

VITAL FSM PETROLEUM CORPORATION

Request for Proposal

2025 Yap Capability, Compliance and Performance Uplift

RFQ2025-02

February 17, 2025

Authorized for Release:

Chief Executive Officer	
Chief Risk Officer	
Operations and Distribution	

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2. INTRODUCTION

2.1. About the FSMPC.

- 2.1.1. The FSM Petroleum Corporation (dba Vital) is a state-owned enterprise that operates petroleum import, storage, distribution facilities throughout the Federated States of Micronesia (FSM). Vital was established by PL15-08 in 2008.
- 2.1.2. Our organization covers more than 11 operating facilities, across three countries. We are known for our culture of compliance, strong financial and management disciplines and adherence to our Statement of General Business Principles (SGBP).
- 2.1.3. For more information about us and the work that we do, please visit our website: <https://www.vitalenergy.fm/>

2.2. Vital procurement activities.

- 2.2.1. Our procurement activities are guided by the principles of high ethical standards, value-for-money, open competition and social and environmental responsibility and are carried out under our procurement policy.
- 2.2.2. For further information or enquiries about our procurement activities, please email: rfp@fsmc.com.

2.3. Request for Proposal/Quotation (RFP/Q) Process

- 2.3.1. Procurement valued more than USD20,000 requires an evaluation of at least three quotations to determine the offer that provides the best value for money through this Request for Quotation/Proposal (RFQ/P) process.
- 2.3.2. This RFQ sets out our requirements for a project and it asks you, as a bidder, to respond in writing in a prescribed format with pricing and other required information.
- 2.3.3. Your participation confirms your acceptance of our conditions of participation in our bids and tenders' processes.

3. INSTRUCTIONS TO BIDDERS

3.1. Background

- 3.1.1. Vital invites you to submit a quotation to deliver the services as specified in the

TERMS OF REFERENCE. These instructions guide prospective bidders and ensure that all bidders are given equal and fair consideration. Please read the instructions carefully before submitting your bid.

- 3.1.2. For your quotation to be considered, it is important that you provide all the prescribed information by the closing date and in the format specified.

3.2. Submission Instructions

- 3.2.1. You must submit your quotation and all supporting documents in English and as an attachment to an email sent to rfp@fsmnpc.com and with the subject line of your email as follows:

- **Submission RFQ2025-02**

- 3.2.2. The supporting documents expected in this RFQ are:

- The Conflict-of-Interest Declaration form completed
- Technical Proposal as per 4.1
- Price Proposal as per 4.2
- Milestone Based Payment as per 3.13

- 3.2.3. Your submission must be clear, concise and complete and should only include a quotation and information that is necessary to respond effectively to this RFQ. Please note that you may be marked down or excluded from the procurement exercise if your submission contains any ambiguities or lacks clarity.

- 3.2.4. **Submission of Multiple Quotation.** No bidder shall submit more than one quotation to this RFQ. Collusion among respondents, in the submission of more than one quotation under different names by any entity or individual, or an ownership interest in more than one respondent by any entity or individual shall be cause for rejection of such quotation and a ban from participation in further projects for Vital.

- 3.2.5. Bids will be evaluated based on information received by:

- **5.00pm GMT+12 on 24/02/2025.**

3.3. Evaluation & Contract Award

- 3.3.1. Each quotation validly received will be assessed against the evaluation criteria matrix set out in Part 4.

- 3.3.2. Any changes in the evaluation criteria will result in the RFQ process being re-issued.

Vital may award the contract once it has been determined that a bidder has met the prescribed requirements and the bidder's proposal has been determined to be substantially

- 3.3.3. responsive to the RFQ documents, provide the best value for money (highest cumulative score) and best serve the interests of Vital.
- 3.3.4. **Notification.** The successful Bidder will be provided a notification of award, and a contract will be prepared which will include by reference this solicitation, the Bidder Quotation, and any other contractual language as may be required by FSM Petroleum Corporation.
- 3.3.5. Vital reserves the right to obtain Bidder clarifications where necessary to arrive at a full and complete understanding of Bidder product, service, and /or solicitation response. Clarification means communication with a Bidder for the sole purpose of eliminating ambiguities in the quotation and does not give Bidder’s an opportunity to revise or modify it’s proposal.
- 3.3.6. In the event of a bid being accepted, procurement will take place under
 - AS4122-2010 Vital’s General Terms and Conditions of Contract for Consultant. Refer to Annex 1
- 3.3.7. Depending on the value or nature of the procurement, the award will be made by issuing a purchase order or a signed and dated contract, or both.

1.1 Key Contacts

- 3.3.8. **Inquiries.** Please contact Vital should you have any doubt as to what is required or if we can help answer any questions that you may have. Any inquiry related to this solicitation shall be in English, and either as an attachment to an email, or within the body of the email and sent to rfp@fsmpc.com with the subject line of your email as follows:
 - **Clarification RFQ2025-02**
- 3.3.9. The Bidder shall not contact or direct inquiries concerning this solicitation and Vital.
- 3.3.10. Details will be kept of any communications between Vital and bidders. This assists Vital to ensure transparency of the procurement process. While Vital prefers written communication in the RFQ process, at any point where there is phone call or other conversation, Vital expects to keep a file note of the exchange, with all forms of communication with prospective bidders to be retained as source documents for the procurement of the services.

3.4. Key Dates

- 3.4.1. Please see the proposed procurement timetable in the table below. This timetable is intended as a guide only and while Vital does not intend to depart from the timetable, it reserves the right to do so at any stage.

• STAGE DATE RFQ sent to potential vendors	17/02/2025
• RFQ Closing Date	30/02/2025
• Award of Contract	15/03/2025
• Commencement of Contract	21/03/2025
• Conclusion of Contract	21/06/2025

3.5. Legal and compliance Confidentiality:

- 3.5.1. **Confidentiality.** Unless otherwise agreed in writing in advance from rfp@fsmpc.com, or where the contents of the RFQ are already in the public domain when shared with the bidder, bidders shall at all times treat the contents of the RFQ and any related documents as confidential. Vital will treat the information it receives from the bidders as confidential.
- 3.5.2. **Conflict of interest.** Bidders must take all necessary measures to prevent any situation of conflict of interest. You must notify rfp@fsmpc.com in writing as soon as possible of any situation that could constitute a conflict of interest during the RFQ process. If you have any familial connection with Vital staff, this must be declared, and approval will then be sought for you to engage in the RFQ process. In support of your response to this RFQ, you must submit to Vital the Conflict-of-Interest Declaration form available on our website:
- <https://www.vitalenergy.fm/>
 - Breach of this requirement can result in Vital terminating any contract with a successful bidder.
- 3.5.3. **Currency, validity, duties, taxes:** Unless specifically otherwise requested, all proposals should be in United States Dollars (USD) and must be net of any direct or indirect taxes and duties and shall remain valid for **120 days** from the closing date. The successful bidder is bound by their proposal for a further **60 days** following notification they are the preferred bidder so that the contract may be awarded. No price variation due to escalation, inflation, fluctuation in exchange rates, or any other market factors shall be accepted at any time during this period.
- 3.5.4. **No offer of contract or invitation to contract:** This RFQ is not an offer to contract or an invitation by Vital to enter a contract with you.
- 3.5.5. **Cost of Quotation Preparation.** Vital is not responsible for the Bidder costs related to developing, presenting or providing response to this request for quotation.
- 3.5.6. **Privacy:** The bidder is to comply with the requirements of applicable legislation and regulatory requirements in force for the use of personal data that is disclosed for the purposes of this RFQ. Vital will handle any personal information it receives under the RFQ in line with its company policies, and guidelines for handling personal information of bidders and grantees.
- 3.5.7. **Warranty, representation, assurance, undertaking:** The bidder acknowledges and agrees that no person has any authority to give any warranty, representation, assurance or undertaking on behalf of Vital in connection with any contract which may (or may not) follow on from this RFQ process.
- 3.5.8. **Complaints process.** Bidders that consider they were not treated fairly during any Vital procurement process may lodge a protest. The protest should be addressed to whistle@fsmpc.com. The bidder must provide the following information:
- a. full contact details;
 - b. details of the relevant procurement;
 - c. reasons for the protest, including how the alleged behavior negatively impacted the bidder;
 - d. copies of any documents supporting grounds for protest;
 - e. the relief that is sought.

TERMS OF REFERENCE

3.6. Background and Context

- 3.6.1. The FSMPC operates a marine import terminal and a bulk aviation depot at Yap International Airport.
- 3.6.2. This project progresses key initiatives defined within the Vital Yap Jet Fuel Master Plan - HCP 2024 - V4.1
- 3.6.3. The project is also intended to address engineering and human element improvement areas identified within the 2024 XOM EIG Aviation Depot Audit.

3.7. Airport Depot Masterplan Summary Scope Components

In Progress	A) Purchase new unloading / loading skid that is capable of and ready to supply a hydrant system and incorporates a hydrant pit for test rig operations.
In Progress	B) Purchase new aviation refueller that is capable of and ready to supply an aircraft from a hydrant system, or its own 5,000 gallon tank.
This Project	C) Increase Capacity. Expand airport storage with shop fabricated storage systems that follow all EI/JIG recommendations and address EI/JIG Depot Operations engineering asset improvement areas of the 2024 EI/JIG Audit.
This Project	D) Design Basis Memorandum (DBM) will assess the three options for depot and terminal operations to meet the increased frequency and product demand from and extended international airport, military and commercial operations.
This Project	E) Updated Operational Philosophy. An organized, formalized document that defines how the airport depot will be operated. Complete refresher training of key organizational architecture in the aviation fuels quality operations standards.
TBA	F) Install and commission in accordance with EI1560, install and commission and operate a hydrant system in accordance with JIG2.
TBA	G) Purchase additional aviation refueler trucks to meet demand.

3.8. Project Objectives & Key Deliverables (Draft)

3.8.1. Objective 1: Increase the strategic oil reserves by a minimum of 60,000 US Gallons, reduce supply chain costs, and address all EI/JIG engineering assets compliance gaps.

- **Deliverable 1.1 – Increased Tank Storage Capacity.**
 - **Engineering, procurement and commissioning of shop fabricated tanks** in accordance with a defined standard such as the Storage Tank Institute (STI) that meets EI/JIG product stewardship recommendations. Physical site storage and distribution arrangement - tank and pipeline calibration charts shall be uploaded into the PetroX inventory management system.
 - **A tank overfill protection (TOP) system.** shall be incorporated within the system design. Product sampling infrastructure shall support efficient completion of daily, weekly, and monthly product stewardship process requirements.
 - **Facility as-built drawings.** The minimum facility drawings for operations, including diagrams, layouts, hazardous zones, PIDs, OEM manuals, shall be produced and electronic copies submitted and manual copies at site.
- **Deliverable 1.2. – Change Management Plan.** To work with the project management office and consultants currently working on the master plan elements A) and B) and ensure facility layout and equipment placement arrangements support the element C) and D) of the master plan.
- **Deliverable 1.3. – Iso-Container Supply Chain Cost Reduction Plan.** To review the current process for the isotainer supply chain, identify major cost components, major delays and disruptions. Work with the ODM and the Supply Officer to confirm a plan of action to reduce the total costs of the isotainer supply chain.
- **Deliverable 1.4. – Design Basis Memorandum.** To review the current process for the isotainer supply chain, identify major cost components, major delays and disruptions. Work with the ODM and the Supply Officer to confirm a plan of action to reduce the total costs of the isotainer supply chain.
 - **Aviation Refueller.** Define and confirm the US military demand requirements. Assesses conventional aviation refueler to meet the needs of the US Military expectations.
 - **Extant U/G Hydrant.** Confirm and complete a thorough investigation of the extant u/g hydrant system and a risk-based assessment on its potential to be commissioned for use, and an action plan for commissioning.
 - **New A/G Apron Hydrant.** Provide a design for an a/g apron hydrant line that can be used with a hydrant truck system. Provide a P50 budgetary estimate for the installation, commissioning of the proposed design.
- **Deliverable 1.5. – Hydrant System (TO BE CONFIRMED).** To be a variation to the contract and scope of work dependent on the outcome of Deliverable 1.4.

3.8.2. Objective 2: Achieve a “Good” rating at the 2025 EI/JIG Aviation Audit.

- **Deliverable 2.1 - Operating Philosophy and Principles.** A detailed facility operational **philosophy** shall be documented for the Yap Aviation Depot. The document shall include the following minimum components:
 - **Organizational Architecture for AFQOS.** The documentation of all the roles and responsibilities that support best practice aviation fuels quality operating standards, and compliance with EI/JIG 2. The architecture shall be unambiguous, incorporate three lines of defense (3LD), and shall be comprehensive and appropriate for Vitals operations.
 - **HSSE-MS Map.** The company aspires to certification with ISO:41000 for its safety management system. The consultant shall meet with company executives, managers, and operators and produce a 'map' of how extant FSMPC management systems meet the minimum requirements of the EI/JIG HSSE Management System (MS). The map shall identify any gaps identified in the EI/JIG-MS Map and shall be used as a baseline to formalize a plan for further. An online training lesson for the Elevate system shall be developed and be part of the annual SAFER refresher course to improve understanding of the mapping knowledge across the organization.
 - **Minimum Manning and Experience Levels (MMEL).** The consultant shall develop a minimum manning and experience level for the facility. In consultation with the Program Manager (Knowledge Management), reconfirm the knowledge, skills and experience requirements for each operation's role in the aviation fuels quality architecture. The MMEL must be able to be used to develop a SCORM compliant learning program and materials.
 - **Outcomes Based Competency (OCA) Assessment.** Review the company HRMonize position descriptions, and performance plans for each operational position within the depot, terminal, and line management. Complete an interview with each person in the Yap operations and confirm their actual competency levels against the desired level. The consultant will be supported by the company HR consultants ([Maxumise Home - Human Capital Management - Maxumise](#)) who will be directly engaged by the company to support this activity.
 - **Annual Operational Plan.** In consultation with the CEO and the ODM, the consultant shall develop an annual operating plan for the depot. This shall comprise an unambiguous '2025 Plan-on-a-Page' highlighting key targets and initiatives, with a maximum of two (2) supporting pages covering compliance expectations, comprehensive list(s) of operator led inspection (OIs), and preventative maintenance inspections (PMI's) to be completed. The plan will clearly articulate the Officer-In-Charge responsibility, the ODM accountability, and a proposed means of verification and validation through an audit plan.
 - **Annual Internal Audit and Inspection Plan.** In consultation with the CEO, the CRCO, and the M(QA), the consultant shall review and strengthen the verification and validation processes of the 3rd line of defense. Visit schedule, check sheets and inspections and standard audit reports shall be formalized and the visitation schedule confirmed.

- **Annual Assurance Letter.** In consultation with the CEO, the CRCO, and the M(QA) the consultant shall prepare draft assurance letter(s) for individuals within the organizational architecture that have been delegated key responsibility for AFQOS control points.
- **Deliverable 2.2 – Spill Control and Counter Prevention Plan (SPCC).** The company will utilize the US EPA standards as a guide for its operations. A Plan shall be delivered that meets the US EPA ‘SPCC’ requirements shall be delivered.
- **Deliverable 2.3 – Yap Bulk Terminal Facility Security Plan (FSP).** The FSP establishes procedures, methods, and equipment to ensure physical and personnel security of the Yap Bulk Plant, and the Yap Aviation Depot. 33 CFR 105 shall be used as a basis for rules and regulations governing the FSP requirements.
- **Deliverable 2.4 – Yap Aviation Depot Facility Security Plan (FSP).** The FSP establishes procedures, methods, and equipment to ensure physical and personnel security of the Yap Bulk Plant, and the Yap Aviation Depot. 33 CFR 105 shall be used as a basis for rules and regulations governing the FSP requirements.

3.8.3. Objective 3: Achieve a risk aware workforce.

- **Deliverable 3.1. General Risk Assessment (GRA) Workshops.**
 - To plan, conduct and facilitate a workshop with key individuals from the organizational architecture. A draft Risk Assessment Workshop agenda, topics and methodology shall be finalized with the Program Manager (Knowledge Management). Draft workshop materials from a 2010 Workshop are available as reference or update.
 - To produce a report that customizes the company 32 GRA’s, the status of controls at the aviation depot, and the draft RiskValue of the facility. To work with the Chief Risk Officer to enter the results of the General Risk Assessment Workshops in the Vintra Risk Assessment and Management Tool.
 - To review and update the organizational architecture and ensure it is unambiguous on the roles and responsibilities of individuals to establish, maintain, and oversight identified controls.

3.8.4. Objective 4: Achievement of minimum manning levels and experience for facility operations.

- **Deliverable 4.1. MMEL Development Plan.** To work with the ODM and the KM to formalize a training and development plan for aviation operations. Establish lessons, modules, and others in Elevate¹ or other to ensure the organizational architecture is aware of the role and responsibility in achieving the aviation fuel quality stewardship results.

3.9. Consultant Project Delivery / Management Expectations

¹ Elevate is the company online learning management system.

- 3.9.1. Conduct in accordance with the Project Management Institute (PMI) Code of Conduct
- 3.9.2. Work with the stakeholders to develop and have approved a Project Business Case that shall include the Stakeholders Matrix for the Project. This component will finalize objectives, deliverables, and their success criteria.
- 3.9.3. Provide a Scope of Work and a Work Breakdown Structure (WBS) that adequately demonstrates to Stakeholders how the objectives of the approved Business Case will be achieved.
- 3.9.4. Provide a Schedule and program that reflects the required and likely delivery times including the deadlines, milestones and deliverables.
- 3.9.5. Provide a +/-10% Cost Estimate and a Sanction that reflects assets to be procured under the Project for the tank farm upgrade.
- 3.9.6. Provide a Risk Register highlighting the risks anticipated in the Project and their remedial action plans
- 3.9.7. Provide a Work Estimate that details the effort in hours, and cost of various design, engineering, procurement, administration and project management resources.
- 3.9.8. Develop a Project Deployment Plan that summarizes the Consultants approach to scope, schedule, quality, engineering, design, procurement, resource, risk and budget management.
- 3.9.9. Coordinate resources associated with the delivery of Project and execute the project in accordance with the approved Project Deployment Plan.
- 3.9.10. Procurement and management of internal engineers, external design consultants and contractors including:
 - Prepare quotation and tender documentation
 - Prepare tender evaluation plans and assess submissions
 - Make recommendations on best value submissions
 - Prepare contract documentation required to engage external consultants and contractors
 - Perform all duties of the Superintendent's Representative in the administration of construction contracts including assessment of progress payments and contract variations.
- 3.9.11. Provide construction management services and expertise consisting of:
 - Manage project defects throughout the works and to the end of the defects liability period
 - Provide effective supervision of contractors throughout the construction phase of projects
 - Monitor and assess the quality of works undertaken by contractors
- 3.9.12. Ensure construction works are undertaken in a safe manner that exceed Vital Policies and Procedures

- 3.9.13. Ensure that construction designs are in accordance with sound professional practices
- 3.9.14. Ensure all environmental requirements are achieved in relation to implementation of the Project
- 3.9.15. Prepare and have approved the Project Handover Certificate at practical completion, confirming that the Stakeholders have accepted each Deliverable under the Project and have been provided with all information necessary to understand and operate new infrastructure. This shall include demonstration and provision of all documentation as required.
- 3.9.16. Prepare Project Update Reports and submit to the Vital Project Management Office that shall include:
- 3.9.17. Progress of WBS and Deliverables against the agreed deadlines and milestones
- 3.9.18. Update on Consultant Work Effort actual against estimate.
- 3.9.19. Summary of Change Requests complete with the financial and schedule implications arising from changes to a project’s scope of works or contract variations
- 3.9.20. Disclosing variations, lapses, or non-compliance with the approved Project Deployment Plan
- 3.9.21. Identifying the actions taken to manage risk, issues or problems encountered
- 3.9.22. Ensure actions, words and behaviors throughout the Project comply with Vitals core values of honesty, integrity and respect, and Vitals Statement of General Business Principles.

3.10. Timelines

- 3.10.1. The proposed services are to be delivered within a period of **90 days** with expected start date as detailed in the section Key Dates.
- 3.10.2. If necessary, the contract period may shift to accommodate any unexpected delays preventing the commencement on the target date.
- 3.10.3. The target deadline for the delivery of each expected output is presented in the Sections below,

3.11. Reporting and contracting arrangements

- 3.11.1. The contract will be managed by the **Chief Executive Officer** or his designee, who will regularly monitor progress towards achievement of Objectives and Deliverables.
- 3.11.2. The **Chief Executive Officer** will sign off on the following Deliverables:

Deliverable 1.1 – Increased Tank Storage Capacity.
Deliverable 1.3. – Iso-Container Supply Chain Cost Reduction Plan
Deliverable 1.4. – Design Basis Memorandum

Deliverable 2.1 - Operating Philosophy and Principles
Deliverable 3.1. General Risk Assessment (GRA) Workshops.
Deliverable 4.1. MMEL Development Plan

3.11.3. The **Chief Risk Officer** will sign off on the Deliverables.

Deliverable 2.3 – Yap Bulk Terminal Facility Security Plan (FSP).
Deliverable 2.2 – Spill Control and Counter Prevention Plan (SPCC).
Deliverable 2.4 – Yap Aviation Depot Facility Security Plan (FSP)
Deliverable 3.1. General Risk Assessment (GRA) Workshops.

3.11.4. The **Operations Distribution and Logistics Manager** will sign off on the following Deliverables.

Deliverable 2.1 - Operating Philosophy and Principles
Deliverable 2.3 – Yap Bulk Terminal Facility Security Plan (FSP).
Deliverable 2.2 – Spill Control and Counter Prevention Plan (SPCC).
Deliverable 2.4 – Yap Aviation Depot Facility Security Plan (FSP)
Deliverable 3.1. General Risk Assessment (GRA) Workshops.
Deliverable 4.1. MMEL Development Plan

3.11.5. The Contractor is expected to interact and collaborate with Vitals management team, as well as the district representatives at the site and within shared services.

3.12. Skills and qualifications

3.12.1. Tenderers that have the following skills or can demonstrate a high-level capacity and desire to apply their expert skills and knowledge are encouraged to apply.

- A minimum of ten (10) years’ direct experience in aviation fuel quality management, airport operations, audit and inspections.
- Demonstrated understanding and experience in Pacific development and environment.
- Experience working in Pacific Islands countries and/or territories, with a working knowledge of the Pacific region.
- Excellent engagement and communication skills (oral and written) in English, including delivering of high-quality reporting.

3.13. Scope of Bid Price and Schedule of Payments

3.13.1. This is a milestone-based contract and will be paid in accordance with the draft and payment schedule below. Vital and the Bidder will finalize this based on the Proposal

3.13.2. The terms of payment shall be in accordance with the provisions of Article 10 of the SPC General Conditions.

Milestone/deliverables	Deadline	% payment
Contract Signing with agreed workplan, design and methodology	30 March 2025	10%
Objective 1. Increase the strategic oil reserves by a minimum of 60,000 US Gallons, reduce supply chain costs, and address all EI/JIG engineering assets compliance gaps.		
Deliverable 1.1 – Increased Tank Storage Capacity.		
Deliverable 1.2. – Change Management Plan		
Deliverable 1.3. – Iso-Container Supply Chain Cost Reduction Plan		
Deliverable 1.4. – Design Basis Memorandum		
Objective 2. Achieve a “Good” rating at the 2025 EI/JIG Aviation Audit.		
Deliverable 2.1 - Operating Philosophy and Principles		
Deliverable 2.3 – Yap Bulk Terminal Facility Security Plan (FSP).		
Deliverable 2.2 – Spill Control and Counter Prevention Plan (SPCC).		
Deliverable 2.4 – Yap Aviation Depot Facility Security Plan (FSP)		
Objective 3. Achieving a risk aware workforce		
Deliverable 3.1. General Risk Assessment (GRA) Workshops.		
Objective 4. Achieving minimum manning levels and experience (MMEL).		
Deliverable 4.1. MMEL Development Plan		

4. PROPOSAL EVALUATION MATRIX

4.1. Technical Proposal

4.1.1. The evaluation matrix below reflects the obtainable score specified for each evaluation criterion (technical requirement) which indicates the relative significance or weight of the items in the overall evaluation process.

Evaluation criteria	Score Weight (%)	Points obtainable
Mandatory Requirements		
<p>1. Evidence of experience with similar projects and referee contacts</p> <p>2. Proposed workplan and design of the system</p>	<p>Mandatory requirements. Bidders will be disqualified if any of the requirements are not met</p>	
Technical Requirements		
<ul style="list-style-type: none"> Design and Approach Review of the proposed quality control points, systems design philosophy, pump system design, tank foundation design, and piping network. Quality and feasibility of the technical approach, including system design, choice of materials (e.g., pump, tank, and ancillary equipment), methodology for installation, and how they plan to ensure system stability during natural disasters. 	25%	250
<ul style="list-style-type: none"> Experience and Reputation Review of the contractor’s experience in successfully completing similar projects (aviation engineering and quality control, aviation management system design and audit, tank installations, and piping systems). Evidence of previous work, certifications, and relevant qualifications 	25%	250
<ul style="list-style-type: none"> Project Delivery Understanding of the project scope, challenges, and requirements. This includes the ability to identify key risks and provide clear mitigation strategies. Demonstrating familiarity with local regulations and best practices. 	50%	350
<ul style="list-style-type: none"> Compliance with Environmental and Safety Standards Evaluation of the contractor's commitment to safety and environmental practices, including risk assessments, health and safety protocols, waste management, and adherence to environmental regulations during installation 	25%	150
Total	100%	1000

1.2 Price Proposal

- 4.1.2. The consultant is invited to submit:
- 4.1.3. A fixed price proposals
- 4.1.4. A fixed price proposal to complete Component 3 of the project.
- 4.1.5. A budgetary price proposal to complete Component 2 of the project following the completion of the investigation work.

4.2. Bid Price

Milestone/deliverables	Price
Objective 1. Increase the strategic oil reserves by a minimum of 60,000 US Gallons, reduce supply chain costs, and address all EI/JIG engineering assets compliance gaps.	
Deliverable 1.1 – Increased Tank Storage Capacity.	
Deliverable 1.2. – Change Management Plan	
Deliverable 1.3. – Iso-Container Supply Chain Cost Reduction Plan	
Deliverable 1.4. – Design Basis Memorandum	
Objective 2. Achieve a “Good” rating at the 2025 EI/JIG Aviation Audit.	
Deliverable 2.1 - Operating Philosophy and Principles	
Deliverable 2.3 – Yap Bulk Terminal Facility Security Plan (FSP).	
Deliverable 2.2 – Spill Control and Counter Prevention Plan (SPCC).	
Deliverable 2.4 – Yap Aviation Depot Facility Security Plan (FSP)	
Objective 3. Achieving a risk aware workforce	
Deliverable 3.1. General Risk Assessment (GRA) Workshops.	
Objective 4. Achieving minimum manning levels and experience (MMEL).	
Deliverable 4.1. MMEL Development Plan	

5. ANNEX 1

AS4122-2010 Vital’s General Terms and Conditions of Contract for Consultant

Australian Standard®

General Conditions of Contract for
Consultants



This Australian Standard® was prepared by Committee LL-001, General Conditions of Contract for Consultants. It was approved on behalf of the Council of Standards Australia on 15 October 2010.

This Standard was published on 22 November 2010.

The following are represented on Committee LL-001:

- Association of Consulting Architects Australia
 - Australasian Procurement and Construction Council
 - Australian Constructors Association
 - Australian Institute of Architects
 - Consult Australia
 - Master Builders Australia
-

This Standard was issued in draft form for comment as DR AS 4122.

Standards Australia wishes to acknowledge the participation of the expert individuals that contributed to the development of this Standard through their representation on the Committee and through the public comment period.

Keeping Standards up-to-date

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Australian Standard®

General Conditions of Contract for Consultants

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Preface

This Standard was prepared by the Standards Australia Committee LL-001, General Conditions of Contract for Consultants, to supersede AS 4122-2000, *General conditions of contract for engagement of consultants*. The previous edition of this Standard was developed and published by Standards Australia Committee OB-010, Construction Industry Practice.

It is anticipated that the Standard will generate net benefit to the Australian community by providing greater access to a standard form of contract to purchasers and providers of services, particularly in the building and construction industry, by:

- providing fair, reasonable, commercial terms to facilitate widespread utilization of the Standard by all stakeholders;
- reducing time and resources spent negotiating contractual terms and conditions of engagement;
- streamlining the process of engagement of consultants;
- improving clarity and certainty of contractual terms and conditions between clients and consultants; and
- reducing disputes between clients and consultants based on contractual terms.

Users of this Standard are advised of the importance of completing the Annexures, as in some cases completion of the *Item* is necessary for the operation of the corresponding clause.

The following warnings should be noted:

- (i) This Standard has not been developed specifically for use:
- in a design and construct context; and/or
 - where the *Client* intends to novate this *Contract* with the *Consultant* to another party.

Parties intending to use this Standard in those circumstances should seek advice as to when an alternative contract such as AS 4904-2009, *Consultants agreement-Design and Construct*, may be used.

- (ii) Legislation has come into force in some jurisdiction on dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

This Standard incorporates Amendment No. 1 (Month Year). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.

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NOTES

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this *Contract*, except where the context otherwise requires:

Approvals	means certificates, licenses, consents, permits, approvals and requirements made or authorized by a Commonwealth, State, Territory or local government, or by a <i>Legislative Requirement</i> ,
Business Day	means calendar day but excludes public holidays as defined by the governing law of this <i>Contract</i> and weekends;
Client	means the person identified in <i>Item 1</i> ;
Client Information	means all information supplied to the <i>Consultant</i> in a <i>Document</i> for the purposes of this <i>Contract</i> ,
Consultant	means the person identified in <i>Item 2</i> ;
Contract	means the agreement recorded in the <i>Contract Documents</i> ;
Contract Documents	means the <i>Documents</i> listed in <i>Item 3</i> ;
Deliverables	means those <i>Documents</i> and things required under this <i>Contract</i> to be handed over to the <i>Client</i> by the <i>Consultant</i> ,
Direction	means any agreement, approval, assessment, authorization, decision, determination, explanation, instruction, order, permission, rejection, request or requirement given or made by the <i>Client</i> ,
Documents	includes information stored by electronic and other means;
Fee	means the money payable under this <i>Contract</i> for the performance of the <i>Services</i> as adjusted in accordance with this <i>Contract</i> (excluding disbursements) and includes any amount payable stated in <i>Item 20</i> ;
Force Majeure	means an event or circumstance which: <ul style="list-style-type: none">(a) is beyond the reasonable control of either party;(b) is not caused by either party;(c) can occur with or without human intervention; and(d) was not reasonably foreseeable by the parties at the time of entering into this <i>Contract</i>, the consequences of which could not have been reasonably prevented by the party affected;
GST	means the tax payable on a taxable supply under <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any related legislation;

<i>Intellectual Property Right</i>	means any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, know-how, trademarks and any other right in respect of intellectual property;
<i>Insolvency Event</i>	means any of the events set out in clause 31;
<i>Item</i>	means an <i>Item</i> in Annexure Part A;
<i>Legislative Requirements</i>	means legislation and subordinate legislation of the Commonwealth of Australia or the State or Territory applicable to the <i>Services</i> , and any instruments made under such legislation or subordinate legislation;
<i>Moral Right</i>	means the rights defined as 'Moral Rights' in the <i>Copyright Act 1968</i> (Cth);
<i>Scope</i>	is described in <i>Item 4</i> (as varied from time to time in accordance with this <i>Contract</i>);
<i>Services</i>	means the <i>Services</i> described in or reasonably inferred from the <i>Scope</i> , including the supply of the <i>Deliverables</i> ;
<i>Variation</i>	means a change to the <i>services</i> whether or not it is a change to the <i>Scope</i> .

1.2 Interpretation

In this *Contract*, except where the context otherwise requires,

- (a) 'person' includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.
- (b) 'includes' is not a word of limitation;
- (c) a reference to *Legislative Requirements* includes all amendments, re-enactments and replacements to *Legislative Requirements*;
- (d) if a word is defined, another part of speech or grammatical form of that word has a corresponding meaning; and
- (e) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.

1.3 Contra Proferentem

In the interpretation of this *Contract*, no rule of construction applies to the disadvantage of one party on the basis that the party put forward or drafted this *Contract* or any provision in it.

1.4 Joint and Several

To the extent permitted by law, if either party consists of one or more persons, this *Contract* binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally and this *Contract* must be read and construed accordingly.

1.5 Headings and guidance notes are provided for information or convenience and do not form part of this *Contract*.

2 CONSULTANT TO PERFORM SERVICES

The *Consultant* must perform the *Services* in accordance with this *Contract*.

3 CLIENT TO PAY

The *Client* must pay the *Consultant* in accordance with this *Contract*.

4 STANDARD OF CARE

The *Consultant* must perform the *Services* to the standard of skill, care and diligence expected of a skilled and competent professional practicing in the particular fields relevant to the *Services*, or such higher standard as the *Consultant* has represented in writing to the *Client* in relation to this *Contract*.

5 SCOPE

- 5.1 The *Consultant*, exercising skill, care and diligence to the standard of care required in clause 4, has examined the *Scope* and agrees that the *Services* will be suitable, appropriate and adequate for the purpose stated in *Item 5*, except to the extent that, prior to commencement of work on the *Deliverables*:
- (a) the *Consultant* notified the *Client* in writing of any ambiguity, error, omission, discrepancy, insufficiency or inconsistency in the *Scope* which would prevent the *Services* from being suitable, appropriate and adequate for the purpose stated in *Item 5*, and its proposed solution; and
 - (b) the *Client* has not amended the *Scope* to the extent necessary, if at all, to address the concern notified under clause 5.1(a).
- 5.2 After commencement of work on the *Deliverables*, the *Consultant* must promptly notify the *Client* if and to the extent the *Consultant* becomes aware that any *Client Information* contains an ambiguity, error, omission, discrepancy, insufficiency or inconsistency or is otherwise insufficient to enable the *Consultant* to perform the *Services*.
- 5.3 If the *Consultant* gives notice under clause 5.2, the *Client* must either:
- (a) direct an appropriate amendment to the *Scope*; or
 - (b) direct the *Consultant* to proceed notwithstanding its advice.

- 5.4 The *Consultant* is entitled to an adjustment to the *Fee* and/or time for performing the services in relation to a *Direction* under clause 5.3:
- (a) where the *Consultant* has given notice under clause 5.2; and
 - (b) it was not reasonably practicable for the *Consultant* to identify any ambiguity, error, omission, discrepancy, insufficiency, or inconsistency necessitating amendment to the *Scope* prior to commencement of work on the *Deliverables*.

6 CLIENT'S REPRESENTATIVE AND CONSULTANT'S REPRESENTATIVE

- 6.1 The *Client* appoints the person named in *Item 6* to act as the *Client's* representative to exercise the *Client's* functions under this *Contract*.
- 6.2 The *Consultant* appoints the person named in *Item 7* to act as the *Consultant's* representative to exercise the *Consultant's* functions under this *Contract*.
- 6.3 Either party may terminate the appointment of its representative by notice in writing to the other party. The notice must identify and provide contact details for the party's new representative.
- 6.4 Unless the *Client* objects to the *Consultant's* proposed representative on reasonable grounds in writing, within 3 *Business Days*, or as otherwise agreed in writing, the termination and new appointment will take effect 4 *Business Days* after service of the notice.

7 INFORMATION

The *Client* must promptly provide the *Consultant* with *Client Information* sufficient to enable the *Consultant* to perform the *Services*.

8 DIRECTIONS

- 8.1 The *Client* may give *Directions* to the *Consultant* at any time.
- 8.2 A *Direction* may be given orally by the *Client* except where this *Contract* Otherwise provides.
- 8.3 The *Client* must give the *Consultant Directions* necessary for the performance of the *Services* in a timely manner.
- 8.4 The *Consultant* must comply with all *Directions* given under this *Contract*.

- 8.5 If the *Consultant* in writing requests the *Client* to confirm an oral *Direction*, the *Consultant* is not bound to comply with the *Direction* until the *Client* confirms it in writing.

9 VARIATIONS

- 9.1 The *Client* may direct the *Consultant* to perform a *Variation*. All such *Directions* must be in writing and specify that they direct a *Variation*.
- 9.2 If the *Consultant* considers any *Direction* requires a *Variation* but the *Direction* is not in writing or does not specify that it directs a *Variation*, then the *Consultant* must promptly notify the *Client* in writing setting out why the *Consultant* considers the *Direction* requires a *Variation*. In that case the *Consultant* must not comply with the *Direction* unless the *Consultant* receives a written:
- (a) *Direction* specifying a *Variation*; or
 - (b) notice that the *Client* disagrees, stating its reasons.
- If a notice is issued under clause 9.2(b), the *Consultant* must comply with the *Direction* but may, within 20 *Business Days*, dispute the *Client*'s notice under clause 9.2(b) by notice given under clause 32.
- 9.3 The *Fee* must be adjusted for each *Variation*. Unless the amount of the adjustment is agreed, the adjustment must be calculated by the *Client* on the basis of applicable rates or fees in this *Contract* or, if none, then reasonable rates or fees.
- 9.4 The *Consultant* is not obliged to perform a *Variation* that is outside the general *Scope* of the *Services*.

10 PAYMENT

- 10.1 The basis for payment to the *Consultant* is stated in *Item 8*.
- 10.2 The *Consultant* is only entitled to payment for disbursements set out in *Item 9*, and any other disbursement if approved in writing by the *Client* (such approval not to be unreasonably withheld or delayed) prior to the disbursement being incurred.
- 10.3 The *Consultant* must claim payment in writing at the times stated in *Item 10*, or if no times are stated, by the last *Business Day* of each month. If no time is stated, only one payment claim may be made each month.
- 10.4 The payment claim must:
- (a) in respect of the *Services*:
 - (i) identify the *Services* to which the payment claim relates;

- (ii) separately identify each *Variation*;
 - (iii) separately identify any other claim for payment under this *Contract* including a payment stated in *Item 20*; and
 - (iv) set out the amount of the Fee claimed, and how that amount was determined;
 - (b) in respect of disbursements:
 - (i) identify each disbursement claimed;
 - (ii) state the amount of the disbursement claimed;
 - (iii) be accompanied by relevant invoices and receipts for payment;
- and
- (c) be in the form of a valid tax invoice.
- 10.5 The *Client* must either:
- (a) pay the whole amount claimed in the payment claim; or
 - (b) within 10 *Business Days* of service of a payment claim issue a statement stating the lesser amount the *Client* proposes to pay together with the reasons.
- 10.6 The *Client* must pay the amount specified in clause 10.5(a) or 10.5(b) within the period specified in *Item 11* or, if no period is specified, within 30 calendar days after service of the payment claim under clause 10.3.
- 10.7 Payment by the *Client* is on account and is not evidence of the value of work completed, an admission of liability nor evidence that the *Services* have been executed satisfactorily.
- 10.8 If the *Client* fails to make the payment that is due and payable in accordance with clause 10.6, the *Consultant* may notify the *Client* in writing that it will suspend performance of the *Services*, after expiry of at least 5 *Business Days* written notice to the *Client*. Unless the payment has been made, the *Consultant* may suspend performance of the *Services* any time after expiration of the notice period. The *Consultant* must promptly lift the suspension after the *Client* has made the payment.
- 10.9 If the *Client* fails to make the payment that is due and payable in accordance with clause 10.6, the *Consultant* may notify the *Client* in writing that interest is payable on any overdue payments at the rate stated in *Item 12* from the date of the notice. If so, the *Consultant* must promptly issue an amended tax invoice and the Fee must be adjusted to include the amount of interest paid.
- 10.10 Nothing in this clause 10 limits the *Consultant's* rights under clause 27.

11 GST

If the *Fee* is stated to be *GST* exclusive, the *Client* must pay the *Fee* plus the applicable *GST*.

12 TIME

- 12.1 Subject to clause 12.2, the *Consultant* must complete the *Services* by the time stated in *Item 13*.
- 12.2 The *Client* must grant the *Consultant* a reasonable extension of time for any delay to completion of the *Services* caused by:
- (a) an act or omission of the *Client* or its officers, employees, agents or other consultants or contractors (including a *Variation* directed by the *Client*);
 - (b) a *Force Majeure*;
 - (c) any event or circumstance set out in *Item 14*; or
 - (d) any event or circumstance for which another provision of this *Contract* provides that the *Consultant* may be entitled to an extension of time,
- provided that the *Consultant* notifies the *Client* of the delay and its cause promptly after the *Consultant* becomes aware of the delay or its cause, and provides reasonable evidence of the cause and duration of the delay.
- 12.3 The *Client* must pay the *Consultant's* reasonable costs of and incidental to delay (valued as a *Variation*) caused by any of the following events for which an extension of time has been granted under clause 12.2:
- (a) any breach of this *Contract* or negligent or unlawful act or omission of the *Client* or its officers, employees, agents or other consultants or contractors;
 - (b) a *Variation* directed by the *Client*,
 - (c) any event or circumstance set out in *Item 14*; or
 - (d) any event or circumstance that occurs for which another provision of this *Contract* provides that the *Consultant* may be entitled to an extension of time with costs.

13 LAW AND APPROVALS

- 13.1 The *Consultant* must comply with all *Legislative Requirements* and *Approvals* in carrying out the *Services*.
- 13.2 The *Consultant* must obtain the *Approvals*, if any, stated in *Item 15*.
- 13.3 If a new *Legislative Requirement* or *Approval*, or a change in a *Legislative Requirement* or *Approval*:
- (a) occurs after agreement of the *Fee*;
 - (b) causes the *Consultant* to incur more or less cost or time than otherwise would have been incurred or expended; and

- (c) could not have been reasonably anticipated by the *Consultant* exercising the standard of care in clause 4 as at the date the *Fee* was submitted to the *Client* (or, if the *Fee* was amended after it was submitted, the date of that amendment) prior to the 15th *Business Day* before agreement of the *Fee*,

Then the difference in cost will be valued as a *Variation* and an extension of time may be granted in accordance with clause 12.

14 CONSULTATION AND MEETINGS

The *Consultant* must consult regularly with the *Client* and attend meetings and briefings reasonably required by the *Client* in connection with the *Services*.

15 REVIEW AND ACCEPTANCE

- 15.1 The *Consultant* must allow the *Client* to review and discuss the *Documents* and *Deliverables* (whether complete or in progress) produced by the *Consultant* in performing the *Services*.
- 15.2 The *Consultant* remains responsible for the *Services* despite any review or acceptance of any of the *Services* by the *Client*.

16 ADVERSE EVENT

Each party must, as soon as practicable after becoming aware of any matter or circumstance (including any change in *Legislative Requirement* or *Approval*) which may adversely affect or has adversely affected the performance of the *Services*, notify the other party. The notice must include reasonable detail describing the matter or circumstances and its anticipated effect on the *Services*.

17 COOPERATION WITH OTHERS

The *Consultant* must use reasonable endeavors to liaise, cooperate and confer with contractors and other consultants of the *Client* in order to coordinate its *Services* with the services of those contractors and consultants to produce the *Deliverables*.

18 KEY PERSONNEL

The *Consultant* must provide the key personnel (if any) stated in *Item 16* to perform the *Services* stated in *Item 16*. If any key person is not available due to circumstances beyond the reasonable control of the *Consultant*, the *Consultant* must promptly notify the *Client* and arrange a replacement approved by the *Client* (such approval not to be unreasonably withheld or delayed).

19 CONFLICT OF INTEREST

- 1g_1 a conflict of interest in connection with this *Contract includes* a conflict between a duty owed by the *Consultant* to a person and a duty owed by the *Consultant* to the *Client*.
- 1g_2 The *Consultant* represents that to the extent reasonably ascertainable at commencement of this *Contract*, after making all reasonable enquiries, no conflict of interest exists or is likely to arise except as set out in *Item 17*.
- 19.3 The *Consultant* must monitor and, unless the *Client* gives prior written consent to the conflict of interest, avoid the occurrence of any conflict of interest.
- 19.4 The *Consultant* must notify the *Client* immediately on becoming aware of a conflict of interest or a significant risk of a conflict.
- 19.5 Where a conflict of interest arises or is likely to arise, the *Client* may proceed under clause 27.

20 SUBCONTRACTING AND ASSIGNMENT

- 20.1 Subject to clause 20.2 neither party may, without the prior written approval of the other (which must not be unreasonably withheld or delayed), transfer any of its rights or obligations under this *Contract*.
- 20.2 The *Client* may assign its rights under this *Contract* without notice to the *Consultant*.
- 20.3 The *Consultant* must not subcontract any part of the *Services* without the prior written approval of the *Client* (which must not be unreasonably withheld or delayed). In granting the approval the *Client* may impose reasonable conditions.
- 20.4 Subcontracting does not relieve the *Consultant* of any obligation under this *Contract*.

21 COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

- 21.1 The *Client* licenses to the *Consultant* such *Intellectual Property Rights* in *Client Information* as are necessary to enable the *Consultant* to perform the *Services* in accordance with this *Contract*.
- 21.2 The *Consultant* retains the *Intellectual Property Rights* created outside the terms of this *Contract* and used in performing the *Services*. Subject to clause 21.4, the *Consultant* grants to the *Client* a royalty-free non-exclusive irrevocable license to use such *Intellectual Property Rights* for any purpose for which the *Services* are provided.
- 21.3 The Alternative stated in *Item 18* applies.
- Alternative 1**
- Subject to clause 21.4, on creation the *Consultant* grants to the *Client* an irrevocable, royalty-free license to use, adapt, reproduce, amend, publish and sublicense on the same terms, the *Deliverables* created by the *Consultant* for any purpose for which the *Services* are provided, including any subsequent repairs, maintenance or servicing.
- Alternative 2**
- Subject to clause 21.4, on creation all *Intellectual Property Rights* in the *Deliverables* created by or for the *Consultant* vest in the *Client*.
- The *Client* grants to the *Consultant* an irrevocable, royalty-free license to use, adapt, reproduce, amend, publish and sublicense those *Intellectual Property Rights*.
- To the extent the *Intellectual Property Rights* in or relating to the *Deliverables* are not capable of being vested in the *Client* because the *Consultant* does not own the *Intellectual Property Rights*, the *Consultant* must obtain an irrevocable license for the *Client* to use those *Intellectual Property Rights*, except for those rights stated in *Item 19*.
- 21.4 The rights created by clause 21.3 are revocable by the *Consultant* if the *Client* does not pay the amount payable under this *Contract* including the amount stated in *Item 20*, within 40 *Business Days* after completion of the *Services*, termination of this *Contract* or determination of any dispute regarding the *Consultants* entitlement to payment.
- 21.5 The *Consultant must* not infringe any *Intellectual Property Rights* in performing the *Services*.
- 21.6 The *Client* must not infringe any *Intellectual Property Rights* in providing *Client Information*.

22 MORAL RIGHTS*

- 22.1 This clause applies if *Item 21* states that it applies.
- 22.2 The *Consultant* has or must obtain a consent from each of its officers and employees and use its best endeavors to obtain such consent from its agents, sub consultants and subcontractors (and their respective employees) in connection with the *Services* in substantially the same form as the consent set out in Annexure Part C, or such other form as is acceptable to the *Client*.
- 22.3 In relation to the *Services*:
- (a) the *Consultant* must be attributed as the author of the physical product of the *Services* as stated in *Item 21* when the *Client* considers it reasonable and practicable, or as otherwise agreed in writing;
 - (b) the *Client* need not advise the *Consultant* of any intended alteration to or demolition of any project, building or structure related to the *Services* unless otherwise agreed in writing;
 - (c) the *Consultant* has the right to give consent on behalf of its employees and its consultants (if any); and
 - (d) Where requested, the *Consultant* must provide the *Client* with copies of all relevant consents in the form of Annexure Part C, or another form as agreed, within a reasonable time.

23 CONFIDENTIALITY

- 23.1 The parties must treat as confidential:
- (a) the information stated in *Item 22*; and
 - (b) all other information which of its nature is confidential or which the parties ought reasonably to know is confidential.
- 23.2 The obligation of confidentiality does not apply to the extent:
- (a) that the information is in the public domain otherwise than as a result of a breach of this Contract,
 - (b) disclosure is required by law;
 - (c) disclosure is necessary to procure goods or services in connection with the *Services*, provided that the recipient of the information is also subject to an obligation of confidentiality; or
 - (d) Disclosure is agreed in writing by the parties.

• These provisions do not derogate from the rights and obligations set out in Part IX of the *Copyright Act 1968* (Cth).

- 23.3 The *Consultant* must not publish or enable others to publish any information in connection with the *Services* without the prior written consent of the *Client* (which must not be unreasonably withheld or delayed).
- 23.4 The *Consultant* must ensure that its officers, employees, agents, Sub consultants and subcontractors comply with the *Consultant's* obligations under this clause 23.

24 SUSPENSION BY THE CLIENT

- 24.1 The *Client* may suspend the performance of the *Services* at any time by notice in writing to the *Consultant*.
- 24.2 Unless the suspension has been directed due to the *Consultant's* wrongful conduct, the *Client* must pay the *Consultant* any costs and expenses reasonably incurred by the *Consultant* as a result of the suspension.
- 24.3 The *Consultant* must recommence the *Services* when reasonably directed to do so by the *Client*.
- 24.4 If the suspension lasts longer than the period stated in *Item 23* the *Consultant* may terminate this *Contract*.
- 24.5 The *Client* is not liable to the *Consultant* for any indirect or consequential loss suffered or incurred as a result of the exercise by the *Client* of its rights under this clause 24.

25 SUSPENSION BY THE CONSULTANT

- 25.1 If a risk to the health or safety to any person arises where the *Services* are being performed (other than at any premises owned or controlled by the *Consultant*), the *Consultant* may suspend the performance of the *Services* to the extent necessary to protect affected persons.
- 25.2 The *Consultant* must give prompt notice to the *Client* of the suspension, the reason for the suspension and, if known by the *Consultant*, its likely duration.
- 25.3 The *Consultant* must recommence the *Services* as soon as possible and give prompt notice to the *Client*.
- 25.4 The *Consultant's* right to suspend the performance of the *Services* following the *Client's* failure to make a payment is set out in clause 10.8.

26 TERMINATION WITHOUT CAUSE

- 26.1 This *Contract* may be terminated:
- (a) at any time by mutual agreement; or
 - (b) by the *Client* for any reason after giving reasonable written notice to the *Consultant*.
- 26.2 If this *Contract* is terminated under clause 26.1, the *Client* must pay to the *Consultant*
- (a) the applicable portion of the *Fee* for the *Services* performed prior to the date of termination;
 - (b) all disbursements incurred by the *Consultant* prior to the date of the termination which would have been payable had this *Contract* not been terminated; and
 - (c) any costs and expenses reasonably incurred by the *Consultant* by reason of termination.
- The *Client* is not liable to the *Consultant* under this clause 26 for any amount greater than the amount that the *Client* would have paid to the *Consultant* had this *Contract* been completely performed.
- 26.3 The *Client* is not liable to the *Consultant* for any indirect or consequential loss arising out of the termination under clause 26.1.
- 26.4 Upon termination and payment of the amount due to the *Consultant* under clause 26.2, the *Consultant* must deliver to the *Client* all *Deliverables* and all *Documents* which, on completion, would be *Deliverables*. The *Consultant* is not liable in respect of the *Documents* which it has not completed due to the termination of this *Contract*.

27 TERMINATION DUE TO DEFAULT BY EITHER PARTY

- 27.1 If either party commits a substantial breach of this *Contract*, the other party may give to the party who committed the breach a written notice to show cause. A notice to show cause must:
- (a) state it is a notice given under this clause 27;
 - (b) specify the alleged breach with reasonable details;
 - (c) require the party who committed the breach to show cause in writing why the party giving the notice should not exercise a right referred to in this clause 27; and
 - (d) Specify a date (which must not be less than 5 *Business Days* after the notice is served) by which the party who committed the breach must show cause.

- 27.2 Substantial breaches include but are not limited to:
- (a) suspension of work other than as permitted in clauses 10.8, 24 and 25;
 - (b) failure to proceed with due diligence and without delay;
 - (c) failure to provide evidence of insurance in accordance with clause 30.5; and
 - (d) failure of the *Client* to pay the *Consultant* under clause 10.
- 27.3 If the recipient of a notice to show cause fails to show reasonable cause why the other party should not exercise a right under clause 27.3 within the time specified in the notice, the other party may, by further written notice:
- (a) terminate this *Contract*; or
 - (b) if the breach is a failure of the *Client* to pay the *Consultant* under clause 10, the *Consultant* may suspend performance of the *Services* until payment is made.
- 27.4 If the *Consultant* suspends performance of this *Contract* under clause 27.3(b), the *Consultant* must promptly lift the suspension after the *Client* remedies the breach, unless the *Consultant* has terminated the *Contract*.

28 INDEMNITY

- 28.1 To the extent permitted by law, the *Consultant* indemnifies the *Client* from and against all liability, losses, damages, costs and expenses (including legal expenses), due to:
- (a) loss of, damage to, or destruction of any property (including the *Deliverables*); or
 - (b) personal injury (including psychological injury) or death,
- to the extent contributed to by any breach of this *Contract* by the *Consultant* or negligent or unlawful act or omission of the *Consultant*, its officers, employees, agents, subconsultants or subcontractors in connection with this *Contract*.
- 28.2 Clause 28.1 does not apply to the extent that:
- (a) the liability, loss, damage, cost or expense is contributed to by any breach of this *Contract* by the *Client* or negligent or unlawful act or omission of the *Client* or its officers, employees, agents, other consultants or contractors, and/or
- 28.3
- (b) the *Client* fails to act reasonably to mitigate the liability, loss, damage, cost or expense.

Clauses 28.1 and 28.2 do not exclude any other right of the *Client* at law.

29 LIMITATION OF LIABILITY

- 29.1 The liability of the *Consultant* to the *Client* arising under or in connection with this *Contract* including:
- (a) in tort (including for negligence);
 - (b) under statute; or
 - (c) otherwise,
- to the extent permitted by law, is limited in the aggregate to the amount specified in *Item 24* if any.
- 29.2 Clause 29.1 does not apply to liability arising from:
- (a) personal injury (including psychological injury) or death;
 - (b) infringement of *Intellectual Property Rights*;
 - (c) fraudulent, malicious or criminal conduct;
 - (d) willful default;
 - (e) conduct with reckless disregard for the consequences;
- or of by the *Consultant* or its officers, employees, agents, subconsultants and subcontractors.

30 INSURANCE

- 30.1 Except if the *Client* has agreed to effect relevant insurance under clause 30.7, the *Consultant* must effect and maintain the following insurances:
- (a) public liability insurance;
 - (b) workers' compensation insurance; and
 - (c) Professional indemnity insurance.
- 30.2 The public liability insurance must be for an amount not less than that set out in *Item 25* and must be maintained for the entire duration of this *Contract*.
- 30.3 The workers' compensation insurance must be effected and maintained in accordance with the applicable Australian, State or Territory legislation.
- 30.4 The professional indemnity insurance must be for an amount not less than that set out in *Item 26* and must be maintained for not less than the period set out in *Item 27*. The policy must include provision for one automatic reinstatement of the sum insured.

- 30.5 Before the *Consultant* commences work and whenever requested in writing by the *Client*, the *Consultant* must provide to the *Client* a certificate of currency in respect of each insurance policy required under clause 30.1, showing:
- (a) the insurance policy numbers;
 - (b) the expiry date of each policy; and
 - (c) the amount of insurance cover required to be held under this *Contract*.
- 30.6 Without limiting the *Consultant's* other obligations under this *Contract*, if the *Consultant* fails to promptly provide evidence when required under clause 30.5, the *Client* may give the *Consultant* a written notice requiring the *Consultant* to provide the evidence required within a specified period of not less than 5 *Business Days* from when the notice is served and specifying the *Client's* intent to exercise its rights under this clause 30.6 if the *Consultant* does not comply. If the *Consultant* does not comply, the *Client* may effect and maintain the insurance, pay the premiums and deduct these payments from moneys due or to become due to the *Consultant* from the *Client* or otherwise treat the failure as a breach of contract.
- 30.7 The *Client* must effect and maintain the insurances (if any) specified in *Item 28*. Each policy must name the *Consultant* as an insured. The *Client* must maintain the insurances for not less than the period set out in *item 28*. The *Client* must provide a copy of the policies and certificates of currency to the *Consultant* before the *Consultant* is required to commence the *Services*.

31 INSOLVENCY

- 31.1 Either party may terminate this *Contract* without notice if the other party is subject to an *Insolvency Event*. This right is in addition to any other rights under this *Contract*.
- 31.2 *Insolvency Event* means:
- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*,
 - (b) execution is levied against a party by a creditor;
 - (c) a party is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or

- (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth) or like provision under the law governing the *Contract*,
- or
- (d) in relation to a party being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) it enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for its winding up and not stayed within 14 days;
 - (v) a winding up order is made in respect of it;
 - (vi) it resolves by special resolution that it be wound up voluntarily (other than a voluntary winding up by members for the purpose of reconstruction or amalgamation); or
 - (vii) a mortgagee of any of its property takes possession of that property.

32 DISPUTE RESOLUTION

- 32.1 If a dispute between the parties arises in connection with this *Contract*, then either party may give the other party a written notice of the dispute in accordance with clause 33, adequately identifying and providing details of the dispute.
- 32.2 Notwithstanding the existence of a dispute in relation to any matter other than the exercise of a right to terminate this *Contract*, the parties must continue to perform the *Contract* unless permitted to suspend performance under clauses 10.8, 24, 25 or 27.
- 32.3 Within 10 *Business Days* after service of a notice of dispute, the parties must confer at least once to resolve the dispute or to agree on methods of doing so. Each party must be represented by a person having authority to agree to such resolution or methods of resolution. All conferences under this clause 32.3 must be conducted in good faith and without prejudice.
- 32.4 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.

33 SERVICE OF NOTICES

- 33.1 Subject to clause 33.2, notices under this *Contract* must be served:
- (a) by hand, mail, fax or email, at the address, fax number or email address, set out in *Item 29*, or, if notice of a change in address, fax number or email address is given, at the last such notified address, fax number or email address;
 - (b) by such other means as the parties agree in writing.
- 33.2 Any *Document* given under clauses 24, 25, 26, 27, 31 or 32 must be served by hand or registered mail.
- 33.3 A *Document* is served:
- (a) by mail, 3 *Business Days* after posting;
 - (b) by fax, when the sender receives an error-free transmission report from the correct fax number;
 - (c) by email or other electronic means, when it becomes capable of being retrieved by the addressee at the relevant email or other electronic address.
- 33.4 Any notice served after 5 pm on any *Business Day* or on a weekend or a public holiday is deemed to be served on the next *Business Day*.

34 SURVIVAL OF TERMINATION

Clauses 10, 21, 22, 23, 26, 28, 29, 30, 32, 33 and 35 will survive the completion or earlier termination of this *Contract*.

35 GOVERNING LAW

The law governing this *Contract* and its interpretation is the law of the State or Territory stated in *Item 30* or, if the State or Territory is not stated, the law of the State or Territory where the *Services* are to be substantially performed and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in that State or Territory.

36 STANDARD FORM NATURE OF CONTRACT

Apart from completed Annexures Part A and Part C, this *Contract* is AS 4122-2010 in its original form, unless *Item 31* specifies otherwise, in which case Annexure Part B states the amendments.

EXECUTION (IF REQUIRED)

NOTE: If a formal execution of this *Contract* is required, the following form or another form may be used.

This *Contract* is dated: _____

If a party is a company, use the following execution clause.

Executed in accordance with section 127 of the *Corporations Act 2001* (Cth) by the persons named below for the entity named opposite:

Insert name of *Client* Company

Signed by a Director:

Signed by a Director/Secretary:

Print name of Director:

Print name of Director/Secretary:

Executed in accordance with section 127 of the *Corporations Act 2001* (Cth) by the persons named below for the entity named opposite:

Insert name of *Consultant* Company

Signed by a Director: President

Signed by a Director/Secretary:

Print name of Director: President

Print name of Director/Secretary:

If a party is not a company, then any person with authority to bind the party can execute the *Contract* by signing it in the place allocated below. If you do so as agent for another person please write after your name "as agent for" and insert that person's name.

Signed:

Print name:

Signed:

Print name:

Part A

Annexure to the Australian Standard
General Conditions of Contract for Consultants
AS 4122-2010

The parties are encouraged to review AS 4121-1994, *Code of ethics and procedures for the selection of consultants*, prior to completing Annexure Part A.

Item

Item 1
(clause 1.1) The *Client* is:

.

Item 2
(clause 1.1) The *Consultant* is:

Item 3
(clause 1.1) The *Contract Documents* are: 3.1.1 See Annexure PART C

.

Item 4
(clause 1.1) The *Scope* is described in the
following *Documents*, or the
Scope is: 4.1.1 See Annexure PART C

Item 5
(clause 5.1)

The purpose(s) for which the
Services will be suitable is/are:

Item 6
(clause 6.1)

The *Client's* representative is:

Item 7
(clause 6.2)

The *Consultants* representative:

Item 8
(clause 10.1)

Claims for payment must be
made on the following basis:

As per Deliverable Option 2 Lumpsum and Schedule of
rates as per proposal

Specify whether the basis is inclusive or
exclusive of GST.

GST inclusive

Yes

No

Item 9
(clause 10.2)

Disbursements for which the
Consultant may claim payment:

- Item 10*
(clause 10.3) Time to claim payment is no later than:
- Item 11*
(clause 10.6) The time for payment is no later than: calendar days after service of a payment claim.
- Item 12*
(clause 10.9) The rate of interest for overdue payment is:
- Item 13*
(clause 12.1) Alternative 1: The date or the period after commencement of this *Contract*, by which the *Services* must be completed is: Alternative 1:
Alternative 2: Under the program attached. Alternative 2:
- | *Item 14*
(clause 12.3 (c)) other causes of delay for which the *Consultant* may notify an extension of time:
- Item 15*
(clause 13.2) The *Approvals* to be obtained by the *Consultant* are:
- | *Item 16*
(clause 18) The key personnel are: **Refer Part C**
- Item 17*
(clause 19.2) Existing conflicts of interest:
None

Item 18
(clause 21.3) Copyright and other *Intellectual Property Rights*, the Alternative that applies is:

Guidance Note:
Identify whether Alternative 1 or Alternative 2 applies.

Item 19
(clause 21.3
Alternative 2)

List excluded *Intellectual Property Rights*:

Guidance Note:
For example, maps referenced from

Item 20
(clause 21.4,
Alternative 2)

The additional amount payable to the *Consultant* for granting of *Intellectual Property Rights* to the *Client* is:

Guidance Note:
If Alternative 2 applies, state the **additional amount payable to the Consultant to vest the Intellectual Property Rights** in the *Client*.

Item 21
(clause 22.1)

Does clause 22 (*Moral Rights*) apply?

If yes, the author is:

Item 22
(clause 23.1)

The following *Documents* are confidential:

Item 23
(clause 24.4)

Maximum period for which *Client* may suspend the *Services* at any one time, after which the *Consultant* may terminate:

Item 24
(clause 29.1)

The *Consultant's* liability is limited to

Yes No

Item 25
(clause 30.2)

Item 26
(clause 30.4)

Item 27
(clause 30.4)

The amount of public liability insurance is: N/A

The amount of the professional indemnity insurance is: Not more than

The professional indemnity insurance must be maintained for the following period:

<i>Item 28</i> (clause 30.7)	The <i>Client</i> must effect the following insurances and maintain them for the following periods: refer to Item 26 & 27	Insurance:	Period:
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<i>Item 29</i> (clause 33.1)	The address for the service of notices is: FSM Petroleum Corporation
---------------------------------	--

:

<i>Item 30</i> (clause 35)	The law governing this <i>Contract</i> is:
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<i>Item 31</i>	Has this <i>Contract</i> been amended from its original form?	No
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Part C

Annexure to the Australian
Standard General Conditions of Contract for
Consultants
AS 4122-2010

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