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Consultancy agreement

Simmonds & Bristow Pty Ltd
ACN 010 252 418

The party identified in Item 1 of Schedule 1



Head Office: 40 Reginald Street, Rocklea, QLD 4106
Postal Address: PO Box 849, Archerfield, QLD 4108
1800 620 690 | +61 7 3434 3800 | Fax: +61 7 3434 3899
info@simmondsbristow.com.au | www.simmondsbristow.com.au

RTO 1735 ABN 33 010 252 418



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Parties

Simmonds & Bristow Pty Ltd ACN 010 252 418
of Unit 2A, 40 Reginald Street, Rocklea Qld 4106
(S&B)

The party identified in Item 1 of Schedule 1
(Principal)

Introduction

It is agreed

1. Definitions and interpretation

1.1 Definitions

In this agreement:

- (1) **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;
- (2) **Force majeure** means an act, omission or circumstance over which S&B could not reasonably have exercised control.
- (3) **Intellectual property** includes patents, patentable inventions, registered and registrable designs, trademarks, names, logos copyright works, moral rights and all improvements to such works;
- (4) **Records** includes hard copy and electronic records;
- (5) **Related Body Corporate, Subsidiary and Holding Company** each has the meaning given in section 9 of the *Corporations Act 2001*;
- (6) **Relevant Intellectual Property** means intellectual property and materials owned or licensed by a party to this agreement, which are used in the provision of the S&B Services.
- (7) **Sampling Instructions** means the instructions set out in Schedule 4 and any subsequent amendments S&B makes to those instructions in the ordinary course of its business.
- (8) **S&B Services** means the consultancy services to be performed by S&B under this agreement as identified in Schedule 2;

1.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and to 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. S&B Services

2.1 The Principal engages S&B to perform the S&B services for the term identified in Item 2 of Schedule 1.

3. Payment

3.1 The consultancy fee is calculated in accordance with Schedule 3.

3.2 The Principal will pay the fee within the time prescribed in the proposal nominated in Schedule 2. If a time is not prescribed then within 14 days of S&B's progress and final tax invoices.

3.3 S&B will submit invoices to the Principal progressively and at least once each month.

3.4 A late payment fee of 2% per month will be charged on all amounts owed to S&B by the Principal not paid within the time limited by clause 3.1. S&B at its sole discretion may suspend the provision of services until the amount in arrears is settled by the client.

3.5 The Principal may apply for credit or an extension of credit from S&B by completing the S&B credit application form. S&B may at its sole discretion extend an amount of credit to the Principal..

3.6 The Principal may pay invoices by cash, electronic funds transfer, credit card or bank transfer.

4. Expenses

4.1 The Principal will reimburse S&B for all reasonable expenses S&B incurs in the performance of the services plus a 15% administration charge of the expenses claimed.

4.2 The expenses that may be claimed, include, for example:

- (1) travel expenses between the S&B premises, the Principal's site and the Principal's premises;
- (2) accommodation and subsistence expenses; and
- (3) all other expenses incurred or required to be incurred by S&B to provide the services promptly and efficiently.

5. Additional services

5.1 The Principal may ask S&B to provide additional services outside the scope of Schedule 2. S&B is not obliged to provide additional services.

5.2 IF S&B agrees to provide additional services it may make an additional charge calculated in accordance with Schedule 3 or as otherwise agreed between the parties.

6. Sub-contractors

- 6.1 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.

7. Licence of intellectual property

- 7.1 S&B and the Principal each grant to the other, a worldwide, royalty-free licence to use their respective Relevant Intellectual Property for the sole purpose of performing S&B Services.
- 7.2 S & B grants to the Principal a royalty free licence to S & B's Relevant Intellectual Property required for the proper implementation and continued operation and maintenance of any plant, systems and things designed or installed under this agreement.
- 7.3 Neither party transfers ownership of any intellectual property to the other pursuant to this agreement.
- 7.4 If any improvements are made to Relevant Intellectual Property during S&B Services, those improvements will be owned by the owner of the Relevant Intellectual Property so improved.

8. File and sample storage and retrieval

- 8.1 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 S&B's obligations as a Registered Training Organisation.
- 8.2 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.
- 8.3 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.

9. Sample Collection Warranty

- 9.1 The Principal warrants that it and its employees and contractors will comply with the Sampling Instructions (Schedule 4) when undertaking sampling and submitting samples for analysis by S&B.
- 9.2 The Principal will be liable for any additional costs S&B incurs as a result of the Principal's breach of clause 9.1.
- 9.3 S&B warrants that all samples it collects will be collected in accordance with its NATA accredited sampling methods or the relevant state Environmental Protection Agency sampling requirements, whichever is the stricter, and it will transport samples in accordance with AS5667.

10. Proper dealing

- 10.1 Each party must act honestly and reasonably in all dealings with the other party.

11. Indemnity

- 11.1 The Principal must indemnify and hold S&B harmless against:

- (1) all claims or demands made against S&B;
- (2) all losses incurred by S&B;
- (3) all liabilities incurred by S&B; and
- (4) all legal costs, on a full indemnity basis, and other expenses S&B incurs in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);

arising directly or indirectly as a result of or in connection with a breach or non-performance of any of the Principal's obligations under this agreement whether express or implied, except to the extent the loss was caused by S&B's negligence or default.

12. Insurance

- 12.1 S&B will maintain professional indemnity insurance with a maximum policy amount as stated in the proposal detailed in Schedule 2 or \$2,000,000, whichever is the greater.

13. Default and termination

- 13.1 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 13.1(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.

13.2 On termination of this agreement under this clause 12 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.

14. Dispute resolution

- 14.1 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 with regard to the dispute.
- 14.2 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.
- 14.3 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.
- 14.4 The mediation must be conducted in accordance with ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC.
- 14.5 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.
- 14.6 This clause does not merge upon completion.

15. No partnership

- 15.1 This agreement does not create or evidence a partnership between the parties.
- 15.2 No party has authority to act as agent or representative of or in any way bind or commit another party to any obligation.

16. Assignment

- 16.1 No party may assign all or part of its interest under this agreement without the others consenting. The parties will not withhold their consent to an assignment unreasonably.

17. S&B Liability

- 17.1 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 consultancy services or to this agreement are excluded to the extent permitted by law.
- 17.2 If the consumer guarantees under the *Australian Consumer Law* do not apply to this agreement S&B's liability for a breach of this contract is limited to remedying the breach up to a cost equal to the payments it has received under this contract 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 contract up to the date of the breach.

17.3 If a guarantee under the *Australian Consumer Law* applies to this agreement and S&B 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.

17.4 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.

17.5 The Principal warrants that it has provided to S&B all information, documents and instructions necessary in order for S&B to undertake the services the subject of this agreement and acknowledges that S&B will rely on that information and those documents and instructions in providing the services.

18. Subcontractors' Charges Act 1974 QLD

18.1 The parties agree that in any provision of services by the consultant where the client is requesting the services so that it can meet the requirements of a contract it has with another party, the Sub-contractors' Charges Act 1974 will apply to this agreement.

19. Building and Construction Industry Payments Act 2004 QLD (BCIP Act)

19.1 The parties acknowledge that the consultant may lodge progress payment claims under the BCIP Act according to the processes and requirements of that Act.

20. Force Majeure

20.1 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.

20.2 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.

20.3 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.

21. GST

21.1 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, that part of the supply is to be treated as a separate supply.

21.2 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.

21.3 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.

21.4 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 parties 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.

21.5 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 21.3.

22. Notices

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

22.2 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.

22.3 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 22.2 is prima facie evidence of the date on which that Notice was sent or delivered.

22.4 If the Notice is sent or delivered in a manner provided by clause 22.2, 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 2nd 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 5th 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.

22.5 Despite clause 22.4(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:-
 - (a) within 3 hours after the transmission ends; or
 - (b) by 12 noon on the Business Day on which it would otherwise be treated as given and received

whichever is later.

22.6 If a Notice is served by a method which is provided by law but is not provided by clause 22.2, 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.

22.7 A Notice sent or delivered in a manner provided by clause 22.2 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).

22.1 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
and info@simmondsbristow.com.au

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

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

22.4 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.

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

22.6 Any Notice to a party may be given to its solicitor by any of the means listed in clause 22.2 to the solicitor's business address or email address.

23. Costs

23.1 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.

24. Entire agreement

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

25. Execution of separate documents

25.1 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.

26. Severability

26.1 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.

27. Governing law and jurisdiction

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

28. Variation

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

28.2 If practical, variations as agreed will be shown as an appendix to this agreement marked "agreed variations".

29. Further assurance

29.1 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

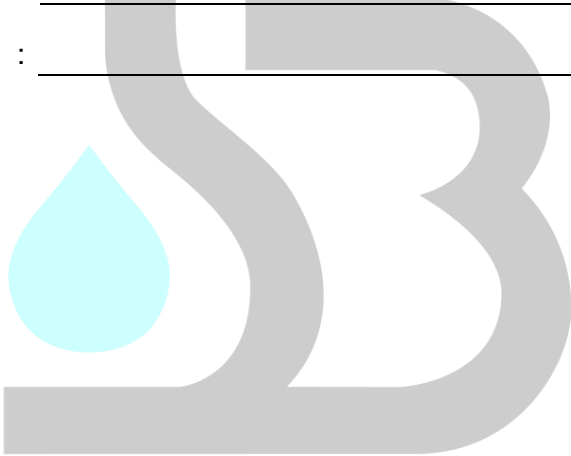
Item 1 Principal

Name : _____
Address : _____

Notice details

Name : _____
Attention : _____
Email : _____
Fax : _____
Phone : _____

Item 2 Term



Schedule 2
S&B Services
(Clause 1.1(8))

Details of services

Proposal Number : _____

Scope of Work : _____

Value of fees : _____

Commencement date : _____

Duration : _____

Accepted by : _____

Authorised signature : _____



Schedule 3 Fee Schedule

(Clause)

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

Managing Director/Principal Engineer	\$400 per hour
Chief Scientist/Engineer	\$250 per hour
Chief Trainer/Project Manager	\$220 per hour
Senior Scientist/Engineer/Trainer	\$180 per hour
Experienced Scientist/Engineer/Trainer	\$135 per hour
Scientist/Engineer/Trainer	\$115 per hour
Industrial Water Plant Operator	\$120 per hour
Plant Operator/Field Officer	\$ 90 per hour
Administrator/Coordinator/Secretary	\$ 75 per hour

The consultant will charge for all time spent performing the work, including, but without limiting the types of activities for which the consultant may charge, time spent drafting and perusing letters and enclosures, making and receiving telephone calls, perusing documents, meeting with you and other people, attending upon regulatory authorities, on other professionals and advisors, attending to inspect and make enquiries, undertaking investigations, researching legal issues, traveling, time spent waiting for appointments, administering a matter and reviewing your file, conferring with other practitioners and other staff within the consultant's office, preparing memoranda, technical drawings, specifications, reports, attending conferences, mediations and all forms of dispute resolution, preparing for conferences and meetings, attending at government departments and registries, undertaking searches and enquiries, supervising support personnel, preparing summaries, schedules, chronologies and other memoranda to assist in performance of the work, drafting, sending and perusing e-mails.

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.

**Schedule 4
Sampling Instructions**

(Clause 9.1)



Executed as an agreement

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

Executed by)
_____)
ACN/ABN _____) Sole Director & Secretary/Director/Secretary
as Principal in accordance with)
s127(1) of the *Corporations Act 2001*) Director/Secretary

