

**ASSISTANCE AGREEMENT**  
**Section 33(1)(f) CALM Act 1984 (WA)**

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**THIS DEED** is made on the 25<sup>th</sup> day of February 2010

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## Parties

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Name                                      Yawuru Native Title Holders Aboriginal Corporation RNTBC (**Yawuru RNTBC**)

Name                                      The Conservation and Land Management Executive Body of Western Australia,  
a body corporate established under section 36 of the *Conservation and Land  
Management Act 1984* (WA) (**Executive Body**)

Name                                      Shire of Broome, a local government under the *Local Government Act 1995*  
(WA) (**Shire**)

## Recitals

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## **Agreed terms**

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The Parties covenant and agree as follows

### **1. Defined terms and interpretation**

#### **1.1 Defined terms**

In this document:

**Agreement** means this agreement.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the place

**Party** means a Party to this Agreement and **Parties** means two or more of them as the case requires.

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**Townsite Areas** means those areas referred to in clause 3(b).

**Yawuru Area ILUA** means the Yawuru Area Agreement Indigenous Land Use Agreement – Broome executed on 25 February 2010.

**Yawuru PBC ILUA** means the Yawuru Prescribed Body Corporate Indigenous Land Use Agreement - Broome executed on 25 February 2010.

## **1.2 Interpretation**

In this Agreement, unless the contrary intention appears:

- (n) headings in this Agreement are inserted for convenience and do not affect the interpretation of this Agreement;
- (o) words of inclusion are not words of limitation; and
- (p) if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any schedule or addendum to this Agreement, the terms and conditions of the clauses of this Agreement prevail.

## **2. Term of Agreement and early termination**

### **2.1 Term**

The term of this Agreement is the period of ninety nine (99) years commencing on the Execution Date.

### **2.2 Agreement to terminate**

This Agreement can only be terminated if all Parties consent and the termination is effected in writing and executed by all of the Parties to this Agreement.

### **2.3 Consequences of termination**

Unless otherwise agreed idd



## **4. Section 33(1)(f) Assistance**

### **4.1 Assistance to be provided**

The Parties agree that the nature of the services to be provided by the Executive Body shall comprise the following:

- (a) advice as to the scope and content of the management plan to be prepared under section 49(2) LA Act (management plan);

(a) by written notice within ten (10) business days of receipt of the notice of default denies

- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute. If the Parties fail to achieve a resolution of the Dispute by mediation within twenty (20) Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to clause 7.5) referring the matter to arbitration or commencing legal proceedings.

## **7.5 Arbitration**

- (a) If the Parties to a Dispute have complied with clauses 7.1 to 7.4 then, if all those Parties agree, they may refer the Dispute to arbitration under the *Commercial Arbitration Act 1985*

- (b) if sent by prepaid post, on the tenth Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight (8) Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day in the place that it is received, the Notice is taken to be received at 9.00 am on the next Business Day.

## **10. Goods and services tax**

### **10.1 Interpretation**

Any reference in this clause 10 to a term defined or used in the GST Act is, unless the contrary intention appears, a reference to that term as defined or used in the GST Act.

### **10.2 Amounts exclusive of GST**

Unless otherwise expressly prov

Supplier an amount equal to the GST imposed on the supply by the date Yawuru RNTBC would be required to pay the GST.

#### **10.5 Indemnity**

The State agrees to indemnify and keep indemnified Yawuru RNTBC from and against any losses and damages, including penalties or interest, which may arise in respect of a breach of clause 10.4 by the State.

### **11. Costs and duties**

#### **11.1 Duties, taxes and government charges**

Subject to clause 10, the State must pay all duties or taxes of a similar nature on and in relation to:

- (a) this Agreement;
- (b) any instrument, document or transaction contemplated by this Agreement; and
- (c) any instrument or document required under any relevant law in connection with any transaction contemplated by this Agreement,

even if another Party is primarily liable for payment of the duty.

#### **11.2 Recovery**

If the State fails to perform its obligations under this clause, any other Party may pay the duties or other taxes of a similar nature and recover the amount paid from the State as a debt due on demand.

#### **11.3 Effect of termination**

Termination of this Agreement does not affect the operation of this clause 11.

### **12. General**

#### **12.1 Severability**

If any provision of this Agreement is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it can not be so read down, the provision (or where possible the offending words), shall be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Agreement which will continue in full force and effect.

#### **12.2 Waiver**

A right or power under this Agreement shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one

Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power;

- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

### **12.3 Further action**

Each Party must use its reasonable endeavours to do all things necessary or desirable to give full effect to this Agreement.

### **12.4 Governing law and jurisdiction**

- (a) This Agreement is governed by the law applicable in Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

### **12.5 Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts, taken together, will constitute one instrument. A Party may execute this Agreement by signing any counterpart.

## Schedule 1 – Party Details (clause 1.1)

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Name	Yawuru Native Title Holders Aboriginal Corporation RNTBC
Address	PO Box 425, Broome, WA 6725
Facsimile	(08) 9193 7432
Email	Jacki.turfrey@klc.org.au
Contact	Jacquelyn Turfrey
Short name	<b>Yawuru RNTBC</b>

Name	<b>The Executive Body of Conservation and Land Management</b>
Address	Locked Bag 104, Bentley Delivery Centre, Perth WA 6983
Facsimile	(08) 6467 5562
Email	Kieran.McNamara@dec.wa.gov.au
Contact	Keiran McNamara
Short name	<b>CEO</b>

Name	<b>Shire of Broome</b>
Address	PO Box 44, Broome, WA 6725
Facsimile	(08) 9191 3455

## Execution Provisions

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### EXECUTED as an agreement

Executed by the **CONSERVATION AND** )  
**LAND MANAGEMENT EXECUTIVE** )  
**BODY** by the Chief Executive Officer in )  
accordance with section 38 of the )  
*Conservation and Land Management Act* )  
1984 in the presence of:

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Signature of Chief Executive Officer

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Signature of Witness

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Full name of Witness (print)

Date

The **Common Seal** of the **SHIRE OF** )  
**BROOME**, a body corporate established )  
under section 2.5 of the *Local* )  
*Government Act* 1995 (WA) was hereto )  
affixed in the presence of: )

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**GRAEME CAMPBELL**  
**PRESIDENT**

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Signature of Witness

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**KENN DONOHOE**  
**CHIEF EXECUTIVE OFFICER**

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Full name of Witness (print)

Date



**EXECUTED** in accordance with s99-5 of the )  
*Corporations (Aboriginal and Torres Strait )*  
*Islander) Act 2006* (Cth) on behalf of **THE )**  
**YAWURU NATIVE TITLE HOLDERS )**  
**(RNTBC) ABORIGINAL CORPORATION )**  
)

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Director (Signature)

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Director/ Company Secretary (Signature)

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Director (Print Full Name)

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Director / Company Secretary (Print Full Name)

Date