SIMPEC PTY LTD
ENTERPRISE AGREEMENT 2019
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1. **TITLE**

This Agreement is known as the *SIMPEC Pty Ltd Enterprise Agreement 2019* (Agreement).

2. **PARTIES BOUND AND APPLICATION OF AGREEMENT**

2.1 This Agreement covers:

   (a) SIMPEC Pty Ltd (ABN: 44 619 238 505) (Employer); and

   (b) Employees of the Employer employed in the classifications contained in clause 6 ("Classifications and Wage Rates") of this Agreement (Employees).

3. **PERIOD OF OPERATION**

3.1 This Agreement commences operation on the seventh (7th) day after the day it is approved by the Fair Work Commission (Commission).

3.2 The nominal expiry date of this Agreement is four (4) years after the day on which the Commission approves the Agreement.

3.3 This Agreement continues to operate beyond the nominal expiry date until it is replaced or terminated in accordance with the *Fair Work Act 2009* (FW Act).

4. **RELATIONSHIP TO AWARDS, LEGISLATION AND OTHER INSTRUMENTS**

4.1 This Agreement operates to the exclusion of any award.

4.2 Where any legislation, award, policy, procedure or other document is referred to in this Agreement it is not incorporated into and does not form part of this Agreement. In particular, references to entitlements provided for in the National Employment Standards (NES) and other legislation are:

   (a) for information only and do not incorporate those entitlements into this Agreement; and

   (b) not intended as a substitute for the detailed provisions of the NES and other legislation.

4.3 If any provision in the agreement is less beneficial than the NES, the NES will prevail.

5. **CONTRACT OF SERVICE**

*Types of Employment*

5.1 Employees will be employed in one of the following categories:

   (a) full-time Employees;
(b) part-time Employees;

(c) casual Employees.

**Full-time Employment**

5.2 Subject to clause 11 (“Jump Up Agreement”) a full-time Employee is an Employee who works an average of 38 ordinary hours per week.

**Part-time Employment**

5.3 Subject to clause 11 (“Jump Up Agreement”), a part-time Employee is an Employee who works an average of fewer than 38 ordinary hours per week.

5.4 The terms of this Agreement will apply pro rata to part time Employees on the basis of their ordinary hours compared to a full-time Employee’s hours.

5.5 On engagement, the Employer and the Employee shall agree on the number of hours to be worked per week and the days to be worked. The terms of this agreement may be varied by consent between the Employer and the Employee.

**Casual Employment**

5.6 A Casual Employee means an Employee who is engaged and paid as such. Casual Employees are paid a 25% loading in lieu of the entitlements normally provided to permanent Employees, including paid leave.

5.7 Casual Employees shall be engaged for a minimum of 4 hours’ payment per shift.

5.8 A casual Employee is entitled to all of the applicable rates and conditions of employment as prescribed by this Agreement except annual leave, paid personal/carer’s leave, paid compassionate leave, paid community service leave, notice of termination and redundancy benefits.

5.9 A casual Employee will be entitled to the relevant penalty rates prescribed by clauses 9 (“Overtime”), 13 (“Shiftwork”) and 18 (“Public Holidays”) of this Agreement as the case may be, provided that where the:

(a) relevant penalty rate is time and a half, the casual Employee must be paid 1.75 times the ordinary hourly rate prescribed for the employee’s classification;

(b) relevant penalty rate is double time, the casual Employee must be paid 2.25 times the ordinary hourly rate prescribed for the employee’s classification; or

(c) relevant penalty rate is double time and a half, the casual Employee must be paid 2.75 times the ordinary hourly rate prescribed for the employee’s classification;

5.10 To avoid doubt, the rates prescribed in clause 5.9 incorporate the casual loading.

5.11 A casual Employee who has been engaged by for a regular sequence of periods of employment during a period of six months has the right to elect to have their contract of employment converted to full-time or part-time employment if the employment is to continue beyond the conversion process.
5.12 If clause 5.11 is enacted, an Employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert their contract of employment to full-time employment and an Employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert their contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed on between the Employer and Employee.

**Probation**

5.13 All new Employees will be engaged on a probationary period of three (3) months. During this period, either party can terminate the employment by giving one week’s notice.

**Duties**

5.14 An Employee’s duties and responsibilities may be varied by the Employer, provided that they are within the Employee’s range of skills, qualification, competence and training.

5.15 At all times in performing their duties and responsibilities, Employees are required to:

(a) comply with any lawful and reasonable direction given by the Employer;

(b) use their best endeavours;

(c) devote the whole of their time and attention to their work; and

(d) ensure the highest level of safe working practices are adhered to and maintained.

**Higher Duties**

5.16 Where an Employee is engaged for more than two hours during one day on duties carrying a higher rate than the Employee’s ordinary classification, they will be paid at the higher rate for the whole day. Otherwise, the Employee is entitled to be paid the higher rate for the time so worked.

**Workplace Flexibility**

5.17 Employees are required to be multi-skilled and work in a flexible manner. All Employees will be required to perform a diverse range of functions within their skill and competence. There shall be no demarcation, restrictions or limitations on the performance of work whatsoever, including or between traditional trade (craft), occupations, vocations or callings.

**Stand Down**

5.18 Notwithstanding any other provision in this Agreement, where an Employee cannot be usefully employed due to industrial action, breakdown of equipment or any stoppage of work over which the Employer cannot be reasonably held responsible, the Employer may stand down the Employee and deduct or withhold payment for that period. This does not break continuity of employment for the purposes of any entitlements.
Notification of Absences

5.19 Prior to any absence from work, Employees are required to notify the Employer as soon as possible of their inability to attend work, the estimated duration of the absence and the reason for the absence. Whenever practicable this should occur before the commencement of the Employee’s shift.

Fitness for Work

5.20 It is a requirement that Employees are not adversely affected by alcohol or drugs during working hours.

5.21 Where an Employee is taking medication, or suffering from any condition, that may affect or limit their ability to carry out work, they are to advise their supervisor.

5.22 Employees may be required to undertake random or “for cause” drug and alcohol testing. Where an Employee returns a positive test or fails to undertake a test he/she will be suspended without pay until such time as the Employee is deemed fit for work or the Employment is terminated.

6. CLASSIFICATIONS AND WAGE RATES

6.1 Employees (other than apprentices) shall be paid no less than the following ordinary rates of pay:

<table>
<thead>
<tr>
<th>Level</th>
<th>On commencement of this Agreement Ordinary Hourly Rate $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1</td>
<td>$23.48</td>
</tr>
<tr>
<td>Level 2</td>
<td>$23.94</td>
</tr>
<tr>
<td>Level 3</td>
<td>$25.47</td>
</tr>
<tr>
<td>Level 4</td>
<td>$25.80</td>
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<tr>
<td>Level 5</td>
<td>$26.54</td>
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<tr>
<td>Level 6</td>
<td>$26.76</td>
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<tr>
<td>Level 7</td>
<td>$27.50</td>
</tr>
<tr>
<td>Level 8</td>
<td>$28.50</td>
</tr>
</tbody>
</table>

- Classification definitions can be found at Appendix 1.

6.2 The following loadings and allowances have been incorporated into the minimum hourly rates of pay:

a) Annual leave loading;
b) Industry allowance;
c) Special allowance;
d) Tool allowance for the Tradesperson classification;
e) Industry specific redundancy scheme;
f) Paid R&R; and
g) Forward and return journey payment.

6.3 Where due to the nature of the work, the Employee is performing, the Employee would be entitled to an additional allowance or special rate under the terms of the Building and Construction General On-Site Award 2010 (Award) that are not referred to in this Agreement, the Employer will pay the Employee that allowance or special rate in accordance with the terms of the Award in addition to the minimum rate of pay specified in clause 6.1 above.

Additional Allowances

6.4 Employees will be paid an allowance of $17.43 per day for each day worked for fares and travel. This allowance will not apply when the Employee is provided with Employer transport to and from the work site.

6.5 Employees engaged as leading hands will be paid the following all-purpose allowance:

<table>
<thead>
<tr>
<th>In charge of 1 person</th>
<th>2.4</th>
</tr>
</thead>
<tbody>
<tr>
<td>In charge of 2 to 5 people</td>
<td>5.3</td>
</tr>
<tr>
<td>In charge of 6 to 10 people</td>
<td>6.7</td>
</tr>
<tr>
<td>In charge of more than 10 people</td>
<td>9.0</td>
</tr>
</tbody>
</table>

Apprentices

6.6 The ordinary rate of pay for an apprentice shall be not less than the relevant percentage of the CW5 ordinary rate set out in Clause 6.1 of this Agreement.

<table>
<thead>
<tr>
<th></th>
<th>% of the standard (trade) rate for apprentices who have not completed year 12</th>
<th>% of the standard (trade) rate for apprentices who have completed year 12</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Year</td>
<td>50</td>
<td>55</td>
</tr>
<tr>
<td>Second Year</td>
<td>60</td>
<td>65</td>
</tr>
<tr>
<td>Third Year</td>
<td>75</td>
<td>75</td>
</tr>
<tr>
<td>Fourth Year</td>
<td>90</td>
<td>90</td>
</tr>
</tbody>
</table>
6.7 The ordinary rate of pay for an adult apprentice (over 21 years of age) will be not less than that prescribed for an Employee classified as a Level 1 in this Agreement.

6.8 Time spent by an apprentice, in attending training and assessments specified in, or associated with, the training contract is to be regarded as time worked for the Company for the purpose of calculating the apprentice’s wage and determining leave entitlements.

6.9 All fees charged by a RTO and the cost of all prescribed textbooks for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the Company within six months of commencement of the apprenticeship or a stage of the apprenticeship, or within 3 months of the commencement of training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.

6.10 The Company may meet its obligations under this clause by paying any fees and/or cost of textbooks directly to the RTO.

Payment of Wages

6.11 Wages shall be paid by electronic funds transfer to an acceptable financial institution nominated by the Employee.

6.12 The Employer may deduct from an Employee’s wages, or any monies owing, any amount it is authorised or required to deduct, including any overpayment of remuneration or any amount provided for by this Agreement.

7. ACCOMMODATION

7.1 Where Employees are required to work at a location away from the Employer’s premises which is such a distance that they cannot reasonably be expected to return home at night, the Employer will provide suitable board and lodging, or reimburse Employees any reasonable expense for meals and accommodation not provided.

7.2 Where Employees are provided with camp accommodation they are required to comply with the relevant rules for that camp.

7.3 Where distance work is required the Employee will be paid at their ordinary rate of pay for time spent travelling for mobilisation and demobilisation up to a maximum of 8 hours per day. The Employer will provide appropriate transport or pay for the transport costs.

7.4 Subject to Clause 7.1, the minimum reimbursement for meals and accommodation not provided will be $494.94 per completed week. In the case of broken parts of the week the reimbursement will be $70.81 per day.

8. HOURS OF WORK

8.1 Except as provided in clause 11 (“Jump Up Agreement”) and clause 13 (“Shiftwork”), Ordinary Hours will not exceed an average of 38 per week.

8.2 No more than 8 ordinary hours can be worked in any one day.
8.3 Ordinary Hours shall be worked between 6.00 a.m. and 6.00 p.m., Monday to Friday (Ordinary Hours). The Employer will determine the actual method of working ordinary hours. The pattern of working hours within the spread of Ordinary Hours may be altered by agreement with an individual Employee or with the majority of Employees in the plant, site, workshop, section or sections concerned or by the Employer giving 1 weeks’ notice.

8.4 Work done outside of ordinary hours will be payable at overtime rates as provided for by this Agreement.

8.5 Subject to Clause 11 (“Jump Up Agreement”) if the Employer elects to roster the Employee on a system which provides for the accrual of RDOs then:

(a) if the Employee is rostered to work a 38-hour week, the Employee will accrue one RDO for every four weeks worked by working eight hours each day, being paid 7.6 ordinary hours’ pay and accruing 0.4 of an hour towards an RDO;

(b) if the Employee is rostered to work a 36-hour week, the Employee will accrue one RDO for every two weeks worked by working eight hours each day, being paid 7.2 ordinary hours’ pay and accruing 0.8 of an hour towards an RDO;

(c) RDOs shall not be accrued during any period of leave or absence from work, except for paid public holidays;

(d) at the time of termination, any untaken RDO accrual hours shall be paid to the Employee at ordinary rates.

9. OVERTIME

9.1 The Employer may require an Employee to work a reasonable amount of overtime including rostered overtime. For the purposes of assessing reasonableness of hours worked, hours of work will be averaged over a 12-month period.

9.2 In computing overtime, each day stands alone.

9.3 Subject to the provisions of this clause, all work done beyond the ordinary hours on any day, Monday to Friday, inclusive, shall be paid for at the rate of time and one half for the first two hours and double time thereafter.

9.4 Overtime performed on:

(a) Saturdays prior to 12.00 noon shall be paid for at the rate of time and one half for the first two hours and double time thereafter;

(b) Saturdays after 12.00 noon or on Sundays shall be paid for at the rate of double time; or

(c) Public holidays shall be paid for at the rate of double time and a half;

Where work is performed on a Saturday, the minimum engagement will be three hours and where work is performed on a Sunday or Public Holiday, the minimum engagement will be four hours.
Working of Overtime

9.5 When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that an Employee has at least ten consecutive hours off duty between the work of successive days.

9.6 An Employee (other than a casual Employee) who works so much overtime between the termination of the Employee's ordinary work on one day and the commencement of the Employee's ordinary work on the next day so that the Employee has not had at least ten consecutive hours off duty between those times shall, subject to this clause, be released after completion of such overtime until the Employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

9.7 If, on instructions of the Employer, such an Employee resumes or continues work without having had such ten consecutive hours off duty, the Employee shall be paid at double time until released from duty and shall then be entitled to be absent for such period of ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

Withdrawal of Overtime

9.8 Overtime is not guaranteed and can be withdrawn by providing Employees with at least one (1) hour's notice. The Employer will not be required to give notice of withdrawal of overtime in the event of any industrial action that affects the Employer.

Recall

9.9 When an Employee is recalled to work following completion of work:

(a) the Employee shall be paid for at least three hours at overtime rates; and

(b) time reasonably spent in getting to and from work shall be counted as time worked.

9.10 When an Employee is instructed by the Employer to hold in readiness at the Employee's place of residence or other agreed place of residence for a call to work after ordinary hours, the Employee shall be paid at ordinary rates for the time the Employee so holds in readiness.

10. MEAL BREAKS AND REST PERIODS

10.1 A rest period not exceeding ten (10) minutes and without deduction of pay will be allowed each day of work at a time determined by the Employer. The rest period will be taken no later than four (4) hours after commencement of work.

10.2 The Employer shall structure the working hours to include one half-hour unpaid meal break to be taken within the first six (6) hours of the commencement of work, provided that this may be extended upon agreement between an Employee, or group of Employees, and the Employer.
10.3 The Employer may stagger the times for Employees to take meal breaks and rest periods to meet operational requirements.

10.4 When an employee is required to work overtime after the usual finishing time of the day or shift for two hours or more, the employee must be allowed to take, without deduction of pay, a crib time of 20 minutes in duration immediately after such finishing time and thereafter, after each four hours of continuous work (also without deduction of pay), a crib time of 30 minutes in duration. In the event of an employee remaining at work after the usual finishing time without taking the crib time of 20 minutes and continuing at work for a period of two hours or more, the employee will be regarded as having worked 20 minutes more than the time worked and be paid accordingly.

11. JUMP UP AGREEMENT

11.1 By way of a common-law agreement between the Employer and an Employee, an Employee may elect to work pursuant to the terms of a Letter of Assignment (LoA).

11.2 An election to work pursuant to the terms of a LoA will only be valid if the terms and conditions of the LoA are better off overall when compared to not only the Modern Award but also compared to this Enterprise Agreement as a minimum.

11.3 For the avoidance of doubt at no stage can an Employee receive a payment or benefit less than the NES.

11.4 An Employee or Employer engaged in a LoA may end the assignment agreement and revert to the terms of the Enterprise Agreement by providing 1 months’ notice.

11.5 A LoA is an agreement that applies to, or is prevalent on, a specific assignment that the particular Employee is working on.

11.6 At all times a LoA is in operation, this Agreement will continue to apply to the Employer and the Employee. At no time can an Employee or the Employer elect (unilaterally or otherwise) not to be covered by the Agreement.

12. REST AND RECREATION LEAVE

12.1 An Employee may be required to work a system of works that includes Rest and Recreation Leave (R&R). R&R usually consists of a period of unpaid authorised leave, accrued RDOs (if applicable) and any paid leave which has been requested and approved.

12.2 If, in such a case, the Employer elects to roster the Employee on a system which provides for R&R, any accrued RDO’s shall generally be taken concurrently with the Employee’s R&R.

13. SHIFT WORK

13.1 As a condition of employment, the Employees agree to work shift work when required to do so by the Employer.
13.2 The Employer can require Employees to work shift work but before it does so, it must give 48 hours’ notice of intention to introduce shift work. The notice will include advice on the intended starting and finishing times of the respective shifts. However, less than 48 hours’ notice may be given in the event of safety or emergency requirements.

13.3 For the purposes of this clause morning shift means a shift commencing at or after 4.30am and before 6am and early afternoon shift means a shift commencing on or after 11am and before 1pm. When Employees are working the shifts defined in this sub-clause, they will be paid at the ordinary time hourly rate plus 25 per cent.

13.4 A Nightshift means any shift that commences at or after 6.00pm, continues after midnight and finishes at or before 8.00am the following day and Afternoon shift means any shift finishing at or after 9.00pm and before 11.00pm.

13.5 In addition to the wages paid under this Agreement, Employees on Night or Afternoon Shift Work (excluding the shifts defined in clause 13.3) other than on a Saturday, Sunday or Public Holiday, shall be paid a flat loading of:

a) Fifty (50) per cent of their ordinary hourly rate for ordinary hours worked when working in the general building and construction and metal and engineering industry; or

b) Fifteen (15) per cent of their ordinary hourly rate for ordinary hours worked when working in the civil construction industry.

13.6 The shift work loadings specified above are not paid in the circumstances described in sub-clause 13.7 where only the applicable overtime work rate is applied.

13.7 Where an Employee is required to work Afternoon Shifts or Night Shifts for less than five consecutive shifts, the Employee will be paid at the applicable overtime work rate in lieu of any shift work loading.

13.8 The consecutive nature of shifts will not be regarded as broken, if work is not carried out on a public holiday, Saturday or Sunday.

13.9 Where an Employee is required to work permanent night shift which is defined as follows:

a) during a period of engagement on shift, works night shift only;

b) remains on a night shift for a longer period than 4 successive weeks; or

c) does not rotate or alternate with another shift (or day work) so as to give the employee at least 1/3 of their working time off night shift in each cycle;

that Employee will be paid a 30 per cent flat loading for all hours worked.

14. INCLEMENT WEATHER

14.1 Subject to clause 14.2, an Employee will not be required to work when the Company determines that it is not reasonable or safe due to inclement weather and the Employee cannot be otherwise usefully engaged in other work.
14.2 In circumstances where emergency work is required, or it is necessary to complete a concrete pour already commenced to a practical stage, an Employee working in inclement weather will be paid at the rate of Double Time calculated to the next hour and in the case of wet weather, the Employee will be provided with adequate wet weather gear.

14.3 When an Employee is not required to work because of inclement weather by the Company under this clause, the Employee is entitled to the following payments (up to a maximum of 32 hours at the Employee's applicable Hourly Rate of Pay in any 4-week period):

a) if less than 10 hours’ notice is provided by the Company, but the Employee has not yet started work - payment of 4 hours paid at the Employee's applicable Hourly Rate of Pay; or

b) if less than 10 hours’ notice is provided by the Company and the Employee has already started work - payment of the actual hours worked on that shift for the Employee paid at the applicable Hourly Rate of Pay or 7.6 hours paid at the Employee's applicable Hourly Rate of Pay, whichever is higher.

14.4 Employees are not entitled to payment under this clause if the Company has provided at least 10 hours’ notice of the requirement not to work prior to the start of work.

14.5 Employees on a portion of a work site not affected by inclement weather must continue to work even though Employees working on other areas of the same work site may have stopped because of inclement weather.

14.6 Subject to the availability of alternative work in an Employee’s classification, the Company may require the Employee to transfer from a site or from a location on site, where it is unreasonable and/or unsafe to work because of inclement weather to:

a) another area on the same site, where it is reasonable and safe to work; or.

b) to another site where it is reasonable and safe to work and where the Company, if necessary, provides transport.

14.7 For the avoidance of doubt, any payment for time lost due to inclement weather under this clause is only payable at an Employee’s applicable Hourly Rate of Pay for Ordinary Hours of Work.

15. ANNUAL LEAVE

15.1 Annual leave is provided for in the NES.

15.2 For each year of service, the NES entitles Employees to:

(a) 4 weeks of paid annual leave; or

(b) 5 weeks of paid annual leave if the Employee is a continuous shift worker. For the purposes of this clause and the NES, a continuous shift worker is defined as an employee engaged to work in a system of consecutive shifts throughout the 24 hours of each of at least six consecutive days without interruption (except during
breakdown or meal breaks or due to unavoidable causes beyond the control of the Employer) and who is regularly rostered to work those shifts.

15.3 Under the NES, annual leave accrues progressively during a year of service according to the Employee’s ordinary hours of work and accumulates from year to year. Annual leave does not accrue during any period of unpaid leave, unauthorised absence or workers’ compensation.

15.4 Annual leave can be taken by agreement between the Employer and Employee following a request by the Employee to take accrued annual leave. Leave approval is subject to the operational requirements of the workplace but shall not be unreasonably withheld.

15.5 The Employer may also require an Employee to take accrued annual leave:

(a) by giving a minimum of 2 weeks’ notice; or

(b) where the Employer shuts down all or any part of the business;

providing that the requirement to take leave is reasonable in the circumstances.

15.6 If, where the Employer shuts down all or any part of the business, an Employee does not have sufficient accrued leave he/she may be required to take leave without pay.

15.7 Any untaken annual leave is paid out on termination.

15.8 Annual leave is paid at ordinary rates of pay. Employees are not entitled to annual leave loading as it has been incorporated into the ordinary rates.

15.9 By written agreement with the Employer, an Employee may elect to cash out part of his/her accrued annual leave entitlement each 12 months, provided that:

(a) paid annual leave cannot be cashed out if the cashing out would result in the Employee’s remaining accrued entitlement to paid annual leave being less than four weeks;

(b) each cashing out of a particular amount of paid annual leave must be by a separate written agreement in writing between the Employer and the Employee; and

(c) the Employee must be paid at least the full amount that would have been payable to the Employee had the Employee taken the leave.

15.10 This clause shall not apply to casual Employees.

16. PERSONAL/CARER’S LEAVE

16.1 Personal/carer’s leave entitlements are provided for in the NES.

Paid Personal/Carer’s Leave

16.2 The NES entitles Employees (other than casual Employees) to 10 days of paid personal/carer’s leave for each year of service.
16.3 Under the NES, paid personal/carer’s leave accrues progressively during a year of service according to the Employee’s ordinary hours of work and accumulates from year to year. Paid personal/carer’s leave does not accrue during any period of unpaid leave, unauthorised absence or workers’ compensation.

16.4 Under the NES, paid personal/carer’s leave may only be taken:

(a) because the Employee is not fit for work because of a personal illness, or personal injury, affecting the Employee; or

(b) to provide care or support to a member of the Employee’s immediate family, or a member of the Employee’s household, who requires care or support because of:

(i) a personal illness, or personal injury, affecting the member; or

(ii) an unexpected emergency affecting the member.

16.5 Paid personal/carer’s leave may not be taken in advance of accrual.

16.6 Under the NES, an Employee (other than a casual Employee) shall be paid for any period of paid personal/carer’s leave at the Employee’s ordinary rate of pay for the Employee’s ordinary hours of work in the period.

16.7 If an Employee is terminated by the Company and then re-engaged within a period of 6 months, the Employee’s unclaimed personal/carers’ leave balance will be reinstated.

Unpaid Carer’s Leave

16.8 Unpaid carer’s leave entitlements are provided for in the NES.

16.9 The NES entitles Employees (including casual Employees) to 2 days of unpaid carer’s leave for each occasion (a permissible occasion) when a member of their immediate family or household, requires care or support because of:

(a) a personal illness, or personal injury, affecting the member; or

(b) an unexpected emergency affecting the member.

16.10 Under the NES:

(a) an Employee may take unpaid carer’s leave for a particular permissible occasion if the leave is taken to provide care or support as referred to in clause 16.9;

(b) an Employee may take unpaid carer’s leave for a particular permissible occasion as:

(i) a single continuous period of up to 2 days; or

(ii) any separate periods to which the Employee and the Employer agree;

(c) an Employee cannot take unpaid carer’s leave during a particular period if the Employee could instead take paid personal/carer’s leave.

Notice and Evidence Requirements (paid and unpaid personal/carer’s leave)
16.11 An Employee who is unable to attend work must notify the Employer as soon as practicable of his/her inability to attend work, the estimated duration of the absence and the reason for the absence. Generally, this should occur before the commencement of the Employee’s shift.

16.12 An Employee who has given notice of the taking of personal/carer’s leave must provide the Employer with evidence that would satisfy a reasonable person that the leave is being taken for the specified reason.

16.13 An Employee is not entitled to take paid or unpaid personal/carer’s leave under the NES unless the Employee complies with these notice and evidence requirements.

**Workers’ Compensation Exclusion**

16.14 An Employee is not entitled to take paid or unpaid personal/carer’s leave during a period when the Employee is absent from work because of a personal illness, or a personal injury, for which the Employee is receiving workers’ compensation.

17. COMPASSIONATE LEAVE

17.1 Compassionate leave entitlements are provided for in the NES.

17.2 The NES entitles Employees (including casual Employees) to 2 days of compassionate leave for each occasion (a **permissible occasion**) when a member of their immediate family or household:

(a) contracts or develops a personal illness that poses a serious threat to his or her life; or

(b) sustains a personal injury that poses a serious threat to his or her life; or

(c) dies.

**Permissible occasions**

17.3 Under the NES:

(a) an Employee may take compassionate leave for a particular permissible occasion if the leave is taken:

(i) to spend time with the member of the Employee’s immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in clause 17.2; or

(ii) after the death of the member of the Employee’s immediate family or household referred to in clause 17.2.

(b) an Employee may take compassionate leave for a particular permissible occasion as:

(i) a single continuous 2-day period; or

(ii) 2 separate periods of 1 day each; or
(iii) any separate periods to which the Employee and the Employer agree.

(c) if the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the Employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

**Payment**

17.4 Under the NES:

(a) an Employee (other than a casual Employee) shall be paid for any period of compassionate leave at the Employee’s ordinary rate of pay for the Employee’s ordinary hours of work in the period.

(b) for casual Employees, compassionate leave is unpaid leave.

**Notice and Evidence Requirements**

17.5 An Employee who wishes to take compassionate leave must notify the Employer as soon as practicable of the reason for and estimated period of the leave. Generally, this should occur before the commencement of work.

17.6 An Employee who has given notice of the taking of compassionate leave must provide the Employer with evidence that would satisfy a reasonable person that the leave is being taken for that reason.

17.7 An Employee is not entitled to take compassionate leave under the NES unless the Employee complies with the notice and evidence requirements in this Agreement.

**Workers’ Compensation Exclusion**

17.8 An Employee is not entitled to take compassionate leave during a period when the Employee is absent from work because of a personal illness, or a personal injury, for which the Employee is receiving workers’ compensation.

**Definition of immediate family**

17.9 For the purpose of Clauses 16 and 17, immediate family is defined as:

(a) A spouse, defacto partner, child, parent, grandparent, grandchild or sibling of the Employee, or

(b) A child, parent, grandparent, grandchild or sibling of a spouse or defacto partner of the Employee.

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**18. FAMILY AND DOMESTIC VIOLENCE LEAVE**

18.1 This clause applies to all Employees, including casuals.

18.2 In this clause:
(a) family and domestic violence means violent, threatening or other abusive behaviour by a family member of an Employee that seeks to coerce or control the Employee and that causes them harm or to be fearful.

(b) family member means:

(i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the Employee; or

(ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or

(iii) a person related to the Employee according to Aboriginal or Torres Strait Islander kinship rules.

18.3 An Employee is entitled to 5 days’ unpaid leave to deal with family and domestic violence, as follows:

(a) the leave is available in full at the start of each 12-month period of the Employee’s employment; and

(b) the leave does not accumulate from year to year; and

(c) is available in full to part-time and casual Employees.

18.4 An Employee may take unpaid leave to deal with family and domestic violence if the Employee:

(a) is experiencing family and domestic violence; and

(b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the Employee to do that thing outside their ordinary hours of work.

18.5 The time an Employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the Employee’s continuity of service.

18.6 An Employee must give their Employer notice of the taking of leave. The notice:

(a) must be given to the Employer as soon as practicable (which may be a time after the leave has started); and

(b) must advise the Employer of the period, or expected period, of the leave.

18.7 An Employee who has given their Employer notice of the taking of must, if required by the Employer, give the Employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 18.2 (a).

19. PUBLIC HOLIDAYS

19.1 The following days shall be observed as public holidays (Public Holidays):

(a) New Year’s Day (1 January);
(b) Australia Day (26 January);
(c) Good Friday;
(d) Easter Monday;
(e) Anzac Day (25 April);
(f) Sovereign's Birthday;
(g) Christmas Day (25 December); and
(h) Boxing Day (26 December),

provided that, if any other day declared by or under a law of a State or Territory is generally observed in a locality as an additional day or as a substitute day for any of the said holidays, the additional day shall also be observed, or the day so substituted shall be observed.

19.2 Employees (other than casual Employees) who, because it is a Public Holiday, are not required to work on a day on which they are normally required to work will be paid for the ordinary hours normally worked on that day.

20. LONG SERVICE LEAVE

Long service leave entitlements are provided for in applicable legislation.

21. UNPAID PARENTAL LEAVE

Unpaid parental leave entitlements are provided for in the NES.

22. COMMUNITY SERVICE LEAVE

Unpaid leave for voluntary emergency management activities and leave for jury service (including up to 10 days’ paid leave for Employees other than casuals) are provided for in the NES.

23. SUPERANNUATION

23.1 Superannuation legislation, including the Superannuation Guarantee (Administration) Act 1992 (Cth), the Superannuation Guarantee Charge Act 1992 (Cth), the Superannuation Industry (Supervision) Act 1993 (Cth) and the Superannuation (Resolution of Complaints) Act 1993 (Cth), deals with the superannuation rights and obligations of Employers and Employees.

23.2 Contributions shall be paid into an eligible fund nominated by the Employee. Provided that where an Employee does not nominate a fund, or the Employer is unable to pay into that fund, contributions will be paid into a MySuper fund nominated by the Employer.
24. **TERMINATION OF EMPLOYMENT**

24.1 Except in the case of Casual Employees, the contract of employment may be terminated at any time by:

(a) the Employer giving the Employee written notice in accordance with the table below; or

(b) the Employee giving the Employer notice in accordance with the table below:

<table>
<thead>
<tr>
<th>Employee’s period of continuous employment</th>
<th>Period of notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than 1 year</td>
<td>1 week</td>
</tr>
<tr>
<td>More than 1 year but not more than 3 years</td>
<td>2 weeks</td>
</tr>
<tr>
<td>More than 3 years but not more than 5 years</td>
<td>3 weeks</td>
</tr>
<tr>
<td>More than 5 years</td>
<td>4 weeks</td>
</tr>
</tbody>
</table>

The period of notice to be given by the Employer is increased by one week if the Employee is over 45 years of age and has completed at least 2 year’s continuous service with the Employer. The Employee will not be required to provide additional notice because of age.

24.2 For casual Employees, employment may be terminated by either party giving one working day’s notice.

24.3 Where the Employer has given notice of termination to an Employee and requires them to work out their notice period, an Employee must be allowed up to one day’s time off without loss of pay for the purpose of seeking other employment.

24.4 Instead of providing notice, the Employer may provide the Employee with payment in lieu of notice for the period of notice not provided. Payment shall be the total of all amounts that, if the employment had continued until the end of the required notice period, the Employer would have become liable to pay.

24.5 Where the Employee fails to provide the required notice, the Employer may deduct from any monies owing an amount equivalent to the period of notice not provided.

24.6 Notwithstanding the above, an Employee may be dismissed without notice for serious misconduct, and in such cases, wages shall be paid up to the time of dismissal only.

**Return of Property**

24.7 On the termination of employment, the Employee must return all Employer property prior to receiving any final payments.

**Abandonment**

If an Employee has three consecutive days of unauthorised absence from work without explanation, the Employer will make reasonable efforts to contact the Employee. If the Employer is unable to make contact with the Employee, the then the Employer may consider that the Employee has abandoned their employment. In such circumstance,
the Employee may be subject to disciplinary action, up to and including termination of employment.

25. SEVERANCE

25.1 An Employee who ceases employment with the Employer for any reason other than termination due to misconduct or refusal of duty shall be paid a severance payment calculated at the rate of 1.75 times their Ordinary Hourly Rate for each Completed Week of Service under this Agreement.

25.2 Any period of service as a casual shall not entitle the Employee to accrue severance under this clause.

25.3 A Completed Week of Service means any week where the Employee attends work for all rostered hours in that week.

25.4 For the purpose of this clause, a Completed Week of Service shall include time not worked due to annual leave, paid personal leave (including sick leave and carers leave), compassionate leave, jury service, R&R leave days, public holidays, RDO’s (if applicable) and workers compensation to a maximum of two (2) weeks.

26. ACCIDENT PAY

26.1 Accident pay means a weekly payment made to an Employee by the Employer that is the difference between the amount of workers’ compensation received by the Employee and the payment for their ordinary hours each week. Where the incapacity caused by the injury which leads to workers’ compensation becoming payable is for a period less than one week, the payment is the difference between the amount of compensation and the ordinary time hourly rate for that period. The ordinary time hourly rate does not include shift loadings or overtime.

26.2 Subject to the relevant workers’ compensation claim being accepted, accident pay is payable from the time of the injury for which workers’ compensation is paid for a total of 26 weeks in respect to the Employee’s incapacity from that injury, regardless of whether the incapacity is in one continuous period or not.

26.3 Where an Employee receives a lump sum payment in lieu of weekly payments under the applicable workers’ compensation legislation, the liability of the Employer to pay accident pay will cease from the date of receipt of the lump sum by the Employee.

26.4 For a casual Employee the weekly payment as defined in clause 26.1 will be calculated using the Employee’s average weekly ordinary hours with the Employer over the previous 12 months or, if the Employee has been employed for less than 12 months by the Employer, the Employee’s average weekly ordinary hours over the period of employment with the Employer. The weekly payment will include casual loading but will not include shift loadings and overtime.

26.5 If an Employee entitled to accident pay under this clause returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of such work.
26.6 For the avoidance of doubt, an Employee will not be entitled to any payment under this clause in respect of any period of workers’ compensation where the statutory payment for the period exceeds the amount the Employee would have received for working ordinary time hours for the same period.

27. DISPUTE SETTLEMENT PROCEDURE

27.1 If a dispute relates to:

(a) a matter arising under this Agreement; or

(b) the NES;

this clause sets out procedures to settle the dispute.

27.2 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the Employee or Employees concerned and relevant supervisors and/or management.

27.3 Discussions should commence with a level of supervision or management appropriate to the particular dispute. If the dispute is not resolved at that level, discussions should involve the Employer’s staff member responsible for industrial relations at the Site and, if the issue remains unresolved, the Employer’s senior Site manager.

27.4 If discussions at the workplace level do not resolve the dispute a party to the dispute may refer the matter to the Commission.

27.5 If the Commission is satisfied clauses 27.2 and 27.3 have been complied with and genuine attempts have been made to resolve the dispute at the workplace level, the Commission must attempt to resolve the dispute by mediation or conciliation.

27.6 If the parties to the dispute agree, the Commission may attempt to resolve the dispute by making a recommendation.

27.7 If the dispute remains unresolved, the Commission can only arbitrate and make a determination that is binding on the parties (save for any right of appeal to the Commission) where all parties agree to the dispute being arbitrated and each party agrees in writing to be bound by the decision of the Commission (save for any right of appeal to the Commission).

27.8 The Commission must not make a determination that is inconsistent with:

(a) any applicable version of a State or National Code of Practice for the Construction Industry, or successors thereto and howsoever named;

(b) this Agreement.

27.9 Any party to the dispute may, at any stage, appoint a representative of their choice for the purposes of the procedures in this clause.

27.10 At all times whilst a question or dispute is being resolved work will continue.
27.11 An Employee who is a shop steward, delegate or elected Employee representative is entitled to five days’ paid leave per year to undertake training to assist in their settlement of disputes role. The time of taking this leave must be agreed between the Employee and Employer.

28. **INDIVIDUAL FLEXIBILITY ARRANGEMENTS**

28.1 The Employer and an Employee covered by this Agreement may agree to make an Individual Flexibility Arrangement (IFA) to vary the effect of terms of this Agreement (in relation to the Employer and the Employee), in order to meet the genuine needs of the Employer and the Employee.

28.2 The IFA must be genuinely agreed to by the Employer and the Employee.

*Terms that may be varied*

28.3 The terms of this Agreement the effect of which may be varied by an IFA are the following:

(a) clause 6 (“Classification and Wage Rate”);

(b) clause 8 (“Hours of Work”);

(c) clause 9 (“Overtime”);

(d) clause 10 (“Meal and Crib Breaks”);

(e) clause 11 (“Jump Up Agreement”); and

(f) clause 13 (“Shiftwork”).

*Employer must ensure*

28.4 The Employer must ensure the IFA:

(a) is in writing;

(b) is about matters that would be permitted matters under section 172 of the FW Act;

(c) does not include a term that would be an unlawful term under section 194 of the FW Act;

(d) results in the Employee being better off overall than the Employee would be if no IFA was made;

(e) is signed in all cases by the Employer and the Employee (and if the Employee is under 18 years of age by a parent or guardian of the Employee);

(f) and a copy of the IFA is given to the Employee within 14 days after it is agreed.

28.5 The Employer or the Employee may terminate the IFA:
29. CONSULTATION

29.1 This clause applies if a major workplace change is likely to have a significant effect or there is a change to the regular roster or ordinary hours of work on Employees (the relevant Employees).

29.2 The Employer must notify and provide information to the relevant Employees of:

(a) a major workplace change that is likely to have a significant effect on the Employees; or

(b) a change to their regular roster or ordinary hours of work.

29.3 The Employer must consult and invite the relevant Employees to give their views about:

(a) the timing and introduction of the change;

(b) the impact the change is likely to have on the Employees (including any impact in relation to their family or caring responsibilities); and

(c) measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees.

29.4 The Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

29.5 The Employer must consider matters raised about the major change or changes to their regular roster or ordinary hours of work by the relevant Employees.

29.6 An Employee may appoint a representative for the purposes of the consultation.
30. SIGNATURES

Employer

Signed for and on behalf of SIMPEC Pty Ltd (ABN: 44 619 238 505):
APPENDIX 1

Level 1

- General construction labouring and cleaning duties
- Assists Employees at higher classification levels, including tradesmen (TA)
- Non-cryogenic Insulator
- Employees who use hand held grinding machines
- Work of a chainman or surveyor’s assistant
- Brush Hand
- Lagger
- Sheet metal Worker (2nd class)
- On site vehicle operator- flat tray
- On site Agitator truck driver
- Carpenter’s / Form setter’s Assistant
- Driver of Trucks – under 20 tonne capacity

Level 2

- Operates machinery and equipment and/or performs tasks requiring the exercise of skill and knowledge beyond that of an Employee of Level 1
- Spotter
- Storeperson
- Materials Controller
- Steel-fixer (includes tack welding steel reinforcement)
- Concrete Finisher (i.e. placing concrete and finishing placed concrete)
- Duties of a Scaffolder holding a "basic" certificate of competency (i.e. not including "intermediate or advanced certificate of competency"
- Rubber Liner
- Non-Trades Person Industrial Painter/Spray painter
- Operates articulated vehicles on site
- Formwork Carpenter
- Driver of Trucks – over 20 tonne capacity
- Cryogenic Insulator/lagger
• Concreter including Concrete Finisher
• Operator of Pneumatic Tyred Tractor up to 110 kW
• Fork Lift Operator – lifting capacity up to 2.3 tonne
• Tack Welder
• Operator of Crawler Tractor up to and including CAT D5 (power up to 104 kW)

Level 3
• Operates machinery and equipment and/or performs tasks requiring the exercise of skill and knowledge beyond that of an Employee at Level 2
• Duties of a Dog person
• Duties of a rigger holding a "basic" certificate of competency (i.e. not including "intermediate or advanced certificate of competency)
• Sheet metal Worker (1st Class)
• Poly Welder/Poly Fabricator
• Operates the following types of equipment:
  • Crawler tractor with Transmission operated attachments (up to an including 2000 kg shipping mass)
  • Concrete finisher (Transmissioned/Powered)
  • Hand Sprayer (lance type)
  • Pneumatic tyred tractor with Transmission operated attachments (up to and including 15 kw net engine Transmission)
  • Roller vibrating or non-vibrating (under 8 tonnes) - not hand controlled
  • Trenching machine (small Ditch-Witch type)
  • Fork Lift Operator – lifting capacity in excess of 2.3 tonne

Level 4
• Operates machinery and equipment and/or performs tasks requiring the exercise of skill and knowledge beyond that of an Employee at Level 3
• Rigger or scaffolder holding an "intermediate or advanced certificate of competency"
• Operates mobile cranes with lifting capacity up to 10 tonnes
Operates the following types of mobile plant:

- Bitumen Sprayer (driver)
- Crawler loader (up to and including 15000 kg mass)
- Crawler tractor with Transmission operated attachments (over 2000 kg up to and including 15000 kg shipping mass)
- Dumper, rear and bottom, (above 2 cubic metres, up to and including 30 cubic metres struck capacity)
- Excavator (up to and including 0.5 cubic metres struck capacity)
- Skid Steer Operator
- Loader Driver
- Grader (below 35 kw net engine Transmission)
- Pile Driver
- Pneumatic tyred loader (up to and including 1 05kw net engine Transmission)
- Pneumatic tyred tractor with Transmission operated attachments (above 15kw up to and including 150kw net engine Transmission)
- Roller (8 tonnes and above)
- Scraper (up to and including 10 cubic metres struck capacity)

Level 5

- Boilermaker
- Mechanical Fitter
- Pipe Fitter
- Welder / Coded Welder
- Carpenter
- Plumber
- Painter (Tradesperson)
- Mechanic
- Tradesperson (Other)
- Licensed Drainlayer
Operates machinery and equipment and/or performs tasks requiring the exercise of skill and knowledge beyond that of an Employee at Level 4

- Operator of Pneumatic Tyred Tractor and Wheel Loader – over 110 kW.
- Operator of Grader/Excavator – up to 100 BHP
- Concrete Pump Machinery Operator and Concrete Cutting Machinery or Drilling Machine
- Operates the following types of equipment:
  - Mobile crane with lifting capacity in excess of 10 tonnes and up to and including 100 tonnes
  - Crawler Tractor with Transmission attachments (above 15000kg mass up to and including 60000kg mass)
  - Crawler loader (above 15000kg mass, up to and including 60000kg mass)
  - Dumper, rear and bottom (above 30 cubic metres, up to and including 120 cubic metres struck capacity)
  - Excavator (above 0.5 cubic metres, up to and including 5.5 cubic metres struck capacity - this group includes Gradall)
  - Grader (35 kw up to and including 190kw net engine Transmission)
  - Pneumatic tyred loader (over 105 kw up to and including 500 kw net engine Transmission)
  - Pneumatic tyred tractor with Transmission operated attachments (above 150kw up to and including 500kw net engine Transmission)
  - Scraper (above 10 cubic metres, up to and including 50 cubic metres struck capacity)

Level 6

- Electrical Fitter
- Electrical Installer
- Electrical Mechanic
- Mechanical Tradesperson – Special Class
- Welder – Special Class
- Operates a mobile crane with lifting capacity in excess of 100 tonnes and up to and including 140 tonnes.

Level 7

- Electronic Tradesperson
• Instrument and Controls Tradesperson
• Instrument Tradesperson
• Electrical Tradesperson – Special Class
• Controls Systems Tradesperson
• Dual Tradesperson
• Final Trim Grade Operator
• Operates a mobile crane with lifting capacity in excess of 140 tonnes and up to and including 200 tonnes.

Level 8
• Operates a crane with lifting capacity in excess of 200 tonnes.
• Foreperson
• Offshore Technician (Oil and Gas)
• Onshore Technician (Oil and Gas)