

**OPERATIONS SERVICES PRODUCTION AGREEMENT**

BALLOT VERSION

## CONTENTS

1.	TITLE.....	3
2.	COVERAGE.....	3
3.	RELATIONSHIP WITH OTHER INSTRUMENTS AND THE NATIONAL EMPLOYMENT STANDARDS .....	3
4.	TERM OF AGREEMENT .....	3
5.	TYPE OF EMPLOYMENT.....	3
6.	DUTIES.....	4
7.	REMUNERATION.....	5
8.	SUPERANNUATION.....	8
9.	HOURS OF WORK.....	9
10.	PUBLIC HOLIDAYS.....	10
11.	ANNUAL LEAVE.....	11
12.	PERSONAL/CARER'S LEAVE.....	12
13.	COMPASSIONATE LEAVE .....	12
14.	PARENTAL LEAVE.....	12
15.	LONG SERVICE LEAVE.....	13
16.	COMMUNITY SERVICE LEAVE.....	13
17.	LEAVE TO DEAL WITH FAMILY AND DOMESTIC VIOLENCE.....	13
18.	LEAVE WITHOUT PAY.....	13
19.	INCLEMENT WEATHER.....	13
20.	ACCOMMODATION AND TRAVEL .....	14
21.	STAND ASIDE AND STAND DOWN.....	17
22.	ISSUE RESOLUTION PROCEDURE.....	17
23.	INDIVIDUAL FLEXIBILITY .....	18
24.	MANAGEMENT OF CHANGE / CONSULTATION.....	19
25.	REDUNDANCY.....	22
26.	TERMINATION OF EMPLOYMENT.....	22
27.	RECONCILIATION.....	23
28.	NO FURTHER CLAIMS .....	23

## 1. TITLE

This agreement will be known as the *Operations Services Production Agreement* ("**Agreement**").

## 2. COVERAGE

2.1 This Agreement shall cover:

- (a) OS MCAP Pty Ltd (ACN 626 224 655) ("**the Company**"); and
- (b) Employees of the Company employed in the classifications set out in clause 6.6 of this Agreement who undertake production activities on a mining operation ("**Employees**").

## 3. RELATIONSHIP WITH OTHER INSTRUMENTS AND THE NATIONAL EMPLOYMENT STANDARDS

- 3.1 Subject to clauses 14, 16, 17 and 25 of this Agreement, it does not incorporate the Company's policies or procedures (notwithstanding any references to any policies or procedures in this Agreement).
- 3.2 While this Agreement operates in relation to an Employee, no other industrial instrument shall have effect in relation to the Employee.
- 3.3 The National Employment Standards ("**NES**") apply to all Employees as a minimum standard. Where there is an inconsistency between the NES and a clause of this Agreement, the NES will apply and the clause of this Agreement will not apply, except to the extent that the clause of the Agreement provides for a more beneficial outcome for Employees than the NES.

## 4. TERM OF AGREEMENT

- 4.1 This Agreement will commence operating seven days after the Agreement is approved by the Fair Work Commission ("**FWC**").
- 4.2 The term of the Agreement ends on the nominal expiry date of the Agreement which will be four years after the date on which the FWC approves the Agreement.
- 4.3 The Agreement will continue to operate past the term of the Agreement, until terminated, or replaced by another agreement.

## 5. TYPE OF EMPLOYMENT

- 5.1 Employees may be engaged under this Agreement as Full Time Employees or Part Time Employees.
- 5.2 A Full Time Employee is an Employee who is employed to work ordinary hours of work as follows:
  - (a) in the case of an Employee to whom the *Black Coal Mining Industry Award 2020* would have applied but for the operation of this Agreement— an average of 35 ordinary hours per week, averaged over their roster cycle; or
  - (b) in the case of any other Employee – an average of 38 ordinary hours per week,

averaged over a six month period.

5.3 A Part Time Employee is an Employee who:

- (a) is employed to work less than the following number of ordinary hours per week:
  - (i) in the case of an Employee to whom the *Black Coal Mining Industry Award 2020* would have applied but for the operation of this Agreement— an average of 35 ordinary hours per week, averaged over their roster cycle; or
  - (ii) in the case of any other Employee – an average of 38 ordinary hours per week, averaged over a six month period;
- (b) has reasonably predictable hours of work; and
- (c) receives, on a pro rata basis, equivalent pay and conditions to those of Full Time Employees who do the same kind of work.

5.4 Each Part Time Employee's rostered hours of work, including the days when they will work and their starting and finishing times, will be as agreed in writing between the Company and the Part Time Employee from time to time.

5.5 All time worked in excess of the rostered hours as mutually arranged will be un-rostered overtime and paid for at the rates prescribed in clause 7.8.

5.6 Employees may be engaged for a fixed term or specified task. Such Employees are not entitled to notice of termination or redundancy pay on expiry of the fixed term or completion of the specified task, unless required by the *Fair Work Act 2009* (Cth) ("**FW Act**").

## 6. DUTIES

6.1 Employees are required to undertake all duties as reasonably directed by the Company that are within their skill and competence and, where required by law, authorised, and in accordance with safe working practices.

6.2 Employees will undertake training aimed at maintaining, enhancing or broadening their work skills and work performance as required by the Company, and will teach work skills to others as required.

6.3 Employees are employed to work at deployments within a hub as directed by the Company from time to time. The relevant hubs are:

- (a) East Coast Hub which includes all mining operations in Queensland and New South Wales at which the Company provides services now or in the future;
- (b) Western Australia Hub which includes all mining operations in Western Australia at which the Company provides services now or in the future;
- (c) South Australia Hub which includes all mining operations in South Australia at which the Company provides services now or in the future; and
- (d) any other region the Company designates as a new hub in the future.

- 6.4 At least 14 days' notice, unless otherwise agreed between the Company and the Employee concerned, will be provided where an Employee is required by the Company to change deployment within their hub. Terms and conditions of employment will be reviewed in light of any change in responsibilities in the event of a transfer, but will remain at least as beneficial as set out in this Agreement.
- 6.5 Transfer between hubs will be by agreement with the Employee.
- 6.6 Employees will be placed in one of the following classifications according to their responsibilities from time to time:

<b>Operation Coverage</b>	<b>Classification</b>	<b>Description</b>
Non-Coal Operations	Production Technician	Operating mobile equipment
Coal Operations	Production Technician	Operating mobile equipment

Trainee Production Technicians in Non-Coal Operations or Coal Operations may be employed by the Company under this Agreement.

- 6.7 An Employee's classification under clause 6.6 does not limit the duties that an Employee may be required to perform in accordance with clause 6.1.

## **7. REMUNERATION**

- 7.1 Employees will be paid an annual fixed cash reward for their roster ("**Annual Salary**").
- 7.2 The Annual Salary includes compensation for:
- (a) all allowances (unless otherwise prescribed by this Agreement), disabilities, skills; and
  - (b) any other loadings, penalties, overtime or other payments that would have been applicable to rostered hours in the applicable roster under the relevant modern award. This includes compensation for working on rosters which cover weekends, public holidays, and day/afternoon/night shifts.
- 7.3 The Annual Salary is set out in the Employee's contract of employment, as amended from time to time. The commencement of this Agreement does not have the effect of reducing the Annual Salary payable to any Employee under their contract of

employment for their roster and in operation immediately prior to commencement of this Agreement. During the term of this Agreement, an Employee's Annual Salary:

- (a) will not be reduced, unless the Employee changes to a roster or a position with a different Annual Salary; and
- (b) will be reviewed annually as part of the Company's reward process, with outcomes to be determined at Company discretion.

7.4 The minimum Annual Salary payable under this Agreement to an Employee for working any roster will be not less than the Above Award Guarantee. An Employee's Annual Salary may be higher than required by the Above Award Guarantee.

7.5 For the purposes of this Agreement:

- (a) the "Above Award Guarantee" is a guarantee that the Annual Salary payable to every Full Time and Part Time Employee will be 105% of the amount that would have been payable to an Employee under the relevant modern award for working the roster on which they are working.
- (b) the "relevant modern award" in relation to any Employee is the modern award that would have applied to that Employee if this Agreement did not apply to that Employee;

7.6 The Company will notify Employees of the Above Award Guarantee for their roster:

- (a) on commencement of employment;
- (b) on any change of roster or position; and
- (c) between 1 and 15 July each year.

7.7 For the purpose of Section 16 of the FW Act the base rate of pay for an Employee will be not less than 105% of their hourly base rate of pay in the relevant modern award.

7.8 **Un-rostered overtime**

- (a) Any un-rostered overtime worked by Employees will be paid:
  - (i) other than on public holidays, at double the Above Award Guarantee hourly roster rate for each hour of un-rostered overtime; and
  - (ii) on public holidays, at triple the Above Award Guarantee hourly roster rate for each hour of un-rostered overtime.
- (b) The Above Award Guarantee hourly roster rate for the purpose of calculating the un-rostered overtime rate will be not less than the rate calculated by dividing the Above Award Guarantee that is payable for the Employee's roster by the number of rostered hours per annum for the Employee's roster. The commencement of this Agreement does not have the effect of reducing the un-rostered overtime rate currently paid to any Employee for their roster and in operation immediately prior to commencement of this Agreement.
- (c) Alternatively, an Employee and the Company may agree in writing to the Employee taking time off instead of being paid for a particular amount of un-

rostered overtime that has been worked by the Employee.

7.9 When un-rostered overtime work is necessary it must be arranged so that Employees have at least 10 consecutive hours break between work on successive working shifts.

7.10 In calculating overtime, each shift is to be treated separately.

**7.11 Call Back**

(a) An Employee who is recalled to work overtime after leaving the workplace (whether the Employee was notified before or after leaving the workplace) will be paid for at least four hours work at the rate under clause 7.8, for each time the Employee is recalled.

(b) The provisions of sub-clause (a) do not apply in the following cases:

(i) where it is customary for an Employee to return to the workplace to perform a specific job outside the Employee's ordinary working hours;

(ii) where the overtime is continuous (subject to a reasonable meal break) with the end or start of ordinary working time; or

(iii) to a second or subsequent call out if that call out is made before completion of the first call-out.

(c) Overtime worked on a call-back of less than four hours will not be regarded as overtime for the purposes of a rest period if the actual time worked is less than four hours on any recall or on each of any recalls.

7.12 Where the Company directs an Employee to undertake training outside of the Employee's normal shift patterns, the Company will make payment to the Employee in accordance with overtime rates for the period of the training. Provided that the Employee will be given time off in lieu for the period of the training delivery where the Company needs to provide time off in lieu to meet fatigue management guidelines.

7.13 Annual Salary will be averaged over a year and paid fortnightly in arrears.

7.14 Payment will be by electronic funds transfer to a bank account in Australia nominated by the Employee.

7.15 Employees may be eligible to participate in the Company Short Term Incentive Program, as amended from time to time. The Company reserves the right in its sole discretion to cancel, replace, or make any variations to any such scheme at any time.

7.16 Where an overpayment of salary or entitlements has occurred, Employees must repay the overpayment within a reasonable period of time. Where the overpayment is not repaid within a reasonable period of time, the Company is authorised by the Employee to deduct and retain any overpayments from the Employee's pay, including from termination payments, to the fullest extent permitted by law and section 324 of the FW Act.

7.17 Without limiting clause 3.1, the Company has a policy that provides for accident pay that may be amended by the Company from time to time provided that accident pay for

any Employee will not be less than the Employee would receive if an accident pay clause in a modern award applied to that Employee, but for this Agreement.

## **8. SUPERANNUATION**

- 8.1 Employees are allowed a personal choice of complying superannuation fund, to receive superannuation contributions on their behalf. Should an Employee elect to not choose their own complying superannuation fund, superannuation will be paid to the Employee's stapled fund. If the Employee does not have a stapled fund, contributions are to be made to the Company's default superannuation fund. The Company reserves the right to change its default fund at any time. The Company's default superannuation fund will be a fund which offers a MySuper product.
- 8.2 The Company's contribution on behalf of Employees will be in accordance with the *Superannuation Guarantee (Administration) Act 1992*, as varied from time to time.
- 8.3 An Employee can request, and the Company may agree, that the Employee will forgo part of their Annual Salary otherwise payable under this Agreement in order to pay this amount into the Employee's nominated superannuation fund.
- 8.4 Employee Superannuation Co-Contribution is offered at the discretion of the Company to participating Employees, who have completed a written election application, on the following conditions:
- (a) Subject to subclause (c), the Company may, at its discretion, review, vary or cease the Employee Co-Contribution Policy at any time. This includes where there are changes in Australian Taxation Office practice, tax rulings, legislation or legislative interpretation.
  - (b) The Employee may cease Employee Co-Contribution at any time by 30 days' notice and submitting a completed election form.
  - (c) The Company may cease Co-Contribution at any time by 30 days' notice.
  - (d) Company and Employee Co-Contributions will cease during periods of unpaid leave unless otherwise agreed by the Company.
  - (e) Company and Employee Co-Contributions are calculated in accordance with the Employee Co-Contribution Policy, as amended from time to time.
  - (f) All contributions will only be paid into one superannuation fund for each Employee. Contributions made to and earnings received from a superannuation fund must be preserved in the fund until the Employee reaches preservation age or meet any other legislative and fund criteria allowing the release of superannuation benefits.
  - (g) Company and Employee Co-Contributions will incur tax at the rate under the taxation legislation applicable at the time.
  - (h) Subject to clause 8.4(a) above, the Company offers two co-contribution rates. At the Commencement of this Agreement, the Company contribution rates (including the minimum SG contribution) are:



Your regular co-contribution rate		Company regular contribution rate p.a.
After tax p.a.	Before tax p.a.	
0.00%	0.00%	SG (currently 10.50%)
2.50%	2.94%	12.00%
3.50%	4.12%	14.00% (max.)

## 9. HOURS OF WORK

- 9.1 The Company expects that an Employee's work will usually be completed in their rostered hours. Employees may be required to work reasonable un-rostered overtime.
- 9.2 A rostered shift includes hot seat changes/handovers to be completed as directed at the start and end of shift.
- 9.3 An Employee's rostered hours of work are inclusive of an Employee's ordinary hours and rostered overtime each week.
- 9.4 By working these hours, Employees are acknowledging that the requirement to work the rostered hours of work is reasonable having regard to, among other things, the operational requirements of the workplace and the roster arrangements. The Annual Salary is calculated on the basis that Employees will work these hours.
- 9.5 The Company shall determine each Employee's roster, including the days and hours of work, and starting and finishing times and places from time to time, and may change any such rosters, days and hours of work or starting and finishing times and places, provided that:
- (a) an Employee shall not be rostered to work more than 12.75 hours in any one shift, and will have a minimum break of 10 consecutive hours between shifts; and
  - (b) the Company will provide an Employee with one week's notice of any change to an Employee's place on a roster, unless otherwise agreed with the Employee.
  - (c) before implementing any change to ordinary starting and finishing times for an Employee's roster or a change to starting and finishing places on a site, the Company will provide at least one week's notice of the change, unless:
    - (i) the Company and the Employee otherwise agree;
    - (ii) there are operational requirements that require a shorter period of notice to be given.
  - (d) For the avoidance of doubt, clause 24.1(b) applies to a change to the regular roster or ordinary hours of work of Employees.
- 9.6 Employees are entitled to meal and rest breaks up to a total of 30 minutes for each 5 hours worked. The meal break and rest breaks will be taken at times prescribed by the Company having regard to safety, operational and production requirements. Employees will not be required to work more than 5 hours without a meal and rest break other than in an emergency work situation. Reasonable time taken to travel to

or from the area designated by the Company for crib will be counted as time worked and will not be counted as part of the paid meal break.

## **10. PUBLIC HOLIDAYS**

10.1 The following days are public holidays:

- (a) New Year's Day
- (b) Australia Day
- (c) Good Friday
- (d) Easter Saturday (for Employees rostered to work ordinary hours on that day)
- (e) Easter Sunday
- (f) Easter Monday
- (g) Anzac Day
- (h) Sovereign's Birthday
- (i) Christmas Day
- (j) Boxing Day
- (k) any additional day observed by the local community and gazetted at the place of work as a holiday
- (l) any day gazetted in addition or in lieu of one of these holidays.

10.2 Each deployment will determine whether a public holiday starts on the commencement of the night shift before the holiday or the morning shift of the holiday.

10.3 Subject to the NES:

- (a) Employees acknowledge that in accordance with their applicable roster, they may be requested to work on a public holiday. Employees acknowledge that this is reasonable based on the Company's operational requirements.
- (b) As the Company's operations are 24/7, 365 day a year operations, without limiting this Agreement, the Company may roster Employees to work on any day of the year including (but not limited to) Christmas day and Boxing day.
- (c) However for Christmas Day (25 December) and Boxing Day (26 December):
  - (i) If an Employee who is rostered to work does not wish to work either or both the public holidays, using the leave system, they will request approval not to work the rostered shift from their Supervisor. Subject to subclause ((d)) below, the Supervisor may grant this approval, taking into account all relevant circumstances, including operational requirements.
  - (ii) At any time the Company may call for volunteers from non-rostered Employees to work un-rostered overtime at overtime rates.

- (iii) The Company will determine which Employees are required to work on any of the two public holidays.
  - (d) Sub clause (c)(i) above does not apply to:
    - (i) Employees on roster who perform statutory functions or ERT/Mines Rescue Functions; and
    - (ii) Employees on roster who are engaged on critical path activities.
- 10.4 The Annual Salary includes compensation in recognition of the need for Employees to work on public holidays. No separate payment will be made where a public holiday falls during a non-rostered day.

## 11. ANNUAL LEAVE

- 11.1 Annual leave entitlements will be provided for in accordance with the NES.
- 11.2 Employees are entitled to annual leave, in addition to the amount provided for in the NES, such that the Employee's total entitlement to annual leave pursuant to the NES and this Agreement for each year of service is a cumulative total of 5 weeks.
- 11.3 An Employee who:
- (a) is a seven day roster Employee (an Employee who over the roster cycle, may be rostered to work shifts on any of the seven days of the week); or
  - (b) works a roster which requires ordinary shifts on public holidays and not less than 272 ordinary hours per year on Sundays,
- is a shiftworker for the purpose of the NES and entitled annually to an additional week of annual leave in addition to clause 11.2, being a cumulative total of 6 weeks.
- 11.4 Annual leave taken during employment and paid out on termination of employment is paid at an Employee's Annual Salary rate.
- 11.5 An Employee and the Company may agree for the Employee to "cash out" amounts of annual leave provided that:
- (a) the cashing out would not result in the Employee's remaining accrued entitlement to paid annual leave being less than 4 weeks;
  - (b) each occasion of cashing out is by a separate agreement in writing between the Company and the Employee; and
  - (c) cashed out annual leave is paid at the Employee's Annual Salary rate.
- 11.6 The Company may shut down all or part of its operation for a particular period (**Temporary Shutdown Period**) and require affected Employees to take leave during that period provided:
- (a) unless a shorter period is agreed, the Company must give the affected Employees 28 days' written notice (or as soon as reasonably practicable for any Employee who is engaged after the notice is given to other Employees);

- (b) an affected Employee may elect to cover the temporary shutdown period by taking one, or a combination of two or more, of the following:
  - (i) paid annual leave if the Employee has accrued an entitlement to such leave;
  - (ii) leave without pay;
  - (iii) if agreed by the Company, annual leave in advance;
- (c) if the Employee does not make an election, or leave in advance is not agreed, that covers the whole of the temporary shutdown period, then the Company may reasonably direct the Employee in writing to take a period of paid annual leave to which the Employee has accrued an entitlement; and
- (d) if a Temporary Shutdown Period includes a day or part-day that is a public holiday and would have been a working day for the Employee had the Employee not been on leave in accordance with this sub-clause, the Employee is taken not to be on leave on that day or part-day.

## **12. PERSONAL/CARER'S LEAVE**

12.1 Personal/carer's leave entitlement will be provided for in accordance with the NES and the relevant modern award, provided that:

- (a) Employees will be credited with their annual entitlement to paid personal/carer's leave under the NES and in accordance with the relevant modern award;
- (b) personal/carer's leave accruals for any Employee will not be less than the Employee would have received under a clause in a modern award that would have applied to that Employee but for this Agreement;
- (c) accrued but untaken personal/carer's leave will be paid out on termination of employment (except where the termination is a result of serious misconduct, or the Employee is within probation, or where personal/carer's leave transfers to a new employer) and is paid at the Employee's Annual Salary rate.

12.2 Personal/carer's leave is paid at an Employee's Annual Salary rate.

## **13. COMPASSIONATE LEAVE**

13.1 Compassionate leave entitlements will be provided for in accordance with the NES.

13.2 Compassionate leave is paid at an Employee's Annual Salary rate.

## **14. PARENTAL LEAVE**

14.1 Subject to clause 14.2, Employees are entitled to parental leave in accordance with the BHP Group Parental Leave Australia Policy as amended from time to time.

14.2 The entitlements under clause 14.1 will not be less than:

- (a) the NES;
- (b) For the term of this Agreement, the entitlements in the Policy as at

commencement of the Agreement.

## **15. LONG SERVICE LEAVE**

- 15.1 Long service leave is in accordance with applicable legislation.
- 15.2 Long service leave accrues and must be taken subject to relevant legislation and the Company policies, as amended from time to time.
- 15.3 Long service leave is paid at an Employee's Annual Salary rate in accordance with their normal pay periods.

## **16. COMMUNITY SERVICE LEAVE**

- 16.1 Subject to clause 16.2, community service leave entitlements are provided for in accordance with the BHP Group Public Service Leave - Australia Policy, as amended from time to time.
- 16.2 The entitlements under clause 16.1 will not be less than:
  - (a) the NES;
  - (b) For the term of this Agreement, the entitlements in the Policy as at the commencement of this Agreement.

## **17. LEAVE TO DEAL WITH FAMILY AND DOMESTIC VIOLENCE**

- 17.1 Subject to clause 17.2 paid family and domestic violence leave is provided for in the BHP Group Family and Domestic Violence Support Policy, as amended from time to time.
- 17.2 The entitlements under clause 17.1 will not be less than:
  - (a) the NES;
  - (b) For the term of this Agreement, the entitlements in the Policy as at the commencement of this Agreement.

## **18. LEAVE WITHOUT PAY**

- 18.1 An Employee who has exhausted all leave entitlements may make a written application for leave without pay stating the reasons, and the proposed commencement and completion dates. Leave without pay, and its duration, may be granted at the Company's sole discretion. Leave without pay under this clause does not count as service.

## **19. INCLEMENT WEATHER**

- 19.1 Arrangements in the event of severe wet weather or a cyclone are dealt with in the relevant Asset or site policy, as amended from time to time.
- 19.2 Where Employees cannot get to work due to severe wet weather or a cyclone, they are

enabled to utilise accrued annual leave if they desire.

## **20. ACCOMMODATION AND TRAVEL**

20.1 From time to time Employees may be offered access to Company-provided travel and/or accommodation in line with host site accommodation arrangements. For the term of this Agreement, the following arrangements will apply.

20.2 In this clause:

- (a) **Local Area** means the area within a radius of the site at which an Employee is working from which it is reasonably practical to drive from the Employee's residence in and out of that site for each shift in accordance with any fatigue management plan requirements for the site;
- (b) **Local Employee** means any Employee who resides within the Local Area;
- (c) **Commute Employee** is an Employee who lives outside a radius of the site at which they are working and from which it is not reasonably practical to drive from the Employee's residence in and out of that site for each shift, but from which it is reasonably practical to drive in and out of that site for each swing in accordance with any journey management plan requirements for the site;
- (d) **Non-Local Employee** means any other Employee that is not a Local Employee or Commute Employee.

### **20.3 Employment in a hub**

Employees are employed to work at deployments within a hub as directed by the Company from time to time. As a result, Employees are not employed to work in a single location or site and are able to choose where to reside.

### **20.4 Local Employees Benefits**

- (a) Subject to this clause 20.4, Local Employees will travel to and from the site in their own time and at their own expense each day that they are required to perform work.
- (b) Local Employees will be paid a local allowance of \$6,000 per year paid in equal fortnightly instalments for each fortnight work, including non-rostered overtime, is performed as required or an Employee is on paid leave.
- (c) The Company may, at its option, require Local Employees to travel daily to and from the site from a designated location and by a designated means where that is the approved way to access and leave the site. This will not affect payment of the allowance in clause 20.4(b).
- (d) This clause does not apply if an Employee accepts other housing arrangements with the Company.

### **20.5 Commute Employees Benefits**

- (a) Subject to clause 20.7, the Company by whatever means it deems appropriate will provide Commute Employees with single person's village or other accommodation during the rostered swing of work. The type and location of the

accommodation is at the Company's discretion. If an Employee chooses not to stay in the accommodation provided the Employee will be responsible for their own accommodation at their own expense.

- (b) The Company will provide Commute Employees with:
  - (i) travel to and from the site from the accommodation each day that they perform work as directed. The Company may, at its option, require Employees to travel daily to and from the site by a designated means;
  - (ii) a travel allowance of \$5,000 per year paid in equal fortnightly instalments for all incidental costs incurred in travelling to and from their residence to their accommodation to perform work, including non-rostered overtime, as required. This allowance will be paid for each fortnight work is performed as required or an Employee is on paid leave.
- (c) The Company may, at its discretion, require Employees to commute to and from the accommodation by a designated means. This will not affect payment of the allowance in clause 20.5(b).

#### 20.6 Non-Local Employees Benefits

- (a) Subject to clause 20.7 the Company will by whatever means it deems appropriate, provide Non-Local Employees with:
  - (i) single person's village or other accommodation during the rostered swing of work. The type and location of the accommodation is at the Company's discretion. If an Employee chooses not to stay in the accommodation provided the Employee will be responsible for their own accommodation at their own expense;
  - (ii) air transport between the departure points below (or any other departure point(s) nominated by the Company at its discretion) and the nominated provincial airport and return, in accordance with timetables to meet the Employee's roster. At the commencement of this Agreement the transport departure points are:
    - (A) for the East Coast Hub – Brisbane;
    - (B) for the Western Australia Hub – Perth;
    - (C) for the South Australia Hub – Adelaide;
  - (iii) travel to and from the site from the accommodation each day that they perform work; and
  - (iv) road transport between the provincial airport nominated by the Company and the single person's village or other accommodation and return.
- (b) The Company may, at its discretion, require Employees to travel under this sub-clause by a designated means.

#### 20.7 Conditions of travel and accommodation

- (a) Only one of subclauses 20.4, 20.5, or 20.6 will apply. An Employee must provide

a written request to their Supervisor at least 28 days prior to any change in status under those clauses.

- (b) The benefits apply for:
  - (i) each week the Employee works in accordance with the directions of the Company or is on paid leave; and
  - (ii) the term of this Agreement.
- (c) Any payments applicable under this clause:
  - (i) are divisible flat payments and do not compound for overtime or any penalty;
  - (ii) apply pro rata for Part Time Employees in accordance with clause 5.3.
- (d) All travel and rest time under this clause is non-working time.
- (e) Employees who choose to use the accommodation or travel provided will, as a condition of employment, abide by the rules and regulations of the Company and/or the operator, as amended from time to time. Disruptive behaviour and/or breaching rules and regulations can invoke removal of accommodation and/or travel rights. An Employee who has their rights withdrawn and does not provide their own accommodation and/or travel in accordance with their roster, may have their employment terminated.
- (f) Employees will comply with the journey management plan requirements of any site.
- (g) Without limiting sub-clauses 20.7(d) and (f), to assist with management of fatigue, Non-Local and Commute Employees travelling to or from the Local Area to perform work may be required by the Company to:
  - (i) travel on the day preceding the first shift and rest at designated Company provided accommodation, prior to commencing the first shift; and
  - (ii) on completion of work on any roster, travel may include rest at designated Company provided accommodation during the period following the completion of the final shift before commencing commute travel.
- (h) Where any transport is provided by the Company, an Employee must travel on the scheduled transport that is allocated to the Employee. In circumstances where an Employee, for any reason other than a direction by the Company, does not travel at the allocated time:
  - (i) it will be the Employee's responsibility to provide an alternate means of transport at the Employee's cost and subject to journey management and fatigue management requirements; or
  - (ii) where that is not possible, it may result in the Employee being ineligible to work that rostered shift and no payment will be provided for that shift.



## **21. STAND ASIDE AND STAND DOWN**

21.1 Subject to clause 21.3, the Company can stand aside an Employee:

- (a) With or without pay for full or partial refusal of duty; or
- (b) With or without pay for neglect of duty; or
- (c) With or without pay for misconduct, while it is being investigated.

21.2 If the Company stands aside an Employee without pay for neglect of duty or misconduct and the Company determines after an investigation that the Employee did not neglect their duty or did not engage in any misconduct (as the case may be), the Company will pay the Employee the full amount of remuneration they would have received in respect of the period for which they were stood aside.

21.3 Subject to the NES,

- (a) An Employee stood aside under clause 21.1(c) is entitled to be paid their Annual Salary for the period they are away from work, provided the Employee:
  - (i) remains ready, willing and able to perform work; and
  - (ii) complies with all lawful and reasonable directions given by the Company during this period (including, for example, any direction to participate in the investigation into alleged misconduct).
- (b) If an Employee stood aside with pay under this clause fails to meet the requirements of sub-clause 21.3(a), the Employee is not entitled to be paid their Annual Salary for the period that the Employee does not meet those requirements.

21.4 The Company may stand down an Employee without pay during a period in which the Employee cannot usefully be employed because of one of the following circumstances:

- (a) industrial action;
- (b) a breakdown of machinery or equipment if the Company cannot reasonably be held responsible for the break down; or
- (c) an interruption to work for any cause for which the Company cannot reasonably be held responsible.

21.5 Employees who have been stood down under the circumstances described in clause 21.4 above may request to take accrued annual or long service leave entitlements. Approval is at the Company's discretion.

21.6 Any Employee stood down under clause 21.4 will continue to have their service recognised for the purposes of "continuous service".

## **22. ISSUE RESOLUTION PROCEDURE**

22.1 This clause sets out the process for resolving issues which relate to:

- (a) a matter arising under this Agreement; or

- (b) the NES.
- 22.2 Where an issue under clause 22.1 arises which an Employee seeks to be resolved, the issue must first be referred for discussion between the Employee and their immediate Supervisor to attempt to resolve the issue.
- 22.3 If the issue remains unresolved, it may be referred for discussion between the Employee and the Employee's Superintendent.
- 22.4 If the issue is still not resolved, it may be referred for discussion between the Employee and the Employee's Departmental Manager.
- 22.5 Discussions in accordance with clauses 22.2 to 22.4 will be held as soon as reasonably practicable.
- 22.6 By agreement, the Company and the Employee may bypass any of the steps in clauses 22.3 or 22.4 in the interests of speedy resolution of the issue.
- 22.7 If the issue resolution processes in clauses 22.2 to 22.4 have genuinely been exhausted (with the exception of the processes in clauses 22.3 and 22.4 if there was an agreement to bypass any of these steps), and the issue is still unable to be resolved at the workplace level, either party (or its representative) may refer the matter to the FWC for conciliation. If the matter remains unresolved, it can be referred to the FWC for arbitration by consent of both parties involved.
- 22.8 Either the Employee or the Company may have a representative to assist at any stage of this process.

### **23. INDIVIDUAL FLEXIBILITY**

- 23.1 The Company and any 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 arrangement 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 Company 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 Company and Employee.
- 23.2 The Company must ensure that the terms of the individual flexibility arrangement:
  - (a) are about permitted matters under section 172 of the FW Act; and
  - (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.

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

- (a) is in writing;
- (b) includes the name of the Company and Employee; and
- (c) is signed by the Company and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
- (d) includes details of:
  - (i) the terms of this 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 their employment as a result of the arrangement; and
- (e) states the day on which the arrangement commences.

23.4 The Company must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

23.5 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) if the Company and Employee agree in writing—at any time.

## **24. MANAGEMENT OF CHANGE / CONSULTATION**

24.1 This term applies if the Company:

- (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**

24.2 For a major change referred to in paragraph 24.1(a):

- (a) the Company must notify the relevant Employees of the decision to introduce the major change; and
- (b) subclauses 24.3 to 24.9 apply.

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

- 24.4 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 Company of the identity of the representative,
- the Company must recognise the representative.
- 24.5 As soon as practicable after making its decision, the Company must:
- (a) discuss with the relevant Employees;
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the Employees; and
    - (iii) measures the Company is taking to avert or mitigate the adverse effect of the change on the Employees; and
  - (b) for the purposes of the discussion—provide, in writing, to the relevant Employees:
    - (i) all relevant information about the change including the nature of the change proposed; and
    - (ii) information about the expected effects of the change on the Employees; and
    - (iii) any other matters likely to affect the Employees.
- 24.6 However, the Company is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- 24.7 The Company must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
- 24.8 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 Company, the requirements set out in paragraph 24.2(a) and subclauses 24.3 and 24.5 are taken not to apply.
- 24.9 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 Company'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**

24.10 For a change referred to in paragraph 24.1(b):

- (a) the Company must notify the relevant Employees of the proposed change; and
- (b) subclauses 24.11 to 24.15 apply.

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

24.12 If:

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

the Company must recognise the representative.

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

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

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

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

24.16 In this term **relevant Employees** means the Employees who may be affected by a change referred to in subclause 24.1.

## **25. REDUNDANCY**

### **25.1 Definition of redundancy**

- (a) An Employee is made redundant where an Employee's employment is terminated at the Company's initiative:
  - (i) because the Company no longer requires the job done by the Employee to be done by anyone except where this is due to the ordinary and customary turnover of labour; or
  - (ii) because of insolvency or bankruptcy of the Company.
- (b) This clause does not apply to Employees engaged for a fixed term or a specified task.

### **Redundancy payment**

25.2 Except where clause 25.3 or 25.4 applies, when terminations of employment occur due to redundancy, the Employees terminated are entitled to redundancy pay equal to the greater of:

- (a) the amount the Employee would be entitled to under the relevant modern award; or
- (b) for the term of this Agreement, the amount of redundancy pay payable under the BHP Redundancy Termination Australia Policy, as amended from time to time.

25.3 The entitlements under clause 25.2 will not be less than:

- (a) the NES;
- (b) for the term of this Agreement, the entitlements in the Policy as at the commencement of this Agreement;
- (c) Regardless of length of employment, four weeks' pay.

### **Exemption**

25.4 Subject to the NES, the Company is not liable for any payment in clause 25.2 if the Company would not have been required to make a payment of redundancy pay to the Employee under the relevant modern award as amended from time to time.

### **Variation of redundancy pay**

25.5 Despite anything in this clause, the Company may make application to the FWC to be granted relief from the obligation to make a payment pursuant to clause 25.

## **26. TERMINATION OF EMPLOYMENT**

26.1 An Employee may resign from their employment with the Company by giving one week's written notice to the Company.

26.2 Subject to clause 26.3, the Company may terminate the employment of a Full Time or

Part Time Employee by giving the Employee four weeks' written notice or by payment by the Company in lieu of all or part of that notice.

- 26.3 The Company may employ any Full Time or Part Time Employee on probation. In that case, the period of probation will begin on the commencement of employment and will continue for a period of up to 6 months continuous service. During the period of probation, the Company may terminate the Employee's employment by giving one week's written notice or payment by the Company in lieu of all or part of that notice.
- 26.4 The period of notice to be given by the Company to Full Time or Part Time Employees under clause 26.2 shall increase by one week if the Employee is over 45 years old and has completed more than two years continuous service with the Company.
- 26.5 The Company may dismiss an Employee without notice for any serious misconduct, and in such case the Employee's remuneration shall be payable only up to the time of dismissal.

## **27. RECONCILIATION**

- 27.1 The Company is committed to reconciling in accordance with this clause, the amounts payable to Employees to ensure that each Employee receives at least the Above Award Guarantee, on the rostered hours actually worked.
- 27.2 Once this Agreement has been in operation for six months, an Employee can make a written request for a review:
- (a) within 28 days after 1 January or 1 July each year, **(Review Date/s)** and covering the period of six months prior to the Review Date; or
  - (b) at the time of termination of the Employee's employment covering the period since the last relevant Review Date if their employment ends before completion of the six month period,

**(Review Period).**

- 27.3 The review will be conducted by reviewing the amounts paid and rostered hours actually worked in the Review Period.
- 27.4 If the total amount paid to an Employee in respect of the Review Period for their rostered hours is less than the Above Award Guarantee in respect of the Review Period, the Company will make a top-up payment of the difference to the Employee within 14 days.

## **28. NO FURTHER CLAIMS**

This Agreement is a comprehensive and full settlement of all Employee enterprise bargaining claims for the duration of this Agreement unless otherwise permitted by the FW Act.

**Signatories**

Signed for and on behalf of **OS MCAP Pty Ltd**

.....

Name

Date

Position/Explanation of authority

Address

Signed for and on behalf of **Construction Forestry Maritime Mining and Energy Union – Mining and Energy Division**

Name

Address

Position/Explanation of authority

Signed for and on behalf of **Employees**

.....

Name

Date

Position/Explanation of authority

Address

Signed for and on behalf of **The Australian Workers Union**

Name

Address

Position/Explanation of authority

