
Parties

TE RŪNANGA O NGĀI TAHU

and

HER MAJESTY THE QUEEN

in right of New Zealand

DEED OF SETTLEMENT
SECTION 19

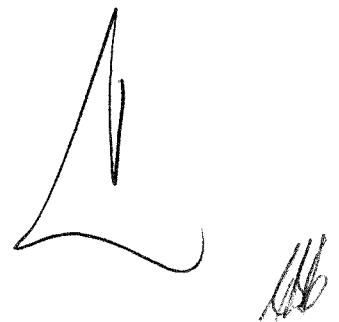
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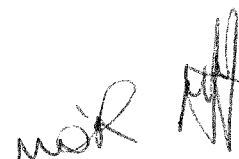
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SECTION 19: TAXATION MATTERS**19.1 GOODS AND SERVICES TAX**

The parties intend that the Deed Redress be received by Te Rūnanga or any Ngāi Tahu Recipient without any obligation for Te Rūnanga or the relevant Ngāi Tahu Recipient to account to the Inland Revenue Department for any GST. If a GST liability exists or arises, it is intended by the parties that no net detriment or benefit should result to Te Rūnanga, to any Ngāi Tahu Recipient, or to the Crown. To this end the parties agree to the following, and agree that the provision of any Deed Redress by the Crown to a Ngāi Tahu Recipient will be subject to the Ngāi Tahu Recipient's agreement to the following:

- 19.1.1 if the provision of any Deed Redress by the Crown to Te Rūnanga or to any Ngāi Tahu Recipient (or the payment of any indemnity payment made under this *clause 19.1*) results in Te Rūnanga or any Ngāi Tahu Recipient being required to account for output tax (including any reduction of a refund as a result of the absorption of input tax credits and including interest or penalties for late payment of tax) as provided by the Goods and Services Tax Act 1985, the Crown will indemnify Te Rūnanga or the Ngāi Tahu Recipient against that GST liability (including any such interest or penalties) and, on the Business Day on which Te Rūnanga or the Ngāi Tahu Recipient accounts to the Inland Revenue Department for such output tax (or interest or penalties), the Crown shall (subject to *clauses 19.1.2 and 19.3*) pay to Te Rūnanga or the Ngāi Tahu Recipient, an amount equal to the amount paid by Te Rūnanga or the Ngāi Tahu Recipient to the Inland Revenue Department in respect of that GST liability (including such reduction in a refund and any such interest or penalties);
- 19.1.2 if, for whatever reason, Te Rūnanga or any Ngāi Tahu Recipient obtains a refund or credit in respect of any output tax (or interest or penalties) for which an indemnity payment is made by the Crown under *clause 19.1.1*, or in respect of any provision of Deed Redress which was a supply on which GST was not chargeable, then, on the Business Day following the Business Day on which the refund is received or the output tax payment which is reduced as a result of the credit is payable, Te Rūnanga or the Ngāi Tahu Recipient shall pay to the Crown an amount equating to the refund or credit together with any interest payable by the Commissioner of Inland Revenue on or in respect of that refund or credit (less any income tax payable by Te Rūnanga or the Ngāi Tahu Recipient in respect of such interest); and



19.1.3 if Te Rūnanga or any Ngāi Tahu Recipient:

- (a) either:
- (i) obtains a refund or credit in respect of any output tax in respect of any provision of Deed Redress which was a supply on which GST was not chargeable and pays to the Crown an amount equating to the refund or credit together with any interest payable by the Commissioner of Inland Revenue on or in respect of that refund or credit (less any income tax payable by Te Rūnanga or the Ngāi Tahu Recipient in respect of such interest); or
 - (ii) does not claim such a refund or credit but was entitled to such a refund or credit;
- (b) subsequently disposes of the property provided by the Crown as Deed Redress to a person who is not a registered person for GST purposes; and
- (c) suffers a detriment as a consequence of accounting for GST output tax in respect of the disposal from the consideration payable on the disposal of the property,

then the Crown shall, upon request by Te Rūnanga or the Ngāi Tahu Recipient, reimburse to Te Rūnanga or the Ngāi Tahu Recipient the amount paid by Te Rūnanga or the Ngāi Tahu Recipient under *clause 19.1.2* or the amount not claimed (as the case may be). In the event that only part of such property is disposed of to a person who is not a registered person for GST purposes in circumstances where this *clause 19.1.3* otherwise applies, the amount to be reimbursed by the Crown will be a proportion of the amount paid under *clause 19.1.2* or not claimed (as the case may be) equal to the proportion of the property being disposed of.

19.2 INCOME TAX

19.2.1 Income Tax on Deed Redress

The parties intend that the Deed Redress be received by Te Rūnanga or any Ngāi Tahu Recipient without any obligation for Te Rūnanga or the relevant Ngāi Tahu Recipient to pay any income tax on that Deed Redress. If such income tax liability exists or arises, it is intended by the parties that no net detriment or benefit should result to Te Rūnanga, to any Ngāi Tahu Recipient or to the Crown. To this end the parties agree the following, and agree that the provision of any Deed Redress

by the Crown to a Ngāi Tahu Recipient will be subject to the Ngāi Tahu Recipient's agreement to the following:

- (a) if the provision of any Deed Redress by the Crown to Te Rūnanga or to any Ngāi Tahu Recipient (or the payment of any indemnity payment made under this *clause 19.2.1*) results in Te Rūnanga or any Ngāi Tahu Recipient being required to pay income tax (including any income tax payable subsequently as a result of the absorption of tax losses and including interest or penalties for late payment of tax), the Crown will indemnify Te Rūnanga or the Ngāi Tahu Recipient against that income tax liability (including any such interest or penalties) and, on the Business Day on which Te Rūnanga or the Ngāi Tahu Recipient pays to the Inland Revenue Department any amount on account of such income tax (including any relevant instalments of provisional tax and including any such interest or penalties), the Crown shall (subject to *clauses 19.2.1(b)* and *19.3*) pay to Te Rūnanga or the Ngāi Tahu Recipient an amount equal to the amount paid by Te Rūnanga or the Ngāi Tahu Recipient to the Inland Revenue Department on account of such income tax (including any such interest or penalties); and
- (b) if, for whatever reason, Te Rūnanga or any Ngāi Tahu Recipient obtains a refund or credit which reduces an obligation of Te Rūnanga or the Ngāi Tahu Recipient to pay income tax in respect of any income tax (or interest or penalties) for which an indemnity payment is made by the Crown under *clause 19.2.1(a)* then, on the Business Day following the Business Day on which the refund is received or on which an income tax payment is reduced as a result of the credit, Te Rūnanga or the Ngāi Tahu Recipient shall pay to the Crown an amount equating to the refund or credit together with any interest payable by the Commissioner of Inland Revenue on or in respect of that refund or credit (less any income tax payable by Te Rūnanga or the Ngāi Tahu Recipient in respect of such interest).

19.2.2 Licence Fees

The parties agree that *clause 19.2.1* will apply to licence fees (but not interest) received by Te Rūnanga from the Crown Forestry Rental Trust or the Crown relating to Licensed Land transferred to Te Rūnanga under *Section 7* (Transfer of Forestry Assets) if the licence fees are received by Te Rūnanga within six months after the end of the tax year in which they were paid by the licensee of the relevant Licensed Land, as if such licence fees were Deed Redress provided by the Crown.

19.3 AGREEMENT TO PREVENT AND MINIMISE LIABILITY

19.3.1 Reasonable Steps

Te Rūnanga undertakes to take reasonable steps in accordance with New Zealand law to prevent and minimise any liability for GST or income tax (or interest or

penalties) to which *clause 19.1* or *clause 19.2* would apply and the provision of any Deed Redress to any Ngāi Tahu Recipient will be subject to the Ngāi Tahu Recipient's agreement to take reasonable steps in accordance with New Zealand law to prevent or minimise any liability for GST or income tax (or interest or penalties) to which *clause 19.1* or *clause 19.2* would apply.

19.3.2 Limit of Obligation

For the avoidance of doubt, the parties acknowledge that the obligation imposed under *clause 19.3.1* does not extend to:

- (a) seeking or obtaining any binding tax ruling; or
- (b) incurring any costs in respect of challenges to proposed tax assessments unless the Crown agrees to reimburse the reasonable costs incurred by Te Rūnanga or the Ngāi Tahu Recipient in relation to items covered by the Crown's indemnity, before any challenge is made.

19.4 EXTENT OF TAX INDEMNITIES

For the avoidance of doubt, the parties acknowledge that *clauses 19.1* to *19.3* apply only to the receipt by Te Rūnanga or any other Ngāi Tahu Recipient of Deed Redress (or indemnity payments) and do not apply to any subsequent dealings or distributions by Te Rūnanga or the relevant Ngāi Tahu Recipient with such redress or any part of it.

19.5 STAMP DUTY


The Crown undertakes that, in the case of any Deed Redress or any transfer of any property to Te Rūnanga under *Section 4* (Transfer of Commercial Properties - Not Subject to Deferred Selection), *Section 5* (Transfer of Commercial Properties - Subject to Deferred Selection), *Section 6* (Transfer of Farm Assets), *Section 7* (Transfer of Forestry Assets), *Section 10* (High Country Stations) or *clause 11.2* or *clause 11.3*, where an instrument of conveyance to the Ngāi Tahu recipient would be liable to stamp duty unless reliance can be placed on section 13(1)(a) of the Stamp and Cheque Duties Act 1971, the Deed Redress will be transferred to the Ngāi Tahu Recipient by the Crown itself so that reliance can be placed on that exemption.

19.6 SPECIFIED PROPERTIES : GST

19.6.1 Definitions

In this *clause 19.6* and in *clause 19.7*:

Specified Property means a Settlement Property (as defined in *Section 8* (Transfer of Assets (General))), a Reselected Property (as defined in *Section 8* (Transfer of Assets (General))), the Station Areas (as defined in *Section 10* (High Country



Stations)) or a Tribal Property (as defined in *Section 11* (Mahinga Kai - Transfer and Vesting of Properties));

Terms of Transfer means the terms specified in this Deed on which the Specified Property is transferred to, or vested in, Te Rūnanga;

Transfer Value in respect of any Specified Property has the meaning given to it in the Section of this Deed pursuant to which that Specified Property is transferred to, or vested in, Te Rūnanga.

19.6.2 Payments are GST Exclusive

The Transfer Value payable by Te Rūnanga and other amounts referred to in the Terms of Transfer are not inclusive of any payment on account of GST and Te Rūnanga shall, subject to this *clause 19.6*, pay an amount equal to the relevant GST in addition to the Transfer Value and any such money or sums.

19.6.3 Crown to Furnish Tax Invoice

If the supply of any property or services is a taxable supply under the Terms of Transfer, the Crown shall furnish to Te Rūnanga a tax invoice for the GST amount payable and Te Rūnanga shall pay to the Crown such GST amount on the earlier of:

- (a) the day which is 5 Business Days prior to the last Business Day of the month following the issue of the tax invoice; and
- (b) the later of:
 - (i) the date on which the Transfer Value or other amount payable by Te Rūnanga becomes payable; and
 - (ii) the day which is 5 Business Days after the issue of the tax invoice.

19.6.4 Default GST

Where any GST amount is not so paid to the Crown in accordance with *clause 19.6.3*, Te Rūnanga shall pay to the Crown:

- (a) if the Crown has paid the GST, interest at the interest rate for late settlement on the amount of GST reimbursement unpaid from the later of the date on which the Crown paid the GST and the date on which the GST amount was payable by Te Rūnanga under *clause 19.6.3* until the date on which Te Rūnanga pays the GST amount to the Crown; and



- (b) if the Crown does not pay the GST when it falls due under the Goods and Services Tax Act 1985, any additional GST, penalty or other sum levied against the Crown under the Goods and Services Tax Act 1985 by reason of non-payment of the GST payable in respect of the supply made under the relevant section but not any such sum levied against the Crown by reason of a default by the Crown after payment of the GST amount to the Crown by Te Rūnanga nor any such sum levied against the Crown in respect of a default by the Crown occurring during the period which ends 5 Business Days after the issue of the tax invoice.

It shall not be a defence to a claim against Te Rūnanga for payment of the above amounts, that the Crown has failed to mitigate the Crown's damages by paying an amount of GST when it fell due under the Goods and Services Tax Act 1985.

19.6.5 Supply of a Going Concern

If any transfer is a transfer of a tenanted property or of the Station Areas (as defined in *clause 9.1*) then, unless otherwise expressly stated, the parties agree that the supply is the supply of a going concern under section 11(1)(c) of the Goods and Services Tax Act 1985 on which GST is chargeable at zero per cent. If however, it subsequently transpires that GST is payable in respect of the supply then the provisions of *clauses 19.6.2 to 19.6.4* shall apply.

19.7 LOWEST PRICE CLAUSE

The Transfer Value for each Specified Property is the lowest price that the parties would have agreed on for the Specified Property on the basis of payment in full for the Specified Property on the date of transfer of the Specified Property. On that basis, no income or expenditure arises under the "accruals rules" as defined in section OZI of the Income Tax Act 1994.

19.8 NOT CONDITIONAL

Clause 17.1 (which provides that this Deed is conditional on the Settlement Legislation coming into force) does not apply to *clauses 19.1 to 19.4* insofar as those clauses apply to the first instalment of the Settlement Amount which is payable under *clause 2.4.1*.

