

# EXAMPLE ONLY

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## Partnership Service Level Agreement

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Department	NSW Department of Climate Change, Energy, Environment and Water
Agency/Division	NSW Biodiversity Conservation Trust ('BCT')
Partner	
Partner Services	<b>BCT Big Scrub Tender</b>  <b>Fund and deliver between 25 and 60 hectares of best practice lowland rainforest restoration using a variety of methods.</b>  <i>Site planning, implementation and maintenance for five years</i>

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## Service Level Agreement Details

<b>Department</b>	Name	The Crown in right of the State of New South Wales acting through the Department of Climate Change, Environment, Energy and Water (ABN 20 770 707 468).
	Agency/ Division	NSW Biodiversity Conservation Trust
	Address	Locked Bag 914, Coffs Harbour, 2450
<b>Department Authorised Officer</b> <i>(refer to clause 29 - Notices)</i>	Name	
	Position	
	Address	
	Telephone	
	E-mail	
<b>Partner('You')</b>	Name	
	Address	
	ABN	
<b>Your Authorised Officer</b> <i>(refer to clause 29- Notices)</i>	Name	
	Position	
	Address	
	Telephone	
	E-mail	
<b>Partner Services</b>		Fund and deliver between 25 and 60 hectares of best practice lowland rainforest restoration using a variety of methods. Including site planning, implementation and maintenance for five years.  Described in detail in <b>Schedule A – Restoration Plans</b> to be negotiated between the parties.
<b>Commencement Date</b> <i>(refer to clause 2 - Term)</i>		

**Additional Insurance Policies** (refer to clause 15 –Insurance)

Types of Insurances	Minimum Sum Insured	Tick if Required
Public liability	\$10 million	✓
Product Liability	\$10 million	✓
Professional Indemnity	\$5 million	✓
Workers Compensation		✓
Comprehensive Motor Vehicle		✓

# Terms of Partnership

## Definitions and Term

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### 1. Interpretation and Definitions

#### 1.1 Interpretation

Unless the context requires otherwise, in this Agreement:

- (a) the terms set out in the left hand column of the Service Level Agreement Details have the meaning ascribed to them in the right hand column of the Service Level Agreement Details;
- (b) where any time limit pursuant to this Agreement falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
- (c) a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
- (d) specific examples do not limit the meaning of general words introduced by “including” or “for example” or similar expressions;
- (e) references to persons include bodies corporate, government agencies and vice versa;
- (f) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (g) nothing in this Agreement is to be interpreted against a party solely on the grounds that the party put forward this Agreement or any part of it; and
- (h) where an expression is defined, any other grammatical form of that expression has a corresponding meaning;
- (i) monetary amounts are expressed in Australian dollars.

#### 1.2 Definitions

**Agreement** means this agreement between you and the Department for you to provide the Partnership Services according to the Service Level Agreement Details, Terms of Partnership Services, Schedules and any documents referenced in this Agreement.

**Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales.

**Claim** means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs on a full indemnity basis.

**Confidential Information** of a party means all trade secrets, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) which:

- (a) is by its nature confidential;
- (b) a party has designated as confidential;

- (c) is capable of protection at common law or equity as confidential information; or
- (d) is derived or produced partly from information described in paragraph (a), (b) or (c) above,

but does not include information that:

- (a) is in the public domain; or
- (b) a party receiving the information independently knows or develops other than as a result of a breach of this Agreement or any other obligation of confidentiality owed by or to any other person.

**Correctly Rendered Invoice** means an invoice rendered in accordance with the Department's Information for Suppliers webpage.

**Deliverables** means all the Goods, supplies or Services you provide to the Department in the course of performing the Services, including reports, documents and other materials embodying data, results and other information. Further details of the Deliverables, if any, are set out in the Schedules.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999*.

**Intellectual Property or IP** includes:

- (a) all rights in relation to copyright, inventions, plant varieties, trademarks, designs, patents; and
- (b) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including trade secrets and know-how,

but does not include Moral Rights.

**Licensed Software** means the Software set out in **Schedule A – Goods**.

**Moral Rights** has the same meaning as in the *Copyright Act 1968 (Cth)*.

**Notice** means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communication one party gives to another party in writing under this Agreement.

**Personal Information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998 (NSW)*.

**Schedules** means **Schedules A– Services** and **Schedule B – Warranty Periods**.

**Signing Date** means the date that the last party signed this Agreement.

**Warranty Period** means the periods set out in **Schedule C – Warranty Periods**.

**WHS Law** means the *Work Health & Safety Act 2011*, regulations, codes of practice and other instruments under that Act.

## **2. Term**

- 2.1 This Agreement will commence on the Commencement Date.
- 2.2 Unless terminated, this Agreement will end once you have provided the Partnership Goods and Services to the Department's satisfaction.

## **What you must do**

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### **3. Your general obligations**

#### **3.1 You must:**

- (a) Provide the Goods and Services agreed with the BCT in accordance with the delivery timeframes and service levels in the Schedules;
- (b) provide any agreed Deliverable in accordance with this Agreement by any relevant delivery date and at any times, intervals and frequency specified in the Schedules;
- (c) perform the Services in accordance with this Agreement;
- (d) provide any documentation relating to the Services, as appropriate, completed to the satisfaction of the BCT;
- (e) perform all work reasonably incidental to the agreed partner Goods and Services;
- (f) carry out your obligations under this Agreement with due professional care and skill including in accordance with any key performance indicators or performance standards specified in the Schedules;
- (g) maintain sufficient capability and resources to meet your obligations under this Agreement;
- (h) perform your obligations under this Agreement in a manner consistent with any required levels of quality and performance;
- (i) obtain at your own cost all licences, approvals and consents necessary to perform the Services and to meet your obligations under this Agreement;
- (j) comply with all policies, guidelines and reasonable directions the BCT has provided to you;
- (k) avoid damage to property and the environment when carrying out the Services, and make good any such damage at your expense; and
- (l) prevent nuisance or inconvenience to anyone who may be affected when carrying out the Services.

#### **3.2 You warrant that the Goods:**

- (a) are unused, of good quality, fit for purpose and free from defects and omissions in material, design or workmanship; and
- (b) comply with any applicable specifications, requirements and laws.

## What we will do

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### 4. BCT obligations

#### 4.1 The BCT will:

- (a) seek, assess and approve private landholdings for conservation and restoration through a transparent and equitable evaluation process;
- (b) place in-perpetuity Conservation Agreements on-title that protect the Big Scrub remnants and restoration sites forever;
- (c) negotiate a suitable management plan with the landholders and provide ongoing funding for the management of their conservation area;
- (d) utilise our rigorous scientific methodology and data sources to ensure the conservation occurs in accordance with the NSW Governments biodiversity investment priorities, contributes to the National Reserve System, and represents good value for money;
- (e) carry out rigorous ecological monitoring and reporting, as well as annual reviews with the landholders.
- (f) provide support for the landholders that ensures the agreed conservation management actions are undertaken.

### 5. Errors and Defects

- 5.1 If Goods delivered to the Department do not conform with this Agreement, then the Department, irrespective of whether it has paid for the Goods, may reject the Goods by giving written notice to you ("Rejection Notice").
- 5.2 If the Department issues a Rejection Notice in respect of any Goods, in addition to any other rights the Department may have under this Agreement or by law, you must immediately, at the Department's option:
  - (a) refund any moneys paid in advance for the Goods (if applicable); or
  - (b) replace the Goods at your cost.

### 6. Warranty periods

- 6.1 If the Goods are or become defective in any way during the Warranty Period, then, at the Department's absolute discretion:
  - (a) you must immediately replace or repair the Goods at your cost; or
  - (b) the Department may terminate this Agreement and you must fully refund any amounts paid for the Goods which the Department does not retain.
- 6.2 If the result achieved by the Services is, or becomes, defective in any way during the Warranty Period, then you must immediately re-perform the Services or remedy the defect at your cost.
- 6.3 If requested by the Department, you must provide a detailed report on the steps you have taken to prevent similar future non-compliance.

## **7. Title and risk**

- 7.1 The Goods become the property of the Department on delivery of the Goods to the Department.
- 7.2 The risk of loss or damage to the Goods passes to the Department on delivery of the Goods to the Department's premises.
- 7.3 If you retake any Goods, the risk of loss or damage to the Goods passes back to you on removal from the Department's premises.

## **8. Subcontractors**

- 8.1 You:
  - (a) remain fully responsible for the performance of the Services or provision of the Goods if you subcontract the performance of any part of those Services or Goods; and
  - (b) must engage any subcontractors under written agreement on terms consistent with this Agreement.

## **9. Work health and safety**

- 9.1 You must:
  - (a) ensure the health and safety of all people who your activities may affect under this Agreement, including your employees and subcontractors and members of the public, in compliance with the WHS Law;
  - (b) undertake your own identification and detailed analysis of all work health and safety risks associated with the Services; and
  - (c) develop and implement a job safety analysis and a site-specific safety management plan;
  - (d) comply with BCT WHS requirements.
- 9.2 You will ensure that your subcontractors have:
  - (a) the necessary resources in place to comply with the WHS Law; and
  - (b) taken all necessary measures to identify reasonably foreseeable hazards in relation to the Services or Goods which could potentially give rise to health and safety, and have taken all necessary measures to assess and eliminate or control the risks arising from those hazards.

## Intellectual Property and Information

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### 10. Intellectual Property

- 10.1 You will not infringe the Intellectual Property rights of any person in providing the Services or delivering the Goods.

### 11. Confidential Information

- 11.1 Each party must keep the other party's Confidential Information confidential and not disclose it to any other person without the prior written consent of the disclosing party.
- 11.2 Each party may disclose the other party's Confidential Information to its personnel and legal and professional advisors provided they ensure that the recipient:
- (a) keeps the Confidential Information confidential; and
  - (b) does not use the Confidential Information except for the purposes of this Agreement.

### 12. Privacy

- 12.1 You will:
- (a) ensure that Personal Information that the BCT provides or you collect under or in connection with this Agreement is used only for the purposes of this Agreement and is protected against loss and against unauthorised access, use, modification or disclosure or against other misuse;
  - (b) unless you are otherwise required or authorised by law to do so, not disclose any Personal Information without the written consent of:
    - i. the individual to whom the Personal Information relates; or
    - ii. the Department,
  - (c) comply with the Information Protection Principles applying to NSW public sector agencies under the *Privacy and Personal Information Protection Act 1998 (NSW)* when doing any act or engaging in any practice in relation to Personal Information as if you were an agency directly subject to that Act; and
  - (d) include equivalent requirements regarding Personal Information (including this **clause 12**) in any subcontract entered into for the provision of any of the Services under this Agreement.
- 12.2 Where you are an individual you authorise the BCT to make Personal Information concerning you, such as your name, address and details of your work performance, available to other State, Commonwealth and local government agencies and funding agencies, for reporting, statistical and accounting purposes. You do not have to supply this information, however, the BCT may not be able to fulfil its obligations under other arrangements without revealing that information to such agencies. You may obtain details of any Personal Information about you the BCT holds by contacting the BCT's Authorised Officer.

### 13. Disclosure of Information

13.1 You acknowledge that, under the *Government Information (Public Access) Act 2009*, the Department may be required to publicly disclose information about this Agreement. None of the disclosure obligations require the disclosure of:

- (a) the commercial-in-confidence provisions of the Service Level Agreement;
- (b) any matter that could reasonably be expected to affect public safety or security; or
- (c) information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009*.

13.2 You may nominate any items you consider are confidential and why, to assist the Department in determining what items to disclose.

### 14. Access to Information

14.1 In order for the Department to comply with its obligations under the *Government Information (Public Access) Act 2009*, if this Agreement involves you providing any Services to the public on behalf of the Department you must, within seven (7) days of receiving a written request by the Department, provide the Department with immediate access to the following information contained in records you hold:

- (a) information that relates directly to the performance of the Services;
- (b) information you have collected from members of the public to whom you provide, or offers to provide, the Services; and
- (c) information you receive from the Department to enable you to provide the Services.

14.2 For the purposes of **clause 14.1**, information does not include:

- (a) information that discloses or would tend to disclose your financing arrangements, financial modelling, cost structure or profit margin;
- (b) information that you are prohibited from disclosing to the Department by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
- (c) information that, if disclosed to the Department, could reasonably be expected to place You at a substantial commercial disadvantage in relation to the Department, whether at present or in the future.

14.3 You will provide copies of any of the information in **clause 14.1**, as the Department requests, at your own expense.

14.4 Your failure to comply with any request pursuant to **clause 14.1** or **14.3** will be considered a breach of an essential term and will allow the Department to terminate this Agreement by providing Notice in writing of your intention to do so with the termination to take effect seven (7) days after receipt of the Notice. Once you receive the Notice, if you fail to remedy the breach within the seven (7) day period to the satisfaction of the Department, then the termination will take effect seven (7) days after receipt of the Notice.

## Dealing with Risk

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### 15. Insurance

- 15.1 You must maintain, at your own cost, during the term of this Agreement:
- (a) a broadform public liability policy of insurance to the value of at least \$10 million in respect of each claim and in the aggregate as to the number of occurrences in the policy period;
  - (b) workers' compensation insurance as required by all relevant laws of Australia relating to workers compensation; and
  - (c) the Additional Insurance Policies listed in the Service Level Agreement Details for the minimum sum provided.
- 15.2 If specified as being required in the Service Level Agreement Details, a professional indemnity insurance policy must be maintained for a period of 7 years from the end of the Agreement.
- 15.3 You must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause may be vitiated, rendered void or voidable.
- 15.4 Where the Department requests, you must provide a copy of valid and current certificates of currency the insurer has issued for each or any of the policies described above which will include the policy number, expiry date, level of cover (per claim and aggregate), policy excess, summary of cover (including exclusions and endorsements) and jurisdictional limits.
- 15.5 Without limitation to **clause 15.1**, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Agreement.

### 16. Indemnities

- 16.1 You must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (paid or payable including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:
- (a) the Services or Goods or the use of any Deliverables;
  - (b) your breach of this Agreement including any failure to provide the Services or Goods;
  - (c) your or your subcontractor's or employee's unlawful or negligent act or omission in connection with this Agreement;
  - (d) any illness, injury or death of any person you, or your subcontractors or employees, cause or contribute in connection with this Agreement;
  - (e) any loss or damage to real or personal property you, or your subcontractors or employees, cause in connection with this Agreement; or
  - (f) you or your subcontractor's acts or omissions in connection with this Agreement that is in infringement of any Intellectual Property, or privacy rights of the Department or any third party.

- 16.2 Your liability to indemnify the Department under this clause will be reduced proportionately to the extent that the Department's negligent or unlawful acts or omissions, or those of its officers, employees or agents contributed to the relevant loss or liability.
- 16.3 Your liability to indemnify the Department under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Agreement.

## 17. Liability Caps

### 17.1 Subject to clause (a):

- (a) Your aggregate liability to the Department under or in respect of the Agreement whether in contract, tort (including negligence), statute or any other cause of action is limited to an amount equal to five (5) times the total Fee; and
- (b) the Department's aggregate liability to you under or in respect of the Agreement whether in contract, tort (including negligence), statute or any other cause of action, is limited to one (1) times the total Fee.

### 17.2 Nothing in the Agreement operates to limit or exclude:

- (a) liability that cannot by law be limited or excluded;
- (b) an amount payable under an insurance policy taken out in conjunction with this Agreement;
- (c) the liability of either party in respect of personal injury (including sickness and death) or real or tangible property loss or damage;
- (d) liability of a party in respect of a breach of **clause 11** (Confidential Information) or **clause 12** (Privacy);
- (e) Your liability under **clause 10** (Intellectual Property);
- (f) liability of either party for unlawful or illegal acts or conduct; or
- (g) the Department's liability to pay such of the Fee as is due and payable.

## Reduction in Scope and Ending this Agreement

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### 18. Termination

18.1 Where a party has breached this Agreement:

- (a) the other party may give a Notice to that party requiring it to rectify that breach within 30 days of receiving that Notice; and
- (b) if the party which received the Notice fails to rectify that breach in time, the other party may terminate this Deed immediately by giving a further Notice.

18.2 The Department may terminate this Agreement by Notice, with effect on the date stated in the Notice, if:

- (a) you breach any of the following provisions: clause 3 (Your General Obligations); clause 7 (Title and Risk), clause 9 (Work Health and Safety); clause 10 (Intellectual Property); clause 15 (Insurance), clause 11 (Confidential Information) and clause 30.9 (Assignment);
- (b) the Department considers that delivery of the Goods or provision of the related Services is no longer viable;
- (c) the Department decides not to proceed with the project, at its discretion, noting this is a pilot project and at any point it may be deemed not feasible to proceed;
- (d) the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity; or
- (e) you become insolvent, if you are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, or if you resolve to go into administration or liquidation or have a summons for your winding up presented to a Court or enter into any scheme of arrangement with your creditors.

18.3 This clause does not exclude or reduce the rights of a party to terminate the Agreement arising by operation of the common law or statute or the other terms of this Agreement.

### 19. Consequences of termination

19.1 On termination or expiry of this Agreement:

- (a) accrued rights and obligations are not affected;

### 20. Reduction

20.1 Without limitation to **clause 18** (Termination), the Department may provide Notice to you to reduce the scope of the Services at the Department's convenience, with effect from the date stated in the Notice.

### 21. What you must do if you receive a Notice

21.1 Upon receipt of a Notice of termination or reduction you must:

- (a) stop work as specified in the Notice;
- (b) take all available steps to minimise loss resulting from that termination; and

(c) continue work on any part of the Services not affected by the Notice.

## 22. Dispute Resolution

- 22.1 If a dispute arises in relation to this Agreement (“a Dispute”), a party must comply with this **clause 22** before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.
- 22.2 A party claiming that a Dispute has arisen must notify the other party in writing giving details of the Dispute.
- 22.3 During the 14 days after notice is given under **clause 22.2** (or longer period if the parties agree in writing), each party must use its reasonable efforts through a meeting of senior officers (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.
- 22.4 If the parties cannot agree on a mediator within seven days after a request under **clause 22.3**, the chairperson of Resolution Institute (ACN 008 651 232) or the chairperson’s nominee will appoint a mediator. If, within seven days of a request to the chairperson, no mediator is appointed, then the party which requested the mediation will choose the mediator. If that party does not choose a mediator within two further days, then the mediation will not occur and the parties may proceed to arbitration or court proceedings.
- 22.5 Each party to a Dispute must pay its own costs of complying with this clause and split the costs of the mediator evenly.

## Modern Slavery

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### 23. Definitions

In this **clause 26** (Modern Slavery):

“Anti-slavery Commissioner means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018 (NSW)*.

“Information” may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes “personal information” as defined in the *Privacy and Personal Information Protection Act 1998* or information which tends to identify individuals.

“Modern Slavery” has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

“Modern Slavery Laws” means, as applicable, the *Modern Slavery Act 2018 (NSW)* and the *Modern Slavery Act 2018 (Cth)*.

“Modern Slavery Offence” has the same meaning as in the *Modern Slavery Act 2018 (NSW)*.

“Modern Slavery Statement” means a modern slavery statement as required or volunteered under the *Modern Slavery Act 2018 (Cth)*.

## 24. Compliance

The Partner warrants that, as at the date of its execution of this Service Level Agreement, neither the Partner, any entity that it owns or controls or, to the best of its knowledge, any subcontractor of the Partner, has been convicted of a Modern Slavery offence.

## 25. Information

25.1 The Partner must:

- a) subject to any restrictions under any applicable laws by which it is bound, provide to the Department any Information and other assistance, as reasonable requested by the Department, to enable the Department to meet its obligations under the *Modern Slavery Act 2018 (NSW)* and associated regulatory requirements (for example, annual reporting requirements and NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Department (including by a third party on behalf of the Department) or the NSW Audit Office and providing reasonable access to the Department’s/Audit Office’s auditors to interview the Partner’s staff.
- b) notify the Department in writing as soon as it becomes aware of either or both of the following:
  - (i) a material change to any Information it has provided to the Department in relation to Modern Slavery; and
  - (ii) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).

25.2 The Partner may provide any information or report requested by the Department in the form of a previously prepared statement or re-purposed report, for example a statement provided in response to a similar request for information from another Australian public sector agency, or refer the Department to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same information as that sought by the Department.

25.3 The Partner must, during the term of this Service Level Agreement and for a period of seven (7) years thereafter:

- (a) maintain; and
- (b) upon the Department’s reasonable request, give the Department access to, and/or copies of, a complete set of records in the possession or control of the Partner to trace, so far as practicable, the supply chain of all Goods and service provided under this Service Level Agreement and to enable the Department to assess the Partner’s compliance with this **clause 26** (Modern Slavery).

## 26. Modern Slavery due diligence

The Partner must take reasonable steps to ensure that Modern Slavery is not occurring in the operations and supply chains of the Partner and any entity that it owns or controls.

## 27. Subcontractors

The Partner must take reasonable steps to ensure that all subcontracts of the whole or part of the Service Level Agreement contain:

- (a) In relation to subcontracts that relate exclusively to the Department, provisions in relation to Modern Slavery that are substantially the same as this clause 26 (Modern Slavery); and
- (b) In all other cases, Modern Slavery provisions that are reasonably consistent with the provisions in this clause 26 (Modern Slavery).

## **28. Response to Modern Slavery incident**

31.1 If the Partner becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Partner must take reasonable steps to respond to the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Partner and any relevant Code of Practice/Conduct or other guidance issued by the Anti-slavery Commissioner or (if the Department notifies the Partner that it requires the Partner to comply with the relevant NSW Procurement Board Code/guidance) by the NSW Procurement Board.

31.2 Any action taken by the Partner under **clause 31.1** will not affect any rights of the Department under this Service Level Agreement, including its rights under **clause 31.3** (Termination on ground of Modern Slavery).

### **31.3 Termination on ground of Modern Slavery**

In addition to any other rights of termination, or rights to damages, that it may have under this Service Level Agreement or at law, the Department may terminate this Agreement, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination, on any one or more of the following grounds:

- (a) The Partner has failed to disclose to the Department, prior to execution of this Service Level Agreement, that the Partner, or any entity owned or controlled by the Partner, has been convicted of a Modern Slavery offence.
- (b) The Partner, or any entity owned or controlled by the Partner, is convicted of a Modern Slavery Offence during the term of this Service Level Agreement.
- (c) In the Department's reasonable view, the Partner has failed to notify the Department as soon as it becomes aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls).
- (d) In the Department's reasonable view, the Partner has failed to take reasonable steps to respond to an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls).
- (e) In the Department's reasonable view, the Partner has otherwise committed a substantial breach (including multiple minor (non-trivial) breaches) of **clause 27** (Compliance) or **clause 28** (Information).

## Other Legal Matters

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### 29. Notices

- 29.1 Unless otherwise stated in this Agreement, all Notices must be hand-delivered, posted or emailed to the Authorised Officer. A party can notify a change in its Authorised Officer from time to time.
- 29.2 The receiving party will be deemed to have received the Notice as follows:
- (a) if hand delivered, on the day on which it is delivered or left at the relevant address;
  - (b) if sent by post within Australia:
    - i. if posted using Express Post, the priority letter service option of regular post, or the priority service option for Registered Mail, on the fourth Business Day after the day on which it is posted;
    - ii. if posted using the regular post option, on the tenth Business Day after the day on which it is posted;
  - (c) if sent by email before 5.00pm on a Business Day, the first of the following occurring:
    - iii. when the sender receives an automated message confirming delivery; or
    - iv. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not be delivered;
  - (d) if sent by email after 5.00pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
- 29.3 Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.

### 30. General

- 30.1 **Survival:**  
The following clauses survive termination or expiry of this Agreement: **clause 10** (Intellectual Property), **clause 11** (Confidential Information), **clause 12** (Privacy), **clause 16** (Indemnities), **clause 17** (Liability Caps), **clause 18** (Termination), **clause 30.2** (Keeping of records), this **clause 29.1** and any other clause which by its nature is intended to survive this Agreement.

- 30.2 Keeping of records and rights of access to such records:

You:

- (a) must keep complete and accurate records and books of account with respect to your performance of the Services (the "Records"), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Agreement;
- (b) authorise the Department and any State or Commonwealth Government department or agency (the "Auditors") that has provided moneys to the Department for the purposes

to which the Services relate, to examine and inspect, at reasonable times and on reasonable Notice, any Agreement Material you hold, and allow any such Records to be copied; and

- (c) must provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.

### 30.3 Conflict of Interest:

You must not:

- (a) act as a contractor to any person who carries on or is involved in any capacity in an activity or business; or
- (b) carry on or be involved in any capacity in an activity or business,

which may conflict with, or adversely affect, your ability to carry out your obligations under this Agreement, and you agree to immediately notify the Department in writing if a risk of such a conflict arises.

### 30.4 **Entire agreement:** This Agreement states all the express terms the parties have agreed on. It supersedes all prior contracts, obligations, representations, conduct and understandings.

### 30.5 **Variation:** This Agreement may only be varied by agreement in writing including by an exchange of emails confirming the agreed variation.

### 30.6 **Inconsistency:** If there is any inconsistency between provisions in this Agreement then the order of precedence will be:

- (a) the Service Level Agreement Details; then
- (b) the Special Conditions; then
- (c) these Terms of Service and Goods; then
- (d) any Schedules or attached Annexures.

### 30.7 Negation of employment, partnership or agency

This Agreement does not create a relationship of agency, partnership, and/or employment between the parties.

You must not represent yourself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.

### 30.8 Waiver

If a party fails to exercise any of its rights under this Agreement, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect estop a party from relying on the terms of this Agreement to their full force and effect.

Any waiver by a party of a breach of this Agreement must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

- 30.9 **Assignment:** You must not assign or novate your obligations or interests under this Agreement, without the prior written consent of the Department.
- 30.10 **Counterparts:** This Agreement may be signed in any number of counterparts which taken together will constitute one instrument.
- 30.11 **Governing Law:** The laws of New South Wales govern this Agreement and the parties submit to the non-exclusive jurisdiction of the courts in that State.

## Execution Clauses

### Department

Signed for and on behalf of the Crown in right of the State of New South Wales acting through the **NSW Biodiversity Conservation Trust** by its authorised signatory but not so as to incur personal liability:

.....	.....
Name	Signature
	C
.....	.....
Chief Executive Officer	Date

### Partner

Signed for on and on behalf of but not so as to incur personal liability:

.....	.....
Name	Signature
.....	.....
Position	Date
.....	.....

## Schedule B – Restoration Plans

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Additional schedules to be added by agreement between the parties to provide restoration plans for each property that is successful in the BCT Big Scrub Conservation Tender. These restoration plans will include information such as site plans, site preparations, site planting, agreed plant species, ongoing maintenance and scheduling.