

OPERATIONS SERVICES PRODUCTION AGREEMENT

PROPOSED AGREEMENT

1. Title

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

2. Coverage

2.1 Subject to clause 2.2, 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 6.4 of this Agreement who undertake production activities on a mining operation ("**Employees**").

2.2 Any site specific enterprise agreement that covers and applies to the Company and any Employees working at the specific site(s) will cover and apply to the Company and those Employees to the exclusion of this Agreement.

3. Relationship with Other Instruments and the National Employment Standards

3.1 This Agreement does not incorporate the Company's policies or procedures (notwithstanding any references to any policies or procedures in this Agreement).

3.2 Subject to clause 2.2, 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 nominal expiry date of the Agreement will be four years after the date on which the FWC approves the Agreement.

4.3 The Agreement will continue to operate past the nominal expiry date until terminated or replaced by another agreement.

5. Type of Employment

5.1 Employees may be engaged under this Agreement as Full Time Employees, Part Time Employees or Casual 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 *Mining Industry Award 2020* would have applied but for the operation of this Agreement— an average of 38 ordinary hours per week, averaged over their roster cycle; or
- (b) in the case of any other Employee – an average of 35 ordinary hours per week, averaged over their roster cycle.

5.3 A Part Time Employee is an Employee who

- (a) is not a Casual Employee and is employed to work less than the following number of ordinary hours per week:
 - (1) in the case of an Employee to whom the *Mining Industry Award 2020* would have applied but for the operation of this Agreement— an average of 38 ordinary hours per week, averaged over their roster cycle; or
 - (2) in the case of any other Employee – an average of 35 ordinary hours per week, averaged over their roster cycle.
- (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 hours as mutually arranged will be overtime.

5.6 A Casual Employee is an Employee who is engaged and paid as a Casual Employee.

5.7 A regular Casual Employee may elect to have their employment converted to full time or part time employment if the employment is to continue beyond the date when they qualify to be a regular Casual Employee.

A "regular Casual Employee" for the purpose of this Agreement is a Casual Employee who has in any preceding period of six months worked a pattern of hours on an ongoing basis which, without significant adjustment, the Employee could continue to perform as a Full Time Employee or Part Time Employee under the provisions of this Agreement.

5.8 The regular Casual Employee must give notice in writing to the Company at least four weeks prior to the Employee attaining such period of six months that they seek to elect to convert their employment to full time or part time employment. The Company must respond within four weeks of receiving such notice whether it consents to or refuses the election, but must not unreasonably so refuse.

5.9 Where it is agreed that the regular Casual Employee will be converted to full time or part time employment, this agreement will be recorded in writing, including

recording whether the Casual Employee is converting to full time or part time employment and, if the Casual Employee is converting to part time employment, recording the matters set out in clause 5.4.

- 5.10 Once a regular Casual Employee has elected to become and been converted to a Full Time or Part Time Employee, the Employee may only revert to casual employment by written agreement with the Company.

6. Duties

- 6.1 Employees are required to undertake all duties as reasonably directed by the Company that are within their skill and competence 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 Organisational requirements may necessitate Employees transferring to other positions, operations, or locations. Reasonable notice will be provided in these circumstances. 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.
- 6.4 Employees will be placed in one of the following classifications according to their responsibilities from time to time:

Operation Coverage	Classification	Description
Non-Coal Operations	Production Technician	Operating heavy mobile equipment
Coal Operations	Production Technician	Operating heavy mobile equipment

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

- 6.5 An Employee's classification under clause 6.4 does not limit the duties that an Employee may be required to perform in accordance with clause 6.1.

7. Remuneration

- 7.1 Full Time and Part Time Employees will be paid an annualised salary ("**Annual Salary**").

- 7.2 The Annual Salary payable under this Agreement to a Full-Time Employee or Part-Time Employee for working any roster will be the total of the following amounts:

- (a) the total amount of the remuneration that would have been payable to the Employee under the relevant modern award for working the same roster; and

- (b) an additional amount comprising 5% of the amount calculated under subclause 7.2(a), being an amount paid to give effect to the “Above Award Guarantee”.

For the purposes of this Agreement:

- (i) 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;
- (ii) the “Above Award Guarantee” is a guarantee that the Annual Salary payable under this Agreement 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.

7.3 For the avoidance of doubt:

- (a) the Above Award Guarantee also applies to the Annual Salary that is payable to any Trainee employed under this Agreement; and
- (b) an Employee's Annual Salary includes compensation for any allowances, penalties or payments that would have been applicable under the relevant modern award to the roster that the Employee is working. This includes compensation for working on rosters which cover public holidays, afternoon shifts and night shifts, and any other allowances, penalties or payments applicable to the Employee's roster under the relevant modern award. For the avoidance of doubt, all of these amounts are to be included in the calculation of the remuneration referred to in clause 7.2(a).

7.4 Any un-rostered overtime worked by Full Time or Part Time Employees will be paid at double time for each hour of un-rostered overtime. The hourly rate for the purpose of calculating the un-rostered overtime rate will be calculated by dividing the Annual Salary that is payable to the Employee by the number of rostered hours per annum for the Employee's roster. Alternatively, a Full Time or Part Time 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.

7.5 When un-rostered 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.

7.6 In calculating overtime for the Above Award Guarantee, each shift is to be treated separately.

7.7 **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 7.4, for each time the Employee is recalled.
- (b) The provisions of sub-clause (a) do not apply in the following cases:

- (1) where it is customary for an Employee to return to the workplace to perform a specific job outside the Employee's ordinary working hours;
 - (2) where the overtime is continuous (subject to a reasonable meal break) with the end or start of ordinary working time; or
 - (3) 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.
- 7.8 Where the Company directs an Employee to undertake training outside of the Employee's normal shift patterns, either:
- (a) The Employee will be given time off in lieu for the period of the training delivery; or
 - (b) The Company may elect to make payment to the Employee in accordance with Overtime rates for the period of the training delivery.
- 7.9 Casual Employees will be paid as follows:
- (a) An hourly rate, plus an additional and distinct casual loading of 25% for each of their rostered hours of work.
 - (b) For the purpose of this clause 7.9, each Casual Employee's hourly rate will be calculated as follows: (Annual Salary for the Comparator Employee) divided by (Total rostered hours of work for the Comparator Employee), where the "Comparator Employee" is a Full Time Employee who is doing the same work on the same roster as the Casual Employee.
 - (c) Any un-rostered overtime worked by a Casual Employee will be paid at double time, plus an additional and distinct casual loading of 25%.
 - (d) The 25% casual loading referred to in clauses 7.9(a) and (c) is paid instead, and in lieu, of annual leave, paid personal/carer's leave, notice of termination of employment, redundancy benefits and any other benefits of full time or part time employment.
 - (e) On each occasion a Casual Employee is required to attend work the Casual Employee will be paid for a minimum of four hours work.
 - (f) If the amount payable to any Casual Employee under subclauses 7.9(a) to (e) for any casual engagement is less than 105% of the amount that would have been payable to that Casual Employee under the relevant modern award for that engagement, then the amount paid to the Casual Employee for that engagement shall be increased so as to make up the difference.
- 7.10 Remuneration will be paid at intervals determined by the Company (up to monthly), and is currently fortnightly in arrears.
- 7.11 Payment will be by electronic funds transfer to a bank account in Australia nominated by the Employee.
- 7.12 Employees may be eligible to participate in the Company 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.

- 7.13 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 *Fair Work Act 2009 (Cth)*.
- 7.14 Without limiting clause 3.1, the Company has an Accident Pay Policy 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. In the event the employee does not elect a 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 by the Company to a default superannuation fund which offers a MySuper product. The Company reserves the right to change its default fund at any time.
- 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 and in lieu pay this amount into the Employee's nominated superannuation fund.

9. Hours of Work

- 9.1 The Company expects that an Employee's work will usually be completed in their rostered hours.
- 9.2 An Employee's rostered hours of work are averaged across their roster cycle, excluding handovers.
- 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 from time to time, and may change any such rosters, days and hours of work or starting and finishing times, provided that:

- (a) an Employee shall not be rostered to work more than 12.5 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.

9.6 Employees are entitled to meal and rest breaks up to a total of 60 minutes per day. The meal break and rest breaks shall be taken at times prescribed by the Company having regard to safety, operational and production requirements.

10. Public Holidays

Employees acknowledge that, from time to time, 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. 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 rostered day off.

11. Annual Leave

11.1 Annual leave entitlements will be provided for in accordance with the NES.

11.2 Employees (other than Casual 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.

12. Personal/Carer's Leave

12.1 Personal/carers' leave entitlement will be provided for in accordance with the NES. Provided that:

- (a) Full Time and Part Time Employees will be credited with their annual entitlement to paid personal/carers' leave under the NES on commencing employment and then on each anniversary of commencement;
- (b) personal 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) where an Employee would have received payment of personal leave on termination of employment in accordance with a clause in a modern award that would have applied to that employee but for this Agreement, payment will be made by the Company equivalent to the monetary payment an Employee would have received under the modern award.

12.2 Personal/carers' 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

Employees (other than Casual Employees) with at least 3 months' continuous service are entitled to unpaid parental leave at least in accordance with the NES.

Note: The Company has policies that provide for parental leave on terms that in some respects are more generous than the NES, including paid parental leave for primary caregivers and secondary caregivers. This clause does not affect the operation of those policies, as amended from time to time.

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.

16. Community Service Leave

Community service leave entitlements will be provided for in accordance with the NES.

17. Leave to deal with Family and Domestic Violence

17.1 Entitlement to unpaid leave

Unless otherwise agreed, an Employee is entitled to 5 days' unpaid leave in each 12 month period to deal with family and domestic violence. The leave is available in full at the start of each 12 month period and does not accumulate from year to year. The leave does not count as service but does not break the Employee's continuity of service.

Note: The Company has policies that provide for family and domestic violence leave on terms that in some respects are more generous than the NES, including paid family and domestic violence leave. This clause does not affect the operation of those policies, as amended from time to time.

17.2 Taking unpaid leave

An Employee may take unpaid leave to deal with family and domestic violence if the Employee is experiencing family and domestic violence, and needs to do something to deal with the impact of the family and domestic violence and it is impractical for the Employee to do that thing outside their rostered hours of work.

17.3 Notice and evidence requirements

- (a) An Employee must notify the Company as soon as practicable of the taking of leave under clause 17, and the expected period of the leave.
- (b) If required by the Company, the Employee must give the Company evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 17.2.
- (c) An Employee must comply with clause 17 to access the entitlement.

18. Stand Aside and Stand Down

18.1 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.

18.2 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.

- 18.3 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.
- 18.4 Employees who have been stood down under the circumstances described in clause 18.3 above may request to take accrued annual or long service leave entitlements. Approval is at the Company's discretion.
- 18.5 Any Employee stood down under clause 18.3 will continue to have their service recognised for the purposes of "continuous service".

19. Issue Resolution Procedure

- 19.1 This clause sets out the process for resolving issues which relate to:
- (a) a matter arising under this Agreement; or
 - (b) the NES.
- 19.2 Where an issue under clause 18.1 arises which the Company or 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.
- 19.3 If the issue remains unresolved, it may be referred for discussion between the Employee and the Employee's Superintendent.
- 19.4 If the issue is still not resolved, it may be referred for discussion between the Employee and the Employee's Departmental Manager.
- 19.5 Discussions in accordance with clauses 18.2, 18.3 and 18.4 will be held as soon as reasonably practicable.
- 19.6 By agreement, the Company and the Employee may bypass any of the steps in clauses 18.3 or 18.4 in the interests of speedy resolution of the issue.
- 19.7 If the issue resolution processes in clauses 18.2, 18.3 and 18.4 have genuinely been exhausted (with the exception of the processes in clauses 18.3 or 18.4 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.
- 19.8 Either the Employee or the Company may have a representative to assist at any stage of this process.

20. Individual flexibility

The Company and individual Employees may agree to make an individual flexibility arrangement, in accordance with the model flexibility term prescribed by the *Fair Work Regulations 2009*. The model flexibility term is incorporated into this Agreement.

21. Management of change / Consultation

In the event that the Company makes:

- (a) 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,

the Company will consult with the relevant Employees in accordance with the model consultation term prescribed by the *Fair Work Regulations 2009*, which is incorporated into this Agreement.

22. Redundancy

22.1 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 or to Casual Employees.

22.2 Severance payment

- (a) Except where clause 22.3 applies, when terminations of employment occur due to redundancy, the Employees terminated are entitled to severance pay equal to three weeks' pay (paid at an Employee's Annual Salary rate) for each completed year of employment, up to a maximum of 30 weeks' pay.
- (b) Regardless of length of employment, the minimum payment due to Employees under clause 22.2(a) is four weeks' pay.

22.3 Exemption

The Company is not liable for the payment in clauses 22.2 if the Company obtains, or causes to be made available for the Employee, work:

- (a) that the Employee is competent to perform;
- (b) in a position that carries the same or a higher classification rate of pay than the Employee's previous position;
- (c) that can reasonably be regarded as permanent; and

- (d) allows the Employee to reside in the same general locality as the Employee's previous residence.

22.4 Variation of severance pay

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 22.2.

23. Termination of Employment

- 23.1 An Employee may resign from his or her employment with the Company by giving one week's written notice to the Company.
- 23.2 Subject to clause 23.3, 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.
- 23.3 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 such period as is notified by the Company in advance in writing. During the period of probation, the Company may terminate the probationary Employee's employment by giving one week's written notice or payment by the Company in lieu of all or part of that notice.
- 23.4 The period of notice to be given by the Company to Full Time or Part Time Employees under clause 23.2 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.
- 23.5 The Company may terminate the employment of a Casual Employee by giving one hour's notice of termination or payment by the Company in lieu of that notice.
- 23.6 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.

24. Better off overall

It is the intention that every Employee covered by this Agreement will be better off overall than if a relevant modern award applied to their employment, including by means of the Above Award Guarantee.

25. 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 *Fair Work Act 2009* (Cth).

Signatories

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

Name

Date

Position/Explanation of authority

Address

Signed for and on behalf of **Employees**

Name

Date

Position/Explanation of authority

Employee Representative

Address