



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Ballarat IVF Pty Ltd
(AG2018/5434)

BALLARAT IVF PTY LTD SCIENTISTS AGREEMENT 2018-2022

Health and welfare services

DEPUTY PRESIDENT SAUNDERS

NEWCASTLE, 7 MARCH 2019

Application for approval of the Ballarat IVF Pty Ltd Scientists Agreement 2018-2022.

[1] An application has been made for approval of an enterprise agreement known as the *Ballarat IVF Pty Ltd Scientists Agreement 2018-2022* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Ballarat IVF Pty Ltd. The Agreement is a single enterprise agreement.

[2] The Employer has provided written undertakings (the Undertakings). A copy of the Undertakings is attached in Annexure A to this decision. I am satisfied that the effect of accepting the Undertakings is not likely to:

- (a) cause financial detriment to any employee covered by the Agreement; or
- (b) result in substantial changes to the Agreement.

[3] The views of each person who the Fair Work Commission knows is a bargaining representative for the Agreement have been sought in relation to the Undertakings.

[4] Pursuant to subsection 190(3) of the Act, I accept the Undertakings.

[5] Subject to the Undertakings, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

[6] The Health Services Union of Australia being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[7] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 14 March 2019. The nominal expiry date of the Agreement is 6 March 2023.



DEPUTY PRESIDENT

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No:
AG2018/5434

Applicant:

Ballarat IVF Pty Ltd

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, Russell Dalton, Director of Ballarat IVF Pty Ltd, give the following undertakings with respect to the Ballarat IVF Pty Ltd Scientists Agreement 2018-2022 (**Agreement**):

1. I have the authority to provide this undertaking on behalf of Ballarat IVF Pty Ltd in relation to the application before the Fair Work Commission.
2. In the event that the application of clauses 11.3.5, 11.3.6 and/or 23.1.2 of the Agreement would otherwise result in the total gross value of:
 - 2.1. the amount payable to an Employee for any ordinary hours agreed under clause 11.3.3 or 11.3.4 of the Agreement;
 - 2.2. the amount payable to the Employee for any hours of work which are additional to the Employee's agreed ordinary hours;
 - 2.3. the amount of superannuation payable for the benefit of the Employee; and
 - 2.4. the annual leave (including annual leave loading) accrued by the Employee for hours worked;

in any four week cycle being any less than the total gross value of the equivalent benefits to which the Employee would be entitled if all of the hours worked by the Employee were instead treated and paid in accordance with the terms of the Award, Ballarat IVF will make an additional payment to the Employee for that period in a gross amount no less than the difference in those values.

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



Signature

4.3.19

Date

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.

BALLARAT IVF PTY LTD

SCIENTISTS AGREEMENT 2018 - 2022

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1. TITLE

This agreement will be known as the Ballarat IVF Pty Ltd Scientists Agreement 2018-2022 (**Agreement**).

2. COMMENCEMENT AND NOMINAL EXPIRY DATE

- 2.1. This Agreement will commence operation on the date that is seven days after the day the FWC approves the Agreement.
- 2.2. The nominal expiry date of this Agreement is the date four years after the day on which the FWC approves the Agreement.
- 2.3. The parties agree that discussions about a new enterprise agreement will be commenced no later than three months prior to the nominal expiry date of this Agreement.

3. DEFINITIONS

In this Agreement:

- 3.1. **Award** means the Health Professionals and Support Services Award 2010.
- 3.2. **continuous service** has the meaning given by the FW Act.
- 3.3. **double time** means 200% of the the ordinary hourly rate of pay specified in Item 1 of Schedule 2 for an Employee's classification level and pay point.
- 3.4. **double time and a half** means 250% of the ordinary hourly rate of pay specified in Item 1 of Schedule 2 for an Employee's classification level and pay point.
- 3.5. **FW Act** means the *Fair Work Act 2009* (Cth) as amended, varied or replaced from time to time.
- 3.6. **FWC** means the Fair Work Commission.
- 3.7. **HSU** means the Health Services Union Victoria No 4 Branch.
- 3.8. **NES** means the National Employment Standards as prescribed by the FW Act from time to time.
- 3.9. **ordinary hourly rate** means the ordinary hourly rate of pay specified in Item 1 of Schedule 2 for an Employee's classification level and pay point.
- 3.10. **time and a half** means 150% of the ordinary hourly rate of pay specified in Item 1 of Schedule 2 for an Employee's classification level and pay point.

4. COVERAGE

- 4.1. This Agreement will cover and apply to:
 - 4.1.1. Ballarat IVF Pty Ltd ACN 098 399 681 (**Ballarat IVF**);
 - 4.1.2. employees of Ballarat IVF who are employed as scientists under any of the classifications set out in Schedule 1 of this Agreement and who are covered in relation to their employment by the Health Professionals and Support Services Award 2010 (**Employees**); and

- 4.1.3. an employee organisation that was a bargaining representative for the Agreement (including the HSU), if the organisation gives written notice to the FWC and Ballarat IVF in accordance with section 183 of the FW Act stating that the organisation wants the Agreement to cover it.

5. ACCESS TO AGREEMENT

Ballarat IVF must ensure that a copy of this Agreement is available to Employees, either at a conspicuous location at the workplace, or through electronic means.

6. INTERACTION WITH NES AND AWARD

- 6.1. This Agreement operates to the exclusion of and wholly replaces the Award as amended from time to time.
- 6.2. Entitlements in accordance with the NES are provided for under the FW Act. The terms of the NES are not excluded by or incorporated into this Agreement and apply to Employees as statutory provisions according to their own terms. In the event that there is an inconsistency between the terms of this Agreement and the terms of the NES and the NES terms provide an additional or more favourable condition of employment to an Employee compared to this Agreement, the terms of the NES will apply and will prevail over this Agreement to the extent of any inconsistency.

7. NO FURTHER CLAIMS

- 7.1. Subject to the ability of any party to seek to vary or terminate this Agreement in accordance with the provisions of the FW Act, no further claims will be made or pursued by or on behalf of an Employee or by Ballarat IVF in relation to the Employees' terms and conditions of employment until after the nominal expiry date of this Agreement.
- 7.2. For the avoidance of doubt, this clause does not prevent or restrict:
 - 7.2.1. Ballarat IVF from making, varying or terminating any policy or procedure; or
 - 7.2.2. Ballarat IVF and an Employee from making, varying, terminating or enforcing any contract between Ballarat IVF and an Employee at common law;
 - 7.2.3. Ballarat IVF from requiring Employees to comply with lawful and reasonable directions in relation to work;

provided that in the event of any inconsistency between this Agreement and any policy, procedure or contract between Ballarat IVF and an Employee, the terms of this Agreement will prevail to the extent of the inconsistency.

8. INDIVIDUAL FLEXIBILITY ARRANGEMENTS

- 8.1. Ballarat IVF and an Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of the terms of this Agreement relating to:
 - 8.1.1. arrangements about when work is performed;
 - 8.1.2. overtime rates;
 - 8.1.3. penalty rates;

- 8.1.4. shift loading;
 - 8.1.5. allowances; and/or
 - 8.1.6. leave loading;
- in order to meet the genuine needs of Ballarat IVF and the Employee.
- 8.2. The individual flexibility arrangement must be genuinely agreed to by Ballarat IVF and the Employee.
 - 8.3. Ballarat IVF must ensure that the terms of the individual flexibility arrangement:
 - 8.3.1. are about matters that are permitted matters under section 172 of the FW Act; and
 - 8.3.2. are not unlawful terms under section 194 of the FW Act; and
 - 8.3.3. result in the Employee being better off overall than the Employee would be if no individual flexibility arrangement was agreed to.
 - 8.4. Ballarat IVF must ensure that the individual flexibility arrangement:
 - 8.4.1. is in writing; and
 - 8.4.2. includes the name of the employer and the Employee; and
 - 8.4.3. is signed by Ballarat IVF and the Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
 - 8.4.4. includes details of:
 - 8.4.4.1. the terms of this Agreement that will be varied by the arrangement; and
 - 8.4.4.2. how the arrangement will vary the effect of those terms; and
 - 8.4.4.3. how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - 8.4.5. states the day on which the arrangement commences.
 - 8.5. Ballarat IVF must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
 - 8.6. An individual flexibility arrangement agreed to under this term may be terminated:
 - 8.6.1. by either Ballarat IVF or the Employee giving 28 days' written notice to the other party to the arrangement; or
 - 8.6.2. at any time, if Ballarat IVF and the Employee agree to the termination in writing.

9. CONSULTATION

- 9.1. This term applies if Ballarat IVF:
- 9.1.1. has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the Employees; or
 - 9.1.2. proposes to introduce a change to the regular roster or ordinary hours of work of Employees.
- 9.2. In this term:
- 9.2.1. **Affected Employee** means an Employee:
 - 9.2.1.1. who is likely be to be significantly affected by a major change to which this term applies; or
 - 9.2.1.2. whose regular roster or ordinary hours of work Ballarat IVF proposes to change.
 - 9.2.2. a major change is likely to have a significant effect on an Employee if it will result in:
 - 9.2.2.1. the termination of the Employee's employment; or
 - 9.2.2.2. major change to the composition, operation or size of Ballarat IVF's workforce or to the skills required of the Employee;
 - 9.2.2.3. the elimination or diminution of job opportunities (including opportunities for promotion or tenure) for the Employee;
 - 9.2.2.4. the need to relocate the Employee to another workplace; or
 - 9.2.2.5. the restructuring of the Employee's job.
- 9.3. If an Affected Employee or Affected Employees give Ballarat IVF notice in writing, appointing a representative (including a representative from the HSU) for the purpose of consultation under this clause, and advising Ballarat IVF of the identity of the representative, Ballarat IVF must recognise that representative.
- 9.4. Where clause 9.1.1 applies, as soon as practicable after making its decision, Ballarat IVF must consult with the Affected Employee(s) by:
- 9.4.1. providing relevant information to Affected Employee(s) about the change, including information about the nature of the change and the expected effects of the change on the Affected Employee(s) (however Ballarat IVF is not required to provide or disclose confidential or commercially sensitive information);
 - 9.4.2. discussing with the Affected Employee(s) the introduction of the change, the effect the change is likely to have on the Affected Employee(s) and measures Ballarat IVF is taking to avert or mitigate the adverse effect of the change on the Affected Employee(s);
 - 9.4.3. giving prompt and genuine consideration to matters raised by the Affected Employee(s) about the major change.

- 9.5. Where clause 9.1.2 applies, Ballarat IVF must consult with the Affected Employee(s) by:
- 9.5.1. providing information to the Affected Employee(s) about the change (however Ballarat IVF is not required to provide or disclose confidential or commercially sensitive information);
 - 9.5.2. inviting the Affected Employee(s) to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities); and
 - 9.5.3. considering any views given by the Affected Employee(s) about the impact of the change.
- 9.6. This clause does not apply to variations to an Employee's regular roster or hours of work which are permitted by the terms of this Agreement or an agreement in writing between the Employee and Ballarat IVF.

10. DISPUTE RESOLUTION

- 10.1. This clause applies if there is a dispute:
- 10.1.1. about any matter arising under this Agreement; or
 - 10.1.2. in relation to the NES.
- 10.2. A party to the dispute may appoint a representative (including a representative from the HSU) for the purposes of the procedures in this clause.
- 10.3. In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the Employee or Employees involved in the dispute and the relevant supervisor or manager, and if the matter is not resolved through those discussions, by discussions between the Employee or Employees involved in the dispute and a director of Ballarat IVF.
- 10.4. If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the FWC.
- 10.5. The FWC may deal with the dispute by mediation, conciliation, expressing an opinion or making a recommendation.
- 10.6. If the dispute is not resolved using the procedures permitted by clause 10.5 and the parties to the dispute agree to the FWC arbitrating the dispute in the circumstances the FWC may then arbitrate the dispute. A decision made by the FWC when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5.1 of the FW Act and may be appealed in accordance with the FW Act.
- 10.7. While the parties are trying to resolve the dispute using the procedures in this term:
- 10.7.1. an Employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
 - 10.7.2. an Employee must comply with a direction given by Ballarat IVF to perform other available work at the same workplace, or at another workplace, unless:
 - 10.7.2.1. the work is not safe; or

- 10.7.2.2. applicable occupational health and safety legislation would not permit the work to be performed; or
- 10.7.2.3. the work is not appropriate for the employee to perform; or
- 10.7.2.4. there are other reasonable grounds for the employee to refuse to comply with the direction.

11. TYPES OF EMPLOYMENT

11.1. An Employee will be employed by Ballarat IVF in one of the following categories:

- 11.1.1. full time;
- 11.1.2. part time; or
- 11.1.3. casual.

11.2. Full time employment

A full time Employee is an Employee who is engaged to work 38 hours per week, or an average of 38 hours per week in a fortnight or four week period.

11.3. Part time employment

11.3.1. A part time Employee is an Employee who is engaged to work on a part time basis for an agreed number of weekly hours (which may be averaged over a fortnight or four week period) being less than 38 hours per week, 76 hours per fortnight or 152 hours per four week period, and who has reasonably predictable hours of work.

11.3.2. The entitlements provided for by this Agreement will apply to a part time Employee on a pro rata basis according to the Employee's ordinary hours of work, on the basis that the ordinary weekly hours (or average weekly hours) for a full time Employees are 38.

11.3.3. Ballarat IVF and existing part time Employees, and all new part-time employees at the time of engagement, will agree in writing on:

11.3.3.1. the number of ordinary hours the Employee will work each week, or the average weekly hours the Employee will work in a fortnight or four week period;

11.3.3.2. the days of the week the Employee may be rostered to work in a week, fortnight, or four week period; and

11.3.3.3. the usual start and finishing times on each day (which may be agreed on the basis that the Employee may be rostered to start and finish work between agreed times).

11.3.4. The agreement made in accordance with clause 11.3.3 will be recorded in writing and signed by the Employee and Ballarat IVF and may be varied by agreement in writing between Ballarat IVF and the Employee. For the avoidance of doubt, an agreement to vary the hours and/or regular pattern of work of a part time Employee may be made on either an ongoing or temporary basis or for a defined period of time.

11.3.5. Hours worked by a part time Employee which are in excess of the number of hours per day, or per week, fortnight or four week period (as the case

may be) agreed under clause 11.3.3 or 11.3.4, but not exceeding 7.6 hours per day or 76 hours per fortnight will be treated and paid as ordinary hours.

- 11.3.6. By agreement in writing between the Employee and Ballarat IVF, additional hours worked by a part time Employee in excess of his or her usual or rostered ordinary hours may be treated and paid as ordinary hours, up to a maximum of 76 hours per fortnight and a maximum of 10 hours per day.

11.4. **Casual employment**

- 11.4.1. A casual Employee is one engaged and paid as such, on an hourly basis.
- 11.4.2. A casual Employee may work up to and including 38 ordinary hours per week with a maximum of 8 ordinary hours per day, provided that by agreement in writing between a casual Employee and Ballarat IVF, a casual Employee may work up to 10 ordinary hours per day.
- 11.4.3. A casual Employee will be paid for ordinary hours worked at the ordinary hourly rate for that Employee's classification.
- 11.4.4. In addition to the ordinary hourly rate for the Employee's classification, a casual Employee will be paid a casual loading of:
 - 11.4.4.1. 25% of the ordinary hourly rate of pay for the Employee's classification, for ordinary hours of work on weekday; or
 - 11.4.4.2. 75% of the ordinary hourly rate of pay for the Employee's classification, for ordinary hours worked on Saturdays, Sundays and public holidays
- 11.4.5. For the avoidance of doubt, a casual Employee will not be entitled to paid annual leave, paid personal carer's leave, notice of termination of employment, redundancy pay or payment for public holidays not worked.
- 11.4.6. A casual Employee will be engaged or paid for a minimum of three hours per engagement.

12. **ORDINARY HOURS**

- 12.1. Ordinary hours may be worked by an Employee who is a day worker between 6:00am and 6:00pm, Monday to Friday.
- 12.2. No more than 8 ordinary hours (exclusive of meal breaks) are to be worked by an Employee on any one day, except that by written agreement between Ballarat IVF and an Employee, up to 10 ordinary hours may be worked per day.
- 12.3. With the exception of meal breaks, an Employee's ordinary hours on each day will be continuous, unless otherwise agreed in writing between Ballarat IVF and the Employee.
- 12.4. The ordinary hours of a full time Employee may be rostered and worked on five days per week for up to 8 hours a day, or according to any other arrangement agreed between the Employee and Ballarat IVF in writing, provided that:
 - 12.4.1. no more than 50 ordinary hours will be worked in any one week; and
 - 12.4.2. no more than 80 ordinary hours will be worked in any one fortnight.

- 12.5. The ordinary hours of a full time or part time Employee may be arranged on an ADO accrual basis, whereby the Employee will:
- 12.5.1. be paid in each pay period for 7.6 ordinary hours out of each 8 ordinary hours worked (on a pro rata basis);
 - 12.5.2. be credited with 0.4 ADO hours out of each 8 ordinary hours worked (on a pro rata basis);
 - 12.5.3. take the Employee's accrued ADO hours as time off work, paid at ordinary hourly rates (**ADO**).
- 12.6. Subject to any agreement in writing between Ballarat IVF and an Employee for an alternative arrangement under which accrued ADO's may be accumulated by the Employee and taken at alternative times, the ADO hours an Employee accrues within a four week period will be rostered by Ballarat IVF and taken as time off work by the Employee on one day within that four week period.

13. ROSTERING

- 13.1. Subject to clause 11 and clause 12 of this Agreement, the starting and finishing times of an Employee's daily hours of work in each week may vary depending on the operating needs of Ballarat IVF's business, and patient requirements.
- 13.2. Ordinary hours will be worked in accordance with rosters, which will be prepared by Ballarat IVF and made available to Employees electronically or by displaying the rosters at a conspicuous location at the workplace at least seven days in advance.
- 13.3. Subject to clause 11 and clause 12 of this Agreement, the starting and finishing times of an Employee's rostered ordinary hours on a particular day may be varied by up to two hours at each end, by Ballarat IVF giving the Employee at least two days' notice of the variation.
- 13.4. Except in the case of illness or injury or other emergency, or as provided by clause 13.3, a roster will not be altered by Ballarat IVF after being posted, without at least five days' notice being given to the Employee affected by the alteration.
- 13.5. An Employee's rostered hours may be varied at any time by agreement between Ballarat IVF and the Employee, subject to the requirements of clause 11 and clause 12.

14. SHIFTWORK

- 14.1. For the purpose of this Agreement (other than clause 27.2), a **shiftworker** is an Employee who is regularly rostered to work ordinary hours outside the ordinary hours of a day worker specified in clause 12.1.
- 14.2. Ballarat IVF and an Employee may agree in writing that the Employee will work as a shiftworker.
- 14.3. The span of ordinary hours of a day worker specified in clause 12.1 will not apply to a shiftworker.
- 14.4. A shiftworker whose ordinary hours on any shift:
- 14.4.1. finish between 6:00pm and 8:00am; or
 - 14.4.2. commence between 6:00pm and 6:00am;

will be paid a shift loading equal to 15% of the ordinary hourly rate for the Employee's classification for all ordinary hours worked on that shift.

15. SATURDAY AND SUNDAY WORK - SHIFTWORKERS

- 15.1. A shiftworker (other than a casual Employee) who is required to work ordinary hours on a Saturday or Sunday will be paid for those hours at the penalty rate of time and a half.
- 15.2. The weekend penalty rate will apply to ordinary hours worked by a shiftworker on Saturday or Sunday in substitution for, and will not be cumulative with, shift loading.

16. MEAL AND REST BREAKS

- 16.1. An Employee who works in excess of five hours will be entitled to take an unpaid meal break of not less than 30 minutes and not more than 60 minutes. The meal break will not be counted as time worked.
- 16.2. An Employee will be entitled to take a paid 10 minute rest break in each four hours worked on any day. By agreement between Ballarat IVF and the Employee, the Employee may instead take one 20 minute rest break in each eight hours worked on any day. Rest breaks will be counted as time worked.

17. CLASSIFICATION

- 17.1. Employees will be classified according to the classification structure set out in Schedule 1, taking into account the requirements of the position the Employee is employed to perform.
- 17.2. Ballarat IVF may direct an Employee to carry out any duties that are within the limits of the Employee's skill, competence and training, consistent with the Employee's classification.
- 17.3. Ballarat IVF must advise an Employee in writing of:
 - 17.3.1. the Employee's classification upon commencement of employment; and
 - 17.3.2. any changes to the Employee's classification.

18. ORDINARY HOURLY RATES

- 18.1. An Employee's minimum ordinary hourly rate of pay will be the ordinary hourly rate set out in Item 1 of Schedule 2 for the Employee's classification level and pay point.
- 18.2. **Base rate of pay**
 - 18.2.1. In this clause, **base rate of pay** has the meaning given by the FW Act.
 - 18.2.2. If the base rate of pay prescribed by this Agreement falls below the base rate of pay that would be payable to an Employee if the Award applied to the Employee, the Employee's base rate of pay will be the base rate of pay prescribed by the Award for the Employee.

18.3. Progression through pay points

- 18.3.1. Progression through level 1

Employees will enter the Level 1 classification at the relevant pay point and then progress annually or in the case of a part time or casual

Employee, after working 1824 ordinary hours, until the Employee reaches pay point 6, or until the Employee is reclassified as Scientist Level 2.

18.3.2. Progression through levels 2–4

Progression for all other classifications for which there is more than one pay point will be by annual movement to the next pay point, or in the case of a part time or casual Employee, after working 1824 ordinary hours having regard to the acquisition and use of skills by the Employee.

19. SUPERANNUATION

Compulsory superannuation contributions

- 19.1. Ballarat IVF will make such superannuation contributions to a complying superannuation fund for the benefit of an Employee as will avoid Ballarat IVF being required to pay the superannuation guarantee charge under Commonwealth superannuation legislation with respect to that Employee.

Salary sacrificing superannuation

- 19.2. Ballarat IVF will permit an Employee to elect to salary sacrifice an amount of the Employee's pre-tax wages into the same superannuation fund as Ballarat IVF makes the contributions provided for in clause 19.1, by entering into an effective written salary sacrificing arrangement with Ballarat IVF, provided that such arrangement does not result in an increased cost (including as a result of any fringe benefits tax liability) to Ballarat IVF. Such contributions will be treated as employer contributions. In this case, the contributions made in accordance with clause 19.1. will be calculated prior to the salary sacrifice deduction.

Voluntary superannuation contributions

- 19.3. Subject to the governing rules of the relevant superannuation fund, an Employee may, in writing, authorise Ballarat IVF to pay on behalf of the Employee a specified dollar amount or percentage deducted from the post-taxation wages of the Employee into the same superannuation fund as Ballarat IVF makes the superannuation contributions provided for in clause 19.1.
- 19.4. An Employee may adjust the amount the Employee has authorised Ballarat IVF to pay from the wages of the Employee under clause 19.2 or 19.3 from the first of the month following the giving of three months' written notice to Ballarat IVF.
- 19.5. Ballarat IVF must pay the amounts authorised under clauses 18.2 or 19.3 (as adjusted in accordance with clause 19.4) no later than 14 days after the end of the pay period in which the deduction is made.

Default superannuation fund

- 19.6. Employee may choose their own superannuation fund in accordance with Commonwealth superannuation legislation. Without limitation, Employees may choose First State Super, Health Employees Superannuation Trust of Australia (HESTA), or any other complying superannuation fund.
- 19.7. If an Employee fails to choose a superannuation fund in accordance with Commonwealth superannuation legislation within 4 weeks of the date of employment, the default fund for the Employee will be First State Super. First State Super has a MySuper product.

20. ALLOWANCES

20.1. Travelling, transport and fares

- 20.1.1. With the exception of work locations situated more than 75 kilometres from the Employee's principal place of work, Employees will commence and cease work at the work location directed by Ballarat IVF, and may be required to travel between workplaces in the course of a day's work as directed by Ballarat IVF.
- 20.1.2. Time spent by an Employee in travelling between two workplaces at the direction of Ballarat IVF will be counted as time worked.
- 20.1.3. If Ballarat IVF requires and authorises an Employee to use the Employee's own motor vehicle in the course of the Employee's duties, the Employee will be paid a travel allowance at the rate of 0.78 cents per kilometre for that use of the Employee's vehicle.
- 20.1.4. If Ballarat IVF requires an Employee to travel in the course of the Employee's duties using a vehicle provided by Ballarat IVF, or by public transport or other means, Ballarat IVF will bear the cost of providing the vehicle or other transport.
- 20.1.5. For the avoidance of doubt, and subject to clause 20.1.8, an Employee's travel between the Employee's home and the Employee's workplace is private travel, for which no travel allowance is payable, and which will not be counted as time worked.
- 20.1.6. On or before commencement of employment, Ballarat IVF will notify each Employee in writing of the location of his or her principal place of work (which may be varied by agreement in writing).
- 20.1.7. Each Employee must notify Ballarat IVF in writing of the address of his or her principal place of residence.
- 20.1.8. If an Employee is directed to commence or cease work under clause 19.1.1 at a work location that is further away from the Employee's principal place of residence than the Employee's principal place of work, and the time spent by the Employee in travelling between his or her principal place of residence and that location is necessarily greater than the time required to travel between the Employee's principal place of residence and principal place of work (each calculated according to the most direct route of travel), then;
- 20.1.8.1. the additional time spent in travel will be regarded and paid as time worked by the Employee; and
- 20.1.8.2. clause 20.1.3 will apply to the additional distance travelled if the Employee is required and authorised to use the Employee's own vehicle for that travel.
- 20.1.9. For the purpose of this clause, the Employee and Ballarat IVF may agree in writing on a reasonable estimate of the travel time and/or travel distance which is to be paid for travel between particular locations, and where such agreement is made, that time and/or distance will be used to calculate any amounts payable under this clause for travel between those locations. Where no such agreement is made, the entitlement to payment for time or distance travelled is conditional on the Employee providing Ballarat IVF with an accurate log book for each occasion, showing the date of travel,

and the actual time and distance travelled for which the Employee is entitled to payment under this clause.

20.1.10. An Employee will only work at a location greater than 75 kilometres from the Employee's principal place of employment by agreement between Ballarat IVF and the Employee, which will be recorded in writing.

20.1.11. If Ballarat IVF and an Employee agree that the Employee will stay away from his or her principal place of residence overnight in order to perform work at a location other than the Employee's principal place of work, Ballarat IVF will provide the Employee with overnight accommodation at its cost, and pay the Employee a living away from home allowance in the amount set out in Item 2.1 of Schedule 2 per night for meals, incidental expenses and the inconvenience of living away from home for the night.

20.2. **Parking reimbursement**

Where Ballarat IVF requires an Employee to use the Employee's own vehicle within rostered hours to travel from one workplace to another, and incurs a fee for parking (not being a fine for breach or infringement of applicable laws or regulations) the Employee will be reimbursed the amount of the parking fee on presentation of the relevant receipt.

20.3. **On call allowance**

20.3.1. On call means an Employee is required to hold himself or herself ready and available to attend the workplace and perform work at the direction of Ballarat IVF.

20.3.2. An Employee who is required by Ballarat IVF to be on call:

20.3.2.1. for a period starting at 4:00pm on any weekday (other than a public holiday) and ending at 8:00am the following day will be paid the weekday on call allowance set out in Item 2.2 of Schedule 2 for the on call period; or

20.3.2.2. for a period starting at or after 8:00am on any Saturday, Sunday or public holiday and ending at or before 8:00am the following day will be paid the weekend/public holiday on call allowance set out in Item 2.3 of Schedule 2 for that on call period.

20.4. **Recall**

If an Employee is recalled to work overtime after leaving Ballarat IVF's premises, or called in to the workplace to work overtime (including to respond to an alarm or other emergency) on a day the Employee is not rostered to work, the Employee will be paid for a minimum of two hours at the applicable overtime rate, from the time of receiving the call.

20.5. **Higher duties**

An Employee who is required and authorised by Ballarat IVF to assume the duties of another Employee on a higher classification level for a period of five or more consecutive working days will be paid for the period for which the Employee was required and authorised to assume such duties at not less than the minimum rate prescribed for pay point 1 of the classification level applying to the Employee so relieved. This clause will not apply where an Employee is only required to assume duties which are within the scope of the Employee's own classification.

20.6. Meal allowance

20.6.1. An Employee will either be supplied with an adequate meal by Ballarat IVF where adequate cooking and dining facilities are available, or paid a meal allowance in the amount set out in Item 2.4 of Schedule 2 in addition to payment for overtime hours worked by the Employee:

20.6.1.1. if the Employee is required to work overtime beyond one hour after the Employee's rostered finishing time; or

20.6.1.2. in the case of a shiftworker, if the overtime worked on any shift exceeds one hour;

provided that where such overtime work exceeds four hours, a further meal allowance in the amount set out in Item 2.5 of Schedule 2 will be paid.

20.6.2. Clause 20.6.1 does not apply where an Employee could reasonably return home for a meal within the meal break.

20.6.3. If requested by the Employee, the meal allowance will be paid on the same day as overtime is worked.

21. CLOTHING AND PROTECTIVE EQUIPMENT

21.1. Ballarat IVF will provide each Employee with any uniforms, protective clothing and/or personal protective equipment which are required to be worn or used by the Employee at work, which will remain the property of Ballarat IVF.

21.2. Uniforms or other clothing provided by Ballarat IVF will be laundered by Ballarat IVF, at no cost to Employees.

21.3. Protective clothing and personal protective equipment is provided for the purpose of protecting the Employee's own clothing, property and health and safety and Employees must wear and use relevant protective clothing and personal protective equipment at Ballarat IVF's direction at all times.

21.4. Items of uniform, clothing and equipment provided by Ballarat IVF must be maintained by Employee in good order and condition (fair wear and tear excepted). Employees must immediately inform Ballarat IVF in the event of loss, damage or defect in any clothing or personal protective equipment provided to the Employee by Ballarat IVF.

22. MAXIMUM WEEKLY HOURS AND REASONABLE ADDITIONAL HOURS

22.1. Maximum weekly hours and requests to work additional hours are provided for in the NES. This clause is included for the purpose of providing information about NES entitlements at the commencement of this Agreement only, and does not incorporate or replace the terms of the NES relating to maximum weekly hours or requests to work additional hours.

22.2. Under the NES, an employer must not request or require an employee to work more than the following number of hours in a week unless the hours in excess of that number of hours (**additional hours**) are reasonable:

22.2.1. for a full-time employee, 38 hours per week; or

22.2.2. for an employee who is not a full-time employee, the lesser of:

22.2.2.1. 38 hours; and

22.2.2.2. the Employee's ordinary hours of work in a week.

- 22.3. Under the NES, an employee may refuse to work additional hours if the additional hours are unreasonable.
- 22.4. Under the NES, in determining whether additional hours are reasonable or unreasonable the following must be taken into account:
- 1.1.1. any risk to the employee's health and safety from working the additional hours;
 - 1.1.2. the employee's personal circumstances, including family responsibilities;
 - 1.1.3. the needs of the workplace or enterprise in which the employee is employed;
 - 1.1.4. whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
 - 1.1.5. any notice given by the employer of any request or requirement to work the additional hours;
 - 1.1.6. any notice given by the employee of his or her intention to refuse to work the additional hours;
 - 1.1.7. the usual patterns of work in the industry, or the part of an industry, in which the employee works;
 - 1.1.8. the nature of the employee's role, and the employee's level of responsibility;
 - 1.1.9. whether the additional hours are in accordance with averaging terms included in an enterprise agreement; and
 - 1.1.10. any other relevant matter.

23. OVERTIME

- 23.1. For the purposes of this Agreement, **overtime** means reasonable additional hours required and authorised by Ballarat IVF to be worked:
- 23.1.1. by a full time Employee, in excess of:
 - 23.1.1.1. the Employee's number of ordinary hours on any day, fixed in accordance with clause 12.2;
 - 23.1.1.2. 38 hours per week (not including time credited for the purpose of ADO accrual) where the Employee's ordinary hours are not averaged over a period longer than one week;
 - 23.1.1.3. 76 hours per fortnight (not including any time credited for the purpose of ADO accrual) where the Employee's ordinary weekly hours are averaged over the fortnight;
 - 23.1.1.4. 152 hours per four week period (not including time credited for the purpose of ADO accrual) where the Employee's ordinary weekly hours are averaged over a four week period.

- 23.1.2. by a part time Employee, in excess of the number of ordinary hours per day, or per week, fortnight or four week period agreed in writing between the Employee and Ballarat IVF in accordance with clause 11.3 (not including time credited for the purpose of ADO accrual), provided that only hours in excess of 7.6 hours per day or in excess of 76 hours per fortnight (not including time credited for the purpose of ADO accrual) will be treated as overtime.
 - 23.1.3. by a casual Employee, in excess of the number of ordinary hours per day fixed in accordance with clause 11.4.2, or in excess of 38 hours per week; or
 - 23.1.4. for a day worker, outside the span of ordinary hours in clause 12.1.
- 23.2. An Employee (other than a casual Employee) who is required and authorised to work overtime will either be paid at overtime rates for the overtime hours worked, or by agreement in writing between Ballarat IVF and the Employee, provided with time off in lieu of payment for the overtime hours worked, in accordance with this clause.

Overtime rates of pay

- 23.3. An Employee who works overtime on a weekday (other than a public holiday) will be paid at the overtime rate of:
- 23.3.1. time and a half for the first two hours of overtime; and
 - 23.3.2. double time thereafter.
- 23.4. An Employee who works overtime on a Saturday or Sunday will be paid for the overtime worked at the rate of double time. An Employee who works overtime on a public holiday will be paid for the overtime worked at the rate of double time and a half.
- 23.5. For casual Employees, the overtime rates prescribed by clauses 23.3 and 23.4 will be payable in substitution for, and not cumulative with, casual loading.

Time off in lieu

- 23.6. Ballarat IVF and an Employee may agree in writing to the Employee taking time off in lieu of being paid for any or all overtime worked by the Employee.
- 23.7. The amount of time off in lieu of payment for overtime worked by an Employee on a weekday will be equivalent to the number of hours of overtime worked by the Employee.
- 23.8. The amount of time off in lieu of payment for overtime worked by an Employee on a Saturday or Sunday will be twice the number of hours of overtime worked
- 23.9. Time off in lieu of payment for overtime will be taken by the Employee at a time agreed in writing between the Employee and Ballarat IVF.
- 23.10. If the Employee does not take time off in lieu of payment for overtime worked within 4 weeks after the overtime is worked (or within such other period as is agreed in writing between Ballarat IVF and the Employee), or the Employee's employment is terminated before the time off is taken, the Employee will instead be paid for the overtime worked at the overtime rate that was applicable to the period of overtime which was worked, at the time the overtime was worked.

Rest period after overtime

- 23.11. If an Employee works so much overtime after the completion of ordinary hours on one day that the Employee would not have at least ten consecutive hours off duty before the commencement of ordinary hours on the following day, the Employee will:
- 23.11.1. be released from work after the completion of the overtime until the Employee has had ten consecutive hours off duty, without loss of pay for ordinary hours in that period; or
 - 23.11.2. if instructed by Ballarat IVF to resume or continue work the following day without having had ten consecutive hours off duty after completion of the overtime, be paid at the rate of double time for the hours worked by the Employee, until the Employee has been provided with ten consecutive hours off duty without loss of pay for ordinary hours during that the period of absence.

24. PAYMENT OF REMUNERATION

Amounts due to an Employee in accordance with this Agreement will be paid by Ballarat IVF fortnightly by no later than Thursday in the relevant week, by electronic funds transfer into the bank or financial institution account nominated by the Employee, unless otherwise agreed between Ballarat IVF and the Employee.

25. DEDUCTIONS

In the event of an overpayment of any amount due to an Employee to an Employee for work performed or leave taken by the Employee, Ballarat IVF may agree in writing with the Employee a plan to recover the amount of the overpayment. If an overpayment has not been repaid in full during the Employee's employment, all or any part of the remaining amount of the overpayment may be deducted from any amount otherwise due to the Employee on termination of the Employee's employment.

26. PUBLIC HOLIDAYS

- 26.1. Public holidays are provided for in the NES. The public holidays relevant to an Employee are the days that are prescribed by the NES as public holidays at that Employee's principal place of work at the relevant time.
- 26.2. At the date of commencement of this Agreement, the public holidays prescribed by the NES are:
- 26.2.1. 1 January (New Year's Day);
 - 26.2.2. 26 January (Australia Day);
 - 26.2.3. Good Friday;
 - 26.2.4. Easter Monday;
 - 26.2.5. 25 April (Anzac Day);
 - 26.2.6. the Queen's Birthday;
 - 26.2.7. 25 December (Christmas Day);
 - 26.2.8. 26 December (Boxing Day); and

- 26.2.9. any other day or part day declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory or a public holiday; or
- 26.2.10. such day or part-day as is substituted under a law of a State or Territory, or in accordance with a procedure under a law of a State or Territory, for any day or part day that would otherwise be a public holiday.
- 26.3. Ballarat IVF and an Employee may, by written agreement, substitute another day for a public holiday.
- 26.4. An Employee who is rostered by Ballarat IVF to work ordinary hours on a public holiday will be paid at the penalty rate of time and a half for the ordinary hours required to be worked on that day, subject to a minimum of three hours, in addition to payment of the Employee's ordinary hourly rate of pay for the Employee's ordinary hours of work on that day.

27. ANNUAL LEAVE

- 27.1. This clause does not apply to casual Employees. A casual Employee is not entitled to paid annual leave.

Entitlement to annual leave

- 27.2. Under the NES, an Employee is entitled to 4 weeks of annual leave for each year of service with Ballarat IVF.
- 27.3. If this Agreement defines the Employee as a shiftworker for the purposes of the NES, the Employee is instead entitled to five weeks of paid annual leave, for each year of service with Ballarat IFV under the NES.
- 27.4. For the purposes of the NES, a **shiftworker** is an Employee who is regularly rostered to work Sundays and public holidays. This means an Employee who is rostered to work ordinary hours on at least 5/7ths of the Sundays and 5/7ths of the public holiday in any year.
- 27.5. An Employee's entitlement to paid annual leave accrues progressively during a year of service according to the Employee's ordinary hours of work, and accumulates from year to year.

Payment for annual leave

- 27.6. If an Employee takes a period of paid annual leave to which the Employee is entitled under the NES, Ballarat IVF must pay the Employee at the Employee's ordinary hourly rate of pay for the Employee's ordinary hours of work in the period of paid annual leave.
- 27.7. In addition to the Employee's ordinary hourly rate of pay for a period of annual leave:
 - 27.7.1. an Employee (other than a shiftworker) will be paid annual leave loading of 17.5% of the Employee's ordinary hourly rate of pay for the Employee's ordinary hours in the period of annual leave;
 - 27.7.2. an Employee who is a shiftworker will be paid the higher of:
 - 27.7.2.1. annual leave loading of 17.5% of the Employee's ordinary hourly rate of pay for the Employee's ordinary hours during the period of annual leave; or

27.7.2.2. the weekend penalties and/or shift loadings the Employee would have received for working his or her ordinary hours in the period of annual leave, had the Employee not been on annual leave.

27.8. If, when the employment of an Employee ends, the Employee has a period of accrued but untaken paid annual leave, Ballarat IVF will pay the Employee the amount that would have been payable to the Employee had the Employee taken that period of leave.

Taking annual leave

27.9. Accrued annual leave may be taken for any period agreed between Ballarat IVF and an Employee. Ballarat IVF will not unreasonably refuse to agree to an Employee's request to take accrued annual leave.

27.10. If the period during which an Employee takes paid annual leave includes a period that is:

27.10.1. an absence from work on a day that is a public holiday at the Employee's principal place of work;

27.10.2. paid personal/carer's leave;

27.10.3. unpaid carer's leave;

27.10.4. compassionate leave;

27.10.5. community service leave; or

27.10.6. long service leave

to which the Employee is entitled under the NES or this Agreement, the Employee is taken not to be on paid annual leave for the period of that other leave or absence.

Direction to take annual leave

27.11. Ballarat IVF may direct an Employee to take accrued annual leave by giving at least eight weeks' notice during all or any part of a period for which Ballarat IVF shuts down a clinic or part of the business in which the Employee works over the Christmas/New Year period in any year.

27.12. If an Employee has accrued more than 8 weeks of untaken annual leave Ballarat IVF may enter into discussions with the Employee to develop a plan for taking accrued annual leave in excess of 4 weeks, which will be recorded in writing where an agreement is reached. If no agreement is reached within 2 weeks, Ballarat IVF may direct the Employee to take accrued annual leave by giving at least 8 weeks' notice in writing, provided that the direction must not leave the Employee with less than 4 weeks of accrued annual leave remaining

27.13. If an Employee does not have a sufficient amount of accrued annual leave for a period of shutdown, the Employee may be required to take leave without pay, or annual leave in advance of accrual, for all or part of the remaining period of the shutdown.

Annual leave in advance

27.14. If agreed in writing between Ballarat IVF and an Employee, the Employee may take a period of annual leave in advance of the Employee accruing an entitlement to the annual leave.

- 27.15. If, on the termination of the Employee's employment, the Employee has not accrued an entitlement to a period of annual leave taken in advance of accrual, Ballarat IVF may deduct from any money otherwise due to the Employee on termination an amount equal to the amount that was paid to the Employee in respect of the period of annual leave taken in advance of accrual, for which the Employee has not accrued an entitlement by the time of termination.

Cashing out of annual leave

- 27.16. Paid annual leave may be cashed out by an Employee by agreement in accordance with this clause, and not otherwise.
- 27.17. Each cashing out of a particular amount of paid annual leave by an Employee must be the subject of a separate agreement in writing between Ballarat IVF and the Employee. The agreement must specify:
- 27.17.1. the amount of annual leave being cashed out;
 - 27.17.2. the amount that will be paid to the Employee for the annual leave being cashed out; and
 - 27.17.3. the date on or by which the payment will be made.
- 27.18. Where any amount of paid annual leave is cashed out, the Employee must be paid at least the full amount that would have been payable to the Employee had the Employee taken that amount of annual leave at the time the payment is made, including annual leave loading.
- 27.19. Annual leave must not be cashed out if the cashing out would result in the Employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.

Transfer of employment situations that affect the entitlement to payment of annual leave

- 27.20. If there is a transfer of employment in relation to an Employee and the second employer recognises the Employee's service with Ballarat IVF for the purposes of annual leave, the Employee is not entitled to be paid any amount for a period of untaken paid annual leave on termination of the Employee's employment with Ballarat IVF.

28. PERSONAL/CARERS LEAVE

Paid personal/carer's leave

- 28.1. This clause is supplementary to and does not exclude the terms of the NES relating to personal/carer's leave.
- 28.2. A casual Employee is not entitled to paid personal/carer's leave.
- 28.3. An Employee (other than a casual Employee) will be entitled to paid personal/carer's leave as follows:
- 28.3.1. 7 hours and 36 minutes per month for a full time Employee (pro rata for a part time Employee) in the first year of continuous service;
 - 28.3.2. 106 hours and 24 minutes per year of service for a full time Employee (pro rata for a part time Employee) for the second, third and fourth years of continuous service (inclusive); and

- 28.3.3. 159 hours 36 minutes per year for a full time Employee (pro rata for a part time Employee) for the fifth and subsequent years of continuous service.
- 28.4. An Employee's entitlement to 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.

Taking personal/carer's leave and unpaid carer's leave

- 28.5. Subject to the notice and evidence requirements in clause 28.10, personal/carer's leave may be taken by an Employee:
 - 28.5.1. if the Employee is not fit for work because of a personal illness or personal injury affecting the Employee; or
 - 28.5.2. 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:
 - 28.5.2.1. a personal illness, or personal injury affecting that person; or
 - 28.5.2.2. an unexpected emergency affecting that person.
- 28.6. If an Employee takes a period of paid personal/carer's leave, Ballarat IVF must pay the Employee at the Employee's ordinary hourly rate of pay for the Employee's ordinary hours of work in the period.
- 28.7. If the period during which an Employee takes paid personal/carer's leave includes a day that is a public holiday at the Employee's principal place of work, the Employee is taken not to be on paid personal/carer's leave on that public holiday.

Unpaid carer's leave

- 28.8. Subject to the notice and evidence requirements in clause 28.10, an Employee is entitled under the NES to 2 days of unpaid carer's leave for each occasion when a member of the Employee's immediate family, or a member of the Employee's household, requires care or support because of:
 - 28.8.1. a personal illness, or personal injury affecting that person; or
 - 28.8.2. an unexpected emergency affecting that person.
- 28.9. 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 for paid personal/carer's leave and unpaid carer's leave

- 28.10. An Employee's entitlement to take either personal/carer's leave or unpaid carer's leave is conditional on and subject to the Employee:
 - 28.10.1. giving Ballarat IVF notice of the taking of that type of leave as soon as practicable and advising Ballarat IVF of the period or expected period of the leave; and
 - 28.10.2. on request by Ballarat IVF, providing Ballarat IVF with evidence (which may be in the form of a medical certificate or such other form of evidence as is reasonably requested by Ballarat IVF) which satisfies Ballarat IVF

that the leave is being taken for a reason which would entitle the Employee to take that kind of leave.

29. COMPASSIONATE LEAVE

- 29.1. An Employee is entitled to 4 days of compassionate leave for each occasion (**permissible occasion**) when a member of the Employee's immediate family, or a member of the Employee's household:
- 29.1.1. contracts or develops a personal illness that poses a serious threat to his or her life;
 - 29.1.2. sustains a personal injury that poses a serious threat to his or her life; or
 - 29.1.3. dies.
- 29.2. Subject to the notice and evidence requirements in clause 29.5, an Employee may take compassionate leave for a particular permissible occasion if the leave is taken:
- 29.2.1. 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 29.1.1 or 29.1.2, at any time while the injury or illness subsists;
 - 29.2.2. after the death of the member of the Employee's immediate family or household which is referred to in clause 29.1.3.
- 29.3. Compassionate leave may be taken for a particular permissible occasion as:
- 29.3.1. a single continuous period;
 - 29.3.2. 2 separate periods of at least one day each; or
 - 29.3.3. any separate periods to which the Employee and Ballarat IVF agree.
- 29.4. An Employee (other than a casual Employee) will be paid for a period of compassionate leave taken by the Employee, at the Employee's ordinary hourly rate of pay for the Employee's ordinary hours of work in the period of leave. A casual Employee is not entitled to be paid for a period of compassionate leave.
- 29.5. An Employee's entitlement to take compassionate leave is subject to the Employee:
- 29.5.1. giving Ballarat IVF notice of the taking of compassionate leave as soon as practicable and advising Ballarat IVF of the period, or expected period, of the leave; and
 - 29.5.2. on request by Ballarat IVF, providing Ballarat IVF with evidence (which may be in the form of a medical certificate or such other form of evidence as is reasonably requested by Ballarat IVF) which satisfies Ballarat IVF that the leave is being taken for a reason which would entitle the Employee to take compassionate leave under the NES.

30. COMMUNITY SERVICE LEAVE

- 30.1. Community service leave is provided for by the NES. This clause is included for purpose of providing information about NES entitlements at the time commenting of this Agreement only, and does not incorporate or replace the provisions of the NES in relation to community service leave.

- 30.2. The NES provides Employees who engage in eligible community service activities with entitlements to be absent from work for specified purposes associated with those activities, subject to notice and evidence requirements contained in the NES. Community service leave (other than in the case of jury service) is unpaid leave.

31. LONG SERVICE LEAVE

- 31.1. Entitlements to long service leave in accordance with applicable award derived long service leave terms are provided for by the NES.
- 31.2. The award derived long service leave terms prescribed by the Health Services Union of Australia (Victoria – Private Sector – Medical Scientists, Psychologists and Pharmacists) Award 2004 (AP833755CRV) (**pre-modern award**) are set out as Schedule 3 for ease of reference.
- 31.3. Where an Employee covered by this Agreement is entitled to long service leave in accordance with the award derived long service terms set out in Schedule 3:
- 31.3.1. a reference in the terms set out in Schedule 3 to personal leave under clause 30 of the pre-modern award will be read as a reference to personal/carer's leave under clause 28 of this Agreement;
 - 31.3.2. a reference in the terms set out in Schedule 3 to payment for "accident pay" made under clause 37 of the pre-modern award will be read as a reference to a payment for accident make-up pay made under clause 36 of this Agreement;
 - 31.3.3. a reference in the terms set out in Schedule 3 to "pay" will be read as a reference to the amount payable to the Employee for ordinary hours of work calculated at the Employee's ordinary hourly rate of pay under clause 18 of this Agreement; and
 - 31.3.4. an absence from work by a male Employee not exceeding 12 months in respect of a pregnancy of the Employee's spouse or domestic partner will be regarded in the same way as an absence from work by a female Employee for a period not exceeding 12 months in respect of pregnancy;
 - 31.3.5. a reference in the terms set out in Schedule 3 to the "Commission" will be read as a reference to the FWC.

32. PARENTAL LEAVE

Unpaid parental leave

- 32.1. Entitlements to unpaid parental leave are provided for in the NES. Clauses 32.2 and 32.3 are included for the purpose of providing information about NES entitlements at the time of commencement of this Agreement only, and this clause does not incorporate or replace the provisions of the NES relating to unpaid parental leave. This clause 32 otherwise contains supplementary terms which provide Employees with additional entitlements.
- 32.2. The NES provides an Employee who meets eligibility, notice and evidence requirements contained in the NES with an entitlement to take up to 12 months of unpaid parental leave, and to request an extension of the period of unpaid leave for up to a further 12 months (which may be refused by an Employer on reasonable business grounds), if the leave is associated with the birth of a child of the Employee, or the Employee's spouse or partner, or the placement of a child with the Employee for adoption.

- 32.3. The NES also contains associated entitlements, such as entitlements to unpaid no safe job leave and unpaid special maternity leave which apply in limited circumstances. Entitlements to unpaid parental leave and/or associated entitlements under the NES are affected by matters including an Employee's length of service and the circumstances and age of a child being placed for adoption. The NES also contains terms that regulate the times at which unpaid parental leave may be taken by Employees, including if the Employee's partner also takes a period of unpaid parental leave.

Additional entitlement to unpaid parental leave

- 32.4. An Employee who is eligible for Dad and Partner Pay under the *Paid Parental Leave Act 2010*, but who is not entitled to take unpaid parental leave under the NES will be entitled to take 2 weeks of unpaid parental leave under this clause in order to access the Dad and Partner Pay entitlement from the Commonwealth under the *Paid Parental Leave Act 2010*.

Paid parental leave

- 32.5. An Employee (other than a casual Employee) who is entitled to unpaid parental leave under the NES and who will be the primary carer for the child to whom the leave relates immediately after the birth or adoption of the child, will be entitled to be paid for five weeks of the period of parental leave taken by the Employee in accordance with the NES, at the Employee's ordinary hourly rate of pay for ordinary hours in the period of leave.
- 32.6. An Employee (other than a casual Employee) who is entitled to unpaid parental leave under the NES and who will not be the primary carer for the child to whom the leave relates immediately after the birth or adoption of the child, will be entitled to be paid for two weeks of the period of parental leave taken by the Employee in accordance with the NES at the Employee's ordinary hourly rate of pay for ordinary hours in the period of leave.
- 32.7. Payment for a period of parental leave taken by the Employee may instead be made at half the rate of pay for double the period provided for by clause 32.5 or 32.6.
- 32.8. The payment to which an Employee is entitled for a period of parental leave under this clause is intended to be separate from and additional to any payment the Employee is entitled to receive from the Commonwealth under the *Paid Parental Leave Act 2010* for a period of parental leave.

Attendance at prenatal appointments and parenting classes

- 32.9. In addition to any entitlement the Employee otherwise has to take paid personal/carer's leave, an Employee (other than a casual Employee) may take up to 2 days of the Employee's paid personal/carer's leave entitlement per year, to attend prenatal appointments or parenting classes associated with the birth or expected birth of a child of the Employee or the Employee's spouse or de facto partner, if those appointments or classes are only available during the Employee's ordinary rostered hours.
- 32.10. The entitlement to take leave in accordance with clause 32.9 is subject to and conditional on the Employee providing Ballarat IVF with notice of the Employee's intention to take the leave as soon as practicable and, on request by Ballarat IVF, providing Ballarat IVF with evidence in a form that satisfies Ballarat IVF that the Employee is entitled to take the leave.

Special maternity leave

- 32.11. Unpaid special maternity leave is provided for by the NES. This clause does not incorporate or replace the provisions of the NES relating to unpaid special maternity leave, but contains supplementary terms which provide Employees with an additional entitlement to paid leave.
- 32.12. If the pregnancy of an Employee terminates after 20 weeks other than by the birth of a living child the Employee (other than a casual Employee) will be entitled to take up to four weeks of paid special maternity leave, commencing on the date the pregnancy terminates.
- 32.13. Where an Employee (other than a casual Employee) takes a period of paid special maternity leave to which the Employee is entitled under clause 32.12, the Employee will be paid at the Employee's ordinary hourly rate of pay for ordinary hours during the period of leave.
- 32.14. An Employee's entitlement to take a period of paid special maternity leave under clause 32.12 is subject to and conditional on the Employee, on request by Ballarat IVF, providing Ballarat IVF with evidence (which may be in the form of a medical certificate or such other form of evidence as is reasonably requested by Ballarat IVF) which satisfies Ballarat IVF that the Employee is entitled to take that period of leave.
- 32.15. For the avoidance of doubt, the entitlement to paid special maternity leave under clause 32.12 is separate and additional to any personal/carer's leave which the Employee is otherwise entitled to take under this Agreement, including in the event of termination of the Employee's pregnancy.

33. REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

- 33.1. Requests for flexible working arrangements are provided for by the NES. Clause 33.2 is included for the purpose of providing information about NES entitlements at the commencement of this Agreement only and does not incorporate or replace the terms of the NES relating to requests for flexible working arrangements. Clause 33.3 supplements the terms of the NES.
- 33.2. The NES provide an entitlement to an employee who meets the eligibility criteria and service requirements specified in the NES to make a written request for a change to their working arrangements because of personal circumstances listed in the NES. . At the time of commencement of this Agreement, the circumstances listed in the NES which entitle an Employee to make a request, are that the Employee:
 - 33.2.1. is the parent, or has responsibility for the care, of a child who is of school age or younger;
 - 33.2.2. is a carer (within the meaning of the *Carer Recognition Act 2010*);
 - 33.2.3. has a disability;
 - 33.2.4. is 55 or older;
 - 33.2.5. is experiencing violence from a member of the Employee's family;
 - 33.2.6. provides 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 the member is experiencing violence from the member's family;
- 33.3. Any agreement made between Ballarat IVF and an Employee to vary the Employees working arrangements as a result of a request for flexible working arrangement made in accordance with the NES will be recorded in writing.

34. PROFESSIONAL DEVELOPMENT

If an Employee is required and authorised by Ballarat IVF to attend a professional development conference or training course, the necessary costs of registration, travel and/or accommodation to attend the conference or course will be paid by Ballarat IVF and the time spent at the conference or training course will be regarded as time worked.

35. STUDY LEAVE

An Employee (other than a casual Employee) will be entitled to take up to two days of paid study leave per examination, to study for and/or attend an examination that the Employee is required to sit as part of a course of study approved in writing by Ballarat IVF for this purpose.

36. ACCIDENT MAKE UP PAY

36.1. **Accident Make-Up Pay** means the ordinary hourly rate of pay for the Employee's ordinary hours of work in a week under this Agreement, less the weekly amount of compensation paid or payable to the Employee in accordance with the *Workplace Injury, Rehabilitation and Compensation Act 2013 (WIRC Act)* and any amount paid to the Employee for hours actually worked by the Employee in that week (calculated on a pro rata basis where the period for which the payment is to be made is less than one week).

36.2. Ballarat IVF will pay Accident Make-Up Pay to an Employee (other than a casual Employee) for a maximum period of 13 weeks in respect of any one injury if, as a result of a workplace injury occurring after the commencement of this Agreement, Ballarat IVF is liable to pay the Employee weekly payments of compensation pursuant to the provisions of the WIRC Act as amended from time to time.

36.3. The entitlement to be paid Accident Make Up Pay will cease if:

36.3.1. the Employee ceases to be entitled to receive weekly payments of compensation;

36.3.2. the Employee receives a lump sum in redemption or in lieu of weekly payments of compensation;

36.3.3. the Employee's employment with Ballarat IVF ends; or

36.3.4. the Employee dies.

36.4. An Employee's entitlement to be paid Accident Make-Up Pay is conditional on the Employee:

36.4.1. complying with the Employee's return to work obligations under the WIRC Act;

36.4.2. attending any medical examinations requested by Ballarat IVF's insurer; and

36.4.3. performing any duties (including any of the Employee's ordinary duties or suitable alternative duties) which the Employee is certified by a medical practitioner as fit to perform, and which Ballarat IVF makes available for the Employee in accordance with a return to work plan made in accordance with the *Workplace Injury Rehabilitation and Compensation Act 2013*.

37. OCCUPATIONAL HEALTH AND SAFETY

- 37.1. Employees must strictly comply with their statutory and other duties relating to occupational health and safety, and with all policies, procedures and directions of Ballarat IVF relating to occupational health and safety. Ballarat IVF must comply with its statutory and other duties relating to occupational health and safety and the provision of a safe workplace for its employees.
- 37.2. Without limitation, an Employee must take reasonable care for his or her own health and safety and for the health and safety of any person who may be affected by their acts or omissions at the workplace or otherwise in the course of work, and must cooperate with Ballarat IVF in response to any action taken by Ballarat IVF to comply with requirements imposed by applicable occupational health and safety legislation, including the *Occupational Health and Safety Act 2004* (Vic) and regulations made under that Act.
- 37.3. An Employee's refusal or failure to comply with the Employee's duties or with any of Ballarat IVF's policies, procedures or directions relating to occupational health and safety, or any conduct of an Employee (whether by act or omission) which creates a risk to health and safety (whether to the Employee or to any other person) will be grounds for disciplinary action

38. DISCRIMINATION, BULLYING AND HARASSMENT

- 38.1. Employees are prohibited from:
 - 38.1.1. bullying any person in the course of or in connection with employment;
 - 38.1.2. sexually harassing any person in the course of or in connection with employment;
 - 38.1.3. acting in a discriminatory manner towards any person contrary to the provisions of any State or Commonwealth equal opportunity or discrimination legislation applicable in the state in which the Employee is employed;
 - 38.1.4. victimising any other person who has made a complaint of bullying, discrimination or sexual harassment.
- 38.2. Bullying, discrimination, harassment and victimisation are unlawful behaviours and may result in disciplinary action, including termination of employment.

39. SMOKING, DRUGS AND ALCOHOL

- 39.1. Employee must not smoke in any vehicle provided by Ballarat IVF or in any part of a workplace except in designated smoking areas.
- 39.2. The parties covered by this Agreement acknowledge that alcohol, illegal drugs and legal medications each have the potential to adversely affect an Employee's ability to perform his or her required duties safely.
- 39.3. An Employee must not commence or continue work unless the Employee has a blood alcohol concentration of less than 0.05% and no illegal drugs present in the Employee's body.
- 39.4. An Employee must not bring alcohol or illegal drugs to work, or consume any alcohol or illegal drugs during working hours (including meal breaks) or whilst at work, unless expressly permitted to consume alcohol at a function or event organised by Ballarat IVF.

- 39.5. At any function or event where an Employee is permitted to consume alcohol, the Employee must limit his or her alcohol consumption to a reasonable level. Inappropriate, violent, offensive or drunken behaviour at work functions or events is not permitted and may result in disciplinary action being taken against the Employee, including termination of employment.
- 39.6. If an Employee is taking prescribed medication, or over the counter medication which may adversely affect the Employee's ability to work safely, the Employee must inform Ballarat IVF prior to commencing work. Ballarat IVF may require the Employee to undertake alternate duties or not attend work if in the reasonable opinion of Ballarat IVF, the Employee is unable to perform his or her usual duties safely.

40. CONFLICT OF INTEREST

- 40.1. An Employee must avoid any conflict between the interests of Ballarat IVF and the interest of the Employee, and at all times during the Employee's employment, act in the best interest of Ballarat IVF to the exclusion of any personal interest or advantage.
- 40.2. An Employee must, at the earliest opportunity, make full written disclosure to Ballarat IVF of all facts or circumstances which do or may give rise to a conflict between the interest of the Employee and the interests of Ballarat IVF. At the direction of Ballarat IVF, an Employee must take such steps as Ballarat IVF considers reasonably necessary to prevent, avoid or end any conflict of interest.
- 40.3. An Employee must devote the whole of the Employee's attention, time and ability to carrying out the Employee's duties during the hours the Employee is employed to work for Ballarat IVF.
- 40.4. An Employee must not undertake any work or employment for, or provide services to any third party or business (except as authorised on behalf of Ballarat IVF) without the prior written consent of Ballarat IVF:
 - 40.4.1. during the hours that the Employee is employed to work for Ballarat IVF;
 - 40.4.2. at Ballarat IVF's workplace; or
 - 40.4.3. using Ballarat IVF's property (including intellectual property) or information.
- 40.5. An Employee must not engage in conduct which causes a risk to the reputation or viability of Ballarat IVF's business.
- 40.6. During an Employee's employment with Ballarat IVF, the Employee must not engage in any employment or business that is competitive with the business of Ballarat IVF without Ballarat IVF's express written consent.
- 40.7. An Employee must not accept any payment or other benefit from any third party (including any patient, client, customer or supplier of Ballarat IVF) as an inducement or reward for any act or forbearance in connection with any matter done or to be done by or on behalf of Ballarat IVF, or otherwise in connection with the Employee's employment with Ballarat IVF, without Ballarat IVF's express written consent.

41. CONFIDENTIAL INFORMATION

- 41.1. Confidential Information includes:
 - 41.1.1. patient/client lists, identities and/or contact information;
 - 41.1.2. personal or health information;

- 41.1.3. financial information;
- 41.1.4. information which is commercially sensitive;
- 41.1.5. information concerning Ballarat IVF's clients, patients, suppliers, employees, officers, directors, business, policies, procedures, plans, techniques, intellectual property, methods or technology;
- 41.1.6. information which is designated or marked as confidential, or which an Employee ought reasonably know is confidential in nature;

but does not include information which is in the public domain other than as a result of any use or disclosure of that information by or involving an Employee.

- 41.2. Confidential Information which becomes known to an Employee during the Employee's employment must not be:

- 41.2.1. disclosed by the Employee to any other person; or
- 41.2.2. used by the Employee for the Employee's personal benefit, or the benefit of any other person (except to the extent necessary in the course of the Employee's duties); or
- 41.2.3. used by the Employee other than for Ballarat IVF's business purposes;

at any time without Ballarat IVF's express written consent.

- 41.3. Nothing in this clause restricts or limits an Employee's continuing obligations with respect to Confidential Information after the termination of the Employee's employment.
- 41.4. Employees must comply with the requirements of all relevant laws and Ballarat IVF's directions in relation to personal information, health information and health records (including in relation to the collection, use, storage or disclosure of, and/or access to, such information or records) and must not engage in conduct that breaches, or causes Ballarat IVF to breach, any obligations with respect to such information.

42. POLICIES AND PROCEDURES

- 42.1. Ballarat IVF's policies and procedures are not incorporated into this Agreement and may be made, amended, revoked or terminated by Ballarat IVF at its discretion from time to time.
- 42.2. Policies and procedures may contain directions to Employees with which Employees will be required to comply. Refusal or failure to comply with Ballarat IVF's policies or procedures may provide grounds for disciplinary action, which may include termination of employment.
- 42.3. Employees are required to read and ensure that they understand Ballarat IVF' policies and procedures as made or amended from time to time and may be required to declare in writing that the Employee has read any or all such policies or procedures and understands the obligations which the policies or procedures impose.

43. DISCIPLINARY PROCEDURE

Application of clause

- 43.1. This clause will not apply to an Employee unless and until the Employee has completed 6 months of continuous service with Ballarat IVF.

Discussion regarding possible disciplinary action

- 43.2. If Ballarat IVF is considering taking disciplinary action against an Employee under this clause (including by issuing a first, second, third, or final warning, or terminating the Employee's employment), Ballarat IVF will:
- 43.2.1. notify the Employee of the reason it is considering taking disciplinary action; and
 - 43.2.2. give the Employee an opportunity to respond.
- 43.3. An Employee may be accompanied by a support person whose role may include providing the Employee with personal and/or emotional support and advice, but who may not act as an advocate for the Employee (who may be a representative of the HSU) at meetings relating to disciplinary action.

Disciplinary procedures (minor matters)

- 43.4. If after considering the Employee's response (if any) to any allegations Ballarat IVF determines that there are performance or conduct issues relating to an Employee, or the Employee's performance or conduct is not meeting the standard required by Ballarat IVF, Ballarat IVF may (without limitation) counsel the Employee or give the Employee a first written warning.
- 43.5. If there are performance issues, Ballarat IVF may provide the Employee with additional training to address any skills deficit, if Ballarat IVF determines that further training is appropriate in the circumstances and the Employee will be afforded a reasonable amount of time to demonstrate improvement.
- 43.6. If Ballarat IVF determines, after considering the Employee's response (if any), that there there are further performance or conduct issues after a first written warning has been given, or the Employee's conduct or performance has not improved to the standard required by Ballarat IVF, the Employee may be given a second written warning
- 43.7. If Ballarat IVF determines after considering the Employee's response (if any) that there are further performance or conduct issues after a second warning has been given, or the Employee's performance or conduct has not improved to the standard required by Ballarat IVF, the Employee may be given a final written warning.
- 43.8. If there are further performance or conduct issues after a final written warning has been given or the Employee's performance or conduct has not improved to the standard required, the Ballarat IVF may (without limitation) after considering the Employee's response (if any) decide to terminate the Employee's employment.
- 43.9. A record of written warnings given to an Employee by Ballarat IVF will be recorded on the Employee's personnel file in writing
- 43.10. For the avoidance of doubt, this clause does not prevent Ballarat IVF from deciding to take alternative or additional measures where it determines that alternative or additional matters are appropriate, after considering the Employee's response (if any), which may include (for example) providing a verbal warning, counselling in relation to the Employee's performance or conduct, suspending the Employee from work on pay while investigating allegations made against them, or terminating the Employee's employment.

Disciplinary procedures (serious matters)

- 43.11. Notwithstanding the above, if Ballarat IVF determines that a performance or conduct matter relating to an Employee is a serious matter, Ballarat IVF may after considering

the Employee's response (if any) give the Employee a final written warning, or decide to terminate the Employee's employment (which may include summary dismissal in the case of serious misconduct).

44. TERMINATION OF EMPLOYMENT

- 44.1. This clause does not apply to a casual Employee.
- 44.2. Ballarat IVF may terminate the employment of an Employee by providing the Employee with:
 - 44.2.1. 1 week of notice of termination in writing, if the Employee has completed no more than one year of continuous service with Ballarat IVF at the end of the day notice is given; or
 - 44.2.2. 4 weeks' notice of termination in writing, if the Employee has completed more than one year of continuous service with Ballarat IVF at the end of the day the notice is given.
- 44.3. If the Employee has completed more than 5 years of continuous service with Ballarat IVF and is over 45 years of age at the end of the day the notice is given, Ballarat IVF must provide an additional week of notice of termination.
- 44.4. The period of written notice of termination required to be given to Ballarat IVF by an Employee is the same as that which would be required to be given by Ballarat IVF, except that there is no requirement for the Employee to give any additional notice based on the age of the Employee.
- 44.5. If an Employee fails to give Ballarat IVF the required period of notice of termination in writing, Ballarat IVF may withhold from any monies which would otherwise be due to the Employee on termination of the Employee's employment, an amount not exceeding the amount the Employee would have been paid under this Agreement in respect of the period of notice required by this clause but not given by the Employee.
- 44.6. Ballarat IVF may, at its election, pay an Employee in lieu of all or part of any period of notice of termination given by either party, or which would otherwise be required to be given by Ballarat IVF. Payment in lieu of notice will be calculated at the Employee's full rate of pay (within the meaning of the FW Act) for the hours the Employee would have worked had the employment continued until the end of the minimum period of notice.
- 44.7. Where Ballarat IVF gives notice of termination to an Employee, the Employee will be allowed up to one day's time off without loss of pay during the notice period, for the purpose of seeking other employment.
- 44.8. Nothing in this clause or this Agreement requires Ballarat IVF to provide notice of termination or payment in lieu of notice to:
 - 44.8.1. a casual Employee;
 - 44.8.2. an Employee whose employment is terminated because of serious misconduct;
 - 44.8.3. an Employee employed for a specified period of time, for a specified task, or for the duration of a specified season; or
 - 44.8.4. 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.

45. REDUNDANCY PAY

- 45.1. An Employee is entitled to be paid redundancy pay by Ballarat IVF if the Employee's employment is terminated:
- 45.1.1. at Ballarat IVF's initiative, because Ballarat IVF no longer requires the job done by the Employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
 - 45.1.2. because of the insolvency of Ballarat IVF.
- 45.2. The amount of redundancy pay equals the total amount payable by Ballarat IVF for the redundancy pay period worked out using the following table, at the Employee's ordinary hourly rate of pay for the Employee's ordinary hours of work.

Redundancy pay period		
	Employee's period of continuous service with Ballarat IVF on termination	Redundancy pay period
1	At least 1 year but less than 2 years	4 weeks
2	At least 2 years but less than 3 years	6 weeks
3	At least 3 years but less than 4 years	7 weeks
4	At least 4 years but less than 5 years	8 weeks
5	At least 5 years but less than 6 years	10 weeks
6	At least 6 years but less than 7 years	11 weeks
7	At least 7 years but less than 8 years	13 weeks
8	At least 8 years but less than 9 years	14 weeks
9	At least 9 years	16 weeks

Exclusions from obligation to pay redundancy pay

- 45.3. An Employee is not entitled to redundancy pay if, immediately before the time of the termination, or at the time the Employee was given notice of termination (whichever happened first):
- 45.3.1. the Employee's period of continuous service with Ballarat IVF is less than 12 months; or
 - 45.3.2. Ballarat IVF is a small business employer, within the meaning of the FW Act.

Transfer of employment that affect the obligation to pay redundancy pay

- 45.4. If there is a transfer of employment in relation to an Employee within the meaning of the FW Act, and the Employee's service with Ballarat IVF counts as service with the second employer for the purpose of redundancy pay, the Employee will not be entitled to be paid redundancy pay by Ballarat IVF.
- 45.5. An Employee is not entitled to redundancy pay in relation to the termination of the Employee's employment with Ballarat IVF if:
- 45.5.1. the Employee rejects an offer of employment made by another employer that:

- 45.5.1.1. 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 Ballarat IVF immediately before the termination; and
- 45.5.1.2. recognises the Employee's service with the Ballarat IVF, for the purpose of redundancy pay; and
- 45.5.2. had the Employee accepted the offer, there would have been a transfer of employment in relation to the Employee, within the meaning of the FW Act.

Transfer to lower paid duties

- 45.6. If an Employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given to the Employee by Ballarat IVF as the Employee would have been entitled to if the Employee's employment had been terminated. Ballarat IVF may, at its option, make payment in lieu of all or part of that period of notice, in an amount equal to the difference between the Employee's former ordinary hourly rate of pay for ordinary hours and the Employee's new ordinary hourly rate of pay for ordinary hours for the period of notice not given.

Employee leaving during notice period

- 45.7. An Employee who is given notice of termination because of redundancy may terminate his or her employment during the period of notice. In this case, the Employee will remain entitled to be paid any amount of redundancy pay the Employee would have received in accordance with this clause had the Employee remained in employment until the expiry of the notice period, but will not be entitled to any payment in lieu of notice.

Job search entitlement

- 45.8. An Employee who is given notice of termination because of redundancy may take up to one day's time off without loss of pay during each week of the notice period, for the purpose of seeking other employment, instead of the entitlement provided for in clause 44.7. If the Employee takes more than one day off during the notice period for the purposes of seeking other employment, the Employee's entitlement to payment is subject to and conditional on the Employee producing proof of attendance at an interview.

46. STAND DOWN

- 46.1. Ballarat IVF may stand an Employee down from duties, or require the Employee to perform restricted or modified duties at Ballarat IVF's discretion:
 - 46.1.1. for the purpose of investigating a complaint or allegation of misconduct involving the Employee; or
 - 46.1.2. during all or any part of a period of notice of termination of employment given by either party.
- 46.2. An Employee will be entitled to continue to receive payment of the Employee's ordinary hourly rate for the Employee's ordinary hours calculated in accordance with this Agreement during a period of stand down in accordance with this clause.

47. USE AND RETURN OF PROPERTY AND EQUIPMENT

- 47.1. An Employee must not remove any item of property belonging to Ballarat IVF from Ballarat IVF's premises without Ballarat IVF's express consent, except where this is

necessary in the ordinary course of the Employee's duties. Any property belonging to or supplied by Ballarat IVF must be maintained by Employees in good order and condition (fair wear and tear excepted) and must not be used for an Employee's personal benefit, or the benefit of any other person (except as necessary in the course of the Employee's duties) without Ballarat IVF's express consent.

47.2. On termination of an Employee's employment, and otherwise on request by Ballarat IVF, an Employee must return any property (including without limitation keys, access cards, electronic devices, clothing, equipment and/or documents) belonging to or provided by Ballarat IVF. Where a document is required to be returned to Ballarat IVF, the Employee must return any original and copies of the documents in the Employee's possession, whether in hard copy or electronic form, and the Employee will not be entitled to make or retain a copy of any such documents or the information recorded therein.

EXECUTION

SIGNED for and on behalf of Ballarat IVF Pty Ltd
by its duly authorised representative in the
presence of:

Name: RUSSELL VICTOR DALTON
 Address: 1105 HOWE ST WENDOOBEE
 Authority to sign: Director Ballarat IVF.

K Neale

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Witness

SIGNED by Rosemary Kelly
bargaining representative for the Agreement in the
presence of: JAMES CINIAR

Name: _____
Address: LEVEL 1, 62 LYON STREET
Authority to sign: CARLTON SOUTH
VICTORIA 3053

.....
Witness

ASSISTANT SECRETARY
HEALTH SERVICES UNION
VICTORIA NO 24 BRANCH

SCHEDULE 1 CLASSIFICATIONS

1. Graduate Scientist Level 1

- 1.1. Positions at level 1 are regarded as entry level positions and for initial years of experience.
- 1.2. This level is the entry level for new graduates who meet the requirement to practise as a scientist (where appropriate in accordance with their professional association's rules and be eligible for membership of their professional association) or such qualification as deemed acceptable by Ballarat IVF. It is also the level for the early stages of the career of a scientist.
- 1.3. Graduate Scientist Level 1 will include a scientist who possesses a science degree, but has no direct experience in the field of IVF laboratory work.
- 1.4. The duties and responsibilities of a Graduate Scientist Level 1 may include:
 - 1.4.1. working closely with a more experienced scientist in order to acquire basic skills.
 - 1.4.2. validation and provision of results of basic procedures.
 - 1.4.3. managing or assisting with specimen reception.
 - 1.4.4. undertaking mock procedure training opportunities when appropriate.
 - 1.4.5. contribution to data collection, record keeping, and generation of performance reports.

2. Scientist Level 2

- 2.1. A scientist level 2:
 - 2.1.1. works independently and is required to exercise independent judgment on routine tasks and activities in the IVF laboratory.
 - 2.1.2. holds special knowledge, and a full range of technical skills required for undertaking work in the IVF laboratory.
- 2.2. A Scientist Level 2 may require professional supervision from more senior members of the profession or health team when performing novel, complex, or critical tasks. They have demonstrated a commitment to continuing professional development and may have contributed to workplace education through provision of seminars, lectures or in-services. At this level the scientist may be actively involved in quality improvement activities or research.
- 2.3. At this level the scientist contributes to the evaluation and analysis of guidelines, policies and procedures applicable to their clinical/professional work and may be required to contribute to the supervision of discipline specific students.
- 2.4. The duties and responsibilities of a Scientist Level 2 may include:
 - 2.4.1. undertaking the day to day routine tasks in the IVF laboratory.
 - 2.4.2. liaising with nursing staff, doctors and patients regarding planning, progress, and outcomes of laboratory processes.
 - 2.4.3. making significant contributions to process improvements when required.

- 2.4.4. participation in all laboratory quality assurance activities.
- 2.4.5. providing training opportunities to more junior staff, and students.

3. Senior Scientist Level 3

- 3.1. A scientist at this level is an experienced scientist and able to independently apply professional knowledge and judgment when performing novel, complex, or critical tasks specific to their discipline.
- 3.2. At this level scientists will have additional responsibilities. This level will include a scientist employed as Laboratory Supervisor.
- 3.3. An employee at this level:
 - 3.3.1. works in an area that requires high levels of specialist knowledge and skill as recognised by Ballarat IVF;
 - 3.3.2. is actively contributing to the development of professional knowledge and skills in their field of work as demonstrated by positive impacts on service delivery, positive referral patterns to area of expertise and quantifiable/measurable improvements in health outcomes;
 - 3.3.3. may be accountable for allocation and/or expenditure of resources and ensuring targets are met and is responsible for ensuring optimal budget outcomes for their customers and communities;
 - 3.3.4. may be responsible for providing regular feedback and appraisals for senior staff to improve health outcomes for customers and for maintaining a performance management system; and
 - 3.3.5. is responsible for providing support for the efficient, cost effective and timely delivery of services.
 - 3.3.6. is undertaking, or has achieved, a Masters degree in the field of reproductive biology.
 - 3.3.7. may contribute, under supervision, to work of a research or developmental nature.
- 3.4. The duties and responsibilities of a Senior Scientist Level 3 may include:
 - 3.4.1. supervision of scientists in their daily tasks.
 - 3.4.2. assisting management with the rostering of staff to meet the workload requirements of the laboratory.
 - 3.4.3. overseeing and maintenance of equipment and instrumentation.
 - 3.4.4. creation and modification of work instructions and procedure manuals.
 - 3.4.5. responsibility for accurate record keeping.
 - 3.4.6. training and performance reviews of more junior scientists.
 - 3.4.7. technical supervision of procedures and equipment in the IVF laboratory.
 - 3.4.8. active participation in the application of the Ballarat IVF Quality Management System.

- 3.4.9. preparation of laboratory processes and procedures for accreditation.
- 3.4.10. ordering and maintenance of stock and consumables in the laboratory.
- 3.4.11. preparation of reports of laboratory performance indicators.
- 3.5. The duties and responsibilities of a Senior Scientist Level 3 employed as the Laboratory Supervisor may also include:
 - 3.5.1. overseeing collection of, and, producing Collated Laboratory Outcome Data for review by the Medical Director at monthly Ballarat IVF management meetings.
 - 3.5.2. ensuring the Ballarat IVF Laboratory Quality Management System is ready for assessment during annual RTAC accreditation visits and attending annual RTAC accreditation visits.
 - 3.5.3. liaising with management regarding operational matters, including by attending meetings with management as required, and reporting the outcomes from management meetings back to the laboratory staff.
 - 3.5.4. responsibility for training and competency of scientists working in the laboratory

4. Advanced Senior Scientist Level 4

- 4.1. A scientist at this level:
 - 4.1.1. applies a high level of professional judgment and knowledge based on experience, and in depth knowledge of scientific literature, in the field of Reproductive Biology when performing a wide range of novel, complex, and critical tasks, specific to their discipline.
 - 4.1.2. holds, maintains, and utilises an advanced, and directly relevant higher level tertiary qualification such as a Ph.D in the field of Reproductive biology in his/her daily work.
 - 4.1.3. actively initiates research projects designed to test, report on, and provide quality assurance for the processes in the IVF laboratory.
 - 4.1.4. has the capacity to assess functional outcomes in the IVF laboratory as they relate to quality of service, established protocols, and budgetary framework.
- 4.2. An employee at this level:
 - 4.2.1. has a proven record of achievement at a senior level;
 - 4.2.2. has the capacity to allocate resources, set priorities and ensure budgets are met within a large and complex organisation;
 - 4.2.3. may be responsible to the executive for providing effective services and ensuring budget/strategic targets are met;
 - 4.2.4. supervises staff where required; and
 - 4.2.5. is expected to develop/implement and deliver strategic business plans which increase the level of care to customers within a budget framework.
- 4.3. The duties and responsibilities of an Advanced Senior Scientist Level 4 may include
 - 4.3.1. providing support to the Laboratory Supervisor and management.

- 4.3.2. providing comprehensive oversight and consultation to laboratory staff regarding the technical operations of the Ballarat IVF laboratory.
- 4.3.3. suggesting, developing, and by way of supervision, implementing strategic plans to enhance quality of service to patients.
- 4.3.4. providing advice, opinion and perspective to the Medical Director regarding matters of quality management.
- 4.3.5. overseeing the implementation, and outcomes of new treatments or procedures.
- 4.3.6. ensuring the acquisition of high quality, contemporary technical equipment in relation to the Ballarat IVF laboratory
- 4.3.7. participating in preparation for accreditation activities and providing advice for staff undertaking these.
- 4.3.8. providing opinion regarding the budgetary impact of proposed, new processes, procedures, or new infrastructure acquisition.

**SCHEDULE 2
RATES OF PAY**

1. Ordinary hourly rates

Classification	Pay point	Ordinary hourly rate (excluding casual loading)			
		From commencement of Agreement	From first full pay period on or after 1 July 2019	From first full pay period on or after 1 July 2020	From first full pay period on or after 1 July 2021
Graduate Scientist Level 1	Pay point 1 (UG qualification)	\$28.17	\$28.87	\$29.60	\$30.34
	Pay point 2 (3 year degree entry)	\$29.26	\$29.99	\$30.74	\$31.51
	Pay point 3 (4 year degree entry)	\$30.55	\$31.31	\$32.10	\$32.90
	Pay point 4 (masters entry)	\$31.60	\$32.39	\$33.20	\$34.03
	Pay point 5 (PHD entry)	\$34.43	\$35.29	\$36.17	\$37.08
	Pay point 6	\$35.65	\$36.55	\$37.46	\$38.40
Scientist Level 2	Pay point 1	\$37.07	\$39.30	\$41.66	\$44.16
	Pay point 2	\$38.42	\$40.72	\$43.16	\$45.75
	Pay point 3	\$39.88	\$42.27	\$44.81	\$47.50
	Pay point 4	\$41.47	\$43.96	\$46.60	\$49.39
Senior Scientist Level 3	Pay point 1	\$43.27	\$45.87	\$48.62	\$51.54
	Pay point 2	\$44.48	\$47.15	\$49.98	\$52.98
	Pay point 3	\$45.44	\$48.17	\$51.06	\$54.12
	Pay point 4	\$47.46	\$50.30	\$53.32	\$56.52
	Pay point 5	\$49.21	\$52.16	\$55.29	\$58.61
Advanced Senior Scientist Level 4	Pay point 1	\$50.66	\$51.93	\$53.22	\$54.55
	Pay point 2	\$54.07	\$55.42	\$56.80	\$58.22
	Pay point 3	\$58.79	\$60.26	\$61.77	\$63.32
	Pay point 4	\$64.91	\$66.53	\$68.19	\$69.90

2. Allowances

	From Commencement of Agreement	From first full pay period on or after 1 July 2019	From first full pay period on or after 1 July 2020	From first full pay period on or after 1 July 2021
2.1. Living away from home allowance (clause 20.1.11)	\$114 per night	\$116.28 per night	\$118.60 per night	\$120.97 per night
2.2. Weekday on call allowance (clause 20.3.2).	\$25.00	\$25.50	\$26.01	\$26.52
2.3. Weekend/public holiday on call allowance (clause 20.3.2).	\$30 for the first 12 consecutive hours on call, and pro rata for each consecutive hour.	\$30.60 for the first 12 consecutive hours on call, and pro rata for each consecutive hour.	\$31.21 for the first 12 consecutive hours on call, and pro rata for each consecutive hour.	\$31.83 for the first 12 consecutive hours on call, and pro rata for each consecutive hour.
2.4. Meal allowance for overtime beyond one hour (clause 20.6.1)	\$12.62	\$12.85	\$13.11	\$13.37
2.5. Meal allowance where overtime exceeds 4 hours (clause 20.6.1)	\$11.37	\$11.60	\$11.83	\$12.07

**SCHEDULE 3
LONG SERVICE LEAVE**

32. LONG SERVICE LEAVE

32.1 Entitlement

32.1.1 An employee shall be entitled to long service leave with pay, in respect of continuous service with one and the same employer, or service with Institutions or Statutory Bodies, in accordance with the provisions of this clause.

32.1.2 The amount of such entitlement shall be:

32.1.2(a) On the completion by the employee of fifteen years continuous service - six months long service leave and thereafter an additional two months long service leave on the completion of each additional five years service.

32.1.2(b) In addition, in the case of an employee who has completed more than fifteen years service and whose employment is terminated otherwise than by the death of the employee, an amount of long service leave equal to 1/30th of the period of his/her service since the last accrual of entitlement to long service leave under paragraph 32.1.2(a).

32.1.2(c) In the case of an employee who has completed at least ten years service, but less than fifteen years service and whose employment is terminated for any cause other than serious and wilful misconduct, such amount of long service leave as equals 1/30th of the period of service.

32.2 Service entitling to leave

32.2.1 Subject to this clause service shall also include all periods during which an employee was serving in Her Majesty's Forces or was made available by the employer for National Duty.

32.2.2 For the purposes of this clause service shall be deemed to be continuous notwithstanding:

32.2.2(a) the taking of any annual leave or long service leave;

32.2.2(b) any absence from work of not more than fourteen days in any year on account of injury or illness or if applicable such longer period as provided in clause 30 - Personal leave;

32.2.2(c) any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of long service leave or annual leave;

32.2.2(d) any absence on account of injury arising out of or in the course of the employment of the employee for a period during which payment is made under clause 37 - Accident pay;

32.2.2(e) any leave of absence of the employee where the absence is authorised in advance in writing by the employer to be counted as service;

- 32.2.2(f)** any interruption arising directly or indirectly from an industrial dispute;
 - 32.2.2(g)** the dismissal of an employee if the employee is re-employed within a period not exceeding two months from the date of such dismissal;
 - 32.2.2(h)** any absence from work of a female employee for a period not exceeding twelve months in respect of any pregnancy;
 - 32.2.2(i)** any other absence of a employee by leave of the employer, or on account of injury arising out of or in the course of his or her employment not covered by 32.2.2(d).
- 32.2.3** In calculating the period of continuous service of any employee, any interruption or absence of a kind mentioned in 32.2.2(a) to 32.2.2(e) shall be counted as part of the period of his or her service, but any interruption or absence of a kind mentioned in 32.2.2(f) to 32.2.2(i) shall not be counted as part of the period of service unless it is so authorised in writing by the employer.
- 32.2.4** Every employer shall keep or cause to be kept a long service leave record for each employee, containing particulars of service, leave taken and payments made.

32.3 Payment in lieu of long service leave on the death of an employee

Where an employee who has completed at least ten year service dies while still in the employ of the employer, the employer shall pay to such employee's personal representative a sum equal to the pay of such employee for 1/30th of the period of the employee's continuous service in respect of which leave has not been allowed or payment made immediately prior to the death of the employee.

32.4 Payment for period of leave

- 32.4.1** Payment to an employee in respect of long service leave shall be made in one of the following ways:
- 32.4.1(a)** In full in advance when the employee commences his or her leave; or
 - 32.4.1(b)** At the same time as payment would have been made if the employee had remained on duty; in which case payment shall, if the employee in writing so requires, be made by cheque posted to a specified address; or
 - 32.4.1(c)** In any other way agreed between the employer and the employee.
- 32.4.2** Where the employment of an employee is for any reason terminated before he or she takes long service leave to which he or she is entitled, or where any long service leave accrues to an employee pursuant to 32.1.2(b) or 32.1.2(c), the employee shall be entitled to payment for such leave as at the date of termination.
- 32.4.3** Where an increase occurs in the ordinary time rate of pay during any period of long service leave taken by the employee, the employee shall be entitled to receive payment of the amount of any increase in pay at the completion of such leave.

32.5 Taking of leave

- 32.5.1** When an employee becomes entitled to long service leave such leave shall be granted by the employer within six months from the date of the entitlement, but the taking of such leave may be postponed to such date as is mutually agreed, or in default of agreement as is determined by the Commission: provided that no such determination shall require such leave to commence before the expiry of six months from the date of such determination.
- 32.5.2** Any long service leave shall be inclusive of any public holiday occurring during the period when the leave is taken.
- 32.5.3** If the employer and an employee so agree:
- 32.5.3(a)** the first six months long service leave to which an employee becomes entitled under this determination may be taken in two or three separate periods; and
 - 32.5.3(b)** any subsequent period of long service leave to which the employee becomes entitled may be taken in two separate periods, but save as aforesaid long service shall be taken in one period.
- 32.5.4** An employer may by agreement with an employee grant long service leave to the employee before the entitlement to that leave has accrued, provided that such leave shall not be granted before the employee has completed ten years service.
- 32.5.5** Where the employment of an employee who has taken long service leave in advance is subsequently terminated for serious and wilful misconduct before entitlement to long service leave has accrued, the employer may, from whatever remuneration is payable to the worker upon termination, deduct and withhold an amount equivalent to the amount paid to the employee in respect of the leave in advance.

32.6 Definitions

For the purpose of this clause the following definitions apply:

- 32.6.1** **Pay** means remuneration for an employee's normal weekly hours of work calculated at the employee's ordinary time rate of pay provided in clause 18 - Rates of pay, at the time the leave is taken or (if they die before the completion of leave so taken) as at the time of their death; and shall include the amount of any increase to the employee's ordinary time rate of pay which occurred during the period of leave as from the date such increase operates.
- 32.6.2** **Month** shall mean a calendar month.

IN THE FAIR WORK COMMISSION

FWC Matter No:
AG2018/5434

Applicant:

Ballarat IVF Pty Ltd

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, Russell Dalton, Director of Ballarat IVF Pty Ltd, give the following undertakings with respect to the Ballarat IVF Pty Ltd Scientists Agreement 2018-2022 (**Agreement**):

1. I have the authority to provide this undertaking on behalf of Ballarat IVF Pty Ltd in relation to the application before the Fair Work Commission.
2. In the event that the application of clauses 11.3.5, 11.3.6 and/or 23.1.2 of the Agreement would otherwise result in the total gross value of:
 - 2.1. the amount payable to an Employee for any ordinary hours agreed under clause 11.3.3 or 11.3.4 of the Agreement;
 - 2.2. the amount payable to the Employee for any hours of work which are additional to the Employee's agreed ordinary hours;
 - 2.3. the amount of superannuation payable for the benefit of the Employee; and
 - 2.4. the annual leave (including annual leave loading) accrued by the Employee for hours worked;in any four week cycle being any less than the total gross value of the equivalent benefits to which the Employee would be entitled if all of the hours worked by the Employee were instead treated and paid in accordance with the terms of the Award, Ballarat IVF will make an additional payment to the Employee for that period in a gross amount no less than the difference in those values.
3. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature



Date