

[2015] FWCA 7516



DECISION

Fair Work Act 2009

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

RECS (QLD) PTY LTD
(AG2015/5383)

RECS (QLD) PTY LTD ENTERPRISE AGREEMENT 2015

Building, metal and civil construction industries

COMMISSIONER ROE

MELBOURNE, 30 OCTOBER 2015

Application for approval of the RECS (QLD) PTY LTD Enterprise Agreement 2015.

[1] An application has been made for approval of an Enterprise Agreement known as the *RECS (QLD) Pty Ltd Enterprise Agreement 2015* (the Agreement). The application was made pursuant to Section 185 of the *Fair Work Act 2009* (the Act). Section 185 is in Part 2–4 of the Act which provides for the making of Enterprise Agreements between an employer and their employees who are employed at the time the agreement is made and who will be covered by the agreement. The application has been made by *RECS (QLD) Pty Ltd* (the Applicant). The Agreement is a single-enterprise Agreement.

[2] The Agreement covers all on-hire employees engaged anywhere in Australia who would otherwise be covered by any of 11 listed modern awards. The Awards cover a wide range of industries and occupations including manufacturing, construction, mining, road transport, oil, gas, maritime and clerical. The F17 Statutory Declaration states that the Agreement covers all employees of the employer other than senior executives. I am not satisfied that this statement is accurate as the employer employs some persons who are not “on-hire”. However, I am satisfied that the group selected for coverage is operationally and organisationally distinct from those employees who administer and market the business. I am satisfied that the business operates or intends to operate across Australia and that the modern awards which define the coverage represent the scope of work that the company offers services or intends to offer services. I am satisfied that the fairly chosen requirement is met.

[3] I am satisfied from the F17 Statutory Declaration that the requirements of the legislation in respect to the notice of representational rights, the access period and the notice of the time and place of voting have been followed. The application for approval was made within 14 days of the Agreement being made.

[4] The Applicant says that there are 3 employees covered by the Agreement and I accept that those employees voted to approve the Agreement.

[5] The Applicant says that the terms of the Agreement were explained to employees. There were no bargaining representatives and there was no negotiation. The employer drafted a proposed agreement and provided it to employees by email. Employees were provided with a link that directed them to the relevant Awards.

[6] The Agreement incorporates all 11 listed modern awards. The Agreement applies where there is any inconsistency. Employees, but not the employer, are prohibited from making any further claims.

[7] The Agreement imposes a number of additional obligations and restrictions on employees which are not found in the Award. The Agreement excludes the casual conversion clauses in the various awards and pays a 1% additional casual loading after six months service. The Agreement provides for 0.1% per hour greater than the relevant award. The Agreement allows for any over award payments to be offset against any entitlements, terms, conditions, penalties and allowances which might otherwise apply to employees.

[8] The model consultation and flexibility terms will apply.

[9] Section 180(5) of the Act requires that all reasonable steps must be taken by the employer to explain the terms of the agreement and the effect of those terms. It is quite common for the Fair Work Commission to identify terms which it believes may disadvantage employees in circumstances where the employer has failed to identify these matters in the F17 Statutory Declaration and in the information provided to employees. In this case the employer failed to identify a number of matters which disadvantage employees. Where these matters are minor it does not necessarily mean that Section 180(5) has not been complied with. The requirement is about “reasonable steps”. Where the matters are more significant the Fair Work Commission might not be satisfied that Section 180(5) has been met and as a consequence the requirement for genuine agreement in Section 188 may not be met and this will prevent the Agreement being approved. In the circumstances of this case I am satisfied, on a fine balance, that reasonable steps were taken to explain the terms of the agreement and the effect of those terms.

[10] Clause 13.8 permits overpayments of wages to be deducted at a time and in a manner which is at the Company’s sole discretion. This term is of no effect as it is clearly to the benefit of the employer and is unreasonable in the circumstances (Section 326 of the *Fair Work Act 2009*). The same may apply to Clause 15.2 which allows for deduction of any money owed from employee entitlements upon termination of employment.

[11] The following are some of the matters in the Agreement which disadvantage employees when compared to the Awards or some of the Awards:

1. Clause 6 requires employees to comply with any specific client policies and procedures applicable to their assignment. These policies and procedures are unknown and were not available at the time the Agreement was voted on. This requirement could potentially allow a variation to the Agreement to occur without meeting the requirements of the Act for variation. Employees could be significantly disadvantaged by making this requirement an enforceable term of the Agreement.

2. Clause 7 requires the employees to follow lawful and reasonable directions from both the employer and also from the client and failure to do this may result in disciplinary action including termination of employment. This clause makes what may be a common law requirement an enforceable agreement term with possible penalties for non-compliance. Generally the consequence of non-compliance is disciplinary not enforcement. For this reason the clause is not a significant disadvantage but it is not immaterial.
3. Clause 8 Safety and Health includes an extensive list of obligations on employees which are not contained in the Awards. As appears to be common in Agreements the only enforceable health and safety obligations are on the employee not the employer. The clause makes what might be in employer policies an enforceable agreement term with possible penalties for non-compliance. It includes onerous and intrusive matters such as drug and alcohol testing at any time and without cause.
4. Clause 9.4 provides for abandonment of employment to be deemed after two days absence. None of the safeguards associated with abandonment of employment provisions in Awards are included.
5. Clause 9.2 provides for fixed term, fixed task and maximum term employment. Clause 10.6 provides that each assignment may be a discrete period of employment and Clause 12.5 provides that each assignment ends when the client changes shift pattern or roster cycle. Clause 10.7 provides that assignments may end at the company's discretion. The combination of these clauses may be in conflict with rights under the National Employment Standards and rights to protection from unfair dismissal. In order to ensure that this is not an unlawful term which excludes or modifies the application of unfair dismissal rights it needs to be clear that this does not affect continuity of employment or unfair dismissal rights.
6. Clause 12.3 provides that the maximum ordinary hours of work is 12 hours. The provisions in the relevant Awards concerning daily ordinary hours vary. However, generally Awards only allow shifts of 12 hours where certain conditions and safeguards are met. Those safeguards are not included in the Agreement. Some Awards, such as the Transport and Distribution Award do not provide for 12 hour shifts.

[12] I am not satisfied that 0.1% per hour is sufficient compensation for these matters.

[13] I considered the employer's submissions about these matters. Following the hearing the employer has provided undertakings that:

- Clause 6 client policies and procedures do not form part of the Agreement.
- The requirements for drug and alcohol testing do not form part of the Agreement (Clause 8.2.2 and 8.3).
- The abandonment of employment provisions do not form part of the Agreement (Clause 9.4).
- The provisions in respect to 12 hour shifts do not form part of the Agreement (Clause 12.3).
- Clauses 9.2 and 12.5 do not replace or alter any rights under the NES or unfair dismissal provisions.

[14] I am not satisfied that the additional 1% is sufficient compensation for the removal of the right to casual conversion in Awards. I accept the submission of the employer that there have been a number of agreements approved by the Fair Work Commission which contain this provision. The substitution of non-monetary entitlements for monetary entitlements is often a difficult matter to judge. Casual conversion offers employees the opportunity for job security and access to paid leave. Employees may value these matters differently. There will be differential issues for employees. For example, those with a disability or with particular family circumstances will be likely to gain greater benefit from increased job security and access to paid leave. For the purpose of the BOOT it may not be appropriate to see all casual employees as a single class in this particular circumstance. I note that the F17 Statutory Declaration reveals that two of the three current employees who will be covered by the Agreement are casuals. One of the employees is an Aboriginal or Torres Strait Islander. Job security is likely to be a particularly valuable consideration for employees of indigenous background.

[15] The employer submitted that the *Fair Work Act 2009* provides regular casual employees with protection from unfair dismissal and this reduces the importance of the casual conversion clause. I am satisfied that casual employees in the labour hire industry are not guaranteed any particular number of hours of work and therefore their income is precarious. Casual conversion offers those employees the opportunity for guaranteed 38 hours of work and pay per week if full time or regular guaranteed hours if part time. This is a major potential advantage to some casual employees.

[16] I provided the employer with the opportunity to make submissions about these matters either in the lead up to the hearing or at the hearing. I considered those submissions.

[17] Following the hearing the employer provided an undertaking that the exclusion of the casual conversion provisions of the Awards would not apply (Clause 11).

[18] I am satisfied that the undertakings will ensure that the Agreement meets the BOOT.

[19] I am satisfied that the undertakings do not result in financial disadvantage to employees. Given the scope of the concerns in this matter and the limited number of matters contained in the Agreement apart from the Award incorporation, I was concerned that the undertakings might represent a substantial change to the Agreement. However, on balance I am satisfied that they do not result in a substantial change to the Agreement.

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

[21] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 6 November 2015. The nominal expiry date of the Agreement is 30 October 2019.



COMMISSIONER

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27th October 2015

Fair Work Commission

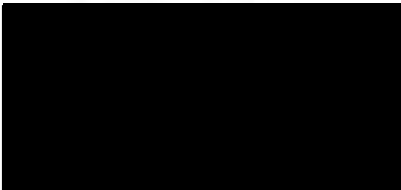
Re: **RECS (QLD) Pty Ltd Enterprise Agreement 2015**

To whom it may concern,

RECS (QLD) Pty Ltd undertakes that:

1. It will not apply clause 8.2.2, 8.3, 9.4, 11, 12.3 of the RECS (QLD) Pty Ltd Enterprise Agreement 2015 as terms of the Agreement;
2. Nothing in clause 9.2 and 12.5 is intended to override any rights an employee may have under the national employment standards or in respect of unfair dismissal; and
3. Client policies and procedures do not form part of this Agreement.

Yours sincerely,



Petrina Ind
Recruitment Manager
RECS (QLD) Pty Ltd



RECS (QLD) PTY LTD ACN 605 016 206

RECS (QLD) PTY LTD Enterprise Agreement 2015

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 this agreement.

Note - the model consultation term is taken to be a term of this agreement and can be found at the end of the agreement.

Note - the model flexibility term is taken to be a term of this agreement and can be found at the end of the agreement.

1. TITLE

- 1.1. This will be called the RECS (QLD) PTY LTD Enterprise Agreement 2015 (the "Agreement").

2. PARTIES

- 2.1. The parties to this Agreement are:
- (a) the Company; and
 - (b) all Employees whose employment would, but for the operation of this Agreement, be covered by one of the following Awards:
 - a. Building and Construction General On-Site Award 2010;
 - b. Mining Industry Award 2010;
 - c. Black Coal Mining Industry Award 2010;
 - d. Manufacturing and Associated Industries and Occupations Award 2010;
 - e. Road Transport (Long Distance Operations) Award 2010;
 - f. Road Transport and Distribution Award 2010;
 - g. Hydrocarbons Industry (Upstream) Award 2010;
 - h. Clerks – Private Sector Award 2010;
 - i. Hospitality Industry (General) Award 2010;
 - j. Oil Refining and Manufacturing Award 2010; or
 - k. Maritime Offshore Oil and Gas Award 2010.

3. APPLICATION

- 3.1. This Agreement applies to:
- (a) the Company; and
 - (b) all Employees whose employment would, but for the operation of this Agreement, be covered by the terms of an Award.
- 3.2. This Agreement shall, in respect of each individual Employee, be read and interpreted as incorporating the terms of the Award, provided that where there is any inconsistency between this Agreement and the Award, this Agreement shall take precedence to the extent of the inconsistency.

4. DEFINITIONS

- 4.1. Act: means the *Fair Work Act 2009* (Cth).
- 4.2. Assignment: means the placement of the Employee with a Client for an agreed period. An Assignment may consist of a single shift or a number of shifts depending upon the needs of the client.
- 4.3. Award: means the relevant modern award made by the Fair Work Commission (or its predecessors) (from the list in clause 2.1(b)) which, but for the operation of this Agreement, would have applied to the Employee during an Assignment.
- 4.4. Client: means the Company's client for which the Company has arranged a placement/Assignment for an Employee.
- 4.5. Company: means RECS (QLD) PTY LTD ACN: 605 016 206.
- 4.6. Employees: mean all persons employed by the Company, to perform work in Australia.
- 4.7. Labour Hire: means the on-hire of a Company Employee to a Client, where such Employee works under the general guidance and instruction of the Client or a representative of the Client.
- 4.8. Nominal Expiry date: means four (4) years from the date the Fair Work Commission approves this Agreement.
- 4.9. Operation date: means seven (7) days after the Agreement is approved by the Fair Work Commission.
- 4.10. Parties: mean the parties identified in clause 2 of this Agreement.

5. DURATION

- 5.1. This Agreement shall operate on and from the Operation date until the Nominal Expiry date.
- 5.2. This Agreement shall remain in force until it is terminated or replaced.

6. POLICIES AND PROCEDURES

- 6.1. While the Company's policies and procedures do not form part of this Agreement, Employees will comply with any policies and procedures that the Company may implement.
- 6.2. To the extent that the contents of policies or procedures refer to obligations on the Company, they are guides only and are not contractual terms, conditions or representations on which Employees may rely.
- 6.3. Employees shall also comply with any specific Client policies and procedures applicable to their Assignment.

7. LAWFUL DIRECTIONS

- 7.1. Employees must follow all lawful directions given by the Employee's Leading Hand/Supervisor, or any other person nominated by the Company or Client. Should an Employee not be able to perform the assigned task for any reason whatsoever, it is an Employee's duty to inform their Leading Hand/Supervisor or other appropriate person immediately.
- 7.2. Refusal to comply with any lawful direction may result in disciplinary action, which may include the termination of an Employee's employment.

8. SAFETY AND HEALTH

- 8.1. The Company is committed to establishing safe and healthy workplaces and as such Employees must, at all times:
 - 8.1.1. Take all practicable steps to ensure their health and safety and the safety of others while at work.
 - 8.1.2. Ensure that they are familiar with and comply with the Company's safety and health policies and procedures, as amended from time to time.
 - 8.1.3. Ensure that they are familiar with and comply with any safety and health policies and procedures of the Client.
 - 8.1.4. Exercise all reasonable and necessary precautions which are appropriate to the nature of the work and the conditions under which the work is carried out.
 - 8.1.5. Wear all applicable Personal Protective Equipment that is required at the work location.
 - 8.1.6. Undertake the necessary training as directed by the Company or the Client, to ensure the duties and services are performed in a manner that minimises risks to their health and the health and safety of others.
 - 8.1.7. Not attend work if unable to perform the requirements of the role for any reason, and notify the Company as soon as practicable when unable to present fit for work. Such notification, where practicable, should occur prior to the start of such work.
 - 8.1.8. Ensure that all licences and accreditations are current and upon renewal forward a copy of the updated licence or accreditation to the Company.
 - 8.1.9. Report to the Company (and Client when required), as soon as possible after any accident, or incident occurs or hazard arises during the course of an Assignment. Where an Employee is unable to contact the Company due to the seriousness of an accident or injury whilst on Assignment, any other Employee may contact the Company to alert them that an incident or injury has occurred.
 - 8.1.10. Not, under any circumstances, carry out work under the influence of alcohol or drugs. Where an Employee is taking medication prescribed by a medical practitioner the Employee must notify the Company and gain a written authorisation from the Company before they commence/continue to carry out their Assignment.

- 8.2. The Company or a Client may require an Employee to:
- 8.2.1. Provide evidence from a medical practitioner that the Employee is medically fit to perform work; and/or
- 8.2.2. Submit to drug and/or alcohol testing as and when required by the Company or Client.
- 8.3. The Employee agrees to provide evidence of medical fitness and consents to submit to alcohol and/or drug testing as required by the Company or the Client in accordance with the relevant Company or Client's policies and procedures.

9. CONTRACT OF EMPLOYMENT

- 9.1. Employees shall be engaged on an Assignment as full time, part time or casual.
- 9.2. Full time and part time Employees can be engaged on a permanent, fixed term, maximum term or fixed task basis.
- 9.3. A casual employee is one who is engaged and paid as such.
- 9.4. Where an Employee is absent from work for a continuous period exceeding two (2) working days of their Assignment without the consent of the Company or without prior notification to the Company, the Employee will be deemed to have abandoned their employment. Termination of the Employment as a result of abandonment will operate from the date of the last attendance at work or the last day's absence in respect of which notification was given to the Employer, whichever is the later.
- 9.5. It is a condition of employment that an Employee continues to hold the right to work in Australia.
- 9.6. If an Employee is offered employment by a Client the Employee must refer the Client to the Company.
- 9.7. No employment relationship exists between an Employee and a Client whilst the Employee undertakes an Assignment with the Company.
- 9.8. Whilst on Assignment, Employees will be under the supervision of a nominated representative or representatives of the Client (as directed by the Company) and must comply with all reasonable lawful directions given by any Client representative, as being necessary for the performance of their duties in a safe, professional and effective manner.

10. ASSIGNMENTS

- 10.1. Where the Company offers hours of work to an Employee under an Assignment and that offer is accepted by the Employee, the Company will provide the Employee with a letter of Assignment. Letters of Assignment shall be read in conjunction with this Agreement and shall not form part of it.
- 10.2. Details of each Assignment will include:
- Remuneration;
 - Initial hours of work;
 - Position title/classification for Assignment;
 - Applicable Modern Award; and
 - A guide to the duration of the particular Assignment.
- 10.3. The nature of the Company's business is such that the Assignment may be varied or terminated at any time and the Company will advise an Employee of these changes as soon as possible.
- 10.4. Assignments will be for a minimum of four (4) hours.
- 10.5. An Employee's classification for each assignment will be based on skills required for the particular role and not skills or qualifications the Employee may possess
- 10.6. From time to time an Employee may be placed on Assignments to provide services for the benefits of Clients of the Company with each shift constituting a discrete period of employment.
- 10.7. The length of Assignments are generally determined by Client needs and while the Company may indicate the potential length of an Assignment in good faith, the Client may vary the length of the Assignment or terminate an Employee's

attendance at its absolute discretion. When this occurs the Company will undertake to find the Employee an alternate Assignment consistent with their candidate register and profile.

- 10.8. Consistent with the nature of Labour Hire, Assignments may be in another industry or location.

11. CASUAL CONVERSION

- 11.1. If an Award contains a provision that requires or allows the conversion of casual employees to permanent employees, those provisions will have no effect.
- 11.2. To compensate an Employee for the loss of any such casual conversion rights, an additional casual loading of 1% of the hourly base rate of pay in the relevant Award will be paid from the date that the casual conversion right (if any) would have applied but for this Agreement and is paid on ordinary hours only. The Company may however absorb such additional casual loading payable under this clause in any over Agreement payment that may be being paid to an Employee.

12. HOURS OF WORK

- 12.1. As the Company is a labour hire business, Employees will work within start and finish times consistent with the Client's site requirements. Generally, whatever hours of work and associated rostering arrangements apply at the Client's site, these will also apply to an Employee's Assignment unless otherwise advised by the Company.
- 12.2. An Employee's ordinary hours of work are set out in their Award.
- 12.3. The maximum number of ordinary hours that an Employee can work on any one day (or shift) is 12 hours.
- 12.4. While on an Assignment an Employee may be required to work in accordance with any shift pattern or roster cycle nominated by Company.
- 12.5. If, while on Assignment, the nominated shift pattern or roster cycle is changed by the Client, the Employee's Assignment will be taken to have ended effective from the date of that change in cycle.
- 12.6. Employees will be advised of the working hours arrangements expected of them prior to commencing an Assignment.

13. REMUNERATION

- 13.1. The rates of pay, terms and conditions in this Agreement represent the minimum that will be paid to Employees. The Company will assess the market conditions and may pay Employees a higher rate of pay or more attractive terms where it is determined by the Company, at its sole discretion. Given the nature of labour hire, any increase above the minimums may vary from Assignment to Assignment and will be entirely at the discretion of the Company.
- 13.2. Details of the payment associated with each Assignment will be advised to each Employee prior to their commencement. In some situations the Assignment may provide for an all-inclusive rate in satisfaction of any and/or all entitlements, terms, conditions, loadings, penalties and allowances which might otherwise apply to the Employee under this Agreement. This may also include flat or rolled up hourly rates or may include the payment of an annualised salary on a weekly or fortnightly basis. The total payment on each Assignment will not be less than you would have received under this Agreement for the work performed.
- 13.3. Payment of wages shall be by direct deposit/electronic funds transfer (EFT) on a weekly or fortnightly basis (as decided by the Company) to a bank nominated by each Employee. If a public holiday or weekend falls on the normal pay day, the payment shall be made as soon as practicable after the normal pay day.
- 13.4. An Employee must complete the required Company timesheets and have their timesheets approved by the Client in order to be paid.
- 13.5. In addition to the hourly base rate of pay in the relevant Award, an Employee will receive a **BOOT Allowance** to ensure that they are always better off than they would

be under the Award. The **BOOT Allowance** is 0.1% of the hourly base rate of pay in the relevant Award and is paid on ordinary hours only.

- 13.6. An Employee may be paid a flat hourly rate for all hours worked, in lieu of the payment of loadings (including casual loading), allowances, overtime rates, shift loading and penalty rates prescribed by the Employee's relevant Award and the **BOOT Allowance**.
- 13.7. In establishing the appropriate flat hourly rate under clause 13.6, the Company will ensure that the Employee is always be paid an amount that is, on an overall basis, no less than the amount the amount that the Employee would have been paid under the Award plus the **BOOT Allowance** for working the Assignment. When calculating the minimum amounts payable to an Employee, the Company will take into account all relevant matters under the Award, including:
- 13.7.1. the Employee's classification under the Award;
 - 13.7.2. any applicable allowances and loading (including casual loading) payable under the Award;
 - 13.7.3. any overtime or penalty rates payable under the Award;
 - 13.7.4. any expenses occurred by the Employee for distance work with respect to travel and board and lodging where these are not provided by the Company or Client; and
 - 13.7.5. any other provision of the Award which would provide the Employee with a monetary entitlement or compensate them for an expense.
- 13.8. Where an overpayment is made in error to an Employee, the Company will discuss the overpayment with the Employee and the overpayment will be reconciled in the next one to two pay periods dependent upon the overpayment amount. The final determination of the period of the overpayment reconciliation will be at the Company's sole discretion.

14. SUPERANNUATION

- 14.1. The Company will comply with all applicable superannuation legislation.
- 14.2. The Company default fund is "RSSMT – Resource Super (TRM0001AU)", which the Company may alter in the future at its sole discretion.
- 14.3. Contributions to any other fund will be by mutual agreement between the Company and the Employee.

15. TERMINATION OF EMPLOYMENT

- 15.1. The Company may pay an Employee an amount in lieu of all or part of any unworked period of notice of termination.
- 15.2. If on termination an Employee owes the Company money, this may be received by the Company from any accrued entitlements owing to the Employee. The Company is authorised to make any reasonable deductions for the purposes of this clause upon issuing written advice to the Employee of the amount the Employee owes the Company.
- 15.3. Upon termination of employment, an Employee must immediately return to the Company and/or Client all property belonging the Company and/or Client which the Employee has in their possession.

16. FLEXIBILITY

- 16.1. The model flexibility term in the Fair Work Regulations is taken to be a term of this Agreement.

17. DISPUTE RESOLUTION

- 17.1. The following procedure may be invoked to settle disputes about any matters arising under this Agreement and in relation to the National Employment Standards.
- 17.2. An Employee may appoint a representative of their choosing at any stage of the following process.

- 17.3. Dispute Resolution Procedure:
- Stage 1: The Employee and the Company representative will discuss and/or meet to identify and define the matter causing concern. The employee and the Company will discuss the matter in a genuine attempt to resolve the issue. If the matter remains unresolved progress to Stage 2.
- Stage 2: The problem is to be described in writing by the Company representative and referred to the appropriate Manager of the Company for resolution. If required additional parties may be identified and brought into discussion to assist in achieving a resolution. If the matter remains unresolved progress to Stage 3.
- Stage 3: The Company and the Employee will make a further attempt to resolve the issue, if the matter remains unresolved then progress to Stage 4.
- Stage 4: Any of the parties may refer the matter to the Fair Work Commission for mediation and conciliation, unless the parties otherwise agree on an alternative independent mediator. The matter can only be referred where Steps 1-3 of the Dispute Resolution Procedure have been undertaken.
- Stage 5: If the matter is not resolved at Stage 4, either party to the dispute may refer the matter to the Fair Work Commission for arbitration. Any decision of the Fair Work Commission under this clause must be consistent with the *Building and Construction Industry (Fair and Lawful Building Sites) Code 2014*.
- 17.4. While the dispute resolution procedure is being followed Employees will continue to work normally and the status quo will be preserved, except where the personal safety of employees is at risk.

18. CONSULTATION

- 18.1. The model consultation term in the Fair Work Regulations is taken to be a term of this Agreement.

19. ADDITIONAL CLAIMS

- 19.1. The Employees will not, during the term of this Agreement, pursue any further claims about any matter which pertains to the employment relationship.

Signed for and on behalf of the Employees

[Redacted Signature]

Signature of Employee

KEVAN O'BRIEN

Name of Employee (print)

MACHINE OPERATOR / TRAINER
Position of Employee

[Redacted Signature]

Signature of Witness

PETRINA IND

Name of Witness (print)

[Redacted Address]

Address of Employee

27/8/2015

DATED

[Redacted Address]

Address of Witness

27/8/2015

DATED

Signed for and on behalf of the Company

[Redacted Signature]

Signature of Authorised Officer

GRAEME ERIC FIELDING

Name of Authorised Officer (print)

[Redacted Address]

Address of Authorised Officer

DIRECTOR

Position of Authorised Officer

27.8.15

DATED

34119641v2

[Redacted Signature]

Signature of Witness

KERRIE McCROSSEN

Name of Witness (print)

[Redacted Address]

Address of Witness

27.8.15

DATED

Schedule 2.3 Model consultation term

(regulation 2.09)

Model consultation term

- (1) This term applies if the employer:
 - (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
 - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

- (2) For a major change referred to in paragraph (1)(a):
 - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
 - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer must:
 - (a) discuss with the relevant employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
 - (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the employees; and
 - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (9) In this term, a major change is *likely to have a significant effect on employees* if it results in:
 - (a) the termination of the employment of employees; or

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

Change to regular roster or ordinary hours of work

- (10) For a change referred to in paragraph (1)(b):
 - (a) the employer must notify the relevant employees of the proposed change; and
 - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (12) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the employer must:
 - (a) discuss with the relevant employees the introduction of the change; and
 - (b) for the purposes of the discussion—provide to the relevant employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:

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

Schedule 2.2 Model flexibility term

(regulation 2.08)

Model flexibility term

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (d) includes details of:
 - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the employer and employee agree in writing — at any time.

27th October 2015

Fair Work Commission

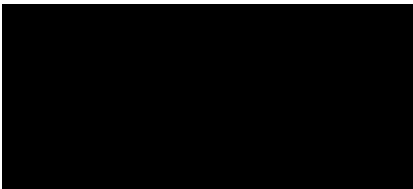
Re: **RECS (QLD) Pty Ltd Enterprise Agreement 2015**

To whom it may concern,

RECS (QLD) Pty Ltd undertakes that:

1. It will not apply clause 8.2.2, 8.3, 9.4, 11, 12.3 of the RECS (QLD) Pty Ltd Enterprise Agreement 2015 as terms of the Agreement;
2. Nothing in clause 9.2 and 12.5 is intended to override any rights an employee may have under the national employment standards or in respect of unfair dismissal; and
3. Client policies and procedures do not form part of this Agreement.

Yours sincerely,



Petrina Ind
Recruitment Manager
RECS (QLD) Pty Ltd