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Australian Government Solicitor

**DEED OF SETTLEMENT AND
RELEASE**

Commonwealth of Australia represented by the **Department of Families,
Housing, Community Services and Indigenous Affairs**
(ABN 36 342 015 855)

and

Northern Land Council

and

Arnhem Land Aboriginal Land Trust

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DEED OF SETTLEMENT AND RELEASE

Date

This Deed is dated 21 day of August 2013

Parties

This Deed is made between and binds the following Parties:

1. **Commonwealth of Australia** represented by the **Department of Families, Housing, Community Services and Indigenous Affairs** of Level 3, Centraplaza, 16 Bowes Street, Woden ACT 2606 (Attention: Branch Manager, Land Reform Branch) (ABN 36 342 015 855) (**Commonwealth**)
2. **Northern Land Council** of 45 Mitchell Street, Darwin NT 0800 (**NLC**)
3. **Arnhem Land Aboriginal Land Trust** of c/- 45 Mitchell Street, Darwin NT 0800 (**Land Trust**)

Context

This Deed is made in the following context:

- A. By operation of s 31 of the NTNER Act, the Commonwealth acquired certain leases from the Land Trust.
- B. The Land Trust is established pursuant to s 4(1) of ALRA and holds an estate in fee simple in the Land set out adjacent to its name in Schedule 1 over which the Commonwealth acquired a Section 31 Lease.
- C. The NLC is a statutory authority established under s 21 of ALRA.
- D. By operation of s 60(2) of the NTNER Act, the Commonwealth is liable to pay a reasonable amount of compensation in respect of the acquisition from the Land Trust of a Section 31 Lease.
- E. By operation of s 62(5) of the NTNER Act, the Commonwealth is liable to pay rent in relation to a Section 31 Lease to the Land Trust while the lease is in force.
- F. The Land Trust has appointed the NLC to represent it in negotiations with the Commonwealth for agreement as to the rent and reasonable amount of compensation to be paid by the Commonwealth.
- G. Following negotiations, the Parties have agreed to enter into this Deed for the Commonwealth to pay the Settlement Sum in full and final satisfaction of its liability under s 60(2) of the NTNER Act to pay a reasonable amount of

compensation and its liability under s 62(5) to pay rent in respect of the acquisition of the Section 31 Leases.

- H. Under s 6 of ALRA, the Land Trust is not empowered to accept moneys due and owing to it. The Parties have therefore agreed that the Settlement Sum will be paid by the Commonwealth to the NLC who will receive the compensation due and owing to the Land Trust in exercise of the NLC's power under s 27(1)(d) of ALRA.
- I. The Parties acknowledge that in 2012, funding was provided by the Commonwealth to the NLC to enable the NLC to assist traditional owner groups access governance and financial training and to assist in the establishment of community development corporations to facilitate the delivery of community development projects.
- J. Whilst the traditional owner groups may choose to direct the Settlement Sum to other uses, the NLC has undertaken consultations with traditional Aboriginal owners concerning acceptance of the Settlement Sum noting that, the activities referred to in recital I are intended to build the capacity of traditional owner groups and to facilitate the investment of the Settlement Sum back into the communities listed in Schedule 1 in order to provide long term benefits for those communities and the traditional Aboriginal owners of those communities.

Operative provisions

In consideration of the mutual promises contained in this Deed, the Parties agree as follows:

1. Interpretation

1.1. Definitions

- 1.1.1. Unless the contrary intention appears, the following definitions apply to this Deed:

Aboriginal	means a person who is a member of the Aboriginal race of Australia.
Agreed Compensation	means, in respect of a Section 31 Lease acquired by the Commonwealth from the Land Trust, the amount agreed pursuant to s60 of the NTNER Act and set out in Schedule 1 adjacent to the description of the land over which the lease was granted.
ALRA	means the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (Cth).
Business Day	means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory.

Claim	includes all sums of money, actions, suits, causes of action, proceedings, accounts, liabilities, losses, assessments, demands, rent, costs, expenses, notices or any other type of claim however arising and whether past, present or future, fixed or unascertained, actual or contingent and whether in law, equity, under statute (including but not limited to sections 60 and 62 of the NTNER Act) or pursuant to an administrative scheme.
Deed	means this deed of settlement and release including the Schedules.
GST	has the meaning given to it in the GST Law.
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Minister	means the Minister for Families, Housing, Community Services and Indigenous Affairs.
NTNER Act	means the <i>Northern Territory National Emergency Response Act 2007</i> (Cth).
Party	means each of the following parties to this Deed: <ul style="list-style-type: none">a. the Commonwealth;b. the NLC; andc. the Land Trust.
Rent	means, in respect of a Section 31 Lease acquired by the Commonwealth from the Land Trust, the rent paid or payable by the Commonwealth to the NLC (for the Land Trust) pursuant to section 62(5) of the NTNER Act and set out in Schedule 1 adjacent to the description of the land over which the lease was granted.
Section 31 Lease	means a lease acquired by the Commonwealth from the Land Trust under section 31 of the NTNER Act.
Settlement Sum	means, in respect of a Section 31 Lease acquired by the Commonwealth from the Land Trust, the amount set out in Schedule 1 adjacent to the description of the land over which the lease was granted, being the sum of the Rent and the Agreed Compensation.
Sunset Date	means 31 December 2013.

1.2. Interpretation

1.2.1. In this Deed:

- a. words importing the singular include the plural and vice versa;
- b. any gender includes the other genders;

- c. any reference to a person includes a reference to a corporation, firm, authority, government or governmental agency;
- d. a reference to a Party to this deed includes a successor-in-title, a permitted substitute and a permitted assign of that Party;
- e. a reference to legislation or to a legislative provision includes:
 - A. all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision;
 - B. any amendments, modifications or re-enactments of that legislation or legislative provision; and
 - C. any legislation or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- f. the clause headings and table of contents are for reference only and do not in any way influence the meaning of this Deed;
- g. a reference to any deed, agreement, document or other instrument (including this Deed) includes a reference to that deed, agreement, document or other instrument as renewed, extended, novated, varied or substituted from time to time;
- h. a reference to a right, obligation or concept includes each part of it;
- i. where the day on or by which any act, matter or thing is to be done under or pursuant to this Deed is not a Business Day, the act, matter or thing must be done on the next Business Day;
- j. references to clauses are references to clauses of this Deed; and
- k. all references to dollars are to Australian dollars.

1.2.2. In the interpretation of this Deed, no rule of construction applies to the disadvantage of one Party on the basis that it put forward this Deed or a clause in this Deed.

1.3. Entire agreement

1.3.1. The covenants and provisions contained in this Deed exclusively and completely state the rights of each Party with respect to:

- a. the payment of the Settlement Sum by the Commonwealth; and
- b. all Claims the Land Trust has in respect of the payment of rent and compensation by the Commonwealth,

in respect of the acquisition of the Section 31 Leases.

1.3.2. This Deed supersedes all negotiations and prior agreements, whether written or oral, between the Parties in respect of the payment of rent and compensation by the Commonwealth in respect of the acquisition of the Section 31 Leases.

2. Intent of this Deed

2.1. Settlement of all Claims

- 2.1.1. By entering into this Deed, the Parties agree to finally and conclusively settle all Claims the Land Trust may have in respect of the acquisition by the Commonwealth of the Section 31 Leases.

3. Nature and payment of the Settlement Sum

3.1. Settlement Sum

- 3.1.1. The Commonwealth agrees to pay and the Land Trust agrees to accept payment of the Settlement Sum by the Commonwealth to the NLC in settlement of all Claims for the acquisition by the Commonwealth of the Section 31 Lease on land owned by the Land Trust.

- 3.1.2. The Land Trust agrees:

- a. that acceptance by the NLC of the Settlement Sum shall be in full and final settlement of all Claims which the Land Trust may have in respect of the acquisition by the Commonwealth of the relevant Section 31 Lease;
- b. that part of the Settlement Sum comprising Rent represents the amount paid or payable pursuant to section 62(5) of the NTNER Act; and
- c. that part of the Settlement Sum comprising the Agreed Compensation represents a reasonable amount of compensation for the purposes of section 60 of the NTNER Act.

3.2. Commonwealth to pay Settlement Sum

- 3.2.1. The Commonwealth agrees to pay the Settlement Sum to the NLC within 10 Business Days after the date of this Deed.
- 3.2.2. The Settlement Sum shall be paid into an account nominated by the NLC for the purposes of section 6 and section 27(1)(d) of the ALRA.

4. Release and further claims

4.1. Release of Commonwealth

- 4.1.1. In consideration of the Commonwealth entering into this Deed and upon the payment by the Commonwealth of the Settlement Sum, the Land Trust releases and forever discharges the Commonwealth from all Claims in respect of the acquisition by the Commonwealth of the Section 31 Leases.

4.2. No further Claims

- 4.2.1. Upon the Commonwealth making the payment of the Settlement Sum under clause 3.2.1, the Land Trust agrees not to make any further Claims in respect of the acquisition by the Commonwealth of the Section 31 Leases.
- 4.2.2. The Land Trust acknowledges and agrees that it will not institute or seek to be joined to any proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of any additional amount of rent under s 62(5) or compensation under s 60(3) of the NTNER Act.

5. Benefit of Deed and bar to proceedings

5.1. Benefit of Deed

- 5.1.1. The Land Trust and the NLC acknowledges and agrees that the Commonwealth may enforce this Deed in favour of itself, its officers, employees and/or its agents in the name of the Commonwealth and/or of such persons.

5.2. Bar to proceedings

- 5.2.1. This Deed may be pleaded in bar in any proceedings which may be commenced by or through or on behalf of the Land Trust in respect of all Claims in respect of the acquisition by the Commonwealth of the Section 31 Leases.

6. General

6.1. Goods and Services Tax

- 6.1.1. The Parties acknowledge and agree that the Settlement Sum is not a payment in consideration of a 'supply' attracting GST.

6.2. Costs

- 6.2.1. Each Party must pay its own costs of preparing, negotiating, completing and executing this Deed. No Party is entitled to claim or be paid legal costs associated with the review, preparation or advice in connection with this Deed.

6.3. Giving effect to this Deed

- 6.3.1. Each Party to this Deed must do all things (including executing any document) and must ensure that each of its employees and agents do all things (including executing any document) reasonably required by the other Party to give full effect to this Deed.

6.4. Notices

- 6.4.1. A Party giving notice under this Deed must do so:
- a. in writing;

- b. signed by that Party, or its solicitor, attorney or authorised officer;
- c. addressed to the recipient at the address set out in this Deed; and
- d. hand delivered, sent by facsimile or by prepaid post to that address or those addresses (or to such other address as may be notified, in accordance with this clause, by a Party to the other Parties from time to time).

6.4.2. A notice given in accordance with this clause will be deemed to be received:

- a. if hand delivered, on the date of delivery;
- b. if sent by prepaid post, two business days after the date of posting; and
- c. if sent by facsimile transmission when the transmission has been completed.

6.5. Waiver

6.5.1. A failure or delay to exercise or enforce any right, remedy, power or privilege under this Deed by a Party will not operate as a waiver unless and until expressly communicated in writing by that Party to the other Parties.

6.6. Severance

6.7. If a court or tribunal says any provision of this Deed has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.

6.8. Exclusion of legislation

6.8.1. Any legislation that adversely affects an obligation of a Party, or the exercise by a Party of a right or remedy, under or relating to this Deed is excluded to the full extent permitted by law.

6.9. Assignment and novation

6.9.1. The rights conferred on the Aboriginal Land Trust and the NLC by this Deed may not be assigned or novated.

6.10. Variation

6.10.1. This Deed may only be varied in writing signed by all the Parties.

6.11. Governing law

6.11.1. This Deed is governed by the laws of the Northern Territory.

6.12. Authority

- 6.12.1. Each Party who executes this Deed and any associated documents, represents that it has full authority to do so and that it has obtained all necessary consents and approvals.
- 6.12.2. If a Party to this Deed executes this Deed, and any associated documents, under power of attorney, that Party agrees that there is no known limitation on the power to act.

6.13. Counterparts

- 6.13.1. This Deed may be executed in counterparts.
- 6.13.2. If this Deed has been executed by the NLC and the Commonwealth (but not the Land Trust) as contemplated by special condition 7, then this Deed is binding as between the NLC and the Commonwealth for the purposes of the NLC and the Commonwealth enforcing their respective rights and obligations under special condition 7.

7. Special condition re payment of Settlement Sum pending execution by Land Trust

7.1. Execution by Land Trust

- 7.1.1. The NLC has given the Land Trust a direction to enter into this Deed which is annexed at Schedule 2.
- 7.1.2. The NLC will use its best endeavours to ensure this Deed is executed by the Land Trust as soon as practicable after execution by the NLC and the Commonwealth but in any event no later than the Sunset Date.

7.2. Payment of Settlement Sum pending execution by the Land Trust

- 7.2.1. Notwithstanding clause 3.2.1 of this Deed, the Commonwealth agrees to pay the Settlement Sum to the NLC, in accordance with clause 3.2.2, within 10 Business Days after execution of this Deed by the NLC and the Commonwealth and pending execution by the Land Trust.
- 7.2.2. The Land Council will not disburse the Settlement Sum until the Land Trust has signed this Deed.

7.3. Investment of Settlement Sum pending execution by the Land Trust

- 7.3.1. Where the Commonwealth pays the Settlement Sum to the NLC pursuant to this special condition 7, then pending execution of this Deed by the Land Trust or repayment of the Settlement Sum in accordance with special condition 7.5, the NLC may only invest the Settlement Sum in investments of the kind

authorised by section 39(10)(a) of the *Financial Management and Accountability Act 1997* taking into account the Sunset Date.

7.4. Notice of execution by the Land Trust

- 7.4.1. The NLC must notify the Commonwealth as soon as the Land Trust has executed this Deed. If the Land Trust has not executed this Deed on or before the Sunset Date the NLC must notify the Commonwealth of this fact no later than the Business Day immediately following the Sunset Date.

7.5. Repayment of the Settlement Sum to the Commonwealth if Land Trust does not execute by Sunset Date

- 7.5.1. If this Deed is not duly executed by the Land Trust on or before the Sunset Date,
- a. the NLC must immediately repay the Settlement Sum to the Commonwealth (together with any income earned on the investment of the Settlement Sum less any related costs incurred provided such costs cannot exceed any income earned). The Commonwealth may give the NLC a notice specifying the manner in which such payment is to be made; and
 - b. the rights and obligations of the Parties under this Deed terminate save for this special condition 7.5.
- 7.5.2. Special condition 7.5.1(a) and (b) apply except to the extent otherwise agreed by the NLC and the Commonwealth in writing.

SCHEDULE 1. SCHEDULE OF DETAILS

Australian Government Solicitor

SCHEDULE 1. SCHEDULE OF DETAILS for Arrhem Land Aboriginal Land Trust

Aboriginal Land Community	Aboriginal Land Trust	Land (subject to any variations made pursuant to s35(6) of the NTNER Act)	Rent (paid or payable pursuant to s62(5) of the NTNER Act)	Agreed Compensation (amount agreed pursuant to s60 of the NTNER Act)	Settlement Sum (being the sum of the Rent and the Agreed Compensation)
s 22					
s 47G					
s 22					
s 47G					
s 22					

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Aboriginal Land Community	Aboriginal Land Trust	Land (subject to any variations made pursuant to s35(6) of the NTNER Act)	Rent (paid or payable pursuant to s62(5) of the NTNER Act)	Agreed Compensation (amount agreed pursuant to s60 of the NTNER Act)	Settlement Sum (being the sum of the Rent and the Agreed Compensation)
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s 22



Australian Government Solicitor

SCHEDULE 1. SCHEDULE OF DETAILS for Arrhem Land Aboriginal Land Trust

Aboriginal Land Community	Aboriginal Land Trust	Land (subject to any variations made pursuant to s35(6) of the NTNER Act)	Rent (paid or payable pursuant to s62(5) of the NTNER Act)	Agreed Compensation (amount agreed pursuant to s60 of the NTNER Act)	Settlement Sum (being the sum of the Rent and the Agreed Compensation)
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s 22



SCHEDULE 2. - LAND COUNCIL'S DIRECTION

The Northern Land Council directs the Arnhem Land Aboriginal Land Trust to execute this Deed.

The common seal of the Northern Land Council was hereunto affixed by authority of the Chief Executive Officer of the said Land Council in the presence of:



s 22

Witness signature

s 22

Chief Executive Officer

s 22

Witness print name

Executed as a deed

Signed, sealed and delivered on behalf of the **Commonwealth of Australia** acting through the **Department of Families, Housing, Community Services and Indigenous Affairs** by its authorised signatory in the presence of:

s 22

s 22

Signature of authorised signatory

Signature of witness

MICHAEL BILLOU

s 22

Name of authorised signatory (please print)

Name of witness (please print)

The common seal of the Northern Land Council was hereunto affixed by authority of the Chief Executive Officer of the said Land Council in the presence of:



s 22

Witness signature

s 22

Chief Executive Officer

s 22

Witness print name

Lawyer

Position

The common seal of the Arnhem Land Aboriginal Land Trust was hereto affixed by a member of staff of the Northern Land Council with the written authority of the Chair and two members of that Land Trust in the presence of :



s 22
[Redacted]

Witness

s 22
[Redacted]

Chair

s 22
[Redacted]

Print name

s 22
[Redacted]

Member

LEGAL SECRETARY

Position

s 22
[Redacted]

Member