

Schedule 7

Replacement RC Deed of Novation

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Replacement RC Deed of Novation

[Insert Name of Insolvent Corporation]

Insolvent Corporation

[Insert Name of Replacement Corporation]

Replacement Corporation

South West Aboriginal Land & Sea Council Aboriginal Corporation

[SWALSC may be replaced by the CSC]

SWALSC

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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Replacement RC Deed of Novation

Date [Insert Date]

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

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

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

State of Western Australia [Insert State's address for notices] (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. The Insolvent Corporation, SWALSC, the State and the Government Parties are parties to the ILUA.
- B. Clause 14.4(b) of the ILUA envisages that the Replacement Corporation, following its appointment by the Trustee, will replace the Insolvent Corporation as a party to the ILUA by executing a "Deed of Novation".
- C. The Insolvent Corporation has agreed to enter into this Deed for substitution of the Replacement Corporation for the Insolvent Corporation as a party to the ILUA, on the terms and conditions contained in this Deed, in consideration of the Replacement Corporation accepting in all respects the obligations of the Insolvent Corporation under 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

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.

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

Parties means Insolvent Corporation, the Replacement Corporation, SWALSC, the State and the Government Parties.

Representative Parties 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. Novation

2.1 ILUA (original agreement)

Subject to clause 2.2, and with effect from the Effective Date:

(a) the Replacement Corporation is substituted for the Insolvent Corporation as a party to the ILUA and will perform the terms and conditions of the ILUA;

(b) the Replacement Corporation will be bound by the ILUA, and be entitled to the benefit of the ILUA, as if the Replacement Corporation were a party to the ILUA in lieu of the Insolvent Corporation; and

- (c) the Insolvent Corporation is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the ILUA.

2.2 Liability before Effective Date

Notwithstanding clause 2.1:

- (a) the Insolvent Corporation is not released, relieved or discharged from any obligation or liability that it may have incurred under the ILUA before the Effective Date; and
- (b) the Replacement Corporation will not assume any obligation or liability that has accrued under the ILUA before the Effective Date.

3. Affirmation of the ILUA

The ILUA will be read and construed subject to this Deed, and in all other respects the provisions of the ILUA are ratified and confirmed, and, subject to the variation and novation contained in this Deed, the ILUA will continue in full force and effect.

4. General

4.1 Governing Law

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

4.2 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 4.2(a).

4.3 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.

4.4 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.

4.5 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.

4.6 Duties

The Replacement 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 4.6(a).

4.7 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.

4.8 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 [Insert Name and ICN of Insolvent 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 by [Insert Name and ICN of Replacement 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 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 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