



# DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Dreampath Recruitment Pty Ltd T/A Dreampath Pty Ltd**  
(AG2021/7935)

## **DREAMPATH COAL - NEW SOUTH WALES NORTHERN DISTRICT ENTERPRISE AGREEMENT 2021**

Coal industry

COMMISSIONER WILSON

MELBOURNE, 22 NOVEMBER 2021

*Application for approval of the Dreampath Coal - New South Wales Northern District  
Enterprise Agreement 2021*

[1] An application has been made for approval of an enterprise agreement known as the *Dreampath Coal - New South Wales Northern District Enterprise Agreement 2021* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Dreampath Recruitment Pty Ltd T/A Dreampath Pty Ltd. The Agreement is a single enterprise agreement.

[2] The Employer has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement. The undertakings are taken to be a term of the agreement.

[3] Subject to the undertakings referred to above, 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.

[4] The Construction, Forestry, Maritime, Mining and Energy Union 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.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 29 November 2021. The nominal expiry date of the Agreement is 29 November 2025.



COMMISSIONER

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## Annexure A

IN THE FAIR WORK COMMISSION

**Matter Number:** AG2021/7935

**Applicant:** Dreampath Recruitment Pty Ltd

**Section 185 – Application for approval of a single enterprise agreement.**

### **Undertaking – Section 190**

I Nicole Thompson, National Industrial Relations Manager give the following undertaking in relation to Dreampath Coal - New South Wales Northern District Enterprise Agreement 2021 (the Agreement).

1. I have the authority given to me by Dreampath Recruitment Pty Ltd to provide the following undertakings in relation to the application before the Fair Work Commission.
2. I have sought views of the bargaining representatives for this undertaking pursuant to section 190(4) of the *Fair Work Act (Cth)*.
3. Dreampath Recruitment Pty Ltd gives the following undertaking pursuant to section 190 of the *Fair Work Act 2009 (Cth)*.
  - a. Referencing errors  
Clause 22.4.1 references the classifications/rates of pay in clause 15, however this should be clauses 21 and 22 of the Agreement as this is where the classifications and rates of pay are located. Clause 22.4.1 also references the flat hourly rates in clause 23.3, this should be clause 22.3.
  - b. Personal/carer's leave  
This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency. The notice to be required for the taking of personal/carer's leave in clause 28.3.1 notice requirements shall be as soon as is practicable, which may be a time after the leave has started, in accordance with section 107(2)(a) of the *Fair Work Act 2009 (Cth)*.
  - c. Public holidays  
The entitlement in Clause 30.3 to substitute a public holiday with a day other than the day prescribed shall only be able to occur by agreement between the employer and an individual employee, in accordance with section 115(3) of the *Fair Work Act 2009 (Cth)*.
  - d. Abandonment of Employment  
In relation to the provisions regarding termination after abandonment of employment in Clause 10.1, an employees employment will only be terminated after the employer given written notice of the day of termination, which cannot be a day before the day the notice is given, in accordance with section 117(1) of the *Fair Work Act 2009 (Cth)*.
  - e. Redundancy  
In relation to the exemption for redundancy payments in Clause 13.7 of the Agreement, this exemption shall only apply where the employer has made an application to the Fair

Work Commission in relation to the exemption in accordance with section 120(2) of the Fair Work Act 2009 (Cth). The Fair Work Commission may determine that the amount of redundancy pay is reduced to a specified amount (which may be nil) it considers appropriate.

#### Redundancy Payment

An employee made redundant pursuant to Clause 13.4 with less than 12 years' service and an employee retrenched pursuant to clause 13.6 with less than 4 years' service shall be entitled to redundancy pay calculated according to the following table in accordance with section 119 of the Fair Work Act 2009 (Cth):

Redundancy pay period		
	Employee's period of continuous service with the employer 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 but less than 10 years	16 weeks
10	At least 10 years	12 weeks

- f. This Agreement does not cover employees whose employment is covered by *Schedule B – Staff Employees of the Black Coal Mining Industry Award*.
- g. In relation to clause 22.3 and clause 22.4 we undertake that the employee's rates will not fall below the minimum rates contained in the Agreement. Where an employee's considers that over a one month period they are not better off overall under this Agreement due to the implementation of clause 22.3 and clause 22.4, they may request a comparison of the wages received for that roster cycle under this Agreement and the wages they would otherwise have been provided with under the Agreement. Any shortfall in wages which would otherwise be payable under the Agreement will be paid to the Employee in the next pay period after the review is completed. If the Employee and Employer cannot reach agreement on the total amount which should be paid by the operation of this undertaking, the Dispute Resolution Procedure in clause 34 of the Agreement will be followed and the parties will agree to the Fair Work Commission arbitrating and making a binding determination to resolve the matter.

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

  
Nicole Thompson

Date 16 September 2021



# Dreampath Coal - New South Wales Northern District Enterprise Agreement 2021

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**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.**

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## PART 1 – APPLICATION AND OPERATION

### 1 Title

1.1 This will be called the Dreampath Coal - New South Wales Northern District Enterprise Agreement 2021 (the **Agreement**).

### 2 Parties

2.1 The parties to this Agreement are:

2.1.1 Dreampath Recruitment Pty Ltd (ABN 88 635 076 238) (the Company);

2.1.2 All Field Employees who are employed by the Company who:

- i. Perform work for the Company in connection with, or incidental to the mining of Coal (open cut and prep plants only) in the District; and
- ii. Are engaged in the job classifications set out in this Agreement;

2.1.3 The Union (Union).

### 3 Objective

3.1 The Company's vision is to be 'First Choice' for our Indigenous people, community, and clients as a company that is committed to the 'Reconciliation' journey. We work with our key stakeholders to establish the objective, design the program, and deliver the Indigenous field employees that will lead to long-term employment of Indigenous people.

3.2 It is known that Indigenous businesses are more likely to employ our people than non-Indigenous businesses. That is what we do and our commitment to ensure that the opportunities we provide create a positive cycle of social and economic empowerment.

3.3 The Company will operate an Indigenous business providing on-hiring services to organisations in the coal mining industry (open cut and prep plant only) in District of Northern New South Wales. The Company's clients will include multi-national organisations whose operational and business needs determine the services they seek from the Company and the terms on which they require those services to be performed. In order to maintain client satisfaction and remain competitive in the industry, the Company must deliver high quality, cost effective and time critical services, which meet the operational needs of its clients. It is an objective of this Agreement to ensure the Company and its Field Employees are well positioned to provide such services, with the aim of contributing to the sustainability and growth of the Company's business.



## 4 Commencement and Operation

- 4.1 This Agreement will come into operation and take effect seven (7) days after the date it is approved by the Fair Work Commission (FWC). The nominal expiry date of the Agreement will be four (4) years from the date the FWC approves it. After this date the Agreement will continue to apply until varied, replaced or terminated in accordance with the Act.
- 4.2 This Agreement shall incorporate the Black Coal Mining Industry Award 2010, as varied from time to time. Should there be an inconsistency between this Agreement and the Black Coal Mining Industry Award 2010 then this Agreement shall prevail.
- 4.3 Where this Agreement refers to a condition of employment provided for in the National Employment Standards (NES), the NES definition applies except where this Agreement provides for more favourable conditions.

## 5 Definitions

**"The Act"** shall mean the *Fair Work Act 2009 (Cth)* as amended from time to time.

**"Afternoon Shift"** means any shift, the ordinary hours of which finish after 6.00pm and at or before midnight.

**"Agreement"** shall mean this workplace agreement made in accordance with the *Dreampath Coal Mining Agreement 2021*.

**"Award"** shall mean the Black Coal Industry Award 2010, as amended from time to time.

**"Casual Field Employee"** shall mean a Field Employee entitled to a minimum payment of four (4) hours work per engagement. Casual Field Employees will be paid a 25% casual loading which is in lieu of all paid leave entitlements (annual leave, annual leave loading, personal leave, paid community service leave, notice of termination, public holidays not worked and redundancy entitlements).

**"Client"** shall mean any client of the Company.

**"Culture" or "Cultural"** shall mean relating to the ideas, customs and practices of Aboriginal and Torres Strait Islander people.

**"The Company"** shall mean Dreampath Recruitment Pty Ltd (ABN 88 635 076 238).

**"Day"** (unless otherwise agreed by the Company and a majority of the Field Employees affected) means a calendar day commencing at midnight on one day and concluding 24 hours later.

**"District"** shall mean the NSW Northern District of the CFMMEU.

**"EFT"** shall mean Electronic Funds Transfer.

**"Field Employee/s"** shall mean all Company Field employees who are placed on assignment with a Client of the Company and are covered by this Agreement.

**"Full-time Field Employees"** shall mean a Field Employee who has been notified in writing of their full-time employment status prior to commencement. A full time Field Employee shall work an average of no less than thirty-five (35) ordinary hours per week over a rostered cycle. A full time Field Employee will accrue annual leave and personal leave.

**"FWC"** shall mean the Fair Work Commission or any other body that replaces it.

**"Individual Flexibility Arrangement"** shall mean an agreement made in accordance with clause 6 of this Agreement.

**"Minimum Hourly Rate"** shall mean the rate set out in clause 22 payable to an Employee for his or her ordinary hours of work and is used for the recalculation of the other payment rates in this Agreement where such recalculation is necessary.

**"NES"** shall mean National Employment Standards, as varied from time to time.

**"Night Shift"** means any shift, the ordinary hours of which finish after midnight and at or before 8.00am.

**"Ordinary hours of work"** shall mean a maximum of thirty five (35 hours) per week averaged over a roster cycle.

**"Part time Field Employee"** shall mean a Field Employee who has been notified in writing of their part time employment status prior to commencement. A part time Field Employee works an average of less than thirty-five (35) ordinary hours per week and the Field Employee has predictable hours of work. Part time Field Employees shall receive a pro rata, equivalent pay and conditions to those full time Field Employees. A part time Field Employee will accrue annual leave and personal leave.

**"Roster"** means any arrangement of rostered hours required to be worked by an Employee.

**"Roster cycle"** means the period over which a roster repeats and an employee's hours average 35 hours.

**"Rostered Hours"** means ordinary hours of work and rostered overtime.

**"Rostered Overtime"** means reasonable additional hours which are required to be worked by the Field Employee as an integral part of the Employee's roster.

**"Seven Day Roster Field Employee"** means a Field Employee who may be rostered to work shifts on any of the seven days of the week.

**"Site"** means the mine site in the Northern District of New South Wales where the Company is contracted by the client.

**"Six Day Roster Field Employee"** means a Field Employee who, over a roster cycle, is rostered to work shifts, the hours of which occur during any six consecutive 24 hour periods in a span of seven consecutive 24 hour periods. The roster must include a non-working period of at least 24 consecutive hours at the same time each week.

**"Union"** shall mean the Construction, Forestry, Maritime, Mining and Energy Union (Mining and Energy Division) and any reference to Union in this Agreement is a reference to the Union in its capacity as a representative of Employee(s).

**"Usual Place of Residence"** in relation to a Field Employee, means the residential address of the Field Employee at the time of commencement of employment or, if the Field Employee relocated from that residence, the Field Employee's new residential address as notified to the Company.

## **6 Individual Flexibility Arrangements**

**6.1** The Company and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

- 6.1.1** the agreement deals with 1 or more of the following matters:
  - i. arrangements about when work is performed;
  - ii. overtime rates;
  - iii. penalty rates;
  - iv. allowances; and
  - v. leave loading.
- 6.1.2** the arrangement meets the genuine needs of the Company and Field employee in relation to 1 or more of the matters mentioned in paragraph 6.1.1; and
- 6.1.3** the arrangement is genuinely agreed to by the Company and Field employee.

**6.2** The Company must ensure that the terms of the individual flexibility arrangement:

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

**6.3** The Company must ensure that the individual flexibility arrangement:

- 6.3.1** is in writing; and
- 6.3.2** includes the name of the Company and Field employee; and
- 6.3.3** is signed by the Company and employee and if the employee is under 18 years of age, signed by a parent or guardian of the Field employee; and
- 6.3.4** includes details of:
  - i. the terms of the enterprise agreement that will be varied by the arrangement; and
  - ii. how the arrangement will vary the effect of the terms; and
  - iii. how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
  - iv. states the day on which the arrangement commences.

**6.4** The Company must give the employee a copy of the individual flexibility arrangement within fourteen (14) days after it is agreed to,

6.5 The Company or Field employee may terminate the individual flexibility arrangement:

6.5.1 by giving no more than 28 days written notice to the other party to the arrangement; or

6.5.2 if the Company and employee agree in writing — at any time.

6.6 Upon termination of an individual flexibility arrangement the terms and conditions under this Agreement will apply to the Field Employee's employment without alternation. Any benefits provided to the Employee under the individual flexibility arrangement do not form part of the Field Employee's contract of employment and may be (subject to the terms of this Agreement) discontinued on termination of the individual flexibility arrangement.

## **PART 2 – TYPES OF EMPLOYMENT AND TERMINATION OF EMPLOYMENT**

### **7 Types of Employment**

7.1 Field Employees under this Agreement will be employed in one of the following categories of employment:

7.1.1 Full Time Field Employee;

7.1.2 Part Time Field Employee;

7.1.3 Casual Field Employee;

7.1.4 Apprentices and/or Trainee Field Employees.

#### **7.2 Full Time Employment**

7.2.1 A full time Field Employee works an average of thirty five (35) ordinary hours per week.

7.2.2 A full time Field Employee will accrue annual leave and personal leave in accordance with Clause 27 and 28 of this Agreement

#### **7.3 Part Time Employment**

7.3.1 A Part Time Field Employee is an employee who:

- i. works less than thirty five (35) ordinary hours per week;
- ii. has reasonably predictable hours of work; and
- iii. receives, on a pro rata basis, the equivalent pay and conditions to those of full time field employees who do the same kind of work.

7.3.2 At the time of engagement, the Company and the part-time field Employee will agree in writing on:

- i. that the Field Employee may work part time;
- ii. the hours to be worked by the Field Employee, the days upon which the hours will be worked and the actual starting and finishing times for the work each day;
- iii. the classification applying to the work to be performed by the Field Employee; and
- iv. the period of part time Field employment.

7.3.3 Any agreed variation to the regular pattern of work will be in writing.

7.3.4 A copy of the part time agreement and any variation to it will be provided to the Field Employee by the Company.

7.3.5 A part time Field Employee is entitled to accrue leave on a pro-rata basis.

7.3.6 All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in clause 23.

7.3.7 A part time field employee will be paid per hour the hourly rate prescribed for the classification or level and roster in which the Employee is engaged, as set out in clause 22

#### **7.4 Casual Employment**

7.4.1 A Casual Field Employee is one engaged and paid as such.

7.4.2 A Casual Field Employee will be paid the hourly rate of pay for the relevant classification as outlined in this agreement, in addition to a loading of 25% calculated on the ordinary rate of pay.

7.4.3 The Casual loading is in lieu of:

- i. Annual Leave and Leave Loading entitlements;
- ii. Personal Leave entitlements;
- iii. Notice of Termination requirements; and
- iv. Redundancy entitlements.

7.4.4 For the avoidance of doubt, casual loading is paid in lieu of entitlements, which do not apply to Casual Field Employees, having regard for the National Employment Standards.

7.4.5 The minimum engagement for a Casual Field Employee working ordinary hours will be four (4) hours on any one day that the Field Employee is placed on assignment.

#### **7.5 Casual Conversion**

7.5.1 A Field Employee engaged by the Company as a Casual Field Employee, other than an irregular Casual Field Employee, who has been engaged for a sequence of periods of employment under this Agreement during a period of six (6) months may request that their employment be converted to full time or part time employment.

- 7.5.2 An irregular Casual Field Employee is a Casual Field Employee who has been engaged to perform work on an occasional or non-systematic or irregular basis.
- 7.5.3 Any request made by the Field Employee under clause 7.5 must be in writing and provided to the Company.
- 7.5.4 Where a Casual Field Employee requests in writing the opportunity to immediately convert from casual employment to a fixed term or permanent employment (the choice of which category shall be the Company's). Where a Casual Field Employee seeks to convert to full time or part time employment, the Company may agree to or refuse the request, but the request may only be refused on reasonable grounds. Reasonable Grounds for deciding not to make an offer are:
- whether the field employee's position or the contractual arrangement with the client is less than 12 (twelve months); or
  - where the field employee is subject to disciplinary action (including but not limited to performance improvement plan)
- 7.5.5 The Company commits to not engage in contrived practices in order to avoid conversion from casual employment to fixed term or permanent employment or from fixed term employment to permanent employment. Any dispute about the proper application of this clause may be dealt with under the 'Disputes at Work' procedure contained in this Agreement.
- 7.5.6 Nothing in this clause requires the Company to increase the hours of a Regular Casual Field Employee who has converted to fixed term or permanent employment in accordance with clause 7.5
- 7.5.7 Where it is agreed that a Casual Field Employee will have their employment converted to full time or part time employment as provided for in this clause, the Company and Field Employee must discuss and record in writing:
- the form of employment to which the Field Employee will convert – that is, full time or part time employment;
  - if it is agreed that the Field Employee will become a part time Field Employee, the number of hours and the pattern of hours that will be worked, as set out in clause 7.3; and
  - the date upon which the conversion will take effect.
- 7.5.8 Nothing in this clause obliges a regular Casual Field Employee to convert to full time or part time employment, nor permits the Company to require a regular Casual Field Employee to convert.
- 7.5.9 Once a Casual Field Employee has elected to become and has been converted to a full time or part time Field Employee, the Field Employee may only revert to Casual employment by written agreement with the Company.
- 7.5.10 Should a Casual Field Employee wish to remain casual that their hourly rate includes the 25% casual loading in accordance with clause 7.4.

7.6 At the time of the Field Employees engagement, the Company will inform each Field Employee in writing of their status and anticipated term of their engagement by issuing the Letter of Engagement.

#### 7.7 Fixed Term Engagement

- 7.7.1 Field Employees engaged on fixed term employment will have this specified in



their Letter of Engagement.

- 7.7.2 Unless this Agreement otherwise, Fixed Term Field Employees shall receive the wages and conditions of Full-Time Field Employees for the duration of their assignment.
- 7.7.3 Fixed-term Field Employees shall accrue annual leave as per full-time Field Employees.
- 7.7.4 A Fixed Term Field Employee shall not be engaged on single or consecutive fixed terms assignment/s that are greater than twelve (12) month in length. A Fixed Term Field Employee who continuous to be engaged past 12 months, will convert to Full Time or Part Time. For the avoidance of doubt this clause does not apply to apprentices and/or trainees.
- 7.7.5 A fixed term employee shall also not be entitled to notice of termination and redundancy as outlined in Clauses 12 and 13 of the Agreement.

#### **7.8 Specific Project/Site Assignment or Workplace Related Task Engagement**

- 7.8.1 Field Employees engaged on specific project/site assignment or workplace related task will have this specified in their Letter of Engagement.
- 7.8.2 A specific project/site/assignment contract contains a 'sunset' date on which both parties agree that employment will end.
- 7.8.3 A workplace related task contract is linked to the completion of a specific task and at the completion of this task that employment will end.
- 7.8.4 A specific project/site assignment or workplace related task Field Employee shall not be engaged on single or consecutive specific project/site/assignment or workplace related task assignment/s that are greater than twelve (12) month in length. A specific project/site/assignment or workplace related task Field Employee who continuous to be engaged past 12 months, will convert to Full Time or Part Time. For the avoidance of doubt this clause does not apply to apprentices and/or trainees.
- 7.8.5 Field Employees engaged under specific project/site/assignment or workplace related task are not entitled to notice of termination and redundancy payouts in accordance with the Act.
- 7.8.6 Field Employee specific project/site/assignment or workplace related task may be extended by mutual agreement.
- 7.8.7 A specific project/site/assignment or workplace related task Field Employee is entitled to accrue leave on a pro-rata basis. A specific project/site/assignment or workplace related task Filed Employee will accrue pro-rata annual leave and pro-rata personal leave.

## **8 Suspension**

- 8.1 The Company has the right to suspend a Field Employee with pay for part or all of a day or days for disciplinary reasons. Such disciplinary reasons may include refusal of duty,



neglect of duty, misconduct or a serious breach of site rules, regulations, policies or procedures or during any investigation of these matters.

- 8.2 For suspension greater than one (1) day, a letter will be provided to formally notify the Field Employee of the suspension and the reasons. It will state that the Employee cannot attend work or perform duties for a specified period and will outline the procedure to be followed.

## 9 Lawful directions

- 9.1 Field Employees are required to follow all lawful and reasonable directions that are within their ability, given by their Leading Hand/Supervisor, or any other appropriate person, as nominated by the Company or Client. Should a Field Employee not be able to perform the assigned task for any reason whatsoever, it is the Field Employee's duty to inform their Leading Hand/Supervisor or other appropriate person immediately.
- 9.2 In circumstances where the Field Employee informs their Leading Hand/Supervisor, or any other appropriate person, as nominated by the Company or Client that they are unable to perform the assigned task due to Cultural reasons, the parties will work cooperatively together to consider alternatives for how the task can be completed that appropriately considers those Cultural reasons. This may include seeking information or support from Indigenous people of the Field Employee's family, community and the Company to better understand the specific circumstances that may be impacting the ability of the Field Employee to perform the assigned task and considering options for resolving the matter appropriately. In an instance where an appropriate alternative cannot be established the parties will follow Clause 34 of this Agreement.
- 9.3 Refusal to comply with any lawful and reasonable direction may result in disciplinary action, which may include the termination of employment.

## 10 Abandonment of Employment

- 10.1 Subject to the notice requirements in the NES, a Field Employee who is absent from work for a period of three (3) consecutive working days without notification to the Company, unless the Field Employee can establish that it was not reasonably practical to do so because of illness or other reasonable excuse, will be considered to have terminated their employment without notice from the commencement of the period of absence, providing that Company has made reasonable attempts to contact the Field Employee.
- 10.2 We will ensure to contact a member of the Indigenous community to ensure that Cultural obligations are not contributing to the abandonment of employment. Most common Cultural obligations are 'Sorry Business' when a member of the family has passed away and there are Cultural protocols that need to be adhered to and respected.
- 10.3 The Company will only be liable to pay wages and other payments up to and including the last day of actual work.

## 11 Safety and Fitness for Work

- 11.1 The Company is committed to undertaking its best endeavours to the establishment of healthy and culturally safe workplaces, which includes the use of healthy and safe work methods, impairment testing (both planned and random), work organisation, working time, machinery and equipment.
- 11.2 The company recognises that cultural safety of field employees is important as this is creating an environment that is safe and inclusive to Aboriginal and Torres Strait Islander people's values, practices, traditions, structures and beliefs. This may be done through cultural awareness training.
- 11.3 Field Employees will not be allowed to enter or engage in work on a site or workplace if Field Employees are, or are reasonably suspected to be, under the influence of, or affected by, alcohol or drugs.
- 11.4 The Company often operates in industries, which carry significant safety risks. A Field Employee's health and wellbeing is an essential element of the Company's success. Any breaches of obligations in relation to Workplace Health and Safety may be considered serious and may result in consideration being given to disciplinary action which may include termination of employment.
- 11.5 Field Employees shall be required to wear relevant personal protective equipment (PPE) at times as directed and/or as required. An Employee's clothing will be of a standard and nature as deemed relevant and appropriate by the Company. Any PPE provided will be replaced on a fair wear and tear basis, subject to the Company being satisfied that replacement is required. It is a condition of issue and of employment that the issued PPE will be worn whilst at the workplace.
- 11.6 Employees will be required to comply with Company and/or Client policies and procedures. These policies and procedures are not a term of this Agreement, nor do they vest enforceable rights in the Employee, and are for the benefit of the Company only and do not give rise to any action against the Company in law, statute or equity.
- 11.7 The Company may require Field Employees to undertake an independent evaluation to determine an Employee's safety and fitness for work at any time both prior to and during an assignment.
- 11.8 Field Employees are required to notify the company of any additional paid or unpaid work undertaken during a Field Employee's engagement with the Company. The Company reserves the right to refuse work to employees who undertake additional work, which would impact on fatigue management.

## 12 Termination of Employment

- 12.1 Notice of Termination by an Employee
  - 12.1.1 Full-time and Part-time Filed Employee must give one week's notice to terminate employment or forfeit to the Company one week's pay, based on projected roster, instead of giving notice.

## 12.2 Notice of Termination by the Company

- 12.2.1 The Company must not terminate a full-time or part-time Field Employee's employment unless it provides written notice of the date of termination, with the notice period required to be calculated as follows:

Employee's period of continuous service with the Company	Notice period required
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks
<i>The period of notice is to be increased by 1 week where the permanent Filled Employee is over 45 years of age and has completed 2 years of continuous service with the Company at the time of giving of the notice. This additional week only applies to notice given by the Company.</i>	

- 12.2.2 The Company may, at its discretion, elect to pay an Employee the full wages in lieu of notice the amount the Company would have been liable to pay to the Employee had the employment continued until the end of the notice period.

- 12.2.3 This Clause does not apply to:

12.2.3.1 A Field Employee whose employment is terminated because of serious misconduct; or

12.2.3.2 Field Employees engaged on a Fixed Term basis once the fixed term has come to an end;

12.2.3.3 Field Employees engaged on a Specific task basis once the task has been completed;

12.2.3.4 a Casual Field Employee.

## 12.3 Accrued Leave Payments on Termination

- 12.3.1 In addition to any other amounts payable under this Agreement, when a Field Employee's employment with the Company is terminated the Employee must be paid his or her:

12.3.3.1.1 untaken accrued annual leave entitlements which shall be paid at the same rate as if the Employee had taken the leave during the course of employment.

12.3.3.2 accrued untaken personal/carer's leave entitlements at the time of termination shall be paid at the same rate as if the Employee had taken the leave during the course of employment, but only if the Employee's employment is terminated:

A. by retrenchment. For the avoidance of doubt if Field Employee is offered redeployment within the local area in accordance with clause 13.7.1(a) and they

refuse the redeployment then they are not entitled to this entitlement;

B. by retirement where the Company is satisfied that the retirement is genuine/permanent;

C. by the Company because of ill health; or

D. by the Employee's death.

12.3.2 Any payment made on termination of employment in relation to an Employee's accrued long service leave entitlement will be in accordance with Clause 25 which reflects the requirements of the Coal Mining Industry (Long Service Leave) Administration Act 1992.

## 13 Redundancy

13.1 No Field Employee who is a party to this Agreement will be made redundant or retrenched during the life of this Agreement without prior consultation with the affected Field Employees.

13.2 The redundancy entitlements in this Clause do not apply to:

13.2.1 Field Employees terminated as a consequence of serious misconduct, performance or other inability to fulfil the contract of employment; or

13.2.2 Field Employees who resign; or

13.2.3 Field Employees engaged for a Fixed Term or a specific period of time or for a specified task/s; or

13.2.4 Apprentices and/or trainees; or

13.2.5 Casual Field Employees.

13.3 Definition of Redundancy

13.3.1 A Field Employee is made redundant where his or her employment is terminated at the Company's initiative because:

13.3.2 because the Company no longer requires the job done by the Field Employee (this may include but is not limited to loss of client site/s); or

13.3.3 because of insolvency or bankruptcy of the Company.

13.4 Severance pay:

13.4.1 Subject to clause 13.3 Field Employee who is made redundant is entitled to severance pay equal to one (1) week's pay for each completed year of employment with the Company.

13.4.2 For the purpose of this clause one (1) week's pay is equal to the Field Employee's minimum hourly rate of pay multiplied by their ordinary hours of work. For full time Field Employee's, the ordinary hours of work are thirty-five

(35) hours.

#### 13.5 Definition of Retrenchment

13.5.1 Retrenchment occurs when an Employee is made redundant due to:

- i. technological change;
- ii. market forces; or
- iii. diminution of reserves.

#### 13.6 Retrenchment Payment

13.6.1 A Field Employee whose employment is terminated due to retrenchment is entitled to retrenchment pay equal to two (2) weeks' pay for each completed year of employment, with the Company, in addition to severance pay as prescribed by clause 13.4.

13.6.2 Regardless of the Field Employee's length of employment, the minimum payment due to an Employee under clause 13.6 is two (2) weeks' pay.

13.6.3 For the purpose of this clause one (1) week's pay is equal to the Employee's minimum hourly rate of pay multiplied by their ordinary hours of work. For full time Employee's the ordinary hours of work are thirty-five (35) hours.

#### 13.7 Exemption

13.7.1 The Company is not liable for the payments prescribed by clauses 13.4 and 13.6 where,

(a) the Company obtains, or causes to be made available for the Field Employee, work:

- i. that the Field Employee is competent to perform;
- ii. in a position that carries the same (or higher) classification rate of pay as the Field Employee's previous position;
- iii. that can reasonably be regarded as permanent; and
- iv. allows the Field Employee to reside in the same general locality as the Employee's previous residence.

or,

(b) The termination is due to the ordinary and customary turnover of labour.

### PART 3 – HOURS OF WORK AND RELATED MATTERS

#### 14 Ordinary hours of work

14.1 The ordinary hours of work will be an average of thirty five (35) hours per week which is averaged over the roster cycle, with each rostered shift being allocated an equal number of ordinary hours and for those ordinary hours to commence from the start of each rostered shift.

## 15 Weekend Work

15.1 All ordinary hours worked on a Saturday or Sunday will be paid as double time.

## 16 Shift Work

16.1 All ordinary hours worked by shift work Field Employees will be paid for at the following rates:

Type of Shift	Shift Rate
Day Shift	Ordinary Time
Afternoon Shift	115% of the ordinary time
Night Shift	125% of the ordinary time
	For the avoidance of doubt when a field employee is rostered to work on a night shift in excess of 10 hours and/or a 6 or 7 day roster the '125% of the ordinary time' will apply to their rostered shift length.

## 17 Rostering

17.1 Rostering of hours and length of shifts

17.1.1 Subject to the consultation obligations set out in Clause 33 of this Agreement, the Company will determine:

- i. the type of rosters to be worked by the Field Employees based on the Company's business requirements and those of its clients; and
- ii. the normal shift length to be worked will be up to 12.5 hours.

17.2 Starting and Finishing Places

17.2.1 The starting and finishing place of a shift are to be agreed between the Company and the majority of affected Field Employees or, in the absence of agreement as determined in accordance with clause 33.

17.2.2 At open cut and prep plant mines, the designated starting and finishing place will be at the relevant assembly areas.

17.3 Roster Changes

17.3.1 A Field Employee's place on a roster will not be changed, except where one (1) weeks' notice is provided.



## 18 Meal Breaks During Rostered Hours

- 18.1 A Field Employee is entitled to a meal break of 30 minutes, without deduction from pay, during rostered hours in each shift where he or she is rostered to work for more than 5 hours in the shift.
- 18.2 In addition, an Employee who is rostered to work:
  - iii. a ten (10) hour shift is entitled to a further fifteen (15) minutes break, without deduction from pay, during rostered hours; or
  - iv. a ten and a half (10.5) hour shift or more are entitled to a further thirty (30) minutes break, without deduction from pay, during rostered hours.
- 18.3 The time at which meal breaks are to be taken is not fixed and Field Employees will be required to vary their meal break times to meet the needs of the Company's/Clients continuous operations; however a Field Employee will not be required to work more than five (5) hours without a meal break.

## 19 Meal Breaks During Non-Rostered Hours

- 19.1 If a Field Employee is required to work more than one and a half hours past the rostered shift finishing time (exclusive of any meal break) then, unless otherwise agreed:
  - 19.1.1 the Field Employee will be allowed at least 30 minutes for a meal without deduction of pay, before starting the overtime;
  - 19.1.2 unless notified the previous day of the requirement to work overtime, the Field Employee will also be supplied with a meal or paid a meal allowance; and
  - 19.1.3 after each four hours of overtime worked after a meal break the Field Employee will be entitled to take a further 30 minute break and either be supplied with a meal or be paid a meal allowance.
- 19.2 Where the overtime worked is not continuous with an Employee's rostered hours, the Employee is entitled to a meal break of thirty (30) minutes without deduction from pay after each five (5) hours worked.

## 20 Stand down

- 20.1 The Company has the right to stand down a Field Employee for part of all of a day(s) for:
  - 20.1.1 Refusal of duty;
  - 20.1.2 Neglect of duty;
  - 20.1.3 Misconduct; or
- 20.2 A field Employee is not entitled to payment while stood down.
- 20.3 The Company has the right to stand down a Field Employee without pay if the Field



Employee cannot be usefully employed in the Field Employee's usual classification because of:

20.3.1 a breakdown of machinery that has lasted for more than three (3) consecutive working days. The day of the breakdown is counted as one of the three (3) consecutive working days if it happens to be a working day;

20.3.2 Client or site directive;

20.3.3 mining incident (where such incident prevents work to be performed); or

20.4 Prior to standing a Field Employee down under the provisions of clause 20.3 the Company will investigate the ability to provide refresher training on Company and/or Client procedures. Where all such training is up to date or there is no ability to provide the necessary training, the Company will issue the Field Employee(s) with written notification advising of the stand down and the estimated duration.

20.5 Field Employee/s who are stood down under the provisions of clause 20.3, and who have sufficient leave accruals, may apply for annual leave for all or part of the duration of the period of stand down as contained within the notice.

## PART 4- REMUNERATION AND RELATED MATTERS

### 21 Classifications

21.1 A Field Employee's classification for each assignment will be based on skills required for the particular role and/or qualifications a Field Employee may possess.

Classification	Description/AFQ
Trainee: Years 1 & 2	A Trainee is a Field Employee who is completing their first or second year of a system of training which has been approved by the relevant State training authority, which meets the requirements of a training package developed by the relevant Industry Skills Council and endorsed by the National Quality Council, and which leads to an AFQ certificate level qualification.
Mineworker Level 1 (Inexperienced) (Award equivalent Mine Worker Training)	A Mineworker who initially performs the required tasks under direct supervision. This classification applies indicative roles include clean skins, trade assistants and labourers. If a Mineworker doesn't receive the necessary training required to allow progression to Level 2 within 12 months, then they will be paid the Level 2 rate of pay from that time.
Mineworker Level 2 (Experienced) (Award equivalent Mineworker)	A Mineworker is an employee who is assessed by the employer as competent to perform the required tasks in a variety of operating circumstances and under limited supervision. An employee continues in this classification until assessed for advancement to Mineworker Level 3 - Advanced.

Mineworker Level 3 (Award equivalent Mineworker Advanced)	A Mineworker is an employee who is assessed by the employer as competent to perform the required tasks in a variety of operating circumstances and under limited supervision (utilising 2 or more skills in operating production equipment); or An employee who has successfully completed a relevant trade apprenticeship or its AQF equivalent.
Mineworker Level 4 (Specialised)	An employee appointed to this classification will undertake a specialised role, which requires them to exercise independent discretion in undertaking functions within the bounds set by the employer. The indicative roles include - Supervisor and OCE.

## 22 Shift Rates – Flat Rate and Minimum Hourly Rates

### 22.1 Minimum Rates of Pay for Ordinary Hours of Work

22.1.1 Field Employees will be paid the applicable Minimum Hourly Rate of pay for the relevant job classification, as set out in clause 22.

22.1.2 The Minimum Hourly Rate is the rate applied as the ordinary rate for the purposes of calculating the other rates in this Agreement.

### 22.2 Field Employee Ordinary Hourly Rate

Classification	Base Rate	Casual Rate
Mineworker Level 1 (Inexperienced) (Award equivalent Mine Worker Training)	\$27.27	\$34.08
Mineworker Level 2 (Experienced) (Award equivalent Mineworker)	\$29.08	\$36.35
Mineworker Level 3 (Trades) (Award equivalent Mineworker Advanced)	\$30.65	\$38.31
Mineworker Level 4 (Specialised)	\$33.83	\$42.28
Trainee Year 1	\$21.47	N/A
Trainee Year 2	\$22.55	N/A
For the avoidance of doubt the apprentices will be paid the relevant percentage as outlined in Schedule A, Clause A.6 of the modern award. The percentages will be calculated on the Mine Worker Level 1 (inexperienced) rate.		

### **22.3 Implementation of flat rates**

- 22.3.1 The Company may calculate a combination of classification rate for ordinary hours, shift penalties, overtime (including treble time for public holidays) rates and
- 22.3.2 any applicable allowances from this Agreement as a "flat rate" to apply at a particular site provided:
- i. the flat rate of pay will not result in a Field Employee being paid less than they would otherwise be entitled to under the Agreement for the work performed.
  - ii. the Company engages in consultation with the Field Employee, and
  - iii. the Company provides at least 2 weeks' notice of any change.
- 22.3.3 Flat rates of pay will be calculated based on specific roster patterns on individual client sites.
- 22.3.4 The Company may pay Field employee flat rates of pay in satisfaction of the following entitlements in this Agreement that they would receive for working a particular roster cycle:
- i. Base rates of pay in clause 22.2;
  - ii. The casual loading in clause 23.4
  - iii. Allowances in accordance with the Modern Award;
  - iv. Overtime and penalty rates for rostered overtime in clause 23; and
  - v. Weekend and shift penalty rates in clause 22.
- 22.3.5 Where a flat rate of pay is paid, the Company will advise the Field employee, in writing, and keep a record of:
- i. The flat rate of pay that is payable;
  - ii. Which provisions of the Agreement will be satisfied by the flat rate of pay; and
  - iii. The method by which the flat rate of pay is calculated.

- 22.3.6 Any entitlement not specified in the record in clause 22.3.4 will be separately paid for in accordance with the applicable provisions of this Agreement (e.g. non- rostered overtime).
- 22.3.7 Notwithstanding the Minimum Wage Rates as defined in clause 22.2, the Company may negotiate a Commercial Agreement with a Client that contains higher wage rates for employees. In this instance the Company will communicate this to the relevant employees and provide to them in writing the increased wage rate and the time period it is in force.

#### **22.4 Wages for Casuals**

- 22.4.1 Casual Field Employees will be paid the rate for the relevant classification in Clause 15 of this agreement plus a casual loading of 25% for working ordinary hours (except in the case of the flat hourly pay rates. – Clause 23.3 where casual loading has already been factored). Other loadings, shift, overtime, weekend, public holiday and penalty rates shall be in addition to the relevant classification hourly rate of pay as prescribed in Clause 22.2 of this agreement.

#### **22.5 Rates of Pay Inclusive of Award Entitlements**

- 22.5.1 The wages payable to Field Employees as set out in this clause are in excess of the amounts Field Employees would be entitled to receive in accordance with the Award in relation to rates of pay for ordinary hours of work and payments for applicable allowances under the Award.

#### **22.6 Review**

- 22.6.1 The ordinary hourly rates for each classification in this Agreement will be increased by 2.5% at the following times:
- i. First full pay period on or after 1 July 2022
  - ii. First full pay period on or after 1 July 2023
  - iii. First full pay period on or after 1 July 2024
  - iv. First full pay period on or after 1 July 2025
- 22.6.2 The Company will periodically review market conditions, Client and Field Employee performance and may, at its discretion, award an increase to the classification rates in this Agreement additional to any increase awarded under sub clause 22.6.
- 22.6.3 During the life of this Agreement no ordinary hourly wage rate will fall below the relevant minimum wage as set out in the Modern Award.

#### **22.7 Absence from Work**

- 22.7.1 A Field Employee absent from work is not entitled to payment for the period of absence unless paid absence is agreed by the Company or permitted by this Agreement or Law.

#### **22.8 Payment of Wages**

22.8.1 Payment of wages shall be by direct deposit/electronic funds transfer on a weekly or fortnightly basis to a bank account nominated by the Field Employee. Where a public holiday or weekend falls on the normal pay day, the payment shall be made as soon as is practicable after the normal pay day.

22.8.2 Upon termination of employment, wages due to a Field Employee will be paid by electronic funds transfer:

- i. within three (3) business days after the date of termination where the Field Employee does not have a Novated Lease; and
- ii. within fourteen (14) days where the Field Employee has a Novated Lease.

## **22.9 Payment for Attending Training and Medical Appointments**

22.9.1 When a Field Employee attends Company directed training or medical appointments outside of their normal rostered hours, they will be paid the Overtime Rate for four (4) hours for medical appointments and eight (8) hours for training.

## **22.10 Salary Sacrifice**

22.10.1 Subject to all relevant laws, the Company and an individual Field Employee may agree to a salary sacrifice arrangement. The obligations of the Company in respect of payment of remuneration will be satisfied by the Company complying with such an arrangement provided that the salary sacrificed amount and the residual wages combined are not less than the classification rate otherwise payable in accordance with this Agreement.

# **23 Overtime and Penalty Rates**

23.1 In calculating overtime, except in relation to Call Back, each day is to be treated separately.

## **23.2 Payment for Overtime**

23.2.1 All time worked in excess of or outside the ordinary hours of any shift on the following days will be paid for at double time.

23.2.2 All time worked in excess of or outside the ordinary hours of any shift will be paid for at the rate of double time for Employees:

- a) who are six-day roster Field Employees or seven-day roster Field Employees;
  - i. who work a roster which requires ordinary shifts on public holidays and not less than 272 ordinary hours per year on Sundays; or
  - ii. who work a roster which requires ordinary shifts on Saturday and Sunday where the majority of the rostered hours on the Saturday or Sunday shifts fall between midnight Friday and midnight Sunday.

## **23.3 Minimum Payment for Overtime on Saturday and Sunday**

- 23.3.1 An Employee called on to work overtime on a Saturday or Sunday (that is not continuous with work started on the previous day) will be paid for at least four (4) hours at the appropriate rate.

23.4 Reasonable Additional Hours

- 23.4.1 Subject to the NES, the Company may require a Field Employee to work reasonable additional hours in addition to their rostered hours and be paid the applicable overtime rates.

23.5 Rest Period after Working Overtime

- 23.5.1 If a Field Employee works so much overtime that the Field Employee has not had at least 10 consecutive hours off duty between the end of the Field Employee's ordinary hours of work on one day and the start of the Field Employee's ordinary hours of work on the next day:
- i. the Field Employee will be released from duty after that overtime is finished until the Field Employee has had 10 consecutive hours off duty; and
  - ii. there will be no loss of pay for ordinary hours of work time which occur during this absence.
- 23.5.2 A Field Employee who, on the instructions of the Company, resumes or continues work without having had 10 consecutive hours off duty in accordance with Clause 23.5.1 will:
- i. Be paid at double time during ordinary hours and after that until the Field Employee is released from duty;
  - ii. then be entitled to be absent for 10 consecutive hours; and
  - iii. not suffer any loss of pay for ordinary hours of work time which occur during this absence.

23.6 Call back

- 23.6.1 A Field Employee who is recalled to work overtime after leaving the workplace will be paid for at least four (4) hours' work at the appropriate rate each time the Employee is recalled, even if the job to be performed is completed within a shorter period.
- 23.6.2 However, if:
- i. it is customary for a Field Employee to return to the workplace to perform a specific job outside the Employee's ordinary working hours; or
  - ii. the overtime is continuous (subject to a reasonable meal break) with the end or start of ordinary working time;
  - iii. the minimum payment provided for in Clause 23.6.1 does not apply.
- 23.6.3 Where an Employee is recalled to work in accordance with this Clause and the actual period of work performed is less than four hours, it will not be counted as overtime for the purposes of calculating a rest period entitlement in accordance with Clause 24.5.



## 24 Retention Bonus

- 24.1 The Company is committed to exploring employee retention initiatives. During the life of this agreement the company will, at its discretion, pay a retention bonus to employees in addition to their remuneration where such a bonus is negotiated with the relevant Client site.

## 25 Accident Pay

### 25.1 General

A Field Employee in receipt of wages under the provisions of applicable workers compensation legislation will be entitled to receive accident pay from the Company subject to the conditions and limitations set out in this clause.

### 25.2 Payment to be made during Incapacity

The Company shall pay, or cause to be paid accident pay during the incapacity of the Employee, within the meaning of the said Act

- until such incapacity ceases; or
- until the expiration of a period of seventy-eight weeks from the date of injury,

whichever event shall first occur, even if the Company terminates the Field Employee's employment within the period.

### 25.3 Meaning of 'Accident Pay'

- 25.3.1 For the purposes of this Clause, accident pay means for a period of 78 weeks from the date of injury, a payment representing the difference between the weekly amount of compensation paid to the Field Employee under the applicable workers' compensation legislation and the weekly amount, including bonus, that would have been received by virtue of this Agreement, had the Field Employee been at work on their normal roster at the date of the injury (provided the latter amount is greater than the former amount).

### 25.4 Pro-rata Payments

- 25.4.1 In respect of incapacity for part of a week the amount payable to the Field Employee as accident pay shall be a direct pro rata.

### 25.5 When not entitled to Payment

- 25.5.1 A Field Employee shall not be entitled to any payment under this clause in respect of any period of paid annual leave or long service leave, or for any paid public holiday.

### 25.6 Redemptions



25.6.1 In the event that a Field Employee receives a lump sum in redemption of weekly payments under the relevant legislation above, the liability of the Company to pay accident pay as herein provided shall cease from the date of such redemption.

25.7 Damages Independent of the Legislation

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

25.8 Calculation of Period

25.8.1 The 78 week period commences from the first day of incapacity for work, which may be subsequent to the date of injury. Intermittent absences arising from the one injury are to be cumulative in the assessment of the 78 week limitation.

## 26 Superannuation

26.1 The Company will make superannuation contributions on behalf of each Employee at the rate prescribed under the relevant legislation.

26.2 Ordinary Time Earnings referred to in Clause 26.1 will mean the total of the following:

- (a) Earnings in respect of ordinary hours of work other than earnings consisting of lump sum payment of any kind made to the Employee on the termination of their employment and lump sum payments in relation to cashing out of personal/carer's leave;
- (b) Earnings in respect of bonus payments;
- (c) Earnings in respect of shift allowances and weekend penalty rates;
- (d) Earnings in respect of rostered overtime i.e., which forms part of a roster pattern of work; and
- (e) Earnings in respect of allowances which are not a reimbursement of expenses.

26.3 Employees may elect to contribute to superannuation at any percentage of salary or fixed dollar amount they wish above the limits specified above, however; Employees should note that there are age-based contribution limits for tax deductibility purposes for any money contributed to superannuation on a pre-tax basis.

26.4 Superannuation contributions will not be paid on Non-Rostered Overtime.

26.5 The Company will not offset the statutory contribution against any salary sacrifice amounts Employees have made.

26.6 Where an Employee does not elect a fund, contributions will be made to the Company's default superannuation fund, Mine Super.

## PART 5 - LEAVE AND PUBLIC HOLIDAYS

### 27 Annual Leave

#### 27.1 Application and Interaction with NES

- i. This Clause does not apply to Casual Field Employees.
- ii. Annual leave entitlements are provided for in the NES. This Clause supplements those entitlements.

#### 27.2 Entitlement to Annual Leave

27.2.1 A Full-time Field Employee is entitled to accrue a total of 175 ordinary hours (five weeks) annual leave for each year of employment (Inclusive of the Field Employee's NES entitlement).

27.2.2 A Part-time Field Employee is entitled to accrue a total of 175 ordinary hours (five weeks) annual leave for each year of employment (inclusive of the Field Employee's NES entitlement), on a pro rata basis.

27.2.3 A Field Employee who:

- i. is a seven-day roster Field Employee; or
- ii. works a roster which requires ordinary shifts on public holidays and not less than 272 ordinary hours per year on Sundays;

is entitled annually to an additional 35 ordinary hours (one week) of annual leave each year of employment.

27.2.4 Annual leave accrues weekly on a pro rata basis (based on the ordinary hours worked by the Field Employee).

27.2.5 Where a Field Employee changes roster during the course of a year, the Field Employee's entitlement to annual leave will be calculated on a pro rata basis.

#### 27.3 When Annual Leave can be Taken

27.3.1 A Field Employee with an annual leave entitlement, who wishes to take a single day of annual leave, must give the Company one (1) weeks' notice in writing.

27.3.2 A Field Employee with an annual leave entitlement, who wishes to take any other amount of the accrued leave entitlement, must, unless otherwise agreed between the Field Employee and the Company, give the Company at least three (3) weeks' notice in writing of the amount of leave to be taken.

27.3.3 The Company will grant a Field Employee's request to take accrued annual leave unless, in its opinion, the operations of the business will be unduly affected.

27.3.4 Unless otherwise agreed between the Company and a Field Employee, annual

leave will be given and taken in not more than three (3) separate periods each year; (this is not impacted by the taking of single days).

- 27.3.5 The Company may direct a Field Employee to take all or part of an annual leave entitlement provided at least four (4) weeks' notice in writing is given to the Field Employee.

#### 27.4 Payment for Annual Leave

- 27.4.1 A Field Employee taking annual leave will Field Employee's rostered earnings for the period of annual leave, which includes all rostered overtime and rostered public holidays. For the avoidance of doubt when a field employee takes leave in accordance with clause 27 of the Agreement the field employees will have deducted from their relevant leave accrual entitlement the ordinary hours only of each shift that would have been worked.

## 28 Personal/Carer's Leave

### 28.1 Application and Interaction with NES

- 28.1.1 Accruals and payment/entitlements in this Clause do not apply to Casual Field Employees.
- 28.1.2 Personal/carers leave entitlements are provided for in the NES. This Clause supplements those entitlements and deals with evidence required to be provided by a Field Employee when taking paid personal/carers leave.

### 28.2 Entitlement to Paid Personal/Carer's Leave

- 28.2.1 A Full-time Field Employee is entitled to accrue:
- i. 105 ordinary hours of personal/carers leave (inclusive of the Field Employee's NES entitlement) on commencing employment; and
  - ii. 105 ordinary hours of personal/carers leave on each anniversary of commencement.
- 28.2.2 Any accrued paid personal leave entitlement which is not taken by a Field Employee accumulates without limitation. For the avoidance of doubt when a field employee takes leave in accordance with clause 28 of the Agreement the field employees will have deducted from their relevant leave accrual entitlement the ordinary hours only of each shift that would have been worked.

### 28.3 Notification and Evidence Requirements

- 28.3.1 As soon as reasonably practicable during the ordinary hours of the first day of each period of absence on personal/carers leave, the Field Employee must notify the Company of their inability to attend for duty and, as far as practicable,

state the estimated duration of the Field Employee's absence. If it is not reasonably practicable for the Field Employee to provide notice during the ordinary hours of the first day of such absence, the Field Employee must inform the Company as soon as it is reasonably practicable to do so.

28.3.2 If requested by the Company, the Field Employee must provide a medical certificate, or such other evidence as will prove to the company's reasonable satisfaction that the absence from work was for the reasons set out in the NES. This must be provided to the Company as soon as practicable. For the avoidance of doubt, the provision of medical certificates or other evidence (accepted by the Company) shall be provided by the Field Employee in the following circumstances:

- i. More than two (2) consecutive days; or
- ii. For Monday to Friday Field Employee - Single days that are before or after a weekend and/or a public holiday.
- iii. Other evidence as referenced above can mean;
  - Statutory declarations; or
  - Confirmation document from a town chemist; or
  - Site medic/ESO (Emergency Services Officer).

28.3.3 A Field Employee is not entitled to be absent from work on personal/carer's leave, or to receive payment for such absence, unless the Employee complies with the requirements set out in this Clause.

#### 28.4 Deduction of Paid Personal/Carer's Leave

28.4.1 For each period of paid personal/carer's leave taken in accordance with this Clause the ordinary hours of rostered shifts that would have been worked by a Field Employee during the period will be deducted from the Field Employee's accrued paid personal/carer's leave entitlement.

#### 28.5 Payment for Paid Personal/Carer's Leave

28.5.1 If a Field Employee takes a period of paid personal/carer's leave in accordance with this Clause the Company must pay the Field Employee at the Field Employee's Hourly Rate of pay for the Field Employee's hours as if they were at work in the period.

#### 28.6 Payment of Personal/Carer's Leave on termination

28.6.1 Personal/Carers Leave shall be paid out on termination in accordance with clause 12.3.

## 29 Long Service Leave

29.1 Field Employees will accrue in accordance with Coal Mining Industry (Long Service Leave) Administration Act 1992 and where eligible be paid as if they were at work.

## 30 Public Holidays

### 30.1 List of Public Holidays

The following are public holidays recognised for the purposes of this Agreement:

- a) 1 January (New Year's Day);
- b) 26 January (Australia Day and/or Survival Day);
- c) Good Friday;
- d) Easter Sunday;
- e) Easter Saturday, where that day is gazetted as a public holiday for that locality;
- f) Easter Monday;
- g) Easter Tuesday;
- h) 25 April (Anzac Day);
- i) Labour Day;
- j) Queen's birthday holiday;
- k) 25 December (Christmas Day);
- l) 26 December (Boxing Day); and
- m) any other day, or part day, declared or prescribed or gazetted by or under State law to be observed generally within New South Wales, which the Field Employee is based for work purposes as a public holiday.

30.2 If under (or in accordance with a procedure under) a State law, a day or part-day is substituted for a day or part-day that would otherwise be a public holiday in accordance with this Clause, then the substituted day or part-day is the public holiday instead.

30.3 The Company and the majority of Field Employees affected may agree to observe a holiday on a day other than the day prescribed especially with the sensitivity surrounding 26<sup>th</sup> January. If this occurs, the day agreed upon is the recognized public holiday and the actual holiday becomes an ordinary working day.

### 30.4 Payment for Public Holidays

30.4.1 A Field Employee rostered to work on a recognised public holiday:

- i. A Field Employee who is rostered to work on a holiday is to be paid at the rate of double time for work performed during ordinary hours, in addition to the payment prescribed.
- ii. Work performed in excess of ordinary rostered hours on a public holiday is to be paid at the rate of treble time.

30.4.2 A Field Employee who is not rostered to work on a public holiday which would otherwise have been a working day for that Field Employee will be paid for that day at the Field Employee's ordinary hours and classification/base rate. This clause does not apply to Casual Field Employees.

30.4.3 If payment for public holidays falling on rostered days off is included in a flat hourly rate, then no additional payment will be made for public holidays not worked.

30.4.4 Notice of Public Holidays to be worked subject to the NES

- i. The working of all public holidays will be on a voluntary basis for Field Employees not ordinarily rostered on for work.
- ii. Except for Christmas Day and Boxing Day public holidays, Field Employees are requested to work public holidays as rostered (where reasonable and consistent with the Act) unless advised otherwise by the Company with at least four (4) weeks' notice to be given for such change.

## 31 Compassionate Leave

### 31.1 Entitlement, Notification and Evidence Requirements

31.1.1 In accordance with the NES, Field Employees are entitled to two days of compassionate leave for each occasion when a member of the Field Employee's immediate family or a member of the Field Employee's household:

- i. contracts or develops a personal illness that poses a serious threat to his or her life;
- ii. sustains a personal injury that poses a serious threat to his or her life; or
- iii. dies.

31.1.2 A Field Employee must notify the Company as soon as reasonably practicable of the intention to take compassionate leave.

31.1.3 The Field Employee must provide the Company with a medical certificate or such other evidence as proves to the Company's reasonable satisfaction that the absence from work was for the reasons set out in this clause.

31.1.4 The Company will work with the Field Employee to discuss compassionate leave options as we understand that 'Sorry Business' takes place in Indigenous families and communities. We will also refer the Field Employees to community services as another option that is culturally safe for them to access for support whilst dealing with 'Sorry Business'.

### 31.2 Payment for Compassionate Leave (other than for Casual Field Employees)

31.2.1 If a Field Employee, other than a Casual Field Employee takes a period of compassionate leave in accordance with this Clause and the NES, the Company will pay the Field Employee at the Field Employee's minimum hourly rate of pay for the Field Employee's ordinary hours of work in the period.

### 31.3 Unpaid Compassionate Leave (Casual Field Employees)

31.3.1 If a Casual Field Employee takes a period of compassionate leave in accordance with this Clause and the NES, the leave is unpaid.

## 32 Family and Domestic Violence Leave

### 32.1 Definitions

In this clause:



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

(b) Family member means:

- i. a spouse, former spouse, de facto partner, former de facto partner, child, parent, grandparent, grandchild or sibling of the Employee; or
- ii. a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Employee; or
- iii. a person related to the Employee according to Aboriginal or Torres Strait Islander kinship rules.

## 32.2 Entitlement to unpaid leave

32.2.1 An Employee is entitled to five (5) days' unpaid leave to deal with family and domestic violence.

32.2.2 The leave is available in full at the start of each twelve (12) month period of the

32.2.3 Employee's employment.

32.2.4 The leave does not accumulate from year to year;

32.2.5 Is available in full to part-time and casual Employees.

## 32.3 Taking unpaid leave

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

- i. Is experiencing family and domestic violence; and
- ii. Needs to do something to deal with the impact of the family and domestic violence and it is impractical for the Employee to do that thing outside their ordinary hours of work.

## 32.4 Service and continuity

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

## 32.5 Notice

32.5.1 An Employee must give their Supervisor | Manager notice of taking the leave as soon as practicable (which may be a time after the leave has started) and must include the period or expected period of the leave.

## 32.6 Evidence

32.6.1 An Employee who has given the Company notice of the taking of leave under



this clause must give the Company evidence that would satisfy a reasonable person that the leave is taken for the purpose specified. Such evidence may include a document issued by the police service, a court or a family violence support service or a statutory declaration.

#### 32.7 Confidentiality

- 32.7.1 The Company will treat the information concerning any notice or evidence provided under this clause as confidential as far as it is reasonably practicable to do so.
- 32.7.2 Nothing in this clause prevents the Company from disclosing information provided by the Employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the Employee or another person.

#### 32.8 Compliance

- 32.8.1 An Employee is not entitled to take leave under this clause unless the Employee complies with this clause.

## PART 6-CONSULTATION AND DISPUTE RESOLUTION

### 33 Consultation

#### 33.1 This clause applies if the Company:

- 33.1.1 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
- 33.1.2 proposes to introduce a change to the regular roster or ordinary hours of work of employees.

#### Major change

#### 33.2 For a major change referred to in subclause 33.1.1:

- 33.2.1 the Company must notify the relevant employees of the decision to introduce the major change; and
- 33.2.2 subclauses 33.3 to 33.9 apply.

#### 33.3 The relevant Employees may appoint a representative for the purposes of the procedures in this term.

#### 33.4 If:

- 33.4.1 a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
- 33.4.2 the Employee or Employees advise the Company of the identity of the representative; the Company must recognise the representative.

#### 33.5 As soon as practicable after making its decision, the Company must:

33.5.1 discuss with the relevant Employees:

- i. the introduction of the change; and
- ii. the effect the change is likely to have on the Employees; and
- iii. measures the Company is taking to avert or mitigate the adverse effect of the change on the Employees; and

33.5.2 for the purposes of the discussion – provide in writing to the relevant Employees:

- i. all relevant information about the change including the nature of the change proposed; and
- ii. information about the expected effects of the change on the Employees; and
- iii. any other matters likely to affect the Employees.

33.5.3 However, the Company is not required to disclose confidential or commercially sensitive information to the relevant Employees.

33.5.4 The Company must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.

33.5.5 If a term in the Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Company, the requirements set out in subclauses 33.2.1, 33.3 and 33.5 are taken not to apply.

33.5.6 In this term, a major change is “likely to have a significant effect on Employees” if it results in:

- i. the termination of the employment of Employees; or
- ii. a major change to the composition, operation or size of the Company's workforce or to the skills required of Employees; or
- iii. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- iv. the alteration of hours of work; or
- v. the need to retrain Employees; or
- vi. the need to relocate Employees to another workplace; or
- vii. the restructuring of jobs.

Change to regular roster or ordinary hours of work

33.6 For a change referred to in paragraph 33.1.2:

33.6.1 the Company must notify the relevant Employees of the proposed change; and

33.6.2 subclauses 33.4.2 to 33.6.7 apply.

33.6.3 The relevant Employees may appoint a representative for the purposes of the procedures in this term.

33.6.4 If:

- i. a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
- ii. the Employee or Employees advise the Company of the identity of the representative; the Company must recognise the representative.

33.6.5 As soon as practicable after proposing to introduce the change, the Company must:

- i. discuss with the relevant Employees the introduction of the change; and
- ii. for the purposes of the discussion – provide to the relevant Employees:
  - 33.6.5.i.a all relevant information about the change, including the nature of the change; and
  - 33.6.5.i.b information about what the Company reasonably believes will be the effects of the change on the Employees; and
  - 33.6.5.i.c information about any other matters that the Company reasonably believes are likely to affect the Employees; and
- iii. invite the relevant Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

33.6.6 However, the Company is not required to disclose confidential or commercially sensitive information to the relevant Employees.

33.6.7 The Company must give prompt and genuine consideration to matters raised about the change by the relevant Employees.

33.6.8 In this term, “relevant Employees” means the Employees who may be affected by the major change.

## 34 Disputes at Work

34.1 If a dispute relates to:

- 34.1.1 a matter arising under the agreement; or
- 34.1.2 the National Employment Standards;

this term sets out procedures to settle the dispute.

34.2 A Field Employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.

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

34.4 Field Employees have the option to have an Indigenous support person (internal or external) who is able to give support from an Indigenous perspective. This is to give better representation and understanding to the dispute, particularly if there are cultural differences that are contributing to the dispute.

34.5 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.

34.6 The Fair Work Commission may deal with the dispute in 2 stages:

34.6.1 the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and

34.6.2 if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:

i. arbitrate the dispute; and

ii. make a determination that is binding on the parties.

**Note: If Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act.**

34.7 While the parties are trying to resolve the dispute using the procedures in this term:

34.7.1 a Field 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

34.7.2 a Field Employee must comply with a direction given by the Company to perform other available work at the same workplace, or at another workplace, unless:

i. the work is not safe; or

ii. applicable occupational health and safety legislation would not permit the work to be performed; or

iii. the work is not appropriate for the Field Employee to perform; or

iv. there are other reasonable grounds for the Field Employee to refuse to comply with the direction.

34.8 The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this term.

## PART 7 - SUPPORT OF THE PARTIES

### 35 Signatories

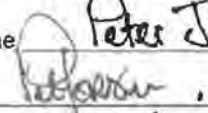
The parties recognise that each has a responsibility to ensure the successful operation of this Agreement.

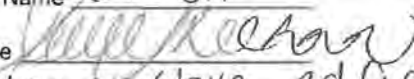
The signatures below testify the fact that the Agreement has been approved by the Field Employees who will be covered by the Agreement in accordance with the Fair Work Act 2009.

**Signed for and on behalf of Dreampath Recruitment Pty Ltd by:**

Name Steven Fordham  
Signature   
Address 12 Enterprise Crescent, Muswellbrook NSW 2333  
Position Managing Director  
Date 18.10.2021  
Witness Name Tiarne Scandurra  
Signature   
Address 12 Enterprise Crescent, Muswellbrook NSW 2333  
Date 18.10.2021

**Signed for and on behalf of the employees of Construction, Forestry, Maritime, Mining and Energy Union -Northern Mining and NSW Energy District:**

Printed Name Peter Jordan  
Signature   
Address 67A Aberdare Rd Cessnock 2325  
Position District President  
Date 19.10.21

Witness Name Kellie Sheehan  
Signature   
Address 67A Aberdare Rd, Cessnock 2325  
Date 19/10/2021





IN THE FAIR WORK COMMISSION

**Matter Number: AG2021/7935**

**Applicant: Dreampath Recruitment Pty Ltd**

**Section 185 – Application for approval of a single enterprise agreement.**

### **Undertaking – Section 190**

I Nicole Thompson, National Industrial Relations Manager give the following undertaking in relation to Dreampath Coal - New South Wales Northern District Enterprise Agreement 2021 (the Agreement).

1. I have the authority given to me by Dreampath Recruitment Pty Ltd to provide the following undertakings in relation to the application before the Fair Work Commission.
2. I have sought views of the bargaining representatives for this undertaking pursuant to section 190(4) of the *Fair Work Act (Cth)*.
3. Dreampath Recruitment Pty Ltd gives the following undertaking pursuant to section 190 of the *Fair Work Act 2009 (Cth)*.
  - a. Referencing errors  
Clause 22.4.1 references the classifications/rates of pay in clause 15, however this should be clauses 21 and 22 of the Agreement as this is where the classifications and rates of pay are located. Clause 22.4.1 also references the flat hourly rates in clause 23.3, this should be clause 22.3.
  - b. Personal/carer's leave  
This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency. The notice to be required for the taking of personal/carer's leave in clause 28.3.1 notice requirements shall be as soon as is practicable, which may be a time after the leave has started, in accordance with section 107(2)(a) of the Fair Work Act 2009 (Cth).
  - c. Public holidays  
The entitlement in Clause 30.3 to substitute a public holiday with a day other than the day prescribed shall only be able to occur by agreement between the employer and an individual employee, in accordance with section 115(3) of the Fair Work Act 2009 (Cth).
  - d. Abandonment of Employment  
In relation to the provisions regarding termination after abandonment of employment in Clause 10.1, an employees employment will only be terminated after the employer given written notice of the day of termination, which cannot be a day before the day the notice is given, in accordance with section 117(1) of the Fair Work Act 2009 (Cth).
  - e. Redundancy  
In relation to the exemption for redundancy payments in Clause 13.7 of the Agreement, this exemption shall only apply where the employer has made an application to the Fair

Work Commission in relation to the exemption in accordance with section 120(2) of the Fair Work Act 2009 (Cth). The Fair Work Commission may determine that the amount of redundancy pay is reduced to a specified amount (which may be nil) it considers appropriate.

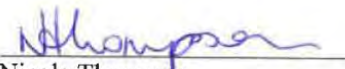
### **Redundancy Payment**

An employee made redundant pursuant to Clause 13.4 with less than 12 years' service and an employee retrenched pursuant to clause 13.6 with less than 4 years' service shall be entitled to redundancy pay calculated according to the following table in accordance with section 119 of the Fair Work Act 2009 (Cth):

<b>Redundancy pay period</b>		
	<b>Employee's period of continuous service with the employer on termination</b>	<b>Redundancy pay period</b>
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 but less than 10 years	16 weeks
10	At least 10 years	12 weeks

- f. This Agreement does not cover employees whose employment is covered by *Schedule B – Staff Employees of the Black Coal Mining Industry Award*.
- g. In relation to clause 22.3 and clause 22.4 we undertake that the employee's rates will not fall below the minimum rates contained in the Agreement. Where an employee's considers that over a one month period they are not better off overall under this Agreement due to the implementation of clause 22.3 and clause 22.4, they may request a comparison of the wages received for that roster cycle under this Agreement and the wages they would otherwise have been provided with under the Agreement. Any shortfall in wages which would otherwise be payable under the Agreement will be paid to the Employee in the next pay period after the review is completed. If the Employee and Employer cannot reach agreement on the total amount which should be paid by the operation of this undertaking, the Dispute Resolution Procedure in clause 34 of the Agreement will be followed and the parties will agree to the Fair Work Commission arbitrating and making a binding determination to resolve the matter.

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

  
Nicole Thompson

Date 16 September 2021