

Schedule 8

Accession Deed

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Deed of Accession

South West Aboriginal Land & Sea Council Aboriginal Corporation

[SWALSC may be replaced by the CSC]

SWALSC

[Insert Name of Incoming Corporation]

Incoming Corporation

State of Western Australia

State

Minister for Aboriginal Affairs, Minister for Lands, Minister for Mines and Petroleum, Minister for Environment, Minister for Water, Conservation Commission of Western Australia, Conservation and Land Management Executive Body, Housing Authority, Marine Parks and Reserves Authority, Water Corporation, Western Australian Land Authority
Government Parties

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Deed of Accession

Date **[Insert Date]**

Parties **South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832**
[Insert address of SWALSC registered office] (SWALSC) [SWALSC may be replaced by the CSC]

[Insert Name of Incoming Corporation] [Incoming Corporation ICN] [Insert address of Incoming Corporation registered office] (Incoming Corporation)

State of Western Australia [Insert State's address] (State)

Minister for Aboriginal Affairs, Minister for Lands, Minister for Mines and Petroleum, Minister for Environment, Minister for Water, Conservation Commission of Western Australia, Conservation and Land Management Executive Body, Housing Authority, Marine Parks and Reserves Authority, Water Corporation, Western Australian Land Authority (Government Parties)

Background

- A. SWALSC, the Insolvent Corporation, the State and the Government Parties are parties to the ILUA.
- B. Clause 14.4(d) of the ILUA provides for a replacement Regional Corporation appointed by the Trustee to become a party to the ILUA by executing an "Accession Deed".
- C. The Parties wish to enter into this Deed, as the "Accession Deed" referred to in clause 14.4(d) of the ILUA, to reflect the accession of the Incoming Corporation to the ILUA.
- D. The Government Parties authorised, in the ILUA, the State to execute this Deed on their behalf.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Deed:

Agreement Area has the meaning given in the ILUA.

Deed means this document.

Effective Date means **[insert]**.

ILUA means the document titled "South West Indigenous Land Use Agreement (**[Amend title as appropriate for each ILUA]**)", which was dated **[insert]** and entered into between SWALSC, the Representative Parties (for and on behalf of the Native Title Agreement Group), the State and the Government Parties.

Insolvent Corporation means a body corporate that:

- (a) was appointed by the Trustee, in accordance with clause 4 of the Trust Deed, as the Regional Corporation for the Agreement Area;
- (b) became a party to the ILUA in the circumstances described in either clause 8.2 or clause 14.4 of the ILUA; and
- (c) subsequently committed, or otherwise suffered, an Insolvency Event.

Insolvency Event has the meaning given in the ILUA.

Native Title Agreement Group has the meaning given in the ILUA.

Parties means SWALSC, the Incoming Corporation, the State and the Government Parties.

Regional Corporation has the meaning given in the ILUA.

Representative Parties has the meaning given in the ILUA.

Trust Deed has the meaning given in the ILUA.

Trustee has the meaning given in the ILUA.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) any capitalised term used that is defined in the ILUA, but not specifically defined in this Deed, will have in this Deed the meaning that it bears in the ILUA;
 - (c) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
 - (d) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, a government entity and a trust;
 - (e) a reference to a Party is a reference to a Party to this Deed and includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;
 - (f) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
 - (h) a reference to a clause is a reference to a constituent part of this Deed;
 - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
 - (j) **includes** in any form is not a word of limitation.

2. Accession to ILUA

2.1 ILUA (original agreement)

Subject to clause 2.2:

- (a) the Parties agree that, with effect from the Effective Date, the Incoming Corporation is joined as a party to the ILUA; and
- (b) the Incoming Corporation will be bound by the ILUA, and be entitled to the benefit of the ILUA, as if the Incoming Corporation were a party to the ILUA in lieu of the Insolvent Corporation.

2.2 Liability before Effective Date

Notwithstanding clause 2.1, the Incoming Corporation will not assume any liability that has accrued under the ILUA before the Effective Date.

3. General

3.1 Governing Law

This Deed is governed by and must be construed according to the law applying in Western Australia.

3.2 Jurisdiction

Each Party irrevocably:

- (a) submits to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 3.2(a).

3.3 Further acts and documents

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by another Party to give effect to this Deed.

3.4 Counterparts

This Deed may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes the deed of each Party who has executed and delivered that counterpart.

3.5 Expenses

Except as otherwise provided in this Deed, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

3.6 Duties

The Incoming Corporation:

- (a) must pay all duties and any related fines and penalties in respect of this Deed and the performance of this Deed; and
- (b) indemnifies each other Party against any liability arising from failure to comply with clause 3.6(a).

3.7 Severability

If any part of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

3.8 Entire agreement

To the extent permitted by law, in relation to its subject matter, this Deed:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

Executed as a deed.

Executed by South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832
in accordance with its constitution in the
presence of:

Signature of authorised representative

Full name of authorised representative

Date

Signature of witness

Full name of witness

Date

Executed by [Insert Name and ICN of Incoming Corporation] in accordance with its
constitution in the presence of:

Signature of authorised representative

Full name of authorised representative

Date

Signature of witness

Full name of witness

Date

Executed for and on behalf of the **State of**)
Western Australia and of each of the)
Government Parties by The Honourable)
[Insert name of the Premier] in the presence)
of:)
)
)

Signature of Premier

Signature of Witness

Date

Full name of Witness

Address of Witness

Occupation of Witness