

**SCHEDULE 3 - COMPENSATION AGREEMENT (REDACTED)**

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DATED 19 DECEMBER 2017

**SETTLEMENT DEED**

**BETWEEN**

**THE TJAYUWARA UNMURU NATIVE TITLE HOLDERS**

**- AND -**

**TJAYUWARA UNMURU ABORIGINAL CORPORATION RNTBC**

**(ICN 7854)**

**- AND -**

**DAVID PEARSON AND DENNIS DOUGLAS**

**- AND -**

**THE STATE OF SOUTH AUSTRALIA**

**CROWN SOLICITOR  
Level 6, 45 Pirie Street, Adelaide SA 5000**

DEED dated 19 December 2017

**PARTIES:**

**THE TJAYUWARA UNMURU NATIVE TITLE HOLDERS** being the native title holders, according to the determination of the Federal Court of Australia in Proceeding No. SAD 208 of 2010 (**Tjauwara Unmurur Native Title Holders**)

**AND**

**TJAYUWARA UNMURU ABORIGINAL CORPORATION RNTBC** (ICN 7854) for and on behalf of the Tjauwara Unmurur Native Title Holders (**Corporation**)

**AND**

**DAVID PEARSON AND DENNIS DOUGLAS** both C/- SANTS of Level 4, 345 King William Street, Adelaide, South Australia 5000, for and on behalf of the Tjauwara Unmurur Native Title Holders as claimants in Federal Court Proceeding No. SAD 32 of 2015 (**Applicant**)

**AND**

**THE STATE OF SOUTH AUSTRALIA**

**BACKGROUND:**

- A. On 16 July 2013 the Federal Court of Australia made a determination of native title in the proceeding SAD 208 of 2010 (**Tjauwara Unmurur Determination**) recognising the non-exclusive native title rights and interests of the Tjauwara Unmurur Native Title Holders over those portions of Crown Leases No. 2491 and No. 2495 over which native title had not been wholly extinguished.
- B. On 27 February 2015 the Applicants filed Native Title **Compensation Application** (Federal Court Proceeding No. SAD 32 of 2015) seeking compensation from the **State of South Australia** in relation to the compensable extinguishment of native title over certain areas within the external boundary of the Tjauwara Unmurur Determination.
- C. The Tjauwara Unmurur Native Title Holders are represented by the Applicant in the Compensation Application and by the Corporation in relation to their native title rights and interests.
- D. The following areas of extinguishment were determined by the Federal Court in the Tjauwara Unmurur Determination:
  - a. All roads including the corridor of the Stuart Highway which have been delineated in a public map pursuant to section 5(d)(ii) of the *Crown Lands Act 1929* (SA) or s70(3) or (4) of the *Crown Land Management Act 2009* or which have otherwise been validly established pursuant to South Australian Statute or common law as shown in red on the map at *Schedule 2* of the Determination;
  - b. The land parcels comprising that portion of the Central Australian Railway excised from the native title claim area, namely, portion of section 1317 and sections 1318 and 1319 in OH (Alberga); and,
  - c. Allotment 3003 in Deposited Plan 35731.

- E. The State, the Corporation, and the Tjauwara Unmuru Native Title Holders are entering into this Agreement with the object of settling the State's compensation obligations for all of the loss, diminution, impairment or other effect on the Tjauwara Unmuru Native Title Holders' exercise and enjoyment of any native title rights and interests within the Agreement Area (as defined in Clause 1.2) caused by any act for which the State is responsible, up to the date of in principle agreement to settle the Compensation Application on 5 July 2017.
- F. There is some uncertainty as to whether or which acts over Allotment 3003 of Deposited Plan 35731 extinguished or merely impaired native title rights and interests over that land. The State accepts that an application may subsequently be made to the Federal Court to vary the Tjauwara Unmuru Determination in that regard but, regardless of whether the application is made or of its outcome, the settlement in this Agreement concludes any liability of the State within the Agreement Area.
- G. The State, the Corporation and the Applicant conducted negotiations, involving the consideration of videoed interviews and expert reports, and reached an agreement on just terms compensation that is viewed by the parties to be appropriate in the circumstances.

**IT IS AGREED:**

**1. DEFINITIONS**

- 1.1 In this Agreement the definitions which are contained in the *Native Title Act 1993* (Cth) apply unless otherwise indicated.
- 1.2 Subject to any contrary intention indicated by subject or context, in the interpretation of this Agreement (including the Background and Schedules) the following definitions apply:
- Agreement** means this deed (including Background and Schedules);
- Agreement Area** means all of the land and waters within the external boundary of the Tjauwara Unmuru Determination, including all areas the subject of the Compensation Application, being the land and waters bounded by the green line on the map contained in Schedule 1;
- Applicant** means the persons whose names appear as the applicant on the Compensation Application;
- Compensation Application** has the meaning given in paragraph B of the Background;
- Compensation Entitlement** means an entitlement (whether present or future), arising under the NTA or the *Native Title (South Australia) Act 1994*, to receive Native Title Compensation from the State for any act occurring on or in respect of any part of the Agreement Area before 5 July 2017;
- Compensation Payment** means [Redacted];
- Corporation** means the Tjauwara Unmuru Aboriginal Corporation RNTBC, ICN 7854 for and on behalf of the Tjauwara Unmuru Native Title Holders;
- Determination Date** means the date on which the Compensation Application is finally and conclusively determined by a Court or, if clause 4.2 is invoked,

the date that an ILUA embodying the terms of this Agreement is registered by the National Native Title Tribunal;

**Native Title Compensation** means compensation for an act affecting native title, within the meaning of the NTA and *Native Title (South Australia) Act 1994*;

**NTA** means the *Native Title Act 1993* (Cth);

**Parties** means the Tjauwara Unmurur Native Title Holders, the Corporation, the Applicants and the State of South Australia, and **Party** has a corresponding meaning;

**State** means the Crown in the right of the State of South Australia and includes any Minister, agency, instrumentality or other emanation of it;

**Tjauwara Unmurur Determination** has the meaning given in paragraph A of the Background;

**Tjauwara Unmurur Native Title Holders** means the native title holders as defined in clause 3 of the Tjauwara Unmurur Determination.

## 2. INTERPRETATION

- 2.1 In this Agreement, unless a contrary intention appears: words denoting the singular or plural include the plural and singular respectively;
- 2.2 words denoting individuals include corporations and vice versa;
- 2.3 a reference to any Act or statutory instrument or a particular provision of an Act or statutory instrument is taken to include:
  - 2.3.1 all regulations, orders or instruments issued under the legislation or provision; and
  - 2.3.2 any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision; and
- 2.4 a reference to a corporation, organisation or other body (whether or not incorporated) is:
  - 2.4.1 if that corporation, organisation or other body is replaced by another corporation, organisation or other body, deemed to refer to that other corporation, organisation or other body; and
  - 2.4.2 if that corporation, organisation or other body ceases to exist, deemed to refer to the corporation, organisation or other body which most clearly or substantially fulfils the same purposes or objects as the first mentioned corporation, organisation or other body.

## 3. AUTHORITY TO ENTER INTO AGREEMENT

- 3.1 The Applicant warrants to the State that its constituent members are collectively authorised in accordance with sections 61 and 251B NTA to enter into this Agreement on behalf of the Tjauwara Unmurur Native Title Holders.
- 3.2 The Corporation warrants to the State that it is authorised to enter into this Agreement, and (without limitation) to accept the Compensation Payment, on behalf of the Tjauwara Unmurur Native Title Holders.

**4. AGREEMENT NOT DEPENDENT ON COURT DETERMINATION**

- 4.1 This Agreement continues in force whether or not a final Determination is made in the Compensation Application.
- 4.2 If a Determination is not made in the Compensation Application by 31 December 2017, the parties are agreed that an Indigenous Land Use Agreement (ILUA) in substantively identical terms to this Agreement will be entered into and presented to the National Native Title Tribunal for registration.
- 4.3 In the circumstances described in clause 4.2,:
  - 4.3.1 this Agreement will remain in force until the ILUA is registered with the National Native Title Tribunal; and
  - 4.3.2 the Applicant will withdraw the Compensation Application once the ILUA is registered with the NNTT.

**5. AGREEMENT BINDS TJAYUWARA UNMURU NATIVE TITLE HOLDERS**

- 5.1 This Agreement binds all past, present and future Tjauwara Unmuru Native Title Holders who may have a Compensation Entitlement.

**6. COMPENSATION**

- 6.1 The State must pay the Compensation Payment to the Corporation within 35 days of the Determination Date or of the date of this Agreement, whichever is the later.
- 6.2 The Parties agree that the Compensation Payment constitutes "just terms" compensation for the purposes of the NTA.
- 6.3 The Applicants agree that the Compensation Payment discharges any native title compensation obligation that the State may have in relation to the Agreement Area for acts done up to 5 July 2017.

**7. RELEASE OF STATE**

- 7.1 The Tjauwara Unmuru Native Title Holders, the Corporation and the Applicant acknowledge and agree that the Corporation will accept the Compensation Payment on behalf of the Tjauwara Unmuru Native Title Holders in full and final satisfaction of any and all Compensation Entitlement.
- 7.2 Subject to the payment of the Compensation Payment in accordance with this Agreement, each of the Tjauwara Unmuru Native Title Holders, the Corporation and the Applicant releases and discharges the State from all liability in relation to any and all Compensation Entitlement.
- 7.3 Subject to the payment of the Compensation Payment in accordance with this Agreement, each of the Tjauwara Unmuru Native Title Holders, the Corporation and the Applicant agrees that none of them will claim or seek in any way to enforce any Compensation Entitlement.

**8. TARCOOLA TO ALICE SPRINGS RAILWAY CORRIDOR**

- 8.1 The Tjauwara Unmuru Native Title Holders, the Corporation and the Applicant acknowledge and agree that the State is not liable for any Native Title Compensation for anything done on or in relation to the "Tarcoola to Alice

Springs railway corridor", comprising the land surrendered from Pastoral Lease No. 2941.

9. **SUBSEQUENT ACTS**

- 9.1 To avoid doubt, this Agreement does not affect any entitlement that the Tjauwara Unmuru Native Title Holders may have, under the NTA, to receive Native Title Compensation from the State for any act occurring on or in respect of the Agreement Area after 5 July 2017.

10. **GST**

- 10.1 In this clause 10:

- 10.1.1 "**ANTS GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 10.1.2 "**GST**" means the tax imposed by the ANTS GST Act;
- 10.1.3 "**GST Rate**" means, at any particular time, the rate (expressed as a fraction of the Value of a supply) at which GST is payable by the supplier on a Taxable Supply;
- 10.1.4 "**Tax Invoice**" has the meaning attributed in the ANTS GST Act;
- 10.1.5 "**Taxable Supply**" has the meaning attributed in the ANTS GST Act, and also means any component of a Taxable Supply that is treated as a separate supply under the ANTS GST Act; and
- 10.1.6 "**Value**" of a Taxable Supply has the meaning attributed in the ANTS GST Act.

- 10.2 -

- 10.2.1 Subject to clause 10.2.3, if any supply made under this Agreement is a Taxable Supply, the recipient must pay to the supplier, in addition to any consideration payable or to be provided by the recipient for the supply under this Agreement apart from this clause 10.2 ("**base consideration**"), an additional amount of consideration ("**GST consideration**") for the supply calculated by multiplying the GST Rate by the base consideration.
- 10.2.2 When claiming payment of GST consideration under this clause 10.2, the supplier must disclose the supply and the base consideration to which the GST consideration is attributable.
- 10.2.3 Clause 10.2.1 does not apply to a Taxable Supply if this Agreement elsewhere provides that the base consideration for the supply is inclusive of GST.

- 10.3 If any supply under this Agreement is a Taxable Supply:

- 10.3.1 any invoice for payment for the supply must be a Tax Invoice; and
- 10.3.2 the recipient is not required to make any payment in respect of the supply unless the supplier has provided a Tax Invoice in respect of that payment.

**11. CONFIDENTIALITY**

- 11.1 All information exchanged by the parties during the course of negotiations leading to the signing of this Agreement has been disclosed on a 'without prejudice' basis and is confidential between the parties and shall not be disclosed to any third party without the written consent of the other party except in relation to any information already known to the public (other than as a result of a breach of confidence by the person releasing the information).
- 11.2 No party shall publish or disseminate information as to the terms of this settlement to any person without the written consent of the other party except in relation to any information:
- 11.2.1 Disclosed to a party's employees, accountants, insurers or legal advisers in connection with the proceedings about this Agreement; or
  - 11.2.2 Disclosed to the Australian Taxation Office or any other public authority by compulsion of law; or
  - 11.2.3 Known to the public, other than as a result of a breach of confidence by the person releasing the information.
- 11.3 Clause 11.1 does not apply to the filing of any documents by agreement of the parties in the Native Title Compensation Application for the purpose of recording the Determination of that application.
- 11.4 The parties intend that a copy of this Agreement be attached to the consent determination to be made by the Federal Court in the Compensation Application, such copy to be enclosed in a sealed envelope not to be opened without an order of the Federal Court.

**12. SEVERABILITY**

- 12.1 If a provision of this Agreement is invalid or unenforceable in a jurisdiction:
- 12.1.1 it must, if possible, be read down for the purposes of its operation in that jurisdiction, so that it is valid and enforceable;
  - 12.1.2 if it cannot be read down under clause 12.1, but is capable of being severed, then it must be severed, but without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction; or
  - 12.1.3 if it cannot be read down under clause 12.1 or severed under clause 12.2, then the Parties must consult in good faith to determine whether any variation of this Agreement can be made so as to cure or avoid the invalidity or unenforceability while restoring them, as nearly as possible, to the respective positions in which they would have been had the provision not been invalid or unenforceable.

**13. NO WAIVER**

- 13.1 A failure to exercise or any delay in exercising any right, power or remedy by a party does not operate as a waiver.
- 13.2 A waiver is not valid or binding on the party granting that waiver unless made in writing.



**14. GOVERNING LAW AND JURISDICTION**

14.1 This Agreement is governed by the laws of South Australia. Each Party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in South Australia in connection with matters concerning this Agreement.

**15. COUNTERPARTS**

15.1 This Agreement may be signed in separate counterparts.

**16. GIVING EFFECT TO AGREEMENT**

16.1 Each Party must do everything necessary to give full effect to this Agreement, including everything necessary to finalise the determination of the Compensation Application or, should clause 4.2 be invoked, the registration of an ILUA, with minimum delay.

**EXECUTED AS A DEED**

**EXECUTED** by **TJAYUWARA UNMURU** )  
**CORPORATION RNTBC (ICN 7854)** in )  
accordance with section 99 - 5 of the *Corporations* )  
(*Aboriginal and Torres Strait Islander Act 2006* (Cth)) )

[As signed 19 December 2017]

.....  
Director

.....  
Director/Corporation Secretary  
(delete the inapplicable)

.....  
[Print Name]

.....  
[Print Name]

**SIGNED** by **DAVID PEARSON** for and on behalf )  
of **THE TJAYUWARA UNMURU NATIVE TITLE** )  
**HOLDERS** in the presence of: )

[As signed 19 December 2017]

.....  
Witness

.....  
[Print Name]

**SIGNED** by **DENNIS DOUGLAS** for and on behalf )  
of **THE TJAYUWARA UNMURU NATIVE TITLE** )  
**HOLDERS** in the presence of: )

[As signed 19 December 2017]

.....  
Witness

.....  
[Print Name]

**SIGNED** by the **ATTORNEY-GENERAL** for and on )  
behalf of **THE STATE OF SOUTH AUSTRALIA** )  
)

[As signed 19 December 2017]

.....  
Witness

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**SCHEDULE 1- MAP OF AGREEMENT AREA**

