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Simmonds & Bristow Pty Ltd Standard Conditions of Contract

Simmonds & Bristow Pty Ltd
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Simmonds & Bristow Pty Ltd - Standard conditions

1. Definitions and interpretation

1.1 Definitions

In these Standard Conditions and in any Special Conditions:

- (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) **Charges** means the fees and charges for the S&B Services as specified in the Proposal;
- (3) **Claim** means includes all actions, suits, causes of action, arbitrations, claims, demands, proceedings, complaints and objections in respect of any debts, dues, costs, expenses, obligations, liabilities, interest, verdicts, orders or judgments either at law or in equity or arising under a statute and irrespective of whether the matters giving rise to those claims are known to the parties as at the date of the Contract;
- (4) **Commencement Date** means the date on which the parties agree the provision of the S&B Services is to commence;
- (5) **Confidential Information** means any information:
 - (a) disclosed (including inadvertently) by either party in connection with this Contract;
 - (b) disclosed by a third party which either party is required to keep confidential;
 - (c) in respect of Relevant Intellectual Property owned, used by or licensed to either party;
 - (d) in relation to the business or operations of either party, including information of a private, confidential or secret nature concerning the business, technology, systems, ideas, concepts, know-how, techniques, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including computer software, manufacturing processes or other information embodied in drawings or specifications); and
- (e) including and relating to the terms and conditions of the Contract; however, it does not include information which:
 - (i) is or becomes public, except through breach of a confidentiality obligation;
 - (ii) the recipient can demonstrate was already in its possession or was independently developed by the recipient; or
 - (iii) the recipient receives from another person on a non-confidential basis;
- (6) **Consequential Loss** means any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; punitive or exemplary damages; in each case arising from or in connection with the performance of the Contract and whether or not foreseeable at the time of entering into the Contract;
- (7) **Contract** means the agreement between the Principal and S&B made up of:
 - (a) the Proposal;
 - (b) the Standard Conditions;
 - (c) the applicable Special Conditions (if any); and
 - (d) any other document incorporated by reference as forming part of the Contract;
- (8) **Force Majeure** means an act, omission or circumstance over which S&B could not reasonably have exercised control (including without limitation, any act of God, war declared or undeclared, acts of public enemy, riots, civil commotion, invasion, insurrection, acts of restraint of any Government, federal, state or municipal action or regulation, fire, flood, hurricanes, accidents, epidemic, pandemic or quarantine);
- (9) **GST** has the same meaning as in the GST Act;

- (10) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (11) **Information Privacy Act** means the *Information Privacy Act 2009* (Qld);
- (12) **Personal Information** has the meaning given:
- for the purpose of the Information Privacy Act – in that Act; or
 - for the purposes of the Privacy Act – in that Act;
- (13) **Principal** means the person or entity to whom S&B is contracted to provide the S&B Services;
- (14) **Principal's Data** means data owned or supplied by the Principal to which S&B is provided access pursuant to the Contract;
- (15) **Principal's Site** means any site owned, occupied or utilised by the Principal at which S&B Services are provided;
- (16) **Privacy Act** means the *Privacy Act 1988* (Cth);
- (17) **Proposal** means the written proposal from S&B to the Principal setting out terms on which S&B will provide the S&B Services which these Standard Conditions are attached or in which the Standard Conditions are referred to;
- (18) **Proposal Acceptance** means the acceptance form included with the Proposal;
- (19) **Records** includes hard copy and electronic records;
- (20) **Related Body Corporate** has the meaning given in section 9 of the *Corporations Act 2001* (Cth);
- (21) **Relevant Intellectual Property** means all intellectual property rights including patents, patentable inventions, registered and registerable designs, trademarks, names, logos, copyright works, moral rights and all improvements to such works that are necessary for and relevant to the performance of the Contract;
- (22) **Sampling Instructions** means the instructions provided by S&B from time to time to the Principal and any subsequent amendments S&B makes to those instructions in the ordinary course of its business;
- (23) **Service Period** means the period of time during which the S&B Services are provided pursuant to the Contract, as nominated in the Proposal;
- (24) **S&B** means Simmonds & Bristow Pty Ltd ABN 33 010 252 418;
- (25) **S&B Services** means the the services to be provided by S&B set out in the Proposal or the Contract;
- (26) **Special Conditions** means the additional conditions set out in Annexure A to these Standard Conditions;
- (27) **Standard Conditions** means the Simmonds and Bristow Pty Ltd Standard Conditions set out in this document;
- (28) **Variation** means any change to the S&B Services or goods to be supplied under the Contract involving additional work as may be agreed between the parties in writing.

1.2 Interpretation

- (1) Reference to:
- one gender includes the others;
 - the singular includes the plural and to the plural includes the singular;
 - a person includes a body corporate;
 - a party includes the party's executors, administrators, successors and permitted assigns;
 - a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
 - that Statutory Provision as amended or re-enacted;
 - a statute, regulation or provision enacted in replacement of that Statutory Provision; and
 - another regulation or other statutory instrument made or issued under that Statutory Provision; and
 - 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 Contract or affect its interpretation.
- (5) A provision of this Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Contract or the inclusion of the provision in the Contract.
- (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 Contract 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.
- (4) Any reference to a party in this Contract includes, and any obligation or benefit under these conditions will bind or take effect for the benefit of, that party's executors, administrators, successors in title and assigns.

2. Nature of Contract

2.1 When Contract formed

A Contract will be formed between the Principal and S&B when the Principal signs and returns the Proposal Acceptance to S&B or directs S&B to proceed with the S&B Services set out in the Proposal. All Contracts incorporate the Standard Conditions.

2.2 Special conditions

In addition to these Standard Conditions, where the S&B Services comprise the provision of:

- (1) the services of a relief water or waste water treatment plant operator, the Special Conditions - Operation and Maintenance of Treatment Plant and the Special Conditions - Supply of Relief Plant Operator also apply;
- (2) the services of a permanent water or waste water treatment plant operator, with or without incidental maintenance, planned, managed or otherwise of the clients fixed or mobile water and/or wastewater treatment plant, the Special Conditions - Operation and Maintenance of Treatment Plant also apply;
- (3) training services, the Special Conditions - Training Services also apply; and
- (4) the supply of goods (equipment) and/or conduct of minor works to the client's water and/or wastewater infrastructure, the Special Conditions - Minor Works also apply.

2.3 Hierarchy

If there is any inconsistency between the documents which make up the Contract, then the following will prevail in descending order of precedence:

- (1) the Proposal;
- (2) the relevant Special Conditions;
- (3) the Standard Conditions; and
- (4) any other document incorporated into the Contract by reference.

2.4 Entire Agreement

The Contract contains the entire understanding between the parties for the supply of the S&B Services and supersedes all prior agreements, arrangements and communications, whether oral or written. Any quotation, correspondence or other material provided by S&B in the course of dealing with the Principal that does not form part of the Proposal or as an authorised variation to the proposal does not form part of the Contract.

3. Term

- 3.1 A Contract commences on the Commencement Date and continues until the expiration of the Service Period unless terminated earlier in accordance with the Contract.

4. S&B responsibilities

4.1 General obligations

S&B must:

- (1) use its best endeavours to meet all due dates specified in the Proposal or otherwise agreed;

- (2) promptly notify the Principal if it believes it will not be able to meet any due date;
- (3) act honestly and reasonably in its dealings with the Principal;
- (4) notify the Principal in writing as soon as practicable of any fact or circumstance likely to cause an actual or potential conflict of interest that arises in relation to carrying out the S&B Services. The Principal will treat the information so provided as confidential;
- (5) protect people and property, avoid unnecessary interference with the passage of people and vehicles and prevent nuisance and unreasonable noise and disturbance in relation to the S&B Services; and
- (6) provide reports to the Principal at the times and in the manner specified in the Contract.

4.2 Warranties

S&B warrants to the Principal that:

- (1) from the Commencement Date it will supply the S&B Services to the Principal;
- (2) the S&B Services will be rendered diligently and efficiently;
- (3) it will perform the S&B Services in accordance with the Contract and relevant laws and industry standards; and
- (4) if S&B agrees to collect samples, those samples will be collected in accordance with its NATA accredited sampling methods for the relevant state Environmental Protection Agency sampling requirements, whichever is the stricter, and it will transport samples in accordance with AS 5667.

4.3 Additional Services

- (1) The Principal may ask S&B to provide additional services outside the scope of the Proposal. S&B is not obliged to provide those additional services;
- (2) If S&B agrees to provide additional services, it may make an additional charge calculated in accordance with the Proposal or as otherwise agreed between the parties.

4.4 Deemed acceptance of Services

The S&B Services will be deemed to have been performed in accordance with clauses 4.2(2) and (3) unless the Principal

notifies S&B within 2 days of the provision of any S&B Services of:

- (1) the nature of the S&B Services provided by S&B that the Principal considers to be in breach of clause 4.2; and
- (2) the basis for the Principal's view that the S&B Services rendered were in breach of clause 4.2.

5. Assignment and Sub-contracting

5.1 Assignment by Principal

- (1) The Principal must not assign its rights and obligations under the Contract without the prior approval of S&B. Such approval will not be unreasonably withheld if the assignee enters into an agreement with S&B to observe and perform the remaining obligations of the Principal under the Contract.
- (2) The agreement required under clause 5.1(1) will be prepared by S&B's nominated solicitors at the assignee's cost.

5.2 Assignment by S&B

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

5.3 Sub-contracting permitted

S&B may sub-contract all or part of its performance obligations under the Contract unless otherwise agreed in writing by the parties.

5.4 Personnel

S&B must ensure that any sub-contractor complies with all obligations of S&B under the Contract. S&B is responsible for all acts and omissions of its sub-contractors.

6. Principal's obligations

- 6.1 The Principal must act honestly and reasonably in its dealings with S&B.
- 6.2 The Principal must take out and maintain those policies of insurance that would be held by a reasonably prudent business in the position of the Principal.
- 6.3 The Principal:
 - (1) must provide all access, information, data and demonstrations required by S&B to allow S&B to provide the S&B Services;

- (2) must ensure all information and data supplied by it and all representations made by it, whether in writing or verbally, are complete and accurate; and
- (3) acknowledges that S&B will rely on the information, data, demonstrations and representations in providing the S&B Services.

7. Payment

- 7.1 The Principal must pay the fees and expenses in the amount and at the rate specified in the Proposal.
- 7.2 Unless otherwise specified in the Proposal, S&B will submit invoices to the Principal progressively each month and will forward to the Principal an invoice in electronic form. Each invoice must be paid in cleared funds within 14 days of any progress or final invoice (or such lesser period as is specified in the Proposal).
- 7.3 Unless otherwise specified in the Proposal, the Principal will reimburse S&B for all reasonable expenses S&B incurs in the performance of the S&B Services (including travel expenses between the S&B premises, the Principal's site and the Principal's premises and accommodation and subsistence expenses) plus a 15% administration charge calculated on the expenses claimed.
- 7.4 If the Principal disputes the whole or any portion of an invoice submitted by S&B, the Principal must pay the portion of the amount stated in the invoice that is not in dispute and must notify S&B in writing (within seven days of receipt of the invoice) of the reasons for disputing the remainder of the invoice.
- 7.5 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 required by clause 7.2. S&B at its sole discretion may suspend the provision of the S&B Services until the amount in arrears is paid in full by the Principal.
- 7.6 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.
- 7.7 The Principal may pay invoices by electronic funds transfer, credit card or bank transfer. A surcharge of 1.4% will be

added to the total amount of payments made using a credit card or a debit card.

8. Work Health and Safety

- 8.1 To the extent that S&B and the Principal have overlapping duties under the *Work Health and Safety Act 2011* (Qld) (or any similar legislation in any other jurisdiction), the Principal must, so far as is reasonably practicable, consult, co-operate and co-ordinate with S&B in relation to the discharge of those duties.
- 8.2 Where S&B personnel attend any site at the request of or on behalf of the Principal, the Principal must:
 - (1) comply with all the Principal's obligations in relation to S&B's personnel pursuant to relevant legislation, including legislation relating to workplace health and safety, discrimination and harassment;
 - (2) establish and maintain a safe work environment and safe systems of work;
 - (3) communicate applicable safe work procedures to S&B personnel;
 - (4) provide appropriate induction to S&B personnel;
 - (5) promptly inform S&B of any unusual workplace risk or practice or of any change in site or safety conditions that may present a hazard to any S&B personnel;
 - (6) comply with any reasonable requests made by S&B or S&B personnel to ensure the workplace health and safety of S&B personnel;
 - (7) allow S&B to enter into any site or any workplace where any S&B personnel are providing S&B Services or is to provide S&B Services to ensure compliance with relevant legislation, including legislation relating to workplace or occupational health and safety, discrimination and harassment;
 - (8) notify S&B as soon as practicable of any event that may give rise to a claim under any insurance policy, statutory indemnity or self-insurance arrangement that relates to S&B personnel;
 - (9) notify S&B as soon as practicable of any injury or incident involving S&B personnel where the health and safety of any person was put at risk, including any near misses.

9. Confidentiality

- 9.1 A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- 9.2 A party is not in breach of clause 9.1 in circumstances where it is legally compelled to disclose the other party's Confidential Information or where disclosure of the Confidential Information is necessary for the performance of the S&B Services.
- 9.3 Each party must take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of the Contract, do not make public or disclose the other party's Confidential Information.
- 9.4 This clause survives the termination of the Contract.

10. Privacy

- 10.1 If S&B collects or has access to Personal Information in order to perform the Contract, when performing this Contract, S&B must:
- (1) if the Principal is an 'agency' for the Information Privacy Act, other than for chapter 3 of the Information Privacy Act — comply with those parts of Chapter 2 of the Information Privacy Act which are applicable to the Principal, as if S&B were the Principal; or
 - (2) otherwise — comply with the Australian Privacy Principles in the Privacy Act.
- 10.2 S&B must:
- (1) not transfer any Personal Information collected or accessed in connection with the Contract, outside of Australia, except with the prior written consent of the Principal; and
 - (2) take any steps to prevent unauthorised use or disclosure of Personal Information collected or accessed in connection with the Contract that are reasonably notified by the Principal.

11. Environmental incident reporting

- 11.1 If, in the course of providing the S&B Services or otherwise during the Service Period, S&B or any of its employees or sub-contractors becomes aware of any event or circumstance (**Incident**) which, in S&B's reasonable opinion requires

notification to a government agency or department, S&B will give the Principal notice of that Incident (**Incident Notice**) as soon as practicable.

- 11.2 Within 24 hours of receipt of an Incident Notice, the Principal must:
- (1) provide S&B with written acknowledgement of receipt of the Incident Notice; and
 - (2) notify the relevant government agency or department of the Incident.
- 11.3 If the Principal fails to acknowledge receipt of the Incident Notice within 24 hours of receipt, S&B will notify the relevant agency or department of the Incident in accordance with its statutory obligation to do so.
- 11.4 An Incident Notice can be given either:
- (1) in writing by SMS-Text, email, facsimile or letter; or
 - (2) verbally.

12. Intellectual Property

- 12.1 The Principal grants to S&B a worldwide, royalty-free non-exclusive licence to use its Relevant Intellectual Property for the sole purpose of performing the S&B Services.
- 12.2 S&B grants to the Principal a royalty free non-exclusive licence to use S&B's Relevant Intellectual Property so far as it may be required for the proper implementation and continued operation and maintenance of any plant, systems and things designed or installed by S&B under the Contract.
- 12.3 Neither party transfers ownership of or grants any other right to use any Relevant Intellectual Property to the other pursuant to the Contract.
- 12.4 If any improvements are made to Relevant Intellectual Property as part of the S&B Services, those improvements will be owned by the owner of the Relevant Intellectual Property so improved, unless agreed otherwise.

13. S&B liability

- 13.1 Except as expressly provided to the contrary in the Contract, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the S&B Services or

to the Contract are excluded to the extent permitted by law.

13.2 If the consumer guarantees under the *Australian Consumer Law* do not apply to the Contract, S&B's liability for a breach of the Contract is limited to an amount equal to the payments it has received under the Contract up to the date of the breach..

13.3 If a guarantee under the *Australian Consumer Law* applies to this Contract and the 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, at S&B's sole discretion:

- (1) supplying the S&B Services again; or
- (2) paying the cost of having the S&B Services supplied again.

13.4 S&B is not liable for any Consequential Loss.

13.5 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 the Contract; 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 the Contract.

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

14. Building Industry Fairness (Security of Payment) Act 2017 (Qld)

14.1 The parties agree that in any provision of services by S&B where the Principal is requesting the services so that it can meet the requirements of a contract it has with another party, the *Building Industry Fairness (Security of Payment) Act 2017 (Qld)* will apply to this Contract.

15. Insurance

15.1 Professional indemnity and public risk insurance policies

S&B must effect and maintain:

- (1) a professional indemnity insurance policy for an amount not less than \$2,000,000 per occurrence and in the aggregate;
- (2) a public and product liability insurance policy for an amount not less than \$20,000,000;
- (3) a contract works insurance policy for an amount of not less than \$500,000;
- (4) workers compensation insurance policy applicable to the State in which the work is performed; and
- (5) comprehensive motor vehicle insurance policy for each motor vehicle owned by S&B that may be used in performing the S&B Services.

The policies are to be effected by either an existing policy (endorsed if necessary to meet the requirements of this clause) or effecting a separate project or plant-specific policy.

The Principal may nominate an alternate amount of insurance for either or both policies, which S&B may accept and provide at its sole discretion.

15.2 Currency of policies

S&B will renew the policies as necessary to ensure that there is always a current professional indemnity insurance policy in place for a period of 6 years after the completion of the S&B Services and which otherwise complies with the requirements of this clause.

15.3 Evidence of policies

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

16. Indemnities

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

- (1) all Claims made against S&B (including any Claim that may arise in consequence of a notification made pursuant to clause 11);
- (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 the Contract whether express or implied, except to the extent the loss was caused by S&B's negligence or default.

16.2 The indemnity provided in clause 16.1 extends to any Claim, liability or loss suffered by S&B by reason of S&B acting on the instructions or with the approval or consent of the Principal.

16.3 This clause survives the termination of the Contract.

17. File and sample storage and retrieval

17.1 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 authorises 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.

17.2 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 (ex GST) for each matter,.

17.3 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.

18. Default and Termination

18.1 A party may terminate this Contract 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 the Contract, 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 the Contract 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 the Contract are parties, in existence or entered into after the Contract, 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 the Contract, 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 the Contract or an agreement referred to in clause 18.1(3);
- (7) the Defaulting Party suspends payment of its debts;
- (8) it becomes unlawful for the Defaulting Party to perform its obligations under the Contract;
- (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 the Contract.

18.2 On termination of the Contract under this clause 18, 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.

19. Dispute resolution

19.1 If any dispute or difference arises between the parties either during or after the completion of S&B Services or after the termination of the Contract as to any matter arising under this Contract, 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.

19.2 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.

19.3 If the dispute is not resolved within 7 days of the conference or within such further period as the parties agree, a party may commence proceedings in a court of competent jurisdiction or the parties may agree to refer the dispute to the Australian Disputes Centre (**ADC**) for mediation.

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

19.5 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.

19.6 Nothing in this clause prevents a party applying to a court for urgent interlocutory relief.

19.7 This clause does not merge upon completion.

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, in whole or in part, to Force Majeure.

20.2 S&B will notify the Principal as soon as practicable of any anticipated delay or inability to perform due to Force Majeure. The performance of S&B's obligations under the Contract 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 the Contract as soon as practicable 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 the Contract for which no S&B Services have been provided; and
- (2) the Principal will pay S&B a reasonable sum in relation to S&B 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) words used 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;
- (2) 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

- (3) 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 the Contract for any supply made under or in connection with the Contract does not include GST.

21.3 To the extent that any supply made under or in connection with the Contract 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 the Contract.

21.5 If a payment to a party under the Contract 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. All notices given under this Contract must be in writing and may be delivered in person or by mail or by email.

22. Notices

22.1 A notice or other communication connected with the Contract (**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 4th 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 7th 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.

22.1 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).

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 the Proposal Acceptance Schedule.

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.

23. General

23.1 Costs

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

23.2 No partnership

- (1) The Contract does not create or evidence a partnership or joint venture between the parties.
- (2) No party has authority to act as agent or representative of or in any way bind or commit another party to any obligation.

23.3 Severability

Any provision of the Contract 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 the Contract or affect the validity or enforceability of that provision in any other jurisdiction.

23.4 Variation

A variation of the Contract will have no force or effect unless the variation is agreed in writing and signed by each party to the Contract.

23.5 Further assurance

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

23.6 Waiver

- (1) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (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.
- (3) A waiver is not effective unless it is in writing.
- (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.

23.7 Continuing obligations

Each obligation and warranty of a party (except an obligation fully performed at completion) continues in force despite completion.

23.8 Time of the essence

- (1) Time is of the essence of the Contract.
- (2) If the parties agree to vary a time requirement, the time requirement so varied is of the essence of the Contract.

- (3) An agreement to vary a time requirement must be in writing.

23.9 Governing law and jurisdiction

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

Annexure A Special Conditions

(Refer clause 1.1(26))

Special conditions – Supply of Relief Plant Operator

1. Definitions

In these Special Conditions:

- (1) **S&B Operator** means an officer, employee, agent or subcontractor nominated by S&B to provide S&B Services;
- (2) **S&B Operator Base** means the town or city in which an S&B Operator usually resides; and
- (3) **Working Day** means a day on which the S&B Services are to be provided by an S&B Operator to the Principal.

2. S&B responsibilities

2.1 S&B will provide the Principal with monthly reports as to the progress of the provision of the S&B Services.

2.2 S&B is responsible, as applicable, for:

- (1) the payment of all amounts due to any S&B Operator under the terms of any legislation, industrial instrument or contract;
- (2) the payment of any leave entitlements due to any S&B Operator, including annual leave, personal leave, parental leave and long service leave;
- (3) subject to these conditions, the deduction and remittance of all applicable taxes from payments due to any S&B Operator, including income tax, fringe benefits tax and payroll tax; and
- (4) maintaining a policy of workers' compensation insurance where this is

required by legislation in the relevant jurisdiction.

3. Principal's responsibilities

3.1 The Principal will make available to the S&B Operator all equipment and facilities necessary for the S&B Operator to provide the S&B Services including:

- (1) tools;
- (2) any necessary safety equipment, excluding personal protective equipment (PPE);
- (3) field testing equipment as necessary;
- (4) Vehicle/s as required; and
- (5) internet access.

3.2 The Principal must reimburse S&B for airline flights for the S&B Operator engaged in providing S&B Services:

- (1) from the S&B Operator Base to the Principal's Site on the first day of any period in which the S&B Operator is scheduled to provide S&B Services at the Principal's Site; and
- (2) from the Principal's Site to the S&B Operator Base on the last day of any period during which the S&B Operator has performed S&B Services or was scheduled to provide S&B Services; and
- (3) to and from the Principal's Site and S&B Operator Base as provided for in the S&B Proposal or as agreed in writing from time to time for personnel rest and recovery during the provision of the services.

3.3 While the S&B Operator is at the Principal's Site, the Principal must arrange and pay for:

- (1) all meals;
- (2) suitable accommodation including ensuite facilities;
- (3) transfer of the S&B Operator between the accommodation and the Principal Site; and
- (4) transfer of the S&B Operator between the local commercial airport and the accommodation.

If the Principal fails or elects not to provide these services & facilities, S&B will do so on the Principal's behalf and will invoice to the Principal for the provision of the services & facilities at cost plus 15%.

4. Labour hire licence

- 4.1 The Principal acknowledges that the provision of the S&B Operator to the Principal by S&B under this Contract (Labour Hire Services) may be regulated under the *Labour Hire Licensing Act 2017* (Qld) and associated regulations (Labour Hire Law).
- 4.2 S&B warrants that it holds the necessary licence (Labour Hire Licence) to enable the lawful provision of the Labour Hire Services to the Principal.
- 4.3 The Principal agrees to do all things necessary to enable S&B to comply with its obligations under the Labour Hire Law and the terms and conditions of its Labour Hire Licence including promptly when requested, providing details of the following:
- (1) the S&B Operator's accommodation during the Service Period;
 - (2) any notifiable incidents under the *Work Health and Safety Act 2001* (Qld) involving the S&B Operator during the Service Period; and
 - (3) any services (such as meals and transport) provided to workers and any fees charged for those services during the Service Period.

5. Placement

5.1 If one or more S&B Operators supplied under this Contract is employed or engaged in carrying out functions which are the same as or similar to the functions an S&B Operator carries out under the terms of this Contract:

- (1) by or for the Principal or a Related Body Corporate of the Principal (other than S&B or a Related Body Corporate of S&B); and
- (2) within the period beginning on the date of this Contract and terminating 6 months after the date when this Contract terminates;

then the Principal will pay S&B a placement fee, on demand, of \$15,000 for each S&B Operator to whom this clause applies.

5.2 The Principal accepts that the placement fee payable under clause 5.1 above is reasonable having regard to the cost to S&B of replacing the S&B Operator and the convenience to the Principal of a trained operator carrying out the relevant functions.

Special conditions – Operation and Maintenance of Treatment Plant

1. Definitions

- 1.1 In these Special Conditions:
- (1) **Approved Personnel** means those of S&B's personnel approved by the Principal in accordance with these Special Conditions who, at the date of this Contract, are set out in the Proposal;
 - (2) **Plant** means the water or waste water treatment plant more particularly described in the Proposal.

2. Holding Over

- 2.1 If S&B continues to provide the S&B Services after the expiry of the Contract with the Principal's approval, then it does so on a monthly appointment:
- (1) which either party may terminate on at least one month's notice to the other party ending on any day; and
 - (2) for the fee rate payable immediately before the expiry of the Contract.
- 2.2 The monthly appointment will be on the same terms as this Contract except for those changes which are necessary to make this Contract appropriate for a monthly appointment.
- 2.3 The parties can agree to extend the term by variation of the term between the parties in writing prior to the expiration of the contracted term. The fee rate payable for the additional term or terms will also be agreed in writing with each extension.

3. S&B responsibilities

- 3.1 S&B must:
- (1) 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;
 - (2) 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 reasonably be requested by the Principal including a monthly meeting of the Principal's nominated personnel;
 - (3) at all times, act in accordance with any reasonable and lawful instruction given by the Principal; and

- (4) use its best endeavours not to do or omit to do anything, without the Principal's prior approval, which causes the Principal to breach any contract it has entered into regarding the Plant.

4. Notifiable incident

- 4.1 When required to do so by law, S&B must notify any responsible regulating authority or person of any incident in the discharge of the S&B Services.
- 4.2 S&B will inform the Principal as soon as practicable of any notification made under the previous sub-clause.

5. 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 S&B Services. All instructions are to be in sufficient detail to define clearly the Principal's requirements.

6. Work Tasking, Scheduling and Work Health and Safety

- 6.1 The Principal must not, without the prior written approval of S&B, allocate tasks or responsibilities to any S&B personnel or require any S&B personnel to perform or participate in work, other than in the provision of the S&B Services.
- 6.2 The Principal must not, without the prior written approval of S&B, allocate work rosters to any S&B personnel. All additional time and call out worked at the direction of the Principal are to be paid by the principal at the agreed rates in the proposal.
- 6.3 S&B must take reasonable steps to ensure that, at all times, S&B personnel, when on the Principal's Site:

- (1) act in accordance with all reasonable directions of the Principal in relation to health and safety and environmental matters; and
- (2) minimise disruption to operations at the Principal's Site.

7. Default and termination

- 7.1 If the Contract is terminated under clause 18.1 of the Standard Conditions:
 - (1) the Principal must pay to S&B any part of the Fees which have accrued prior to the termination but have 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 18.1(3), 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; and
- (4) S&B must, if requested so to do by the Principal (whether during or after the term of the Contract), cause its personnel (so far as they are able so to do) engaged in the performance of the S&B 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 the Contract had not been terminated.

8. Personnel of S&B

- 8.1 The S&B Services (other than duties of a clerical nature) must be performed by S&B personnel approved by the Principal, which approval will not be unreasonably withheld.

9. Variations

9.1 Changes in the Services

- (1) Clause 4.3(1) of the Standard Conditions does not apply.
- (2) Variation of the S&B Services will not invalidate the Contract. The Principal may require S&B to perform and S&B must perform any Variation agreed between the parties.

9.2 Variations

- (1) If the Principal requires S&B to perform a Variation:
 - (a) the Principal must notify S&B in writing of the details of the Variation; and
 - (b) S&B must provide the Principal, within 7 days of the notice under clause 9.2(1)(a), with a statement of

its proposal for performing the Variation.

- (2) If the Principal directs or S&B identifies the need for urgent works to be carried out that are outside the scope of the S&B Services but which are necessary to protect life, health or safety of persons on the Principal's Site, and/or prevent environmental nuisance or harm, S&B will carry out these works without delay.
- (3) Works carried out under clause 9.2(2) above 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 rates agreed in the Proposal.

10. Records and reports

10.1 Except where S&B is providing a relief plant operator, S&B will provide the Principal with copies of the Plant log sheets, laboratory compliance testing and maintenance records monthly by way a monthly service report.

11. Intellectual property rights granted to Principal

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

11.2 If, during execution of the S&B Services, S&B develops, discovers or first reduces to practice a concept, 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 arranging completion of the S&B 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.

Special conditions – Training Services

1. Definitions

1.1 In these Special Conditions:

- (1) **Nominated Learners** means those people identified by the Principal and referred to in the Proposal;
- (2) **Training Fee** means the amount set out in the Proposal.

2. Term

2.1 If no term is identified in the Proposal the Service Period expires 2 years from the Date of Commencement. However, either party may cancel this Contract by notice in writing to the other before the Commencement Date. Payment of Training Fees at the time of cancellation will be in accordance with Clause 5.4.

3. Government

3.1 In performing the S&B Services, S&B will comply with all requirements of any government programme contributing to the payment of fees. If there is any conflict between the terms of this Contract and applicable government programme, the government requirements will prevail.

4. Principal's obligations

4.1 The Principal warrants that each Nominated Learner will comply with all S&B policies which have been developed to satisfy statutory requirements and requirements of government training programmes. Those policies include, for example, Code of Conduct, Code of Practice, Human Resources Policy, Complaint and Appeal Policy, Access and Equity Policy, Work Health and Safety Policy.

4.2 The Principal warrants that the Principal and each Nominated Learner will comply with the requirements of any government programme contributing to the payment of the Training Fee.

5. Payment

5.1 Where government is paying the whole or part of the Training Fee, S&B will accept payment according to the government funding programme under which the payments are to be made. Otherwise, the provisions of this clause 5 will apply.

5.2 The provisions of the following S&B documents will apply to this Contract and

the Principal agrees that copies of these documents have been provided to it:

- (1) Qld User Choice Enrolment/Induction Check-List
- (2) Learner Orientation Booklet
- (3) Special Conditions for Training under Qld User Choice
- (4) Special Conditions for Training under Qld User Choice (Local Councils Only)
- (5) Milestone Plan.

5.3 The Principal will pay the Training Fee, or the balance of the Training Fee after any government contribution is deducted, at least 14 days before the S&B Services commence unless the Principal and S&B agree otherwise.

5.4 Subject to clauses 5.5 and 5.6 below and subject to refund requirements of any applicable government programme, S&B will refund fees as follows:

- (1) for cancellations received in writing 14 days before the training is due to begin – full refund
- (2) for cancellations received in writing between the date 14 days before the training is due to begin and the date 7 days before the training is due to begin – 50% refund
- (3) for cancellations received later than the date 7 days before the training is due to begin – no refund
- (4) for withdrawals after training begins – no refund.

5.5 S&B may deduct from refunds any actual and reasonable costs S&B incurs before the cancellation.

5.6 If government is paying or contributing to the payment of the training fee, S&B will comply with all government requirements relating to the payment of fees and the refunding of fees.

5.7 S&B encourages the Principal to substitute a new learner for one of the Nominated Learners before the training is due to begin if the Principal wishes to do so. Substitutions are not permitted after the S&B Services begin.

6. S&B liability

6.1 S&B will comply with the standards required under the following statutory schemes:

- (1) Standards for registered training organisations (RTOs)

- (2) Department of Employment, Small Business and Training (QLD) User Choice 2020-21 Policy (and any later replacement policy);
- (3) Department of Employment, Small Business and Training (QLD) Pre-qualified Supplier Policy 2020-21 for QLD VET Investment Programs (or any later replacement policy).
- (4) Department of Employment, Small Business and Training (QLD) Registered Training Organisation User Choice Skills Assure Supplier 2020-21 Policy
- (5) Department of Employment, Small Business and Training (QLD) Skills Assure Supplier Policy 2020-21 for Queensland VET Investment Programs

Special conditions - Minor Works

1. Provision of goods

1.1 The parties acknowledge and agree that, to the extent the Proposal provides for the supply of goods and associated S&B Services, clause 4.2 of the Standard Conditions do not apply to those goods and associated S&B Services, and the provisions in these Special Conditions apply.

2. Definitions

2.1 In these Special Conditions:

- (1) **Date for Practical Completion** means the last day for completion specified in the Proposal (if any);
- (2) **Goods** means any goods to be supplied by S&B, as detailed in the Proposal;
- (3) **Practical Completion** means when the Work is complete other than minor omissions and defects which will not prevent or impair the normal use of the Goods; and
- (4) **Works** means the supply of Goods and associated S&B Services to the Principal's Site, as set out in the Proposal.

3. Warranties

3.1 S&B warrants that:

- (1) the Goods will conform to the description provided by S&B, any applicable drawings and specifications agreed with the Principal;
- (2) the Goods will be of merchantable quality and are fit for the purpose for which they are supplied;
- (3) the Goods will be new (unless otherwise specified in the Proposal);
- (4) it will obtain the standard manufacturer's warranties with respect to the Goods and, on request, will assign the benefit of these warranties to the Principal and provide copies of these warranties to the Principal;
- (5) the Principal will receive title to the Goods free from all liens and encumbrances;
- (6) it will diligently carry out the Works and will maintain reasonable progress in the performance of the Works;
- (7) the Works will be carried out appropriately, with reasonable skill and diligence and in accordance with the Proposal.

4. Approvals and access

4.1 The Principal must:

- (1) obtain any necessary permissions, consents and approvals in connection with Works; and
- (2) give S&B access to the Principal's Site sufficient to enable S&B to complete the Works.

5. Title and risk

- 5.1 Title in the Goods passes to the Principal upon payment of S&B's invoice in respect of the Goods.
- 5.2 Risk in the Goods passes to the Principal when the Goods are delivered to the Principal's Site.

6. Variations

- 6.1 Clause 4.3(1) of the Standard Conditions does not apply.
- 6.2 S&B and the Principal may agree to vary the Works, provided that before S&B commences to provide Goods or S&B Services other than those set out in the Proposal, the details of any variation must be documented in writing.

7. Assignment and subcontracting

7.1 S&B may assign or subcontract the Work and the supply of Goods.

8. Time for completion/variations

8.1 S&B will complete the Works by the Date for Practical Completion (plus any extensions of time granted by the Principal). S&B is entitled to an extension of time for delays caused by Force Majeure or by delays in sourcing Goods, inclement weather and industrial disturbances.

8.2 If the physical conditions at the Principal's Site or the Principal's Site surroundings differ from those contemplated in the Proposal or described to S&B, S&B will be entitled to an extension of time for delays and to reimbursement of any costs incurred as a result of the Principal's Site conditions.

9. Clean Up

9.1 S&B will keep the Principal's Site and Works clean and tidy and remove all rubbish and surplus material from the Principal's Site at the completion of the Works.

10. Payment

10.1 At the times specified in the Proposal (and if no times are specified, on a monthly basis), S&B may submit a payment claim to the Principal, supported by relevant information to allow the Principal to assess the payment claim.

10.2 If the Principal determines that the amount to be paid differs from the amount set out in any payment claim, the Principal must issue a payment schedule within 5 Business Days setting out the amount to be paid and the basis for the Principal's decision to pay an amount other than the amount set out in the payment claim.

10.3 Any payments due to S&B must be made within the period specified in the Proposal, or, if no period is specified in the Proposal, within 14 days of the date of a payment claim.