

## Operations & Maintenance Service Agreement

The Party named as Principal in Item 1 of Schedule 1

Simmonds and Bristow Pty Ltd  
ACN 010 252 418



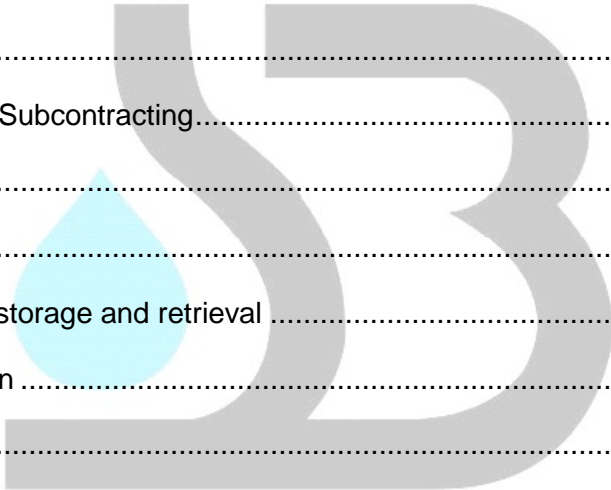
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**This Agreement** is dated

## Parties

**The Party named in Item 1 of Schedule 1  
(Principal)**

**Simmonds and Bristow Pty Ltd ACN 010 252 418**  
of 40 Reginald Street, Rocklea, Queensland 4106  
**(S&B)**

## Introduction

- A. The Principal wishes to engage S&B to provide operations and maintenance services in connection with the Plant.
- B. The terms and conditions of the engagement are set out in this Agreement..

## It is agreed

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Agreement:

- (1) **Approved Personnel** means those of S&B's personnel approved by the Principal under clause 7.1 who, at the date of this Agreement, are as set out in Item 4 of Schedule 1;
- (2) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (3) **Force majeure** means an act, omission or circumstance over which S&B could not reasonably have exercised control.
- (4) **Intellectual property** includes patents, patentable inventions, registered and registrable designs, trademarks, names, logos copyright works, moral rights and all improvements to such works;
- (5) **Plant** means the water and/or wastewater treatment plant more particularly described in Item 2 of Schedule 1;
- (6) **Records** means all designs, reports, plans, drawings, specifications, samples, models, patterns, photographs, graphics, logos, artworks or other documents, (but not diary notes) supplied by or created in the course of or in connection with S&B, or those for whom S&B is responsible, performing the Services or fulfilling the requirements of this Agreement;

- (7) **Regulating Authority** means the State or Commonwealth authority(s) regulating the installation, maintenance or operation, of the Plant or any of the Services under this Agreement;
- (8) **Related Entity** has the meaning given in section 9 of the *Corporations Act*;
- (9) **S&B** extends to and includes its permitted assigns;
- (10) **Services** means the operations and maintenance services described in Schedule 2;
- (11) **Service Fees** means the fees payable by the Principal to S&B for the provision of the Services under this Agreement as set out in Schedule 3;
- (12) **Term** means the period set out in Item 3 of Schedule 1;
- (13) **Variation** means any change to the Services involving additional work as agreed between the Parties in writing.

## 1.2 Interpretation

- (1) Reference to:
  - (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular;
  - (c) a person includes a body corporate;
  - (d) a party includes the party's executors, administrators, successors and permitted assigns;
  - (e) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
    - (i) that Statutory Provision as amended or re-enacted;
    - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
    - (iii) another regulation or other statutory instrument made or issued under that Statutory Provision; and
  - (f) money is to Australian dollars, unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.

- (5) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

### 1.3 Parties

- (1) If a party consists of more than one person, this Agreement binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than one person is for their benefit, separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

## 2. Appointment and Term

### 2.1 Appointment for the Term

The Principal appoints S&B to provide the Services, and S&B agrees to provide the Services for the Term on the terms of this Agreement.

### 2.2 Holding over

- (1) If S&B continues to provide the Services after the expiry of the Term with the Principal's approval, then it does so under a monthly appointment:
  - (a) which either party may terminate on at least one month's notice to the other party ending on any day; and
  - (b) at the Service Fees payable immediately before the end of the Term.
- (2) The monthly appointment will be on the same terms as this Agreement except for those changes which are necessary to make this Agreement appropriate for a monthly appointment.

## 3. Default and termination

3.1 A party may terminate this Agreement at any time by written notice to the other party (**Defaulting Party**) if any of the following apply:

- (1) the Defaulting Party fails to carry out any provision of this Agreement, the failure is capable of remedy and the Defaulting Party does not remedy that failure within a reasonable time after written notice to the Defaulting Party requiring it to be remedied;
- (2) the Defaulting Party fails to carry out any material provision of this Agreement and the failure is not capable of remedy;
- (3) the Defaulting Party fails to carry out any provision of any agreement to which both it and another party to this Agreement are parties, in existence or entered

into after this agreement, the failure is capable of remedy and the Defaulting Party does not remedy that failure within a reasonable time after notice to the Defaulting Party by that other party requiring it to be remedied;

- (4) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the Defaulting Party's property and is not satisfied, set aside or withdrawn within 10 Business Days after its issue;
- (5) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 10 Business Days;
- (6) any other event occurs or circumstance arises which, in the reasonable opinion of a party to this Agreement, is likely materially and adversely to affect the ability of the Defaulting Party to perform all or any of its joint or several obligations under or otherwise to comply with the terms of this Agreement or an agreement referred to in clause 3.1(3);
- (7) the Defaulting Party suspends payment of its debts;
- (8) it becomes unlawful for the Defaulting Party to perform its obligations under this Agreement;
- (9) where the Defaulting Party is a body corporate:
  - (a) the Defaulting Party becomes an externally-administered body corporate under the *Corporations Act 2001*;
  - (b) steps are taken by any person towards making the Defaulting Party an externally-administered body corporate;
  - (c) a controller (as defined in section 9 of the *Corporations Act 2001*) is appointed of any of the property of the Defaulting Party or any steps are taken for the appointment of a controller;
  - (d) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*, or
  - (e) a resolution is passed for the reduction of capital of the Defaulting Party or notice of intention to propose such a resolution is given, without the prior written consent of the other parties to this Agreement.

3.2 On termination of this Agreement under this clause 3 each party retains the rights it had against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.

### 3.3 **Post termination obligations**

If this Agreement is terminated under clause 3.1:

- (1) the Principal must pay to S&B any part of the Service Fees which has accrued prior to the termination but has not been paid (including any unbilled fees for services provided or reimbursable expenses incurred after the last monthly claim).

- (2) except as provided in clause 3.3(1), the termination is without prejudice to any rights which might have accrued to either party prior to the date of termination;
- (3) S&B must deliver to the Principal all books, records, plans, drawings, papers, models and information of any kind relating to the Plant which are the Principal's property. S&B must also furnish to the Principal copies (at the Principal's cost) of all other documents and records in S&B's possession which relate specifically to the Plant;
- (4) S&B must, if requested so to do by the Principal (whether during or after the term of this Agreement), cause its personnel (so far as they are able so to do) engaged in the performance of the Services, to assist the Principal in resolving any dispute (including arbitration proceedings) between it and other contractors on the Plant. S&B will be remunerated for such services at its then prevailing hourly rates payable in advance. S&B will be reimbursed expenses as if this Agreement had not been terminated.

## **4. Duties of S&B**

### **4.1 Scope of duties**

The duties of S&B stated broadly are to provide operation and maintenance services in connection with the Plant. The Services are more particularly described in Schedule 2.

### **4.2 Services and skills**

S&B warrants that it and its Approved Personnel:

- (1) have the necessary skills, competence, experience and capacity to undertake and complete the Services; and
- (2) at all times will apply such skills, competence and experience in the performance of the Services; and
- (3) will perform the Services in a timely manner

### **4.3 S&B to inform Principal**

S&B must from time to time keep the Principal appropriately informed regarding aspects of the Plant which come to the knowledge of S&B in the performance of its duties and of which the Principal ought reasonably to be informed.

### **4.4 Consultations with Principal**

S&B will make its Approved Personnel available for consultation with the Principal (with or without other consultants) at the Plant at least once in each week and on such other occasions as may be reasonably requested by the Principal including a monthly meeting of the Principal's nominated personnel.

### **4.5 Instructions from Principal**

S&B must, at all times, act in accordance with any reasonable and lawful instructions given by the Principal.



#### 4.6 Performance of obligations

In performing the Services S&B will use its best endeavours not knowingly to do or omit to do anything without the Principal's prior approval which causes the Principal to be in breach of any contract which it has entered into in respect of the Plant.

#### 4.7 Conflict of Interest

As soon as any facts or circumstances likely to cause an actual or potential conflict of interest arise in relation to carrying out the Services, S&B will immediately notify the Principal in writing of the conflict and provide details of the facts or circumstances. The Principal will treat the information so provided as confidential.

#### 4.8 Notifiable incidents

- (1) S&B may notify the Regulating Authority(s), and the owners or occupiers of the land, in accordance with the applicable laws, regulations or guidelines, if an incident occurs in relation to public health, water safety, workplace health and safety, environmental contamination or harm in relation to the Plant or the Services.
- (2) S&B will inform the Principal immediately of any notification under clause 4.8(1).

#### 4.9 Indemnity

- (1) S&B indemnifies the Principal against any claim, demand, action or proceeding that may be brought against the Principal in respect of loss, injury or damage to property or persons arising directly out of any negligent act, error or omission by S&B, its servants, agents or employees in the performance of the Services except to the extent that the claim, demand, action or proceeding is attributable to
  - (a) acts or omissions of the Principal;
  - (b) a notification by S&B under clause 4.8 above;
- (c) acts or omissions of others whom S&B does not control.

### 5. Other Consultants

#### 5.1 Authority of S&B

S&B has authority to receive communications, grant approvals and issue instructions on behalf of the Principal in all matters arising for the consideration of the Principal under this Agreement except:

- (1) where such matters are by this Agreement reserved for the Principal personally; or
- (2) in any instance where the Principal gives notice in writing to S&B that it does not have that authority.

## **6. Responsibilities of Principal**

### **6.1 Instructions to S&B**

The Principal must consider promptly all submissions received from S&B and will give its decision and instructions on the submissions so as not to delay S&B in carrying out the Services. All instructions are to be in sufficient detail to define clearly the principal's requirements..

### **6.2 Indemnity of S&B**

The Principal indemnifies S&B against any claim, demand, action or proceeding that may be brought against S&B by reason of S&B acting on the instructions or with the approval or consent of the Principal except to the extent that the claim, demand, action or proceeding is attributable to acts or omissions for which S&B is responsible to the Principal under this Agreement.

## **7. Personnel of S&B**

### **7.1 Approved Personnel**

The Services (other than duties of a clerical nature) must be performed by S&B personnel previously approved by the Principal, which approval will not be unreasonably withheld. The Approved Personnel at the date of this Agreement are identified in Item 4 of Schedule 1.

### **7.2 Subcontracting**

S&B must not subcontract any part or the whole of the Services unless it has:

- (1) made written application in writing to the Principal giving full particulars of the part of the Services it wishes to subcontract and of the proposed sub-contractor; and
- (2) obtained the written approval of the Principal.

## **8. Remuneration and Variations**

### **8.1 Service Fees**

The Service Fees are to be calculated and paid in accordance with Schedule 3.

### **8.2 Changes in the Services**

Variation will not invalidate this Agreement. The Principal may require S&B to perform and S&B must perform any Variation agreed between the parties.

### **8.3 Variations**

If the Principal requires S&B to perform a Variation:

- (1) the Principal must notify S&B in writing of the details of the Variation; and
- (2) S&B must provide the Principal, within 7 days of the notice under clause 8.3(1), with a statement of its proposal for performing the Variation.
- (3) if the Principal directs or S&B identifies the need for urgent works to be carried out that are outside the scope of the Services but which are necessary to protect life, health and safety of persons on site, and/or prevent environmental nuisance or harm, S&B will carry out these works without delay.
- (4) Works carried out under 7.3(3) will be treated as Variations and the Principal will pay S&B for these works on presentation of a valid Tax Invoice for the work. The cost of these works will be calculated at the agreed rates in Schedule 4.

#### 8.4 Valuation and Payment of Variation

If the Principal requires S&B to perform a Variation, the Principal must pay or allow S&B an amount ascertained by applying the hourly rates specified in Schedule 4 to the work performed by S&B in carrying out the Variation, or as agreed between the parties.

### 9. Work Health and Safety

- 9.1 To the extent that S&B and the Principal have overlapping duties under the *Work Health and Safety Act 2011* (or any similar legislation in any other jurisdiction), the Principal must, so far as is reasonably practicable, consult, cooperate and coordinate with S&B in relation to the discharge of those duties.

### 10. Goods and services tax

- 10.1 In this clause:

- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
- (2) words used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member; and
- (4) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

- 10.2 Unless GST is expressly included, the consideration expressed to be payable under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.
- 10.3 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.
- 10.4 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement.
- 10.5 If a payment to a party under this Agreement is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST pursuant to clause 10.3.

## **11. Confidentiality**

- 11.1 Except to the extent that S&B may be required by law or in the performance of the Services to divulge information concerning the Plant, S&B must keep confidential all information concerning the Plant and must ensure that its personnel and employees do likewise.

## **12. Assignment and Subcontracting**

### **12.1 Assignment by Principal**

The Principal must not assign its rights and obligations under this Agreement without the prior approval of S&B. Such approval is not to be unreasonably withheld if the assignee enters into an agreement with S&B to observe and perform the remaining obligations of the Principal under this Agreement.

### **12.2 Assignment by S&B**

S&B must not assign its rights and obligations under this Agreement without the prior approval of the Principal. The Principal will not withhold its approval unreasonably.

### **12.3 Sub-contractors**

S&B may sub-contract for the performance of this Agreement or any part of this Agreement, unless specifically agreed otherwise between the parties. S&B will commonly subcontract laboratory testing to Symbio Pty. Limited unless otherwise directed by the Principal.

## **13. Insurance**

### **13.1 Insurance Policy**

S&B must effect and maintain a policy of professional indemnity insurance in respect of the carrying out of the Services against damage, injury or loss of any kind suffered by the Principal arising from S & B's negligence for an amount not less than \$2,000,000 (**the policy**). The policy is to be effected by either an existing policy (endorsed if necessary to meet the requirements of this clause) or the taking out of a separate Plant specific policy.

### 13.2 **Policy Terms**

The policy must be on normal terms and must be taken out with a reputable insurer..

### 13.3 **Currency of Policy**

The policy must be renewed by S&B as necessary to ensure that there is always a current policy in place to cover all claims made against S&B for a period of 6 years after the completion of the Services and which otherwise complies with the requirements of this clause.

### 13.4 **Evidence of Policy**

S&B must produce evidence of the existence of insurance in conformity with the requirements of this clause upon the Principal's reasonable request.

## 14. **Records**

### 15. **File and sample storage and retrieval**

15.1 S&B will store the Principal's files for up to 7 years following completion of the matter or termination of the Principal's instructions. The Principal authorizes S&B to destroy the Records stored on the Principal's files after 7 years, except files relating to the delivery of training and issuing of qualifications which will be stored for a period of 35 years in accordance with S&B's obligations as a Registered Training Organisation.

15.2 If the Principal wishes to retrieve a file from storage for any reason following completion, the Principal agrees to pay the retrieval costs of \$200.00 for each matter, or such greater sum as S&B may require.

15.3 Samples of water, soil, aggregate and other materials submitted by or on behalf of the Principal for analysis by S&B will be stored at no charge for a brief period (as determined by the sub-contracted laboratory's standard practice but typically for no longer than 2 weeks following the issue of an analytical certificate) from the date of issue of the Laboratory Certificate of Analysis. The Principal authorises S&B to approve the appropriate and safe destruction and disposal of the samples.

### 15.4 **Intellectual Property Rights granted to Principal**

S&B grants to the Principal an irrevocable non-exclusive perpetual royalty-free licence to use the Records and the Intellectual Property related specifically to the Plant for the operation, repair, maintenance, upgrading, marketing or improvement of the Plant.

If, during execution of the Services under these terms and conditions, S&B develops, discovers or first reduces to practice a concept, a product or process which is capable of being patented, then:

- (1) that concept, product or process is and remains the property of S&B; and
- (2) as long as the concept, product or process is used for the purpose of the operation, repair, maintenance, upgrading or improvement of the Plant including, but not limited to, arranging completion of the Services on the termination or novation of these terms and conditions, S&B grants to the Principal and any nominee of the Principal an irrevocable non-exclusive perpetual royalty-free licence to use the concept, product or process..

S&B indemnifies the Principal against all claims by any party arising out of the use of any concept, product or process, the Records or the Intellectual Property related specifically to the Plant.

### 15.5 Principal grants rights

The Principal grants S&B an irrevocable non-exclusive perpetual royalty-free right to use the Principal's Intellectual Property relating to the Plant for the purpose of carrying out the S & B Services and associated activities.

### 15.6 Survival

This clause 15 survives termination, suspension, novation, cancellation, repudiation, rescission, frustration, completion or any other discharge of this Agreement.

## 16. Notices

16.1 A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing. 'Writing' includes emails.

16.2 In addition to any other method of service provided by law, the Notice may be:

- (1) sent by prepaid ordinary post to the address for service of the addressee, if the address is in Australia and the Notice is sent from within Australia;
- (2) sent by prepaid airmail to the address for service of the addressee, if the address is outside Australia or if the Notice is sent from outside Australia;
- (3) sent by email to the email address of the addressee; or
- (4) delivered at the address for service of the addressee.

16.3 A certificate signed by a party giving a Notice or by an officer or employee of that party stating the date on which that Notice was sent or delivered under clause 16.2 is prima facie evidence of the date on which that Notice was sent or delivered.

16.4 If the Notice is sent or delivered in a manner provided by clause 16.2, it must be treated as given to and received by the party to which it is addressed:

- (1) if sent by post from within Australia to an address in Australia, on the 2<sup>nd</sup> Business Day (at the address to which it is posted) after posting;

(2) if sent by post to an address outside Australia or sent by post from outside Australia, on the 5<sup>th</sup> Business Day (at the address to which it is posted) after posting;

(3) if sent by email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or

(4) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

16.5 Despite clause 16.4(3):

(1) an email message is not treated as given or received if the sender's computer reports that the message has not been delivered; and

(2) an email message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact:-

(i) within 3 hours after the transmission ends; or

(ii) by 12 noon on the Business Day on which it would otherwise be treated as given and received

whichever is later.

16.6 If a Notice is served by a method which is provided by law but is not provided by clause 16.2, and the service takes place after 5pm on a Business Day, or on a day which is not a Business Day, it must be treated as taking place on the next Business Day.

16.7 A Notice sent or delivered in a manner provided by clause 16.2 must be treated as validly given to and received by the party to which it is addressed even if:

(1) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent;

(2) the Notice is returned unclaimed; or

(3) in the case of a Notice sent by email, the email message is not delivered or opened (unless the sender's computer reports that it has not been delivered).

16.1 S&B's address for service and email address are:

Name : Simmonds & Bristow Pty Ltd  
Attention : David Bristow  
Address : Unit 2A, 40 Reginald Street, Rocklea Qld 4106  
Email address : To be sent to both [david@simmondsbristow.com.au](mailto:david@simmondsbristow.com.au)  
and [info@simmondsbristow.com.au](mailto:info@simmondsbristow.com.au)

16.2 The Principal's address for service and its email address are set out in Item 1 of Schedule 1.

16.3 A party may change its address for service or email address by giving Notice of that change to each other party.

16.4 If the party to which a Notice is intended to be given consists of more than one person then the Notice must be treated as given to that party if given to any of those persons.

16.5 Any Notice by a party may be given and may be signed by its solicitor.

16.6 Any Notice to a party may be given to its solicitor by any of the means listed in clause 16.2 to the solicitor's business address or email address.

## **17. Dispute resolution**

17.1 If any dispute or difference arises between the parties either during or after the completion of S&B Services or after the termination of this Agreement as to any matter arising under this Agreement, either party may give to the other notice in writing setting out the particulars of the dispute (**notice of dispute**). Giving a notice of dispute is a condition precedent to either party commencing arbitration or court proceedings regarding the dispute.

17.2 Within 14 days of the service of a notice of dispute the parties must confer at least once to attempt to resolve the dispute or to agree on a method of dispute resolution. Each party must be represented at those conference(s) by a person having authority to resolve the issue in dispute.

17.3 If the dispute is not resolved within 7 days of the conference or within such further period as the parties agree, the dispute must be referred to the Australian Disputes Centre (**ADC**) for mediation.

17.4 The mediation must be conducted in accordance with ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC.

17.5 The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated in this clause.

17.6 This clause does not merge upon completion.

## **18. Costs**

18.1 Except as otherwise set out in this Agreement, each party must pay its own costs and expenses in relation to preparing, negotiating, executing and completing this Agreement and any document related to this Agreement.

## **19. Waiver**

19.1 A party's failure to exercise or delay in exercising a power or right does not operate as a waiver of that power or right.

19.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

19.3 A waiver is not effective unless it is in writing.



19.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## **20. Severability**

20.1 Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of that provision in any other jurisdiction

## **21. Governing law and jurisdiction**

21.1 This Agreement is governed by the law of Queensland. The parties submit to the non-exclusive jurisdiction of its Courts.

## **22. No partnership**

22.1 This Agreement does not create or evidence a partnership between the parties.

22.2 No party has authority to act as agent or representative of or in any way bind or commit another party to any obligation.

## **23. S&B Liability**

23.1 Except as expressly provided to the contrary in this Agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Services or to this Agreement are excluded to the extent permitted by law.

23.2 If the consumer guarantees under the *Australian Consumer Law* do not apply to this Agreement S&B's liability for a breach of this Agreement is limited to remedying the breach up to a cost equal to the payments it has received under this Agreement up to the date of the breach. If the breach cannot be remedied, the damages for which S&B is liable will not exceed the amount of the payments it has received under this Agreement up to the date of the breach.

23.3 If a guarantee under the *Australian Consumer Law* applies to this Agreement and the Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, S&B's liability for failure to comply with the guarantee is limited to:

- (1) supplying the services again; or
- (2) paying the cost of having the services supplied again.

23.4 The Principal warrants that it has not relied on:-

- (1) any term, condition or warranty, undertaking, inducement or representation made by or on behalf of S&B which has not been stated expressly in this Agreement; or

- (2) any description or illustrations or specifications contained in any document including any catalogues or publicity material produced by S&B if it is not incorporated in or referred to expressly in this Agreement.

23.5 The Principal warrants that it has provided to S&B all information, documents and instructions necessary for S&B to undertake the Services and acknowledges that S&B will rely on that information and those documents and instructions in providing the Services.

## **24. Force Majeure**

24.1 S&B will not be liable for any delay or failure to perform its obligations if the delay or failure is due to force majeure.

24.2 S&B will notify the Principal as soon as practicable of any anticipated delay due to force majeure. The performance of S&B's obligations under this Agreement will be suspended for the period of the delay due to force majeure.

24.3 If a delay due to force majeure exceeds 30 days, the Principal may terminate this Agreement immediately on providing notice to S&B. If the Principal gives such notice to S&B-

- (1) S&B will refund moneys previously paid by the Principal under this Agreement for which no services have been provided; and
- (2) the Principal will pay S&B a reasonable sum in relation to services rendered or costs and expenses incurred prior to termination for which no payment has been made by the Principal.

## **25. Entire agreement**

25.1 To the extent permitted by law, this Agreement constitutes the entire agreement between the parties and supersedes all prior agreements.

## **26. Execution of separate documents**

26.1 This Agreement is properly executed if each party executes either this document or an identical document. In the latter case, this document takes effect when the separately executed documents are exchanged between the parties.

## **27. Variation**

27.1 A variation of this Agreement will have no force or effect unless it is in writing and signed by each party to this Agreement.

## **28. Further assurance**

28.1 Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

**Schedule 1  
Reference Schedule**

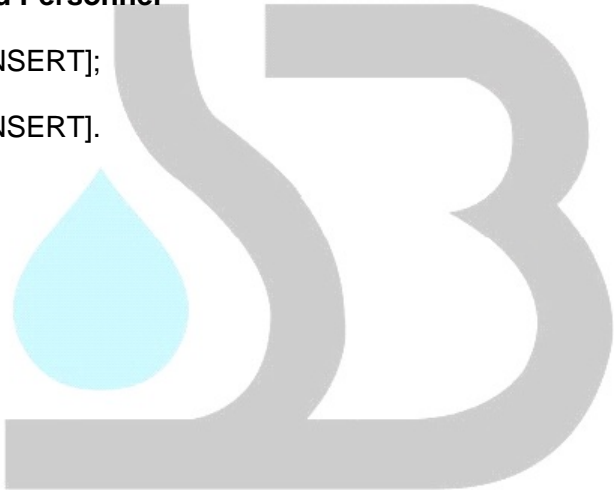
Item 1      **Principal**  
  
                 [INSERT] ABN [INSERT]  
  
                 of [INSERT]  
  
                 email: [INSERT]

Item 2      **Plant**  
  
                 [INSERT]

Item 3      **Term**  
  
                 [INSERT] commencing on [INSERT] (notwithstanding the date of this Agreement)

Item 4      **Approved Personnel**

- (a)      [INSERT];
- (b)      [INSERT].



## Schedule 2

### Specific Duties of S&B

Our operator will maintain the condition of the plants and their immediate surroundings to a high degree of standard and will complete the following tasks:

#### STP & Irrigation Area:

|                             |  |
|-----------------------------|--|
| Pump Station                | Daily visual inspection for odour, pump or alarm, blockages and noise<br>Weekly inspections and tests of pumping station strobe lights and alarms  |
| Inlet Screen                | Daily visual inspection of inlet screen for signs of blockage downstream and daily inspection of pump to ensure it is operating effectively and not producing excessive noise  |
| Aeration Tank               | Observe general tank conditions, colour of water, odours, etc.<br>Daily housekeeping and testing<br>Daily visual inspection of blower  |
| Clarifier                   | Observe the colour of the water, the condition of the weirs and the condition of the scum skimmer and its baffle<br>Daily housekeeping and testing   |
| Disinfection System         | Daily visual inspection of the disinfection system   |
| Sludge Denaturing Equipment | Daily visual inspections of sludge denaturing equipment  |
| Irrigation Area -           | Daily visual inspections of supply infrastructure<br>Daily monitoring of irrigation volume<br>On site weekly testing for free chlorine and conductivity<br>Monthly visual inspections of irrigation area infrastructure and runoff locations |
| On Site Testing             | Daily process testing for pH, conductivity, dissolved oxygen, temperature and turbidity<br>Weekly effluent testing for pH, conductivity, dissolved oxygen, turbidity, ammonia, nitrate and phosphorus  |
| Sampling                    | Collection of monthly, six monthly and annual samples required by the regulatory authorities (eg DERM). Also, during the first six months, the collection of weekly validation samples as required to validate the operation of the plant.   |
| Small Works                 | Conduct small works to improve the appearance and condition of the sewage treatment plant including repairs to leaking pipes, irrigation heads and valves etc.   |

#### WTP:

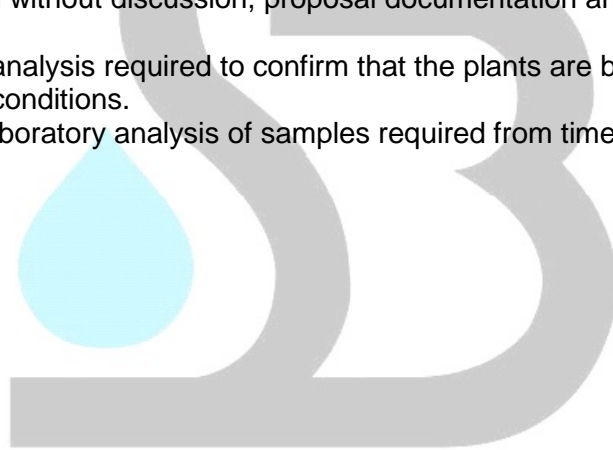
|                      |   |
|----------------------|---|
| RO Systems           | Daily visual inspection of both RO Systems<br>Daily recording of system parameters<br>Back flushing and cleaning of membranes as recommended by manufacturers or as required. |
| Input Filters        | Daily visual inspection of filters<br>Replacement of filter cartridges as required.   |
| 1 & 5 Micron Filters | Daily visual inspection of Filters<br>Daily cleaning of filter cartridges   |

|                     |   |
|---------------------|---|
| Disinfection System | Replacement of filter cartridges as required<br>Daily visual inspection of the disinfection system  |
| Holding Tanks       | Daily visual inspection of the holding tanks  |
| Transfer Pumps      | Daily visual inspection of the transfer pumps   |
| Bore Pump           | Daily visual inspection of the bore pump  |
| Sampling            | Collection of monthly samples required by the regulatory authorities .  |
| Small Works         | Conduct small works to improve the appearance and condition of the water treatment plant including repairs to leaking pipes, irrigation heads and valves etc. |

**Exclusions:**

The following items are not included as part of this operation and maintenance contract.

- Chemicals
- Mechanical and electrical repairs and major maintenance
- Spare parts required for such repairs
- Supply of filter cartridges
- Minor projects (eg tree removal around ponds, submersible pump refurbishment). These minor projects will be accessed on a need to do basis. No project will be commenced without discussion, proposal documentation and prior approval from yourself.
- Laboratory analysis required to confirm that the plants are being operated within the license conditions.
- Any other laboratory analysis of samples required from time to time



## Schedule 3 Remuneration of S&B

The Service Fee at the date of this Agreement is as follows:

Operations & Maintenance Services **\$90.00** per Hour

These fees refer to planned work at pre-determined times.

Additional duties will be carried out in normal hours (8am until 5pm) at the same rate and will generally be scheduled one week in advance. Any work that involves a separate visit will incur a fee for a minimum of 4 hours.

Unplanned work that is urgent and cannot be scheduled will be charged at **\$115.00** per hour during normal business hours. Any work that involves a separate visit it will incur a fee for a minimum of 4 hours.

Unplanned work that is urgent, cannot be scheduled and must be performed outside normal hours will be charged at **\$150.00** per hour for a minimum of 4 hours to cover penalty rates in accordance with the new modern industry award.

Additional work that is outside the scope of this Agreement will be treated as a variation to the purchase order and will be quoted on the basis of the fees set out in the standard terms and conditions.

If due to weather or operating conditions beyond S&B's control we have to place our personnel on call for call-outs to undertake unplanned work, a daily fee of \$30/day/person for week days and **\$50/day/person** for weekends will be levied in addition to any other fees for each day we have our nominated personnel on call.

### 1. **Payments**

- (1) The Principal must pay the Service Fees monthly as follows:
  - (a) On the last Business Day of every month during the term of this Agreement S&B is to submit to the Principal a tax invoice:
    - (i) detailing and valuing the Services performed by S&B for the period to which the claim relates (including details of hours worked); and
    - (ii) for reimbursable expenses pursuant to paragraph 3 of this Schedule 3.
- (2) The Principal must make payment to S&B of the amount invoiced within 14 days.

### 2. **Fee Inclusive of Support Staff**

The Service Fee is inclusive of the cost of all necessary clerical and supportive staff (such as clerks) and all statutory and other costs (such as payroll tax, holiday pay, sickness benefits, long service leave, superannuation and fringe benefits tax). The Principal must provide (at its expense) all necessary facilities such as office accommodation, telephone, facsimile and computer services required for the performance of the Services.

### 3. **Reimbursable Expenses**

The Principal will reimburse S&B for the following expenses plus an administration fee of 15% applied to those expenses:-

- Chemicals
- Mechanical and electrical repairs and major maintenance
- Spare parts required for such repairs
- Minor projects (eg tree removal around ponds, submersible pump refurbishment). These minor projects will be accessed on a need to do basis. No project will be commenced without discussion, proposal documentation and prior approval from yourself.
- Laboratory analysis required to confirm that the plants are being operated within the license conditions.
- Any other laboratory analysis of samples required from time to time

### 4. **Fee Exclusions**

The Service Fee is exclusive of:

- (1) GST;
- (2) Freight of samples
- (3) NATA certification and handling fee of \$30 per batch of samples set for laboratory analyses

### 5. **Variations**

Where the scope does not state a fixed fee or specific hourly rates for the work, or the work is varied by the client, the work will be undertaken on an hourly basis charged at fees based on the rates defined in Schedule 4.

### 6. **Machinery Daily Hire**

On occasions where machinery must be hired to complete small works, these will be charged as invoiced +15%. Quotations will be submitted for approval prior to work commencing

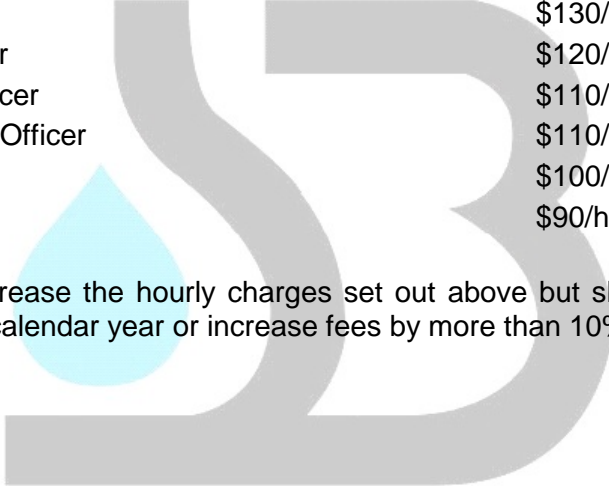
**Schedule 4  
Fee Schedule**

(Clause )

S&B will charge fees in accordance with the following rates:

|                                      |          |
|--------------------------------------|----------|
| Managing Director/Principal Engineer | \$400/hr |
| Project Manager                      | \$280/hr |
| Chief Professional                   | \$280/hr |
| Chief Trainer                        | \$280/hr |
| Specialist Trainer                   | \$250/hr |
| Senior Professional                  | \$240/hr |
| Senior Trainer                       | \$230/hr |
| Experienced Trainer                  | \$210/hr |
| Trainer                              | \$190/hr |
| Specialist                           | \$180/hr |
| Experienced Professional             | \$160/hr |
| Professional                         | \$150/hr |
| Graduate                             | \$130/hr |
| Senior Field Officer                 | \$120/hr |
| Environmental Officer                | \$110/hr |
| Experienced Field Officer            | \$110/hr |
| Field Officer                        | \$100/hr |
| Administrator                        | \$90/hr  |

The consultant may increase the hourly charges set out above but shall not increase fees more than twice in any calendar year or increase fees by more than 10% per annum.





Executed as an agreement.

If the Principal is a company:

**Executed by** )  
**[INSERT]** ) \_\_\_\_\_  
**ACN [INSERT]** ) Sole Director & Secretary/Director/Secretary  
in accordance with s127(1) )  
of the *Corporations Act 2001* ) \_\_\_\_\_  
Director/Secretary

If the Principal is an individual:

**Signed by** )  
**[INSERT]** ) \_\_\_\_\_  
in the presence of: )

\_\_\_\_\_  
Witness

**Executed by** )  
**Simmonds and Bristow Pty Ltd** ) \_\_\_\_\_  
**ACN 010 252 418** ) Sole Director & Secretary/Director/Secretary  
in accordance with s127(1) )  
of the *Corporations Act 2001* ) \_\_\_\_\_  
Director/Secretary

End of document