



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Miriklis Earthmoving Pty. Ltd. T/A Xpower
(AG2023/3421)

XPOWER ENTERPRISE AGREEMENT 2023

Building, metal and civil construction industries

DEPUTY PRESIDENT MILLHOUSE

MELBOURNE, 13 OCTOBER 2023

Application for approval of the XPower Enterprise Agreement 2023

[1] An application has been made for approval of an enterprise agreement known as the *XPower Enterprise Agreement 2023* (Agreement). The application was made pursuant to s 185 of the *Fair Work Act 2009* (Cth) (Act). It has been made by Miriklis Earthmoving Pty. Ltd. T/A Xpower (Employer). The Agreement is a single-enterprise agreement.

[2] The notification time for the Agreement precedes 6 June 2023. Accordingly, the legislative changes to the Act in relation to the *genuine agreement* provisions which commenced on 6 June 2023 do not apply to this approval application.¹ However, the Agreement was made after 6 June 2023. Accordingly, the amendments to the better off overall test have commenced and so apply to this approval application.²

[3] The Agreement lodged contained two typographical errors in clause 21 and Appendix A. On 5 October 2023, the Employer filed amended pages of the Agreement correcting these errors. I am satisfied that the corrections should be made and that it is appropriate to do so pursuant to s 586(a) of the Act.

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

¹ The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Amending Act) commenced operation with respect to the genuine agreement provisions and the better off overall test provisions of the Act on 6 June 2023. However, in relation to the genuine agreement provisions, Division 11 of Part 26 of the Amending Act provides that Part 2-4 of the Act continues to apply, as if the amendments had not been made, in relation to any proposed enterprise agreement for which the notification time occurs before 6 June 2023.

² Division 12 of Part 26 of the Amending Act provides that the amendments to the better off overall test apply in relation to enterprise agreements made on and after 6 June 2023

[5] Subject to the undertaking referred to above, I am satisfied that each of the requirements of ss 186, 187, 188 and 190 as are relevant to this application for approval have been met. For the purposes of the better off overall test, I have had regard to each of the matters in s 193A(2)-(7), and I observe that no views were expressed for the purposes of s 193A(6A).

[6] The Agreement is approved and, in accordance with s 54 of the Act, will operate from 20 October 2023. The nominal expiry date of the Agreement is 13 October 2027.



DEPUTY PRESIDENT

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2023/3421

Applicant:
Miriklis Earthmoving Pty. Ltd. trading as XPower

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Stan Miriklis, Director, have the authority given to me by Miriklis Earthmoving Pty. Ltd. trading as XPower to give the following undertaking with respect to the *XPower Enterprise Agreement 2023* ("the Agreement"):

1. Clause 24.1 of the Agreement, will be interpreted as follows:

The following Public Holidays shall apply to employees covered by this Agreement, in addition to those provided for by the NES. By agreement between the Company and individual employees, other days may be substituted for Australia Day, Anzac Day and Melbourne Cup Day in some situations in order to maximise production.

This undertaking is provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.


Signature

06.10.2023
Date

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

XPower Enterprise Agreement 2023

Introduction

This is an Enterprise Agreement (hereafter referred to as "Agreement") made in accordance with the provisions of the *Fair Work Act 2009* (Cth) and contains standard terms and conditions mutually agreed as applying to the employment of employees by the Miriklis Earthmoving Pty Ltd t/a XPower ("Company").

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1. TITLE

This agreement shall be known as the XPower Enterprise Agreement 2023.

2. OBJECTIVES OF THE AGREEMENT

The parties to this Agreement recognise that Miriklis Earthmoving Pty Ltd trading as XPower (hereinafter referred to as the "Company") must achieve real and sustained performance improvements if the enterprise is to meet client needs, and improve market share. Such performance improvement is the shared goal of the parties to this Agreement.

The Objectives of this Agreement are to:

- Improve company performance thereby enabling us to achieve increased market share, and so support the labour cost increases which are included herein as reward for implementing the labour efficiencies to be agreed and set down in this Agreement.
- Achieve actual implementation of the efficiency measures contained herein which are designed to effect real gains in productivity.

3. COMMITMENTS

The parties to this Agreement commit themselves to ensuring that:

- The efficiency measures contained in this Agreement are implemented and lead to real gains in productivity.
- The Agreement is consistent with the provisions of the Fair Work Act 2009.
- Productivity gains will not be achieved at the expense of health and safety standards.
- The disputes settlement procedures provided herein are strictly adhered to.

4. APPLICATION and SCOPE

This Agreement applies in the state of Victoria to:

- a) All work carried on by the Company's employees on earthmoving and associated civil construction and excavation work.

- b) Employees of the Company who are engaged in any of the occupations, callings or industries specified in the Agreement. This Agreement does not apply to Apprentices and/or Trainees.

5. INDIVIDUAL FLEXIBILITY

- 5.1** An employer and employee covered by this 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.
- 5.2** 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.
- 5.3** 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 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.
- 5.4** The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 5.5** 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.

6. CONSULTATION REGARDING MAJOR WORKPLACE CHANGE

- 6.1** 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

- 6.2** For a major change referred to in paragraph (6.1)(a):

- (a) the employer must notify the relevant employees of the decision to introduce the major change; and
- (b) subclauses (6.3) to (6.9) apply.

- 6.3** The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 6.4** 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.
- 6.5** 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.
- 6.6** However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 6.7** The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 6.8** 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 (6.2)(a) and subclauses (6.3) and (6.5) are taken not to apply.
- 6.9** 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

- 6.10** For a change referred to in paragraph (6.1)(b):
(a) the employer must notify the relevant employees of the proposed change; and
(b) subclauses (6.11) to (6.15) apply.
- 6.11** The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 6.12** 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.

- 6.13** 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).
- 6.14** However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 6.15** The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 6.16** In this term:
"relevant employees" means the employees who may be affected by a change referred to in subclause (1).

7. PARTIES AND PERSONS BOUND

This Agreement shall be binding on XPower ("the Company"), and all employees of the company engaged in any of the occupations or callings specified in Appendix A of this agreement.

8. PERIOD OF OPERATION

This Agreement will commence operation on the seventh day after it has been formally approved by the Fair Work Commission. The nominal expiry date for the Agreement shall be 4 years after the date it has been formally approved by the Fair Work Commission.

9. ENTIRE AGREEMENT

This Agreement operates to the exclusion of all awards provided that allowances specified under the *Building and Construction General On-site Award 2020* which would apply to employees employed under this Agreement are incorporated into this Agreement.

10. MODE OF EMPLOYMENT AND HOURS OF WORK

10.1 Hours of work and penalty payments

- (a) The ordinary hours of work shall be 36 hours per week Monday to Friday, plus a requirement to work a reasonable number of additional hours. The normal working week will be 40 hours per

week with 4 hours per week counting for the purposes of an RDO. These hours will normally be worked between 6.00am and 6.00pm Monday to Friday.

- (b) Except in emergency situations, employees will not be required to work more than 12 hours (including overtime) in a single shift.
- (c) The programming of hours of work will be subject to variation in line with work requirements and in particular having regard to:
 - i) Seasonal fluctuations of the business (downturn during winter months) and
 - ii) Interruption of work due to inclement weather;
- (d) Hours worked in excess of 8 ordinary hours each day, Monday to Friday, shall be paid at double time.
- (e) For all work on a Saturday all time will be paid at double time with a minimum of four hours.
- (f) All work on a Sunday will be paid at double time with a minimum of four hours.
- (g) All work on a Public Holiday shall be paid at double time and a half with a minimum of 4 hours
- (h) When overtime work is necessary it must, wherever reasonably practicable, be arranged so that employees have at least 10 consecutive hours off work between work on successive working days.
- (i) An employee (other than a casual employee) who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day that the employee has not had at least 10 consecutive hours off work between those times must be released after completion of the overtime until the employee has had 10 consecutive hours off work without loss of pay for ordinary working time occurring during such absence.
- (j) If on the instructions of the Company an employee resumes or continues work without having had the 10 consecutive hours off work, the employee must be paid at the relevant overtime rate until released from work for such period. The employee is then entitled to be absent until they have had 10 consecutive hours off work without loss of pay for ordinary working time occurring during the absence.
- (k) Should an employee be rostered to work ordinary hours between 7am and 3.30pm, and the employee commences work at a time after 7am in order to comply with clauses 10.1(i) or 10.1(j) above, overtime shall still apply for any work performed past 3.30pm (unless the employee has agreed to vary their ordinary hours for that particular shift in accordance with the provisions of this Agreement)
- (l) Prior to the Company so altering the start and finish times it shall, by consultation with affected employees:
 - i) provide not less than twelve hours' notice to affected employees of the change to start and finish times;
 - ii) provide an opportunity to affected employees to advise of individual personal or family circumstances relevant to change to start and finish times, and shall consider any such advice from affected employees;
 - iii) have regard to its obligations to provide a safe and healthy workplace; and
 - iv) have regard to the intention of avoiding excessive overtime.
- (m) An employee is entitled to an unpaid meal break of 30 minutes after five hours of work which is to be taken at a time convenient to the business.
- (n) Employees shall receive one paid rest period of 15 minutes duration for each 8 hours worked to be taken at a time convenient to the business.
- (o) An employee required to work overtime for more than one and a half hours after working ordinary hours will be supplied with a meal by the Company or be paid a meal allowance of \$20.00

10.2 Part-time Employment

- (a) A part-time employee is an employee who works an average of less than 38 ordinary hours per week and has reasonably predictable hours of work.
- (b) For each ordinary hour worked, a part-time employee will be paid no less than the hourly rate specified in Appendix A for the relevant classification and pro rata entitlements for those hours.

- (c) The Company will inform a part-time employee of the ordinary hours of work and the starting and finishing times.
- (d) 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.
- (e) The terms of an agreement may be varied, in writing, by consent.
- (f) The Company will provide a copy of the agreement and any variation made in accordance with clause 10.2(e), to the employee.

10.3 Casual Labour

- (a) A casual employee is an employee employed on an occasional basis whose work pattern is not regular and systematic. When a person is engaged for casual employment the employee will be informed in writing that the employee is to be employed as a casual, the job to be performed, the classification level, the actual or likely length of engagement including number of hours to be worked per week, and the relevant rate of pay.
- (b) A casual employee shall be entitled to all the applicable rates and conditions of employment prescribed in this Agreement except annual leave, personal leave, parental leave, jury service and public holidays not worked. Casual employees are entitled to parental leave in accordance with the NES.
- (c) A casual employee shall be entitled to overtime rates after 8 hours per day or 40 hours per week.
- (d) On each occasion a casual employee is required to attend work the employee shall be entitled to payment for a minimum four hours' work.
- (e) A casual employee for working ordinary hours shall be paid 125 percent of the hourly rate prescribed in this Agreement for the employees' classification.
- (f) A casual employee required to work overtime or weekends shall be entitled to the relevant penalty rates as prescribed in this Agreement.
- (g) Termination of all casual employment shall require one hours' notice on either side or the payment or forfeiture of one hours' pay, as the case may be.
- (h) Offers and requests for conversion from casual employment to full-time or part-time employment are provided for in the NES.

10.4 Probationary Period

- (a) All new employees, other than casual employees, shall be on probation for the first three (3) months of engagement during which the Employee is required to demonstrate suitability for ongoing employment in the role in which engaged by the Company.
- (b) If during, or after expiration of that period, the Employee has failed to do so having been given all reasonable opportunity to succeed, the Company may terminate the Employee's services with the giving of notice in accordance with Clause 33 or payment in lieu thereof.

11. WORKPLACE HEALTH AND SAFETY

- (a) All employees are required to comply with procedures and rules on Occupational Health and Safety and those applying on sites on which they are engaged.
- (b) All employees shall be issued with protective clothing/ personal protective equipment (PPE), as required to ensure their occupational health and safety. Where an employee who has been issued with the required protective safety equipment, including safety clothing, and is found not to be wearing the same on the job then the employee will be counselled by their supervisor or a director. Protective clothing and safety equipment is not to be used for the employee's personal

use. The employee will pay for such wear and tear sustained as a result of personal use or unreasonable loss of provided items.

- (c) The parties to this Agreement agree that the company's premises, vehicles, plant and equipment are all non-smoking environments. Smoking is prohibited by employees while on-site.
- (d) Failure to comply with these requirements may result in disciplinary proceedings.

12. FITNESS FOR WORK, ALCOHOL CONSUMPTION AND DRUG USE

- (a) Employees are required to attend for work fit and ready to commence work.
- (b) The use of alcohol or drugs on a worksite or during working hours is strictly forbidden.
- (c) Employees may be required to undertake random breath and drug testing. Where breath and /or drug testing is a condition of entry to a site, each employee must provide a sample.
- (d) Employees who fail to comply with the above and who fail the appropriate tests will be subject to disciplinary proceedings.
- (e) The parties to this Agreement shall in addition to ensuring compliance with OH&S legislation (including Regulations, Code of Practice and Industry Standards), implement the best achievable level of health and safety. Particular emphasis will be placed on the establishment of consultative mechanisms which will include:
 - i) Health and safety representatives who represent employees in negotiations on health and safety matters
 - ii) an occupational health and safety committee
 - iii) In the event that changes to occupational health and safety practices are deemed necessary by either party the issue shall be referred to a consultative mechanism.

13. OH&S ISSUE RESOLUTION PROCEDURES

- (a) As soon as possible after any occupational health and safety issue has been reported, the Company's 'or a management representative and elected safety representative must meet to try to resolve the issue.
- (b) The resolution of the issue must take into account those of the following factors that are relevant:
 - i) Whether the hazard or risk can be isolated
 - ii) The number and location of employees affected
 - iii) Whether appropriate temporary measures are possible or desirable
 - iv) Whether environmental monitoring is desirable
 - v) The time that may elapse before the hazard or risk is permanently corrected
 - vi) Who is responsible for performing work and overseeing the removal of the hazard or risk
- (c) As soon as possible after the resolution of an issue, details of the agreement must be brought to the attention of affected employees in an appropriate manner.

14. PROTECTIVE CLOTHING & EQUIPMENT

Each employee will be issued with protective clothing, which will be replaced on a fair wear and tear basis or at the employees own cost should the employee be negligent with the clothing, on the following basis as required:

Wet Weather Jacket on commencement of winter	1
Work pants	3
Hi Vis Long Sleeve Cotton Drill Shirt	3
Windcheater	2
Safety Boots	1 pair
Leatherman tool (to be replaced by the employee if lost or misplaced).	1

If the employee terminates their employment within the first three (3) months of employment all protective clothing in the possession of the employee shall be returned to the Company, and unaccounted for items or items that are not returned in good condition will be charged to the employee on a pro-rata basis in accordance with the provisions of the *Fair Work Act 2009*. In addition if the employee terminates their employment within three (3) months of receiving a new allocation, the new allocation shall be returned to the Company, and unaccounted for items or items that are not returned in good condition will be charged to the employee on a pro-rata basis in accordance with the provisions of the *Fair Work Act 2009*.

On termination of employment all company supplied clothing bearing the company logo must be returned to the company or will be charged to the employee on a pro-rata basis in accordance with the provisions of the *Fair Work Act 2009*.

The professional image of a Company is enhanced if employees look neat and give the appearance of being part of a team. The wearing of protective clothing helps achieve this image

The protective clothing and equipment that is supplied by the Company must be worn by employees at all times when required to do so.

While not being part of any issue of work clothing/equipment supplied, the company shall be required to provide the following additional personal protective equipment (SAA approved) for use, when necessary, by employees during the performance of their required duties:

- (a) safety helmets, shade protection, sun hats;
- (b) eye protection;
- (c) ear/hearing protection;
- (d) gloves;
- (e) skin protective cream/sun screen (minimum 30+ SPF rating).
- (f) Disposable Coveralls

15. INDUCTION PROCEDURES

The parties to this Agreement acknowledge that it is in the interests of the industry that all new employees understand their obligations to this Agreement and are introduced to their jobs in a manner which will help them work safely and efficiently. All employees are to have completed the construction industry induction or equivalent (red card).

16. MATERIAL HANDLING

An Employees shall not be required to lift material in an unsafe manner. Where required employees will be provided with a mechanical aid or with an assisting employee.

17. CLASSIFICATION STRUCTURE, RATES OF PAY & ALLOWANCES

- (a) Employees covered by this Agreement are classified in accordance with the classification structure detailed in Appendix A of this Agreement.
- (b) Rates will be increased by the amounts shown in the classification structure detailed in Appendix A. Any additional increases will be at the sole discretion of the Company.
- (c) All employees agree to assist in training other employees when required to do so by the Company.
- (d) All employees will be required to work in any of the areas that they are trained for on request.
- (e) The Company reserves the right to nominate the number of positions to be filled and appropriate mix of skills to be filled.
- (f) Actual rates of pay are set out in Appendix A. These rates of pay are inclusive of the following award prescribed entitlements, (provided that where an employee performs work that attracts an allowance under the *Building and Construction General On-site Award 2020* the employee will be paid that allowance):
 - Base Rates of Pay
 - Special Allowance
 - Industry Allowance
 - Annual Leave Loading

18. WORK CYCLES & ROSTERED DAYS OFF

- (a) The ordinary working hours shall be 40 hours per week for full-time employees, from Monday to Friday. Full-time employees will ordinarily work eight hours per working day, with the first 7.2 hours being treated and paid as ordinary hours, and the last 48 minutes (0.8 hours) being unpaid but counted towards an employee's bank/balance of accrued, paid rostered days off (known as an 'RDO').
- (b) Employees receive 7.2 hours' pay when they take an RDO. RDO's are paid at the ordinary time rate paid to employees at the time of taking the RDO.
- (c) Employees will accrue twenty-six RDO's in each twelve months' continuous service.
- (d) Should an employee take a period of paid personal leave, compassionate leave, or annual leave:
 - the employee will be paid for the hours they would ordinarily be paid (i.e. 7.2 hours); and
 - the portion of time which they would ordinarily accrue towards an RDO (i.e. 0.8 hours) will accrue towards an RDO and be deducted from the relevant leave balance, (in order to ensure an employee's RDO balance will not suffer as a result of the employee accessing such leave)..
- (e) RDO's will not accrue during periods of unpaid leave.
- (f) RDO's will be scheduled by the Company based on its operational requirements. An RDO calendar will be prepared in October/November for the following year and distributed to employees at that time. All new employees will be provided with a copy of the calendar. However, RDO's may be rescheduled by agreement between the Company and individual employees.
- (g) Upon commencement of employment, employees who have not worked a complete ten day/two week cycle shall receive pro-rata accrual entitlements for the first RDO or group of RDO's falling after their commencement of employment. Thereafter, for the duration of employment with the Company, RDO's will be paid in full as they occur.
- (h) Upon termination of employment, an adjustment will be made to ensure that the full RDO entitlement, and no more, has been provided. This means that employees then having received more RDO's than they were entitled to will have the relevant amount removed from final termination payments, and employees who have received less than their full RDO entitlement will have the outstanding amount added to final termination payments.

18.1 Work on Scheduled RDOs

- (a) Work may take place on a scheduled RDO or on any substituted day where it is required by the Company to meet its operational requirements.
- (b) An employee may refuse to work on a scheduled RDO if the requirement to do so is plainly unreasonable having regard to:
 - the hours of work that will be worked by that employee in the week of the scheduled RDO;
 - the employee's family responsibilities; and
 - any other special circumstances peculiar to the employee.
- (c) Such work shall be paid for at ordinary time rates of pay.
- (d) The untaken RDO will be banked or re-scheduled to another day.
- (e) Disputes over the application of this clause will be dealt with in accordance with the disputes settlement procedure set out in clause 38 of this Agreement.

18.2 Banking of RDO's

- (a) Where the Company and an employee agree RDO's may be accrued for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed.
- (b) Details of such banked RDO's shall be entered on to each employee's employment records.
- (c) Banked RDO's shall taken either on wet days or at other times to be agreed between the Company and the employee.

18.3 Standby

Where an employee is on standby duty, the employee must be paid a standby allowance of \$607.33 per week and if required to work must be paid at the appropriate rate for time worked (including time spent travelling to the depot, time spent performing work at the depot, and time spent returning home from the depot).

In the case of a single call out, the employee must be paid for a minimum of four hours at the appropriate rate

The allowance will be increased by 4% upon the first pay period to commence on or after 1 July 2024, 2025 and 2026.

- (a) **Standby** means that the employee concerned must be available to the Company by means of telephone at any time the employee is receiving the availability for duty allowance.
- (b) **Appropriate rate** means the rate of pay applicable depending on the time at which the work is performed (i.e. overtime, Saturday, Sunday or public holiday rate).

18.4 Call-out

Where an employee is called out for duty, the employee shall be paid a call-out allowance of \$70.70 per call-out and the employee will be paid at overtime rates from the time taken from leaving the employee's home until the return to the depot for a minimum of 4 hours per call-out.

19. DAILY TRAVEL

- (a) Employees are provided with fully maintained vehicles for transport to and from the worksite.
- (b) In addition to the company providing transport to and from the worksite employees will be paid a daily travel allowance of \$21.00 per day.
- (c) Where an employee is provided with a fully maintained vehicle for private use the employee will not be entitled to daily travel allowance.

20. DISTANT WORK

- (a) When an employee is engaged on Distant Work where the Company provides accommodation, an allowance of \$110.00 per day for meals will be paid to the employee.
- (b) When an employee is engaged on Distant Work, the employee will be paid from the start to finish time at the site.

21. ANNUAL LEAVE

Period of leave

- (a) Full-time employees are entitled to 4 weeks (20 days) of paid Annual Leave accruing pro rata by pay period.
- (b) While annual leave is to be taken by agreement between an employee and the Company, and the Company will not unreasonably refuse any request by an employee to take annual leave, employees are expected to utilise Annual Leave within 12 months of it accruing and to give the Company at least two weeks' notice of their intention to take leave, unless there are exceptional circumstances.

Cashing out of annual leave

- (c) Paid annual leave must not be cashed out except in accordance with an agreement under clause 21(d)-(l).
- (d) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 21(d)-(l).
- (e) 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.
- (f) An agreement under clause 21(d)-(l) 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.
- (g) An agreement under clause 21(d)-(l) must be signed by the Company and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (h) 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.
- (i) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (j) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (k) The Company must keep a copy of any agreement under clause 21(d)-(l) as an employee record.

NOTE 1: Under section 344 of the Act, the Company must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 21(d)-(l).

NOTE 2: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 21(d)-(l).

NOTE 3: An example of the type of agreement required by clause 21(d)-(l) is set out at Schedule G—Agreement to Cash Out Annual Leave of the *Building and Construction General On-site Award 2020*. There is no requirement to use the form of agreement set out at Schedule G—Agreement to Cash Out Annual Leave.

Excessive leave accruals: general provision

NOTE: Clauses 21(m)-(y) contain provisions, additional to the NES, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Act.

- (l) 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, as defined).
- (m) If an employee has an excessive leave accrual, the Company or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (n) Clause 21(q)-(t) sets out how the Company may direct an employee who has an excessive leave accrual to take paid annual leave.
- (o) Clause 21(u)-(y) sets out how an employee who has an excessive leave accrual may require the Company to grant paid annual leave requested by the employee.

Excessive leave accruals: direction by the Company that leave be taken

- (p) If the Company has genuinely tried to reach agreement with an employee under clause 21(n) 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.
- (q) However, a direction by the Company under clause 21(q)(p):
 - i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clauses 21(m)-(o), 21(q)-(t), 21(u)-(y) or otherwise agreed by the Company and employee) are taken into account; and
 - ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - 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 employee.
- (r) The employee must take paid annual leave in accordance with a direction under clause 21(q) that is in effect.
- (s) An employee to whom a direction has been given under clause 21(q) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in clause 21(t) may result in the direction ceasing to have effect. See clause 21(r)(i).

NOTE 2: Under section 88(2) of the Act, the Company must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

Excessive leave accruals: request by employee for leave

- (t) If an employee has genuinely tried to reach agreement with the Company under clause 21(n) but agreement is not reached (including because the Company refuses to confer), the employee may give a written notice to the Company requesting to take one or more periods of paid annual leave.
- (u) However, an employee may only give a notice to the Company under clause 21(u) if:
 - i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - ii) the employee has not been given a direction under clause 21(q) that, when any other paid annual leave arrangements (whether made under clause 21(m)-(o), 21(q)-(t), 21(u)-(y) or otherwise agreed by the Company and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (v) A notice given by an employee under clause 21(v) must not:
 - i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 21(m)-(o), 21(q)-(t), 21(u)-(y) or otherwise agreed by the Company and employee) are taken into account; or
 - ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or

- iv) be inconsistent with any leave arrangement agreed by the Company and employee.
- (w) An employee is not entitled to request by a notice under clause 21(u) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined) in any period of 12 months.
- (x) The Company must grant paid annual leave requested by a notice under clause 21(u).
- (y) The employee will be not entitled to 17.5% Annual Leave loading as it is included in the relevant rate of pay.

22. LEAVE PAYMENT

Payment for period of leave

- (a) Each employee, before going on leave, shall be paid in advance the wages which would ordinarily accrue to him/her during the currency of the leave, or, by agreement between the Company and the employee, the employee shall continue to be paid by the week for the period of annual leave.

23. ANNUAL CLOSE DOWN

- a) Notwithstanding anything contained in this Agreement the Company will, following consultation with the employees, decide to either close down or continue to work over the Christmas/New Year period depending on the work available. If the Company closes down, the Company may, either:
 - i) stand off without pay during the period of leave any employee who has not yet qualified for annual leave; or
 - ii) Provided that where the Company decides to close down the establishment at the Christmas/New Year period for the purpose of giving the whole of the annual leave due to all, or the majority of the employees then qualified for such leave, at least one month's notice of the intention so to do shall be given to the employees.
- b) Notwithstanding clause (a) no employee shall be refused leave over this period.

24. PUBLIC HOLIDAYS

The following Public Holidays shall apply to employees covered by this Agreement, in addition to those provided for by the NES. By agreement of all employees on site, other days may be substituted for Australia Day, Anzac Day and Melbourne Cup Day in some situations by agreement in order to maximise production. Agreement of the employees shall not be unreasonably withheld.

The Public Holidays are:

- * New Year's Day
- * Australia Day
- * Labour Day
- * Good Friday
- * Easter Monday
- * Anzac Day
- * Queen's Birthday
- * Melbourne Cup Day.
- * Christmas Day
- * Boxing Day

If a Public Holiday falls on a weekend (with the exception of ANZAC Day) then the following weekday(s) will be substituted.

- any other day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region.

25. PERSONAL (SICK and CARER'S) LEAVE

- (a) Personal Leave is to be used in situations where an employee is unable to attend for work due to personal injury or illness (Sick Leave) or due to the need to care for or support a member of the Employee's immediate family or household because of a personal illness or injury of the member or an unexpected emergency affecting the member (Carer's Leave).
- (b) The following are members of an employee's immediate family:
 - a spouse, child, partner (including same sex partner), parent, grandparent, grandchild or sibling of the employee; and
 - a child, parent, grandparent, grandchild or sibling of a spouse of the employee provided that:
 - spouse includes a former spouse, a de facto spouse and a former de facto spouse
 - de facto spouse means a person of the opposite sex to the employee who lives with the employee as the employee's husband or wife on a genuine domestic basis although not legally married to the employee;
 - partner includes a former partner (including same sex partner) and
 - child includes an adopted child, a stepchild, an ex-nuptial child and an adult child.
- (c) Full-time employees are entitled to 10 days of paid Personal Leave per annum accruing pro rata by pay period with any unused portion accumulating from one year to the next.
- (d) Casual employees are not entitled to paid Personal Leave.
- (e) In circumstances where an Employee has exhausted the paid Personal Leave entitlement, an additional two day of unpaid Carer's Leave may be granted for each occasion on which an Employee is unable to attend work due to the need to care for an ill or injured family or household member. This does not accumulate.
- (f) The provisions of clause 25(e) above apply to all employees, including casual employees.
- (g) The Employee is required to notify the Company as soon as reasonably practicable (and preferably prior to their scheduled starting time) on any day that they are unable to attend for work.
- (h) The Company requires an employee to provide satisfactory evidence of incapacity for work which would satisfy a reasonable person for absences in excess of one day or where an employee has had more than two single day's absence in a single year or absences either side of a weekend, RDO or a public holiday.
- (i) Unused Personal Leave is not paid out on termination of employment.
- (j) If an employee is terminated by the Company and is re-engaged by the Company within a period of 6 months, then the employee's unclaimed balance of personal/carer's leave will continue from the date of re-engagement. In such case the employee's next year of service will commence after a total of 12 months has been served with that Company excluding the period of interruption in service from the date of commencement of the previous period of employment or the anniversary of the commencement of the previous period of employment.

26. LONG SERVICE LEAVE

The Company shall ensure that all employees are registered with Co-invest for the purposes of Long Service Leave.

27. PARENTAL LEAVE

- (a) In accordance with the provisions of the *Fair Work Act 2009* (Cth), an employee may be eligible for the grant of up to 52 weeks of unpaid Parental (birth-related or adoption) Leave.
- (b) To be eligible, an employee must have completed 12 months service with the Company and be subject to the circumstances prescribed in the relevant provisions of the *Fair Work Act 2009* (Cth).
- (c) Entitlements to Personal leave and Annual Leave and long service leave will not accrue while on unpaid parental leave.

28. COMPASSIONATE LEAVE

- (a) Employees shall be entitled to up to 2 days of paid leave, on each occasion, upon the death or threat to life of a member of the Employee's immediate family as defined in Clause 25(b) or employee's household.
- (b) The Company may require the Employee to provide evidence of the requirement to take Compassionate Leave.

29. COMMUNITY SERVICE LEAVE

- (a) An employee (other than a casual) called for jury service during ordinary working hours will be reimbursed by the Company an amount equal to the difference between the amount paid by the Court and the amount of ordinary rate earnings he/she would have received for the ordinary time hours expended at the Court.
- (b) Employees, including casual employees, are entitled to be absent without pay from work for the purpose of performing a 'voluntary emergency management activity'.
- (c) An employee engages in a voluntary emergency management activity only if they:
 - engage in an activity that involves dealing with an emergency or natural disaster;
 - the employee engages in the activity on a voluntary basis;
 - the employee is a member of, or has a member-like association with, a 'recognised emergency management body' and either:
 - the employee was requested by or on behalf of the body to engage in the activity or
 - no such request was made, but it would be reasonable to expect that if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.
- (d) The employee will provide the Company with proof of attendance, duration of attendance and amount received in respect thereof.

30. PAYMENT OF WAGES

Wages will be paid weekly by electronic funds transfer (EFT).

Wages will be increased by 4% from the first full pay period to commence on or after 1 July 2024, 2025 and 2026 (as set out in the pay rates table in Appendix A).

31. SITE ALLOWANCE

Where required a Site Allowance shall be paid at the appropriate rate per hour, as advised by the relevant project manager, flat for hours worked to compensate for all special factors and/or disabilities on a project and in lieu of the following *Building and Construction General On-site*

Award 2020 special rates - confined space, wet work, dirty work, second-hand timber and fumes. Award special rates and disability payments (other than mentioned above) shall be applied as and when incurred, in accordance with the Award conditions.

32. INCLEMENT WEATHER

- (a) 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.
- (b) The parties agree that a reasonable approach shall be taken to inclement weather which shall mean that work will continue unless the Company and the employees agree that it is either not reasonable or not safe for employees to continue working. The employees on any inclement weather affected site or section of a site can be transferred to another site or section of a site or the depot for productive work. Management will take a reasonable approach when requiring employees to transfer from site to site or back to the depot. This shall include giving consideration to the distance to be travelled and the time of day. However, management maintains the right to make the final decision as to when the transfer of employees from site to site or back to the depot is appropriate or when works on each affected site should cease and personnel stand down until conditions improve.
- (c) Under this Agreement temperatures of more than 36 degrees constitutes inclement weather. Once the temperature reaches 36 degrees the employees will hold discussions with Company management as to whether or not the employees should transfer to another job, return to the depot or finish work for the day.
- (d) Temperature will be measured by the nearest automatic Melbourne Bureau of Meteorology Monitoring Station for example (but not limited to): Melbourne, Moorabbin, Dunns Hill, Melbourne Airport, Frankston, and Point Wilson. At the commencement of each project, the onsite management and employee representatives shall agree which is to be the applicable automatic weather monitoring station or shall determine an alternative method of temperature measurement.
- (e) On days of high temperatures employees will be provided with plenty of drinking water.
- (f) An employee shall be entitled to payment by the Company for ordinary time lost through inclement weather for up to 32 hours in every four weeks. For the purpose of this sub-clause the following conditions shall apply:
 - (i) An employee shall be credited with 32 hours at the commencement of each four weekly period.
 - (ii) The number of hours at the credit of any employee at any time shall not exceed 32 hours.
 - (iii) If an employee commences employment during a calendar month the employee shall be credited 32 hours where the employee commences on any working day within the first week; 24 hours where the employee commences on any working day within the second week; 16 hours where the employee commences on any working day within the third week; and 8 hours where the employee commences on any working day within the fourth week.
 - (iv) No employee shall be entitled to receive more than 32 hours inclement weather payment in any calendar month.
 - (v) The number of hours credited to any employee under this clause shall be reduced by the number of hours for which payment is made in respect of lost time through inclement weather.
- (g) Where an employee is sent home in accordance with Clause 32(a) and where the employee has exhausted their paid entitlement under clause 32(f), the employee may use banked RDO hours or annual leave to make up the hours lost to inclement weather.
- (h) If an employee is notified the night before a shift that they will not be required due to inclement weather, the employee may take an accrued RDO or annual leave.

- (i) A casual employee notified the night before a shift that they will not be required due to inclement weather will not be entitled to any pay.
- (f) Employees may not cease work due to inclement weather without first obtaining the permission of XPower management or site supervisor and following consultation with XPower management.
- (g) Where an employee chooses to finish work due to inclement weather, whether on site or at the depot, without consultation and agreement with XPower management or the site supervisor, the employee will only be paid for time worked.
- (h) The Company will not unreasonably, as determined on site by the Company representative, hold employees at work, whilst inclement weather persists.

33. TERMINATION of EMPLOYMENT

Other than in the case of casual employees, termination of employment may be effected by either party with the giving of notice in writing as follows

Length of Service	Period of Notice
Up to 1 year	1 week
Over 1 year and up to completion of 3 years	2 weeks
Over 3 years and up to completion of 5 years	3 weeks
Over 5 years	4 weeks

Provided that an employee over 45 years of age and with not less than 2 years continuous service at the time of giving notice shall receive an additional week's notice.

The services of a casual employee may be terminated with the giving of one hour's notice.

The Company may elect to make payment for all or that part of the period of notice that it does not require the employee to work.

If an employee who is at least 18 years old does not give the period of notice required under this clause, then the Company may deduct from wages due to the employee under this Agreement an amount that is no more than one week's wages for the employee.

In circumstances where the Employee is terminated on the grounds of serious and wilful misconduct, no notice period nor payment in lieu thereof shall apply. Serious and wilful misconduct includes but is not limited to bringing the Company into disrepute or failing to comply with a reasonable request from the Management.

The Employee undertakes to return to the Company on termination all physical and intellectual property of the Company whether in material, electronic, documentary or any other form.

34. REDUNDANCY

- (a) The Company is, and will remain during the life of this Agreement, a member of the Protect Severance scheme.
- (b) The Company shall pay contributions to the Protect Severance scheme on behalf of each employee (other than apprentices) on a weekly basis in accordance with the Trust Deed.
- (c) An employee is entitled to access his/her redundancy payments when they cease to be employed by the Company. The amount of the redundancy payment shall be whichever is the greater of the entitlement due under the *Building and Construction General On-site Award 2020* and the entitlement of the employee under Protect.

35. INCOME PROTECTION & TRAUMA INSURANCE SCHEME

- (a) The Company will continue to provide income protection insurance for all employees through the Protect insurance scheme. It is agreed that the premium will be collected by the Protect severance scheme at the same time as severance payments. It is agreed payments will be made for periods of all authorised absences, except for those periods where an employee is on leave without pay. The Company may continue payments if requested at the employee's expense.
- (b) It is agreed that the premium will be \$89.10 per week.
- (c) If the premium rates increase higher than those stated above during the life of the Agreement then the Company reserves the right to source an alternative insurance provider.

36. SUPERANNUATION

- (a) The Company will pay compulsory superannuation contributions on the employee's behalf, currently being 10.5% of wages, into each employee's relevant Superannuation Fund.
- (b) Upon engagement, the Company will investigate whether the employee has a 'stapled' superannuation account. Further, within 28 days of commencing employment an employee will be given a standard choice form by the Company, in which the employee can nominate a different eligible superannuation in which contributions can be made (if the employee so wishes). Where there are no 'stapled' superannuation funds, and an employee does not choose a Superannuation Fund within 28 days, their superannuation contributions will automatically be paid into the Company's default super fund, Asgard.
- (c) All superannuation contributions shall be paid monthly.
- (d) Where an employee wishes to have their pay salary sacrificed for additional superannuation, the Company will comply with the employee's request without unreasonable delay. All entitlements and benefits contained in this Agreement will be calculated on the pre-salary sacrifice pay rate.
- (e) Subject to the governing rules of the relevant superannuation fund, the Company must also make the superannuation contributions provided for in this clause while the employee is on any paid leave; and/or for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:
 - (i) the employee is receiving workers compensation payments or is receiving regular payments directly from the Company in accordance with the statutory requirements; and
 - (ii) the employee remains employed by the Company.

37. ACCIDENT PAY

The Company shall pay accident pay, as defined by clause 27 of the *Building and Construction General On-site Award 2020*.

38. DISPUTE SETTLEMENT PROCEDURE

- a) This procedure is designed to promote the resolution of issues that arise at the lowest possible level and to provide a step-by-step process which will be accessed if the parties are genuinely unable to resolve the issue.
- b) At each step in the procedure, reasonable time is to be allowed for the parties to resolve the matter. A party to the dispute may appoint another person, organisation or association to accompany or represent them at each step in relation to the dispute. The parties agree not to proceed to each next step in the procedure until the previous step has been completed. Following these procedures will ensure the dispute is resolved in the most efficient manner.
- c) In the event of a dispute in relation to a matter arising under this Agreement, and/or the National Employment Standards (NES) in the first instance the parties will attempt to resolve the matter

at the workplace by discussions between the employee or employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the employee or employees concerned and more senior levels of management as appropriate. If the matter is not resolved at this level, the grievance shall be referred to the Management.

- d) If the dispute is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to the Fair Work Commission (the "Commission") for resolution.
- e) The parties to the dispute may agree on the process to be utilised by the Commission including mediation or conciliation. If the matter cannot be resolved by the Commission by mediation or conciliation, either party to a dispute may refer the matter for arbitration and that both parties will accept arbitration.
- f) It is a term of this Agreement that while the dispute resolution procedure is being conducted work shall continue normally. The circumstances that applied prior to the dispute arising shall apply until final resolution of the matter.
- (h) This dispute resolution procedure does not apply to Occupational Health and Safety matters. It is expected that the Occupational Health and Safety Representatives will follow appropriate procedures in the resolution of any Health and Safety matters.

39. USE, CARE AND CUSTODY OF COMPANY PROPERTY, EQUIPMENT AND VEHICLES

- (a) Employees are to exercise due care to ensure the proper use and care and secure custody of Company property and equipment under their control. This includes but is not restricted to motor vehicles, excavators, other plant and equipment, tools, protective clothing and footwear and other personal protective equipment.
- (b) Employees are to immediately report any damage to or malfunction in Company property and equipment under their control.

Company Vehicles

- (c) Where a company vehicle is provided to an employee, this is done so for use during business hours. Any private use of the vehicles is at the discretion of the Company and can be modified or restricted without notice.
- (d) Company vehicles must be kept in a clean and tidy condition at all times. The custodian of the vehicle will be responsible to ensure that the vehicle is serviced and maintained (at the Company's expense) at regular intervals within the manufacturer of the vehicle guidelines. Should any mechanical failure or damage occur as a result of failing to abide by this clause, the Company may recover costs of the repairs from the custodian of the vehicle. But not by way of a deduction from the employee's pay unless agreed between the Company and the employee.
- (e) Where company vehicles are provided for private use and garaged off-site, they must be stored at the custodian employee's residence in a safe and secure position.
- (f) The Company must approve private use of the vehicle to travel interstate or while on annual leave. Fuel costs incurred during annual leave are to be paid by the Employee unless otherwise arranged with the Company.
- (g) The Company must be advised immediately of any accident in a company vehicle and before any arrangements are made. It is the responsibility of the driver to secure from other parties involved in the accident their name and address, registration, license number and insurance details. The driver must not accept blame for the accident on behalf of the Company, as this is an insurance matter.
- (h) The custodian employee of a company vehicle will be responsible for the payment of damage should they cause an accident while on private use.
- (i) The Company strictly prohibits the use of any company vehicle by an employee who is under the influence of either alcohol or drugs. In the event of an accident caused by either of the above, the employee will be solely responsible for all costs and repairs associated with the accident.

- (j) Whilst an employee is on annual leave the vehicle must remain on the property of XPower unless otherwise arranged with the Company.

40. STAND DOWN

The Company shall have the right to deduct payment for any day that the employee cannot be usefully employed because of any strike or through any breakdown in machinery or any stoppage of work for which the Company cannot reasonably be held responsible. If the employee so requests, the Company may elect to allow the employee to take annual leave or accrued RDO's rather than standing down the Employee.

41. NO FURTHER CLAIMS

It is a term of this Agreement that the employee parties to this Agreement will not, for the duration of its operation, make or pursue any claims in respect of any subject matters that are covered by this Agreement. It is also a term of this Agreement that the parties will not take any industrial action in support of any claims for the duration of this Agreement.

42. TRAINING

- (a) Each employee will be given the opportunity to participate in training as required.
- (b) In consultation with the relevant employee or employees management will identify specific training courses. The employees agree to participate in good faith in nominated training courses and specific learning programs determined by the Company.
- (c) Where the Company determines a priority and implements a company specific learning program, that program will be conducted in normal working hours and at the Company's expense.
- (d) Where the successful completion of a course requires on-the-job experience, the Company will endeavour to provide that experience component within an agreed time frame. The parties will accept that the experience component is subject to that work being available within the Company's range of projects.
- (e) Any cost associated with the undertaking of the nominated course will be met by the Company upon successful completion of the course and subject to satisfactory attendance and performance. In the event that an employee leaves the Company within the first 12 month's employment the employee will be required to re-pay to the Company the cost of the course, except where the Company has required the employee to undertake the training
- (f) Management, in consultation with employee's representatives, will assist in identifying general training requirements and specific skill based training as part of career planning and in accordance with the requirements of award based skill classification structure.

43. WORKMANSHIP AND QUALITY

- (a) Employees will complete all required documentation, especially time sheets, on time and accurately. Employees commit to taking accountability for completing daily tasks and preparing for the next day's tasks where practicable.
- (b) Employees are required to perform their functions and duties in accordance with generally accepted principles of good quality and safe practices.

APPENDIX A – CLASSIFICATION STRUCTURE and PAY RATES

Classification Definitions:

Junior Labourer (“JL”)

A JL Junior Labourer is an employee who would otherwise be classified under the *Building and Constructions General On-site Award 2020* as a ‘Construction worker level 1 / Engineering construction worker level 1 (CW/ECW 1) (level b)’; has been employed by the Company for less than 12 months and is under the age of 21. Upon turning 21, the employee will be classified as an L1 Adult Labourer or L2 Adult Labourer, subject to their skills, experience, qualifications, and length of service with the Company.

Adult Labourer – 1st 12 months (“L1”)

An L1 Adult Labourer is an employee who would otherwise be classified under the *Building and Constructions General On-site Award 2020* as a ‘Construction worker level 1 / Engineering construction worker level 1 (CW/ECW 1) (level b)’ and has been employed by the Company for less than 12 months; or who is appointed by the Company as such.

Adult Labourer – after 1st 12 months (“L2”)

An L2 Adult Labourer is an employee who would otherwise be classified under the *Building and Constructions General On-site Award 2020* as a ‘Construction worker level 1 / Engineering construction worker level 1 (CW/ECW 1) (level c)’ and has been employed by the Company for 12 months or more; or who is appointed by the Company as such.

Instructed Person (CW1d)

An Instructed Person is an employee who would otherwise be classified under the *Building and Constructions General On-site Award 2020* as a ‘Construction worker level 1 / Engineering construction worker level 1 (CW/ECW 1) (level d)’; or who is appointed by the Company as such.

Plant Operator (CW4)

A Plant Operator is an employee who would otherwise be classified under the *Building and Constructions General On-site Award 2020* as a ‘Construction worker level 4 / Engineering construction worker level 4 (Engineering construction tradesperson level II and Engineering construction technician level I) (CW/ECW 4); or who is appointed by the Company as such.

Team Leader

A Team Leader is an employee who is appointed by the Company as such.

Works Manager

A Work Manager is an employee who is appointed by the Company as such.

Pay Rates


Classification	CURRENT RATES	PAY RATE UPON AGREEMENT APPROVAL BY FWC	PAY RATE JULY 2024	PAY RATE JULY 2025	PAY RATE JULY 2026
JL = Junior Labourer	\$28.00	\$30.24	\$31.45	\$32.71	\$34.02
L1 = Adult Labourer = 1st 12 months	\$36.73	\$39.67	\$41.26	\$42.91	\$44.63
L2 = Adult Labourer = after 12 months	N/A	\$40.67	\$42.30	\$43.99	\$45.75
IP = Instructed Person (CW1d)	\$39.29	\$42.43	\$44.13	\$45.90	\$47.73
PO = Plant Operator (CW4)	\$42.62	\$46.03	\$47.87	\$49.79	\$51.80
TL = Team Leader	\$44.31	\$47.86	\$49.77	\$51.76	\$53.84
WM = Works Manager	\$47.14	\$50.91	\$52.95	\$55.07	\$57.27

SIGNATORIES

Signed for and on behalf of Miriklis Earthmoving Pty Ltd t/a XPower

Name: Stanley Donald Miriklis

Company Position: Director

Signature: 

Witness Name: Ben McCubbin

Witness Signature: 

Date: 21.09.2023

Address: 552 Park Road Park Orchards Victoria 3114

Signed for and on behalf of the employees:

Name: Daniel O'Connor

Authority to sign Agreement: Bargaining Representative Works Manager

Signature: 

Date: 21.09.2023

Address: 102 Sutherland Street Kilmore Victoria 3764

Name: Jarred Feiam

Authority to sign Agreement: Bargaining Representative Plant Operator

Signature: 

Date: 21.09.2023

Address: 13 lothair street Pascoe vale south Victoria 3044

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2023/3421

Applicant:
Miriklis Earthmoving Pty. Ltd. trading as XPower

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Stan Miriklis, Director, have the authority given to me by Miriklis Earthmoving Pty. Ltd. trading as XPower to give the following undertaking with respect to the *XPower Enterprise Agreement 2023* ("the Agreement"):

1. Clause 24.1 of the Agreement, will be interpreted as follows:

The following Public Holidays shall apply to employees covered by this Agreement, in addition to those provided for by the NES. By agreement between the Company and individual employees, other days may be substituted for Australia Day, Anzac Day and Melbourne Cup Day in some situations in order to maximise production.

This undertaking is provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

Signature



Date

06.10.2023