

TINMARL PTY LTD ATF THE R&M PATANE FAMILY TRUST ENTERPRISE AGREEMENT 2024

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Part 1—Application and Operation

1. Title

This Agreement will be referred to as the *Tinmarl Pty Ltd ATF The R&M Patane Family Trust Enterprise Agreement 2024*.

2. Term, Operation and Coverage of Agreement

- 2.1** This Agreement comes into operation on the first full pay period 7 days after the Agreement is approved by the Fair Work Commission.
- 2.2** The nominal expiry date of the Agreement is 4 years from the date of approval by the Fair Work Commission.
- 2.3** This Agreement will apply to the Employer and all Employees classified under this Agreement performing work in the Commonwealth of Australia. It is the intention of the parties to this Agreement that it will replace all terms and conditions of any applicable Award/s, Industrial Agreements or Industrial Instruments or any variations thereto unless otherwise stated herein and that this Agreement will operate to the exclusion of any applicable Award/s, industrial agreements or industrial instruments including the *Horticulture Award 2020 [MA000028]*.
- 2.4** This Agreement applies to the Employer and the Employees classified under this Agreement where the Employer is operating in the horticulture industry or where the Employer supplies labour on an on-hire basis in the horticulture industry in respect of on-hire employees in classifications covered by this Agreement and those on-hire employees, while engaged in the performance of work for a business in the horticulture industry.

3. Definitions and interpretation

- 3.1** In this agreement, unless the contrary intention appears:

Act means the *Fair Work Act 2009* (Cth)

Agreement means the *Tinmarl Pty Ltd ATF The R&M Patane Family Trust Enterprise Agreement 2024*

Base Hourly Rate means the base rate of pay per hour for an employee excluding any allowances, overtime, penalty rates or other inclusions.

Employee means an Employee of the Employer who is classified under this agreement.

Employer means Tinmarl Pty Ltd ATF The R&M Patane Family Trust (ABN 55 078 250 667)

Default fund employee means an employee who has no chosen fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth)
Defined benefit member has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* (Cth)

Exempt public sector superannuation scheme has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

Harvest period means the period of time during which employees are engaged principally in the harvesting, grading or packing of Horticultural crops

Horticulture industry means:

- (i) the sowing, planting, raising, cultivation, harvesting, picking, washing, packing, storing, grading, forwarding or treating of horticultural crops in connection with a horticultural

enterprise; or

- (ii) clearing, fencing, trenching, draining or otherwise preparing or treating land or property in connection with the activities listed at (i).

Horticultural crops includes all vegetables, fruits, grains, seeds, hops, nuts, fungi, olives, flowers, or other specialised crops unless they are specifically named as a **broadacre field crop** in the *Pastoral Award 2020*

Horticultural enterprise means an enterprise which, as an important part of its enterprise, engages in the raising of Horticultural crops as defined by this Agreement

NES means the National Employment Standards as contained in the *Fair Work Act 2009* (Cth)

On-hire means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or arepresentative of the client

Standard rate means the Base Hourly Rate for a Level 2 in clause 11.1. This rate is to be used for the purposes of calculating various allowances that require a designated standard rate.

4. Individual flexibility arrangements

4.1 An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

- (a) the agreement deals with 1 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 employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
- (c) the arrangement is genuinely agreed to by the employer and employee.

4.2 The employer must ensure that the terms of the individual flexibility arrangement:

- (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
- (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
- (c) result in the employee being better off overall than the employee would be if no arrangement was made.

4.3 The employer must ensure that the individual flexibility arrangement:

- (a) is in writing; and
- (b) includes the name of the employer and employee; and
- (c) is signed by the employer 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 enterprise 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
- (iv) states the day on which the arrangement commences.

4.4 The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

4.5 The employer or employee may terminate the individual flexibility arrangement:

- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
- (b) if the employer and employee agree in writing — at any time.

5. Aims of the Agreement

5.1 The parties acknowledge the particular environment and challenges working in horticulture businesses, including:

- (a) the work is labour intensive, often requiring large numbers of employees for short periods of time.
- (b) employees are drawn from a variety of sources including the various Visa programs - working holiday makers, seasonal workers and overseas labour, overseas students. As such, a significant proportion of the workforce is transient and/or temporary by nature.
- (c) employees want to work as many hours as possible in short periods of time. The Employer wishes to be able to provide employees with as many hours possible whilst maintaining a viable and ongoing business.
- (d) product quality, supply and price are directed and impacted by forces outside the employer's control, including climatic conditions and market supply and demand.
- (e) due to a number of factors including, but not limited to, the fluctuating demand for employees, the unpredictable nature of the industry, the seasonal nature of the industry, the climate, the market and the demand inconsistencies at any point in time, the parties acknowledge that a flexible workforce is essential and that it is often difficult to set, predict or guarantee hours of work with any certainty.
- (f) the work is sometimes performed in less than ideal physical conditions (outdoors, hot/humid temperatures; sun exposure) and employees benefit from work hours and rosters which allow for the negative impacts of these conditions to be minimised so far as possible.

5.2 The parties agree that the objectives of this Agreement are to facilitate:

- (a) sustainable permanent and seasonal employment to the benefit of both business and community;
- (b) the profitable delivery of the highest quality product;
- (c) continuous improvement for better outcomes for both employees and employer; and
- (d) the development and maintenance of a productive and harmonious working environment to further these aims.

- 5.3** It is recognised that an important factor in reaching the above objectives is the development of a working environment where the employer and employees work co-operatively, diligently and with their best efforts to increase the efficiency, productivity, and competitiveness of the Employer's business for the mutual benefit of all parties.

Part 2—Consultation and Dispute Resolution

6. Consultation

Consultation about major workplace change

- 6.1 If the employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:
- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
 - (b) discuss with affected employees and their representatives (if any):
 - (i) the introduction of the changes; and
 - (ii) their likely effect on employees; and
 - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
 - (c) commence discussions as soon as practicable after a definite decision has been made.
- 6.2 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 6.3 For the purposes of the discussion under clause 6.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:
- (a) their nature; and
 - (b) their expected effect on employees; and
 - (c) any other matters likely to affect employees.
- 6.4 Clause 6.3 does not require the employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.
- 6.5 The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 6.1 (b).
- 6.6 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 employer, the requirements set out in clause 6.1(a) and clauses 6.2 and 6.3 are taken not to apply.
- 6.7 In clause 6 **significant effects**, on employees, includes any of the following:
- (a) termination of employment; or
 - (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
 - (c) loss of, or reduction in, job or promotion opportunities; or
 - (d) loss of, or reduction in, job tenure; or
 - (e) alteration of hours of work; or

- (f) the need for employees to be retrained or transferred to other work or locations; or
- (g) job restructuring.

Consultation about changes to rosters or hours of work

- 6.8** The paragraphs under this heading apply if the employer proposes to change the regular roster or regular ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic, variable or unpredictable.
- 6.9** The employer must consult with any employees affected by the proposed change and their representatives (if any).
- 6.10** For the purpose of the consultation, the employer must:
- (a) provide to the employees and representatives information about the proposed change (for example, information about the nature of the change and when it is to begin); and
 - (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.
- 6.11** The employer must consider any views given.

7. Dispute resolution

- 7.1** Clause 7 sets out the procedures to be followed if a dispute arises about a matter under this Agreement or in relation to the NES.
- 7.2** The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.
- 7.3** If the dispute is not resolved through discussion as mentioned in clause 7.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.
- 7.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 7.2 and 7.3, a party to the dispute may refer it to the Fair Work Commission.
- 7.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 7.6** The Fair Work Commission may deal with the dispute in 2 stages:
- (a) the 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 the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.
- 7.7** A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 7.

- 7.8** While procedures are being followed under clause 7 in relation to a dispute:
- (a)** work must continue in accordance with this agreement and the Act; and
 - (b)** an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace that is safe and appropriate for the employee to perform.
- 7.9** Clause 7.8 is subject to any applicable work health and safety legislation.

Part 3—Types of Employment and Termination of Employment

8. Types of employment

8.1 General

- (a) Employees under this agreement will be employed as casual employees.
- (b) At the time of engagement, the employer will inform each employee of the terms of their engagement.

8.2 Casual employment

- (a) A casual employee is one engaged and paid as such.
- (b) For each hour worked, a casual employee will be paid no less than the Base Rate of pay for an employee in that classification in clause 13—Minimum Wages, plus a casual loading of 25%.
- (c) The casual loading is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other entitlements of permanent employment provided for in this agreement.
- (d) A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.

8.3 Right to request casual conversion

The right to request casual conversion is provided for in the NES.

9. Termination of employment

Termination of employment is as per the NES (for the purpose of clarity, there is no notice period for casual employees).

Part 4—Minimum Wages and Related Matters

10. Classifications

Refer to **Schedule A**.

11. Minimum wages

11.1 Adult employee minimum wages

- (a) The classifications and minimum wages for an adult employee are set out in the following table:

Classification	Base Hourly Rate	Base Casual Hourly Rate
Level 1	\$22.63	\$28.28
Level 2	\$23.25	\$29.06
Level 3	\$23.89	\$29.86
Level 4	\$24.75	\$30.93
Level 5	\$26.20	\$32.75

11.2 Wage Reviews

- (a) Wage reviews will be conducted annually with changes in rates applicable from the first full period following 1 July of each year.
- (b) The Base Hourly Rate will be reviewed each year to align with the minimum hourly rate as set by the Fair Work Commission wage decision (where the classification levels in clause 11.1(a) correspond to Levels 1 to 5 in the *Horticulture Award 2020*).

11.3 Level Progression

- (a) Employees engaged at Level 1 will be assessed after the equivalent of 12 months of work (1976 hours of service for casual employees) and, where deemed competent at the required Level 1 duties and identified to be expected to perform the duties required at level 2, progress to Level 2 rates.
- (b) Where an employee is deemed not competent or not required to perform level 2 duties at that point, assessments will take place after the completion of each further 3 months of work (494 hours of service for casual employees).
- (c) The assessment will be based on the classification descriptions in Schedule A as it applies within the context of the employer's processes, procedures, machinery, product lines or other operational elements.
- (d) Disputes about whether the employer is competent at their role can be dealt with under clause 7—Dispute resolution.

12. Pieceworkers

12.1 In clause 12

- (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 Base Hourly Rate for the pieceworker's classification under clause 11.1 level plus for a casual pieceworker the 25% casual loading.

NOTE: The Base Hourly Rate for a junior pieceworker is worked out according to the rates under clause 13.1.

- (c) pieceworker means an employee being paid a piece rate; and
- (d) 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).

NOTE: A pieceworker can use the employee records kept under clause 12.10 as evidence of their experience performing a piecework task.

12.2 The following clauses of this Agreement do not apply to a pieceworker:

- (a) Clause 18 – Ordinary hours of work and rostering arrangements;
- (b) Clause 15.2 **Error! Reference source not found.** – Meal Allowance; and
- (c) Clause 20 – Overtime.

12.3 An employer may pay a casual employee a piece rate for performing a task.

12.4 The employer 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 Base Hourly Rate for the pieceworker.

NOTE: A pieceworker is paid 200% of the piece rate for work on a public holiday (see clause 24.3).

12.5 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 Base Hourly Rate for the pieceworker.

12.6 Despite any other provision of clause 12 a pieceworker must be paid for each day on which they work no less than the Base Hourly Rate for the pieceworker multiplied by the number of hours worked on that day.

12.7 Before a pieceworker begins a piecework task for an employer, the employer must give the pieceworker a written record signed by the employer (a piecework record) that must:

- (a) state the date and time the piecework is to commence;
- (b) describe the task for which the piece rate will be paid;
- (c) state the amount of the piece rate;
- (d) include the following statement:

'Under the *Tinmarl Pty Ltd ATF The R&M Family Trust Enterprise Agreement 2024* a pieceworker must be paid for each day on which they work no less than their Base Hourly Rate under the award (including the 25% casual loading for a casual pieceworker) multiplied by the number of hours worked on that day.'

and

- (e) state the Base Hourly Rate for the pieceworker.

NOTE 1: A piecework record can cover more than one piecework task.

NOTE 2: An example of a piecework record is at Schedule B—Piecework record. There is no requirement to use the form of record set out in Schedule B—Piecework record.

- 12.8** If an employer proposes to change the piece rate for a piecework task the employer must first give the pieceworker a further piecework record including the new rate.
- 12.9** The employer 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.
- 12.10** An employer must give a pieceworker or former pieceworker a copy of the employee record in clause 12.9 upon request.
- 12.11** 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.

13. Juniors

- 13.1** The minimum wage payable to a junior employee will be the percentage of the All Up Hourly Rate for an adult prescribed for the classification upon which the employee is employed as set out in the following table:

Age	Percentage
	%
Under 16 years of age	50
16 years of age	60
17 years of age	70
18 years of age	80
19 years of age	90
20 years of age	100

14. Payment of wages

- 14.1** **Period of payment**

Wages must be paid weekly or fortnightly according to the actual ordinary hours worked each week or fortnight, or according to the applicable piecework payment.

14.2 Method of payment

Wages will be paid by electronic funds to credit an account held by the employee.

14.3 Payment on termination of employment

- (a) If the employment of an employee terminates, the employer must pay an employee the following amounts in accordance with this clause:
- (i) the employee's wages under this agreement for any complete or incomplete pay period up to the end of the day of the termination; and
 - (ii) all other amounts that are due to the employee under this agreement and the NES.
- (b) The amounts described above must be paid to the employee
- (i) by electronic funds transfer no later than 7 days after the day on which the employee's employment terminates.
- (c) The requirement to pay wages and other amounts under clause 14.3 is subject to further order of the Commission and the employer making deductions authorised by this agreement or the Act.

15. Allowances

15.1 Leading Hand Allowance

A leading hand will be paid a leading hand allowance based upon the following:

In charge of:	\$ per week
2 to 6 employees	26.71
7 to 10 employees	31.13
11 to 20 employees	44.37
More than 20 employees	55.75

15.2 Meal allowance

- (a) An employee will be entitled to a payment of \$14.66 or will be provided a suitable meal without cost if the employee:
- (i) is required to work overtime for more than 2 hours after the employee's rostered finishing time; and
 - (ii) was not notified before leaving work on the previous day that the employee will be required to work overtime.
- (b) If the work extends into a second or subsequent meal break, this meal allowance will again apply.

15.3 Wet working allowance

- (a) An employee who, on any one day, is required to work in a wet place must be paid \$2.32 for each hour that they are required to work in the wet place, unless provided with adequate protection.

- (b) 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 ware or slush so that the employee's feet become wet.

16. Accident pay

16.1 Definitions

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

- (a) **Accident pay** means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers' compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over agreement payments) provided the latter amount is greater than the former amount.
- (b) **Injury** will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the employer.

16.2 Entitlement to accident pay

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

16.3 Calculation of the period

- (a) The 26 week period commences from the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 26 week period.
- (b) The termination by the employer of the employee's employment within the 26 week period will not affect the employee's entitlement to accident pay.
- (c) For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

16.4 When not entitled to payment

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

16.5 Return to work

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

16.6 Redemptions

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

16.7 Damages independent of the Acts

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

16.8 Casual employees

For a casual employee, the weekly payment referred to in clause 16.2 will be calculated using the employee's average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee's average weekly ordinary hours over the period of employment with the employer. The weekly payment will include casual loading but will not include over agreement payments.

17. Superannuation

17.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

17.2 Employer contributions

The employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

17.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise the employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 17.2.
- (b) An employee may adjust the amount the employee has authorised the employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to the employer.
- (c) The employer must pay the amount authorised under clauses 17.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 17.3(a) or (b) was made.

Part 5—Hours of Work and Related Matters

18. Ordinary hours of work and rostering

18.1 The ordinary hours of work for casual employees will not exceed an average of 38 hours per week provided that:

- (a) Ordinary hours of work for casual employees can be worked between Monday and Sunday.
- (b) Ordinary hours of work for casual employees can be worked between Monday and Sunday between 5am and 8:30pm (or shifted in accordance with daylight savings).
- (c) Each ordinary hour worked by a casual employee on any day of the week (excluding public holidays) between 8.31 pm and 4.59 am (or 7.31 pm and 3.59 am where daylight savings exists) will attract a loading of 15% of the employee's base hourly rate for his or her classification (in addition to the casual loading of 25%)
- (d) The scope of ordinary hours can be amended by agreement between the employer and the majority of employees. Where this is done by agreement, such hours will be considered ordinary hours for all purposes of this Agreement.
- (e) The maximum number of ordinary hours which a casual employee may work per engagement, or on any day, is 12 ordinary hours.
- (f) All time worked in excess of 12 hours per engagement, 12 hours in a single day or the average of 38 hours per week will be deemed overtime.

19. Breaks

19.1 Meal break

- (a) A meal break of not less than 30 minutes and not more than one hour will be allowed each day, to be taken not later than six hours after commencing ordinary hours of work. Provided that where there is agreement between the employer and an individual employee, the meal break may be taken at a time agreed.
- (b) The duration of meal breaks may be amended by agreement between the employer and the majority of employees. The duration may not be reduced to less than 30 minutes but may be extended to greater than 60 minutes. This provision may be used in circumstances where environmental conditions beyond the employer's control mean that it is either safer or more tenable for employees to take a longer break (for example, a longer break in the middle of the day to avoid working in hot conditions).
- (c) All work performed on the instruction of the employer during a recognised meal break will be paid for at 200% of the appropriate minimum wage. Such payment will continue until the employee is released for a meal break of not less than 30 minutes.
- (d) Employees working longer than 10 hours in one shift will be entitled to an additional 45-minute unpaid break to be taken at a time agreed by the employer and employee.

19.2 Rest break

- (a) Employees will receive two (2) 10-minute paid rest breaks when performing shifts of up to 10 hours.

- (b) Where an employee works beyond 5pm on any day, they are entitled to a further 10-minute paid rest break.

19.3 Ten-hour break after ceasing work for the day

- (a) An employee is entitled to a break of 10 hours between finishing work on one day and commencing work on the next day.
- (b) 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.

20. Overtime

- (a) In recognition of operational requirements according to seasonal variation, the following arrangements are intended to maximise productivity and to allow employees increased leisure time at mutually agreed hours.
- (b) Due to the seasonality of the work and acknowledging the employees' wish to arrange their hours such that they work more hours during the season to allow a longer period away from work in the off-season; for the purpose of clauses 18 and 20 hours will be averaged over a 12 month period.

20.1 Time off instead of payment for overtime

- (a) An employee and the employer may agree in writing to the employee taking time off instead of being paid for all overtime that is required to be worked by the employee under this agreement.
- (b) An agreement made under clause 20.1 will remain in place unless the agreement is terminated.
- (c) An agreement made under clause 20.1 must be in writing and must state each of the following:
 - (i) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (ii) that the agreement can be terminated at any time by notice in writing;
 - (iii) that overtime required to be worked after the agreement is terminated will be paid at the overtime rate applicable to the overtime when worked;
 - (iv) that time off instead of overtime must be taken within twelve months of it being worked, at a time or times agreed by the employee and employer;
 - (v) that, if time off is not taken as mentioned in paragraph (iv), the employer must pay the employee for the overtime, in the next pay period at the overtime rate applicable to the overtime when worked;
- (d) The period of time off that an employee is entitled to take is equal to the number of overtime hours worked (that is one hour of overtime will accrue one hour of TOIL).
- (e) TOIL accrued will be accessed where an employee does not work a full week for reasons other than other paid leave; where an employee is not able to perform work due to inclement weather or other factors outside of the employer's control; or otherwise by agreement.
- (f) Time off must be taken within the period agreed in clause 20.1 and at a time or times

within that period as agreed by the employee and employer.

- (g) If time off for overtime that has been worked is not taken within the period in clause 21.2, the employer must pay the employee for the overtime, in the next pay period at the overtime rate applicable to the overtime when worked unless the employer agrees to pay out the accrued overtime earlier.
- (h) The employer must keep a copy of any agreement under clause 20.1 as an employee record.
- (i) The employer must keep a record of the number of overtime hours worked by the employee, when those hours were worked and an updated record of the employee's time off instead of payment for overtime balance.
- (j) The employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (k) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime required to be worked by the employee. If the employer agrees to the request, then clause 20.1 will apply, including the requirement for a written agreement under paragraph (c) for overtime that has been worked.
- (l) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 20.1 applies has not been taken, the employer must pay the employee for the overtime at the overtime applicable to the overtime when worked.

20.2 Payment for overtime—casual employees (not pieceworkers)

- (a) Overtime will be paid at a rate of 175% of the employee's hourly wage for their classification (inclusive of the casual loading). An employee will only work overtime if it has been directed and approved by the employer.

21. Requests for flexible working arrangements

21.1 Employee may request change in working arrangements

Clause 21 applies where an employee has made a request for a change in working arrangements under s.65 of the Act.

21.2 Responding to the request

Before responding to a request made under s.65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:

- (a) the needs of the employee arising from their circumstances;
- (b) the consequences for the employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

21.3 What the written response must include if the employer refuses the request

Clause 21.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 21.2.

- (a) The written response under s.65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (b) If the employer and employee could not agree on a change in working arrangements under clause 21.2, the written response under s.65(4) must:
 - (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
 - (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

21.4 What the written response must include if a different change in working arrangements is agreed

If the employer and the employee reached an agreement under clause 22 on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

21.5 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 21, can be dealt with under clause 7—Dispute resolution.

Part 6—Leave and Public Holidays

22. Personal/carer's leave and compassionate leave

22.1 Entitlements to unpaid personal/carer's leave and compassionate leave are provided for in the NES.

22.2 Casual employees are entitled to accrue up to five (5) days paid personal carer's leave per annum.

- (i) These will accrue at the rate of 0.02 hours per hour worked, based on the hours worked.
- (ii) Accrual of paid personal leave is capped at a total of 5 days per annum.
- (iii) Each day taken for the purpose of paid personal/carer's leave will be paid as a 7.6 hour day at the employee's base hourly rate of pay.
- (iv) Employees may access their paid leave for time off when:
 - The employee is unfit to attend work due to being ill or injured, or
 - The employee is required to provide care for an immediate family member who is sick or injured, or
- (v) Up to one (1) day per annum of the accrued personal leave, may be accessed for the purpose of compassionate leave which may be used if a member of the employee's immediate family member dies.

22.3 For the purpose of clause 22.2:

- (i) an immediate family member is:
 - Spouse or former spouse;
 - De facto partner or former de facto partner;
 - Child;
 - Parent;
 - Grandparent;
 - Grandchild;
 - Sibling; or
 - child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner (or former spouse or de facto partner).

This definition includes step-relations (for example, step-parents and step-children) as well as adoptive relations

22.4 To access paid leave as per clause 22.2, employees are required to provide reasonable evidence. This may include (but is not limited to):

- (i) Medical certificate for the employee where they are ill or injured and unable to attend work;
- (ii) Medical certificate for the family member requiring care due to illness/injury; or
- (iii) Reasonable evidence of death of a family member (for example a death or funeral notice)

Where reasonable evidence is not provided, the employer reserves the right to process the absence as leave without pay.

23. Community service leave

Community service leave is provided for in the NES.

24. Public holidays

Public holidays are provided for in the NES.

24.1 Working a public holiday

- (a)** Employees may be required to work public holidays in order to meet the operational and seasonal requirements of their roles and employees may only refuse a request to work based on reasonable grounds.
- (b)** In determining whether the Employer's request or the Employee's refusal to work on a public holiday is reasonable, the following will be taken into account:
 - (i)** the nature of the employer's workplace (including its operational requirements) and the nature of the work performed by the employee
 - (ii)** the employee's personal circumstances, including family responsibilities
 - (iii)** whether the employee could reasonably expect that the employer might request work on the public holiday
 - (iv)** whether the employee is entitled to receive overtime payments, penalty rates, or other extra payments
 - (v)** the type of employment (for example casual or shiftwork)
 - (vi)** the amount of notice in advance of the public holiday given by the employer when making the request
 - (vii)** the amount of notice in advance of the public holiday given by the employee in refusing the request
 - (viii)** any other relevant matter.

24.2 Substitution of certain public holidays by agreement at the enterprise

- (a)** The employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES.
- (b)** The employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.

24.3 Public holiday rates of pay—Pieceworker

All work required to be performed on public holidays will be paid for at the rate of 200% of the piece rate for a pieceworker.

24.4 Public holiday rates of pay—casual employees

All hours required to be worked by a casual employee on a public holiday (both ordinary hours and any overtime) will be paid at a rate of 225% of the employee's base rate of pay for their classification (inclusive of the casual loading).

25. Leave to deal with Family and Domestic Violence

Family and Domestic Violence leave is provided for in the NES.

Part 7—Warranties

26. Employee Warranties

26.1 The employee warrants that:

- (a)** As far as is required under the relevant workers' compensation legislation, they have advised the Employer of any pre-existing condition which may be aggravated by the type of employment contemplated by this Contract;
- (b)** They have the lawful right to work in Australia and to perform the duties and responsibilities of employment contemplated by this Contract;
- (c)** They will immediately notify the Employer of any circumstances that may prejudice their lawful right to work in Australia at any time during their employment; and
- (d)** They acknowledge their obligation to advise of any factors, as they apply from time to time, which may impact on their ability to satisfy the requirements of their position as it exists from time to time, including but not limited to advising of any changes to licenses, accreditations, or physical or mental capacity.

26.2 Should an employee breach these warranties, the Employer reserves the right to terminate your employment.

Schedule A—Classification Structure and Definitions

A.1 Level 1

A.1.1 Level 1 employee means an employee classified in accordance with the following criteria:

A.1.2 General description

An employee at this level:

- (a) undertakes induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career opportunities, facilities layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurance;
- (b) performs routine duties essentially of a manual nature and to the level of their training;
- (c) exercises minimal judgment;
- (d) works under direct supervision;
- (e) is responsible for the quality of their own work;
- (f) is a new employee; or is an existing employee performing work within this grade who is undertaking training so as to enable advancement to Level 2.

A.1.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- (a) performing general labouring duties;
- (b) fruit or vegetable picking and general plant maintenance;
- (c) operating small towing tractor engaged in transfer of produce bins and other containers during harvest;
- (d) performing a range of housekeeping tasks in premises and grounds;
- (e) sorting, packing or grading of produce where this requires the exercise of only minimal judgment;
- (f) performing basic recording functions related to work performed at this level;
- (g) providing assistance within the scope of this level to other employees as required;
- (h) undertaking structured training so as to enable advancement to Level 2.

A.2 Level 2 employee

A.2.1 Level 2 employee means an employee classified in accordance with the following criteria:

A.2.2 General description

An employee at this level:

- (a) has completed up to three months structured training so as to enable the performance of work within the scope of this level;

- (b) works under general supervision either individually or in a team environment;
- (c) works with established routines, methods and procedures;
- (d) performs a range of tasks involving the use of skills above and beyond those of Level 1 and to the level of their training;
- (e) exercises limited discretion;
- (f) is responsible for the quality of their own work;
- (g) receives training in occupational health and safety standards and practices relevant to the site;
- (h) performs lower level tasks as required without loss of pay unless re-engaged to perform tasks at predominantly a lower skill level.

A.2.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- (a) performing a range of tasks involving the set up and operation of production and/or packaging or picking equipment, labelling and/or consumer picking equipment;
- (b) repetition work on automatic, semi-automatic or single purpose machines or equipment;
- (c) assembling/dismantling components using basic written, spoken and/or diagrammatic instructions in an assembly environment;
- (d) irrigation, and general plant maintenance under general supervision;
- (e) sorting, packing and grading beyond the scope of Level 1 duties;
- (f) maintaining simple records;
- (g) using hand trolleys, pallet trucks or other mechanical or power driven lifting or handling devices not requiring a licence;
- (h) operating tractors with engine capacity of up to 70 kW;
- (i) general and routine product testing;
- (j) providing assistance within the scope of this level to other employees as required;
- (k) assisting in the provision of on-the-job training in conjunction with supervisors, tradespersons or trainers;

A.2.4 undertaking further training so as to enable advancement to Level 3.

A.3 Level 3 employee

A.3.1 **Level 3 employee** means an employee classified in accordance with the following criteria:

A.3.2 General description

An employee at this level:

- (a) performs work above and beyond the skills of an employee at Level 2 and to the level of their training;

- (b) works under routine supervision either individually or in a team environment;
- (c) exercises discretion with their level of skills and training;
- (d) is responsible for the quality of their own work;
- (e) receives training in occupational health and safety standards and practices in work areas relevant to the site and appropriate to this agreement;
- (f) may perform any lower level task as required without loss of pay.

A.3.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- (a) driving motor lorries or mechanical harvesters or forklifts (where this is a regular and consistent requirement of the position);
- (b) operating tractors with engine capacity of over 70 kW;
- (c) minor maintenance of equipment;
- (d) irrigation, spraying, general plant maintenance without supervision;
- (e) assisting in the training, instruction and coordination of employees;
- (f) recording detailed information on production and quality indicators;
- (g) providing assistance within the scope of this level to other employees;
- (h) undertaking further training so as to enable advancement to Level 4.

A.4 Level 4 employee

- (a) **Level 4 employee** means an employee classified in accordance with the following criteria:

A.4.2 General description

An employee at this level:

- (a) performs work above and beyond the skills of an employee at Level 3 and to the level of their training;
- (b) coordinates work in a team environment or works individually under general supervision
- (c) exercises discretion with their level of skills and training;
- (d) is responsible for the quality of their own work;
- (e) has knowledge of the employer's operation as it relates to the production process;
- (f) monitors the application of occupational health and safety standards in work areas relevant to the site and appropriate to this level;
- (g) may perform any lower level task as required without loss of pay.

A.4.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- (a) using precision measuring instruments;
- (b) machine setting, loading and operation;
- (c) inventory and store control;
- (d) licensed operation of all appropriate materials handling equipment;
- (e) basic engineering and fault handling;
- (f) basic non-trades maintenance involving the use of tools and equipment within the scope of this agreement;
- (g) licensed and certified to operate forklifts, engine driving and crane driving operation;
- (h) performing quality checks on the work of others;
- (i) quality assurance/control;
- (j) assisting in provision of on-the-job training;
- (k) monitoring variables affecting production yields, detecting errors, investigating causes and recommending collective/preventative action;
- (l) providing assistance within the scope of this level to other employees;
- (m) undertaking further training so as to enable advancement to Level 5.

A.5 Level 5 employee

A.5.1 Level 5 employee means an employee classified in accordance with the following criteria:

A.5.2 General description

An employee at this level:

- (a) works above and beyond the skills of an employee at Level 4 and to the level of their training;
- (b) performs work under minimal supervision either individually or in a team environment;
- (c) coordinates and schedules approved work in a team environment;
- (d) exercises good interpersonal communication skills;
- (e) exercises discretion within the scope of this grade;
- (f) possesses and uses a trade qualification in the course of their duties;
- (g) has a sound knowledge of the employer's operation as it relates to the production process;
- (h) undertakes lower level tasks as required without loss of pay.

A.5.3 Indicative duties

Indicative of the duties an employee may perform at this level are:

- (a) inspecting products and/or materials for conformity with established operational standards and approves/passes first off samples;
- (b) operating, setting up and adjusting maintenance functions including (but not limited to):

- (i) removing equipment fastenings including use of destructive cutting equipment;
 - (ii) running adjustments to production equipment;
- (c) operating all lifting equipment;
- (d) basic production scheduling and materials handling within the scope of production process or directly related functions;
- (e) exercising high level stores and inventory responsibilities;
- (f) providing on-the-job training;
- (g) providing assistance within the scope of this level to other employees.

Schedule B—Piecework Record

Employee Name	
Employer Name	

Piecework Commencement Details	
Date	
Time	

Piece Work Task 1	
The rate to be paid by the Employer to the Employee for the <picking / packing> of <insert crop> on the property of the Employer shall be:	
\$	per

Piece Work Task 2	
The rate to be paid by the Employer to the Employee for the <picking / packing> of <insert crop> on the property of the Employer shall be:	
\$	per

Piece Work Task 3	
The rate to be paid by the Employer to the Employee for the <picking / packing> of <insert crop> on the property of the Employer shall be:	
\$	per

General Terms

1. The piecework rate(s) is fixed at a level such that a piece worker working at the average productivity of a pieceworker competent at the piecework tasks will earn at least 15% more per hour than the hourly rate for the pieceworker.
2. The piecework rate(s) given above shall be reviewed as necessary in light of any changes in the Award rate or in the nature of the work or the conditions under which it is performed.
3. Under this agreement a pieceworker must be paid for each day on which they work no less than their hourly rate under the award (including the 25% casual loading for a casual pieceworker) multiplied by the number of hours worked on that day.
4. The pieceworker's hourly rate under the Award is \$ _____ per hour.

Employer (Representative)			
Name			
Signed		Date	___ / ___ / ___

Signatories to Agreement

Signed for and on behalf of the Employer Tinmarl Pty Ltd ATF R&M Patane Family Trust

Authorised signatory: Name: _____
Address: _____

Position: _____
Signature: _____
Date: _____

In the presence of: Witness Name: _____
Witness Address: _____
Signature: _____
Date: _____

Signed as an authorised representative of the Employees of Tinmarl Pty Ltd ATF The R&M Patane Family Trust covered by the agreement:

Authorised signatory: Name: _____
Address: _____

Position: _____
Signature: _____
Date: _____

In the presence of: Witness Name: _____
Witness Address: _____
Signature: _____
Date: _____