

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

THIS DEED is made on the 25th day of February 2010

BETWEEN:

YAWURU NATIVE TITLE HOLDERS ABORIGINAL CORPORATION RNTBC ("Yawuru RNTBC")

and

THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY ("Executive Body")

and

BROOME SHIRE COUNCIL ("BSC")

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Parties

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

- A The Shire, the Yawuru RNTBC and the Executive Body are parties to the Yawuru Prescribed Body Corporate Indigenous Land Use Agreement - Broome ("Yawuru PBC ILUA") and to the Yawuru Area Agreement Indigenous Land Use Agreement - Broome ("Yawuru Area ILUA") under the *Native Title Act 1993* (Cth) which were executed on 25 February 2010 respectively.
- B Under clause 11 of the Yawuru PBC ILUA and clause 10 of the Yawuru Area ILUA a Conservation Estate and Marine Park are established, comprising areas of land to be granted in fee simple and areas of land to be reserved under Part 4 of the *Land Administration Act 1997* (WA) for the purpose of conservation, recreation and traditional and customary Aboriginal use and enjoyment and a Marine Park area. The care, control and management of those areas within Broome township that are reserved under Part 4 of the LA Act is to be placed jointly with the Yawuru RNTBC and the Shire of Broome.
- C This agreement is made between the Yawuru RNTBC, the Shire of Broome and the Executive Body to enable the Executive Body to provide advice to, and supply services to, the Yawuru PBC and the Shire of Broome under section 33(1)(f) of the CALM Act.

Agreed terms

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 where the notice is sent to or a public holiday in Western Australia.

Business Hours means from 9.00am to 5.00pm on a Business Day.

CALM Act means *Conservation and Land Management Act 1984 (WA)*

Conservation Estate means the coastal park and marine park described in clause 11 of the Yawuru PBC ILUA and clause 10 of the Yawuru Area ILUA.

Details means the Parties' respective details contained in Schedule 1.

Execution Date means the date of the execution of this Agreement by the last of the Parties to execute it.

Executive Body means the Conservation and Land Management Executive Body of Western Australia established under section 36 of the CALM Act.

ILUA Register means the Register of Indigenous Land Use Agreements established under section 199A of the NTA.

Joint Management Agreement means the Joint Management Agreement for the management of the Conservation Estate executed on 25 February 2010.

LA Act means the *Land Administration Act 1997 (WA)*.

LEADR means the dispute resolution organisation of that name. If LEADR ceases to exist as an organisation, then **LEADR** shall be taken to mean any other dispute resolution organisation with similar objects agreed by a majority of the Parties to the relevant dispute or, if no majority agreement can be reached, decided by the Party that first notified the relevant dispute.

Native Title Registrar is the Registrar appointed under section 95 of the NTA.

NNTT means the National Native Title Tribunal established by section 107 of the NTA.

Notice has the meaning given in clause 9.

NTA means the *Native Title Act 1993 (Cth)*.

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

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:

- (a) words and expressions defined in the NTA have the same meaning where used;
- (b) a reference to a clause, schedule or addendum is a reference to a clause of, or a schedule or addendum to, this Agreement and a reference to this Agreement includes any recital, schedule or addendum;
- (c) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) the word 'person' includes a firm, a body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and assigns;
- (g) a reference to a person, statutory authority, government body (corporate or unincorporated) established under any written law includes a reference to any person (corporate or unincorporated) established or continuing to perform the same or a substantially similar function;
- (h) a reference to dollars or \$ is to Australian currency;
- (i) an obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (j) an obligation, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (l) a reference to a day is to be interpreted as the period of time commencing at midnight and ending twenty-four hours later;
- (m) references to time are to time in Western Australia;

- (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 in writing by all Parties, if this Agreement is terminated in accordance with clause 2.2 then:

- (a) other than this clause 2.3, this Agreement ceases to have any force or effect on and from the date of termination;
- (b) any act done under or in accordance with this Agreement shall remain, to the extent permitted by law, valid; and
- (c) all rights and obligations under this Agreement which accrued before or on the date of termination of this Agreement shall remain binding and enforceable by or against each Party.

3. Conditions Precedent to Implementation of this Agreement

This Agreement will not become operative until the following events have occurred:

- (a) Yawuru PBC ILUA and Yawuru Area ILUA are registered on the ILUA Register maintained by the Native Title Registrar;
- (b) those areas referred to in clause 11.5 of the Yawuru PBC ILUA and clause 10.4 of the Yawuru Area ILUA are reserved for the purpose of conservation, recreation and traditional and customary Aboriginal use and enjoyment under section 41 of the LA Act and, where appropriate, an order classifying an area as a Class A reserve has been made under section 42 of the LA Act; and
- (c) the care, control and management of the areas referred to in clause 3(b) above has been placed with Yawuru RNTBC and the Shire of Broome jointly under section 46 of the LA Act.

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);
- (b) day to day management of the Townsite Areas in accordance with the management plan;
- (c) provision of qualified rangers to undertake the day to day management of the Townsite Areas in accordance with the management plan;
- (d) training and supervision of trainee rangers appointed pursuant to the program referred to in clause 11.8 of the Yawuru PBC ILUA; and
- (e) administrative support for the day to day management of the Townsite Areas.

4.2 Conditions on which Assistance is to be provided

The Executive Body shall be subject to the direction of the Park Council being the management committee for the Townsite Areas established under the Joint Management Agreement in undertaking tasks under sub-clauses 4.1(b) and (e).

4.3 Timeframes for provision of assistance

When the events in clause 3 have occurred, the assistance set out at clause 4.1 will commence, and will continue until funding for joint management of the Townsite Areas ceases.

4.4 Funding for Assistance

Funding for the assistance provided by the Executive Body is to be taken from the funds provided for joint management whilst those funds are available.

5. Variation of this Agreement

This Agreement may not be varied unless the variation is effected in writing executed by all of the Parties to this Agreement.

6. Default

6.1 Notice of default

If any Party believes that another Party has defaulted in fulfilling an obligation arising from this Agreement, then the first Party shall immediately notify the defaulting Party, specifying the nature of the default and what action the notifying Party requires.

6.2 Failure to remedy

If the alleged defaulting Party:

- (a) by written notice within ten (10) business days of receipt of the notice of default denies that it has committed a default; or
- (b) does not remedy the alleged default within ten (10) Business Days of receipt of notice of default, or such longer time as specified in the notice of default,

then either Party may invoke the dispute resolution provisions of clause 7.

6.3 Compliance with dispute resolution

A Party must comply with the dispute resolution provisions of clause 7.2 to 7.3 in respect of an alleged default to which clause 6.2 applies before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief).

7. Dispute resolution

7.1 No arbitration or court proceedings

If a dispute arises under this Agreement including a dispute in respect of clause 6 (Dispute), a Party must comply with clauses 7.2 to 7.4 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief).

7.2 Notification

A Party claiming a Dispute has arisen must give the other Parties to the Dispute notice setting out details of the Dispute.

7.3 Parties to resolve Dispute

During the ten (10) Business Days after a notice is deemed to have been served under clause 7.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable endeavours to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, any Party to the Dispute may request that the Dispute be referred to a mediator and, if a Party so requests, the Dispute must be referred to mediation in accordance with clause 7.4.

7.4 Mediation

- (a) If the Parties to the Dispute cannot agree on a mediator within ten (10) Business Days after a request under clause 7.3, the chairman of LEADR or the chairman's nominee will appoint a mediator at the request of either Party.
- (b) The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 7:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Party to a Dispute must pay its own costs of complying with this clause 7. The Parties to the Dispute must equally pay the costs of any mediator.

- (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 (WA)*.
- (b) The arbitration will be held in Perth, Western Australia or any other place agreed by the Parties.
- (c) The Parties will appoint a person agreed between them to be the arbitrator of the Dispute.
- (d) If the Parties fail to agree on a person to be the arbitrator under clause 7.5(c), then the Parties must request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural matters.

7.6 Breach of this clause

If a Party to a Dispute breaches any of the provisions of clauses 7.1 to 7.4, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

8. Confidentiality

From Execution Date, nothing in this Agreement shall be considered confidential.

9. Notices and other communications

9.1 Service of notices

A notice, demand, consent, approval or communication under this Agreement (Notice) must be:

- (a) in writing and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for notices specified in Schedule 1 as varied from time to time by any Notice given by the recipient to the sender.

9.2 Effective on receipt

A Notice given in accordance with clause 9.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;

- (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 provided to the contrary, all amounts fixed or determined under or referred to in this Agreement are exclusive of GST.

10.3 GST payable

- (a) If GST is or becomes payable by a Supplier in relation to any supply that it makes under, in connection with or resulting from this Agreement, the Parties agree that, in addition to any consideration provided by a Party (Recipient) for a supply from another Party (Supplier), the Recipient must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (additional amount).
- (b) The obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of the additional amount.
- (c) If a Recipient is required under this Agreement to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (d) If a Supplier makes a taxable supply under this Agreement to a Recipient the consideration for which is a supply by the Recipient which is not taxable, the additional amount is not payable by the Recipient to the Supplier unless the Recipient is entitled to an input tax credit for the taxable supply.

10.4 Taxable Supplies made to Yawuru RNTBC

Where clause 10.3 requires Yawuru RNTBC to pay an additional amount to a Supplier equal to the GST imposed on a supply, the State shall, on behalf of Yawuru RNTBC, pay to the

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)

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	Yawuru RNTBC

Name	The Executive Body of Conservation and Land Management
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	CEO

Name	Shire of Broome
Address	PO Box 44, Broome, WA 6725
Facsimile	(08) 9191 3455
Email	shire@broome.wa.gov.au
Contact	Kenn Donohoe
Short name	Shire

Execution Provisions

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:

Signature of Chief Executive Officer

Signature of Witness

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:)

GRAEME CAMPBELL
PRESIDENT

Signature of Witness

KENN DONOHOE
CHIEF EXECUTIVE OFFICER

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)
)

Director (Signature)

Director/ Company Secretary (Signature)

Director (Print Full Name)

Director / Company Secretary (Print Full Name)

Date