



DECISION

Fair Work Act 2009

s.185 - Application for approval of a single-enterprise agreement

S&DH Enterprises Pty Ltd

(AG2023/1560)

APPLICATION FOR APPROVAL OF THE S&DH BODDINGTON AGREEMENT 2023

Building, metal and civil construction industries

COMMISSIONER JOHNS

MELBOURNE, 2 JUNE 2023

Application for approval of the S&DH Boddington Agreement 2023

[1] An application has been made for approval of an enterprise agreement known as the *S&DH BODDINGTON AGREEMENT 2023 (the Agreement)*. The application was made pursuant to s.185 of the *Fair Work Act 2009 (the Act)*. It has been made by S&DH Enterprises Pty Ltd. The Agreement is a single enterprise agreement.

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

[3] Pursuant to s.205(2) of the Act, the model consultation term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[4] Pursuant to s.202(4) of the Act, the model flexibility term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[5] The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) of the Act, I note that the Agreement covers the organisation.

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 9 June 2023. The nominal expiry date of the Agreement is 1 June 2027.



COMMISSIONER

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Note - the model consultation and flexibility terms are taken to be terms of this agreement. A copy of these terms can be found at the end of the agreement.

S&DH Boddington Agreement 2023

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1. Title

This agreement shall be known as the *S&DH Boddington Agreement 2023 (Agreement)*.

2. Application

This Agreement covers and applies to the Company and its Employees that are employed to perform building, engineering, maintenance and civil construction work in the Classifications covered by this Agreement at the Boddington Gold Mine located approximately 120 kilometres southeast of Perth in Western Australia.

3. Operation of Agreement

- 3.1 This Agreement will commence operation 7 days after it is approved by the FWC (**Commencement Date**) and its nominal expiry date will be 4 years after the date the Agreement was approved by the FWC.
- 3.2 This Agreement will continue to operate after its nominal expiry date until it is terminated or replaced.
- 3.3 It is intended that this Agreement is comprehensive and will stand alone so that the Construction Award, Mining Award and any other awards, orders, transitional instruments, preserved state agreements, notional agreements preserving state awards and state Industrial Laws, will not apply to Employees while this Agreement is in operation to the maximum extent permissible by law.
- 3.4 This Agreement will be read and interpreted in conjunction with the NES. If there is any inconsistency between this Agreement and the NES, the NES provision will apply to the extent of the inconsistency.

4. Better Off Overall

Employees covered by this Agreement shall enjoy terms and conditions of employment which, when taken overall, result in the Employees being better off overall than the terms and conditions of employment that would otherwise apply under the Awards.

5. Definitions

Definitions are set out in Schedule A.

6. Classifications and Composite Hourly Rates

- 6.1 Classification and reclassification from one grade to another will be determined by the Company in its absolute discretion having regard to business needs, skill requirements, skill levels, experience and qualifications. Temporary assignment to a different Classification does not constitute appointment to that Classification.
- 6.2 The Composite Hourly Rate of pay for each Classification is as follows.

Company Classification	Composite Hourly Rate of pay (from the first full pay cycle after the Commencement Date)
Boilermaker	\$59.50
Electrician	\$62.00
Dual Trade Electrician	\$63.00

- 6.3 The Composite Hourly Rates of pay set out at clause 6.2 will be increased in accordance with the table below:

Date of Increase	Composite Hourly Rate increase (%)
1 July 2023	CPI
1 July 2024	CPI
1 July 2025	CPI
1 July 2026	CPI

- 6.4 Where there is no increase in the CPI, the Composite Hourly Rates of pay will remain the same.

7. Remuneration

- 7.1 Employees will be paid the Composite Hourly Rate applicable for their Classification as set out in the table at clause 6.2 for each Rostered Hour worked. The Composite Hourly Rate is payable as full compensation for pay and entitlements for working Rostered Hours as required from time to time.
- 7.2 Employees may be required by the Company to work outside Rostered Hours (**Extra Hours**) and will be paid at the Composite Hourly Rate for each hour when this occurs. An Employee will not unreasonably refuse a direction to work Extra Hours.
- 7.3 When an Employee is required to work Extra Hours, the Company will calculate the total amount of remuneration that the Employee would have been paid on a quarterly basis (starting 3 months after the Commencement Date) for performing the same work under the Awards and ensure that the amount the Employee is being paid under the Agreement is greater.
- 7.4 Unless otherwise outlined in this Agreement, the applicable Composite Hourly Rate of pay will be used for all purposes, including calculating payment for superannuation, accrued leave entitlements, Extra Hours, annual leave loadings, notice payments and redundancy payments under clause 28.1.
- 7.5 Any existing contractual arrangement an Employee may have with the Company at the Commencement Date, in relation to remuneration and increases in remuneration will continue to be recognised by the Company and will not be reduced as a result of the establishment of this Agreement.

8. Additional Payments

8.1 Leading Hand Allowance

An Employee who is appointed in writing by the Company to be a Leading Hand shall be paid an allowance of \$3 per hour in addition to the Employee's Composite Hourly Rate of pay prescribed in clause 6.2 for each hour worked as a Leading Hand.

8.2 Travel Allowance

An Employee will be paid a travel allowance of \$100 for each Roster Cycle worked. The travel allowance is not payable if an Employee does not work the entirety of their Roster Cycle or is absent from work for any part of their Roster Cycle without the authorisation of the Company.

9. Payment of wages

- 9.1 Wages shall be paid in accordance with the Employee's contract of employment which can be paid up to monthly on the day nominated by the Company by electronic funds transfer into an Employee's Australian financial institution account.

9.2 The Company may deduct from an Employee's wages, or any monies owing to the Employee, any amount it is authorised or required to deduct, including any overpayment of remuneration or any amount provided for by this Agreement, to the extent permitted by law.

9.3 Pay periods in place for Employees as at the Commencement Date will not be altered without prior notice and consultation.

10. Job security

10.1 The parties are committed to maintaining and improving the job security of Employees.

10.2 The parties accept that full-time, permanent, in-house, direct hire employment will be the normal basis of employment for any work within the scope of this Agreement. The Company is committed to maximising such employment.

10.3 The parties recognise that the use of contractors and/or labour hire to perform work of the type which could be performed by Employees covered by this Agreement, can affect the job security of these Employees.

10.4 In the interests of maintaining and improving job security of Employees covered by this Agreement, if the Company engages contractors or labour hire, it will require the contractor or labour hire provider to perform work or engage its workers (whether those workers are employees or independent contractors) on rates of pay, entitlements and conditions at least equal to that which Employees covered by this agreement would be entitled to.

10.5 For clarity, if the Company engages contractors or labour hire employees to perform work that is work that can be performed by any Classification covered by this Agreement, whether or not there are people employed in that Classification at the time, the Company must require the contractor or labour hire provider to perform work or engage its workers on rates of pay, entitlements and conditions at least equal to that as provided for in this Agreement for the relevant Classification. Where the contractor or labour hire worker is engaged on a casual basis, the Company must require the contractor or labour hire provider to engage its workers on rates of pay, entitlements and conditions at least equal to that as provided for Casual Employees under this Agreement for the relevant Classification, including payment of the 25% casual loading.

10.6 Sub-clauses 10.1 to 10.5 above do not apply in respect of specialist contractors who do not fall within the scope of the Agreement.

11. Fitness for Work

11.1 Employees must comply with the Company's directions and requirements regarding fitness for work. These requirements will be explained during the induction.

11.2 Such clothing, footwear and equipment as provided by the Company shall be worn by the Employee in the manner required by the Company and applicable Site safety regulations.

11.3 Specific additional personal protective equipment which may be provided for the performance of specific tasks shall be worn in accordance with applicable Site safety regulations.

11.4 Employees must ensure that they take all reasonable care not to expose themselves or others to unnecessary health or safety risks. It is each Employee's obligation to ensure they are fit to work at the start of their shift and throughout the work period.

11.5 Fitness for work includes fitness having regard to physical, psychological and social factors. Impairment of fitness for work can be due to a range of factors, including but not limited to –

- (a) medical conditions, including stress;

- (b) alcohol;
- (c) drugs; and
- (d) fatigue.

- 11.6 An Employee must notify his or her Supervisor at the start of their shift if the Employee is taking prescription drugs which may cause impairment to the Employee.
- 11.7 If an Employee has any concerns regarding their fitness for work, or the fitness for work of another person, the Employee must immediately notify their direct Supervisor (or if that Supervisor is not available, the most appropriate Supervisor in that Employee's work area).
- 11.8 The Company is committed to meeting its legislative obligations (as a minimum), which includes providing and maintaining safe systems of work and eliminating hazards in the workplace. As part of this commitment, all Employees will be subject to alcohol and drug testing both at commencement of their employment as part of the recruitment and selection process, and throughout their employment in accordance with applicable fitness for work procedures (as amended from time to time).
- 11.9 Random drug and alcohol testing will be in accordance with Company procedures. A non-negative test result may result in the revocation of Company supplied accommodation and disciplinary action up to and including termination of employment.
- 11.10 Employees shall comply with all site safety regulations.
- 11.11 Non-compliance with Site safety regulations shall be grounds for exclusion from the Site the Employee performs work at and may result in disciplinary action up to and including summary termination of employment.
- 11.12 Acceptance of employment shall be deemed acceptance of these conditions.

12. Site Security

- 12.1 It is a condition of employment that Employees comply with the relevant Site security processes and procedures as determined from time to time.
- 12.2 Any breach of Site security protocols may result in disciplinary action being taken against the offending Employee, including possible exclusion from the Site and/or dismissal.

13. Camp accommodation

- 13.1 Employees will be provided with meals and board at no expense when they are required by the Company to reside in camp accommodation on Site. Employees are required to observe and comply with all rules and directions established for the camp accommodation and surrounding facilities. Failure to abide by these rules and directions may lead to disciplinary action and/or the withdrawal of an Employee's camp accommodation, and in such circumstances an Employee's employment may be terminated.

14. Loss and/or Validation of Licences and Certificates

- 14.1 Employees have a duty to:
 - (a) provide evidence of their possession of valid licences/certificates, as determined by the Company, on request; and
 - (b) notify the Company immediately in writing of any cancellation or suspension of any such licence or certificate required, as determined by the Company, in the performance of their duties.

- 14.2 The Company reserves the right to randomly check whether Employees have a valid licence for the work being performed.
- 14.3 The Company reserves the right to terminate, without notice or payment in lieu, any Employee that fails to declare such a cancellation or suspension within 24 hours of it taking effect.
- 14.4 Without limiting any of the Company's options (including termination of employment), should either a licence or certificate held by an Employee be cancelled or suspended, reasonable alternate employment options for the Employee will be examined by the Company. The Company cannot guarantee comparable pay, status or hours of work provided in the Employee's current position. The Employee must cooperate with the Company to provide proof of validation of licence(s)/certificate(s). Any costs associated with the validation process will be paid by the Company, unless the process proves that the Employee's licence/certificate is not valid. In such circumstances, the Company may seek recovery of the costs associated with the validation process from the Employee.

15. Contract of Employment

- 15.1 Employees may be engaged under this Agreement on a full-time, part-time or casual basis.

15.2 Full-time employment

A full-time Employee means an Employee who works an average of 38 ordinary hours per week. Full-time Employees will be engaged on such rosters as determined by the Company from time to time.

15.3 Part-time employment

- (a) A part-time Employee is an Employee who works less than an average of the full-time ordinary hours per week and has reasonably predictable hours of work. A part-time Employee receives entitlements on a pro rata basis, (proportionate to the number of ordinary hours worked per week), equivalent pay rate and conditions to those of full-time Employees who do the same kind of work.
- (b) The Company will inform a part-time Employee of the Ordinary Hours of Work and the part time Employee's starting and finishing times.
- (c) Before commencing a period of part-time employment, the Employee and the Company will agree in writing:
- (i) that the Employee may work part-time;
 - (ii) upon the hours to be worked by the Employee, the days upon which the hours will be worked and commencing times for the work;
 - (iii) upon the Classification applying to the work to be performed; and
 - (iv) upon the period of part-time employment.
- (d) The terms of the agreement referred to in clause 15.3(c) may be varied, in writing, by consent.

15.4 Casual employment

- (a) A Casual Employee is an employee engaged to work on an hourly basis from time-to-time that work is available and offered. There is no firm advanced commitment to continuing and indefinite work according to an agreed pattern of work for a Casual Employee.

- (b) The Company, when engaging a person for casual employment, must inform the employee, in writing, that the employee is to be employed as a casual, stating by whom the employee is employed, the job to be performed, the Classification level, and the relevant rate of pay.
- (c) Casual Employees will be offered and/or paid a minimum of 4 hours of work on each occasion that they are offered and accept to work.
- (d) Casual Employees will be paid the applicable Composite Hourly Rate of pay specified in clause 6.2, plus a 25% loading.
- (e) The 25% loading is paid in compensation for paid annual leave, personal/carer's leave, compassionate leave, parental leave, Public Holidays and redundancy pay which a Casual Employee is not entitled to receive.
- (f) A Casual Employee required to work a Night Shift must be paid 150% of the relevant Composite Hourly Rate of pay prescribed in clause 6.2, inclusive of the 25% casual loading.
- (g) An Employee may only be engaged as a Casual Employee for a maximum cumulative period of 12 weeks in a six-month period. If they are rehired within this period such that the cumulative engagement exceeds 12 weeks duration, then they shall be Employed as a permanent Employee.
- (h) Division 4 of the NES applies to offers and requests for conversion from casual employment to full time or part time employment.

15.5 Notice of Termination of Employment

- (a) An Employee's contract of employment (other than a Casual Employee) may be terminated at any time by:
 - (i) The Company giving the Employee written notice (or payment in lieu of part or all thereof) in accordance with the table below; or
 - (ii) The Employee resigning and giving written notice in accordance with the table below.

Employee's period of continuous service with the Company at the end of the day the notice is given	Notice
Not more than 1 year	1 week
More than 1 year but no more than 3 years	2 weeks
More than 3 years but no more than 5 years	3 weeks
More than 5 years	4 weeks

- (b) The Company will provide Employees over 45 years of age with not less than 2 years continuous service at the time of giving notice with an additional 1 week's notice.
- (c) When an Employee resigns, the Company may waive the requirement to work out some or all of the notice period set out in the table above. In such circumstances, the Company will only be required to pay the Employee for work performed until the Employee's last day of employment.
- (d) A Casual Employee's contract of employment may be terminated by the Company or the Casual Employee by giving one hour's notice (or payment or forfeiture of 1 hour's pay, as the case may be).
- (e) Subject to the applicable legislation, if an Employee fails to give the required notice or having given such notice, leaves before the notice expires, the Employee shall forfeit the entitlement

to any monies owing under this Agreement, except to the extent that those monies exceed the ordinary wages for the prescribed period of notice.

- (f) The Company has the right to dismiss an Employee at any time because of serious misconduct, in which case the Employee shall be paid all wages due up to the time of dismissal only. The Company shall not be required to provide notice or payment in lieu of notice in such circumstances.
- (g) The Company shall be under no obligation to pay for any day, or part day, not worked upon which the Employee is required to present for duty, except for authorised absences from work for which the Employee has an entitlement to be paid pursuant to this Agreement or at law.

16. Stand Down

- 16.1 The Company may stand down an Employee for part or all of a day/shift, or days/shifts, if the Employee cannot be usefully employed in the Employee's usual Classification because of:
 - (a) industrial action;
 - (b) a breakdown in machinery or equipment, if the Company cannot reasonably be held responsible for the breakdown; or
 - (c) a stoppage of work for any cause for which the Company cannot reasonably be held responsible.
- 16.2 The Company is not required to pay an Employee while the Employee is stood down in accordance with this clause, unless:
 - (a) the Employee was required to attend work, in this case they shall be entitled to receive 2 hours' pay; or
 - (b) the Employee has commenced work, in which case they shall be entitled to a minimum of 4 hours' pay.
- 16.3 Notwithstanding clause 16.2, no payment shall be made for any period of industrial action. Any payments during such periods shall be strictly in accordance with the FW Act.

17. Absence from Work

- 17.1 If an Employee is unable to attend or perform work for any reason, they must give their Supervisor as much notice as possible, and provide them with a reason for, and the estimated duration of, the absence.
- 17.2 If an Employee does not attend work in circumstances where they have not:
 - (a) provided notice of absence; or
 - (b) received authorisation for the absence,the Employee may be subject to disciplinary action.
- 17.3 Any unauthorised absence will not count as service for the purposes of entitlement to allowances and leave accruals.

18. Annual Leave

- 18.1 Full-time Employees will be entitled to 4 weeks of paid annual leave per year (pro rata for part-time Employee) for each year of service with the Company, in accordance with the NES. For the avoidance of doubt, a reference to a “week” means 38 ordinary hours.
- 18.2 A continuous shiftworker for the purposes of an additional week’s annual leave referred to in section 87(1)(b) of the FW Act, means an Employee engaged to work in a system of consecutive shifts throughout the 24 hours of each of at least 6 consecutive days without interruption (except during breakdown or meal breaks or due to unavoidable causes beyond the control of the Company) and who is rostered to work those shifts.
- 18.3 When taking annual leave an Employee shall be paid in accordance with the FW Act for their ordinary hours at their Composite Hourly Rate of pay for the period of leave taken.
- 18.4 In addition to the payment prescribed in clause 18.3, an Employee taking leave will receive a 17.5% loading calculated at their Composite Hourly Rate of Pay. This loading is paid in lieu of any applicable Shift Allowance prescribed in clause 32.4.
- 18.5 If a Public Holiday is observed on an ordinary working day during the period of annual leave, that day will not be counted as annual leave.
- 18.6 Any authorisation given by the Company enabling an Employee to take annual leave during a particular period is subject to the operational requirements of the workplace.
- 18.7 Annual leave accrues progressively with any amount of unused annual leave being cumulative. All untaken accrued annual leave shall be paid out at the time of termination of employment.
- 18.8 An Employee must take an amount of annual leave in conjunction with the Christmas/ New Year holidays if the Employee is directed to do so by the Company because, during that period, the Company closes down the business in which the Employee works and at least that amount of annual leave is credited to the Employee. The Company may direct an Employee to take unpaid leave, where insufficient leave accrual is available. The Company shall give the Employee at least 2 months’ notice of its intention to do so.
- 18.9 Excessive leave accruals by an Employee will be dealt with pursuant to the provisions of this clause 18.9.
- (a) An Employee has an excessive leave accrual if the Employee has accrued more than 8 weeks’ paid annual leave (or 10 weeks’ paid annual leave for a shiftworker).
 - (b) If an Employee has an excessive leave accrual, the Company and the Employee may confer to genuinely reach an agreement on how to reduce or eliminate the excessive leave accrual.
 - (c) If the Company has genuinely tried to reach agreement with an Employee under this clause but agreement is not reached (including because the Employee refuses to confer), the Company may direct the Employee in writing to take one or more periods of paid annual leave.
 - (d) However, a direction under clause 18.9(c):
 - (i) is of no effect if it would result at any time in the Employee’s accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements are taken into account;
 - (ii) must not require the Employee to take any period of paid annual leave less than one week;

- (iii) must not require the Employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
- (iv) must not be inconsistent with any leave arrangement agreed by the Company and the Employee.
- (e) If the Company issues a direction under clause 18.9(c) the Employee must take the paid annual leave pursuant to the direction.
- (f) An Employee to whom a direction has been given under clause 18.9(c) may request to take a period of paid annual leave as if the direction had not been given.

18.10 Paid annual leave must not be cashed out except in accordance with an agreement under this clause 18.10.

- (a) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under this clause 18.10.
- (b) The Company and an Employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the Employee.
- (c) An agreement under this clause must state:
 - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
 - (ii) the date on which the payment is to be made.
- (d) An agreement under this clause must be signed by the Company and the Employee and, if the Employee is under 18 years of age, the Employee's parent or guardian.
- (e) The payment must not be less than the amount that would have been payable had the Employee taken the leave at the time the payment is made.
- (f) An agreement under this clause will not result in the Employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (g) The maximum amount of accrued paid annual leave that may be cashed out under this clause in any period of 12 months is 2 weeks.
- (h) The Company shall keep a copy of an agreement made under clause 18.10 as an employee record.

18.11 This clause 18 does not apply to a Casual Employee.

19. Public Holidays

- 19.1 The Company will recognise Public Holidays, including a part-day Public Holiday, in accordance with the NES as they apply to Employees in the State of Western Australia.
- 19.2 Employees may be requested to work on Public Holidays, and part-day Public Holidays, that fall within Rostered Hours. Employees agree that a request by the Company to work on a Public Holiday is reasonable, having regard to the operational requirements of the business. The Composite Hourly

Rate of pay includes compensation in recognition of the need for Employees to work Rostered Hours on Public Holidays and part-day Public Holidays.

- 19.3 Employees who perform work on a Public Holiday will be afforded at least 4 hours of work or be paid for 4 hours at the Composite Hourly Rate.
- 19.4 When a Public Holiday falls on a day which does not form part of an Employee's Rostered Hours, or during an Employee's period of approved annual leave or approved personal leave, the Employee will be paid 8 hours at the Employee's applicable Composite Hourly Rate of pay.
- 19.5 Employees will not receive pay for Public Holidays while receiving workers' compensation benefits.

20. Personal/Carer's Leave

20.1 Entitlement

- (a) Personal/carer's leave accrues and is credited progressively during each year of service according to the Employee's ordinary hours of work. Personal/carer's leave accumulates from year to year.
 - (b) Full-time Employees are entitled to 10 days of paid personal/carer's leave for each year of service, which may be taken as sick leave or carer's leave, in accordance with the FW Act. Part-time Employees accrue personal/carer's leave on a pro-rata basis.
- 20.2 An Employee may take a period of paid personal/carer's leave:
- (a) because the Employee is not fit for work because of a personal illness or injury; or
 - (b) to provide support to a member of the Employee's Immediate Family or member of the Employee's household who requires care or support because of personal illness or injury or an unexpected emergency.
- 20.3 When personal/carer's leave is taken, an Employee must be paid the amount which they would have received for actually working their prescribed ordinary hours of work. If an Employee is absent on the ground of personal illness or injury for a period longer than their entitlement to accrued paid personal leave, the Employee is not entitled to payment in respect of such absence.
- 20.4 An Employee will not be entitled to paid personal leave for any period in respect of which the Employee is receiving payment for workers' compensation, unless expressly permitted under applicable workers' compensation legislation.
- 20.5 If an Employee is unable to attend work because of personal illness or injury, the Employee must notify their Supervisor as follows:
- (a) at least 30 minutes before the Employee is due to commence work, or, where that is not possible due to circumstances beyond the Employee's control, as soon as practicable thereafter; and
 - (b) of the period or expected period of the leave.
- 20.6 Upon termination of employment Employees will have their accrued but untaken personal leave entitlements paid out at their Composite Hourly Rate of Pay. This clause will not apply in circumstances where an Employee's employment is terminated for serious misconduct.
- 20.7 Employees are entitled to unpaid carer's leave in accordance with the FW Act.
- 20.8 Other than unpaid carer's leave, the provisions of this clause do not apply to Casual Employees.

21. Parental Leave

An Employee may be entitled to unpaid parental leave in accordance with the FW Act.

22. Compassionate Leave

22.1 An Employee is entitled to take up to 2 days compassionate leave for each occasion when a member of the Employee's Immediate Family or household:

- (a) contracts or develops a personal illness or sustains a personal injury that poses a serious threat to their life; or
- (b) dies.

22.2 The entitlement may be taken in a single unbroken period of 2 days or as 2 separate periods of 1 day or as agreed by the Company and Employee.

22.3 An Employee (except for a Casual Employee) is to be paid for any period of paid compassionate according to the Employee's ordinary hours of work at the Employee's Hourly Rate of Pay.

22.4 The Company may require an Employee, as a condition of payment, to provide the Company with reasonable evidence of the injury, illness or death.

23. Ceremonial Leave

An Aboriginal or Torres Strait Islander Employee who is legitimately required by indigenous tradition to be absent from work for bereavement related ceremonies and obligations, will be entitled to up to 10 working days unpaid leave in any one year, with the approval of the Company.

24. Community Service Leave

An Employee shall be entitled to community service leave in accordance with the FW Act.

25. Long Service Leave

25.1 Employees covered by this Agreement are entitled to long service leave in accordance with the provisions of the *Construction Industry Portable Paid Long Service Leave Act 1985 (WA)*.

25.2 The Company, on lodgement of this Agreement, agrees to join the Western Australia portable long service leave scheme known as MyLeave.

26. Leave to deal with family and domestic violence

An Employee will be entitled family and domestic violence leave in accordance with the NES.

27. Superannuation

27.1 Superannuation contributions will be paid in accordance with the relevant legislation for all Rostered Hours worked.

27.2 The Company will make superannuation contributions capped to the maximum level in accordance with the relevant legislation as amended from time to time into an Employee's nominated and compliant superannuation fund or, if no fund has been nominated by the Employee, into the Employee's stapled superannuation fund or the Company's default superannuation fund, which:

- (a) offers a MySuper product;

- (b) is an exempt public sector scheme, or
- (c) is a fund of which a relevant Employee is a defined benefit member.

27.3 Employees also have the option to make pre-tax and after-tax contributions to an Employee's nominated and compliant superannuation fund.

27.4 For the purposes of clause 27.2, the Company's default superannuation fund will be the Cbus superannuation fund (ABN 75 493 363 262).

28. Redundancy

28.1 Entitlements to redundancy payments will be as provided for in the relevant Award that covers the Employee subject to this clause.

28.2 An Employee will not be paid redundancy pay if alternative employment is offered on comparable terms.

28.3 Any severance or redundancy payments paid by the Company to an Employee or contributions made by the Company into an applicable industry scheme, for each completed week of service by the Employee, may be set off by the Company against a claim for an entitlement to redundancy pay under the FW Act and Industrial Laws.

29. Hours of Work

29.1 Ordinary Hours of Work

- (a) The ordinary hours of work shall be an average of 38 per week over a defined work cycle (not exceeding 4 weeks) and may be worked on any or all of the days of the week Monday to Sunday inclusive and, except in the case of shiftworkers, be worked between the hours of 6:00am and 6:00pm (**Ordinary Hours of Work**).
- (b) By agreement between the Company and Employees, Ordinary Hours of Work may be arranged outside these times. Such an agreement will only be entered into in accordance with clause 36 of the Agreement (Individual Flexibility).
- (c) The Company shall determine the actual pattern of working Ordinary Hours of Work which best suits the Company's operational requirements.
- (d) Where the Company wishes to vary the pattern of working the Ordinary Hours of Work, it shall first seek the agreement of the Employees involved. Failing agreement, the Company may give those Employees 1 weeks' notice of the changes.

30. Roster Cycle

30.1 Work on Site will be carried out in accordance with the operational demands of the Company or the client. This is normally carried out on the basis of an on-duty period followed by an off-duty period without pay (**Roster Cycle**).

30.2 A shift shall consist of a period of work of 10 to 12 hours duration, inclusive of meal breaks. However, Employees shall work such hours, including Extra Hours, as the Company may require.

30.3 Scheduled start and finish times of each shift may be varied to suit operational or client requirements.

30.4 The on-duty period will commence upon arrival at the onsite facility and hours will be paid up until the departure from the onsite facility at the appropriate rate of pay.

- 30.5 The Company may change Roster Cycles:
- (a) by agreement with an Employee or Employees, in which case the change will come into effect immediately or at an agreed date; or
 - (b) by providing the Employee or Employees with a notice period of at least 21 days where practicable; or
 - (c) by providing the Employee or Employees with a notice period of 7 days in exceptional circumstances.
- 30.6 The Company may change start and finish times (including the number of hours worked on each shift):
- (a) by agreement with an Employee or Employees, in which case the change will come into effect immediately or at an agreed date;
 - (b) by providing the Employee or Employees with a notice period of 1 hour where practicable; or
 - (c) without notice in exceptional circumstances.
- 30.7 As at commencement of this Agreement, Employees will be required to work a 8 day on, 6 day off Roster Cycle.
- 30.8 Prior to the Company making a change to a Roster Cycle, the Company will undertake a reconciliation exercise to ensure that the remuneration for the changed Roster Cycle is better off overall than under the Construction Award and the Mining Award.

31. Roster Arrangements

- 31.1 Arrangements will be established in accordance with business demands. The Company will make every effort to roster Employees in a manner that is both fair and equitable. If Employees have family or cultural commitments, the Company will attempt to accommodate Employees as best as possible, considering the operational requirements of the business.
- 31.2 When work beyond the normal Rostered Hours is necessary, it shall whenever reasonably practical be arranged so that the Employee has at least 10 consecutive hours off duty between work on consecutive days without loss of pay. By Agreement between the Company and the individual Employee, the 10 hour break may be reduced to a period of 8 hours.
- 31.3 Employees engaged under this Agreement acknowledge and accept that the requirement to work Rostered Hours is reasonable in order to meet operational or client requirements and Employees commit to work the Rostered Hours while they are fit and able to do so.

32. Shift Work

- 32.1 As a condition of employment, Employees accept that it may be necessary to perform Shift Work when required to do so by the Company. The provisions of this clause only apply to time spent performing Shift Work at the express direction of the Company.
- 32.2 Shift Work is deemed to be any arrangement of working hours where the majority of the Ordinary Hours of Work are worked outside of the spread of hours specified in clause 29.1 and when Employees are working as such (**Shift Work**).
- 32.3 Except for operational reasons where a shorter period of notice is required, an Employee shall be given at least 48 hours' notice of the requirement to work on Shift Work.

- 32.4 Employees will be paid a shift allowance of 25% of the applicable Composite Hourly Rate (**Shift Allowance**) for Rostered Hours worked during a Night Shift.
- 32.5 Each day of paid leave taken on any Public Holiday occurring during any shift cycle will be regarded as a shift worked for leave accrual purposes.
- 32.6 An Employee on Shift Work who is called out to work by the Company:
- (a) after the expiration of their customary working time and after they have left work for the shift;
or
 - (b) on a day on which they are rostered off,
- will be paid at least 3 hours work at the applicable Composite Hourly Rate of pay.

33. Meal Breaks

- 33.1 An Employee is entitled to two paid 30-minute meal breaks per shift. These breaks in each shift will be instead of any other rest period or cessation of work elsewhere prescribed in this Agreement.
- 33.2 A meal break shall be scheduled to be taken after the expiry of 5 hours of the commencement of an Employee's Ordinary Hours of Work. This period may be extended with the agreement of Employees in order to better suit the Company's operational requirements.
- 33.3 The Company may stagger the time of taking meal and rest breaks to meet operational requirements.
- 33.4 Meal breaks will be paid at the Composite Hourly Rate, where applicable.
- 33.5 The provisions of clause 33.1 will not be applicable to the case of an Employee who is engaged in hot work, where such work continues for more than 2 hours. In such cases, the Employee will be entitled to 20 minutes rest after every 2 hours of work without loss of pay.

34. Income Protection

- 34.1 The Company will provide income protection insurance for Employees with an income protection insurance provider of the Company's choice.
- 34.2 The income protection product selected by the Company will provide the following:
- (a) maximum gross weekly payments of up to \$2,000 for a period of up to 52 weeks; and
 - (b) a 28-day waiting period.
- 34.3 The income protection product selected by the Company will be reviewed on an annual basis.
- 34.4 No other prescriptions or requirements for the Company selected income protection insurance product are established by this Agreement.
- 34.5 During the period for which an Employee is in receipt of income protection insurance payments, the Employee shall not be entitled to any other payments under this Agreement.

35. Dispute Resolution Procedure

- 35.1 If a dispute arises about matters arising under this Agreement or in relation to the NES, the Employee and the Company agree that either of them may expressly elect to have the dispute dealt with under this procedure and that, in the first instance after the election is made, they will attempt to

resolve the dispute at the workplace level, by discussions between the Employee and the relevant Supervisor(s) and/or Management.

- 35.2 In the event of a dispute between the Company and an Employee or Employees about any matters arising under this Agreement, or in relation to the NES, the dispute shall be dealt with in the following manner:
- (a) The Employee must contact their immediate Supervisor and inform him/her of the concern. If required, the Supervisor will arrange a meeting to discuss the matter further. The Employee must detail what their concern is, how it is impacting them and the outcome sought (if any). The Supervisor will provide a response to the matter raised.
 - (b) If the Employee does not consider the matter to be resolved, he/she may request that the matter considered by the supervisor be further considered by the relevant Site Manager. The Supervisor will arrange a meeting with the Site Manager. The Employee will be asked to provide the reason(s) why they do not consider the matter to be resolved. The Site Manager will provide a response to the matter.
 - (c) If the Employee still does not consider the matter to be resolved, he/she may request the matter considered by the Supervisor and Site Manager be reviewed by a General Manager. The Site Manager will arrange for the Employee to meet with the General Manager. During the meeting, the Employee must explain what their concern is, and why they do not consider the matter to be resolved. The General Manager will provide a response to the Employee.
 - (d) If the dispute cannot be resolved with the involvement of senior Company Management, the matter may be referred to the FWC by the Company or the Employee for conciliation.
 - (e) The FWC will attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation. If the dispute is not resolved by conciliation and it is agreed in writing by all the parties directly involved in the dispute, the dispute may be arbitrated on terms agreed between the parties.
- 35.3 Employees may appoint a representative of their choice to assist in the resolution of the dispute under this procedure at any point in the dispute.
- 35.4 While the parties are trying to resolve the dispute using the procedures in this clause:
- (a) the Employee must continue to perform their work as they would normally unless they have a reasonable concern about an imminent risk to their health or safety; and
 - (b) the Employee must comply with any directions given by the Company to perform other available work at the same workplace or at another workplace.

36. Individual Flexibility

- 36.1 The Company and an Employee may agree to make an individual flexibility arrangement to vary the effect of the terms of this Agreement if the individual flexibility agreement:
- (a) meets the genuine needs of the Company and the Employee; and
 - (b) is genuinely agreed to by the Company and the Employee.
- 36.2 The Company will ensure that the terms of the individual flexibility arrangement:
- (a) are about permitted matters under section 172 of the FW Act;
 - (b) are not unlawful terms under section 194 of the FW Act; and

- (c) result in the Employee being better off overall than the Employee would be if no arrangement was made.

36.3 The Company will ensure that the individual flexibility arrangement:

- (a) is in writing;
- (b) includes the name of the Company and Employee;
- (c) is signed by the Employee and the Company and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
- (d) includes details of:
 - (i) the terms of the Agreement that will be varied by the arrangement;
 - (ii) how the arrangement will vary the effect of the terms;
 - (iii) how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (iv) the day on which the arrangement commences.

36.4 The Company will provide the Employee with a copy of the individual flexibility arrangement within 14 days after it has been agreed to.

36.5 The Company or Employee may terminate the individual flexibility arrangement:

- (a) by giving no more than 28 days' written notice to the other party to the arrangement; or
- (b) at any time, provided that the Company and the Employee agree in writing.

37. Requests for a change in working arrangements

37.1 If an Employee makes a request to change their working arrangements with the Company under section 65 of the FW Act, the Company will respond to the request following the procedure in, and otherwise comply with, clause 6 of the Awards.

38. Consultation

38.1 This clause applies if:

- (a) 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 the change is likely to have a significant effect on the Employees; or
- (b) the Company proposes to change an Employee's regular roster or Ordinary Hours of Work.

38.2 Prior to the circumstances in clause 38.1 occurring, the Company will consult with relevant Employees referred to in clause (a) (and any representative appointed by an affected relevant Employee) about the decision to introduce the major change.

38.3 Where there is a proposed change to the Employee's regular roster or Ordinary Hours of Work as per clause 29.1 the Company will:

- (a) provide information to the Employees about the change;

- (b) invite the Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities); and
- (c) consider any views given by the Employees about the impact of the change.

- 38.4 The Company will provide all relevant affected Employees with written details about the change. However, the Company is not required to disclose confidential or commercially sensitive information to the Employees.
- 38.5 The meaning of the terms **major change** and **likely to have a significant effect** are in accordance with the FW Act – Model Consultation Term in Regulation 2.09 and Schedule 2.3 of the FW Regulations, as amended from time to time.

39. Inclement Weather

- 39.1 For the purposes of this clause 39, inclement weather means the existence of rain or abnormal climatic conditions (whether hail, extreme cold, high wind, severe dust storm, extreme high temperature or the like or any combination of these conditions) where it is not reasonable or it is unsafe for Employees to continue working in those conditions.
- 39.2 When inclement weather conditions exist, an affected Employee is not required to commence or continue to work where it is unreasonable or unsafe to do so.
- 39.3 If an Employee has commenced work and is instructed to stop due to inclement weather, the Employee will be paid for the time worked until the cessation of work.
- 39.4 The time of the cessation of work due to inclement weather and the resumption of work after a period of inclement weather has ended will be recorded by the Company.
- 39.5 Where an Employee reports to work and is not able to perform any work because of inclement weather, the Employee must, unless instructed otherwise by the Company, remain on Site for 2 hours and will be paid 2 hours' pay the Composite Hourly Rate.

40. No Extra Claims

- 40.1 This Agreement is made in full and final settlement of all claims in relation to work covered by this Agreement and the parties bound shall not make any further claims for the period up to the nominal expiry date of this Agreement.
- 40.2 This Agreement may, however, be varied at any time during the life of this Agreement in accordance with the FW Act.

41. Set Off

- 41.1 The Company can enter into a common law contract with an Employee with terms and conditions of employment that are more generous than this Agreement.
- 41.2 Any payment or benefit which an Employee received from the Company, which exceeds an entitlement under this Agreement, can be set off against a claim for underpayment of another entitlement under this Agreement.
- 41.3 For the avoidance of doubt, nothing in this clause 41 allows, permits or purports to allow the Company to use common law contracts to remove an Employee from the scope of the Agreement's coverage. Any Employee covered by this Agreement will continue to be covered by the Agreement notwithstanding they have entered into a common law contract with the Company.

Signatories

Signed for and on behalf of S&DH Enterprises Pty Ltd ABN 12 138 560 871:

Jodie Grandile

Jodie Grandile

Signature on behalf of the Company

Name of person authorised to sign

Head of Human Resources

17/05/2023

Position

Date

Level 15/225 St Georges Tce, Perth 6000

Address

In the presence of:

[Signature]

Leonard Della Rocca

Witness (signature)

Name (please print)

Signed on behalf of the Employees:

[Signature]

Cian Pereira

Signature of Employee Representative

Name of person authorised to sign

Electrician

17/05/2023

Position

Date

Level 15/225 St Georges Tce, Perth 6000

Address

In the presence of:

[Signature]

Leonard Della Rocca

Witness (signature)

Name (please print)

SCHEDULE A – Definitions

Agreement or **this Agreement** means the *S&DH Boddington Agreement 2023* including any schedules or annexures.

Awards means the Construction Award or the Mining Award as to the context requires.

Construction Award means the *Building and Construction General On-Site Award 2020*.

Casual Employee means an Employee employed by the Company on a casual basis as described in clause 15.4(a).

Classification means the classification level that an Employee is appointed by the Company, which may be either a Boilermaker, Electrician or Dual-Trade Electrician.

Commencement Date has the meaning given in clause 3.

Company means S&DH Enterprises Pty Ltd (ACN 138 560 871).

Composite Hourly Rate means the hourly rate of pay for working each Rostered Hour as set out for each Classification in clause 6 of this Agreement, and is inclusive of payment for Ordinary Hours, Rostered Hours, all applicable allowances including, but not limited to any site allowance, Public Holidays (worked and not worked) and shift penalties, but not including the Shift Allowance.

CPI means the Perth all groups Consumer Price Index (CPI) measure of growth from June to June, as determined by the Australian Bureau of Statistics (under the previously used Australian Bureau of Statistics catalogue number 6401.0).

Employee or **Employees** means employees of the Company who are covered by the *Building and Construction General On-site Award 2020* or the *Mining Industry Award 2020* and who are engaged to work and working in the Classifications contained in clause 6.1 of this Agreement at the Boddington Gold Mine located approximately 120 kilometres southeast of Perth in Western Australia.

Extra Hours has the meaning given in clause 7.2.

FW Act means the *Fair Work Act 2009* (Cth) as at the Commencement Date.

FWC means the Fair Work Commission.

FW Regulations means the *Fair Work Regulations 2009* (Cth) as at the Commencement Date.

Immediate Family means any of the following:

- (i) a spouse, de facto partner, former spouse, former de facto partner, child, step child, parent, grandparent, grandchild or sibling of the Employee; or
- (ii) a child, parent, grandparent, grandchild or sibling of a spouse, de facto partner or former spouse or de facto partner of the Employee.

Industrial Laws means the FW Act and any applicable State or Federal legislation or subordinate law, any applicable modern award (as defined by the FW Act) including the Award and any other industrial instrument which may cover or apply to an Employee.

Leading Hand means an Employee who is appointed, in accordance with clause 8.1, to supervise, direct or otherwise be in charge of another Employee or Employees, and does so.

Mining Award means the *Mining Industry Award 2020*.

NES means the National Employment Standards, contained in the FW Act.

Night Shift means a shift starting at or after 3.00pm and before 11.00pm.

Ordinary Hours of Work has the meaning given in clause 29.1.

Parties means the Company and the Employees.

Public Holiday means a public holiday as prescribed by the NES.

Roster Cycle has the meaning given in clause 30.1.

Rostered Hours means the hours that an Employee is rostered to work by the Company (excluding handovers) and includes Ordinary Hours plus reasonable additional hours worked over a specified roster.

Shift Allowance has the meaning given in clause 32.4.

Shift Work has the meaning given to it in clause 32.2.

Site means the Boddington Gold Mine located approximately 120 kilometres southeast of Perth in Western Australia.

Schedule 2.3 Model consultation term

(regulation 2.09)

Model consultation term

- (1) This term applies if the employer:
 - (a) 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
 - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

- (2) For a major change referred to in paragraph (1)(a):
 - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
 - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) 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 employer of the identity of the representative;the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer 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 employer 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.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (9) In this term, a major change is ***likely to have a significant effect on employees*** if it results in:
 - (a) the termination of the employment of employees; or

- (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or
- (e) the need to retrain employees; or
- (f) the need to relocate employees to another workplace; or
- (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- (10) For a change referred to in paragraph (1)(b):
 - (a) the employer must notify the relevant employees of the proposed change; and
 - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (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 employer of the identity of the representative;
 the employer must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the employer 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 employer reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the employer 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).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:

relevant employees means the employees who may be affected by a change referred to in subclause (1).

Schedule 2.2 Model flexibility term

(regulation 2.08)

Model flexibility term

- (1) An employer 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:
 - (a) 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;
 - (v) leave loading; and
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (d) 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
 - (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the employer and employee agree in writing — at any time.