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| **Waiver Agreement**  **pursuant to**  **Coal Mining Industry (Long Service Leave) Administration Act 1992 (Cth)** |
| **BETWEEN**  **[Name of employer]**  **(Employer)**  [ABN/ACN/ARBN**]** [number]  **Date of Birth:**  **AND**  **[Name of employee]**  **(Employee)** |

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# RECITALS

* 1. The Employee is an eligible employee under section 4 of the Administration Act.
  2. In the absence of this Agreement, section 4 of the Payroll Act requires the Employer to pay levy to Coal LSL in respect of its employment of the Employee.
  3. Part 5A, Division 2 of the Administration Act provides that the Employer and Employee may enter into an agreement for the Employer to pay Remuneration and Contributions to the Employee in lieu of paying Levy to Coal LSL.
  4. This Agreement is an agreement under Part 5A, Division 2 of the Administration Act.
  5. The terms of this Agreement do not have effect unless the Agreement is approved by Coal LSL.

# OPERATIVE TERMS

# DEFINITIONS

* 1. **Administration Act** means the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (Cth).
  2. **Agreement** means this agreement, including any schedules, attachments or annexures.
  3. **Coal LSL** means the Coal Mining Industry (Long Service Leave Funding) Corporation established under the Administration Act.
  4. **Employee** means the party identified as the Employee in Item 1 of Schedule 1 of this Agreement.
  5. **Employer** means the party identified as the Employer in Item 2 of Schedule 1 of this Agreement.
  6. **Fact Sheet** means the Waiver Agreement Factsheet published on Coal LSL’s website at the date of this Agreement.
  7. **Levy** means the amount of levy the Employer would have been required to pay Coal LSL under the Payroll Act in respect of the Eligible Employee if this Agreement did not have effect.
  8. **Payroll Act** means the *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992* (Cth).
  9. **Prior Agreement** means any agreement between the parties under Part 5A Division 2 of the Administration Act (Waiver Agreements) that was:

1. Approved by Coal LSL, and
2. Was not otherwise terminated before the Date of Effect in Item 3 of Schedule 1 of this Agreement.
   1. **Regulations** means the *Coal Mining Industry (Long Service Leave) Administration Regulations 2018*.
   2. **Remuneration and Contributions** means the amount paid to the Employee under clause 6.1 and Item 4 of Schedule 1 of this Agreement.

# PRE-CONDITIONS

* 1. The parties acknowledge that the Employee is:

1. An eligible employee under section 4 of the Administration Act;
2. A prescribed employee under clause 7 of the Regulations as indicated by the parties in Item 5 of Schedule 1; and
3. Otherwise entitled to enter into an agreement under Part 5A, Division 2 of the Administration Act.
   1. The Employer must immediately notify Coal LSL if the Employee no longer satisfies a requirement set out in clause 2.1a to c.

# LODGEMENT

* 1. The employer must do all things necessary to ensure this Agreement has effect.
  2. Without limiting clause 3.1 of this Agreement, the Employer must lodge this Agreement in accordance with the requirements of the Fact Sheet.

# DATE OF EFFECT

* 1. This Agreement does not have any effect unless:

1. The Agreement is lodged with Coal LSL; and
2. The Agreement is approved by Coal LSL.
   1. Subject to clause 4.1, this Agreement takes effect on the date specified in Item 3 of Schedule 1 which must be a date after this Agreement is lodged with Coal LSL.
   2. The parties acknowledge and accept that:
3. approval of this Agreement by Coal LSL will terminate any Prior Agreement; and
4. unless approved by Coal LSL, this Agreement will not terminate any Prior Agreement.

# ADVICE

* 1. The parties acknowledge they have read and understood the Fact Sheet and have obtained their own independent legal and financial advice on the terms of this Agreement.

# REMUNERATION AND CONTRIBUTIONS

* 1. The Employer agrees to pay the Employee the amount in Item 4 of Schedule 1.
  2. The Employee acknowledges that they will not accrue qualifying service under section 39A of the Administration Act during the term of this Agreement.
  3. If the Remuneration and Contributions become less than the Levy in any month, the Employer will pay the Levy amount directly to the Eligible Employee, and as directed by the Eligible Employee, until:

1. the parties enter a new agreement under to Part 5A Division 2 of the Administration Act (Waiver Agreements); or
2. this Agreement is terminated.

# TERMINATION

* 1. This Agreement terminates if:

1. Coal LSL notifies the Employer that it withdraws its approval for this Agreement;
2. The Employee no longer satisfies all the requirements in clause 2.1 of this Agreement; or
3. The Employee notifies the Employer that this Agreement is terminated and that notice is:
   1. in writing;
   2. signed; and
   3. specifies the date that this Agreement terminates.
   4. As soon as practicable after this Agreement is terminated the Employer must give Coal LSL written notice of termination which specifies the date of termination.

**DATED**

**[Date]**

**Executed as a deed.**

|  |  |  |
| --- | --- | --- |
| Signed, sealed and delivered by **[Eligible Employee name]** in the presence of: |  |  |
| Signature of witness |  | Signature of [Eligible Employee name] |
| Name of witness (print) |  |  |

Signed, sealed and delivered by **[Employer name and ACN/ABN]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by

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Signature of Director Signature of Director / Secretary

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Name of Director Name of Director / Secretary

# SCHEDULE 1

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|  |  |  |
| Item 1 | **Employee** | [Employee full name and postal address]  DOB: [Date of birth]  LSL number: [LSL number] |
| Item 2 | **Employer** | [Employer name and address]  ACN/ABN: [ACN/ABN] |
| Item 3 | **Date of Effect** | [Parties to agree a date after this Agreement is lodged with Coal LSL] |
| Item 4 | **Remuneration and Contributions** | Remuneration:  [Amount of remuneration – could be a whole dollar amount, OR “amount of levy otherwise payable to Coal LSL”, OR “amount of levy otherwise payable to Coal LSL plus $$”]  [Frequency of payment]  [Remuneration destination such as account name, BSB and account number]  AND/OR  Contribution:  [Amount of contribution – could be a whole dollar amount, OR “amount of levy otherwise payable to Coal LSL”, OR “amount of levy otherwise payable to Coal LSL plus $$”]  [Frequency of payment]  [Contribution destination such as Fund name, Fund ABN, product number, account name and account number]  [Item 4 may be modified to include multiple remuneration and/or contribution destinations.] |
| Item 5 | **Prescribed Employee** | The Employee:  is at least 55 years of age and has no qualifying service for the purposes of section 39A of the Act; or  is at least 55 years of age and has at least 8 years of qualifying service for the purposes of section 39A of the Act; or  is a manager of a corporation that employs eligible employees in the black coal mining industry; or  is a senior professional employee engaged in the management of a corporation that employs eligible employees in the black coal mining industry; or  has an annual salary (including allowances) of: (i) in 2017—at least $174,700; and  (ii) in a subsequent year—$174,700, as adjusted by the annual rate of the Consumer Price Index for 2017 and then for each completed year (if any) after 2017; or  is employed under an undergraduate placement or a work training placement. |