

STANDARD TERMS AND CONDITIONS FOR PROVISION OF SERVICES IN FIJI

1. Contract Formation

These standard terms and conditions for supply of services in Fiji apply when NEFL issues a Purchase Order to a Contractor after which a contract is formed made up of the Purchase Order, these standard terms and conditions and any Schedules (including any annexures, appendices or specifications to any Schedules or the Purchase Order) (referred to throughout these terms and conditions as the 'Contract').

1.1 Definitions and Interpretation

(a) In the Contract, unless the context otherwise requires:

'**Business Day(s)**' means any day on which banks are open for business in Fiji, but excluding 27-31 December inclusive.

'**Confidential Information**' means any information that concerns the business, operations or affairs of NEFL, any participant in NEFL, or any Related Body Corporate of any such participant, that is disclosed to, or otherwise acquired by, the Contractor, at any time in connection with the Contract or the performance of the Services, and which:

- (i) is by its nature confidential;
- (ii) is designated by NEFL as confidential; or
- (iii) the Contractor knows or ought to reasonably know is confidential, but does not include information which:
- (iv) is or becomes public knowledge other than by a breach of the Contract or any other obligation of confidentiality;
- (v) is in the possession of the Contractor without restriction in relation to disclosure on or before the date on which it is disclosed to, or acquired by, the Contractor; or
- (vi) has been independently developed or acquired by the Contractor.

'**Control**' means, for the purposes of the definition of Related Body Corporate, the practical capacity, exercisable by any means (formal or informal), to determine the outcome of decisions about the management, or financial or operating policies, of the entity, including by way of ownership of securities (including stocks or shares), the exercise of voting power in relation to securities (including stocks or shares), the exercise of voting power at a meeting of directors or a board of management, the ability to control the appointment or removal of directors or managers or otherwise.

'**Force Majeure**' means an event or cause beyond the reasonable control of the party claiming force majeure, not able to be overcome by the exercise of due care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that party, and which could not have been reasonably foreseen, excluding:

- (i) strikes or industrial action of any kind (except for state-wide or national strikes or industrial action);
- (i) adverse weather of any kind (other than to the extent that such adverse weather prevents road access to a relevant Site for a continuous period of no less than 14 days); and
- (ii) any event or cause to the extent to which the risk for such event or cause has expressly been reserved or allocated to the affected party under the Contract.

'**Government Agency**' means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

'**Intellectual Property Rights**' means any intellectual or industrial property rights (including a patent, copyright, trade mark, design, rights in confidential information, rights in relation to circuit layouts and similar rights, in each case whether or not registered) granted under any Laws anywhere in the world, but excluding any non-assignable moral rights and similar non-assignable personal rights of an author.

'**Invoice**' means a tax invoice supplied under the Contract.

'**Laws**' means:

- (i) the present or future requirements of any statute, regulation, order, rule, subordinate legislation, common law, equity or other document enforceable under any statute, regulation, rule or subordinate legislation, common law or equity; and
- (ii) the lawful requirements, directions or instructions of any Government Agency.

'**Liabilities**' means damages, claims, losses, liabilities, costs and expenses of any kind (including legal costs on a full recovery basis).

'**NEFL**' means the Newcrest Exploration (Fiji) Limited and its participants.

'**Personnel**' means:

- (i) in relation to the Contractor, any of its employees, agents and representatives, and any Sub-Contractors and any of the employees, agents and representatives of any Sub-Contractors, involved either directly or indirectly in the provision of the Services; and
- (ii) in relation to NEFL, any of the respective past or present officers, employees, agents or representatives.

'**Purchase Order**' means the attached purchase order issued by NEFL to the Contractor in respect of the supply of the Services, and includes any specifications or drawings that may be contained in it or annexed to it.

'**Related Body Corporate**' means, in relation to one entity (the first entity), any other entity which, directly or indirectly, controls, is controlled by or is under common control with, the first entity.

'**Services**' means the services to be provided by the Contractor under this Contract.

'**Sub-Contractor**' means any person engaged by the Contractor in accordance with Clause 11 to perform all or any part of the Services on behalf of the Contractor.

'**Taxes**' means all taxes, fees, levies, duties and charges imposed or assessed in respect of the Services by all local, state or national Government Agencies including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, stamp duty and VAT.

(b) The following capitalised terms have the meaning given in the Purchase Order:

- NEFL Provided Items (if any);
- Contractor;
- Currency;
- Price;
- Services;
- Site; and
- Term.

(c) The Contractor acknowledges and agrees that:

- (i) NEFL has entered into the Contract;
- (ii) the obligations and liabilities of the participants (from time to time) in the NEFL are several only (and will not be, nor be construed to be, either joint or joint and several), in accordance with each participants' respective percentage interest from time to time in the NEFL; and
- (iii) the percentage interests of the participants in the NEFL, and the identity and number of participants in the NEFL, may change from time to time, without the consent of the Contractor, and NEFL may at any time, without the consent of the Contractor, assign its rights and obligations under the Contract to an incoming agent or successor in NEFL.

2. Agreement to perform Services

The Contractor agrees to perform the Services in accordance with the terms of the Contract and in consideration of the payment of the Price by NEFL.

3. Price

- (a) Subject to the terms of the Contract, NEFL must pay the Price to the Contractor for the provision of the Services in the currency shown on the Purchase Order.
- (b) NEFL's obligation to pay the Price under clause 3(a) is subject to the Services being provided in compliance with the requirements of and the standards provided for in the Contract.
- (c) The Price is deemed to include:
 - (i) any applicable Taxes (excluding VAT); and
 - (ii) except to the extent otherwise expressly stated, all expenses incurred by the Contractor in relation to the provision of the Services (including overheads, materials and supplies, consumables, mobilisation and demobilisation, transportation and accommodation of employees and transportation and storage of equipment, materials and supplies, wages, salaries, overtime, bonuses, premiums, employee benefits, allowances, holiday pay, superannuation, insurance, social security benefits, payroll taxes, premiums for insurance, payroll costs, any other contributions and benefits imposed by any applicable Law or agreement and all other costs and expenses).

4. Payment

- (a) Payment for the services shall be invoiced on the following basis:
 - (i) if the price is a lump sum after completion of the Services, as notified to the Contractor by NEFL, the Contractor must render an Invoice to NEFL in relation to the Services at the end of the month in which the Services were completed; or
 - (ii) If NEFL agrees otherwise, the Contractor must render an Invoice to NEFL at the end of each month in which the Services are provided.
- (b) Subject to the other provisions of the Contract, and unless the parties agree otherwise, NEFL must pay to the Contractor the amount shown on an Invoice within 30 days after the end of the month in which the Invoice was received by NEFL.
- (c) Each invoice shall contain reasonable details of the Services provided and quote the purchase order number provided to the Contractor by NEFL in respect of the Services.
- (d) If NEFL disputes all or any part of the invoice, NEFL must pay the undisputed component (if any) and notify the Contractor of the basis for disputing the balance in the time specified for paying the invoice in Clause 4(b).
- (e) The payment by NEFL of any amount (whether in dispute or not) will not constitute acceptance of the Services or admission of any liability or obligation to make that payment.

5. Set-off

NEFL may deduct from moneys due to the Contractor any money due or payable or claimed to be due or payable from the Contractor to NEFL under or for breach of the Contract or otherwise.

6. Taxes

- (a) If VAT is payable on a taxable supply made under the Contract, the amount of VAT payable in respect of that supply must be paid as additional consideration at the same time as payment is required to be made under the Contract in respect of the supply. This clause does not apply to the extent that the consideration for the taxable supply is

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expressly agreed to be VAT inclusive.

- (b) Any reference in the calculation of any amount payable under the Contract to a cost, expense or other Liability incurred by a party must exclude the amount of any input tax credit entitlement in relation to that cost, expense or other Liability. A party will be assumed to have an entitlement to full input tax credits unless it demonstrates otherwise prior to the date on which payment must be made.
- (c) No amount is payable by NEFL until it has received an Invoice.
- (d) The Contractor shall be solely responsible for and indemnify NEFL against the payment of all taxes, levies and charges imposed on the Contractor or NEFL in relation to the Services or in respect of the payments made under this Contract or in respect of personnel used by the Contractor to perform the Services. NEFL may withhold or deduct from the whole or part of payments due to the Contractor any amount which the Company is required to withhold or deduct by any taxing authority. This amount will be treated as having been paid to the Contractor when it is withheld or deducted. If the Contractor is a Fiji resident company then, in accordance with Fijian laws, provisional tax of 15% of invoiced VAT exclusive amount will be deducted by NEFL and paid to Fiji Revenue & Customs Authority ("FCRA"), unless the Contractor is a holder of a certificate of exemption.

7. Contractor's obligations

- (a) The Contractor warrants that it and each of its Personnel (including its Sub-Contractors) is or are qualified and has or have the capacity, experience, resources, skill and expertise to provide the Services in accordance with the requirements of the Contract.
- (b) The Contractor must, and must ensure that all its Personnel:
 - (i) at all times when on Site comply with NEFL's policies and procedures relating to the provision of the Services;
 - (ii) at all times comply with all applicable Laws relating to its obligations under the Contract and the provision of the Services;
 - (iii) at all times when on Site act in accordance with all reasonable directions of NEFL (including in relation to health and safety, industrial relations and environmental matters);
 - (iv) obtain and maintain, at the Contractor's expense, all licences or permits necessary for the provision of the Services under all applicable Laws;
 - (v) adhere to accepted safe working practices and take reasonable precautions against accident or damage occurring on or to any Site from any cause;
 - (vi) minimise disruption to the operating Site;
 - (vii) not harm or damage the environment in the course of performing the Services;
 - (viii) immediately report to NEFL and clean up at its own cost any damage to the environment caused by it or its Personnel, in connection with the performance of the Services; and
 - (ix) ensure the safe transportation, handling, storage and usage of all substances brought onto the Site in connection with the performance of the Services.
- (c) The Contractor must perform and complete the Services by the date specified (if any) in the Purchase Order.
- (d) Time is of the essence in the provision of the Services by the Contractor under the Contract.
- (e) The Contractor acknowledges that it must provide all Personnel and resources, including equipment and tools, in its performance of the Services.

8. Correction of deficient Services

- (a) Without limiting Clause 7, upon receipt of a notice from NEFL of any deficiency in the Services at any time up to 12 months after the end of the Term, the Contractor must correct such deficiency (including by way of providing such additional Services necessary to correct such deficiency) prior to the time specified in the notice at no cost to NEFL.
- (b) If the Contractor fails to correct any deficiency in the Services identified by NEFL pursuant to Clause 8(a), NEFL may correct any deficient Services at the Contractor's risk and cost and any costs and expenses incurred by NEFL will be recoverable from the Contractor as a debt due and payable.

9. Alternative Services

- (a) To the extent that the Contractor is unable to perform all or any part of the Services in accordance with the Contract for any reason, NEFL may, in its absolute discretion, source such part of the Services from any third party ("Alternative Services").
- (b) If NEFL exercises its rights to source Alternative Services, the Contractor is responsible to NEFL for all incremental costs associated with sourcing the Alternative Services, except to the extent that the reason for the inability to perform all or part of the Services was as a direct result of:
 - (i) any act or omission of NEFL; or
 - (ii) any event beyond the reasonable control of the Contractor.
- (c) NEFL must use reasonable endeavours in exercising its rights under this Clause 9 to source the Alternative Services at the minimum cost reasonably available.

10. Variations

- (a) NEFL may at any time, issue a direction to the Contractor which:
 - (i) increases, decreases or deletes any part of the Services;
 - (ii) changes the character, quality or quantity of any part of the Services;
 or

(iii) requires the Contractor to supply additional Services.

- (b) If NEFL issues a direction under (a), the Contractor must carry out the Services as varied by such direction.
- (c) If the Contractor becomes aware that a service is required which is additional to the Services, or that there is a need to vary the Services, the Contractor must immediately notify NEFL in writing giving details of the nature and extent of the variation.
- (d) NEFL and the Contractor must agree in writing the scope and extent of the variation to the Services plus any adjustment to the Price before the Contractor carries out the varied Services.
- (e) If the parties are unable to agree the adjustment to the Price, a variation directed or approved by NEFL must be valued by using reasonable rates or prices.

11. Assignment and sub-contracting by Contractor

- (a) The Contractor must not assign all or any part of its rights or obligations under the Contract, or sub-contract all or any part of its obligations under the Contract (including the provision of the Services), without the prior written consent of NEFL.
- (b) A Sub-Contractor will be considered the agent and representative of the Contractor, as between the Contractor and NEFL, and no sub-contracting or assignment will relieve the Contractor of its obligations under the Contract.

12. Contractor's warranties

The Contractor represents and warrants to NEFL that, in performing the Services, the Contractor and its Personnel shall:

- (a) exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of work comparable to the Services;
- (b) act in a workmanlike, careful, safe and proper manner;
- (c) hold all necessary permits, licences and authorities required by law to supply the Services at the Site;
- (d) ensure the Services are fit for any purpose notified by NEFL and in the absence of notification, for the purpose for which services of that or a similar type are commonly acquired;
- (e) perform the Services in a timely manner; and
- (f) comply with all the requirements of the Contract.

The Contractor represents and warrants that it has not entered into the Contract (on the terms and conditions recorded herein) in reliance on any representation expressly or impliedly given by or on behalf of NEFL, other than to the extent that a relevant representation is expressly recorded in the terms and conditions of the Contract.

13. Contractor's insurance

- (a) The Contractor shall effect and maintain throughout the term of this Contract, at its own expense, the following insurances:
 - (i) Public and Product liability Insurance – covering all legal liabilities to pay damages or compensation arising out of any injury to or death of any person or any loss of or damage to (including resulting loss of use) any property howsoever caused. Such insurance must, unless prohibited by law:
 - (A) provide cover in respect of each and every occurrence for public liability and in the annual aggregate for products liability for an amount not less than FJD\$1,000,000 and in respect of public liability must be unlimited as to the number of claims which can be made under the policy;
 - (B) insure as principal under the contract for its vicarious contingent liability, NEFL (and its personnel for their respective rights and interests) with respect to liability NEFL may incur due to acts and omissions of the Contractor;
 - (C) include a cross liability clause noting that each insured party shall be considered a separate entity and that the insurance shall apply as if a separate policy has been issued to each insured party;
 - (D) cover NEFL's goods in the possession or custody of the Contractor and held off the premises or site for an amount not less than the replacement value of those goods;
 - (E) provide that the policy is extended to cover worker-to-worker injury liability risks; and
 - (F) provide coverage for construction and/or underground activities if the Services under this Contract includes such work.
 - (ii) Workers' Compensation Insurance – covering all liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, Contractor's workers or any person deemed to be a worker. Such insurance must, unless prohibited by law:
 - (A) be in the names of the Contractor and the Contractor's sub-contractors for their respective rights and interests, and
 - (B) be endorsed to protect the interests of NEFL as principal under the Contract for benefits under statute and at common law; and
 - (C) waive all express or implied rights of subrogation against all insured parties.
 - (iii) Motor Vehicle/Automobile Third Party Liability Insurance – covering all legal liability to pay damages or compensation arising out of any injury to or death of any person or any loss of or damage to any property howsoever caused by the ownership, possession, operation or use of motor vehicles (which shall include any item of

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plant or equipment which is required to be licensed in accordance with the requirements of any statute relating to motor vehicles) belonging to or under the physical or legal care custody or control of the Contractor. Such insurance must:

- (A) be for the lesser of an amount of not less than FJD\$1,000,000 or the statutory limit in the relevant country, state or territory, in respect of each and every loss and unlimited in the aggregate in respect of all losses occurring during each period of insurance;
- (B) The Contractor shall, in addition, comply with all Statutory requirements concerning the arrangement of compulsory motor vehicle insurance; and
- (C) The insurance must also, unless prohibited by law, be endorsed to:
 - (I) insure, as principal under the contract, for its vicarious contingent liability, NEFL (and its personnel for their respective rights and interests) with respect to liability NEFL may incur due to acts and omissions of the Contractor; and
 - (II) include a cross liability clause noting that each insured party shall be considered a separate entity and that the insurance shall apply as if a separate policy has been issued to each insured party.

(b) General Requirements for all Insurances

- (i) Notwithstanding anything to the contrary, the Contractor will be responsible for and will bear the cost of any excess applicable to the insurances provided for in the insurance paragraphs above.
- (ii) No provision contained in this insurance clause will limit the Contractor's liability to indemnify NEFL in accordance with this Contract.
- (iii) Before performing any of the Work and each time the policies are renewed or varied, the Contractor must provide NEFL with such evidence as NEFL may require that the Contractor and Sub-Contractors are, and remain, insured.
- (iv) In the event that the Contractor fails to effect or maintain any of the Contractor's insurances, NEFL may at its sole option and without being under any duty or obligation to do so:
 - (A) effect and maintain such insurances and deduct the cost thereof from any moneys due to the Contractor; and/or
 - (B) treat the failure to insure as a default under the Contract.
- (v) This insurance clause will survive the early termination of the Contract.
- (vi) The Contractor will ensure that its Sub-Contractors have the benefit of, or effect and maintain insurances similar to, the insurances required to be effected by the Contractor.
- (vii) The Contractor and its Sub-Contractors are responsible for insuring their own vehicles, plant and equipment. No insurance coverage is provided by NEFL.

14. Indemnities

- (a) Subject to Clause 14(b), the Contractor must indemnify and keep indemnified NEFL against any Liabilities arising directly or indirectly from:
 - (i) any breach by the Contractor or the Contractor's Personnel of the Contract (including breach of any warranty);
 - (ii) any negligent, reckless or intentional act or omission of the Contractor or the Contractor's Personnel, including any such act or omission resulting in:
 - (A) damage to or loss or destruction of any property of NEFL, NEFL's Personnel or any third party; or
 - (B) personal injury, illness or death to any person;
 - (iii) breach of Law by the Contractor or the Contractor's Personnel;
 - (iv) any claim made by the Contractor or the Contractor's Personnel in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal; and
 - (v) the receipt of the Services, or NEFL's possession, use or exploitation of any materials supplied, or Intellectual Property Rights assigned or licensed, by the Contractor to NEFL under or in connection with the Contract infringing the rights (including Intellectual Property Rights) of any person, and all claims alleging such infringement.
- (b) The Contractor will not be liable under Clause 14(a) to the extent that the Liability was caused, or contributed to, by the negligent acts or omissions or wilful misconduct (as applicable) of NEFL.
- (c) The Contractor acknowledges and agrees that if it enters onto a Site, it does so at the Contractor's own risk. The Contractor must ensure that its Personnel are also aware that they enter onto a Site at their own risk.
- (d) Without limiting this Clause 14, the Contractor accepts all Liability arising from a failure by it or any of its Personnel to take reasonable care.

15. NEFL Provided Items

- (a) Subject to Clause 15(b), NEFL must provide and make available the NEFL Provided Items (if any) to enable the Contractor to perform the Services.
- (b) The Contractor acknowledges and agrees that the NEFL Provided Items:
 - (i) may be used by the Contractor for the performance of the Services but for no other purpose;

- (ii) are provided to the Contractor for use at its and its Personnel's own risk, and the use or reliance by the Contractor or its Personnel on the NEFL Provided Items does not in any circumstances relieve the Contractor's obligations under the Contract; and
- (iii) to the extent applicable, must be returned by the Contractor to NEFL in a clean and safe condition and in good working order subject only to fair wear and tear.

- (c) The Contractor acknowledges and agrees that where any NEFL Provided Item is provided by a third party, NEFL will not be liable to Contractor for any liability, claim, cost, damages or expense suffered or incurred by the Contractor as a result of, or which may arise in connection with, the acts or omissions of that third party in the provision of the relevant NEFL Provided Item.

16. Intellectual Property Rights

The Contractor hereby assigns to NEFL all Intellectual Property Rights relating to or created during the performance of the Services.

17. Confidentiality

The Contractor must not, and must ensure that the Contractor's Personnel do not, without the prior written approval of NEFL use Confidential Information for any purpose, other than as necessary for the performance of the Services under the Contract, or otherwise disclose any Confidential Information, other than to the extent such disclosure is expressly required by Law. Except as required by Law, no media release or public announcement may be made by the Contractor in relation to the existence or subject matter of the Contract unless the Contractor first receives the prior written consent of NEFL and NEFL approves, in writing, the wording of such media release or public announcement and the manner of publication.

18. Equipment

- (a) Unless previously agreed in writing with NEFL, the Contractor must supply all equipment necessary to perform the Services. Any vehicles or machinery supplied by the Contractor must be properly registered with the appropriate government authority, roadworthy and regularly inspected for mechanical safety.
- (b) Where the Services involve the supply and installation of equipment, any such equipment becomes the property of NEFL upon the earlier of incorporation into any of NEFL's existing plant or equipment or payment of the Contractor's invoice that itemises the equipment in question.

19. Termination

- (a) NEFL may terminate the Contract at any time without cause by giving no less than 24 hours' written notice to the Contractor, and Clause 19(d) will apply.
- (b) Without limiting Clause 19(a), if the Contractor fails to provide the Services in accordance with the Contract, or if the Contractor or its Personnel are negligent or engage in unlawful conduct or wilful misconduct, NEFL may terminate the Contract in whole or in part by written notice.
- (c) Upon receiving notice of termination, the Contractor will immediately cease providing the Services and comply with NEFL's directions including, without limitation, any direction to protect NEFL's property in the Contractor's possession.
- (d) If NEFL terminates the Contract for any reason and subject to NEFL's other rights under the Contract (including rights to withhold or set-off payment and to recover damages), NEFL will pay the Contractor for the Services provided prior to the date of termination which have not been paid for, being an amount representing the Price reduced pro rata by the value of the Services which have not been provided by the date of termination. NEFL will not be liable for any other Liability suffered by the Contractor as a consequence of or in connection with the Contract, the Services or the termination.

20. Suspension and Force Majeure

- (a) Suspension
 - (i) NEFL may immediately suspend the performance of any or all of the Services at any time and for any reason by giving written notice to the Contractor.
 - (ii) If NEFL suspends any of the Services under this clause, NEFL may at any time give the Contractor a written notice to resume performing the suspended Services. The Contractor must resume performing those Services as soon as practicable after the date of such a notice, and in any event no later than 5 Business Days after the date of the notice.
 - (iii) If NEFL suspends any of the Services under this clause, NEFL and the Contractor must agree in good faith as to whether any additional fees are payable to the Contractor (the Contractor shall seek to mitigate its exposure to such additional fees wherever possible).
- (b) Force Majeure
 - (i) If a party is prevented in whole or in part from carrying out its obligations under this Contract as a result of Force Majeure, it must promptly give a notice to the other party that specifies the obligations the party cannot perform and describes the event of Force Majeure.
 - (ii) Following the notice referred to above, and while the Force Majeure continues, the obligations which cannot be performed because of the Force Majeure will be suspended.
 - (iii) The party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure must take all action reasonably practicable to mitigate any loss or damage suffered or incurred by a party as a result of its failure to carry out its obligations

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under this Contract, remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible (save that a party is not required to settle any state-wide or national strikes or state-wide or national industrial action against its will).

21. NEFL Participants

- (a) The Supplier warrants to NEFL and each participant in NEFL that:
 - (i) it will comply with its obligations under the Contract; and
 - (ii) any indemnity given by the Supplier under the Contract is given in favour of NEFL and each of its participants in respect of any Liabilities suffered or incurred by them respectively.
- (b) NEFL will hold the benefit of the warranty under clause 20(a), and the indemnities referred to in clause 21(a)(ii), in favour of each NEFL participant as trustee for the benefit of each NEFL participant.

22. Entire agreement

The Contract comprises the entire agreement between the parties and supersedes all prior contracts, arrangements, understandings or representations (if any) between the parties in respect of the Services.

23. Other terms and conditions of no legal effect

To the extent that the Contractor's terms and conditions are supplied with or in the performance of the Services (including as printed on consignment notes or other documents), such terms and conditions will be of no legal effect and will not constitute part of the Contract for the performance of the Services (notwithstanding the signing of any such document by a representative of NEFL for any reason).

24. Relationship of parties

The relationship between NEFL and the Contractor is a relationship of principal and independent contractor. Nothing in the Contract will be construed to create a relationship of employment, agency or partnership. The Contractor does not have any authority to contract with third parties on behalf of NEFL or to otherwise bind NEFL, without NEFL's prior written agreement.

25. Assignment by NEFL to Related Body Corporate

NEFL may, without the consent of the Contractor, assign all or part of its rights and obligations under the Contract to any person or entity.

26. Dispute resolution

- (a) If any dispute, controversy or claim arises under the Contract, a party will provide written notice to the other of the matters in dispute ("Dispute Notice") and the parties will meet for the purpose of resolving the dispute within 21 days after the service of the notice provided under this Clause 26(a).
- (b) If the dispute is not resolved within 28 days after the service of the notice provided under Clause 26(a), either party may call a meeting of a member of the senior management of each of NEFL and the Contractor (or their respective nominees) who must meet within 7 days after the service of

this request for meeting, to attempt to resolve the dispute in good faith and/or to mutually agree on an alternative dispute resolution process to be undertaken by the parties in relation to the dispute.

- (c) If the dispute is not resolved within 10 days after the service of the notice provided under clause 26(b), the parties must submit the dispute to arbitration under the Arbitration Act, Cap 38. An Arbitrator must be appointed by the President of the Fiji Law Society within 28 days of receipt of written request by either NEFL or the Supplier.
- (d) Neither party may commence litigation, other than urgent interlocutory relief, unless and until the procedures in Clauses 26(a)-(c) have been complied with.
- (e) The Contractor must continue to perform its obligations under the Contract notwithstanding the existence of any one or more dispute(s).

27. Governing law and jurisdiction

The Contract is governed and interpreted in accordance with the Laws in force from time to time in Fiji and the parties unconditionally submit to the jurisdiction of the courts in Fiji.

28. No waiver

No waiver of or variation to the Contract will be binding on the parties unless in writing signed by the parties.

29. Amendment

The Contract will not be amended, modified, varied or supplemented except in writing signed by the parties.

30. Rights cumulative

The rights and remedies of NEFL in the Contract are cumulative and do not exclude any rights or remedies provided by any Laws.

31. Discretion on consent

Where the consent, approval or agreement of a party is required under the Contract, that consent, approval or agreement may be given conditionally or unconditionally, or withheld by that party in its absolute uncontrolled discretion, unless the Contract expressly provides otherwise.

32. Severability

Any provision in the Contract which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the Contract or the validity or enforceability of that provision in any other jurisdiction.

33. Costs and stamp duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of the Contract. All stamp duty that may be payable, including any related fines and penalties, in any relevant jurisdiction on, or in connection with, the Contract must be borne by the Contractor