

Skilled Workforce Solutions (NSW) Pty Ltd Enterprise Agreement 2023

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1. TITLE

This agreement shall be known as the ***Skilled Workforce Solutions (NSW) Pty Ltd Enterprise Agreement 2023***.

2. DEFINITIONS

In this Agreement, unless otherwise expressed, the following applies:

2.1 "Act" means the *Fair Work Act 2009* (Cth) as amended or replaced.

2.2 "Agreement" means the ***Skilled Workforce Solutions (NSW) Pty Ltd Enterprise Agreement 2023***.

2.3 "Award" means the *Black Coal Mining Industry Award 2020*.

2.4 "Company" means Skilled Workforce Solutions (NSW) Pty Ltd ABN: 56104811565.

2.5 "Employee" means an employee of the Company engaged by the Company under one of the classifications contained in this agreement and performing the work at any client site under this Agreement.

2.6 "FWC" means Fair Work Commission.

2.7 "NES" means the National Employment Standards under the Act.

2.8 "Ordinary hours" means an average of 35 hours per week over an employee's roster cycle. For the avoidance of doubt, "ordinary hours" do not include overtime hours.

2.9 "Roster" means any arrangement of rostered hours worked by an employee.

2.10 "Overtime hours" means those hours worked outside of an Employee's ordinary hours.

2.11 "Rostered hours" means ordinary hours of work and rostered overtime.

2.12 "Shiftworker" means an Employee required to work a roster that covers shifts 24 hours a day/7 days a week and the Employee is regularly rostered to work those shifts and regularly works on Sundays and public holidays.

2.13 "Serious Misconduct" means causing serious and imminent risk to the health and safety of another person or the reputation or profits of the Company's business. Examples include theft, fraud, assault, being under the influence of drugs or alcohol or refusing to carry out lawful and reasonable instructions that are part of their job.

2.14 Where this Agreement refers to a condition of employment provided for in the NES, the NES definition applies.

3. PARTIES, APPLICATION, COMMENCEMENT, DURATION & TERMINATION

3.1 This Agreement covers and applies to:

3.1.1 The Company; and

3.1.2 All Employees engaged in a classification contained in this agreement at any of the Company's black coal mining sites in the Northern Districts Coal Fields of NSW.

3.2 This Agreement applies to the Company and Employees whose classifications are contained in this Agreement who, but for this Agreement, would be covered by the Black Coal Mining Industry Award 2020.

3.3 This Agreement will be read in conjunction with the National Employment Standards (NES). Where there is an inconsistency between the Agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

3.4 This Agreement incorporates the Award, provided where there is any inconsistency between the express terms of the Agreement and the Award the Agreement shall prevail to the extent of the inconsistency.

3.5 This Agreement will commence operation seven (7) days after it is approved by the FWC. The nominal expiry date of this Agreement is the date two (2) years from the date the agreement is made in accordance with s 182 of the *Fair Work Act 2009* (Cth)

4. PURPOSE AND INTENTION

The purpose of this agreement is to supply workforce service solutions and labour to the coal mining industry at sites operated by clients of the Company in the Northern Districts Coal Fields of NSW.

5. CLASSIFICATION AND TYPES OF EMPLOYMENT

5.1 Contract of Employment

Employees are engaged in accordance with their contract of employment

5.2 Full-time employment

A full-time employee is an employee whose average ordinary hours of work will be no less than thirty five (35) hours per week.

5.3 Part-time employment

5.3.1 A part-time employee is an employee who:

- (i) works less than 35 hours per week
- (ii) has reasonably predictable hours of work; and

(iii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

5.3.2 At the time of engagement the Company and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.

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

5.3.4 All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in Clause 16 - Overtime Hours.

5.3.5 A part-time Employee will be paid per hour $\frac{1}{35}$ th of the weekly rate prescribed for the classification in which the Employee is engaged.

5.4 Casual Employment

5.4.1 A casual employee is one engaged in accordance with the Company's casual contract of employment, and paid as such.

5.4.2 A casual employee shall be engaged by the hour. For each ordinary hour worked, a casual employee shall be entitled to the minimum ordinary hourly rate of pay as prescribed at clause 8.1.1 in this agreement plus 25%. The 25% casual loading compensates for and is in lieu of leave entitlements (excluding Long Service Leave), except in the case of eligible casual employees in accordance with the NES.

5.4.3 All casual engagements are for a minimum period of four (4) hours each in duration, except where otherwise provided in this Agreement.

5.4.4 The Company recognises that on occasion casual employees may not be available for shifts offered. The Company manages a forecasted roster for our clients and as such requires reasonable notice of any planned unavailability. To ensure minimum disruption to client operations, Casual Employees are encouraged to provide as much notice as possible or at least four (4) weeks' notice where reasonable.

Casual Conversion

5.4.5 Casual conversion shall be in accordance with the NES.

5.5 Probationary Employment

5.5.1 This clause does not affect any qualifying period set out by the Act.

5.5.2 This clause applies to Employees, other than casual Employees.

5.5.3 The first 6 months of employment will be a probation period. During this period the Company may terminate an Employee's employment with 1 week's notice.

5.5.4 Continuing employment during and at the conclusion of the probationary period will depend on the Employee's performance being satisfactory.

5.6 Fixed Term Employment

5.6.1 An employee may be engaged on a temporary basis for a fixed or maximum period of time or a specific project with no guarantee of on-going employment beyond the term specified in the contract of employment.

The above fixed term employment is subject to the provisions of the Fair Work Act.

6. TERMINATION OF EMPLOYMENT

6.1 Termination by employee.

An employee, other than a casual, must give 1 weeks' notice to terminate employment, or forfeit to the Company 1 week's pay instead of giving notice.

6.2 Termination by the Company excluding casuals.

6.2.1 Notice of termination is provided for in the NES. Accordingly, in order to terminate an Employee's employment the Company must give the affected Employee the period of notice specified in the following table:

Period of Continuous Service Period of Notice

Period of Continuous Service	Period of Notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

6.2.2 The period of notice is increased by one (1) week if the Employee is over forty-five (45) years of age and has completed at least two (2) years of continuous service with the Company.

6.2.3 The amount of payment instead of notice must be at least the amount that the Employee would have been paid if the employment had continued in employment to the end of the required period of notice. This payment includes shift loadings and penalties that would have been paid if at work.

6.2.4 Nothing in this Agreement diminishes the Company's right to dismiss an Employee without notice for serious misconduct, and in such cases the Employee's wages and entitlements shall be paid up to the time of dismissal only.

6.3 Notice of termination—redundancy

This clause shall apply to an employee, other than a casual or fixed term employee.

Where termination occurs due to redundancy as defined in clause 41, the employee whose employment is terminated is entitled to a minimum of four weeks' notice of termination.

6.4 Payments on Termination

6.4.1 If, when the employment of an employee ends. The employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.

6.4.2 An employee whose employment is terminated by retrenchment; by retirement at or after 55; by the Company because of ill health; or by death will, if the employee has 70 or more hours of untaken personal leave, be paid for that entitlement at the employee's base rate of pay.

6.4.3 The Company may deduct from termination payments any amounts paid to the Employee in advance and which the Employee is not entitled to retain, the amount of any over payment of wages or other established debt the Employee has with the Company in accordance with the Fair Work Act 2009..

6.4.3 This clause does not affect the right of the Company to dismiss an employee without notice for serious misconduct and in such cases the wages will be payable up to the time of dismissal only.

7. PERFORMANCE OF WORK, COMPANY POLICIES AND PROCEDURES

7.1 The Employee agrees to perform work which they are competent to perform as required by the Company in a safe, efficient and productive way so as to minimise the cost of operations, minimise wastage and to promote the interests of the Company and client.

7.2 The Employee agrees to comply with Company and client Policies and Procedures which may be varied from time to time. For the avoidance of doubt, Company and Client policies and procedures are not incorporated into this Agreement.

8. MINIMUM CLASSIFICATIONS & WAGES

8.1 The wage rates are inclusive of all other allowances unless otherwise mentioned in this Agreement.

8.1.1 EMPLOYEE ORDINARY HOURLY RATE

The following ordinary rates of pay apply from the first full pay period on or after a successful employee ballot to approve the Agreement:

Classification	Base Rate	Casual Rate
Mineworker Level 1 Trainee Cert II & Cert III Year 1	\$25.22	N/A
Mineworker Level 1 Trainee Cert III Year 2	\$28.02	N/A
Mineworker Level 2	\$30.43	\$38.04
Mineworker Level 3	\$32.52	\$40.65

The following ordinary rates of pay will apply from the first full pay period on or after 12 months from the date of the above increase:

Classification	Base Rate	Casual Rate
Mineworker Level 1 Trainee Cert II & Cert III Year 1	\$26.23	N/A
Mineworker Level 1 Trainee Cert III Year 2	\$29.14	N/A
Mineworker Level 2	\$31.64	\$39.55
Mineworker Level 3	\$33.83	\$42.29

8.2 Classification Definitions

Mineworker Level 1 (Trainee): Indentured trainee who completes either a Certificate II or Certificate III level traineeship. Trainees can complete either a one or two year traineeship and will remain in a Level 1 classification until they complete their indenture.

A Mineworker Level 1 (Trainee) is best described as an indentured trainee completing a Certificate II or III level traineeship.

Mineworker Level 2: Entry level classification for an Employee who trains in and performs required tasks under direct supervision (other than a trainee as per. Mineworker Level 1). This classification applies to employees until assessed by the Company as meeting the requirements to be classified as a Mineworker Level 3.

A Mineworker Level 2 Employee is best described as an inexperienced Mineworker or clean skin.

Mineworker Level 3: A Mineworker Level 3 is an employee who is assessed by the Company as competent to perform the required tasks in a variety of operating circumstances and under limited supervision.

A Mineworker Level 3 Employee is best described as an experienced Mineworker.

Trainer Classification: A casual Employee who is appointed by the Company and its client as an Operator Trainer will be paid no less than the flat rate of pay for Mineworker Level 3. If flat rates of pay are not applicable on the mine site they are working on then a reasonable rate, which recognises the duties of a trainer will be negotiated between the Company and the Employee before commencing as a Trainer.

8.3 Flat Payment Rates

- (a) In circumstances where a flat rate of pay is implemented, the flat rate will not result in an employee being paid less than they would otherwise be entitled to under the Agreement for the work performed.
- (b) Flat rates of pay will be calculated based on specific roster patterns on individual client sites.
- (c) The Company may pay employees flat rates of pay in satisfaction of the following entitlements in this Agreement that they would receive for working a particular roster cycle:
 - Base rates of pay at clause 8.1.1.;
 - The casual loading at clauses 5.4 and 13;
 - Allowances at clause 10 (including Award allowances);
 - Public holiday penalties at clause 19;
 - Overtime penalty rates for rostered overtime at clause 16; and
 - Weekend and shift penalty rates at clauses 15 and 18.
- (d) Where a flat rate of pay is paid, the Company will advise the employee, in writing, and keep a record of:
 - The flat rate of pay that is payable;
 - Which provisions of the Agreement will be satisfied by the flat rate of pay; and
 - The method by which the flat rate of pay is calculated.
- (e) Any entitlement not specified in the record in clause 8.3(d) will be separately paid for in accordance with the applicable provisions of this Agreement (e.g. non-rostered overtime).

9. TRAINEES

The following types of traineeship are available under this Agreement:

- (a) A full-time traineeship based on an average of 35 ordinary hours per week over the roster cycle.
- (b) A part-time traineeship based on an average of less than 35 ordinary hours per week over the roster cycle.

9.1 Trainee Rates

9.1.1 Trainees will be engaged to complete a recognised traineeship program.

9.1.2 Trainee rates of pay are provided for in clause 8.

10. ALLOWANCES

Allowances will be paid in accordance with the Award except as provided in this clause.

10.1 First Aid Allowance

An Employee who has been trained to render first aid and who is the current holder of appropriate first aid qualifications, such as a certificate from the St John Ambulance or similar body, will be paid 0.80% per shift (based on their classification rate) on rostered hours if appointed by the Company to perform first aid duty.

10.2 Tool Allowance

Employees eligible for the Tool Allowance in the Award will be paid \$2.25 per hour.

11. PAY FREQUENCY

Wages will be paid weekly.

12. WAGE REVIEW

12.1 Increases to the ordinary wage rates in this Agreement will be increased as follows:

- (a) From the first full pay period on or after the date of approval by the majority of employees, the base ordinary hourly rate of pay will be increased by a total of 14% on the 2019 Agreement hourly rates as at the date of its nominal expiry.
- (b) From the first full pay period 12 month after the Agreement is approved by the majority of employees, the base ordinary hourly rates of pay will increase by a further 4%.

12.2 The Company will periodically review market conditions, client and Employee performance and may, at its discretion, award an increase to the base and flat rates in this Agreement additional to any increase awarded under sub clause 12.1.

12.3 During the life of this Agreement no wage rate will fall below the relevant minimum wage as set out in the Black Coal Mining Industry Award 2020 as varied.

Retention Bonus

12.4 The company is committed to exploring employee retention initiatives. During the operation 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 host site.

13. WAGES FOR CASUAL EMPLOYEES

13.1 Casual Employees will be paid the rate for their classification in Clause 8 of this agreement plus a casual loading of 25% for working ordinary hours (except in the case of the flat hourly pay rates where the casual loading has already been factored in).

The 25% casual loading is in lieu of annual and paid personal/carer's leave, notice of termination and redundancy payments. Other loadings, shift, overtime, weekend, public holiday and penalty rates shall be in addition to the relevant base hourly rate of pay for their classification in Clause 8.1.1 of this agreement.

13.2 Casual Employees will be engaged by the hour with a minimum engagement of 4 hours on each occasion.

13.3 During the life of this Agreement casual wages and loading will not fall below those set out in the Award.

14. HOURS OF WORK AND ROSTERING

14.1 The ordinary hours of work will be an average of thirty five (35) hours per week over the roster cycle.

14.2 The Company can determine the working arrangements to be worked including the types of rosters to be worked, hours of work, shift length, shift start and finish times.

14.3 Employees may be required to work rosters that enable coverage over a 24 hour period, 7 days per week, subject to industry Fatigue Guidelines.

14.4 Shift lengths may be up to 12.67 hours in duration.

14.5 The Company will provide an Employee with 7 days' notice of a change in their roster unless a shorter period is agreed.

14.6 Work will be arranged so that an Employee has ten (10) consecutive hours off between work on successive days.

14.7 The Company is required to provide notification of a cancelled shift, to the affected Employee, at least two (2) hours' prior to the rostered shift starting time. This includes both rostered and unrostered overtime shifts. In situations where the Company has not provided notification Casual Employees will be paid a minimum of four (4) hours as if they were at work. Employees, other than casuals, will be paid in accordance with clause 22.2.2.

14.8 The company will not change the start time of the shifts for casuals on these days to avoid the payment referred to in this clause.

Safety Talks and Medicals

14.9 Where an employee is required to attend a safety talk, as advised by the Company, employees will be paid at double time for the duration of the safety talk. Safety talks are contained to a limit of 15 minutes in duration.

14.10 Employees participating in Order 43 Medicals outside their rostered hours will be paid for the time of attendance at the rate of double time for the full duration of the appointment with a minimum payment of 2 hours. For clarity, travel time to and from the medical appointment is not paid.

15. SHIFTWORK

15.1 Definitions

15.1.1 Afternoon shift means any shift, the Ordinary Hours of which finish after 6.00 pm and at or before midnight.

15.1.2 Night shift means any shift, the Ordinary Hours of which finish after midnight and at or before 8.00 am.

15.1.3 Permanent night shift employee is an employee who:

- i. Works night shift only; or
- ii. Stays on night shift for a longer period than four consecutive weeks; or
- iii. Works on a roster that does not give at least one-third of the employee's working time off night shift in each roster cycle.

Shiftwork rates

An employee will be paid the following additional penalties for all ordinary hours worked as follows:

	<u>Additional penalty</u> (% of ordinary rate)
Monday - Friday	
Day work / Day shift	0%
Afternoon or rotating night shift	15%
Permanent night shift	25%
Saturday and Sunday	
Day work / Day shift	100%
Afternoon or rotating night shift	130%
Permanent night shift	150%

15.3 Work on an Afternoon or Night Shift that spreads across 2 consecutive days will be paid according to the day on which the rostered hours start.

16. OVERTIME HOURS

16.1 Subject to the NES, the Company may require employees to work reasonable additional overtime hours to meet the needs of the business in addition to their Ordinary Hours of work.

16.2 All time worked in excess of the Ordinary Hours of any shift on the following days will be paid for at the following rates:

Day of Week	Overtime Rates (% of ordinary rate)
Monday to Saturday	First 3 hours at 150% (time and a half) After 3 hours at 200% (double time)
Sunday	All hours at 200% (double time)

16.3 All time worked in excess of the Rostered Hours or on any additional shifts by Employees who are shiftworkers will be paid for at the rate of double time except as set out below.

16.4 Six and seven day roster employees

16.4.1 All time worked in excess of or outside ordinary hours of an afternoon shift or a rotating night shift by a 6 or 7 day roster employee will be paid an additional shift loading of 15% (total 215% of ordinary rate).

16.4.2 All time worked in excess of or outside ordinary hours of a permanent night shift by a 6 or 7 day roster employee will be paid an additional loading of 25% (total 225% of the ordinary rate)

17. BREAKS

17.1 A thirty (30) minute paid meal break will be provided for shifts over five (5) hours duration or more.

17.2 Shifts of more than ten (10) hours are entitled to an additional thirty (30) minutes of paid meal break time.

17.3 Meal breaks will be arranged by Supervisory personnel to ensure, where necessary, the continuity of operations.

18. WEEKEND RATES (ORDINARY HOURS)

18.1 If an Employee works on a Saturday or Sunday, subject to clause 15.3, the Employee will be paid at 200% (double time) for ordinary hours worked.

19. PUBLIC HOLIDAYS

19.1 The recognised public holidays shall be:

- New Years Day
- Australia Day
- Good Friday
- Easter Saturday
- Easter Sunday
- Easter Monday
- Easter Tuesday
- Anzac Day
- Labour Day
- Queen's Birthday
- Christmas Day
- Boxing Day

and any other days as gazetted by the Government of the NSW.

19.2 Employee not required to work on a public holiday

An Employee, other than a casual employee, who is not required to work on a public holiday (which would otherwise have been a working day for that Employee) will be

paid for that day at the Employee's classification rate for ordinary hours. For the avoidance of doubt for permanent employees and trainees refer to clause 8.1.1.

19.3 Employee required to work on a recognised public holiday

19.3.1 An Employee who is required to work on a public holiday will be paid at the rate of 300% (triple time) for work performed during ordinary hours.

For those employees engaged under flat rates of pay (Clause 8.1.2) they will be paid their agreed flat rate of pay which incorporates payment for public holidays.

For those employees engaged under Clause 8.1.1 payment will be 300% (triple time) of their applicable ordinary rate stated in that clause.

19.3.2 Work performed in excess of ordinary rostered hours on a public holiday will be paid at the rate of 300% (triple time), with the exception of employees engaged under flat rates of pay.

19.4 Shift loading for work on a public holiday

19.4.1 An employee engaged under clause 8.1.1 will be paid the following additional shift penalties for working on a public holiday.

Type of Shift	Additional penalty (% of ordinary hourly rate of pay)
Ordinary hours – afternoon shift or rotating night shift.	30
Ordinary hours – permanent night shift	50
Overtime hours for 6 or 7 day roster employees – afternoon or rotating night shift	30
Overtime hours for 6 or 7 day roster employee – permanent night shift	50

19.5 Transfer of recognised public holidays

The Company and an Employee may agree to observe a public holiday on a day other than the day prescribed. If this occurs, the day agreed upon is the holiday and the actual holiday becomes an ordinary working day.

19.6 Christmas Day and Boxing Day shifts will remain as optional shifts, Employees may volunteer to work but cannot be forced to work. Optional shifts commence at night shift on the 24th of December and cease at the conclusion of day shift on the 26th of December.

20. ANNUAL LEAVE

20.1 This clause applies to Employees, other than casual Employees.

20.2 Annual leave entitlements are provided for in the NES. This clause supplements those entitlements.

20.3 An Employee is entitled to Annual leave, in addition to the amount provided for in the NES, such that the Employee's total entitlement to annual leave pursuant to the NES and this Agreement for each year of employment is a cumulative total of 175 ordinary hours (five weeks).

20.4 An Employee defined as a shiftworker is entitled annually to an additional 35 ordinary hours (one week) of annual leave.

20.5 For each period of annual leave taken the ordinary hours of each shift that would have been worked by an Employee will be deducted from the Employee's accrued annual leave entitlement.

20.6 Payment for Annual Leave

Annual leave will be paid using either:

- (i) the employee's ordinary rate of pay plus a loading of 20% of that rate; or
- (ii) the employee's rostered earnings for the period of annual leave which includes all rostered overtime and rostered public holidays (but does not include shift allowances other than for shiftworkers); whichever is the greater.

20.7 Employees on annual leave will be paid on the same date as all other Employees.

20.8 To the extent permitted by the Act, the Employee may elect, with the agreement of the Company, to cash out accrued annual leave at the rate that would have been payable had the annual leave been taken.

Annual leave cannot be cashed out if the cashing out results in the Employee's remaining accrued entitlement to paid annual leave being less than four (4) weeks.

Each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and employee.

20.9 Annual Leave will be granted unless in the opinion of the Company the operations will be adversely affected by the granting of Annual Leave at that time requested.

20.10 The Company may require an Employee to take a period of annual leave under particular circumstances, but only where the requirement is reasonable.

21. SHUTDOWN

In the event that the Company decides to shut down or partially shut down its operations it will give affected Employees at least twenty eight (28) days' notice.

The Company may require an Employee to use accrued annual leave or leave without pay for the duration of the shutdown.

Where the Employee does not have a sufficient entitlement to annual leave the Company may either grant annual leave in advance or agree to unpaid leave for the period of the shutdown or part thereof.

22. STAND DOWN

22.1 The Company has the right to refuse payment to an Employee for any day or part day during which an Employee is stood down as a result of refusal of duty, neglect of duty or misconduct of the Employee, or the Employee cannot be usefully employed in the Employee's usual classification because of a strike or a breakdown of machinery.

22.2 Adverse Climatic Conditions

22.2.1 The Company may stand down an Employee during a period in which the Employee cannot perform his or her job at a Client site due to adverse climatic conditions and the Client has directed that the Company's Employees do not attend work. These conditions include wet weather, fires, wind and other extreme climatic conditions.

22.2.2 Employees, other than casual Employees, who have been stood down due to adverse climatic conditions will be paid their minimum ordinary hours over the roster cycle for that period these ordinary hours will be paid at the base rate, in accordance with applicable classification in Clause 8.1.1.

22.2.3 The Company will take all reasonable steps to minimise the need for standing down Employees, including, where practical, using adverse climatic condition days as training days.

22.3 Makeup Shift

22.3.1 The Company will take all reasonable steps to schedule Employees affected by sub-clause 22.2 a makeup shift, the hours of which will be paid according to the ordinary and overtime hours of the makeup shift including any shift loadings.

23. PAID PERSONAL/CARER'S LEAVE

23.1 This clause applies to Employees, other than casual Employees.

23.2 Personal/Carers Leave entitlements are provided for in the NES. The clause supplements the NES and deals with evidence required to be provided by an employee when taking paid personal/ carer's leave.

23.3 Entitlement

A full-time Employee is entitled to 105 ordinary hours of personal/carer's leave (inclusive of the employee's NES entitlement) on commencing employment and on each anniversary of commencement. Any personal leave which is not taken by an employee must accumulate without limitation.

23.4 Notice

When an Employee becomes aware that they will be unable to attend work and wish to take leave in accordance with this provision they are to notify the Company as soon as reasonably practicable and wherever possible before the commencement of their rostered shift.

23.5 Evidence

The Company may require an Employee to provide reasonable proof, such as a doctor's certificate or other evidence, of the Employee's need to take personal/carer's leave prior to the leave being paid.

23.6 Payment of Personal/Carer's Leave

Payment for personal leave will be at the Employee's applicable flat rate of pay for the ordinary hours component of the shift (up to 10 hours per shift)

23.7 Deduction of personal leave

Any personal leave taken must be deducted from the employee's personal leave entitlement, as follows:

- a) Where the absence is for fewer than half the ordinary hours component of the shift, no deduction; or
- b) In all other cases, the full ordinary hour's component of the shift will be deducted for each absence.

24. UNPAID CARER'S LEAVE

Unpaid Carer's leave will be administered in accordance with the NES.

25. COMPASSIONATE LEAVE

Compassionate leave will be administered in accordance with the NES.

26. COMMUNITY SERVICE LEAVE

Compassionate leave will be administered in accordance with the NES.

27. JURY SERVICE

27.1 If an Employee is required to attend for Jury Service, the Company must be notified as soon as possible of the date required to attend, proof of attendance, duration of attendance and the amount received in respect of attendance.

27.2 The Employee will be reimbursed by the Company an amount equal to the difference between the amount paid for jury service attendance and the amount of wages the Employee would have received had the Employee been able to work their ordinary hours during the period of jury service.

28. PARENTAL LEAVE

Parental Leave will be in accordance with the NES.

29. DEDUCTIONS - EQUIPMENT & TOOLS OF TRADE (COMPANY PROPERTY)

29.1 The Company will provide Employees with all tools of trade necessary to perform the work. The equipment will remain the property of the Company.

29.2 If an Employee fails to return any Company supplied equipment in a fair condition upon termination of their employment, after taking into account fair wear and tear, the Company is permitted to deduct the reasonable repair or replacement cost from the Employee's unpaid wages.

29.3 Equipment in the case of Operators is defined as branded clothing and crib bags.

30. SUPERANNUATION

30.1 This clause applies to the exclusion of any obligation which the Company might otherwise have under any State statute or any Award or other industrial instrument or Agreement.

From the lodgement of this Agreement the Company will make superannuation contributions for each Employee to the greater of:

- (i) The current rate of 11% of ordinary time earnings (OTE); or
- (ii) A level so that the Company does not incur a charge under the Superannuation Guarantee Legislation.

30.1.1 For the purposes of sub-clause 30.1 OTE will mean the total of the following:

- (i) Earnings in respect of the Employee's Ordinary Hours of work.
- (ii) Overtime hours that form part of a roster pattern of work. For overtime hours that form part of a roster pattern of work, superannuation will be paid on those hours at the overtime rate of pay.
- (iii) For those employees paid a flat hourly rate, superannuation will be paid on all rostered hours based on the applicable total flat rate of pay.
- (iv) For the avoidance of doubt superannuation is not paid for any unrostered overtime hours.

30.2 For the purpose of the Superannuation Guarantee charge, the Company will make contributions into a complying fund, where Employees fail to nominate their own choice of fund, the default fund will be Mine Super.

31. DRUGS AND ALCOHOL

If an Employee is proven to be influenced by drugs or alcohol, the Employee will not be permitted by the Company to remain at work. The Employee will be immediately stood down without pay. Disciplinary action, which may include immediate termination of employment, will follow.

32. WORK CLOTHING

Gender specific protective clothing will be provided on a needs basis at no cost to the Employee and replaced on a fair wear and tear basis, as determined by the Company, as follows:

- 1 x pair of boots
- 1 x winter jacket or jumper
- 1 x bag
- 3 x sets of work clothing (3 pants or overalls and 3 shirts).

Gender specific protective clothing shall be supplied to all employees to meet industry standards.

Where applicable, the company will supply maternity protective clothing.

33. WORK HEALTH AND SAFETY (WHS)

33.1 The parties to this Agreement are committed to the safe operation of machinery and equipment, to observing safe work practices, to the proper use of personal safety equipment and the health and safety of all Employees and other persons working at a Company or Client site.

33.2 Employees must adhere to the Company's WHS procedures, rules and policies at all times.

33.3 Employees must adhere to any client specific WHS procedures, rules and policies at all times whilst on that client site.

33.4 Disciplinary action, which may include immediate termination of employment, will result from any breach of this clause.

33.5 The Company reinforces its commitment to our core value of Workplace Safety. The Company has an expectation that all Employees will report hazards in the workplace and actively participate in maintaining a safe environment for all. The Company will unconditionally support Employees that raise valid safety concerns and ensure that their concerns are addressed and reasonably rectified.

34. ACCIDENT PAY

34.1 This clause applies to all Employees, including casuals.

34.2 An Employee who is injured during the course of his/her employment shall be entitled to payment in accordance with the applicable New South Wales Workers Compensation legislation as it relates to the Coal Mining Industry, including accident pay.

34.3 The applicable legislation at the time of the Agreement's registration will be binding for the life of this Agreement.

34.4 An Employee in receipt of weekly payments under the provisions of applicable workers compensation legislation will be entitled to receive accident pay from the Company subject to the following conditions and limitations.

34.5 Payment to be made during incapacity

The Company will pay, or cause to be paid, accident pay during the incapacity of the Employee, within the meaning of the applicable workers compensation legislation:

- until such incapacity ceases; or
- until the expiration of a period of 78 weeks from the date of injury
- whichever event will first occur, even if the Company terminates the Employee's employment within the period.

34.6 Meaning of Accident Pay

34.6.1 For the purposes of this clause accident pay means as per the rate provided for in this Agreement.

34.6.2 For the first 39 weeks from the date of the injury, the employee will be paid a weekly payment representing the difference between the weekly amount of compensation under the applicable legislation and the weekly amount that the employee would have earned had they been at work.

34.6.3 From week 40 to week 78 from the date of the injury, the employee will be paid a weekly payment representing the difference between the weekly amount of compensation under the applicable legislation and the weekly amount based on the employee's ordinary hours at the base rate of pay set out in this Agreement.

34.7 Pro rata payments

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

34.8 When not entitled to payment

An Employee will 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.

34.9 Redemptions

In the event that an Employee receives a lump sum in redemption of weekly payments under the applicable workers compensation legislation, the liability of the Company to pay accident pay as herein provided will cease from the date of such redemption.

34.10 Damages independent of the Acts

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

34.11 Calculation of period

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.

35. LICENCE

If it is a requirement of an Employee's employment that he/she holds a current license or permit to drive or operate a particular vehicle or piece of machinery, the Employee must notify the Company immediately if he/she is charged with any offence in relation to the operation of the vehicle or piece of machinery or if the Employee's licence is suspended or cancelled.

36. OTHER EMPLOYMENT AND CONFLICTS OF INTEREST

During employment with the Company Employees must not engage, directly or indirectly, in any employment or business that is similar to or competitive with the business of the Company, without the prior written approval of the Company. Further, during employment with the Company, Employees must not engage, directly or indirectly, in any employment or business that could impair an Employee's ability to act in the best interests of the Company, without the prior written approval of the Company.

The intent of this clause is not to restrict employees from sourcing alternate employment opportunities. The company does expect that any employee would advise of the alternate employment to ensure that it does not conflict with fatigue management policies.

37. WORKPLACE FLEXIBILITY

37.1 Notwithstanding any other provision of this Agreement, the Company and an individual employee may agree to vary the application of certain terms of this Agreement to meet the genuine individual needs of the Company and the individual employee. The terms that the Company and the individual employee may agree to vary the application of are those concerning:

- (i) arrangements for when work is performed;
- (ii) overtime rates;
- (iii) penalty rates;
- (iv) allowances; and
- (v) leave loading.

37.2 The Company and the individual employee must have genuinely made the flexibility agreement without coercion or duress.

37.3 The flexibility agreement between the Company and the individual employee must:

- i) be confined to a variation in the application of one or more of the terms listed in clause 37.1; and
- ii) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

37.4 For the purposes of clause 37.3 (ii) the flexibility agreements will be taken not to disadvantage the individual employee in relation to the individual employee's terms and conditions of employment if:

- i) the flexibility agreement does not result, on balance, in a reduction in the overall terms and conditions of employment of the individual employee under this Agreement; and

ii) the flexibility agreement does not result in a reduction in the terms and conditions of employment of the individual employee under any other relevant laws of the Commonwealth or any relevant laws of a State or Territory.

37.5 The flexibility agreement between the Company and the individual employee must also:

- i) be in writing, name the parties to the flexibility agreement and be signed by an authorised representative of the Company and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- ii) state each term of this Agreement that the Company and the individual employee have agreed to vary;
- iii) detail how the application of each term has been varied by agreement between the Company and the individual employee;
- iv) detail how the agreement does not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment; and
- v) state the date the flexibility agreement commences to operate.

37.6 The Company must give the individual employee a copy of the flexibility agreement within 14 days after it is agreed to and keep the flexibility agreement as a time and wages record.

37.7 The Company seeking to enter into a flexibility agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the Company must take measures, including translation into an appropriate language, to ensure that the employee understands the proposal.

The flexibility agreement may be terminated:

- i) by the Company or the individual employee giving four weeks' notice of termination, in writing, to the other party and the flexibility agreement ceasing to operate at the end of the notice period; or
- ii) at any time, by written agreement between the Company and the individual employee.

The right to make a flexibility agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between the Company and an individual employee contained in any other term of this Agreement.

38. WORKPLACE CONSULTATION

38.1 This term applies if:

- (i) the Company has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
- (ii) the change is likely to have a significant effect on employees of the Company.
- (iii) the company proposes to introduce a change to the regular roster or ordinary hours of work of employees.

38.2 The Company must notify the relevant employees of the decision to introduce the major change.

38.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.

38.4 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.

38.5 As soon as practicable after making its decision, the company must:

(a) 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

(b) 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.

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

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

38.8 If a term in the enterprise agreement provides for a major change to production, program, organisation, structure or technology in relation to the operations of the Company, the requirements set out in subclauses 38.2, 38.3 and 38.5 are taken not to apply.

38.9 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) 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.

(viii) In this term, relevant employees means the employees who may be affected by the major change.

Change to regular roster or ordinary hours of work

38.10 For a change referred to in Clause 38.1(iii):

- (a) the Company must notify the relevant employees of the proposed change; and
- (b) subclauses 38.11 to 38.15 apply.

38.11 The relevant employees may appoint a representative for the purposes of the procedures in this term.

38.12 If:

- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- (b) the employee or employees advise the Company of the identity of the representative;

the Company must recognise the representative.

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

- (a) discuss with the relevant employees the introduction of the change; and
- (b) for the purposes of the discussion—provide to the relevant employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the Company reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the Company reasonably believes are likely to affect the employees; and
- (c) 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).

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

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

38.16 In this term:

relevant employees means the employees who may be affected by a change referred to in subclause 38.1.

39. DISPUTE HANDLING PROCEDURE

39.1 If a dispute relates to:

- (i) a matter arising under the Agreement;
- (ii) matters pertaining to the employment relationship, or
- (iii) the National Employment Standards

this term sets out procedures to settle the dispute.

39.2 An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.

39.3 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 and relevant supervisors and/or management.

39.4 If no resolution to the dispute, the matter will be referred for discussion between the employee and senior management of the Company. Senior Management includes the relevant Regional Manager or General Manager.

39.5 If the above discussions do not resolve the dispute, a party to the dispute may refer the matter to FWC.

39.6 FWC may deal with the dispute in 2 stages:

- (i) FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
- (ii) If FWC is unable to resolve the dispute at the first stage, FWC may then:
 - arbitrate the dispute; and
 - make a determination that is binding on the parties

Note: if FWC arbitrates the dispute, it may also use the powers that are available to it under the Act.

A decision that FWC makes when arbitrating a dispute is a decision for the purpose of Div. 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

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

- (i) 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
- (ii) An employee must comply with a direction given by the Company to perform other available work at the same workplace, or at another workplace, unless:

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

39.8 The parties to the dispute agree to be bound by a decision made by FWC in accordance with this term subject to any appeal rights.

40. LONG SERVICE LEAVE

40.1 An Employee will accrue long service leave in accordance with the legislated standard for the Black Coal Industry.

40.2 Long Service Leave will be paid as if worked.

41. REDUNDANCY

41.1 This clause shall not apply to a fixed term or casual employee.

41.2 The redundancy arrangements in this Agreement are an industry-specific redundancy scheme and, as such, Subdivision B of Division 10 the NES does not apply.

41.3 Definition of redundancy

(a) An employee is made redundant where an employee's employment is terminated at the Company's initiative:

(i) because the Company 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

(ii) because of insolvency or bankruptcy of the Company.

41.4 Severance payment

Except where clause 41.5 applies, when terminations occur due to redundancy the employees terminated are entitled to severance pay equal to one ordinary week's pay for each completed year of employment.

41.5 Retrenchment payment

(a) Except where clause 41.6 applies, where redundancies occur due to:

(i) technological change;

(ii) market forces; or

(iii) diminution of reserves,

the employees terminated are entitled to retrenchment pay equal to two ordinary weeks' pay for each completed year of employment . This payment is additional to the payment prescribed in clause 41.4. This makes a total of three ordinary weeks' pay for each completed year of employment.

(b) Regardless of length of employment, the minimum payment due to employees under clause 41.4(a) is two ordinary weeks' pay.

41.6 Exemption

The Company is not liable for the payment in clauses 41.3 and 41.4 if the Company obtains, or causes to be made available for the employee, work:

- (a) that the employee is competent to perform;
- (b) in a position that carries the same or a higher classification rate of pay than the employee's previous position;
- (c) that can reasonably be regarded as permanent; and
- (d) allows the employee to reside in the same general locality as the employee's previous residence.

42. ACCRUAL OF HOURS (MOUNT THORLEY WARKWORTH SPECIFIC)

The Company recognises that existing practices at the Mount Thorley Warkworth site include the accrual of a portion of wages on a weekly basis for Employees to access as needed. The Company agrees to continue this practice for Employees engaged at Mount Thorley Warkworth. The Company reserves the right to direct employees to redeem accrued amounts (i.e. have the monies paid) should these amounts exceed a total of 36 hours.

43. NO FURTHER CLAIMS

It is agreed between the parties that there will be no further claims for the duration of this Agreement in relation to the terms of this Agreement.

44. UNION ACTIVITIES

Elected representatives will be allowed unpaid absences to attend Union Activities off site upon request provided the following conditions are met:

- There is a maximum of five days per year for each representative of leave available; and
- At least 4 weeks' notice is given to the supervisor in writing.

Subject to operational requirements and the provision of reasonable notice in writing, elected representatives will be released from normal duties without loss of pay to:

- Attend enterprise agreement negotiations
- To hold communication meetings of employees on the site that the elected representative works at where such meetings are given prior approval by the Company and the work site.

Subject to operational requirements and the provision of four weeks' notice, where elected representatives are Lodge Officers of the Union they will be released from normal duties without pay to participate in meetings required in their wider representative role as officers of the Union such as District Meetings, National Convention, Board of Management or Council.

There may be no more than two (2) employees elected to represent employees covered by this agreement for the purposes of this clause.

45. SIGNATURES

Signed for and on behalf of the Company	
Signature:	
Date:	
Name in full:	
Authority to sign:	
Address:	
Witness	

Signed for and on behalf of the Employees	
Signature:	
Date:	
Name in full:	
Authority to sign:	
Address:	
Witness	

Appendix A – Flat Rates of Pay

Mineworker Level 3 - rotating Even time roster – 12.5 hour shifts

- 35 ordinary hours per week averaged over roster cycle.
- 4 week roster cycle (4 x 35 = 140 ordinary hours).
- 14 shifts per 4 week cycle = 10 ordinary hours per shift.
- 2.5 hours rostered overtime per shift.

Even time rosters - 12.5 hour shifts											
Week	Day Shift		Night shift		Overtime			Ave 6 Public holiday worked			
	Monday - Friday	Saturday & Sunday	Monday - Friday	Saturday & Sunday	Time & Half	Double Time	Double Time plus	3 Dayshift	3 Nightshift		
	100%	200%	115%	230%	x 1.5	x2	x 2.15	300%	330%		
Total Hours	44.23	20	50	20	0	17.5	17.5	2.88	2.88	175.00	Hours worked/cycle
Hourly rate	\$32.52	\$65.04	\$37.67	\$74.80	\$48.78	\$65.04	\$70.19	\$97.56	\$107.32		
Total Earning	\$1,438.38	\$1,300.80	\$1,883.72	\$1,495.92	\$0.00	\$1,138.20	\$1,228.40	\$281.42	\$309.57	\$9,076.42	Permanent Wages/cycle
	Base	Flat -									
	\$32.52	\$51.87									
casual loading											
Casual	\$40.65	\$73.17	\$45.80	\$82.93	\$48.78	\$65.04	\$70.19	\$97.56	\$107.32		
Total Earning	\$1,797.98	\$1,463.40	\$2,290.22	\$1,658.52	\$0.00	\$1,138.20	\$1,228.40	\$281.42	\$309.57	\$10,167.71	Casual Wages/cycle
	Flat rate - casual										
	\$58.10										

Note: the Award 'additional shift allowance – open cut' is included in the night shift loading

Mineworker Level 3 - rotating Even time roster – 12.67 hour shifts

- 35 ordinary hours per week averaged over roster cycle.
- 4 week roster cycle (4 x 35 = 140 ordinary hours).
- 14 shifts per 4 week cycle = 10 ordinary hours per shift.
- 2.67 hours rostered overtime per shift.

Even time rosters - 12.67 hour shifts											
Week	Day Shift		Night shift		Overtime			Ave 6 Public holiday worked			
	Monday - Friday 100%	Saturday & Sunday 200%	Monday - Friday 115%	Saturday & Sunday 230%	Time & Half x 1.5	Double Time x2	Double Time plus x 2.15	3 Dayshift 300%	3 Nightshift 330%		
Total Hours	44.15	20	50	20	0	18.69	18.69	2.92	2.92	177.38	Hours worked/cycle
Hourly rate	\$32.52	\$65.04	\$37.67	\$74.80	\$48.78	\$65.04	\$70.19	\$97.56	\$107.32		
Total Earning	\$1,435.83	\$1,300.80	\$1,883.72	\$1,495.92	\$0.00	\$1,215.60	\$1,311.93	\$285.25	\$313.78	\$9,242.83	Permanent Wages/cycle
	Base	Flat -									
	\$32.52	\$52.11									
casual loading											
Casual	\$40.65	\$73.17	\$45.80	\$82.93	\$48.78	\$65.04	\$70.19	\$97.56	\$107.32		
Total Earning	\$1,794.79	\$1,463.40	\$2,290.22	\$1,658.52	\$0.00	\$1,215.60	\$1,311.93	\$285.25	\$313.78	\$10,333.49	Casual Wages/cycle
	Base	Flat rate - casual									
	\$32.52	\$58.26									

Note: the Award 'additional shift allowance – open cut' is included in the night shift loading

Mineworker Level 3 – Permanent nightshift - Monday to Thursday roster - 12.67 hour shifts

- 35 ordinary hours per week averaged over roster cycle.
- 1 week roster cycle (35 ordinary hours).
- 4 shifts per 1 week cycle = 8.75 ordinary hours per shift.
- 3.92 hours rostered overtime per shift.

Monday - Thursday Nightshift roster - 12.67 hour shifts											
Week	Day Shift		Night shift		Overtime			Ave 9 Public holiday worked			
	Monday - Friday	Saturday & Sunday	Monday - Friday	Saturday &	Time & Half	Double Time	Double Time plus	Dayshift	9 Nightshift		
	100%	200%	125%	230%	x 1.5	x2	225%	300%	350%		
Total Hours	0.00	0	32.81	0	0	0	15.68	0.00	2.19	50.68	Hours worked/cycle
Hourly rate	\$32.52	\$65.04	\$40.65	\$74.80	\$48.78	\$65.04	\$73.17	\$97.56	\$113.82		
Total Earning	\$0.00	\$0.00	\$1,333.61	\$0.00	\$0.00	\$0.00	\$1,147.31	\$0.00	\$249.59	\$2,730.51	Permanent Wages/cycle
	Base	Flat - Perm									
	\$32.52	\$53.88									
Casual hourly rate	\$40.65	\$73.17	\$48.78	\$82.93	\$48.78	\$65.04	\$73.17	\$97.56	\$113.82		
Total Earning	\$0.00	\$0.00	\$1,600.33	\$0.00	\$0.00	\$0.00	\$1,147.31	\$0.00	\$249.59	\$2,997.23	Casual Wages/cycle
		Flat rate - casual									
		\$59.14									

Note: the Award 'additional shift allowance – open cut' is included in the night shift loading