



CONSTRUCTABILITY

WA PTY LTD

**ENTERPRISE
AGREEMENT**

2020

CONSTRUCTABILITY WA PTY ENTERPRISE
AGREEMENT 2020

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1. TITLE

This agreement is known as the *Constructability WA Pty Ltd Enterprise Agreement 2020* (the **Agreement**).

2. PARTIES BOUND AND APPLICATION OF AGREEMENT

2.1 This Agreement covers:

- (a) Constructability WA Pty Ltd (ACN:168 163 951) (the **Employer**);
- (b) Employees of the Employer engaged in construction work including but not limited to earthmoving, plant operation, manufacturing, fabrication, commissioning and maintenance anywhere in Australia (the **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 NES AND OTHER LEGISLATION

4.1 This Agreement operates to the exclusion of the Building and Construction General On-site Award 2010 (Award), except as expressly referred to in this Agreement.

4.2 This Agreement also completely excludes the operation of any other Award or other industrial instrument.

4.2 Entitlements provided for in the National Employment Standards (**NES**) are:

- (a) The Agreement will be read and interpreted in conjunction with the NES. Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency; and
- (b) Not intended as a substitute for the detailed provisions of the NES.

5. CONTRACT OF SERVICE

Types of Employment

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

- (a) Full-time weekly hire Employees;
- (b) Part-time weekly Employees;
- (a) Specified period of time or specified task; or
- (b) Casual Employees.

Full-time Employment

5.2 A full-time Employee is an Employee who works 38 ordinary hours per week.

Part-time Employment

- 5.3 A part-time Employee is an Employee who works fewer than 38 ordinary hours per week and has reasonably predictable hours of work.
- 5.4 For each ordinary hour worked, a part-time Employee will be paid no less than 1/38th of the minimum weekly rate of pay for the relevant classification and pro rata entitlements for those hours.
- 5.5 An Employer must inform a part-time Employee of the ordinary hours of work and the starting and finishing times.
- 5.6 Before commencing a period of part-time employment, the Employee and the Employer will agree in writing:
- (a) That the Employee may work part-time;
 - (b) Upon the hours to be worked by the Employee, the days upon which the hours will be worked and commencing times for the work;
 - (c) Upon the classification applying to the work to be performed; and
 - (d) Upon the period of part-time employment.
- 5.7 The terms of an agreement may be varied, in writing, by consent.

Specified Period of Time or Specified Task

- 5.8 An Employee (other than a Casual Employee) may be employed by the Employer for a specified period of time or for a specified project/event (“specified task”) of finite duration as determined by and set out in the Employee’s letter of offer or contract of employment. In the event an Employee’s contract for a fixed period of time reaches its nominated expiry date, or the specified project/event (“specified task”) reaches its conclusion, the Employee’s employment will come to an end automatically.

Casual Employment

- 5.9 A casual Employee is one engaged and paid in accordance with the provisions of clauses 5.10 to 5.15.
- 5.10 The Employer, when engaging a person for casual employment, must inform the Employee in writing that the Employee is to be employed as a casual, the job to be performed, the likely number of hours to be worked, the classification level and the relevant rate of pay.
- 5.12 A casual Employee is entitled to all of the applicable rates and conditions of employment prescribed by this Agreement except annual leave, paid personal/carers leave, paid compassionate leave, paid community service leave, notice of termination and redundancy benefits.
- 5.13 A casual Employee is entitled to payment for a minimum of four hours’ work per engagement.
- 5.14 A casual Employee must be paid a casual loading of 25% on their base hourly rate. The casual loading is paid as compensation for the absence of paid leave, notice of termination and redundancy benefits and public holidays not worked. For the avoidance of doubt, a casual Employee’s casual loading is a cumulative percentage made up of the following loadings:
- (a) 11% of your loading is paid for and in lieu of annual leave and leave loading entitlement that an Employee would have received as a permanent employee;
 - (b) 5% of your loading is paid for and in lieu of personal/carer’s leave entitlement

- that an Employee would have received as a permanent employee;
- (c) 4% of your loading is paid in lieu of notice of termination requirements entitlement that an Employee would have received as a permanent employee;
 - (d) 2.5% of your loading is paid for and in recognition of the itinerant nature of casual work; and
 - (e) 2.5% of your loading is paid for and in lieu of redundancy entitlements that an Employee would have received as a permanent employee.
- 5.15 A casual Employee will be entitled to the relevant penalty rates prescribed by clause 10 (“Overtime”), clause 15 (“Shift Work”) and clause 20 (“Public Holidays”) of this Agreement as the case may be, provided that where the:
- (a) Relevant penalty rate is time and a half; the Employees must be paid 175% of the hourly rate prescribed for the Employee’s classification;
 - (b) Relevant penalty rate is double time; the Employees must be paid 225% of the hourly rate prescribed for the Employee’s classification; and
 - (c) Relevant penalty rate is double time and a half, the Employees must be paid 275% of the hourly rate prescribed for the Employee’s classification.

Casual Conversion

- 5.16 A casual Employee, other than an irregular casual Employee, who has been engaged for a sequence of periods of employment under this agreement during a period of twelve (12) months, thereafter has the right to elect to have their contract of employment converted to full-time or part-time employment if the employment, in the opinion of both parties, is to continue beyond the conversion process.

Probation

- 5.17 A new permanent Employee (whether part time or fulltime) will be engaged on a probationary period of six (6) months. During any period of probation, either party can terminate the employment by giving one-weeks’ notice.

Duties

- 5.18 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.
- 5.19 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;
 - (d) Use their best endeavour;
 - (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.

Workplace Flexibility

- 5.20 Employees are required to be multi-skilled and work in a flexible manner. All Employee’s 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 trades (craft),

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occupations, vocations or callings or whether by way of demands, workplace requirements or work practices inconsistent with the FW Act, *Building and Construction Industry (Improving Productivity) Act 2016* or *Code for the Tendering and Performance of Building Work 2016*.

Stand Down

- 5.21 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 withhold payment for that period.
- 5.22 This does not break continuity of employment for the purposes of any entitlements.

Fitness for Work

- 5.23 Employees must not be affected by alcohol or drugs during working hours.
- 5.24 An Employee who is taking medication, or suffering from any condition, that may affect or limit the Employee's ability to carry out work must advise his/her supervisor.
- 5.25 Employee's 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 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 base hourly rates of pay reviewed and updated December 2021:

Classification	Base Hourly Rate Pay
*CW7:	\$37.57
*CW6:	\$36.47
*CW5:	\$35.36
*CW4:	\$32.89
*CW3:	\$29.58
*CW2:	\$28.94
*CW1:	\$28.46
*CW1a:	\$27.94

Note * classifications as identified in the Award.

- 6.2 These base rates of pay incorporate all allowances, penalties, loadings unless specifically set out otherwise in this Agreement.
- 6.3 The above establish base rates of pay only and these rates may be increased at the Employer's discretion based upon years of experience in the industry and relevant qualifications.
- 6.4 Pay rates will be reviewed by the Employer on an annual basis on the 1st of July each year from the approval of this Agreement. The Employer will review rates of pay

and allowances annually to ensure that the rates above meet the Award obligations including increases due to the Fair Work Commission's National Wage Decision.

- 6.5 Expense Related Allowances will be reviewed by the Employer on the 1 July each year from the approval of this Agreement. Each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

Apprentices

- 6.6 The base rate of pay for an Apprentice shall be not less than the CW 1 base hourly rate of pay in the Agreement as set out under the relevant apprenticeship or traineeship term percentage of the Award.
- 6.7 The base hourly rate of pay for an Adult Apprentice (over 21 years of age) will be not less than that prescribed for an Employee classified as CW1 in the Agreement.
- 6.8 An employee who was engaged by the Employer immediately prior to becoming an Adult Apprentice will not suffer a reduction in their base hourly rate of pay.
- 6.9 All fees charged by an RTO and the cost of all prescribed textbooks for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the employer 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. An employer may meet its obligations under this clause by paying any fees and/or cost of textbooks directly to the RTO.

Payment of Wages

- 6.10 Wages shall be paid on a weekly basis by electronic funds transfer to an acceptable financial institution nominated by the Employee.
- 6.11 The Employer may deduct from an Employee's wages. Provided always that any monies owing or any amount it is authorised or required to deduct, including any overpayment of remuneration is provided for by this Agreement. To avoid doubt, this clause shall not be interpreted such that it contravenes the Building Code 2016.
- 6.12 Despite anything else in this clause, an Employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

7. ALLOWANCES

Fares and Travel Allowance

- 7.1 An employee that starts and finishes work on a construction site or is required to perform prefabricated work in an open yard and is then required to erect or fix on-site must be paid an allowance of \$17.50 per day for each day worked.
- 7.2 For the avoidance of doubt Employees who are engaged and working on a remote project site and are provided with transport to / from the site (i.e. bus from company accommodation to work site) will not receive the allowance described in clause 7.1 above. It is the intent for the allowance to apply to employees who on occasions when

the Employee is directed by the Employer to attend work on a construction site and provide their own personal transport to the work site.

- 7.3 Fares and Travel Allowance will also be paid each time an Employee is recalled after leaving the worksite to resume work on overtime or a call out.
- 7.4 Fares and Travel Allowance will not be payable on any day for which the Employer provides transport free of charge from the Employees home to their place of work and return or provides a fully maintained vehicle free of charge to the employee.
- 7.5 Where an Employee agrees to the Employer's request to use the Employees own vehicle in the course of their employment the Employee will be paid an allowance per kilometre travelled of \$0.80.
- 7.6 Where an Employee is required to travel from inside a 70 kilometre radius of the GPO in the state's capital city to a location outside of that radius they will be paid:
- (a) The fares and travel allowance as defined at sub clause 7.1 above;
 - (b) In respect of travel from the designated radial boundary to the job and return to that boundary:
 - (i) The time outside ordinary working hours reasonably spent in such travel, calculated at base hourly rates to the next quarter of an hour with a minimum payment of half an hour per day for each return journey; and
 - (ii) Where the Employee uses their own vehicle, any expenses necessarily incurred in such travel, which will be a minimum per kilometer travelled of \$0.50.
 - (c) Despite paragraph 7.5, the distant work payment is not payable when, at the commencement of employment, the employee's usual place of residence was more than 50km by road from the construction site on which the employee was initially engaged.

First Aid Allowance

- 7.7 An Employee who is appointed by the Employer to perform first aid duties and holds a minimum qualification of Senior First Aid certificate (or equivalent) or Industrial First Aid certificate (or equivalent) from St John Ambulance, the Australian Red Cross Society or similar body, will be paid a daily allowance of \$3.60.

Meal Allowance

- 7.8 An Employee required to work overtime for more than two (2) hours after working ordinary hours, and not being advised on the previous day must be paid an amount of \$15.40 to meet the cost of a meal. An Employee will be entitled to the meal allowance for each meal after the completion of each four hours from the commencement of overtime. Employees that are provided meals will not receive the allowance.
- 7.9 Clause 7.8 will not apply to an employee who is provided with reasonable board and lodging or who is receiving a living from home allowance as per clause 8.5 (b). Given the nature of the work being conducted by the Employer and that accommodation and board is generally provided it is unlikely that this allowance will apply.

Leading Hand Allowance

- 7.10 (a) For the purposes of this clause leading hand means an Employee appointed in writing by the Employer who is given by the Employer the responsibility of directing and/or supervising the work of other persons, or in the case of only one

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person the specific responsibility of directing and/or supervising the work of that person.

- (b) A person specifically appointed to be a leading hand will be paid, as a minimum, the weekly all-purpose allowance specified in the table below in addition to the Employees own rate of pay being paid to the highest classification being supervised by that Employee (whichever is the greater):

In charge of not more than one person	\$23.18
In charge of two and not more than five persons	\$51.68
In charge of six and not more than ten persons	\$64.98
In charge of more than ten persons	\$87.40

Applicable Allowance

- 7.11 In the unlikely event that the Employer engages in any work that would otherwise attract the application of any of the allowances in clauses 21.3, 21.5, 21.6, 21.9, and 21.13 of the Award, the Employees will be entitled to receive those allowances.

8. ACCOMMODATION

- 8.1 Where Employees are provided with accommodation they are required to comply with the relevant rules for that accommodation. Failure to comply with accommodation behaviour standards may lead to the withdrawal of your accommodation and possible termination of employment.

Living Away From Home

- 8.2 This clause shall apply when:
- (a) An Employee is employed on work at such a distance from the Employee's place of residence that the Employee cannot reasonably return to that place each night; and
- (b) The Employee has provided the Employer with details of their usual place of residence in accordance with clause 8.3.

Employee's Usual Place of Residence

- 8.3 On engagement, an Employee must provide the Employer with details of their usual place of residence at the time of application and reasonable documentary proof of those details. No subsequent change of address will entitle an Employee to the provisions of this clause unless the Employer agrees.
- 8.4 The Employee is not entitled to any payment or other benefit under this clause if the Employee has knowingly made a false statement regarding the details required in clause 8.3.
- 8.5 Where an Employee qualifies under clause 8.2 the Employer will:
- (a) Provide the Employee with reasonable board and lodging in a well-kept establishment with three adequate meals each day; or
- (b) By agreement between the Employer and Employee a daily amount in lieu of food and lodging may be agreed, and it will then be the Employee's responsibility to provide their food and lodging. It is agreed that the Employee will receive payment of the Living Away from Home Allowance under the Award.
- (c) Where an Employee is required to live in camp and provide all board and accommodation free of charge. Where Employees are provided with camp accommodation they are required to comply with the relevant rules for that camp.

- 8.6 There will be no payment for time spent travelling for R&R purposes.
- 8.7 Employees will be provided with suitable board and lodging and have all meals paid for by the Company while travelling to or from a distant work site.
- 8.8 In the event an Employee is required to pay for their own travel to or from a work site, the Company will reimburse the Employee for all reasonable travel expenses incurred by the Employee (including expenses incurred by the Employee for transporting the Employee's tools).

9. HOURS OF WORK

- 9.1 Except as provided in clause 15 ("Shift Work"), Ordinary Hours will not exceed 38 per week over a defined 20-day four-week work cycle.
- 9.2 Ordinary Hours shall be worked between 6.00 a.m. and 6.00 p.m., Monday to Friday up to a maximum of 8 hours worked per day (**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 Employee's in the plant, site, workshop, section or sections concerned or by the Employer giving 1 weeks' notice.
- 9.3 By agreement between the Employer and an Employee working hours may be arranged to allow an Employee to accrue one rostered day off (**RDO**) over a four-calendar week work cycle. The Employee will work 40 ordinary hours each week, be paid 38 hours at the base hourly rate of pay and accrue two hours at the base hourly rate of pay towards an RDO. This enables the Employee to accrue one RDO per four calendar week work cycle. RDOs will be taken by Agreement or as directed by the Employer.
- 9.4 The full time Employees are entitled to not less than 13 RDO's per calendar year.
- 9.5 Payment of RDO's shall be made at the base rate in clause 6.1.
- 9.6 When directed by the Employer, the full time Employee may accrue up to 13 RDO's to be taken at a mutually agreeable time subject to the Employer reserving the right to direct the Employee's to take those RDO's at one day's notice.
- 9.7 When agreed between the Employer and an Employee, an Employee may cash out any accrued RDO's.
- 9.8 A new full-time or part-time employee, if engaged and presenting for work to commence employment and not being required, will be entitled to at least eight hours' work or payment therefore at base hourly rates of pay and appropriate allowance.

10. OVERTIME

- 10.1 The Employer may require an Employee to work a reasonable amount of overtime including rostered overtime.
- 10.2 In computing overtime, each day stands alone.
- 10.3 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.
- 10.4 Overtime performed on weekends will be subject to the following penalties:
 - (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.

Working of Overtime

- 10.5 Employees who work on Saturdays will be engaged for a minimum period of three (3) hours. Employees who work on Sundays or Public Holidays will be engaged for a minimum period of four (4) hours.
- 10.6 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 works of successive days.
- 10.7 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.
- 10.8 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

- 10.9 Overtime is not guaranteed and can be withdrawn by providing Employee's with at least one (1) hours' 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

- 10.10 When an Employee is recalled back 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.

Part-time Employees

- 10.11 A part-time Employee who is required to work in excess of their designated ordinary part-time hours of work on any day will be paid overtime pursuant to Clauses 10.3 or 10.4.
- 10.12 A part-time Employee required to work overtime for at least one and a half hours after working ordinary hours and not having had prior notification on the day before, must be paid an amount of \$15.40 to meet the cost of a meal.
- 10.13 Clause 10.12 will not apply to an employee who is provided with reasonable board and lodging or who is receiving a living from home allowance as per clause 8.5 (b).

11. MEAL BREAKS AND REST PERIODS

- 11.1 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.
- 11.2 The Employer shall structure the working hours to include one half-hour unpaid meal

break to be taken within the first five (5) hours of the commencement of work, provided that this may be extended upon agreement between an Employee, or group of Employee's, and the Employer.

- 11.3 The Employer may stagger the times for Employee's to take meal breaks and rest periods to meet operational requirements.

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. TOOLS OF TRADE

- 13.1 When tools are provided by the Employer to assist the Employees in performing their duties, the Employees are not entitled to use the Employer tools for personal use unless previously authorised.
- 13.2 The Employees must use their best endeavours to use and maintain all tools provided by the Employer in good condition and working order.
- 13.3 The Employees must immediately notify the Employer of any losses, damage to or theft of tools provided by the Employer.

14. LICENCES AND QUALIFICATIONS

- 14.1 At all times, Employees are required to maintain a valid driver's licence, appropriate safety card and any other licences or qualifications which may include national police clearance, that they are required to hold in order to perform their duties at their own cost.
- 14.2 The Employer may ask for, and the Employees agree to provide, proof of such licences, qualifications or cards at any time.
- 14.3 Where any of an Employee's required licences, qualifications, clearances or cards are suspended, cancelled, revoked, or are otherwise invalidated, the Employee is required to inform the Employer immediately, and may face termination of employment where it adversely affects the Employees ability to perform the inherent requirements of the job.

15. SHIFT WORK

- 15.1 An Employer has the right to direct Employees to work shift work but before it does so, it must give twenty-four (24) hours' notice of intention to introduce shift work. The notice will include advice of the intended starting and finishing times of the respective shifts. However, less than twenty-four (24) hours' notice may be given in the event of safety or emergency requirements. Shift workers are Employees that work a system of work in which operations are being continued by the employment of a group of Employees upon work on which another group had been engaged previously
- 15.2 For the purpose of this clause:
- (a) shiftwork means any system of work in which operations are being continued by the employment of a group of employees upon work on which another group had been engaged previously;
 - (b) day shift means any shift starting on or after 6.00 am and before 10.00 am;
 - (c) afternoon shift means any shift starting at or after 10.00 am and before

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8.00 pm;

- (d) night shift means any shift starting at or after 8.00 pm and before 6.00 am;
 - (e) rostered shift means a shift of which the employee concerned has had at least 24 hours' notice.
- 15.3 Shifts must be worked according to a roster which will provide for rotation of shifts unless all the employees concerned agree otherwise provide for not more than eight shifts to be worked in any nine consecutive days and specify the commencing and finishing times of each shift.
- 15.4 The ordinary hours of work for shift workers will not exceed an average of 38 per week over a cycle of two, three or four weeks. A shift will consist of not more than eight consecutive hours inclusive of a crib time of 30 minutes which will be counted as time worked.
- 15.5 Twenty-four minutes of each eight-hour shift worked during a shift cycle will accrue as an entitlement to take a rostered off shift after each 19 shifts worked. The rostered off shift will be paid for as though worked.
- 15.6 Each day of paid leave taken and any public holiday occurring during any shift cycle will be regarded as a shift worked for accrual purposes.
- 15.7 A shift worker who has not worked or is not regarded by reason of clause 15.14 as having worked a complete shift cycle will receive pro rata accrued entitlements for each shift worked or regarded as having been worked in that cycle. Such pro rata entitlements will be payable for the rostered off shift or, in the case of termination of employment, on such termination.
- 15.8 The employer and employees concerned will agree in writing upon arrangements for the taking of rostered off shifts or for their accumulation. Such accumulation will be limited to not more than five shifts before they are taken as rostered off shifts. When rostered off shifts are taken, they will be regarded as shifts worked for accrual purposes in the particular shift cycle in which they are taken.
- 15.9 The rostered off shift prescribed by this clause will be taken as a paid shift off. Provided that where an employer for emergency reasons requires an employee to work on their rostered off shift the employee will, in addition to their accrued entitlements, be paid at overtime rates for all work performed on the rostered off shift.
- 15.10 All time worked by a shift worker in excess of or outside the ordinary hours (inclusive of time worked for accrual purposes), or on a shift other than a rostered shift, must be paid for at the rate of double time. Provided that this will not apply when the overtime is worked by arrangements between the employees themselves or for the purpose of effecting the customary rotation of shifts.
- 15.11 A shift worker whilst on afternoon or night shift other than on a Saturday, Sunday or holiday must be paid their ordinary time hourly rate plus 15%.
- 15.12 Employees working shifts between midnight on Friday and midnight on Saturday must be paid at the minimum rate of time and a half for ordinary hours of work inclusive of time worked for accrual purposes as prescribed in clause 15.14.
- 15.13 Subject to this clause, the provisions of clause 20, will apply to shift workers. Where shifts commence between 11.00 pm and midnight on a Sunday or holiday, the time so worked before midnight will not entitle the employee to the Sunday or holiday rate; provided that the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or holiday and extending into a Sunday or holiday will be regarded as time worked on such Sunday or holiday.
- 15.14 Where shifts fall partly on a Sunday or a holiday that shift, the major portion of which falls on a Sunday or a holiday, will be regarded as the Sunday or holiday shift.
- 15.15 Shift workers who work on any afternoon or night shift which does not continue for at

least five successive afternoons or nights will be paid at the rate of time and a half for all ordinary time occurring during such shift.

- 15.16 An employee who:
- (a) during a period of engagement on shift, works night shift only; or
 - (b) remains on a night shift for a longer period than four successive weeks; or
 - (c) works on a night shift which does not rotate or alternate with another shift or with day work so as to give the employee at least one third of their working time off night shift in each cycle;

must, during such engagement, period or cycle be paid their ordinary time hourly rate plus 30% for all time worked during ordinary working hours on such night shift.

16. INCLEMENT WEATHER

16.1 "Inclement Weather" shall mean the existence of rain or abnormal climatic conditions be they those of hail, snow, cold, high wind, severe dust storm, extreme temperatures, or the like or any combination thereof) by virtue of which it is either not reasonable or not safe for Employees exposed there to continue working whilst the same prevail.

16.2 If the site on which an Employee is working is affected by Inclement Weather, where possible the Employee will be relocated on site. If this is not able to occur, then the Employee will be relocated to another site or to the Employer's yard to perform work until the Employee can return to the site affected by the Inclement Weather.

16.3 If the Employee cannot be relocated on site, to another site or to the Employer's yard, the Employee must remain on site until the Employer instructs them to leave.

16.4 In the event that Employees are instructed to leave the site prior to the end of their normal work day due to Inclement Weather, the Employer will pay them their base hourly rate of pay for the remainder of the ordinary hours.

17. ANNUAL LEAVE

17.1 Annual leave is provided for in the NES.

17.2 For each year of service, the NES entitles Employee's to:

- (a) 4 weeks of paid annual leave; or
- (b) 5 weeks of paid annual leave if the Employee is a continuous shift worker.

17.3 For purposes of this Agreement a continuous shift worker shall be defined as an Employee who is:

- (a) regularly rostered to work on Sundays and Public Holidays ("regularly rostered on meaning at least 34 Sundays and 6 public holidays in a year); and
- (b) worked in a Work Group in which shifts are continuously rostered 24 hours a day for 7 days a week.

17.4 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.

17.5 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.

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

- (a) Giving a direction to take leave as per Clause 38.7 of the Award; or
- (b) Where the Employer shuts down all or any part of the business other than for an Annual Close Down over the Christmas/New Year holidays (**ACD period**);

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

- 17.7 In relation to the ACD period, the Employer may direct Employees to take paid annual leave for all or part of the ACD period. For the purpose of giving the whole of the annual leave due to all or the majority of the Employees who have the required annual leave accruals, the Employer must give at least two months' notice to the affected Employees.
- 17.8 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.
- 17.9 Any untaken annual leave is paid out on termination.
- 17.10 By written agreement with the Employer, an Employee may elect to cash out part of his/her accrued annual leave entitlement each 12-month period, 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.
- 17.11 This clause shall not apply to casual Employee's.

18. PERSONAL/CARER'S LEAVE

- 18.1 Personal/carer's leave entitlements are provided for in the NES. The same definitions for "immediate family" and "de facto partner" as provided for in the NES shall be read into and applied to this Agreement.

Paid Personal/Carer's Leave

- 18.2 The NES entitles Employee's (other than casual Employee's) to 10 days of paid personal/carer's leave for each year of service.
- 18.3 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.
- 18.4 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.
- 18.5 Paid personal/carer's leave may not be taken in advance of accrual.
- 18.6 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 base hourly rate of pay for the Employee's ordinary hours of work in the period.

Unpaid Carer's Leave

- 18.7 Unpaid carer's leave entitlements are provided for in the NES.
- 18.8 The NES entitles Employee's (including casual Employee's) 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.
- 18.9 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 18.4 (b);
 - (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)

- 18.10 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.
- 18.11 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.
- 18.12 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

- 18.13 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.

19. COMPASSIONATE LEAVE

- 19.1 Compassionate leave entitlements are provided for in the NES.
- 19.2 The NES entitles Employee's (including casual Employee's) 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

19.3 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 19.2; or
 - (ii) After the death of the member of the Employee's immediate family or household referred to in clause 19.2.
- (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

19.4 Under the NES:

- (a) An Employee (other than a casual Employee) shall be paid for any period of compassionate leave at the Employee's base hourly rate of pay for the Employee's ordinary hours of work in the period.
- (b) For casual Employee's, compassionate leave is unpaid leave.

Notice and Evidence Requirements

- 19.5 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.
- 19.6 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.
- 19.7 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

- 19.8 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.

20. PUBLIC HOLIDAYS

20.1 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.

20.2 Employee's (other than casual Employee's) 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 up to a maximum of 7.6 hours.

20.3 Employees who perform work on a Public Holiday will be offered a minimum of 4 hours work.

21. LONG SERVICE LEAVE

Long service leave entitlements are provided for in applicable legislation.

22. UNPAID PARENTAL LEAVE

Unpaid parental leave entitlements are provided for in the NES.

23. COMMUNITY SERVICE LEAVE

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

24. FAMILY AND DOMESTIC VIOLENCE LEAVE

The entitlement for an employee to deal with family and domestic violence leave, if required, will be as provided for in the Award.

25. SUPERANNUATION

25.1 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 Employee's.

25.2 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.

Voluntary Employee Contributions

- 25.3 Subject to the governing rules of the relevant superannuation fund, an Employee may, in writing, authorise the Employer to pay on behalf of the Employee a specified amount from the post-taxation wages of the Employee into the same superannuation fund as referred to in clause 26.2.
- 25.4 An Employee may adjust the amount the Employee has authorised the Employer to pay from the wages of the Employee from the first of the month following the giving of three months' written notice to the Employer.
- 25.5 The Employer must pay the amount authorised under paragraph clause 26.3 or 26.4 no later than 28 days after the end of the month in which the deduction authorised under clause 26.3 or 26.4 was made.

26. TERMINATION OF EMPLOYMENT

- 26.1 Except in the case of Casual Employee's, 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:

Employee's period of continuous employment	Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- 26.2 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.
- 26.3 For casual Employee's, employment may be terminated by either party giving one working hours' notice.
- 26.4 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.
- 26.5 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.
- 26.6 This clause does not operate so as to prevent an Employee and the Employer from agreeing to accept a greater or lesser amount of notice period when terminating the contract.
- 26.7 Notwithstanding the above, an Employee may be dismissed without notice for serious misconduct, and in such case, wages shall be paid up to the time of dismissal only.

Return of Property

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

27. REDUNDANCY

27.1 A redundant Employee will receive redundancy/severance payments, calculated as follows, in respect of all continuous service with the Employer:

Period of continuous service with an Employer	Redundancy/severance pay
1 year or more but less than 2 years	2.4 weeks' pay plus for all service in excess of 1 year, 1.75 hours pay per completed week of service up to a maximum of 4.8 weeks' pay
2 years or more but less than 3 years	4.8 weeks' pay plus, for all service in excess of 2 years, 1.6 hours pay per completed week of service up to a maximum of 7 weeks' pay
3 years or more than but less than 4 years	7 weeks' pay plus, for all service in excess of 3 years, 0.73 hours pay per completed week of service up to a maximum of 8 weeks' pay
4 years or more	7 weeks' pay

27.2 Provided that an Employee employed for less than 12 months will be entitled to a redundancy/severance payment of 1.75 hours per week of service if, and only if, redundancy is occasioned otherwise than by the Employee.

27.3 Week's pay means the ordinary time hourly rate at the time of termination multiplied by 38. Hour's pay means the ordinary time hourly rate at the time of termination.

27.4 An Employee whose employment is to be terminated in accordance with this clause may terminate their employment during the period of notice and if this occurs, the Employee will be entitled to the provisions of this clause as if the Employee remains with the Employer until expiry of such notice. Provided that in such circumstances, the Employee will not be entitled to payment instead of notice.

Transfer of business

27.5 Redundancy entitlements do not apply where there is a transfer of business and the Employee accepts employment with the new Employer who agrees to recognise the Employee's service with the Employer's for the purpose of calculating future redundancy entitlements.

27.6 Subject to any order of the Commission, redundancy entitlements also do not apply where there is a transfer of business and the Employee rejects an offer of employment made by the new Employer that:

- (a) Is on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the Employee's terms and conditions of employment with the Employer's; and
- (b) Recognises the Employee's service with the Employer's for the purpose of calculating future redundancy entitlements.

Employees not covered by redundancy pay provisions

27.7 The following Employees are not eligible for redundancy pay:

- (a) A casual Employee;
- (b) An Apprentice;
- (c) An Employee (other than an apprentice) to whom a training arrangement

applies and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement.

28. DISPUTE SETTLEMENT PROCEDURE

28.1 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.

28.2 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 Employee's concerned and relevant supervisors and/or management.

28.3 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.

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

28.5 If the Commission is satisfied clauses 28.2 and 28.3 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.

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

28.7 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).

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

- (a) Any applicable version of the National Code of Practice for the Construction Industry and Implementation Guidelines, or successors thereto and howsoever named;
- (b) The Building and Construction Industry (Improving Productivity) Act 2016 or Code for the Tendering and Performance of Building Work 2016; or
- (c) This Agreement.

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

28.10 At all times whilst a question or dispute is being resolved work will continue.

29. INDIVIDUAL FLEXIBILITY ARRANGEMENTS

29.1 Subject to the FW Act the Employer and an Employee covered by this Agreement may agree to make an Individual Flexibility Arrangement (IFA) to modify the application of terms of this Agreement that relate to terms and conditions of employment if:

- (a) The IFA meets the genuine needs of the Employer and the Employee.
- (b) The IFA must be genuinely agreed to by the Employer and the Employee.

29.2 The Employer must ensure that the terms of the IFA:

- (a) Are about permitted matters under section 172 of the FW Act;

- (b) Are not unlawful term under section 194 of the FW Act; and
 - (c) Results in the Employee being better off overall than the Employee would be if no IFA was made;
- 29.3 The Company must ensure that the IFA:
- (a) Is in writing;
 - (b) Includes the name of the Employer and the Employee;
 - (c) Is signed by the Employer and the Employee (and if the Employee is under 18 years of age by a parent or guardian of the Employee); and
 - (d) Includes details of:
 - (i) Application of the terms of the Agreement that will be modified by the IFA;
 - (ii) How the IFA will modify the application of the terms;
 - (iii) How the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the IFA; and
 - (iv) State the date on which the IFA commences.
- 29.4 The Employer must give the Employee a copy of the IFA within 14 days after it is agreed.
- 29.5 The Employer or the Employee may terminate the IFA:
- (a) By either the Employer or the Employee giving no more than 28 days written notice to the other party to the IFA; or
 - (b) If the Employer and Employee agree in writing — at any time
- 30. CONSULTATION**
- 30.1** 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 Employee's **(the relevant Employee's)**.
- 30.2 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 Employee's; or
 - (b) A change to their regular roster or ordinary hours of work.
- 30.3 The Employer must consult and invite the relevant Employee's to give their views about:
- (a) The timing and introduction of the change;
 - (b) The impact the change is likely to have on the Employee's (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 Employee's.
- 30.4 The Employer is not required to disclose confidential or commercially sensitive information to the relevant Employee's.
- 30.5 All relevant information about a major workplace change will be provided in writing to the relevant Employees.
- 30.6 The Employer must consider matters raised about the major change or changes to their regular roster or ordinary hours of work by the relevant Employee's.
- 30.7 An Employee may appoint a representative for the purposes of the consultation.

31. SIGNATURES

Employer

Signed for and on behalf of Constructability WA Pty Ltd.

Signature on behalf of
the Employer.

Name of person
authorised to sign.

Date: ___/___/___

Authority to Sign.

Position.

Address

Post Code

For Employee's

Signed on behalf of the Employees of Constructability WA Pty Ltd covered by this Agreement.

Signature of
Employee Representative.

Name of Employee Representative
authorised to sign.

Date: ___/___/___

Address.

Post Code.

Authority to Sign.

Position

Appendix 1 – Example Roster and Timesheet – CW3 Employee

For the avoidance of doubt the below is an example roster and breakdown of hours. The purpose of the below is to provide an explanation to Employees covered by the Agreement only.

Actual roster arrangements and shifts are subject to the requirements of the project. The below figures are based on a 72-hour work week again total hours per week will be subject to operational and site requirements.

Monday – Friday
6am to 5.30pm (11 Hour Shift)

CONSTRUCTABILITY WA PTY ENTERPRISE
AGREEMENT 2020

(inclusive of 30 min unpaid meal break)

7.6 Hours x \$29.58 (Base Hourly Rate) = \$224.81
0.4 Hour RDO Accrual
2 Hours x \$44.37 (Time and a Half) = \$88.74
1 Hour x \$59.16 (Double Time) = \$59.16
Total Per Day Monday to Friday = \$372.71

Saturday

6am to 5.30pm (11 Hour Shift)

(inclusive of 30 min unpaid meal break)

2 Hours x \$44.37 (Time and a Half) = \$88.74
9 Hour x \$59.16 (Double Time) = \$532.44
Total Per Day Saturday = \$621.18

Sunday

6am to 12.30pm (6 Hour Shift)

(inclusive of 30 min unpaid meal break)

6 Hour x \$59.16 (Double Time) = \$342.96
Total Per Day Sunday = \$354.96

Total Per Week

72 Hour Work Week

Monday to Friday = \$372.71 x 5 = \$1,863.55
Saturday = \$621.18
Sunday = \$354.96
Total Per Week = \$2,839.69