SUB-CONSULTANT AGREEMENT

SMEC

Member of the Surbana Jurong Group

This Sub-Consultancy Agreement is made this _____ day of _____, 2019 ("Effective Date") by and between:

SMEC International Pty Ltd of "20 Berry Street North Sydney NSW 2060, Australia" ("SMEC" or "Consultant")

and

[SUB-CONSULTANT] a company incorporated in Afghanistan of "ADDRESS" (the "Sub-Consultant").

1. Nature of Engagement

1.1. SMEC engages the Sub-Consultant to provide the services set out in Schedule 2 (the "Services") in accordance with this Agreement.

1.2. The conditions of this contract comprise five (5) parts: Schedule 4, General Conditions, Schedule 1, Schedule 2 and Schedule 3 (the "Agreement"). Where there arises an inconsistency or ambiguity between the provisions in those parts of this Agreement, the order of precedence to resolve the inconsistency or ambiguity is the order set out in this Clause 1.2.

1.3. Where a copy or any extract of SMEC's contract (the "Main Contract") with a client ("Client") is incorporated into this Agreement as Schedule 4:

a) the Sub-Consultant must generally perform its obligations under this Agreement so as to ensure that (to the extent relevant) SMEC complies with its obligations under that Main Contract; and

b) if it is expressly stated (in Schedule 4) that certain Clauses from the Main Contract are to be incorporated in, or replace Clauses in, this Agreement then those Clauses form part of this Agreement and must be strictly complied with as though references to the Client refer to SMEC (unless the context otherwise requires) and references to SMEC refer to the Sub-Consultant. The Sub-Consultant must comply with any additional requirements specified in Schedule 4.

1.4. The Sub-Consultant acknowledges and agrees that it has reviewed Schedule 2 and that:

a) the SMEC Material is suitable, appropriate and adequate to perform the Services, and the Sub-Consultant's deliverables to be created pursuant to this Agreement will be suitable, appropriate and adequate; and

b) it can meet each and every deliverable in accordance with the Program set out in Schedule 2.

1.5. The Sub-Consultant has represented and warrants that:

a) it is a skilled and competent professional in the particular fields relevant to the Services;

b) it will perform the Services to the standard of skill, care and diligence expected of a skilled and competent professional practising in the particular field relevant to the Services;

c) it possesses all relevant authorisations, permits and licences necessary in order to achieve completion of the Services; and

d) it has made its own review, assessment, investigation, interpretation and assumption of all of the risks involved in performing the Services and that the Service Fee is accurate and sufficient and includes all necessary allowances to accept the risks involved in performing the Services in accordance with the terms of this Agreement.

1.6. The Sub-Consultant acknowledges that SMEC has entered into this Agreement in specific reliance on the representations and warranties set out in Clause 1.5.

1.7. The Sub-Consultant:

a) must not represent itself or allow itself to be represented as an employee or agent of SMEC or the Client;

b) does not by virtue of this Agreement become an employee or agent of SMEC or the Client.

1.8. The Sub-Consultant agrees to provide and perform the Services from the Commencement Date on the terms set out in this Agreement. Any Services which are performed, or which the Sub-Consultant should have performed, before the Commencement Date are governed by the terms of this Agreement.

1.9. To the extent permissible by law, this Agreement shall bind the Sub-Consultant's executors, administrators, successors and permitted assigns jointly and severally.

2. Obligations of the Sub-Consultant

2.1. The Sub-Consultant must:

a) comply with all Legal Requirements in carrying out the Services;

b) commence the Services on the Commencement Date and complete the Services on or before the Completion Date in Schedule 1 in accordance with the Program;

c) implement a quality assurance system compliant with the standard specified in Schedule 1;

d) allow SMEC or the Client or their respective representatives or agents access to assess the quality assurance system;

e) do all things necessary and necessarily incidental for the proper performance of the Sub-Consultant's obligations under and pursuant to this Agreement;

f) designate an individual in Schedule 1 as its representative for the administration of this Agreement. The representative shall have written authority to act on behalf of the Sub-Consultant for all purposes in connection with this Agreement. The Sub-Consultant may, from time to time, replace its Representative,

but it must give SMEC prior written notice of the replacement;

g) comply with all reasonable instructions and directions from SMEC in relation to the Services and this Agreement;

h) remove any person from the performance of the Services who in the reasonable opinion of SMEC's Representative is guilty of misconduct or is incompetent or negligent;

i) not comply with any instructions or directions that are issued by the Client to the Sub-Consultant. If the Sub-Consultant receives any such instruction or direction, it must immediately notify, in writing, SMEC's representative designated in Schedule 1;

j) fully co-operate with Other Contractors on site or involved in the Project;

k) permit Other Contractors to carry out their work;

l) co-ordinate and integrate its Services with the activities of Other Contractors;

m) carry out the Services so as to avoid interfering with, disrupting or delaying, the activities of Other Contractors;

n) consult regularly with SMEC throughout the performance of the Services under this Agreement;

o) as soon as practicable after becoming aware of any matter or circumstance that may adversely affect or has adversely effected the:

   i. scope;

   ii. timing; or

   iii. performance of the Services;

   give written notice to SMEC detailing the matter or circumstance, its anticipated effect on the Services and what remedial or corrective action will or is proposed to be taken to mitigate the adverse matter or circumstance;

p) not assign the benefit of this Agreement without the written consent of SMEC;

q) not sub-contract the performance of any of the Services unless otherwise agreed in writing by SMEC. Where the Sub-Consultant has obtained consent to sub-contract part of the Services, the Sub-Consultant must enter into a contract that is substantially in the form of this Agreement. The Sub-Consultant acknowledges and agrees that SMEC consenting to any sub-contract pursuant to this provision does not relieve the Sub-Consultant from any obligation under this Agreement;

r) attend such meetings and briefings as may be necessary or desirable by SMEC or the Client; and

s) notify SMEC, in writing, immediately of the existence or likelihood of a Conflict of Interest and co-operate with SMEC to resolve the Conflict of Interest.

3. Obligations of SMEC

3.1. SMEC will:

a) act reasonably in providing a response to matters referred to it for decision by the Sub-Consultant (where required under this Agreement);

b) pay the Sub-Consultant the Service Fee and any agreed adjustments to the Service Fee in accordance with this Agreement; and

c) designate an individual in Schedule 1 as its representative for the administration of this Agreement. The representative shall have written authority to act on behalf of SMEC for all purposes in connection with this Agreement. SMEC may, from time to time, replace its Representative, but it must give the Sub-Consultant prior written notice of the replacement.

4. Ownership and Use of Information

4.1. Unless otherwise provided in Schedule 4, copyright and any of Intellectual Property Rights arising from the performance of the Services shall vest in SMEC on creation.

4.2. The Sub-Consultant will do all things necessary to perfect the vesting of Intellectual Property Rights in accordance with the terms of Clause 4.1.

4.3. To the extent that Intellectual Property Rights are not capable of vesting in accordance the terms of Clause 4.1 because the Sub-Consultant does not own the Intellectual Property Rights, the Sub-Consultant will ensure that SMEC (and the Client under the Main Contract) are irrevocably licensed to use those Intellectual Property Rights.

4.4. The Sub-Consultant must ensure that neither the Services nor the provision of the Services infringe any Intellectual Property Rights of any person.

4.5. The Sub-Consultant must obtain a signed waiver of moral rights (in the form required by SMEC) from each servant or agent who is the author of any copyright work that forms part of the Services. The waiver must be presented to SMEC immediately upon direction by SMEC's Representative to do so.

4.6. Clause 4 will survive the termination or expiration of this Agreement.

5. Confidentiality

5.1. Unless it is in accordance with this Agreement or SMEC provides its written consent, the Sub-Consultant must not and must not permit any of its officers, employees, agents, contractors, or related companies to:

a) use, exploit or disclose to any person any information disclosed to it by SMEC under this Agreement; or

b) reverse engineer, dissemble or decompile any prototypes, software or other tangible objects which embody the information disclosed to it by SMEC under this Agreement.

5.2. Clause 5.1 does not apply to any information which:

a) is generally available to the public (other than as a result of the wrongful disclosure by the Sub-Consultant); or

b) is required to be disclosed by any law.

5.3. Clauses 5.1 and 5.2 survive the termination or expiration of this Agreement.

6. Payment

6.1. In consideration for the Sub-Consultant performing the Services, SMEC must pay to the Sub-Consultant the Service Fee set out in Schedule 3. Other than as is detailed in this Clause 6 or for a Variation in accordance with Clause 7, the Service Fee is not subject to adjustment for any cause whatsoever including, but not limited to, changes in the cost of labour, plant, equipment, materials, taxation (other than VAT), excise, duty, fees or charges.

6.2. The Sub-Consultant must submit all claims for payment ("Payment Claim") for performance of the Services under this Agreement in accordance with the Alternative applying in Schedule 1.

Alternative 1

The Sub-Consultant will submit all Payment Claims at the completion of the agreed milestones nominated in Schedule 3.

Alternative 2

The Sub-Consultant will submit Payment Claims at the end of each month.

6.3. A Payment Claim must be in writing and must include:

a) a tax invoice;

b) details of:

i. the Services performed by the Sub-Consultant during the period to which the claim relates;

ii. the value of the claim; and

iii. the amount already paid to the Sub Consultant.

c) additional information or documentary evidence that SMEC reasonably requests in order to determine whether or not the amount claimed is payable.

d) any documentation required by the Main Contract (as detailed in Schedule 4); and

e) any other documentation required by law.

6.4. SMEC may within 10 Business Days of receiving Payment Claim under Clause 6.2 give the Sub-Consultant a payment schedule ("Payment Schedule") which states:

a) the amount already paid to the Sub-Consultant;

b) the amount SMEC is entitled to retain, deduct, withhold or set-off under this Agreement;

c) the amount (if any) which SMEC believes to be then payable by SMEC to the Sub-Consultant on account of the Service Fee and Reimbursable Expenses and which SMEC proposes to pay to the Sub-Consultant; and

d) if the amount in paragraph c) is less than the amount claimed in the invoice, the reason why the amount in paragraph c) is less than the amount claimed in the invoice.

6.5. Subject to Clauses 6.7 and 10.3:

a) where no Payment Schedule has been issued by SMEC under Clause 6.4, SMEC must pay the Sub-Consultant the amount specified in the invoice within 30 days of receipt of a Payment Claim under Clause 6.2; or

b) where a Payment Schedule has been issued by SMEC under Clause 6.4, SMEC must pay the Sub-Consultant the amount set out as payable in the Payment Schedule within 30 days after the issue of that Payment Claim.

6.6. The issue of a Payment Schedule or any payment is on account only and is not evidence of the value of the Services or an admission of liability or that the Services comply with the terms of this Agreement.

6.7. Without limiting SMEC rights under any other provision in this Agreement or at law, SMEC may withhold, deduct or set off from any money due and payable to the Sub-Consultant under this Agreement any sum which is due and payable by the Sub-Consultant under this Agreement or the amount of any claim to money which SMEC may reasonably have against the Sub-Consultant whether for damages or otherwise, whether under contract or otherwise at law, relating to the Services.

6.8. Notwithstanding anything else in this Agreement, SMEC's liability to pay any amount of fees, expenses, VAT or other amount under this Agreement will be subject to SMEC first having received payment of the corresponding amount from the Client. SMEC must use reasonable endeavours to pursue payment from the Client. In the event that SMEC, in pursuing payment, compromises the relevant claim with the Client on terms that involve a reduction of the relevant amount to be paid by Client, SMEC's liability to make the corresponding payment to the Sub-Consultant shall be reduced accordingly.

6.9. If SMEC is required by any applicable law to make any deduction or withholding from any payment (including for any taxes, levies, imposts, duties, charges or fees), SMEC shall:

a) pay to the relevant taxation or other authority the full amount of the requisite deduction or withholding; and

b) furnish to the Sub-Consultant an official receipt of the applicable taxation or other authorities involved for all amounts deducted or withheld as aforesaid.

7. Variations and Extensions of Time

7.1. SMEC may, by written notice to the Sub-Consultant, direct the Sub-Consultant to vary the Services in nature, scope or timing (including the omission or reduction of any part of the Services) and the Sub-Consultant will be bound to comply with that direction.

7.2. If the Sub-Consultant is of the opinion that any direction, other than a direction that expressly states in writing that it is given in accordance with Clause 7.1, is a direction to vary the Services, the Sub-Consultant must, prior to the performance of any services relating to the direction and in any case within the period specified in Item 7 of Schedule 1:

a) notify SMEC that it considers a direction to be a direction to vary the Services (unless the Sub-Consultant will not at any time claim an extension of time or additional payment);

b) notify SMEC of the likely impact, if any, of that direction on:

i. the time required from relevant personnel of the Sub-Consultant to perform the Services and the value of that impact calculated by applying the applicable hourly rates in Schedule 3 ('Variation Rates') or, if none, using reasonable rates or fees by the increase or decrease in each person's time; and /or

ii. the agreed Program.

7.3. No claim for additional fees will be payable unless the provisions of Clause 7.1 or 7.2 have been met.

7.4. If the Sub-Consultant submits a notice in accordance with Clause 7.2, SMEC will make a determination as to whether the direction is a variation. If SMEC determines that the direction is a variation, or in the case of a direction that expressly states in writing that it is given in accordance with Clause 7.1:

a) SMEC will value the variation in accordance with the Variation Rates or, if none, using reasonable rates or fees and the Service Fee will be adjusted by that amount; and

b) SMEC will determine an equitable adjustment to the Program.

c) If the Sub-Consultant disagrees with SMEC's determination under this Clause, the Sub-Consultant may refer the matter to dispute resolution in accordance with Clause 12.

7.5. SMEC will not be liable to the Sub-Consultant for any loss of profit or revenue should the Services be reduced pursuant this Clause.

7.6. Notwithstanding that the Sub-Consultant is not entitled to an extension of time, SMEC may in its absolute discretion, to be exercised for the benefit of SMEC, at any time extend the date for completion.

7.7. Notwithstanding anything else in this Agreement, the Sub-Consultant shall not be entitled to an adjustment of the Service Fee or to the affected items of the Program except to the extent that SMEC has obtained a corresponding adjustment under the Main Contract.

8. Non-compliant Services

8.1. If SMEC (acting reasonably) determines that the Services (or part of the Services) do not comply in all respects with the requirements of this Agreement, SMEC may, at its option:

a) require the Sub-Consultant to promptly take such steps as are necessary to ensure that the Services comply with this Agreement at no additional cost to SMEC; or

b) rectify, either itself or by others, the Services which do not comply with this Agreement. The Sub-Consultant agrees to reimburse SMEC for reasonable costs and expenses SMEC incurs in rectifying any non-compliant Services (which cost and expense is deemed a debt due by the Sub-Consultant to SMEC).

8.2. SMEC's rights under Clause 8.1 do not in any way change or affect the Sub-Consultant's obligations under this Agreement or affect SMEC's rights against the Sub-Consultant under this Agreement.

9. Liability

9.1. The Sub-Consultant indemnifies SMEC and its officers, employees and agents against any and all Loss arising out of or in connection with:

a) the negligent performance of the Services by the Sub-Consultant, its Sub-Consultants and their respective officers, employees and agents;

b) the failure of the Sub-Consultant to perform any of its obligations under this Agreement; or

c) any infringement of Intellectual Property Rights caused by the use by SMEC or the Client of the Services or the Sub-Consultant's deliverables created pursuant to this Agreement.

9.2. The Sub-Consultant's liability to indemnify SMEC under Clause 9.1 will be reduced proportionally to the extent that a negligent act or omission of SMEC or its employees or agents contributed to the Loss.

10. Insurance

10.1. The Sub-Consultant will procure, prior to the commencement of any work under this Agreement, the following policies of insurance:

a) workers' compensation insurance for liability under statute and at common law in accordance with statutory requirements. To the extent permitted by law, the policy should extend to provide indemnity to SMEC in respect of any statutory liability to the Sub-Consultant's employees. The policy must be maintained for the duration of this Agreement;

b) public liability insurance for an amount not less than that stated in Schedule 1. The policy must be maintained for the duration of this Agreement and should note the interests of SMEC as Principal;

c) professional indemnity insurance for an amount not less than that stated in Schedule 1, and maintained for the period stated in Schedule 1; and

d) a comprehensive motor vehicle policy which provides cover for loss or damage to any motor vehicle used in the performance of the Services and for loss or damage to property and death or injury to any person arising out of use of any motor vehicle used in the performance of the Services for an amount not less than stated in Schedule 1.

10.2. The Sub-Consultant will provide certificates of currency for the insurances set out in Clause 10.1:

a) prior to the commencement of the Services; and

b) any time during the continuance of this Agreement when SMEC makes a request for a particular insurance policy or for all of the policies of insurance.

10.3. If the Sub-Consultant fails to effect or maintain any of the insurances required by this Agreement, SMEC may effect and maintain such insurances. The cost incurred will be a debt owed by the Sub-Consultant to SMEC. SMEC may set off the debt in accordance with the terms of Clause 6.7 or withhold payment until the Consultant has complied with its insurance obligations as set out in Clause 10 of this Agreement.

10.4. The Sub-Consultant's compliance with this Clause does not in any way limit the liabilities and obligations of the Consultant under this Agreement.

10.5. The provisions of Clause 10 survive the expiration or termination of this Agreement.

11. Termination/Suspension

11.1. SMEC may terminate this Agreement:

a) by giving seven (7) days written notice to the Sub-Consultant;

b) if the Sub-Consultant is in breach of a non-material term of this Agreement and that breach has not been remedied within 14 days after receipt by the Sub-Consultant of a written notice from SMEC identifying the breach and requiring it to be remedied;

c) immediately if:

i. the Sub-Consultant becomes an "externally administered body corporate" or a person or entity is appointed as a "controller" of any of the Sub-Consultant's property (as those terms are defined in section 9 of the Corporations Act 2001); or

ii. SMEC has reason to believe that that the Sub-Consultant is or is likely to become unable to pay its debts as and when they fall due;

iii. The Sub-Consultant breaches a material term of this Agreement; or

iv. the Main Contract is terminated.

11.2. Upon termination:

a) the Sub-Consultant must deliver to SMEC all information and documentation created by or used by the Sub-Consultant in the performance of the Services on or prior to the termination of this Agreement;

b) subject to Clause 6.7 and the Sub-Consultant complying with Clause 11.1(a), SMEC must pay the Sub-Consultant:

i. the applicable portion of the Service Fee for the Services properly performed up to and including the date of termination; and

ii. all disbursements incurred by the Sub-Consultant prior to the date of the termination which would have been payable had this Agreement not been terminated subject to the title for any item which is the subject of the disbursement being assigned to SMEC, provided that the payment made pursuant to this Clause, together with amounts of the Service Fee already paid, will not be greater than the Service Fee.

c) subject to payment prescribed in Clause 11.1(b), SMEC will not be liable to pay the Sub-Consultant any additional compensation including, without limitation, any loss of profits; and

11.3. Nothing in this Clause 11 limits SMEC's right to recover any costs, losses and damages suffered or incurred by it arising out of or in connection with any breach of contract by the Sub-Consultant or the termination of the Agreement.

11.4. If, at any time, termination of this Agreement by SMEC in accordance with Clause 11.1(b) or 11.1 (c) is subsequently held by a court of law or arbitrator to have been invalid, then any such notice of termination shall be deemed to have been given in accordance with Clause 11.1(a).

Effect of Termination

11.5. Termination of this Agreement by either party is without prejudice to the rights and remedies

which either party may have against the other party at the time of termination.

Suspension

11.6. SMEC may by written notice direct the Sub-Consultant to suspend the progress of the whole or part of the Services for such period as SMEC determines.

11.7. The Sub-Consultant must take all reasonable steps to mitigate costs that may arise from a suspension of Services pursuant to Clause 11.6.

11.8. SMEC will pay any reasonable cost and expense incurred by the Sub-Consultant by reason of the suspension unless the suspension arose out of or as a result of an act or omission of the Sub-Consultant.

11.9. Subject to Clause 11.8, SMEC is not liable to pay the Sub-Consultant any compensation including, without limitation, any loss of profits.

11.10. SMEC may give the Sub-Consultant written notice to re-commence the Services ('Recommencement Notice') when required. The Recommencement Notice will specify a reasonable period in which the Sub-Consultant must recommence the Services and the Sub-Consultant must comply with that notice.

12. Dispute Resolution

12.1. If a dispute arises in connection with this Agreement, then either party may give written notice to the other party's Representative specifying the nature of the dispute ("Notice of Dispute"). There must be sufficient particulars of the dispute so that the recipient of the Notice of Dispute is aware of:

a) what the dispute is;

b) the cause of the dispute; and

c) the means by which a dispute can be resolved or corrected.

d) Within ten (10) Business Days after the Notice of Dispute is given, the Representatives must meet at least once to resolve the dispute.

e) If the dispute has not been resolved within 20 Business Days of service of the Notice of Dispute either party may commence legal proceedings or, if agreed in writing by the parties, commence alternative dispute resolution proceedings.

12.2. This Clause 12 survives the termination and expiration of this Agreement.

13. Occupational Health & Safety

13.1. Without limiting Clause 2.1, the Sub-Consultant must:

a) comply with any Act, Regulation, codes of practice and other Legal Requirements dealing with occupational health and safety;

b) comply with SMEC's requirements in respect of health and safety including all directions given by SMEC or SMEC's Representative in respect of health and safety; and

c) take all appropriate steps to promote a high level of awareness among its employees of any occupational health and safety policy of:

i. SMEC;

ii. the Client; and

iii. the party identified in Item 17 of Schedule 1.

13.2. The Sub-Consultant must comply with all directions and the procedures and policies of the party identified in Item 17 of Schedule 1 as controlling the Site in respect of occupational health, safety, security, protection of the environment and employee relations relating to the Site. The Sub-Consultant must ensure that all persons employed or engaged by the Sub-Consultant who require access to the Site, undertake the safety and environmental induction and or training provided by the party identified in Schedule 1 prior to entering the Site, where such induction or training forms part of the procedures in respect of the Project or the Site. Any time expended or any cost incurred to comply with the provisions of this Clause 13 is included in the Service Fee.

13.3. SMEC or SMEC's Representative may direct the Sub-Consultant to suspend the provision of the Services if:

a) the Sub-Consultant has, or, in the reasonable opinion of SMEC, is likely to breach this Clause 13; or

b) SMEC (acting reasonably) forms the view that the manner in which the Services are being performed are likely to cause harm to the health and safety of any person.

13.4. If SMEC exercises the right in Clause 13.3 it will be deemed to be a suspension that arose out of or as a result of an act or omission of the Sub-Consultant.

14. Notices

14.1. A notice or other communication ("notice") connected with this Agreement has no legal effect unless it is in writing and is:

a) delivered by hand at the address for service of the Representative;

b) sent by facsimile to the facsimile number of the Representative; or

c) sent by e-mail to the e-mail address of the Representative and is acknowledged by the Representative either by e-mail, facsimile or post.

14.2. A notice is deemed given and received:

a) if delivered by hand, upon delivery; or

b) if sent by facsimile before 4 pm on a Business Day, on the day it is sent at the place of receipt and otherwise on the next Business Day at the place of receipt.

c) if the Representative sends an acknowledgement that the e-mail was received.

14.3. Despite Clause 14.2(b), a facsimile is not deemed given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the notice have been sent.

14.4. A party may change its address for service or facsimile number by giving notice of that change to each other party.

14.5. The address for service of the parties is set out in Schedule 1.

15. Business Practices

15.1. The Sub-Consultant must comply at all times with SMEC's Code of Conduct (Appendix 1 to this Agreement) and SMEC's Business Integrity Policy (Appendix 2 to this Agreement) as amended or replaced from time to time.

15.2. The Sub-Consultant must:

a) maintain accurate and transparent books and records of all transactions relating to the performance of the Services and ensure that all transactions are recorded accurately and in reasonable detail in a way that does not conceal the true nature of the transaction;

b) obtain and retain invoices and receipts for all expenditure it incurs in performing the Services, whether or not the expenditure is reimbursable by SMEC under this Agreement;

c) maintain accurate records of all activities it undertakes in the performance of the Services including records of any discussions or dealings with Public Officials and with clients or prospective clients of SMEC and provide copies to SMEC upon request;

d) comply with, and ensure that its agents and employees comply with, all Legal Requirements of any applicable jurisdiction, in particular those relating to fraud, bribery and corruption, and with the requirements of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*;

e) not offer, give, pay or promise to give or pay, directly or indirectly, anything of value to:

i. a Public Official or a representative of any client or prospective client of SMEC in connection with the Project; or

ii. to any person to influence improperly the actions of that person or another person,

and must notify SMEC immediately in writing with full particulars in the event that the Sub-Consultant receives a request from any Public Official or other such person for any such payments or gifts;

f) not, by act or omission, engage in any misrepresentation of facts to any person, or mislead or attempt to mislead any person, in the performance of the Services or otherwise in relation to SMEC's business; and

g) when requested by SMEC, attend training and procure that its employees and contractors attend training provided or on behalf of SMEC on SMEC's business integrity policies and procedures.

15.3. Without limiting clause 15.2, the Sub-Consultant must promptly disclose to SMEC full details of all gifts, hospitality and entertainment given or offered, directly or indirectly, to any person by or on behalf of the Sub-Consultant in connection with the Services or SMEC's business, clients or potential clients.

15.4. The Sub-Consultant must ensure that all statements it makes to SMEC or to any Government authority or otherwise prepares under or pursuant to this Agreement, including but not limited to claims, invoices, reports, timesheets and records of disbursements, accurately reflect the actual activities and transactions to which they relate.

15.5. The Sub-Consultant warrants that, at all times during the Term, neither the Sub-Consultant nor an officer, director, senior executive or person holding, directly or indirectly, an ownership interest of greater than 10% in the Sub-Consultant:

a) is a Public Official or a Close Family Member of a Public Official other than as clearly notified to SMEC by way of written communication acknowledged by SMEC not less than 7 days prior to the signature of this Agreement;

b) is listed on a Relevant List or subject to any proceedings or an informal process which could lead to listing on a Relevant List;

c) is the subject of an investigation (whether formal or informal) by the World Bank or another donor or lender of development funding; or

d) is or has been within the previous five years the subject of an investigation by any Government authority or entity into any allegation involving fraud, bribery or corruption.

15.6. The Sub-Consultant must immediately notify SMEC with full details if it becomes any of the things set out in clause 15.5 or of any contravention of this clause 15 by the Sub-Consultant.

15.7. The Sub-Consultant must indemnify, defend and hold harmless SMEC from and against any Loss arising out of, or related to, or connected with the Sub-Consultant's failure to comply with the provisions of this clause 15, to the fullest extent permitted by law.

16. Audits and investigations

16.1. SMEC may from time to time audit the Sub-Consultant's records to determine compliance with the requirements of this Agreement and the validity of any claim for payment.

16.2. If SMEC receives information regarding a possible breach of clause 15 by the Sub-Consultant, SMEC may carry out an investigation to determine compliance with the requirements of clause 15.

16.3. The Sub-Consultant must fully cooperate with any such audit or investigation including:

a) providing all necessary information and access for SMEC and its representatives to audit the books and records of the Sub-Consultant with respect to:

i. ownership of the Sub-Consultant with respect to representations made under clause 15.5; and

ii. any of the Sub-Consultant's activities related to performance under and compliance with this Agreement; and

b) attending and requiring its employees and agents to attend interviews and cooperate with and answer questions put to any of them by SMEC's representatives.

16.4. In the case of an investigation under clause 16.2, SMEC may, by notice in writing to the Sub-Consultant, suspend performance of the Services pending the commencement and completion of the investigation and may lift the suspension by further notice in writing.

17. General

17.1. This Agreement is governed by the law in force in the jurisdiction nominated in Schedule 1. Each party submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

17.2. A right created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same or of any other right of that party.

17.3. If any provision of the Agreement is held to be unenforceable, invalid, void or illegal for any reason, then that provision will to the extent possible be deemed to have been severed and omitted from the Agreement without affecting the enforceability, validity or legality of the remaining provisions (or parts of those provisions) which will continue in full force and effect.

18. Definitions

In this Agreement the following terms have the following defined meanings:

"Agreement" means this contract between SMEC and the Sub-Consultant including all schedules and attachments.

"Business Day" means a day other than a Friday, Saturday] or public holiday in Afghanistan where the Project is located.

"Commencement Date" means the commencement date set out in Schedule 1.

"Client" means SMEC's client under a Main Contract identified in Schedule 1.

"Close Family Member" means, in respect of an individual, the individual's spouse; the individual's and the spouse's grandparents, parents, siblings, children, nieces, nephews, aunts, uncles and first cousins; the spouse of any of these people; and any other individuals who share the same household with the individual.

"Conflict of Interest' includes engaging in any activity, or having any interest which conflicts or may conflict with the ability of the Sub-Consultant to perform its obligations under this Agreement in good faith and objectively.

"Effective Date" means the date inserted on the front page of this Agreement that signifies when the parties entered into a binding contractual arrangement for the provision of the Services.

"Government" means any federal, state, national or local authority, or their agencies and instrumentalities, having jurisdiction in the Territory.

"Intellectual Property Rights" means any intellectual or industrial property rights, whether registered or unregistered, including:

a) all patents, trade-marks, copyright, designs, trade secrets, know-how and other rights in any design, materials, processes, documents and methods of working; and

b) all licences and other rights to use or to grant the use of those items in a);

but excluding Moral Rights.

"Legal Requirements" means all:

a) Acts, Regulations, Ordinances, Laws, By-Laws, Codes of Practice and Standards in effect in, or any binding proclamation by, the local, regional or national Government of, the place in which the Project is being undertaken or any Services are to be performed; and

b) Certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in the place in which the Project is being undertaken or the Services are being performed.

"Loss" means loss, damage, injury, harm, claim, demand, cost (including legal costs on a full indemnity basis), expense, penalty, charge or liability of any kind whatsoever.

"Main Contract" means a contract between SMEC and the Client included in Schedule 4 (if applicable).

"Moral Rights' means the rights so named in the *Berne Convention for the Protection of Literary and Artistic Works (1886)* and any applicable rights under any law of the place in which the Project is being undertaken or of the place in which any Services are to be performed.

"Other Contractor" means any contractor, supplier, subcontractor, consultant, project manager or any other person engaged to work on the Project or on Site.

"Program" means the program set out in Schedule 2.

"Project" means the project identified in Schedule 1.

"Public Official" means any of the following:

a) any official or employee of, person acting in an official capacity for or on behalf of, or individual performing work under a contract for or who is otherwise in the service of, any:
   i. Government or Government department, agency or instrumentality;
   ii. Government-owned or controlled corporation or enterprise; or
   iii. public international organisation including any donor or lender of development funding;

b) any person holding or performing the duties of an appointment, office or position under any law;

c) any individual who holds or performs the duties of an appointment, office or position created by custom or convention of a country or of part of a country;

d) any candidate for a political party or for political office;

e) any political party, official of a political party or funding organisation for a political party.

"Relevant List" means a list of organisations maintained by the World Bank in its "Listing of Ineligible Firms" or "Listings of Firms, Letters of Reprimand" and any similar list maintained by any other donor or lender of development funding.

"Site" means the place identified in Schedule 1.

"Services" means the services described in Schedule 2 together with those activities the Sub-Consultant is required to carry out under the Agreement.

"Service Fee" means the amount set out in Schedule 3.

"SMEC Material" means all material provided by SMEC to the Sub-Consultant, including but not limited to documents, information and data referred to or identified as such in Schedule 2.

"VAT" means Value Added Tax or similar tax on goods or services including, without limitation, sales, use, excise, and similar taxes (as amended from time to time) as may be applicable to the Services.

EXECUTED as an agreement

Signed for and on behalf of:
SMEC International Pty Limited:

.....
Signature of authorised person

.....
Name (Block Letters) Title

in the presence of:

.....
Witnesses Signature

.....
Name (Block Letters) Title

Signed for and on behalf of:
[Insert name of Sub-Consultant]

.....
Signature of authorised person

.....
Name (Block Letters) Title

in the presence of:

....
Witnesses Signature

.....
Name (Block Letters) Title

SCHEDULE 1 - AGREEMENT PARTICULARS

Item 1	SMEC's Client (if relevant):	Ministry of Transport (MoT), Afghanistan
Item 2	Project Name:	Preparation of Central Asia Regional Economic Cooperation Corridors 5 and 6 (Salang Corridor) Project
Item 3	Commencement Date:	Within 7 calendar days of the Effective Date
Item 4	Completion Dates:	
	Inception Report	5 days after the Commencement Date.
	Desktop Review and Scoping Study Report (Draft)	21 days after the Commencement Date.
	Desktop Review and Scoping Study Report (Final)	5 days after receipt of SMEC's comments
	Baseline Survey Report - (Draft)	49 days after the Commencement Date.
	Baseline Survey Report - (Final)	5 days after receipt of SMEC's comments
	Impact Assessment and Mitigation Report - (Draft)	10 days after submission of draft Baseline Survey report
	Impact Assessment and Mitigation Report - (Final)	5 days after receipt of SMEC's comments
Item 5	SMEC's Representative	Saira Tajdar, Environment Safeguard Specialist SMEC International, Afghanistan +92 333 922 3775 - Pakistan), +93 789 621 336- Afghanistan NA Saira.tajdar@smec.com
Item 6	Sub-Consultant's Representative Name: Address: Phone: Fax: Email:	
Item 7	Maximum time for notifying variation claims: *(If nothing stated, 7 days)*	
Item 8	Minimum Level of Professional Indemnity Insurance: *(If nothing stated AUD10 million)*	AFN20 million
Item 9	The period for which professional indemnity insurance shall be maintained: *(If nothing stated 2 years after the*	

	completion of the Services)	
Item 10	Minimum Level of Public Liability Insurance:	Not Required
Item 11	Minimum Level of Motor Vehicle Liability Insurance:	Not Required
Item 12	Variation Rates	NA
Item 13	Quality Assurance System Standard *(If nothing stated AS/NZS ISO 9001)*	
Item 14	Payment alternative applying (see clause 6.2) *(If nothing stated Alternative 2)*	Alternative 1
Item 15	Jurisdiction whose laws govern this Agreement	Afghanistan
Item 16	Location of the Site	Feasibility study Option 2.
Item 17	Party who has control of the Site	The land owner.

SCHEDULE 2 - SCOPE AND PROGRAM OF THE SERVICES

Scope of Services

GENERAL

The Services are detailed in the Description of Services and by reference to the requirements of the Specifications and Standards included as part of this Schedule 2.

All drawings prepared, as part of the Services must be A3 size unless otherwise agreed. The production and quality of the drawings must be suitable for the subsequent reproduction of legible copies and capable of storage and transmission on electronic media unless otherwise agreed. Electronic master files of all drawings and models must be provided in readable format without encryption or restriction so that they may be used, modified or varied and files must be in a format compatible with the computer systems utilised for the Project.

All reports prepared, as part of the Services must be:

(i) in electronic form (Microsoft Word or Excel) and not password protected;
(ii) provided to us electronically;
(iii) in the form set out in this schedule.

DESCRIPTION OF SERVICES

Refer to attached Flora and Fauna Baseline Survey – Terms of Reference (ToR)

Program

The Services are to be commenced on the Commencement Date in Schedule 1 and completed on or before the Completion Date in Schedule 1 and in accordance with the attached Program.

SCHEDULE 3 – PAYMENT TO THE SUB-CONSULTANT

Service Fee

USD ..... calculated in accordance with the attached priced Bill of Quantities.

VAT and Taxes are shown separately in the priced BOQ.

#	Description	Unit	Qty.	Rate (USD)	Amount (USD)	TOTAL (USD)
P1	Inception Report	Item	1			
P2	Desktop Review and Scoping Study Report	Item	1			
P3	Baseline Survey Report	Item	1			
P4	Impact Assessment and Mitigation Report	Item	1			
					Total	
					Add Tax and VAT:	
					Total:	
					In words:	
					Contingency:	**USD 5,000**
					Grand Total:	

Payment Terms

As mentioned under the Pay Items in Preamble to BOQ.

SCHEDULE 4 –MAIN CONTRACT

Main Contract

The following are clauses extracted from the Main Contract and are relevant in accordance with Clause 1.3 of this Agreement

General Conditions of Contract

1. Definitions	1.1 Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings: (a) "Applicable Guidelines" means Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers. (b) "Applicable Law" means the laws and any other instruments having the force of law in the Client's country, or in such other country as may be specified in the Special Conditions of Contract (SCC), as they may be issued and in force from time to time. (c) "Bank" means the Asian Development Bank. (d) "Borrower [or Recipient or Beneficiary]" means the Government, Government agency or other entity that signs the financing [or loan/grant/project] agreement with the Bank. (e) "Client" means [the implementing/executing] agency that signs the Contract for the Services with the Selected Consultant. (f) "Consultant" means a legally-established professional consulting firm or entity selected by the Client to provide the Services under the signed Contract. (g) "Contract" means the legally binding written agreement signed between the Client and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices). (h) "Day" means a working day unless indicated otherwise. (i) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause GCC 11. (j) "Experts" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract. (k) "Foreign Currency" means any currency other than the currency of the

	Client's country. (l) "GCC" means these General Conditions of Contract. (m) "Government" means the government of the Client's country. (n) "Joint Venture (JV)" means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract. (o) "Key Expert(s)" means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant's proposal. (p) "Local Currency" means the currency of the Client's country. (q) "Non-Key Expert(s)" means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part thereof under the Contract. (r) "Party" means the Client or the Consultant, as the case may be, and "Parties" means both of them. (s) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written. (t) "Services" means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto. (u) "Sub-consultants" means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract. (v) "Third Party" means any person or entity other than the Government, the Client, the Consultant or a Sub-consultant.
2 Relationship between the Parties	2.1. Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder
4. Language	4.1. This Contract has been executed in the language specified in the **SCC**, which shall be the binding and controlling language for all matters relating to

	the meaning or interpretation of this Contract
10. Corrupt and Fraudulent Practices	10.1. The Bank requires compliance with its policy in regard to *[corrupt and fraudulent/prohibited]* practices as set forth in **Attachment 1** to the GCC.
a. Commissions and Fees	10.2. The Client requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract and/or sanctions by the Bank.
20. General	
a. Standard of Performance	20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with the third parties. 20.2. The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services. 20.3. The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Client. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.
21. Conflict of Interests	21.1. The Consultant shall hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.
a. Consultant Not to Benefit from Commissions, Discounts, etc.	21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 38 through 42) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment. 21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant shall comply with the Bank's Applicable Guidelines, and shall at all times exercise such responsibility in the best interest of the

	Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Client.
b. Consultant and Affiliates Not to Engage in Certain Activities	21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project, unless otherwise indicated in the **SCC**.
c. Prohibition of Conflicting Activities	21.1.4 The Consultant shall not engage, and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.
d. Strict Duty to Disclose Conflicting Activities	21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.
22. Confidentiality	22.1 Except with the prior written consent of the Client, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or as a result of, the Services.
23. Liability of the Consultant	23.1 Subject to additional provisions, if any, set forth in the **SCC**, the Consultant's liability under this Contract shall be as determined under the Applicable Law.
24. Insurance to be Taken out by the Consultant	24.1 The Consultant (i) shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage specified in the **SCC,** and (ii) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC 13.
25. Accounting, Inspection and Auditing	25.1 The Consultant shall keep, and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs. 25.2 The Consultant shall permit and shall cause its Sub-consultants to permit, the Bank and/or persons appointed by the Bank to inspect the Site and/or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such

	accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Consultant's attention is drawn to Clause GCC 10 which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under this Clause GCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under the Bank's prevailing sanctions procedures.)
26. Reporting Obligations	26.1 The Consultant shall submit to the Client the reports and documents specified in **Appendix A**, in the form, in the numbers and within the time periods set forth in the said Appendix.
27. Proprietary Rights of the Client in Reports and Records	27.1 Unless otherwise indicated in the **SCC**, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Client in the course of the Services shall be confidential and become and remain the absolute property of the Client. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client. 27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Client's prior written approval to such agreements, and the Client shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the **SCC**.
31. Removal of Experts or Sub-consultants	31.1 If the Client finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Client determine that Consultant's Expert of Sub-consultant have engaged in corrupt, fraudulent, collusive, coercive *[or obstructive]* practice while performing the Services, the Consultant shall, at the Client's written request, provide a replacement. 31.2 In the event that any of Key Experts, Non-Key Experts or Subconsultants is found by the Client to be incompetent or incapable in discharging assigned duties, the Client, specifying the grounds therefore, may request the Consultant to provide a replacement. 31.3 Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Client. 31.4 The Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

APPENDIX 1 SMEC GROUP'S CODE OF CONDUCT

APPENDIX 2 SMEC GROUP'S BUSINESS INTEGRITY POLICY