



## **YOUNG WORKERS CENTRE SUBMISSION**

**Inquiry into Corporate Avoidance of the  
Fair Work Act**

**JANUARY 2017**

Victorian Trades Hall Council  
Ground Floor, Old Building, Trades Hall,  
Cnr Victoria & Lygon Streets, Carlton South, VIC 3053

## **ABOUT THE YOUNG WORKERS CENTRE**

The Young Workers Centre, based in Trades Hall, was established in 2016 to break the cycles of exploitation at work for young Victorians.

We educate young people on their rights, safety and wellbeing at work via training programs available to all Victorian high schools, TAFEs and technical colleges. We provide free legal advice to young people to resolve workplace issues. We organise and train young people to develop campaigns to improve their workplaces. We document life at work through our young workers research project.

## **OUR VISION**

A state in which young people are safe at work, do not suffer harassment or bullying, and are provided their legal entitlements. For this vision to be realised, we must encourage young people to speak up without fear and join with other young workers to make change and improve their workplaces and communities.

## EXECUTIVE SUMMARY

Corporate avoidance and evasion of employer obligations to young workers has reached endemic levels across Australia, with entire towns such as Wollongong coming forward with stories of week long unpaid trials, \$10 and \$12 pay rates, or even no pay<sup>1</sup>. One common component to these stories of young worker exploitation is employers' lack of compliance with the *Fair Work Act 2009* (Cth) (FW Act) combined with minimal regulatory powers. Another is the increasing number of employers entering into employment arrangements such as sham contracting that deliberately circumvent minimum employment standards. Finally, legal loopholes allow employers to employ young people on expired 'zombie' agreements made under the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) ('WorkChoices') despite the introduction of the FW Act in 2009.

This submission presents real life case studies and evidence from young Victorians who have suffered the effects of corporate avoidance of the FW Act in their jobs and workplaces through sham contracting and the continued use of expired WorkChoices era zombie agreements. The submission addresses three terms of reference:

- (a) the use of labour hire and/or contracting arrangements that affect workers' pay and conditions;
- (i) whether the National Employment Standards and modern Awards act as an effective 'floor' for wages and conditions and the extent to which companies enter into arrangements that avoid these obligations;
- (j) legacy issues relating to Work Choices and Australian Workplace Agreements;

## THE GIG ECONOMY: SHAM CONTRACTING REBADGED

Sham contracting has been a method increasingly used by employers to minimise or avoid employee entitlements<sup>2</sup>. The rapid growth in gig economy work such as food bike couriers (Deliveroo and Foodora) or rideshare drivers (Uber) has seen an explosion in numbers and a normalising of sham contracting. These contracts are used to employ young people to perform piecework without safety insurance, minimum pay rates and minimum work conditions provided for in the National Employment Standards (NES) and relevant industry Awards.

## ZOMBIE AGREEMENTS: THE LEGACY OF WORKCHOICES

Over 4000 workplace agreements were made under WorkChoices, and no one, not even the Fair Work Commission, can provide accurate figures of the number still in use. Although most, if not all of these agreements would have expired in the seven years since WorkChoices was replaced by the FW Act, they remain lawful until the agreements are formally terminated. We refer to these agreements as 'zombie' to illustrate the fact that they live on past their expiry date. The removal

---

<sup>1</sup> Patty, A. [2016, December 10]. The Great Student Swindle, *The Sydney Morning Herald*. Retrieved from [http://www.smh.com.au/interactive/2016/great\\_student\\_swindle/](http://www.smh.com.au/interactive/2016/great_student_swindle/).

<sup>2</sup> Australian Council of Trade Unions. [2012] *Lives on Hold* [http://www.actu.org.au/media/609158/lives\\_on\\_hold\\_final.pdf](http://www.actu.org.au/media/609158/lives_on_hold_final.pdf)

of the 'no disadvantage' test (and replacement with the similarly weak 'fairness test') allowed these agreements to omit conditions and entitlements currently included in modern Awards, such as penalty rates. As well as missing out on pay, many zombie agreements exclude many conditions enshrined today in modern Awards, such as minimum shift times and uniform allowances. The result: young workers, many in their first job, are working without the evening and weekend penalty rates they would be entitled to under current industry Awards. Their workplace agreement might have been made when they were in primary school, long before their debut into the workforce. Most would be unaware of the process required to terminate such an agreement under ss 225 and 226 of the FW Act.

We have included real life case studies of young people who have presented to our legal centre to illustrate the impact of these work arrangements on young people. Their stories illustrate the use of sham contracting in the gig economy that erodes the minimum floors for pay & conditions set by the NES and industry Awards, as well as the effect of working under long expired WorkChoices zombie agreements.

The Young Workers Centre welcomes the opportunity to illustrate these points further by participating in inquiry hearings.

For further discussion of the prevalence of corporate avoidance of the FW Act, please refer to the Victorian Trades Hall Council submission.

## RECOMMENDATIONS

1. The Young Workers Centre recommends expanded definitions of 'employer' and 'employee' in the *Fair Work Act 2009* so that the 'employee' definition captures employment arrangements such as dependent on demand contracting that are currently disguised as independent contracting.
2. The Young Workers Centre recommends the *Fair Work Act 2009* be amended to make sham contracting a strict liability offence.
3. The Young Workers Centre recommends the federal government work with state health and safety regulators to review Work/Occupational Health and Safety and Workers Compensation and legislation to ensure that companies operating in the gig economy such as Deliveroo and Uber are clearly responsible for the health and safety of its riders and drivers while working, and ensure that these workers are covered by their workers' compensation insurance.
4. The Young Workers Centre recommends the Fair Work Commission must audit all WorkChoices era agreements to identify zombie agreements that are still in use. The results of this audit should be made publicly available.
5. The Young Workers Centre recommends legislation is amended to require employers to replace WorkChoices zombie agreements with agreements that are compliant with the *Fair Work Act 2009*, including specifically passing the Better Off Overall Test. In any workplaces undergoing an agreement replacement process, employers must ensure that representational rights of employees are complied with during bargaining. We do not support any universal blanket termination of expired collective agreements except in these very narrow and specific circumstances relating to WorkChoices era zombie agreements.

## **THE GIG ECONOMY: SHAM CONTRACTING WITH A NEW NAME**

Young people working in the gig economy are largely engaged as independent contractors with their own Australian Business Numbers (ABN). The gig economy is characterised by temporary short term work, where workers have no guaranteed hours of work or income, and do not benefit from the protection of minimum conditions of employment contained within the NES and relevant Awards. Workers perform piecemeal work or access short, temporary 'gigs' of work through digital platforms owned & developed by corporations such as Uber, Deliveroo, Foodora, Airtasker and Freelancer, who take a commission or 'cut' of each gig payment. Many contractors, though independent by law, are in reality economically dependent on a single client or are dependent contractors in that they have no authority over their own work.

This contracting arrangement deliberately shifts responsibility for working costs (bikes or cars and their maintenance, phone costs and internet data plans) and employer responsibilities (superannuation, tax and insurances) from the employing company to workers.

As independent contractors, these workers are not entitled to a minimum wage, minimum or maximum weekly hours, paid leave, notice periods after dismissal, redundancy payouts or unfair dismissal protections. They are responsible for their own superannuation contributions, and may not be covered by government run workers compensation insurance. Independent contractors can form or join a union, but cannot collectively bargain unless authorised by the Australian Competition and Consumer Commission (ACCC).

### **Case study 1: ANDREA\*, FOOD BIKE COURIER**

*\*name has been changed to avoid identification*

Note: References to the Award refer to the *Road transport & distribution Award 2010* in this case study.

Andrea is a 21 year old food bike courier with Deliveroo. She is engaged as an independent contractor to deliver food on demand around Melbourne rain, hail or shine. The contract Andrea signed up to when she started the job was not the result of negotiations between her and the company, rather it was the standard contract Deliveroo were using at the time. This 'standard' contract does not provide Andrea with any of the minimum pay, conditions or other entitlements set for the industry by the Award. There is in fact, no standard or floor for Deliveroo food bike couriers, as contracts change within a matter of months. Deliveroo riders in Melbourne are currently working identical tasks and jobs, on at least five different contracts as seen by Young Workers Centre. Each contract specifies different pay rates and conditions depending on the date the worker commenced work with the company. Andrea describes being lucky enough to be on a 'good' contract compared with others, despite the fact that her contract undercuts the industry Award as shown below.

**“[I] started with them [Deliveroo] in November [2015] as they first set up, and so am on a good contract and pay rate as opposed to newer riders.”**

*See appendix A for a copy of Andrea's Deliveroo contract.*

The table below provides a comparison of three different Deliveroo contracts provided to workers between November 2015 and April 2016. This comparison shows the real wage theft of lost income and super. The analysis is based on a 21 year old casual rider:

- working four three hour shifts per week
- with an average of five deliveries completed per shift
- Three shifts are weeknights (attracting the 'afternoon' rate under the Award)
- One shift is a Saturday night (attracting the 'Saturday' rate under the Award).

CONTRACT DATE	DELIVEROO CONTRACT TERMS	WEEKLY INCOME UNDER DELIVEROO CONTRACT	WEEKLY INCOME UNDER THE AWARD	WAGES STOLEN PER WEEK
November 2015	\$18/hour + \$2.50/delivery	12 hours @ \$18 20 deliveries @ \$2.50 \$216 + \$50 <b>\$266</b>	9 hours @ \$26.72 3 hours @ \$32.81 <b>\$338.91</b> + 9.5% super \$32.20	-\$72.91 income \$32.20 super
February 2016	\$16/hour + \$2.50/delivery	12 hours @ \$16 20 deliveries @ \$2.50 \$192 + \$50 <b>\$242</b>		-\$96.91 income \$32.20 super
April 2016	No hourly rate \$9/delivery	20 deliveries @ \$9 <b>\$180</b>		-\$158.91 income \$32.20 super

*See appendix B for supporting excerpts of Deliveroo contracts from November 2015 to April 2016*

This analysis does not include or quantify additional factors that would demonstrate further losses to workers including:

- phone & data allowance costs
- bike purchase and maintenance costs
- wages stolen due to four hour minimum shifts under the Award
- insurance costs
- employment rights enshrined in law such as the right to a healthy and safe workplace with clearly defined employer responsibilities for workers' compensation insurance.

**× NO MINIMUM HOURLY WAGE**

Andrea must be available and 'logged on' to the company's digital platform to accept delivery tasks while on shift. She is paid a below Award base rate with 'bonus' payments for each completed delivery. On a busy night Andrea might be flat out, but if it's quiet she will earn only the base rate of \$18 well below the minimum pay rates under the Award of \$23.44 for casuals.

**× NO MINIMUM SHIFT LENGTHS**

Andrea works shifts allocated to her on a roster, just like an employee. However as Andrea has no right to a minimum shift length and no minimum hourly wage, she has no minimum shift *pay*. Under

the Award, Andrea would be entitled to minimum four hour shifts and four hours pay \$75 for full or part time worker or \$93.76 for casuals.

*“(The) flexibility is good, although what started off as four hour shift blocks have decreased over time to just one hour, and in some cases even just 30 minutes! (I’m) constantly checking email to 'trade' shifts with others, often leaving me with one or two hour long shifts dispersed over the week.”*

× **NO WEEKEND PENALTY RATES**

The chefs, waitstaff and others employed in the preparation and cooking of the food that Andrea delivers are entitled to penalty rates for hours worked on their weekends, public holidays or late evening. Despite working the same hours, Andrea’s contractor status means she misses out on those penalty rates.

× **NO SUPERANNUATION**

Andrea is over 18 and earning more than \$450 pre tax per month, so if she were an employee she would be receiving 9.5% super paid into her account to set her up for retirement later in life. Unfortunately in her case, contractors are responsible for their own superannuation. Andrea will have to take a 9.5% pay cut and pay super out of her already below Award pay rates if she wants to keep up her superannuation investment.

× **PAY FOR YOUR BIKE, WORK PHONE & DATA COSTS YOURSELF**

Andrea’s contract states she must ‘provide equipment and/or tools necessary to undertake work including but not limited to smart phone, sufficient data plan and appropriate mode of transport’ (4.1.5.1.1.2). If Andrea was an employee, she would be provided transport, a phone and data or an allowance for these tools required for the job.

× **PAY FOR YOUR OWN WORK-RELATED INSURANCES - OR RISK HAVING NONE**

Andrea’s contract states she’s responsible for obtaining and maintaining all insurances needed including: mode of transport insurance, workers comp insurance, professional indemnity insurance, and public liability insurance (7.6.1 4). If Andrea was an employee, her work related insurances would be provided by her employer.

*“Health and safety wise, I've fallen off my bike and had my bike damaged or even at one point stolen, with no protection or support other than “contact us again once you've sorted it out” ie leaving me out of pocket.”*

× **ORGANISE YOUR OWN TAX PAYMENTS**

As holder of an ABN Andrea must pay her own taxes. Andrea is also responsible for any other taxation associated with her job including payment of goods and services tax (GST). If Andrea was an employee, her workplace payroll department would deduct tax through the Pay As You Go (PAYG) scheme.

## **RECOMMENDATIONS**

1. The Young Workers Centre recommends expanded definitions of 'employer' and 'employee' in the *Fair Work Act 2009* so that the 'employee' definition captures employment arrangements such as dependent on demand contracting that are currently disguised as independent contracting.
2. The Young Workers Centre recommends the *Fair Work Act 2009* be amended to make sham contracting a strict liability offence.
3. The Young Workers Centre recommends the federal government work with state health and safety regulators to review Work/Occupational Health and Safety and Workers Compensation and legislation to ensure that companies operating in the gig economy such as Deliveroo and Uber are clearly responsible for the health and safety of its riders and drivers while working, and ensure that these workers are covered by their workers' compensation insurance.

## ZOMBIE AGREEMENTS: THE LEGACY OF WORKCHOICES

Enterprise Bargaining Agreements (EBAs) made under WorkChoices legislation (*Workplace Relations Amendment (Work Choices) Act 2005*) remain applicable and enforceable in workplaces across Victoria and Australia. The true extent of WorkChoices 'zombie' agreements is unknown. Over 4000 agreements were registered under WorkChoices and even the Fair Work Commission is unable to identify how many are still in use\*.

The termination and replacement of the WorkChoices legislation by the FW Act and the process of Award modernisation culminated in greater minimum entitlements and protections for employees, of which young workers under WorkChoices agreements are deprived.

Any enterprise agreements made under the FW Act must satisfy the 'Better Off Overall Test' (BOOT) (s193), which ensures that any worker under the enterprise agreement be better off under the agreement than under the relevant Award. Initial WorkChoices era enterprise agreements were not subjected to the 'no disadvantage test', and despite the introduction of the weak 'fairness test', these agreements continue to undermine the effect of the FW Act and its more robust safety net.

The most cited minimum entitlements evaded under zombie agreements relate to:

- Hourly rates of pay;
- Classifications and duties which appropriately reflect level of responsibility and skill;
- Penalty rates for evening, weekend and public holiday work, overtime, and loading;
- Minimum and maximum shift lengths;
- Rules around charging for uniforms.

## WHO IS STILL WORKING UNDER WORKCHOICES?

In 2015 two high profile workplaces, Grill'd and Pancake Parlour, were found to be operating under WorkChoices zombie agreements. Young workers, with assistance from unions, were able to apply to terminate these agreements. This allowed them and their co workers to work under Award conditions, or better if they negotiated new collective agreements. It must be noted that the agreement termination process was neither simple nor risk free in either workplace. In the case of Grill'd, young worker Kahlani Pyrah was sacked 11 days after seeking termination of the Grill'd zombie agreement to access Award level pay and conditions<sup>3</sup>. In the case of The Pancake Parlour, management warned that termination of the expired zombie agreement could lead to redundancies and increased casualisation of staff<sup>4</sup>. These actions serve as a disincentive for young people seeking to terminate zombie agreements on their own.

---

\* Research for this inquiry and previous Young Workers Centre research projects examining zombie agreements have involved discussions with the Fair Work Commission registry staff about records of agreements made under WorkChoices. They have confirmed that there is no comprehensive record listing agreements that fit the zombie categorisation.

<sup>3</sup> Toscano, N. (2015, July 30). Ruling forces Grill'd stores to increase wages. *The Age*. Retrieved from [http://www.theage.com.au/victoria/ruling\\_forces\\_grilld\\_store\\_to\\_increase\\_wages\\_20150730\\_ginn8q.html](http://www.theage.com.au/victoria/ruling_forces_grilld_store_to_increase_wages_20150730_ginn8q.html)

<sup>4</sup> Toscano, N. (2015, September 30). Pancake Parlour employees win penalty rates for late nights, weekends. *The Sydney Morning Herald*. Retrieved from [http://www.smh.com.au/national/pancake\\_parlour\\_employees\\_win\\_penalty\\_rates\\_for\\_late\\_nights\\_weekends\\_20150921\\_gjrwmn.html](http://www.smh.com.au/national/pancake_parlour_employees_win_penalty_rates_for_late_nights_weekends_20150921_gjrwmn.html)

Two additional case studies below illustrate the significant losses faced by young people working under these out of date WorkChoices zombie agreements. Both workplaces, including one franchise, rely heavily on young employees to carry out their business operations. We have analysed pay, conditions and other entitlements for these workers by comparing their WorkChoices zombie agreements with the relevant modern Awards. If these agreements were made today under the FW Act, our assessment is that neither would pass the BOOT and would not be registered with the Fair Work Commission.

### Case study 2: XAVIER\*, CONFERENCE AND WEDDING VENUE WAITER

*\*name has been changed and workplace not named to avoid identification.*

Note: references to the Award refer to the *Hospitality Industry (General) Award 2010* in this case study.

Xavier is a 25 year old working as a casual waiter at a conference and wedding venue in Melbourne. Xavier and his co workers are employed under a 2007 Workchoices zombie agreement. The agreement has surpassed its nominal expiry date provided within the agreement. The Agreement is now nine years old and undercuts numerous minimum entitlements and protections provided under the relevant Award.

*See appendix C for a copy of Xavier's WorkChoices zombie agreement.*

#### × MISSING PENALTY RATES FOR EVENING, WEEKEND AND PUBLIC HOLIDAY SHIFTS

Xavier regularly works late nights and weekends to staff the many weddings and functions hosted at his workplace. His tasks include supervising other staff, making drinks and delivering food and beverages to customers, deeming him a Level 3 Food and beverage attendant under the Award. The table below compares Xavier's pay under the zombie agreement with the current Award. Analysis shows he could be underpaid up to \$54.32 in one shift alone.

SHIFT	INCOME UNDER CONFERENCE & WEDDING VENUE ZOMBIE AGREEMENT	INCOME UNDER THE AWARD	WAGES STOLEN OVER 8-HOUR SHIFT
Friday night	\$23.50/hour	\$26.51/hour	-\$24.08
Saturday night	\$23.50/hour	\$29.34/hour	-\$46.72
Sunday night	\$23.50/hour	\$34.23/hour	-\$85.84
Public Holiday	\$47.00/hour	\$53.79/hour	-\$54.32

### Case Study 3: HENRY\*, SUBWAY SANDWICH ARTIST

*\*name has been changed to avoid identification.*

Note: references to the Award refer to the *Fast Food Industry Award 2010* in this case study.

Henry is a 22 year old who worked as a casual Sandwich Artist in a suburban Melbourne Subway franchise from 2013 to 2016. Henry worked under a 2009 zombie agreement (*Brodalex Collective Agreement (2009)*). This agreement was to remain in operation for five years, but is still in place

as of December 2016. Henry and his coworkers were underpaid, missed out on penalty rates, and worked under conditions that undercut the Award.

*See appendix D for a copy of the Brodalex Collective Agreement (2009)*

*See appendix E for a wage comparison table of the Brodalex agreement vs Fast Food Industry Award.*

× **NO MINIMUM OR MAXIMUM SHIFT LENGTHS**

Henry missed out on receiving minimum shift lengths under the Award. Three hour minimum shifts acknowledge the time, energy and scheduling it takes for a person to work even a short shift, and serve to make sure that person receives at least a minimum three hours wage for any shift taken. This is particularly pertinent to young people who often rely on public transport to get themselves to work. There would be nothing more frustrating than making yourself available for work only to find yourself sent home after an hour and a half, with little earnings left once a bus or train fare is deducted from your junior rates.

× **WORKING 'PREFERRED HOURS' MEANS TAKING A PAY CUT**

Not only is the base rate under this agreement lower than the current Award rate, but if electing preferred work hours (which are not guaranteed), workers must take an extra pay cut.

× **MISSING PENALTY RATES FOR EVENING, SATURDAY AND PUBLIC HOLIDAY SHIFTS**

Henry could be rostered any day of the week between 6am – 1am. Under the Workchoices zombie agreement Henry does not receive penalty rates for evening or Saturday shifts and is paid only a fraction of the Sunday and public holiday loading he would otherwise be entitled to. Under the Award Henry would receive loading of between 10-50% for hours worked at the unsocial times of after 9pm, on Saturdays, or Sundays and 150% on public holidays.

× **NO PAY FOR ATTENDING WORK MEETINGS**

Henry and his coworkers can be asked to attend unpaid work related meetings outside of their rostered hours. Under the Award attending these meetings would be paid as a minimum 3 hour shift if scheduled outside Henry's rostered hours.

## **RECOMMENDATIONS**

4. The Young Workers Centre recommends the Fair Work Commission must audit all WorkChoices era agreements to identify zombie agreements that are still in use. The results of this audit should be made publicly available.
5. The Young Workers Centre recommends legislation is amended to require employers to replace WorkChoices zombie agreements with agreements that are compliant with the *Fair Work Act 2009*, including specifically passing the Better Off Overall Test. In any workplaces undergoing an agreement replacement process, employers must ensure that representational rights of employees are complied with during bargaining. We do not support any universal blanket termination of expired collective agreements except in these very narrow and specific circumstances relating to WorkChoices era zombie agreements.

## **CONCLUSION**

All Victorian and Australian jobs must be decent, secure and safe. The federal government must make it their concern that businesses of all sizes – multinationals, franchises and small businesses – have shown flagrant disregard for the Fair Work Act by exploiting loopholes to avoid their obligations for workers safety, pay and rights.

Multinational corporations like Deliveroo and Uber are reaping huge profits by shifting their business employment costs, risks and responsibilities on to workers by deeming them independent contractors, as well as on to government by avoiding paying the relevant taxes and levies. These workers are left with little in the way of minimum employment and pay guarantees, no leave and superannuation entitlements, and responsibility for their safety at work is in limbo.

Franchises and small businesses have taken advantage of the young workers their businesses rely on by employing them on WorkChoices era zombie agreements that undercut the entitlements and safety nets enshrined in our modern Awards. These zombie agreements are living on for six and seven years past their expiry, and preclude young workers receiving correct pay rates, penalty rates and minimum shifts that they would ordinarily receive under the Award system.

We respectfully encourage the Inquiry into Corporate Avoidance of the Fair Work Act to make recommendations and take action that will close the loopholes currently available to businesses exploiting young workers through these means, and harsh penalties must be in place as disincentives to any further avoidance.

The Young Workers Centre welcomes the opportunity to illustrate these points further by participating in inquiry hearings.

## REFERENCES

Australian Council of Trade Unions. (2012) *Lives on Hold* [http://www.actu.org.au/media/609158/lives\\_on\\_hold\\_final.pdf](http://www.actu.org.au/media/609158/lives_on_hold_final.pdf)

Patty, A. (2016, December 10). The Great Student Swindle, *The Sydney Morning Herald*. Retrieved from [http://www.smh.com.au/interactive/2016/great\\_student\\_swindle](http://www.smh.com.au/interactive/2016/great_student_swindle).

Toscano, N. (2015, July 30). Ruling forces Grill'd stores to increase wages. *The Age*. Retrieved from [http://www.theage.com.au/victoria/ruling\\_forces\\_grilld\\_store\\_to\\_increase\\_wages\\_20150730\\_ginn8q.html](http://www.theage.com.au/victoria/ruling_forces_grilld_store_to_increase_wages_20150730_ginn8q.html)

Toscano, N. (2015, September 30). Pancake Parlour employees win penalty rates for late nights, weekends. *The Sydney Morning Herald*. Retrieved from [http://www.smh.com.au/national/pancake\\_parlour\\_employees\\_win\\_penalty\\_rates\\_for\\_late\\_nights\\_weekends\\_20150921\\_gjrwmn.html](http://www.smh.com.au/national/pancake_parlour_employees_win_penalty_rates_for_late_nights_weekends_20150921_gjrwmn.html)

**APPENDIX A**

**Deliveroo contract November 2015**

[REDACTED]

Dated [REDACTED] November 2015

**DELIVEROO AUSTRALIA PTY LTD**  
**(ACN 607 915 640)**

and

[REDACTED]

[REDACTED]

---

**INDEPENDENT CONTRACTOR AGREEMENT**

---

Bird & Bird  
Level 11, 68 Pitt Street, Sydney 2000  
New South Wales, Australia  
Telephone: 61 2 9226 9888  
Facsimile: 61 2 9226 9899  
[www.twobirds.com](http://www.twobirds.com)  
Ref: LEM:LTM:97055

**Table of Contents**

1. TERM
  2. DEFINITIONS AND INTERPRETATION
  3. APPOINTMENT
  4. CONTRACTOR OBLIGATIONS
  5. THE COMPANY'S OBLIGATIONS
  6. INVOICE AND PAYMENT PROCEDURES
  7. INDEMNITIES AND INSURANCES
  8. WARRANTIES
  9. TERMINATION
  10. INTELLECTUAL PROPERTY AND MORAL RIGHTS
  11. CONFIDENTIALITY
  12. GENERAL PROVISIONS
- SCHEDULE A
- SCHEDULE B

[REDACTED]

THIS AGREEMENT is made on [REDACTED] November 2015

BETWEEN

DELIVEROO AUSTRALIA PTY LTD ACN 607 915 640 of [Level 1, 3 Wellington Street, St Kilda VIC 3182] ("Company");

AND

[REDACTED] [REDACTED] of  
[REDACTED] ("Contractor"); and

### RECITALS

- A. The Company facilitates an online platform ("**Site**") which enables individuals ("**Customers**") to order food from a restaurant (partnered with the Company) via the Site, to be delivered by the closest driver to the customer. The Company is a technology company operating in the food space.
- B. The Contractor is a sole trader who provides services as a delivery driver, involved primarily in being an intermediary between the restaurant and the Customer as facilitated by the Site.
- C. The Company has determined that it requires the Contractor to provide certain services for the Company and the Contractor has agreed to provide those services in accordance with the terms and conditions set out below.
- D. The Parties have agreed to establish an independent contractor relationship subject to the terms and conditions set out in this Agreement. The Parties do not intend that this Agreement or the arrangements arising from or relating to this Agreement will create an employment relationship between the Company and the Contractor.

### AGREED TERMS

#### 1. TERM

- 1.1 This Agreement will commence on the Commencement Date and will continue until terminated in accordance with clause 9 of this Agreement.
- 1.2 From the Commencement Date this Agreement replaces and terminates all previous agreements between the parties in relation to the Work.

2. **DEFINITIONS AND INTERPRETATION**

2.1 In this Agreement:

"**Allocated Time**" means the Customer nominated time frame for the delivery of the Order;

"**Commencement Date**" means [REDACTED] November 20<sup>15</sup>;

"**Complaint**" means a written or oral expression of dissatisfaction made by an employee of the Company, a Client, or any other person, which is made in relation to the Work, the Contractor or any Contractor Representatives;

"**Confidential Information**" means information given to or gained by the Contractor or Representative in confidence at any time, whether before, during or after the period in which the Representative performed the Work that relates to any trade secret or any commercially sensitive or valuable information concerning the business, affairs, finances, clients, Customer data, subscribers or contacts of the Company which may come to the knowledge of the Contractor or Representative and which is not in the public domain;

"**Customer**" has the meaning set out in Recital A of this Agreement;

"**Intellectual Property**" means all forms of intellectual property rights throughout the world including copyright, registered patent, design, trade mark and Confidential Information, including know-how and trade secrets;

"**Moral Rights**" has the meaning given to it in the Copyright Amendment (Moral Rights) Act 2000 (Cth) and includes rights of integrity of authorship, rights of attribution of authorship and similar rights that exist or may come to exist anywhere in the world;

"**Order**" means the Customer's unique order for food from a selected restaurant via the Site;

"**Service Fees**" means the amount agreed upon between the Parties as per Schedule B of this Agreement as consideration for the provision of Work by the Contractor;

"**Service Standards**" has the meaning set out in Schedule A of this Agreement;

"**Site**" has the meaning as set out in Recital A of this Agreement;

"**WHS Law**" means work health and safety or occupational health and safety legislation and/or regulations as applicable in each State and Territory in Australia as well as any and all other work health and safety codes of practice, by laws, rules or regulations that apply to the performance of the Work in any State or Territory of Australia in accordance with this Agreement; and

“**Work**” means the acceptance via the Site to deliver an Order from a nominated restaurant to the Customer.

3. **APPOINTMENT**

- 3.1 The Company appoints the Contractor on a non-exclusive basis to perform the Work in accordance with the terms of this Agreement, and the Contractor accepts that appointment.
- 3.2 The Contractor retains at all times the right to work elsewhere and receive instructions from other companies without knowledge of or interference by the Company subject to ensuring that any other work being performed for other third parties, does not give rise to a conflict of interest, other conflict or in any way detract from the Contractor’s obligations under this Agreement in relation to the work including but not limited the Contractor’s obligations with respect to Confidential Information of the Company and any of its clients or customers.
- 3.3 The Contractor agrees that they will inform the Company immediately upon becoming aware of any conflict of interest directly or indirectly arising from, relating to or in connection with the Work and any other services that the Contractor is or may provide to a third party.
- 3.4 The Contractor must, prior to the Commencement Date provide the Company with evidence of a criminal record and/or background check as well as evidence of holding the requisite insurance and an ABN. Failure to provide such evidence prior to the Commencement Date or at all may result in the immediate termination of this Agreement
- 3.5 The Contractor acknowledges and agrees :
- 3.5.1 that the Company may alter the volume and nature of Work the Contractor is required to perform from time to time in accordance with the Company’s respective business and operational demands and requirements;
  - 3.5.2 to comply with the Contractor’s obligations as set out in this Agreement, including Service Standards and service expectations in relation to performance of the Work;
  - 3.5.3 that the Company may conduct periodic checks to ensure that the Contractor is complying with the Service Standards and service expectations in relation to performance of the Work pursuant to this Agreement;
  - 3.5.4 the Contractor is not an employee of the Company and that the parties do not intend for this Agreement or the engagement generally to create an employment relationship; and
  - 3.5.5 the Company is not obliged to provide any minimum volume of Work to the Contractor and makes no representation as to the volume of Work it will

provide or the amount of spend it will make during the term of this Agreement.

4. **CONTRACTOR OBLIGATIONS**

4.1 The Contractor acknowledges that he/she must:

- 4.1.1 ensure that at all times the Contractor is properly qualified, competent and experienced to carry out the Work requested by the Company;
- 4.1.2 ensure that the Work is carried out with a high degree of care, skill and diligence, in a timely manner, to the best of their ability and to the Service Standard set in Schedule A to this Agreement;
- 4.1.3 comply with all reasonable guidelines, requirements and instructions provided by the Company to carry out the Work. Notwithstanding, at all times the Contractor will be responsible for determining how the Work is to be performed subject to Schedule A;
- 4.1.4 carry out the Work using the mode of transport approved by the Company;
- 4.1.5 at the Contractor's own expense:
  - 1.1.1.1 perform any and all services necessary to rectify any Work that the Company determines in its sole discretion and acting reasonably, has not been completed satisfactorily in accordance with the Service Standards; and
  - 1.1.1.2 provide equipment and/or tool necessary to undertake the Work, including but not limited to a smart phone, sufficient data plan and an appropriate mode of transport.
- 4.1.6 comply with all road rules and regulations as applicable in the State or Territory in which the Work is performed;
- 4.1.7 comply with all food handling and hygiene rules that apply in relation to the Work, as applicable in the State in which the Contractor performs the Work and as available via the link set out in Item 2 of Schedule A;
- 4.1.8 notify the Company if there are any visa provisions that the Contractor is subject to which may effect, limit or prescribe conditions in relation to Contractor performing work;
- 4.1.9 at the Contractor's own expense, comply with all legislation, regulations, by-laws, ordinances or orders that affect or apply to the Contractor for the Work being carried out by the Contractor, including but not limited to those relating to unlawful discrimination, bullying, harassment and victimisation;

- 4.1.10 at all times perform the Work and comply with WHS Law. In particular, the Contractor agrees and acknowledges that he/she:
- 4.1.10.1 has sole management and control with respect to the performance of the Work;
  - 4.1.10.2 has responsibility to consult with the Company in relation to safe systems of work;
  - 4.1.10.3 must comply with any policies and procedures of the Company relating to WHS law; and
  - 4.1.10.4 must immediately notify the Company of any incident, accident or matter that could give rise to a risk under WHS Law and/or any other health and safety concerns he/she may have in relation to the performance of the Work.
- 4.1.11 where required by the Company, carry a "Deliveroo Contractor Identification Card" when performing the Work;
- 4.1.12 comply with any and all policies and procedures of the Company that apply to contractors in relation to the Work including but not limited to any WHS Law, workplace behaviour, IT and privacy policies and procedures;
- 4.1.13 notify the Company immediately in writing if the Contractor has been charged with, implicated with or suspected of having committed any criminal offence. The Contractor agrees that failure to notify the Company may form grounds for immediate termination of this Agreement, in the Company's absolute discretion, in accordance with the immediate termination provisions of this Agreement set out at clause 9.3 below;
- 4.1.14 if the Company suffers any loss (including but not limited to recouping any costs associated with remedying the loss), as a consequence of the actions or negligence of the Contractor, pay the Company the amount of that loss. The Company can deduct from any moneys it owes to the Contractor an amount to cover the loss;
- 4.1.15 not make any public announcement (including on any social media forum), or press release, in connection with this Agreement and in respect of the Work, without first obtaining the consent of the Company;
- 4.1.16 be responsible for all taxation associated with providing Work to the Company, including goods and services tax ("GST"); and
- 4.1.17 have and continue to have, an Australian Business Number ("ABN") during the term of this Agreement.
- 4.2 The Contractor acknowledges that he/she must not:

- 4.2.1 make any false, misleading or deceptive statements, comments or representations to anyone (including on any social media site or forum) about the Company's services, or the Work. ;
- 4.2.2 make any statements, comments or representations (including on any social media site or forum) or behave in any way that will disparage or harm the Company's reputation and goodwill;
- 1.1.2 assign or subcontract this Agreement or any part of the Work without the prior written approval of the Company;
- 4.2.3 enter into any contracts, arrangements, promises or other types of agreements whilst purporting to be a representative of the Company and that are intended to be binding on the Company without prior written consent from the Company; or
- 4.2.4 except for the proper purposes of carrying out the Work, use Confidential Information for its own benefit or for the benefit of any other person or disclose Confidential Information unless required to by law.

## 5. **THE COMPANY'S OBLIGATIONS**

### 5.1 The Company acknowledges that it will:

- 1.1.3 obtain an Order from the Customer;
- 1.1.4 identify a suitable contractor, through its dispatch algorithm;
- 1.1.5 if the algorithm selects the Contractor, notify the Contractor about the Order;
- 1.1.6 pay the Contractor in accordance with the Service Fees for the Services as set out Schedule A of this Agreement subject to appropriate tax invoices being raised by the Contractor;
- 1.1.7 allow the Contractor to indicate preferred hours of work and availability on a weekly basis subject to the Contractor ensuring that they are available to undertake any necessary time specific tasks required with respect to the Work and/or to discharge all obligations required under this Agreement;
- 5.1.1 request that the Contractor wear a uniform provided by the Company while performing the Work, so as to facilitate the promotion of the business by way of advertising;
- 5.1.2 specify, having regard to the Company's needs, the time required to complete the Work having regard to the Service Standards; and

- 5.1.3 issue to the Contractor a recipient created tax invoice ("RCTI") pursuant to the appropriate legislation for the issue of such invoices a regular intervals as determined by the Company during the term of this Agreement .

**6. INVOICE AND PAYMENT PROCEDURES**

- 6.1 The Company agrees to pay the Contractor the Service Fee set out in Schedule B for the performance of Work under this Agreement by the Contractor on a fortnightly basis following its generation of a RCTI as outlined in clause 6.3.
- 6.2 The company shall pay to the Contractor in respect to the Service Fee (set out in Schedule B) per completed hour worked. Payment of the Contractor's fee shall be paid made fortnightly in arrears.
- 6.3 The Contractor must provide the Company with its ABN upon execution of this Agreement and must include its ABN, the number of hours spent providing the Services, the days on which the Services were provided, the location at which the Services were performed and a description of the nature of the Services performed each day on every invoice issued to the Company.

**7. INDEMNITIES AND INSURANCES**

- 7.1 The Contractor unconditionally indemnifies and will keep indemnified the Company, its officers, employees and agents from and against all actions, claims, demands, costs, liability and expenses (including the cost of defending or settling an action, claim or demand) made, sustained, brought or prosecuted in any way including without limitation that attributable to any injury to a person (including death), loss of or damage to property or any advice or information given which arises out of, relates to or is in connection with the Contractor's performance or purported performance of the Work or in any way directly or indirectly arising from this Agreement or from any information provided by the Contractor pursuant to this Agreement being incorrect or incomplete.
- 7.2 The Contractor agrees and undertakes that the Contractor is, to the extent permitted by law, solely responsible for and liable for any and all superannuation contributions, work related insurance, tax payments and any other payments necessary for the Contractor to be able to provide the services (unless otherwise expressly provided in this Agreement) and indemnifies and will keep indemnified the Company from any and all claims whatsoever by any person in relation to any costs and/or expenses arising therefrom or resulting from the Contractor being determined not to be an independent contractor including without limitation legal costs.
- 7.3 The Contractor agrees that as an independent contractor, the Contractor is not entitled to make any claim against the Company in relation to statutory employee entitlements such as annual leave, personal leave, long service leave, superannuation, parental leave or any claim for minimum wages under a modern Award in relation to the performance of the work pursuant to this Agreement and the Contractor will indemnify and keep indemnified the Company in relation to these matters.

- 7.4 The Contractor confirms that, if applicable, he or she is registered and will remain registered in relation to the Goods and Services Tax for the term of the Agreement and the Contractor must immediately notify the Company should the Contractor cease to be so registered.
- 7.5 The indemnities contained in this Agreement survive the expiration or termination of this Agreement.
- 7.6 The Contractor agrees that he/she will obtain and maintain at all relevant times any necessary insurances and insurance cover relating to the performance of the Work and, upon request by the Company, provide proof of such insurance cover to the Company prior to commencing the Work. Such insurance cover should include, but is not limited to:
- 7.6.1 any applicable motor vehicle insurance;
  - 7.6.2 any necessary workers' compensation insurance;
  - 7.6.3 professional indemnity insurance; or
  - 7.6.4 public liability insurance.

8. **WARRANTIES**

- 8.1 The Contractor warrants that:
- 8.1.1 the Contractor is competent and has the necessary skills, expertise, and qualifications to carry out the Work and is lawfully permitted to work in Australia;
  - 8.1.2 the Contractor is a self-employed sole trader and has not established an employment relationship, partnership, joint venture or agency relationship with the Company;
  - 8.1.3 the Contractor has undertaken and completed all things required by law to register and establish him/herself with the Australian Taxation Office and all other regulatory bodies, as a sole trader;
  - 8.1.4 he/she has no conflict in performing the Work except to the extent disclosed to the Company in writing prior to the execution of this Agreement, and the Contractor will promptly disclose to the Company the details of any conflicts or potential conflicts which may arise during the term of this Agreement;
  - 8.1.5 he/she is solely responsible for all taxation matters arising from and relating to the payment of fees by the Company for the Work; and
  - 8.1.6 the Contractor has and maintains a safe system of work in accordance with WHS Law.

9. **TERMINATION**

- 9.1 The Company may terminate this Agreement at any time by providing one (1) weeks' notice in writing to the Contractor. The Company has additional rights under clause 9.4 below.
- 9.2 The Contractor may terminate this Agreement at any time by providing to the Company in writing the greater of:
- 9.2.1 1 weeks' notice; or
  - 9.2.2 a period of notice that equates to the period of time, as agreed with the Company at the relevant time, for the Contractor to complete the Work in accordance with the terms of Schedule A and the Agreement.
- 9.3 In addition to the right conferred by clause 9.1, the Company may:
- 9.3.1 terminate this Agreement at any time and without prior notice if the Contractor:
    - 9.3.1.1 is implicated with or reasonably suspected of having acted dishonestly, unethically or fraudulently, or has been charged with, has committed or is suspected to have committed any criminal or other illegal acts;
    - 9.3.1.2 breaches their obligations under clause 4 of this Agreement;
    - 9.3.1.3 refuses to comply with any reasonable instructions or directions given by the Company;
    - 9.3.1.4 is unable to carry out the Work; or
    - 9.3.1.5 performs services which are below the standard set out in Schedule A of this Agreement.
  - 9.3.2 in such circumstances the Company need not make any payments to the Contractor, except for payment for any outstanding work performed by the Contractor before the date on which this Agreement is terminated.
- 9.4 In the event that the Agreement is terminated in accordance with clauses 9.1, 9.2 or 9.3 above, or for any other reason, the Company will require the Contractor to deliver or immediately deliver, at the cost of the Contractor, all:
- 9.4.1 files or matters arising out of provision of services;
  - 9.4.2 equipment or documentation provided to the Contractor during the course of providing the services pursuant to this Agreement;

9.4.3 money owed to the Company, including but not limited to a deposit or bond; or

9.4.4 Confidential Information.

9.5 Nothing in clause 9.4 will prevent the Contractor from retaining a copy of any files, records or information it may reasonably require for the ordinary conduct of its business or otherwise comply with its obligations under law.

## 10. INTELLECTUAL PROPERTY AND MORAL RIGHTS

10.1 With respect to Intellectual Property and Moral Rights:

10.1.1 all Intellectual Property rights arising in relation to any material created or developed by the Contractor in connection with the provision of services by the Contractor to the Company under this Agreement (whether alone or with others) will belong to the Company and the Contractor agree to disclose to the Company all such material;

10.1.2 the Contractor acknowledges and agrees that all existing Intellectual Property rights, title and interest in all material created or developed by the Contractor during or in connection with the provision of services by the Contractor to the Company under this Agreement (whether alone or with others) are vested in the Company and, upon their creation, all such future rights will vest in the Company. The Contractor agree to execute all documents and do all acts and things required or desirable to secure any Intellectual Property rights of the Company; and

10.1.3 the Contractor consents (for the Company's benefit) to any and all acts or omissions (whether occurring before or after this consent is given) in relation to all material made or to be made by the Contractor in the course of providing services to the Company under this Agreement which might otherwise infringe the Representative's Moral Rights in any or all of that material.

## 11. CONFIDENTIALITY

11.1 The Contractor acknowledges that during the course of the Work it will be exposed to information that is highly confidential. The Contractor agrees not to use or disclose details of such confidential information other than for purposes directly related to the Contractor providing the services pursuant to this Agreement. "Confidential Information" includes all information, documents, software, reports, data, records, forms and other materials developed by the Contractor and/or the Approved Person or obtained by or disclosed to the Contractor and/or the Approved Person in the course of performing the Services and also includes any of the following in relation to any one or more of the Company, its Related Bodies Corporate or the Company's clients (including the client of the Company for whom the Contractor will perform the Services on behalf of the Company): the names of clients, client records, client information in tangible and intangible form (whether electronic or otherwise),

employee information, marketing and sales information, financial information, trade secrets and other information that is by its nature confidential. Confidential Information does not include information which is available to the public other than in breach of an obligation to keep that information confidential.

11.2 The Contractor agrees to be bound by the confidentiality obligations under this Agreement. Such obligations survive the termination of this Agreement.

12. **GENERAL PROVISIONS**

12.1 Any variation or replacement of this Agreement must be in writing and signed by the parties.

12.2 If any provision of this Agreement is or becomes wholly or partly unenforceable for any reason, then, from the date of the unenforceability, if the offending provision can be read down to make it enforceable without materially changing its effect, it must be read down to the extent necessary to achieve that result. Otherwise the offending provision must be severed from this Agreement and the remaining provisions will operate as if the severed provision had not been included.

12.3 No delay on the part of a party in exercising any right, power or privilege under this Deed will operate as a waiver.

12.4 This Agreement contains the entire understanding between the parties concerning its subject matter and replaces all earlier communications, representations and understandings between the parties.

12.5 The Parties agree that the relationship between the parties is one of independent contractor and nothing in this Agreement is to be interpreted as creating the relationship of employer and employee, master and servant, principal and agent or a partnership between the parties.

12.6 Neither this Agreement or any right or obligation under this Agreement may be assigned or otherwise transferred by either party without the consent of the other.

12.7 This Agreement is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

[REDACTED]

SIGNED AS AN AGREEMENT:

**SIGNED, SEALED AND DELIVERED)**  
for **DELIVEROO AUSTRALIA PTY)**  
**LTD ABN 607 915 640** by its authorised)  
officer: )

\_\_\_\_\_)  
Signature of authorised officer

\_\_\_\_\_  
Name of authorised officer

**SIGNED, SEALED AND DELIVERED)**  
by [REDACTED] I )  
[REDACTED] ] )

DocuSigned by:  
[REDACTED]  
\_\_\_\_\_  
Signature of

[REDACTED]  
\_\_\_\_\_

**SCHEDULE A**

**Services**

Item		
1.	Service Standards	<ul style="list-style-type: none"><li>• pick up the Order from the nominated restaurant;</li><li>• ensure the Order is stored in accordance with food and hygiene requirements;</li><li>• maintain a polite, friendly and where applicable helpful interaction with Customers and restaurant staff.</li><li>• deliver the Order to the Customer within the Allocated Time.</li></ul>
2.	Food and Hygiene Standards	<a href="http://www.foodstandards.gov.au/code/Pages/default.aspx">http://www.foodstandards.gov.au/code/Pages/default.aspx</a>

**SCHEDULE B**

**Service Fees**

1.	Service Fees	Rate per hour \$18.00 Rate per delivery \$2.50
----	--------------	---

**APPENDIX B**

**Deliveroo contracts November 2015 - April 2016: excerpts showing different pay structures and rates.**

[REDACTED]

Dated [REDACTED] November 2015

**DELIVEROO AUSTRALIA PTY LTD**

**(ACN 607 915 640)**

and

[REDACTED]

[REDACTED]

---

**INDEPENDENT CONTRACTOR AGREEMENT**

---

Bird & Bird  
Level 11, 68 Pitt Street, Sydney 2000  
New South Wales, Australia  
Telephone: 61 2 9226 9888  
Facsimile: 61 2 9226 9899  
[www.twobirds.com](http://www.twobirds.com)  
Ref: LEM:LTM:97055

**SCHEDULE B**

**Service Fees**

1.	Service Fees	Rate per hour \$18.00 Rate per delivery \$2.50
----	--------------	---

[REDACTED]

Dated [REDACTED] February 2016

**DELIVEROO AUSTRALIA PTY LTD**

**(ACN 607 915 640)**

and

[REDACTED]

[REDACTED]

---

**INDEPENDENT CONTRACTOR AGREEMENT**

---

Bird & Bird  
Level 11, 68 Pitt Street, Sydney 2000  
New South Wales, Australia  
Telephone: 61 2 9226 9888  
Facsimile: 61 2 9226 9899  
[www.twobirds.com](http://www.twobirds.com)  
Ref: LEM:LTM:97055

**SCHEDULE B**

**Service Fees**

1.	Service Fees	Rate per hour \$16.00 Rate per delivery \$2.50
----	--------------	---

[REDACTED]

Dated April 2016

**DELIVEROO AUSTRALIA PTY LTD**

**(ACN 607 915 640)**

and

[REDACTED]

[REDACTED]

---

**INDEPENDENT CONTRACTOR AGREEMENT**

---

Bird & Bird  
Level 11, 68 Pitt Street, Sydney 2000  
New South Wales, Australia  
Telephone: 61 2 9226 9888  
Facsimile: 61 2 9226 9899  
[www.twobirds.com](http://www.twobirds.com)  
Ref: LEM:LTM:97055



**SCHEDULE B**

**Service Fees**

1.	Service Fees	Drop Fee \$9.00
----	--------------	-----------------

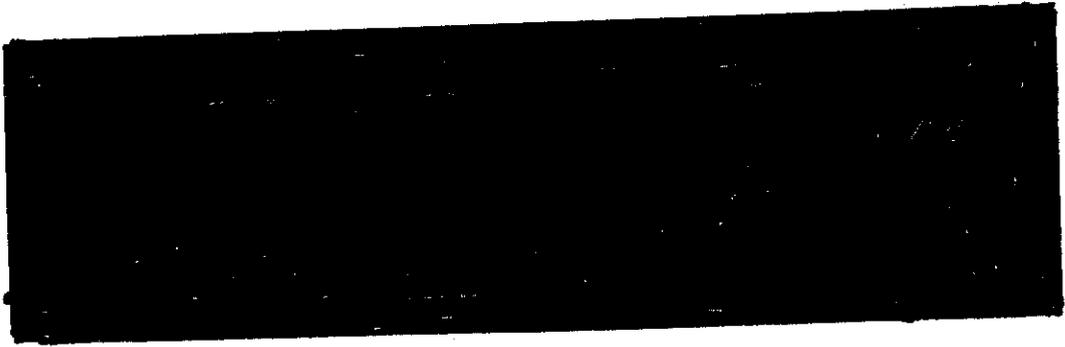
## **APPENDIX C**

### **WorkChoices-era zombie agreement: Conference & wedding venue**

**Restaurant & Catering Victoria**

**WorkChoices**

**Employee Collective  
Agreement**



**November 2007**

# EMPLOYEE COLLECTIVE AGREEMENT

1. **PARTIES TO THE AGREEMENT**

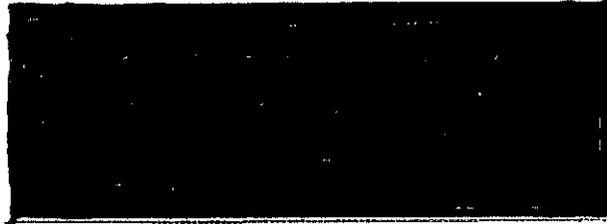
This Employee Collective Agreement is made between:

(the employer)

(ABN)

trading as

All employees  
of



\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ and \_\_\_\_\_

\_\_\_\_\_

2. **CONTRACT OF EMPLOYMENT**

This Agreement shall operate to encompass all terms and conditions of employment.

3. **PERIOD OF OPERATION**

The Agreement will take effect from the day that it is lodged with the Office of the Employment Advocate (OEA).

The nominal expiry date of this Agreement is no later than the fifth anniversary after the date on which the Agreement was lodged with the OEA. The Agreement will remain in operation after the nominal expiry date until replaced by another agreement or terminated in accordance with the *Workplace Relations Act 1996*.

4. **MINIMUM CONDITIONS OF EMPLOYMENT**

The terms and conditions of this Agreement will at all times meet or exceed the minimum conditions of employment as prescribed by the Australian Fair Pay and Conditions Standard.

5. **PROBATION**

All new full and part time employees shall be on probation for the first three (3) months of employment.

During this period the employer will monitor the employee's work performance. In the event that performance is assessed as unsatisfactory the employer may terminate employment by the giving of one (1) day's notice.

6. **DEFINITIONS**

Full Time Employees are defined as those whose ordinary hours of work are 38 hours per week and receive an entitlement to paid annual and paid personal leave.

Part Time Employees are defined as those who are employed on a weekly basis with ordinary hours of work less than 38 hours per week and receive a pro-rata entitlement to paid annual and paid personal leave.

Casual Employees are defined as those employed on a casual basis who receive the default casual loading of 20% in addition to their basic periodic rate of pay and have no entitlement to paid annual and personal leave.

**7. ROSTER ARRANGEMENTS**

Roster arrangements will be established in accordance with business demands. Shift rosters shall be arranged Monday through Sunday inclusive, comprising any combination of day, afternoon and night shifts.

The employer will make every effort to roster employees in a manner that is both fair and equitable. If employees have family and or study commitments the employer will attempt to accommodate employees as best as possible, considering the operational requirements of the business.

**8. HOURS OF WORK**

**Ordinary Hours**

The ordinary hours may be worked over any day of the week, Monday to Sunday inclusive, and shall be arranged by the employer to meet business requirements.

Such ordinary hours of work shall not exceed an average of 38 hours per week, averaged over a given roster cycle (up to but no longer than 12 months). The actual hours worked may vary from week-to-week (with some weeks greater than 38 hours and other weeks less).

The roster cycle shall be made available to employees in advance. A seven day rotating roster (Monday through to Sunday) may be implemented at the discretion of the employer.

**Additional Hours**

Additional hours are those hours worked outside the employee's ordinary hours.

Additional reasonable hours may be required to be worked consistent with the operational requirements of the business. Where a full time or part time employee works additional hours they will be paid at the hourly rate of pay specified in Clause 11 of this Agreement or at a higher rate as agreed between the employer and the employee.

An employee may refuse to work additional hours where the working of such additional hours would result in the employee working hours which are unreasonable or unacceptable having regard to:

- any risk to the employee's health and safety
- family responsibilities
- other personal circumstances
- operational requirements of the workplace or business
- the amount of notice given in regard to available additional hours
- whether the hours are on a public holiday
- any other matter that is considered relevant.

**-9. REST BREAKS OR MEAL BREAKS**

An employee is entitled to paid rest or meal break of 30 minutes after 5 hours of work which is to be taken at a time convenient to the business and the service to customers.

Complimentary meals will be provided during shifts at the discretion of the manager on duty.

**10. PAYMENT OF WAGES**

Wages will be paid by electronic funds transfer after the end of the pay period into a bank account nominated by the employee. The employee must ensure that they provide the correct bank details to the employer and advise the employer promptly if there are any changes to those details.

If the employer does not have facility to make payment using electronic transfer then an alternative method of payment will be agreed. Pay slips giving details of earnings and deductions will be issued with each pay.

**11. WAGE RATE**

The hourly basic periodic rates of pay for all hours worked appear in the table below:

Basic Periodic Rate of Pay		
	Full & Part Time	Casual (Includes default casual loading)
Intro	\$15.40	\$18.20
1	\$15.90	\$18.70
2	\$16.60	\$19.60
3	\$17.20	\$20.20
4	\$18.20	\$21.40
5	\$19.40	\$22.90
6	\$20.00	\$23.50

The wage rates in the table above include payment for protected award conditions dealing with penalty rates, overtime provisions, annual leave loading and shift allowances.

The wage rates in the table above apply as a starting rate for new employees at [REDACTED] unless a higher rate of pay is agreed upon with an employee.

Junior Rates

Junior employees will be entitled to a percentage rate of the basic periodic rate of pay appropriate to their age and classification. The percentage rates applicable to junior employees are listed in the table below.

AGE	Percentage Rate of Basic Periodic Rate of Pay
17 years and under	60%
18 years of age	70%
19 years of age	85%
20 years of age	100%

Apprentice Rates – Cooking

Apprentices will be entitled to a percentage rate of the basic periodic rate of pay for a Cook Grade 3 Tradesperson.

	Percentage Rate of Level 4 (Cook Grade 3 Tradesperson)
Year 1	55%
Year 2	65%
Year 3	80%
Year 4	95%

Wage Reviews

The employer may review and increase rates, as deemed appropriate, during the course of this Agreement.

The employer will ensure that the hourly rate of pay under this Agreement is no less than the relevant classification minimum wage rate as set from time to time by the Australian Fair Pay Commission.

**12. PROTECTED AWARD CONDITIONS**

The Protected Allowable Award Matters have been expressly excluded from this Agreement and are **not** to be taken as being included in this Agreement and **do not** apply to the employee covered by this Agreement.

**13. SUPERANNUATION**

Superannuation contributions will be paid as required under the *Superannuation Guarantee (Administration) Act 1992*, as amended from time to time, to a complying Fund.

**14. ABSENCES**

Where practicable, notification of absence should be made to the employer well in advance of shift commencement time in order that alternative staffing arrangements can be made.

## 15. LEAVE PROVISIONS

### **Annual Leave**

Full time employees are entitled to 152 hours (which is equivalent to 4 weeks or 20 days) paid annual leave per annum. Part time employees will accrue annual leave on a pro-rata basis. Annual leave shall be credited to the employee on a monthly basis.

Annual leave must be taken at a time mutually agreed with the employer. An employee will give a minimum notice period of 4 weeks. The employer may request the employee to take annual leave, by giving 2 weeks notice, if mutual agreement cannot be reached. Annual leave is cumulative and should be taken within 12 months of entitlement.

An employee who leaves or is dismissed for any reason shall receive on termination, pro-rata payment in lieu of any accrued annual leave entitlement.

Casual employees have no entitlement to paid annual Leave.

### **Personal Leave**

Personal leave is available to full time and part time employees, when absent due to:

- personal illness or injury (sick leave); or
- providing care or support for an immediate family or household member due to illness, injury or unexpected emergency (carers leave)

Full time employees are entitled to 76 hours (which is the equivalent to 2 weeks or 10 days) paid personal leave per annum. Part time employees accrue personal leave on a pro-rata basis. Personal leave shall be credited to the employee on a monthly basis.

Employees taking personal leave may be required to provide proof relating to the reason for their absence on each occasion. In the event of absence due to sickness or injury a certificate from a registered health practitioner may be required for any single day or longer absence. In the event of other absences, the employer may require substantiation of such absence.

The employee, where practicable, shall notify the employer at least half an hour before his or her rostered starting time on the first day of absence, of his or her inability to attend for duty, and where practicable state the nature of the illness or injury and the estimated duration of the absence.

An employee will only be entitled to take a maximum of 10 days paid carer's leave (from total accrued personal leave) during any twelve month period unless otherwise agreed.

A full time or part time employee shall also be entitled to a period of up to 2 days unpaid carer's leave on each permissible occasion if all paid personal carer's leave has been exhausted.

Casual employees have no entitlement to paid personal leave. Casual employees shall however be entitled to a period of up to 2 days unpaid carer's leave on each permissible occasion for the purpose of providing care or support for an immediate family or household member due to illness, injury or unexpected emergency.

In the event of such absence, the employer may require substantiation of such absence.

### **Compassionate Leave**

Compassionate leave is available to full and part time employees when:

- a member of the employee's immediate family or household contracts or develops a personal illness or sustains a serious injury that poses a serious threat to his or her life; or
- dies

Up to two days paid compassionate leave may be taken on each permissible occasion.

Employees requiring to take compassionate leave may be required to provide proof relating to the reason for the leave on each occasion.

Casual employees have no entitlement to paid compassionate leave.

### **Parental Leave**

The employee, including an eligible casual, is entitled to take unpaid Parental Leave - including maternity, paternity and adoption leave, of up to 12 months in accordance with Part 7, Division 6 – Parental Leave of the *Workplace Relations Act 1996*.

### **Long Service Leave**

Employees will be entitled to long service leave. The relevant legislation is the *Victorian Long Service Leave Act 1992*.

## **16. PUBLIC HOLIDAYS**

All employees may be required to work Public Holidays - the following days are recognized as public holidays in the State of Victoria

- New Years Day
- Australia Day
- Labor Day
- Good Friday
- Easter Saturday
- Easter Monday
- Anzac Day
- Queen's Birthday
- Melbourne Cup (for Metropolitan areas - or regional equivalent day if applicable)
- Christmas Day
- Boxing Day

If a full time or part time employee is required to work a public holiday they will be paid at the agreed hourly wage rate in Clause 11 of this Agreement.

If the business is closed on a public holiday, which is a normal rostered day of work for a full time or part time employee, that employee will receive payment at the agreed hourly wage rate for the ordinary hours normally worked on that day.

If a casual employee is required to work on a public holiday they will be paid at 1.5 times the agreed wage rate in Clause 11 of this Agreement. A casual employee has no entitlement to any payment if they do not work on a public holiday.

**17. CLASSIFICATIONS LEVEL**

Classifications and Levels 1-6 are derived from the *Liquor and Accommodation Industry – Restaurants – Victoria – Award 1998*. Introductory Level means an employee who enters the industry and is unable to meet the competency requirements of Level 1. An employee can remain at this level for a maximum of three months. Nothing in this Agreement precludes the movement of staff between levels and classifications.

**18. PERSONAL PRESENTATION AND APPEARANCE**

Employees will be expected to present themselves professionally in line with the employer's standards.

Employees must maintain a high standard of presentation in both issued uniforms and personal clothing items in line with the employer's policies.

**19. PROPERTY OF THE EMPLOYER**

Employees are required to take all reasonable care in the use of the employer's property and to protect any employer's property in the care of the employee.

On termination of employment, or upon request to do so, employees must return in good condition (subject to fair wear and tear) any property in their possession belonging to the employer.

**20. CONFIDENTIAL INFORMATION**

The employee will treat all confidential information as strictly confidential and will not disclose any confidential information to any person, firm, company or other body unless previously and expressly authorised in writing by the employer.

The employee shall hold all transactions, records and information pertaining to the business of the employer in strict confidence, both during the period of employment and also after termination of employment.

The employee will not use or attempt to use any confidential information in any manner and for any purpose other than the purpose of the business of the employer.

Nothing in this Agreement prevents an employee from discussing any of the terms and conditions of this Agreement with any other person.

**21. TERMINATION & RESIGNATION**

Both the employer and the employee may terminate employment at any time by giving the other party the required period of notice as specified below.

Instead of providing the above notice the employer may choose to make payment in lieu of notice. If the employee fails to give the required notice, the employee forfeits the entitlement to any monies owing equal to the amount of notice not given.

Nothing in this Agreement affects the employer's right to dismiss an employee without notice for serious misconduct and an employee so dismissed shall only be entitled to be paid for the time worked up to the time of dismissal.

**Full and Part Time Employees:**

The notice of termination period shall be:

By the Employer:

<b>Years Of Service</b>	<b>Less than 1 Year</b>	<b>More than 1 but not more than 3 Years</b>	<b>More than 3 but not more than 5 years</b>	<b>More than 5 Years</b>
<b>Required Notice (at least)</b>	<b>1 Week</b>	<b>2 weeks</b>	<b>3 weeks</b>	<b>4 weeks</b>

Employees 45 years and over who have completed at least two (2) years continuous service with the employer will receive one (1) additional weeks notice.

By the Employee:

Two weeks (2) notice in writing or such other period as agreed by the employer and employee.

During Probation Period:

All Full and Part Time employees shall be entitled to one (1) day's notice of termination.

**Casual Employees:**

The employment of a casual employee, employed for a period of less than twelve months may be terminated by either the employer or employee by the giving of not less than one (1) hours notice or the payment or forfeiture, as the case requires, of one hours pay.

The employer shall give a casual employee who has been engaged on a regular and systematic basis for a period of at least twelve months shall be entitled to notice as per the above table.

The casual employee engaged on a regular and systematic basis for a period of at least twelve months shall give one weeks (1) notice in writing or such other period as agreed by the employer and employee.

**22. WORKPLACE ARRANGEMENTS & PROCEDURES**

**Induction, Training and Development**

As part of the employers' commitment to professional development, it is a requirement that employees may be required to attend and complete training programs from time to time. The employer will meet the cost of training programs that they require the employee to undertake as part of their employment. The employer will endeavor to arrange the training at a time convenient to the employee.

### **Staff Meetings**

An employee may be expected to attend and partake in staff meetings from time to time as part of their work. Should an employer require an employee to attend a staff meeting outside of their normal rostered hours of work the employee shall be paid at their agreed wage rate for the hours of attendance.

### **Information**

All memos and notices will be considered to be within the scope of knowledge of the employee once posted on the staff notice board or included in an employee handbook or similar.

### **Food Preparation and Handling**

An employee shall strictly adhere to food handling and hygiene practices according to their training and the policy guidelines as defined from time-to-time in food safety plans, procedure manuals or similar.

### **Safe Working Practices**

An employee shall observe safe working practices at all times, with particular regard to lifting and stacking, in accordance with training and occupational health and safety guidelines.

### **Policies**

Employees will conform to all the employer's policies and procedures as outlined in their induction and ongoing training, as posted on staff notice board or included in an employee handbook or similar.

## **23. DISPUTE RESOLUTION PROCEDURE**

Any dispute between the employee and the employer will be first met with a genuine attempt to resolve it at the workplace level. This should first involve the employee discussing the matter with his or her supervisor, then with more senior management. If the matter in dispute cannot be resolved at the workplace level, either the employer or the employee may elect to use an alternative dispute resolution process in an attempt to resolve the dispute in accordance with Part 13 – Dispute Resolution Process of the *Workplace Relations Act 1996*.

## **24. ANTI-DISCRIMINATION**

The employer and employee agree to respect and value the diversity of the work force by helping to prevent and eliminate discrimination at the workplace on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction social origin and alike.

## **APPENDIX D**

### **WorkChoices-era zombie agreement: Subway Brodalex agreement**

**\*\*Collective Agreement Number CAEN096062940 as amended by variation agreement\*\***

# **BRODALEX COLLECTIVE AGREEMENT (2009)**

**\*\*Collective Agreement Number CAEN096062940 as amended by variation agreement\*\***

**TABLE OF CONTENTS**

1.	TITLE.....	3
2.	PARTIES .....	3
3.	DEFINITIONS.....	3
4.	APPLICATION.....	5
5.	CONTRACT OF EMPLOYMENT .....	5
6.	OBLIGATIONS.....	7
7.	QUALIFYING PERIOD AND PROBATION PERIOD .....	7
8.	PRE-EXISTING INJURIES AND DISEASES .....	8
9.	COMPANY POLICIES .....	8
10.	JOB CLASSIFICATIONS .....	8
11.	FLEXIBILITY OF DUTIES .....	8
12.	LOCATION AND TRANSFER OF EMPLOYMENT .....	9
13.	HOURS OF WORK.....	9
14.	ROSTERS .....	9
15.	PREFERRED HOURS OF WORK .....	10
16.	MEAL AND REST BREAKS .....	10
17.	OVERTIME.....	11
18.	REASONABLE ADDITIONAL HOURS - SALARIED PERMANENT EMPLOYEES .....	13
19.	TEAM MEETINGS .....	13
20.	WAGES .....	13
21.	JUNIOR WAGE RATES .....	13
22.	TRAINEE WAGE RATES.....	14
23.	SUPERANNUATION .....	14
24.	WAGE REVIEWS AND PERFORMANCE REVIEWS.....	15
25.	EXPENSES.....	15
26.	STAFF DISCOUNTS AND MEALS .....	15
27.	GENERAL LEAVE PROVISIONS.....	15
28.	ANNUAL LEAVE .....	16
29.	PERSONAL LEAVE.....	16
30.	PAYMENT OF ANNUAL LEAVE AND PERSONAL LEAVE AS LOADED WAGE RATE .....	17
31.	UNPAID CARER'S LEAVE.....	18
32.	COMPASSIONATE LEAVE .....	18
33.	PARENTAL LEAVE .....	19
34.	LONG SERVICE LEAVE .....	19
35.	PUBLIC HOLIDAYS.....	19
36.	UNIFORMS AND PROTECTIVE CLOTHING.....	20
37.	TRAINING .....	20
38.	ALCOHOL AND DRUG POLICY.....	20
39.	HEALTH AND SAFETY OF EMPLOYEES .....	21
40.	ANTI DISCRIMINATION, EQUAL OPPORTUNITY AND HARASSMENT.....	21
41.	GRIEVANCE HANDLING PROCEDURE .....	22
42.	SUSPENSION.....	22
43.	STAND DOWN.....	22
44.	NOTICE OF TERMINATION .....	23
45.	TERMINATION WITHOUT NOTICE .....	23
46.	REDUNDANCY .....	24
47.	PROPERTY OF BRODALEX.....	26
48.	DEDUCTIONS .....	27
	SCHEDULE 1 - JOB DESCRIPTIONS .....	29
	SCHEDULE 2 - WAGE RATES .....	31

**1.     TITLE**

This Agreement shall be known as the Brodalex Collective Agreement (2009).

**2.     PARTIES**

The parties to this Agreement are:

- 2.1     Brodalex Pty Ltd (ABN 86 276 478 834) trading as Subway ("**Brodalex**"); and
- 2.2     All employees employed by Brodalex ("**You**" or "**the Employees**") in the Job Classifications set out in this Agreement.

**3.     DEFINITIONS**

- 3.1     "**Agreement**" means this Brodalex Collective Agreement (2009);
- 3.2     "**Brodalex's Policies**" means any of Brodalex's policies and procedures, dealing with employment related duties, entitlements and obligations, as amended from time to time;
- 3.3     "**Capacity**" means full time, part time or casual employment;
- 3.4     "**Casual Employee**" means an Employee employed to work on an hourly basis, when available and as required by Brodalex;
- 3.5     "**Commencement Date**" means a week after the date of issue of the notice of the Workplace Authority that this Agreement meets the No Disadvantage Test;
- 3.6     "**Job Classification**" means the Job Classification in which you are employed by Brodalex as set out in **Clause 10**;
- 3.7     "**Non-salaried Employee**" means an Employee who receives an hourly rate of pay for each hour worked and who receives payment for additional hours worked in accordance with **Clause 17**;
- 3.8     "**Overtime**" means either Directed Overtime or Voluntary Overtime as defined in **Clause 17**;
- 3.9     "**Permanent Employee**" means a full time or part time Employee;
- 3.10    "**Preferred Hours of Work**" means those hours you elect to work in order to meet your personal circumstances, in accordance with **Clause 15**;
- 3.11    "**Rostered Hours of Work**" means the hours required to be worked by you;

- 3.12 "**Salaried Employee**" means an Employee who receives an annual salary in satisfaction of all hours worked and who does not receive payment for additional hours worked in accordance with **Clause 17**;
- 3.13 "**Schedule**" means the Schedules to this Agreement;
- 3.14 "**Shift**" means the continuous period of time from when you start work to when you finish work for any rostered shift (excluding unpaid meal breaks);
- 3.15 "**Wage Rate**" means:
- (a) In the case of full time salaried Employees, the relevant salary set out in **Schedule 2** (expressed either as an annual amount or as a notional hourly amount); or
  - (b) **[Deleted]**
  - (c) "**Ordinary Wage Rate**" means the Wage Rate payable for all Rostered Hours of Work, plus a component for penalty rates.
  - (d) "**Casual Wage Rate**" means the Wage Rate paid to Casual Employees for all Rostered Hours of Work, plus a component for penalty rates and a 25% casual loading.
  - (e) "**Loaded Wage Rate**" means the Ordinary Wage Rate, plus a component for annual leave and personal leave entitlements.
  - (f) "**Preferred Hours Wage Rate**" means the Wage Rate payable for all Preferred Hours of Work and Voluntary Overtime.
  - (g) "**Loaded Preferred Hours Wage Rate**" means the Preferred Hours Wage Rate, plus a component for annual leave and personal leave entitlements.
  - (h) **[Deleted]**
  - (i) For the avoidance of doubt, "Wage Rate" excludes Overtime (**Clause 17**).
  - (j) Having regard to the various Wage Rates payable under this Agreement, references in this Agreement to "your Wage Rate" and "the relevant Wage Rate" shall mean the Wage Rate that you currently receive, or would expect to receive, as varied from time to time.
- 3.16 "**Week**" means Monday to Sunday.

#### **4. APPLICATION**

This Agreement:

- 4.1 Will operate from the Commencement Date and shall remain in operation for a period of 5 years from the Commencement Date (the "**Nominal Expiry Date**");
- 4.2 Shall be binding on Brodalex and all Employees as defined in **Clause 2.2**;
- 4.3 Overrides all letters of offer and employment contracts, whether written or oral, in existence prior to the Commencement Date, save for any agreement or deed relating to confidential information, intellectual property or post employment obligations;
- 4.4 Constitutes the entire agreement between you and Brodalex in relation to all matters relating to your employment with Brodalex, save for any agreement or deed relating to confidential information, intellectual property or post employment obligations or any of Brodalex's Policies;
- 4.5 Is not to be read in conjunction with any award; and
- 4.6 Provides minimum entitlements only and shall not restrict Brodalex and Employees from agreeing to a higher Wage Rate or any other additional benefits.

#### **5. CONTRACT OF EMPLOYMENT**

##### **5.1 Full time Employees**

(a) Full time non-salaried Employees:

- (i) You are required to work an average of 152 hours per four week period, averaged over a 12 month period, plus reasonable additional hours;
- (ii) You will be paid the relevant Wage Rate for each hour worked by you up to 152 hours per four week period; and
- (iii) You will receive Overtime in accordance with **Clause 17**.

(b) Full time salaried Employees:

- (i) You are required to work an average of 152 hours per four week period, averaged over a 12 month period, plus reasonable additional hours; and

**\*\*Collective Agreement  
6 Number CAEN096062940 as amended  
by variation agreement\*\***

- (ii) Your salary is in full satisfaction of all hours worked by you and you shall not be entitled to payment for Overtime under **Clause 17** or any payment for public holidays in accordance with **Clause 35.3**.

**5.2 Part time Employees**

- (a) Part time Employees:
  - (i) You are required to work up to 152 hours per four week period, averaged over a 12 month period, plus reasonable additional hours;
  - (ii) You will be paid the relevant Wage Rate for each hour worked by you up to 152 hours per four week period; and
  - (iii) You will receive Overtime in accordance with **Clause 17**.

**5.3 Casual Employees**

- (a) As a Casual Employee you shall be paid a Casual Wage Rate for all hours worked by you.
- (b) The following Clauses do not apply to Casual Employees:
  - (i) **Clause 7** (qualifying period and probation period);
  - (ii) **Clause 27** (general leave provisions);
  - (iii) **Clause 28** (annual leave);
  - (iv) **Clause 29** (personal leave, excluding unpaid carer's leave);
  - (v) **Clause 32** (compassionate leave);
  - (vi) **Clause 33** (parental leave - unless you are an eligible casual employee as defined in the *Workplace Relations Act 1996*);
  - (vii) **Clause 34** (long service leave - unless you are an eligible casual employee as defined by the *Victoria Long Service Leave Act 1992*);
  - (viii) **Clause 35.3** (payment for public holidays not worked);
  - (ix) **Clause 44.2** (notice of termination - permanent employment); and



**\*\*Collective Agreement  
8 Number CAEN096062940 as amended  
by variation agreement\*\***

- 7.2 During your qualifying period, you or Brodalex may terminate your employment with the giving of 1 day's notice.
- 7.3 The length of any period/s of leave (as provided for under this Agreement) or absence taken during your qualifying period will be added to the length of your qualifying period.

**8. PRE-EXISTING INJURIES AND DISEASES**

- 8.1 Prior to commencing employment with Brodalex, you are required to disclose any pre-existing injuries, diseases or medical conditions suffered by you of which you are aware and which could reasonably be expected to be affected by the nature of your proposed employment with Brodalex.
- 8.2 If you fail to disclose any such pre-existing injuries, diseases or medical conditions, you may not be entitled to compensation for any recurrence, aggravation, acceleration, exacerbation or deterioration of the pre-existing injury, disease or medical condition arising out of your employment with Brodalex.

**9. COMPANY POLICIES**

You must comply with Brodalex Policies. Brodalex may amend its policies from time to time and will advise you of any amendments made.

**10. JOB CLASSIFICATIONS**

- 10.1 Brodalex employs Employees to work in the following Job Classifications:
- (a) Level 1 Employee;
  - (b) Level 2 Employee (Senior Employee); and
  - (c) Level 3 Employee (Store Supervisor/Manager).
- 10.2 The Job Descriptions for each Job Classification are set out in **Schedule 1**.
- 10.3 Any change to your Job Classification shall be made in consultation with you and will be communicated to you in writing.

**11. FLEXIBILITY OF DUTIES**

- 11.1 You are expected to willingly accept flexibility of jobs and duties throughout your employment and to take all reasonable steps to achieve quality, accuracy, efficiency and completion of any reasonable job or task assigned to you.

11.2 A reasonable change in duties to accommodate Brodalex's business needs will not attract any extra payment and will not be grounds for the termination of your employment.

## **12. LOCATION AND TRANSFER OF EMPLOYMENT**

12.1 Brodalex employs Employees at its business premises or such other location as directed by Brodalex from time to time.

12.2 Brodalex may relocate Employees from one location to another, on a permanent or temporary basis, to accommodate the needs of the business, but will first consult with you to ensure that such relocation takes into account your personal circumstances.

## **13. HOURS OF WORK**

13.1 You may be required to work your Rostered Hours of Work on any day of the week, between Brodalex's operating hours of 6.00am and 1.00am.

13.2 Any change to Brodalex's operating hours shall be communicated to you in writing.

## **14. ROSTERS**

14.1 Brodalex will notify you of your Rostered Hours of Work.

14.2 You will be notified of start and finish times of each Shift in accordance with your roster subject to the following:

- (a) As far as possible, there will be a minimum of 10 hours between the completion of work on one day and the commencement of work on the following day;
- (b) As far as possible, you will not be rostered to work for more than 6 consecutive days;
- (c) If you are a Permanent Employee, Brodalex will endeavour to give you at least 2 weeks' notice prior to changing your roster, subject to Brodalex changing the roster by giving only 24 hours' notice if:
  - (i) The change is made necessary by unforeseen circumstances; or
  - (ii) You and Brodalex agree to the change.

**15. PREFERRED HOURS OF WORK**

- 15.1 Brodalex understands that you may have personal circumstances, such as family or schooling responsibilities, that determine the days and times which you prefer to work, in order for you to balance such personal circumstances.
- 15.2 Subject to agreement between you and Brodalex, you may elect your Preferred Hours of Work to suit your personal circumstances. This election should be in writing to Brodalex.
- 15.3 If you elect to work your Preferred Hours of Work, and you work those Preferred Hours of Work, you will receive the relevant Preferred Hours Wage Rate as set out in **Schedule 2**.
- 15.4 You are not required to elect Preferred Hours of Work. If you do not elect Preferred Hours of Work, you will receive the relevant Wage Rate as set out in **Schedule 2**.
- 15.5 If you have elected Preferred Hours of Work, you have the right to modify or withdraw your election, in writing to Brodalex. Brodalex will accommodate your election **immediately**.
- 15.6 If you are paid the Preferred Hours Wage Rate in accordance with this Clause, your Preferred Hours Wage Rate will apply for all Preferred Hours of Work, notwithstanding any Clause to the contrary in this Agreement.

**16. MEAL AND REST BREAKS**

**16.1 Meal Breaks**

- (a) Subject to **Clause 16.1(b)**, Employees shall receive an unpaid meal break of not less than 30 minutes' duration for work performed or Shifts worked of 5 hours or more, as determined by their manager.
- (b) Where you work a Shift of between 5 and 6 hours' duration, the unpaid meal break set out in **Clause 16.1(a)** may be converted into a paid rest break of 15 minutes' duration provided:-
- (i) The Shift is no longer than 6 hours; and
- (ii) It is at the request of the Employee.
- (c) Time that is taken as an unpaid meal break shall not be counted as time worked within the meaning of Rostered Hours of Work.

## 16.2 Rest Breaks

- (a) When and where it can be conveniently arranged between Brodalex and an Employee, any Employee who works more than four Rostered Hours of Work on any day shall be allowed a paid rest break of ten minutes.
- (b) An Employee who works nine hours or more on any day shall be allowed two rest breaks (each of ten minutes' duration).
- (c) For the avoidance of doubt, time that is taken as a paid rest break shall be counted as time worked within the meaning of Rostered Hours of Work.

16.3 Meal and rest breaks are, in all cases, to be taken at times which are convenient to Brodalex's business and the service of customers. It may be that, in some instances, you will be required to work through your break, in which case, a break will be taken at a mutually agreeable time.

## 17. OVERTIME

17.1 This Clause only applies to non-salaried Employees.

17.2 Under this Agreement, Employees may work either Directed Overtime or Voluntary Overtime.

### 17.3 Directed Overtime

- (a) Directed Overtime is:-
  - (i) Hours worked in excess of 152 hours per four week period; and/or
  - (ii) Hours worked outside Brodalex's operating hours, as set out in **Clause 13**;provided you have been directed to work such hours by Brodalex ("**Directed Overtime**").
- (b) Directed Overtime shall, at the option of Brodalex, be provided in one of the following ways:
  - (i) Subject to **Clause 17.3(b)(ii)**, payment of 150% of the relevant Wage Rate set out in **Schedule 2** for the first 2 Directed Overtime hours worked in a Shift, and 200% of the relevant Wage Rate for each Directed Overtime hour worked thereafter in a Shift;

**\*\*Collective Agreement  
12 Number CAEN096062940 as amended  
by variation agreement\*\***

- (ii) Where Directed Overtime is worked on a Sunday, payment of 200% of the relevant Wage Rate set out in **Schedule 2** for each hour worked on the Sunday; or
  - (iii) Subject to **Clause 17.3(b)(iv)**, paid time off in lieu of Directed Overtime hours worked equal to 1.5 hours' time off for the first 2 Directed Overtime hours worked in each Shift, and 2 hours' time off for each Directed Overtime hour worked thereafter in a Shift;
  - (iv) Where Directed Overtime is worked on a Sunday, time off in lieu equal to 2 hours' time off for each Directed Overtime hour worked on the Sunday.
- (c) Subject to **Clause 17.3(d)**, the payments referred to in **Clauses 17.3(b)(i)** and **17.3(b)(b)(ii)** shall be calculated on your Wage Rate.
- (d) **[Deleted]**

#### 17.4 **Voluntary Overtime**

- (a) Voluntary Overtime is:-
- (i) Hours worked in excess of 152 hours per four week period; and/or
  - (ii) Hours worked outside Brodalex's operating hours, as set out in **Clause 13**;
- provided you have volunteered to work such Overtime hours and such hours have been previously authorised by Brodalex ("**Voluntary Overtime**").
- (b) Voluntary Overtime shall, at the option of Brodalex, be provided in one of the following ways:
- (i) **[Deleted]**
  - (ii) Paid time off in lieu of Voluntary Overtime hours worked equal to the number of Voluntary Overtime hours worked in each Shift.

#### 17.5 **Paid time off in lieu**

- (a) Paid time off in lieu should be taken within 4 weeks from the Overtime hours being worked where the operational requirements of the business allow.

- (b) Having regard to the operational requirements of Brodalex, if paid time off in lieu cannot be taken within 4 weeks from the Overtime hours being worked, it will accrue and may be taken at the next most suitable opportunity.
- (c) Accrued time off in lieu not taken within 6 months from the date it has accrued will be paid to you as either Directed Overtime or Voluntary Overtime as applicable.

**18. REASONABLE ADDITIONAL HOURS - SALARIED PERMANENT EMPLOYEES**

- 18.1 The salary for full time salaried Permanent Employees includes a component for all reasonable additional hours in excess of 38 hours per week and is in full satisfaction of all hours worked.
- 18.2 Full time salaried Employees are not entitled to additional payment for Overtime or paid time off in lieu in accordance with **Clause 17**.

**19. TEAM MEETINGS**

- 19.1 Brodalex may, from time to time, require you to attend team meetings outside of your Rostered Hours of Work.
- 19.2 You shall not be entitled to any additional payment for time spent in attendance at team meetings.

**20. WAGES**

- 20.1 You will be paid your wages weekly.
- 20.2 The wages paid to you, averaged over a 12 month period, shall be no less than the relevant minimum rate of pay forming part of the Australian Fair Pay and Conditions Standard, payable for the hours required to be worked by you.
- 20.3 It is your obligation to provide correct bank details to Brodalex and advise Brodalex promptly if there are any changes to those details.
- 20.4 Pay-slips giving details of earnings and deductions will be issued after each payment of wages.

**21. JUNIOR WAGE RATES**

If you are a junior Employee, you may be paid a junior rate as set out in **Schedule 2** in accordance with the percentages set out below:

<b>Age</b>	<b>Junior Percentage</b>
16 years and under	50%

17 years	60%
18 years	70%
19 years	85%
20 years and over	100%

## **22. TRAINEE WAGE RATES**

- 22.1 Brodalex may engage Employees as trainees in certain Job Classifications, pursuant to a training contract registered and approved by the relevant state training body.
- 22.2 If you are engaged as a trainee, Brodalex will, as a minimum, pay you as follows:
- (a) Subject to **Clause 22.3**, in accordance with the minimum wage rates under the *National Training Wage Award 2000* (the "**Training Award**"). Where the Training Award refers to a relevant award, this shall be taken to be a reference to this Agreement.
- 22.3 In the event that the Australian Fair Pay Commission determines a relevant Australian Pay and Classification Scale which contains basic rates of pay for trainees, then the Australian Pay and Classification Scale will apply instead of the Training Award for the purposes of this Agreement.

## **23. SUPERANNUATION**

- 23.1 The Wage Rates set out in **Schedule 2** are exclusive of superannuation.
- 23.2 Subject to **Clause 23.3**, superannuation for Employees employed under this Agreement shall be governed by the provisions of the *Superannuation Guarantee (Administration) Act 1992* (as amended from time to time), currently 9% of ordinary time earnings.
- 23.3 Brodalex will pay superannuation contributions into one of the following superannuation funds, and the provisions in the *Superannuation Guarantee (Administration) Act 1992* relating to choice of superannuation fund shall not apply:-
- (a) Hostplus Superannuation Fund; or
  - (b) AMP Retirement Services Account.

23.4 For the purposes of this Clause, the expression "**ordinary time earnings**" includes your Wage Rate, but does not include Overtime entitlements, performance related bonuses and discretionary bonuses or payments to reimburse expenses.

## **24. WAGE REVIEWS AND PERFORMANCE REVIEWS**

24.1 Wage and performance reviews are conducted periodically.

24.2 The conduct of a wage or performance review will not impose an obligation on Brodalex to increase your Wage Rate, unless such an increase is necessary in order to comply with **Clause 20.2**.

24.3 Brodalex may, however, increase your Wage Rate after taking into account relevant factors, including your performance and prevailing market conditions both generally and relating to the operational requirements of the business.

## **25. EXPENSES**

Where Brodalex has previously authorised reasonable and proper business expenses incurred by you, Brodalex will reimburse you for such business related expenses incurred in the course of carrying out your duties. A tax invoice must be provided in order to receive reimbursement.

## **26. STAFF DISCOUNTS AND MEALS**

26.1 Employees shall be entitled to the following:

- (a) A staff discount of 50% on certain Subway products; and
- (b) One free Subway 6 inch sandwich or similar product and soft drink for each Shift worked of 4 hours or more.

26.2 Staff discounts and free meals are provided at the sole discretion of Brodalex, who reserves the right to amend its staff discount and meal policy from time to time.

## **27. GENERAL LEAVE PROVISIONS**

27.1 All paid leave provided for in this Agreement shall be paid at your Wage Rate.

27.2 The rules set out in the *Workplace Relations Act 1996* in relation to the taking of annual leave, personal leave, compassionate leave, unpaid carer's leave and parental leave will apply in conjunction with this Agreement.

- 27.3 If you are a part time Employee, the leave entitlements provided for in this Agreement accrue and are calculated on a pro-rata basis.
- 27.4 If you are a Casual Employee, you are not entitled to the leave entitlements set out in this Agreement (except for, where applicable, unpaid carer's leave, parental leave and long service leave) as you are paid a loaded hourly rate in lieu of such leave entitlements.

## **28. ANNUAL LEAVE**

- 28.1 You are entitled to 4 weeks' paid annual leave in each year of your employment, to be taken at times agreed by you and Brodalex.
- 28.2 Annual leave accrues on a pro-rata basis throughout the year, is cumulative and is paid out upon termination of employment.
- 28.3 If possible, a request for the taking of annual leave should be made at least 4 weeks in advance. Brodalex may reasonably refuse a request for annual leave where the operational requirements of the business necessitate such a refusal.
- 28.4 Brodalex prefers and encourages you to take all accrued annual leave within 12 months of accruing that annual leave.
- 28.5 Annual leave loading of 17.5% is payable for all annual leave taken under this Agreement, but is not payable upon termination of employment.

## **29. PERSONAL LEAVE**

- 29.1 You are entitled to 10 days' paid personal leave in each year of your employment.
- 29.2 Personal leave accrues on a pro-rata basis, is cumulative and is not paid out upon termination of employment.
- 29.3 Personal leave may be used as follows:
- (a) As "**sick leave**" - in the event of personal illness or injury; or
  - (b) As "**carer's leave**" - to provide care or support to a member of your Immediate Family or household, who requires your care and support because of:
    - (i) A personal illness or injury of a member; or
    - (ii) An unexpected emergency affecting the member.

29.4 **"Immediate Family"** means:

- (a) Your spouse (including a former spouse, a de facto spouse and a former de facto spouse);
- (b) Your child (including your stepchild, adopted child, ex-nuptial child or adult child), parent, grandparent, grandchild or sibling; and
- (c) A child, parent, grandparent, grandchild or sibling of your spouse.

29.5 In order to qualify for the payment of personal leave:

- (a) You must take all reasonable steps to inform Brodalex of any expected period of absence from work due to personal leave prior to the start of the Shift on which you are rostered to work or, in exceptional circumstances, as soon as is reasonably practical, in order that alternative staffing arrangements may be made; and
- (b) To substantiate all absences for personal leave:
  - (i) Where it is reasonably practicable to do so, you must give Brodalex a medical certificate from a registered health practitioner evidencing an inability to work or, in the case of carer's leave, confirming the illness or injury of the person being cared for by you; or
  - (ii) If it is not reasonably practicable for you to give Brodalex a medical certificate, you must make and give Brodalex a statutory declaration containing such details as Brodalex may require.
- (c) It is mandatory to provide the documentary evidence described in **Clause 29.5** where you are absent on account of personal leave for 1 day or more.
- (d) The documentary evidence required in accordance with **Clause 29.5** must be given to Brodalex as soon as is reasonably practicable (which may be before or after personal leave has started).

### **30. PAYMENT OF ANNUAL LEAVE AND PERSONAL LEAVE AS LOADED WAGE RATE**

30.1 By agreement between you and Brodalex, all paid annual leave and personal leave provided for in this Agreement may be paid as a Loaded Wage Rate, in accordance with the following conditions:-

- (a) Your Loaded Wage Rate is inclusive of a pro-rata payment of your entitlement to annual leave and personal leave, as set out in **Clauses 28 and 29**;
- (b) You will still accrue a pro-rata entitlement to take annual leave and personal leave, however, when such annual leave or personal leave is taken it will be unpaid; and
- (c) If your Loaded Wage Rate increases after you have received payment of unused accrued annual leave and personal leave, but before you take such annual leave or personal leave, Brodalex will, at the time you take such unpaid annual leave or personal leave, pay to you an amount equal to the difference between the former pro-rata payment of your entitlement to annual leave or personal leave and the new pro-rata payment of your entitlement to annual leave or personal leave.

### **31. UNPAID CARER'S LEAVE**

31.1 You (including if you are employed on a casual basis) shall be entitled to up to 2 days' unpaid carer's leave for each occasion where a member of your Immediate Family, or a member of your household, requires care or support during such a period because of:

- (a) A personal illness, or injury, of the member; or
- (b) An unexpected emergency affecting the member.

31.2 "**Immediate Family**" in this Clause has the same meaning as in **Clause 29.4**.

31.3 To be entitled to take unpaid carer's leave in accordance with this Clause:

- (a) Your entitlement to paid personal leave in accordance with **Clause 29** must be exhausted; and
- (b) If required by Brodalex, you must provide a medical certificate from a registered health practitioner if the care and support is required because of a personal illness or injury of the member; or
- (c) You must (if requested) provide a statutory declaration if the care and support is required because of an unexpected emergency affecting the member.

### **32. COMPASSIONATE LEAVE**

32.1 You are entitled to up to 2 days' paid compassionate leave on each occasion of the following:

(a) For the purposes of spending time with a person who is a member of your Immediate Family or household who has a personal illness, or injury, that poses a serious threat to his or her life; or

(b) After the death of a member of your Immediate Family or household.

32.2 "**Immediate Family**" in this Clause has the same meaning as in **Clause 29.4**.

32.3 If Brodalex requests reasonable evidence of the illness, injury or death, you must provide such evidence in order to receive payment for compassionate leave.

### **33. PARENTAL LEAVE**

After 12 months' continuous service with Brodalex, you are entitled to unpaid maternity, paternity and adoption leave as set out in the *Workplace Relations Act 1996*.

### **34. LONG SERVICE LEAVE**

34.1 You are entitled to long service leave in accordance with the legislation application in your State of employment.

#### **34.2 Cashing in Long Service Leave**

If you become entitled to long service leave during your employment with Brodalex, you may apply in writing to cash in your long service leave entitlement (or part thereof) in exchange for payment. Brodalex may, in its discretion, grant your application.

### **35. PUBLIC HOLIDAYS**

35.1 As Brodalex generally trades on public holidays, employees may be requested to work on public holidays.

35.2 Public holidays are those days (including substituted public holidays) declared or prescribed as public holidays in your State of employment.

#### **35.3 Public Holidays Worked - All Employees**

(a) This Clause only applies to non-salaried Employees.

(b) Brodalex may request that you work on a public holiday.

(c) If you work on a public holiday you will receive payment of 150% of your Wage Rate, as set out in **Schedule 2**, for all hours worked on the public holiday.

- (d) Unless otherwise agreed with Brodalex, if you are a salaried Employee and you work on a public holiday, you will not be entitled to any additional payment as your Wage Rate takes into account all hours worked.

#### **35.4 Public Holidays Not Worked**

A Permanent Employee who is rostered, but not required, to work on a public holiday shall be paid their Wage Rate for their Rostered Hours of Work.

### **36. UNIFORMS AND PROTECTIVE CLOTHING**

- 36.1 You may be required to wear a uniform and/or protective clothing supplied by Brodalex.
- 36.2 In accordance with **Clause 47**, all uniforms and protective clothing remain the property of Brodalex.
- 36.3 Unless otherwise agreed by Brodalex, employees will be responsible for laundering their uniforms.
- 36.4 If you are required to wear a uniform and/or protective clothing, and are employed after the Commencement Date, you shall pay a bond of the amount of \$50.00 (or such other amount as advised by Brodalex payable by instalments from your wages. This bond shall be repaid to you upon cessation of your employment provided the uniforms and/or protective clothing are returned to Brodalex in good condition, fair wear and tear excepted.

### **37. TRAINING**

- 37.1 Subject to Brodalex's Policies, Brodalex may require you to undertake training from time to time.
- 37.2 You shall not be entitled to any additional payment where you attend training.

### **38. ALCOHOL AND DRUG POLICY**

- 38.1 Subject to **Clause 38.5**, it is prohibited that any Employee be under the influence of drugs or alcohol whilst carrying out their duties.
- 38.2 All Employees must attend work on time and in a fit state to carry out their duties in a safe and efficient manner.

- 38.3 Subject to **Clause 38.5**, if it is suspected that you are under the influence of drugs or alcohol, you will be required to submit to a medical test by a medical practitioner nominated and paid for by Brodalex. This test will be used to assess whether there is alcohol or drugs in your system.
- 38.4 A breach of this Clause will constitute serious misconduct in accordance with **Clause 45**.
- 38.5 For the purposes of this Clause, the term "**drugs**" does not include prescribed medication which does not affect the carrying out of your duties.

### **39. HEALTH AND SAFETY OF EMPLOYEES**

- 39.1 Your responsibilities include, but are not limited to:
- (a) Work carefully to ensure your own safety and the safety of others who may be affected by your acts or omissions;
  - (b) Use and maintain equipment properly; and
  - (c) Ensure that your work area is free of hazards.
- 39.2 Employees must comply with Brodalex's Policies in relation to health and safety in conjunction with this Clause.

### **40. ANTI DISCRIMINATION, EQUAL OPPORTUNITY AND HARASSMENT**

- 40.1 You and Brodalex agree that it is our intention to achieve the main object in Section 3(m) of the *Workplace Relations Act* 1996, which is to respect and value the diversity of people in the workforce by helping to prevent and eliminate discrimination at our workplace on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 40.2 Nothing in this Clause is to be taken to affect any differential treatment (or treatment having different effects) which is not unlawful under Commonwealth or State anti-discrimination legislation.
- 40.3 Employees must comply with Brodalex's Policies in relation to anti-discrimination, equal opportunity, harassment and workplace bullying in conjunction with this Clause.

#### **41. GRIEVANCE HANDLING PROCEDURE**

41.1 Where a dispute arises out of the terms of this Agreement, the following procedure should be followed:

- (a) The matter shall, where possible, first be discussed by you with your immediate manager. Your immediate manager will respond to your grievance as soon as possible.
- (b) If the issue is not resolved in accordance with **Clause 41.1(a)**, the matter must be discussed by you with Brodalex's Management.
- (c) If the matter cannot be resolved in discussion between the parties as part of the steps set out in **Clause 41.1(a)** and **41.1(b)**, the matter may be referred to an agreed private independent mediator for mediation. The agreed private independent mediator shall have only those powers to mediate or such further powers as expressly agreed by the parties to the dispute.
- (d) Any fees incurred in order to undertake the process set out in **Clause 41.1(c)** shall be borne equally by the parties.

41.2 During any discussions or action taken under this Clause, all work shall continue in accordance with the practices existing prior to the matter in dispute arising, or other agreed arrangements. No party shall be prejudiced as to the final settlement by the continuance of the work in accordance with this Clause.

#### **42. SUSPENSION**

You may be stood down on full pay, pending an investigation, if Brodalex receives a complaint from another Employee or customer, or it is otherwise suspected that you have, or may have, committed a serious breach of this Agreement or one of the matters listed in **Clause 45**.

#### **43. STAND DOWN**

43.1 Brodalex shall have the right to stand you down without pay where you cannot be usefully employed because of an act of God, or power failure, or any stoppage of work by a cause for which Brodalex cannot reasonably be held responsible.

43.2 This Clause does not operate to affect your continuity of employment for the purposes of accrual of leave entitlements.

#### 44. NOTICE OF TERMINATION

##### 44.1 Casual Employment

Casual employment can be terminated by either party on the giving of 1 day's notice (or, at the discretion of Brodalex, payment in lieu of notice).

##### 44.2 Permanent Employment

- (a) Subject to **Clause 7**, Permanent employment can be terminated by either party on the giving of the following periods of notice (or, at the discretion of Brodalex, payment in lieu of notice):

<u>Period of Continuous Service</u>	<u>Period of Notice</u>
Not more than 1 year	1 week
1 year and up to 3 years	2 weeks
3 years and up to 5 years	3 weeks
5 years and over	4 weeks

- (b) If you are over 45 years of age and have at least 2 years' continuous service with Brodalex, an additional 1 week's notice (or payment in lieu of notice) shall be given by Brodalex.
- (c) During any period of notice, Brodalex is not obliged to provide you with any work or work of a particular kind. Brodalex may direct that you do not attend Brodalex premises and may further direct that you only carry out duties as directed by Brodalex.

44.3 Any payment in lieu of notice shall be equal to the relevant Wage Rate you would have received in respect of the hours (excluding Overtime, if applicable) that would have been worked by you during the period of notice had you not been terminated.

#### 45. TERMINATION WITHOUT NOTICE

45.1 Brodalex may immediately, without notice or payment in lieu of notice, terminate your employment if you are guilty of serious misconduct. Serious misconduct includes, but is not limited to:

- (a) Wilful or deliberate behaviour by you that is inconsistent with the continuation of your employment;
- (b) Conduct that causes serious risk to the health or safety of a person, or the reputation, viability or profitability of Brodalex business;
- (c) Engaging in theft, fraud or assault;

- (d) Harassing, sexually or otherwise, or discriminating against other employees, contractors or customers of Brodalex;
- (e) Being intoxicated or under the influence of drugs at work;
- (f) Refusing to carry out a lawful, reasonable instruction by a supervisor or manager; or
- (g) Neglect of duty;

and, in such case, you will be paid all entitlements due to the date of the termination of your employment, upon the return of all Brodalex property as required by **Clause 47**.

45.2 **"Neglect of duty"** in this Clause includes the repeated failure by an Employee to attend for work without lawful excuse or prior notification to Brodalex on 3 occasions or more.

## **46. REDUNDANCY**

### **46.1 Discussions before Termination**

- (a) Where Brodalex has made a definite decision that it no longer wishes the job you or other Employees have been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour, the decision may lead to termination of employment. In such circumstances, Brodalex shall hold discussions with you or other Employees directly affected.
- (b) The discussions shall take place as soon as is practicable and shall cover, amongst other matters, the reasons for the proposed terminations, measures to avoid or minimize the terminations and measures (if any) to mitigate any adverse effects of the terminations on yourself or other Employees concerned.
- (c) During such discussions, Brodalex shall not be required to disclose Confidential Information, the disclosure of which would be detrimental to its interests.

#### 46.2 Severance Pay

In addition to the period of notice provided in **Clause 44.2**, if you are a Permanent Employee and your employment is terminated for reasons of redundancy, you shall be entitled to the following amount of severance pay in respect of your continuous period of service with Brodalex:

<b>Period of Continuous Service</b>	<b>Severance Pay</b>
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

**"Weeks' pay"** means the Wage Rate which you would have received for a week's work, averaged over the previous 4 week period.

#### 46.3 Time Off During Notice Period

- (a) If your employment is terminated for reasons of redundancy, during the period of notice of termination given by Brodalex you shall be allowed up to 1 day's time off without loss of pay for the purpose of seeking other employment.
- (b) If you have been allowed paid leave for more than 1 day during the notice period for the purpose of seeking other employment, you will, at the request of Brodalex, be required to produce proof of attendance at an interview or you will not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.

#### 46.4 Transmission of Business

- (a) **"Transmission"** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and **"transmitted"** has a corresponding meaning.
- (b) The provisions of **Clauses 44.2** and **46.2** are not applicable where Brodalex's business is transmitted to another employer (in this Subclause called the **"New Employer"**), in any of the following circumstances:

- (i) Where you accept employment with the New Employer which recognises the period of continuous service which you had with Brodalex (or any prior transmittor) to be continuous service with the New Employer; or
- (ii) Where you reject an offer of employment with the New Employer:
  - (A) In which the terms and conditions are no less favourable, considered on an overall basis, than the terms and conditions applicable at the time of ceasing employment with Brodalex; and
  - (B) Which recognises the period of continuous service which you had with Brodalex (or any prior transmittor) to be continuous service with the New Employer.
- (c) This Clause shall not apply to you if you are:
  - (i) Offered suitable alternative employment;
  - (ii) A Permanent Employee with less than 1 year's continuous service;
  - (iii) Terminated as a consequence of serious misconduct that justifies termination without notice;
  - (iv) On a qualifying period in accordance with **Clause 7**;
  - (v) An apprentice or trainee;
  - (vi) Engaged for a specific period of time or for a specified task or tasks; or
  - (vii) A casual Employee.

#### **47. PROPERTY OF BRODALEX**

- 47.1 When your employment is terminated, you must return to Brodalex all property of Brodalex which is in your possession, custody or control. This includes, without limitation, tools, uniforms, keys, equipment, mobile telephones, documents, policies, manuals, or other information whether in electronic, written or other form. You undertake not to retain any copies of any such property.
- 47.2 Brodalex has the right to withhold any final pay until all property is returned as required by this Clause.

47.3 You are responsible for all loss and damage suffered by Brodalex due to wilful acts or negligence on your part caused during your employment, including loss and damage to property belonging to Brodalex.

#### **48. DEDUCTIONS**

48.1 Brodalex reserves the right to deduct from your wages or, upon the termination of your employment, to deduct from your final pay, including from any accrued leave entitlements, any sums owed to Brodalex by you relating to your employment, in respect to the following:

- (a) Any overpayments of wages or over-reimbursement of expenses;
- (b) If you fail to work out the required notice period as set out in **Clause 44**, an amount equal to the relevant Wage Rate you would have received had you worked out the required notice period;
- (c) The replacement value of any property belonging to Brodalex provided to you or under your control for the purposes of completing your employment duties that you have not returned upon termination, as required by **Clause 47**; or
- (d) The value of any unaccrued leave taken in advance.

## **SCHEDULE 1 - JOB DESCRIPTIONS**

### **Level 1 Employee**

A Level 1 Employee means an employee who is engaged to perform the following duties:

- preparation, assembly, cooking or packing of product for sale;
- the maintenance of the work area at a standard of cleanliness required by Brodalex;
- the cleaning of cooking utensils, cutlery and glassware;
- the performance of customer service functions, including the taking of orders by any means and the entering of information onto a computer;
- the receipt of monies or other duties involving customer contact, except the delivery of product to the customer outside the retail food establishment;
- opening and/or closing the store or outlet, under supervision and according to the established procedures; and
- accepting deliveries with due care and attention.

### **Level 2 Employee (Senior Employee)**

A Level 2 Employee means an employee who is engaged to perform the following duties:

- preparation, assembly, cooking or packing of product for sale;
- the maintenance of the work area at a standard of cleanliness required by Brodalex;
- the cleaning of cooking utensils, cutlery and glassware;
- the performance of customer service functions, including the taking of orders by any means and the entering of information onto a computer;
- the receipt of monies or other duties involving customer contact, except the delivery of product to the customer outside the retail food establishment;
- opening and/or closing the store or outlet according to the established procedures;
- accepting deliveries with due care and attention; and
- who holds the keys to the store or outlet and is responsible for opening or closing at the commencement or conclusion of each trading day.

**Level 3 Employee (Store Supervisor/Manager)**

A Level 3 Employee means an employee who is in charge of a shop or outlet and who, as well as performing the duties comprehended by a Level 2 Employee, is responsible for:-

- placing orders for supplies;
- banking daily takings;
- supervision of employees performing lower level work; and
- providing reports as required.

**SCHEDULE 2 - WAGE RATES**

**Non-salaried Employees**

**Hourly Wage Rates for all hours worked from Monday to Saturday**

<b>Job Classification</b>	<b>Ordinary Wage Rate</b>	<b>Casual Wage Rate</b>	<b>Loaded Wage Rate</b>	<b>Preferred Hours Wage Rate</b>	<b>Loaded Preferred Hours Wage Rate</b>	<b>[Deleted]</b>
Level 1	\$17.69	\$22.90	\$19.64	\$16.43	\$18.42	
Level 2 (Senior Employee)	\$18.72	\$24.22	\$20.77	\$17.38	\$19.48	
Level 3 (Supervisor)	\$18.98	\$24.56	\$21.07	\$17.63	\$19.76	

**Junior Employees**

<b>Year/Stage</b>	<b>Ordinary Wage Rate</b>	<b>Casual Wage Rate</b>	<b>Loaded Wage Rate</b>	<b>Preferred Hours Wage Rate</b>	<b>Loaded Preferred Hours Wage Rate</b>	<b>[Deleted]</b>
Under 17 years old	\$8.85	\$11.45	\$9.82	\$8.22	\$9.21	
At 17 years old	\$10.61	\$13.74	\$11.78	\$9.86	\$11.05	
At 18 years old	\$12.38	\$16.03	\$13.74	\$11.50	\$12.89	
At 19 years old	\$15.04	\$19.46	\$16.69	\$13.97	\$15.66	
At 20 years old	\$17.69	\$22.90	\$19.64	\$16.43	\$18.42	

**Wage Rate for Sunday Work**

Save for Preferred Hours of Work, Directed Overtime or Voluntary Overtime, all hours worked by non-salaried Employees on a Sunday are payable at 150% of the relevant Wage Rate for each hour worked.

**Salaried Employees**

**Annual Wage Rate for all hours of work**

<b>Job Classification</b>	<b>Salary</b>
Level 1	\$38,746.89
Level 2 (Senior Employee)	\$40,992.12
Level 3 (Supervisor)	\$41,570.10

## **APPENDIX E**

### **Wage comparison tables: Brodalex Subway zombie agreement vs Fast Food Industry Award**

ORDINARY WAGE RATE

BASE RATE		Award	Brodalex	Difference
	21+	\$19.44	\$17.69	-\$1.75
20+	\$17.49	\$17.69	\$0.20	
19+	\$15.55	\$15.04	-\$0.51	
18+	\$13.60	\$12.38	-\$1.22	
17+	\$11.66	\$10.61	-\$1.05	
Under 17	\$9.72	\$8.85	-\$0.87	

WEEKNIGHT RATE		Award	Brodalex	Difference
	21+	\$21.38	\$17.69	-\$3.69
20+	\$19.23	\$17.69	-\$1.54	
19+	\$17.10	\$15.04	-\$2.06	
18+	\$14.96	\$12.38	-\$2.58	
17+	\$12.82	\$10.61	-\$2.21	
Under 17	\$10.69	\$8.85	-\$1.84	

SATURDAY RATE		Award	Brodalex	Difference
	21+	\$24.30	\$17.69	-\$6.61
20+	\$21.68	\$17.69	-\$3.99	
19+	\$19.43	\$15.04	-\$4.39	
18+	\$17.00	\$12.38	-\$4.62	
17+	\$14.57	\$10.61	-\$3.96	
Under 17	\$12.15	\$8.85	-\$3.30	

SUNDAY RATE		Award	Brodalex	Difference
	21+	\$29.16	\$17.69	-\$11.47
20+	\$26.23	\$26.53	\$0.30	
19+	\$23.32	\$22.56	-\$0.76	
18+	\$20.40	\$18.57	-\$1.83	
17+	\$17.40	\$15.91	-\$1.49	
Under 17	\$14.58	\$13.27	-\$1.31	

PUBLIC HOLIDAY RATE		Award	Brodalex	Difference
	21+	\$46.80	\$26.53	-\$20.27
20+	\$43.72	\$26.53	-\$17.19	
19+	\$38.87	\$22.56	-\$16.31	
18+	\$34.00	\$18.57	-\$15.43	
17+	\$29.15	\$15.91	-\$13.24	
Under 17	\$24.30	\$13.27	-\$11.03	

CASUAL RATES

BASE RATE		Award	Brodalex	
	21+	\$24.30	\$22.90	-\$1.40
	20+	\$21.86	\$22.90	\$1.04
	19+	\$19.43	\$19.46	\$0.03
	18+	\$17.00	\$16.03	-\$0.97
	17+	\$14.57	\$13.74	-\$0.83
	Under 17	\$12.15	\$11.45	-\$0.70

WEEKNIGHT RATE		Award	Brodalex	
	21+	\$26.73	\$22.90	-\$3.83
	20+	\$24.04	\$22.90	-\$1.14
	19+	\$21.37	\$19.46	-\$1.91
	18+	\$18.70	\$16.03	-\$2.67
	17+	\$16.02	\$13.74	-\$2.28
	Under 17	\$13.36	\$11.45	-\$1.91

SATURDAY RATE		Award	Brodalex	
	21+	\$30.37	\$22.90	-\$7.47
	20+	\$27.32	\$22.90	-\$4.42
	19+	\$24.28	\$19.46	-\$4.82
	18+	\$21.25	\$16.03	-\$5.22
	17+	\$18.21	\$13.74	-\$4.47
	Under 17	\$15.18	\$11.45	-\$3.73

SUNDAY RATE		Award	Brodalex	
	21+	\$42.52	\$34.34	-\$8.18
	20+	\$38.25	\$34.34	-\$3.91
	19+	\$34.00	\$29.19	-\$4.81
	18+	\$29.75	\$24.05	-\$5.70
	17+	\$25.49	\$20.61	-\$4.88
	Under 17	\$21.26	\$17.17	-\$4.09

PUBLIC HOLIDAY RATE		Award	Brodalex	
	21+	\$53.46	\$34.34	-\$19.12
	20+	\$48.09	\$34.34	-\$13.75
	19+	\$42.76	\$29.19	-\$13.57
	18+	\$37.40	\$24.05	-\$13.35
	17+	\$32.06	\$20.61	-\$11.45
	Under 17	\$26.73	\$17.17	-\$9.56

"PREFERRED HOURS" WAGE RATE

BASE RATE		Award	Brodalex	
	21+	\$19.44	\$16.43	<b>-\$3.01</b>
	20+	\$17.49	\$16.43	<b>-\$1.06</b>
	19+	\$15.55	\$13.97	<b>-\$1.58</b>
	18+	\$13.60	\$11.50	<b>-\$2.10</b>
	17+	\$11.66	\$9.86	<b>-\$1.80</b>
	Under 17	\$9.72	\$8.22	<b>-\$1.50</b>

WEEKNIGHT RATE		Award	Brodalex	
	21+	\$21.38	\$17.69	<b>-\$3.69</b>
	20+	\$19.23	\$17.69	<b>-\$1.54</b>
	19+	\$17.10	\$15.04	<b>-\$2.06</b>
	18+	\$14.96	\$12.38	<b>-\$2.58</b>
	17+	\$12.82	\$10.61	<b>-\$2.21</b>
	Under 17	\$10.69	\$8.85	<b>-\$1.84</b>

SATURDAY RATE		Award	Brodalex	
	21+	\$24.30	\$16.43	<b>-\$7.87</b>
	20+	\$21.68	\$16.43	<b>-\$5.25</b>
	19+	\$19.43	\$13.97	<b>-\$5.46</b>
	18+	\$17.00	\$11.50	<b>-\$5.50</b>
	17+	\$14.57	\$9.86	<b>-\$4.71</b>
	Under 17	\$12.15	\$8.22	<b>-\$3.93</b>

SUNDAY RATE		Award	Brodalex	
	21+	\$29.16	\$16.43	<b>-\$12.73</b>
	20+	\$26.23	\$16.43	<b>-\$9.80</b>
	19+	\$23.32	\$13.97	<b>-\$9.35</b>
	18+	\$20.40	\$11.50	<b>-\$8.90</b>
	17+	\$17.40	\$9.86	<b>-\$7.54</b>
	Under 17	\$14.58	\$8.22	<b>-\$6.36</b>

PUBLIC HOLIDAY RATE		Award	Brodalex	
	21+	\$46.80	\$24.65	<b>-\$22.15</b>
	20+	\$43.72	\$24.65	<b>-\$19.07</b>
	19+	\$38.87	\$20.95	<b>-\$17.92</b>
	18+	\$34.00	\$17.25	<b>-\$16.75</b>
	17+	\$29.15	\$14.79	<b>-\$14.36</b>
	Under 17	\$24.30	\$12.30	<b>-\$12.00</b>