

MEMORANDUM OF UNDERSTANDING

Dated: day of 2014.

BETWEEN: **CSR LIMITED** of Trinita 3, 39 Delhi Rd, North Ryde in New South Wales;

AND: **CSR & HOLCIM STAFF ASSOCIATION** of Trinita 3, 39 Delhi Rd, North Ryde in New South Wales.

RECITALS

- A. From at least 2000 the parties have been bound by long service leave provisions in the CSR Staff (Consolidated) Award 2000 (“Award”).
- B. Since that time the parties have made various commitments to each other in relation to providing CSR Staff with long service leave benefits better than those contained in the Award.
- C. The parties acknowledge that the Award will be terminated shortly and any replacing or superseding Award cannot contain provisions dealing with long service leave. Despite the termination of the Award, this Memorandum of Understanding preserves long service leave rights and obligations derived from the terminated Award.
- D. The parties have entered this Memorandum of Understanding (“MOU”) on the basis of clearly recording the rights, obligations and entitlement for long service leave for CSR Staff following the termination of the Award.

OPERATIVE PART

1. APPLICATION OF THIS MOU

- 1.1 This MOU applies to all staff employees of CSR whose employment, as at 31 December 2013, would have been covered by the *CSR Staff (Consolidated) Award 2000* and continues to operate unless terminated in accordance with clause 7 below.

2. TAKING LONG SERVICE LEAVE

- 2.1 An employee may take a period of LSL after at least 7 years’ continuous service with CSR or CSR and a Transmittor as the case may be.
- 2.2 LSL may be taken at a time agreed between the employee and CSR. CSR must not unreasonably refuse a request by an employee to take a period of accrued LSL.
- 2.3 Where any public holiday (gazetted in the State or Territory in which the employee usually resides) occurs during a period in which an employee is taking a period of LSL,

the employee will be entitled to the benefit of the public holiday and the day will not be counted as a day of LSL taken by the employee.

- 2.4 The employer may direct the employee to take long service leave by giving no less than one month's notice (or such other period as required by law) to the employee of the date that the LSL shall be taken.
- 2.5 In certain circumstances, CSR and an employee may agree to cash out a particular amount of the employee's accrued LSL entitlements. In order for this to occur, the following must occur:
- (a) the employee must have completed at least 7 years continuous service with CSR (or CSR and a Transmitter as the case may be);
 - (b) the agreement must be in writing and be genuinely made in the absence of any duress or improper influence; and
 - (c) the employee is to be paid at least the full amount that they would have been paid had the employee taken the LSL that is forgone.

3. ACCRUAL OF LONG SERVICE LEAVE

3.1 Employees continually employed by CSR

- 3.2 The entitlement to long service leave for the period of continuous service with CSR will be calculated daily as follows:
- (a) In the case of an employee who has completed less than 7 years continuous service with CSR, LSL shall accrue at the rate of 0.87 weeks per year.
 - (b) In the case of an employee who has completed a total of at least 7 years continuous service with CSR, but less than 15 years continuous service with CSR, the employee's LSL accrual shall be calculated at the rate of one week per each year after the 7th and before the 15th year of continuous service.
 - (c) In the case of an employee who has completed a total of at least 15 years continuous service with CSR, the employee's LSL accrual shall be retrospectively calculated at the rate of 1.4 weeks per each year of continuous service. The employee will continue to accrue at 1.4 weeks for each year of continuous service thereafter.

3.3 Transmitted Employees

- 3.4 On commencement of employment with CSR a Transmitted Employee will be credited with the amount of accrued LSL arising from the period of their continuous service with the Transmitter. The amount of LSL credited by CSR will be determined by reference to any applicable LSL industrial instrument or LSL law binding on the Transmitter at the time of the Transmission and will be credited by CSR on the basis of hours/days of LSL that has accrued and not the monetary value of the LSL.

- 3.5 Following a Transmitted Employee's commencement of employment with CSR, the accrual of long service leave (adding onto the credited LSL per clause 3.4 above) for the period of continuous service with CSR will be as follows:
- (a) where a Transmitted Employee who has completed less than 7 years continuous service with CSR, LSL shall accrue at the rate of 0.87 weeks per year of continuous service with CSR.
 - (b) where a Transmitted Employee who has completed a total of at least 7 years continuous service with CSR, but less than 15 years continuous service with CSR, LSL shall accrue at the rate of one week per each year of service with CSR after the 7th and before the 15th year of continuous service.
 - (c) Where a Transmitted Employee who has completed a total of at least 15 years continuous service with CSR, the employee's LSL accrual shall be retrospectively calculated at the rate of 1.4 weeks per each year of continuous service with CSR. The Transmitted Employee will continue to accrue at 1.4 weeks for each year of continuous service thereafter.

3.6 Casual Employees

- 3.7 Casual employees do not accrue LSL during their employment.

4. PAYMENT OF LONG SERVICE LEAVE- GENERAL RULE

- 4.1 When an employee takes LSL they shall be paid at the following rates:
- (a) Employees in job grades 1 - 10: Payment for LSL will be at the employee's Base Salary applicable at the time the employee takes the leave.
 - (b) Packaged Employees: Payment for LSL will be at the employee's TFR less the compulsory superannuation guarantee component of the TFR, applicable at the time the employee takes the leave.
- 4.2 An employee who:
- (a) has at least 7 years continuous service with CSR (or CSR and a Transmittor as the case may be); and
 - (b) whose employment is terminated (either by CSR or the employee) for any reason will be paid their accrued but untaken LSL on termination of their employment calculated on the basis set out in clause 4.1 above.

5. PAYMENT OF LONG SERVICE LEAVE- RETRENCHMENT

- 5.1 Employees who are Retrenched by CSR with 7 or more years continuous service with CSR (or CSR and a Transmittor as the case may be) will be paid their accrued but untaken LSL on termination of their employment calculated on the basis set out in clause 4.1 above.

5.2 Employees who are Retrenched by CSR with less than 7 years continuous service with CSR (or CSR and a Transmittor as the case may be) will be entitled to the payment at the termination of their employment of pro rated LSL calculated below:

(a) the amount of LSL credited in accordance with clause 3.4 above for service with a Transmittor, if applicable;

plus

(b) for service with CSR as follows:

(i) Employees under age 52: at the rate of 1.0 weeks per year of service with CSR; pro rata to completed days of service;

(ii) Employees aged 52 and over: at the rate of 1.4 weeks per year of service with CSR; pro rata to completed days of service.

The payment of the above pro rated LSL will be calculated on the basis set out in clause 4.1 above.

6. PAYMENT OF LONG SERVICE LEAVE- SPECIAL PROVISIONS ON RESIGNATION, RETIREMENT OR DEATH

6.1 If an employee has at least one year's continuous service with CSR, and the employee's employment is terminated due to:

(a) Resignation or the retirement by the employee at age 52 or more (and the resigning or retiring employee was employed by CSR on or before 1 March 2004); or

(b) death or incapacity of the employee;

CSR will make a payment for LSL calculated per clause 4.1 above on the basis of LSL having accrued at the rate of 1.4 weeks per year of service with CSR (or CSR and the Transmittor as the case may be) but reduced by any period of LSL taken during employment.

6.2 Where an employee dies during employment and the payment for any accrued but not taken LSL shall be paid into the Employee's nominated bank account.

6.3 The entitlement provided in this clause 6 is in substitution of and not in addition to clauses 4.2 above.

7. TERMINATION

7.1 In the event of LSL Harmonisation the parties will endeavor to meet within a reasonable time period with the view to entering a new agreement.

7.2 In the absence of any varying or replacing MOU being agreed between the parties under the process prescribed by clause 7.1 above, either party may terminate this MOU by providing 90 days' notice in writing.

8. DEFINITIONS AND INTERPRETATION

8.1 In this Memorandum of Understanding unless the context requires otherwise:

Base Salary means the minimum annual base salary payable to a Full-time or Part-time Employee and excluding all allowances, loadings, bonus, superannuation and overtime.

Continuous service means a period of service by an employee with CSR or a Transmittor, as may be applicable, less any Excluded Periods. In addition the following absences shall not break the continuity of service and shall, subject to any limitation herein, count as service:

- (a) Absence on any annual leave, long service leave or other paid leave;
- (b) Absence following any termination of the employment by the employer if such termination has been made merely with the intention of avoiding obligations under this clause in respect of long service leave;
- (c) Absence necessitated by personal sickness or injury of which not more than fifteen working days a year shall count as service;
- (d) Absence in respect of any period during which the employee is performing community service leave in accordance with the *Fair Work Act 2009* (Cth), including jury service, provided that the employee as soon as reasonably practicable on the completion of any such service resumes employment with the employer.

CSR means CSR Limited;

Excluded Period means, for the purposes of the definition of continuous service, the following absences which shall not break the continuity of service, but the period of such absence shall not count as part of continuous service for the accrual of LSL:

- (a) Absence following any termination of the employment by the employer on any ground other than slackness of trade, if the employee is re-employed by the employer within a period not exceeding two months from the date of such termination.
- (b) Absence following any termination of the employment by the employer on the ground of slackness of trade if the employee is re-employed by the employer within a period not exceeding six months from the date of such termination.
- (c) Absence of the employee authorised by the employer at any time (except for paid leave), including but not limited to unpaid leave, parental or adoption leave.
- (d) Absence arising directly or indirectly from an industrial dispute but only if the employee returns to work in accordance with the terms of settlement of the dispute.

LSL means long service leave;

LSL Harmonisation means any Commonwealth legislative enactment that imposes on CSR nationalised LSL laws or the completion of any process by which the State and Territory LSL laws are varied, amended or repealed the effect of which is to afford a framework (via model LSL legislation or otherwise) for nationally consistent LSL entitlements and obligations;

Packaged Employee means an employee who is classified by CSR at Job Grade 11 or above;

Redundancy means an employment situation where CSR no longer requires the job carried out by an employee to be carried out by anyone;

Retrenchment means the termination of employment by CSR of an employee whose position has become redundant;

TFR means Total Fixed Remuneration and in relation to a Packaged Employee, includes, but is not limited to a Packaged Employee's:

- (a) salary;
- (b) the Employer Superannuation Component;
- (c) any salary sacrificed items, as approved by CSR;
- (d) any novated motor vehicle lease(s) in accordance with applicable policies as in force from time to time;
- (e) any fringe benefits other than the Additional Benefits; and
- (f) any grossed up fringe benefits tax,

but does not include any payroll tax or workers compensation payments paid by CSR.

Transmission includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding meaning;

Transmittor and Transmitted Employee: For the purpose of this MOU where a business has, whether before or after the coming into operation of this MOU been transmitted from an employer (**Transmittor**) to CSR and an employee who at the time of such transmission was an employee of the transmittor in that business immediately on transmission of that business becomes an employee of the CSR, the employee is a Transmitted Employee.

SIGNED:

SIGNED by)
CSR LIMITED by a duly authorised officer)
in the presence of:)

Signature of Authorised Officer

Signature of Witness

Print name of Authorised Officer

Name of Witness

SIGNED for and on behalf of)
CSR & HOLCIM STAFF ASSOCIATION)
by a duly authorised officer in the)
presence of:)

Signature of Authorised Officer

Signature of Witness

Print name of Authorised Officer

Name of Witness