



# Terms & Conditions for Software Development

Effective 1<sup>st</sup> July 2023

ABN: 91 092 673 964

The most current Terms can always be found at <https://cbsau.com/terms-and-conditions/>

In reading these Terms and Conditions for Software Development (Terms and Conditions), as an individual and on behalf of a Business, Company or Organisation, the reader shall hereafter be referred to as the "**THE CLIENT**". Therefore, please review these Terms and Conditions carefully. By using CBS for Software Development, **THE CLIENT** agrees to the Terms and Conditions set forth below and updated occasionally.

## 1) Definitions

- a) Unless the context otherwise requires, the following expressions shall have the following meanings:

**"Business Hours"** means any day from Monday through Friday on any non-public holiday, determined by NSW State Law, between the hours of 9.00 am AEST (NSW) and 5.00 pm AEST (NSW). Or Monday through Friday on any non-public holiday, determined by the current State Law, between 9.00 am and 5.00 pm of the current time zone if on-site. Or if overseas, the usual business hours and days prescribed for that country.

**"CBS"** means Carrolls Business Solutions Pty. Ltd. ABN: 91 092 673 964

**"Confidential Information"** means information that is or has been disclosed by one party to the other but does not include any information that is:

on receipt, in the public domain, or which subsequently enters the public domain without any breach of these terms and Conditions;

on receipt, already known by the party receiving it;

at any time after the date of receipt, received in good faith from a third party; or required by law to be disclosed;

**"Documentation"** means the documentation described in the Specifications;

**"Force Majeure Event"** means any war, riot, strike, natural or human-made disaster, or other circumstance of a similar nature;

**"Functional Specification"** means the signed definition describing the scope of work

**"GST"** means goods and services tax imposed under the Goods and Services Tax Act 1985;



"**Intellectual Property**" means copyright, patents, designs, trademarks, trade names, goodwill rights, trade secrets, Confidential Information and any other intellectual proprietary right or form of Intellectual Property;

"**Services**" means the Services supplied by CBS to create and develop the Software;

"**Software**" means mean any Software provided by CBS to **THE CLIENT**

"**Specifications**" means the requirements referred to in the signed functional specification supplied by the Client;

"**System**" means the equipment and Software that form the System on which the Software is to be installed, as specified in the Specifications;

"**THE CLIENT**" means the company that the Software is being developed for;

"**Warranty Period**" means the period specified in the functional specification.

## 2) Scope

- a) CBS will develop, supply, and, if applicable, install the Software for THE CLIENT. CBS will license the Software to THE CLIENT. THE CLIENT shall pay CBS per the terms and conditions outlined in any corresponding Specifications.
- b) CBS will supply any third-party/proprietary software set out in the specifications on the terms of the relevant licence agreement. The CLIENT shall pay CBS the licence fees per the terms and conditions outlined in any corresponding Specifications.

## 3) Development of Software

- c) CBS will develop the Software substantially per the Specifications.
- d) Either party may suggest changes to the Specifications per clause 8.

## 4) Delivery and Installation

- a) CBS shall use reasonable endeavours to deliver the Software and the Documentation, if any, to **THE CLIENT** as soon as reasonably practical.
- b) If applicable, CBS shall use reasonable endeavours to install the Software on the System.
- c) CBS will have no liability for any delays or failure in delivery where such delays or failure are the direct or indirect result of any act or omission of THE CLIENT or a breach by THE CLIENT of these Terms and Conditions.

## 5) Software Acceptance

- a) **THE CLIENT** must, within seven days of delivery date and, if applicable, installation of the Software, or any component if the development is phased, test the Software per the acceptance criteria set out in the Functional Specification and relevant Specifications. CBS will be entitled to observe and, at its option, participate in the acceptance tests.
- b) **THE CLIENT** is deemed to have accepted the Software when either:
  - i) **THE CLIENT** has completed those acceptance tests to its reasonable satisfaction; or



- ii) Fourteen days have elapsed since the Software has been made available to **THE CLIENT** for testing, and **THE CLIENT** has failed to complete the acceptance tests or notify CBS in writing of any defects.

### 6) Warranty

- a) For 30 days from the date the Software goes into production or as stated in any corresponding specification, project definition or statement of works, CBS warrants that the Software will conform with the Specifications in all material respects.
- b) **THE CLIENT** must notify CBS via our helpdesk by emailing details to support@cbsau.com during the Warranty Period if **THE CLIENT** identifies a defect in the Software.
- c) **THE CLIENT**'s sole remedy for a breach of the warranty is limited, at CBS's option, to one of the following:
  - i) Fixing the problem at no additional charge; or
  - ii) The refund of any fees paid to CBS for the defective Services.
- d) If CBS finds that the alleged defect does not exist, CBS may charge for investigating the suspected fault.
- e) CBS will not be liable under this clause:
  - i) If the defect is not notified to the CBS in writing during the Warranty Period;
  - ii) If the error cannot be verified or reproduced by CBS; or
  - iii) If and to the extent that **THE CLIENT** or a third party causes the defect.
- f) Work performed by CBS within any warranty period cannot be construed as an admission by CBS that the work is performed according to a warranty.

### 7) Support

- a) Following the expiry of the Warranty, CBS will only correct errors or defects in the Software, or any other respect, and support the Software on a time and materials basis at our then-current standard rates.
- b) CBS may, at its option, provide support services to **THE CLIENT** according to a separate agreement.

### 8) Change Request Procedure

- a) **THE CLIENT** may request, or CBS may suggest, a change to the Specifications and functionality of the Software ["Change Request"].
- b) **THE CLIENT** will approve an agreed amount of time to analyse the proposed change and accepts that such time is chargeable, regardless of whether **THE CLIENT** subsequently decides to proceed.
- c) Should a Change Request be made, CBS shall give an estimate to **THE CLIENT** of the cost of implementing that Change Request and indicate the impact of the proposed change on the budget and schedule of the project.



- d) If **THE CLIENT** accepts the estimate and the impact on timing provided under clause 8.3 and instructs CBS to proceed with the proposed change, then CBS shall provide to **THE CLIENT** the following:
  - i) revised Specifications [if applicable]; and
  - ii) the revised charges [if applicable],and the Specifications shall then be deemed to incorporate the revised components specified in this clause.
- e) CBS may charge **THE CLIENT** for any work undertaken in providing estimates under this clause at its then-current rates.

### 9) THE CLIENT Obligations

- a) At its own expense, **THE CLIENT** must prepare its IT System(s) and provide CBS with access to such systems to install the Software. In doing so, **THE CLIENT** must comply with any reasonable directions or Specifications issued by CBS.
- b) **THE CLIENT** must provide CBS with full and safe access to its IT Systems as is reasonably required by CBS.
- c) **THE CLIENT** shall make available to CBS promptly all assistance, including personnel, information, facilities, services and equipment, reasonably required by CBS to perform its obligations under these Terms and Conditions.

### 10) Copyright

- a) The intellectual property rights, copyright and company trade secrets of CBS vested in all software products; upgrades, dual-media Software, hard copy or electronic manuals and documentation are vested in CBS, which reserves the right to use the Software or material or any part of it in other applications and for its use.

### 11) License

- a) CBS grants a non-exclusive, non-transferable, non-assignable perpetual license to use, deploy and modify the Software comprising the Retained Software within **THE CLIENT**'s group of companies for **THE CLIENT**'s internal purposes.
- b) CBS reserves the right to use in any way it thinks fit, including the development of Software for third parties and any programming tools, skills or techniques acquired by CBS during any development project.

### 12) Confidentiality, Security and Publicity

- a) CBS acknowledges that in the course of the relationship created by embarking on a Software development project, a lot of information about **THE CLIENTS**" business ("Confidential Information") may be disclosed to CBS. CBS agrees to treat all Confidential Information disclosed to it as strictly confidential and agrees:
  - i) Not to disclose the Confidential Information to anyone or copy the Confidential Information without **THE CLIENTS**" written consent;



- ii) Not to use the Confidential Information for any purpose other than what is reasonably contemplated under this development project for its performance;
  - iii) To notify **THE CLIENT** immediately on becoming aware or suspecting that unauthorised disclosure or use of the Confidential Information has occurred or is likely to occur;
  - iv) To take all reasonable precautions to ensure that its personnel do not disclose or make unauthorised use of the Confidential Information;
  - v) On expiry or earlier termination of a development project, to return to **THE CLIENT** all documents or material containing or embodying the Confidential Information; and
  - vi) If requested by **THE CLIENT**, ensure that its personnel sign and deliver a confidentiality agreement in substantially the same terms as this document.
- b) **THE CLIENT** agrees that CBS may disclose information about **THE CLIENT**:
- i) To any person who guarantees, provides insurance, or provides any other credit Support in relation to **THE CLIENT's** obligations to CBS; and
  - ii) To such persons as may be necessary or desirable to enable CBS to exercise any power, enforcement or attempted enforcement of CBS rights, remedies and powers under these Terms and Conditions
- c) **In the event CBS performs web development services, THE CLIENT acknowledges and will ensure that:**
- i) CBS receives a permanent credit on the Software (including, without limitation, any alteration, modification or subsequent use of the Software), which acknowledges CBS as the developer of the Software; Unless otherwise agreed in writing, credit shall be "Software developed by Carrolls Business Solutions" in a suitable position of each page of the Software. This text will provide a permanent link to [www.cbsau.com](http://www.cbsau.com);
  - ii) CBS may claim credit in its promotional material for the Software development, and (c) **THE CLIENT** will remove the credit within 24 hours of receiving a notice from CBS to do so. In addition, if CBS performs web or other software development services, CBS reserves the right to develop and publish a case study on the work performed.

### 13) Pricing

- a) Hourly-Rate Work
- i) Unless specified otherwise in writing, **THE CLIENT** authorises CBS to undertake work on an hourly-rate basis.
  - ii) CBS may provide an estimated time to complete this work. However, such estimates are not binding, and all hours designated as performed will be charged at our current standard rates or otherwise agreed.
  - iii) CBS reserves the right not to provide estimates for work regarded by CBS to be less than 24 billing hours. The minimum time chargeable for on-site work is 2 (two) hours per person per visit. The minimum time chargeable for off-site work is 15 (fifteen) minutes per person per request during business hours and 2 (two) hours per person per request outside of business hours.



- iv) All Hourly time and material work will be invoiced to **THE CLIENT** weekly.
- b) Prepaid Work
  - i) CBS may offer a prepaid rate where time is prepaid in blocks of 75 hours per resource. Prepaid rates become effective upon the day of payment. However, rates revert to standard if pre-payment is not made before work commences or for the second or subsequent prepaid invoices in respect of work past the previous prepaid work. (We recommend that you process payment within 24 hours of receiving a new invoice to ensure that the prepaid discount is maintained). Unused prepaid credit expires 12 months from the date of issue of the invoice. No refund will be made for the remaining prepaid credit.
- c) Fixed Price Work
  - i) CBS may agree to perform specific work for a fixed price in accordance with an agreed specification and/or release plan/s. In this event, the specification and/or release plan/s are fixed. Any additional or unspecified work will be to **THE CLIENT**'s account. A fifty per cent (50%) payment of any fixed-price component is required before the commencement of work, and twenty-five per cent (25%) payment is required upon delivery of the Software for User Acceptance Testing. The final twenty-five per cent (25%) payment is required before the Release enters Production OR work commencing on any other release OR the elapse of 30 days after sending a request for testing of the work performed, whichever is sooner.
  - ii) CBS will only conduct fixed-price work in a Development and/or Staging environment. **THE CLIENT** forfeits any incomplete or unfinished work when the Release enters Production. **No warranty applies after the Release enters Production.**
  - iii) The following are excluded from any fixed price agreement: on-site work (including on-site meetings), specification development/scoping (including the generation of further estimates), production deployment, 3rd party component integration or configuration, data migration, network infrastructure or hardware services, graphic design including mockups. CBS conducts all development and testing in an environment with a default configuration.

### 14) Negotiation of rates in foreign currency

- a) In its sole discretion, CBS may agree to a fixed price or hourly rates in a foreign currency amount. However, all invoices will be rendered in AUD based on the applicable exchange rate published on [www.xe.com](http://www.xe.com) when the invoice is generated. **THE CLIENT** bears all costs or fees arising from or relating to any foreign currency exchange or international transfer.

### 15) Credit Terms

- a) CBS is under no obligation to supply Goods and Services on credit to **THE CLIENT**.
- b) CBS reserves the right to refuse or withdraw credit for any reason. In the event of credit being refused, CBS may agree to conduct work on a prepaid basis.
- c) If credit is offered, **THE CLIENT** agrees to keep within terms of 7 days, and **THE CLIENT** agrees that CBS can stop work if this is exceeded.



- d) CBS reserves the right to take legal action to recover debt and withhold source code until invoices are paid in full. THE CLIENT has 7 (seven) days from receipt of an invoice to query the invoice or timesheet. THE CLIENT abrogates any right of reply after this time.
- e) CBS does not offer credit to persons or corporations not domiciled within Australia.

### 16) PayPal Surcharge

- a) All payments via PayPal incur a 2.5% surcharge to recover the cost of fees charged for PayPal transactions. When using PayPal, the invoices cannot be split for payment.

### 17) Expenses

#### CALLOUT Time

- **Sydney Metro Area** – 1 Hour travel per site visit. NB this is charged at 50% of the Normal Time rate.
- **Country NSW** – By Car - actual travel time will be charged.  
– By Air - time measured from 1 hr. before the time of departure from Sydney airport to arrival on-site or accommodation and from departure from the site or accommodation to arrival at Sydney Airport
- **Interstate** – Time measured from 1 hr before departure from Sydney Airport to arrival on-site or accommodation and from departure from the site or accommodation to arrival at Sydney Airport.
- **International** – Time measured from 3 hrs before departure time from Sydney Airport to arrival at the overseas accommodation or site office and departure from the accommodation or site office to our arrival at Sydney Airport after customs clearance.

#### EXPENSES

- **Airfares** – Airfares will be recovered at cost. Every attempt will be made to book the cheapest Qantas or Virgin Australia economy airfare available to the site, with a fully flexible fare return.
- **Accommodation and subsistence** – Accommodation, meals, internet connections and other reasonably incurred expenses will be recovered at cost.
- **Travelling** – Taxis, Car Hire, Fuel, Parking and Tolls will be recovered at cost.
- **Mileage** - using a private vehicle instead of a taxi at the ATO accepted rate (currently 85 cents per kilometre for the 2023 - 24 income year).
- **Any other sundry expenses** – Recovered at cost as agreed by **The Client**

**Any other sundry** Recovered at cost as agreed by **The Client**

#### ON CALL Rate

If we are required to be "on-call" for any reason, the rate charged for that time will be 25% of the appropriate on-site rate that would be charged. The ON CALL amount is due and payable even if we are not required. The usual rate as specified above will be charged should we be called.

**Note:** These rates will apply for all work carried out unless a separate quote for a specific project has been agreed upon.





### Help Desk Rates

Available 9:00 – 5:00 Sydney time, Monday to Friday, excluding NSW Public Holidays  
The rate is AUD 220.00 per hour billed in 15 min blocks unless a support agreement is in place, in which case the Agreement will dictate the rules.

### 18) Goods and Services Tax ("GST")

- a) All prices quoted on an hourly or a fixed price basis are exclusive of GST unless otherwise stated. In addition to the amounts quoted, **THE CLIENT** must pay GST on those amounts (if applicable). GST will increase the quoted price by 10%. GST will be added to all invoices (if applicable) and is payable simultaneously with the CBS invoice.

### 19) Testing

- a) **THE CLIENT** is responsible for ensuring the Software has been tested. **THE CLIENT** agrees that before a version is submitted to **THE CLIENT**, the CBS developers may:
  - i) Perform automated testing via Unit Tests
  - ii) Perform an internal "Alpha Testing," e.g. only that pages or forms load, not checking the business rules)
- b) After CBS sends **THE CLIENT** a request to test the Software, **THE CLIENT** will promptly conduct User Acceptance Testing, checking the specified component/release for bugs and sending all feedback within five business days. CBS is not required to commence development on a future version if **THE CLIENT** does not approve any current release.

### 20) Training & Documentation

- a) Training is charged in half-day or full-day sessions. Documentation, if required, is at an additional cost. It will not be supplied if documentation is not explicitly estimated or quoted. All custom documentation will be to **THE CLIENT's** account, including additions, deletions, and amendments.

### 21) Source Code Ownership

- a) **THE CLIENT** acknowledges that CBS [or its suppliers and licensors] is or shall be the sole owner of all rights [including Intellectual Property rights] in the Software and the Documentation supplied to **THE CLIENT**.
- b) **THE CLIENT must not, nor may it permit any other person to:**
  - i) Copy, alter, modify, reproduce, reverse assemble, reverse compile or enhance the Software or the Documentation;
  - ii) Alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality, proprietary or trade secret, legend or notice, or any numbers, or other means of identification used on or in relation to the Software or the Documentation;
  - iii) Make any of the Software or the Documentation available to any person other than its employees without the prior written consent of CBS; or
  - iv) Do any act that would or might invalidate or be inconsistent with CBS's Intellectual Property rights.





- c) **THE CLIENT** must take all such steps as CBS may reasonably require to assist CBS in maintaining the validity and enforceability of CBS's Intellectual Property rights.
- d) **THE CLIENT** must notify CBS of any actual, threatened or suspected infringement of any Intellectual Property right and of any claim by any third party that any use of the Software or the Documentation infringes any rights of any other person as soon as that infringement or claim comes to **THE CLIENT's** notice. Further, **THE CLIENT** shall [at CBS's expense] do all such things as CBS may reasonably require to assist CBS in pursuing or defending any proceedings concerning any such infringement or claim.
- e) **THE CLIENT** indemnifies CBS against any loss, costs, expenses, demands or liability, whether direct, indirect or consequential or otherwise, and whether arising in contract, tort [including in each case negligence], or equity or otherwise, arising out of a claim by a third party alleging infringement of that third party's Intellectual Property rights if such claim arises from infringement, suspected infringement or alleged infringement due to:
  - i) use of any of the Software or the Documentation in combination by any means and any form with Software or equipment not explicitly approved by CBS, or in a manner or for a purpose not reasonably contemplated or authorised by CBS; and/or
  - ii) a breach by **THE CLIENT** of clause 19.2.

### 22) Requests for Work

- a) Work requested by **THE CLIENT** (including employees or representatives of **THE CLIENT**), in written, electronic, or verbal form is authorised by **THE CLIENT**. **THE CLIENT** may choose to work through a "Company Champion." If so, **THE CLIENT** must inform CBS of this decision in writing. After this advice, the Company Champion has sole authority to request billable work. All requests that the Company Champion is copied on are considered authorised.

### 23) Legal and Employment

- a) These Terms and Conditions shall be governed by the laws of New South Wales, Australia and constitutes the complete and exclusive statement between CBS and **THE CLIENT**. No statement or representation not contained in these Terms and Conditions shall be binding on CBS as a warranty or otherwise.
- b) Any disputes between CBS and **THE CLIENT** will be under the jurisdiction of the laws of the state of New South Wales, Australia (or under the jurisdiction of the federal courts of Australia, where applicable).
- c) In circumstances where you are purchasing goods or services from us as a consumer for the purpose of (and defined in section 3 of Schedule 2 of) the ACL, we acknowledge and agree that certain statutory guarantees and rights shall apply to you as provided by the relevant laws but subject to these terms and Conditions as applicable and where permitted by relevant laws.
- d) Nothing in these Terms and Conditions excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL and corresponding provisions and relevant laws of State or Territory legislation



containing implied terms or statutory guarantees which operate to protect the purchaser of goods and services in various circumstances.

- e) If the Unfair Terms in Standard Form Contracts referred to in section 23 of the Australian Consumer Law (ACL) applies to any provisions in these Terms and Conditions, any such provision(s) shall be void to the extent they are unfair within the meaning of section 24 of the ACL.
- f) **THE CLIENT** agrees that they will not entice or procure employees or contractors of CBS to work for any other Business, Company or Organisation, including **THE CLIENT'S** own Business, Company or Organisation. If a CBS employee or contractor does become employed by **THE CLIENT'S** own Business, Company or Organisation, **THE CLIENT** specifically acknowledges that CBS introduced these people and that an introduction fee, equivalent to 30% +GST of their total remuneration package, will be paid to CBS.
- g) These Terms and Conditions shall take precedence over any other oral or printed Terms or Conditions. However, if any conflict between these Terms and Conditions and any other document that may exist, these Terms and Conditions shall prevail.
- h) All the original rights, powers, exemptions and remedies of CBS shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. CBS shall not be deemed to have waived any term or condition herein unless such waiver shall be in writing under the signature of CBS or an authorised officer thereof, and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in a particular transaction, dealing or matter

### 24) Health and Safety

- a) Per Work Cover requirements, all CBS staff shall always be provided with a SMOKE-FREE Environment.
- b) CBS will carry workplace-related insurance for their employees and fulfil their requirements under the regulations of Health and Safety in Employment.
- c) **THE CLIENT** will inform CBS of situations where **THE CLIENT**, its agents or employees have made the building site or premises unsafe (as determined by hazard identification under the Health and Safety in Employment regulations).
- d) CBS will conform to **THE CLIENT'S** Health and Safety in Employment policy for the Site or premises to secure against accident or unlawful entry.

### 25) Services of all Notices

- a) Any notice or other communication in connection with this Agreement shall be:
  - i) in writing;
  - ii) marked for the attention of the person specified in the Functional Specification or any replacement person notified by the relevant party; and
  - iii) left at the address or sent by prepaid post or facsimile to the address or facsimile number of the relevant party specified in the Functional Specification or any replacement address or facsimile number notified by that party.



- b) Notices or other communications are deemed received:
  - i) If delivered by hand, on delivery;
  - ii) If delivered by post:
  - iii) On the third day following posting, if sent and received within Australia; and
  - iv) On the tenth day following posting to or from an overseas destination.
  - v) If delivered by facsimile, on the production of a transmission report by the machine from which the fax was sent in its entirety to the fax number of the recipient, specifying the correct number of pages sent, the date and time of transmission and that transmission was successful, provided that the onus of proving receipt shall be on the sender.

## 26) Cancellations

- a) by **THE CLIENT**
  - i) If **THE CLIENT** cancels any hourly job after commencement, CBS will charge for all hours up to that point. If **THE CLIENT** cancels an hourly job, any prepaid work not fully completed will not be refunded; however, the remaining balance will be credited to **THE CLIENT's** account for future utilisation. If **THE CLIENT** cancels any fixed-price job, CBS will retain the initial fifty per cent of prepaid value. Any additional hours completed will be charged to **THE CLIENT** as a proportion of the quoted price based on hours completed to that point in time.
- b) by CBS
  - i) CBS reserves the right to terminate any previously agreed project specification for fixed-price work without prior notice but with cause. CBS will charge on a pro-rata basis for any work completed.
  - ii) CBS reserves the right to terminate any previously purchased prepaid work blocks without prior notice but with cause. In this case, **THE CLIENT** will be refunded for hours not completed as a proportion of the prepaid blocks purchase value.
  - iii) CBS reserves the right to terminate any ongoing service contract with cause including, but not limited to, hosting and database updates, with fourteen days' notice. In this case, any paid unexecuted services will be refunded as a proportion of the charged price based on a percentage of the specified project completed.

## 27) Deadlines

- a) CBS may choose to estimate the completion date of a project. While we will endeavour to meet all deadlines, we do not offer any guarantees due to the nature of development work. CBS is not liable for losses suffered due to a project not being completed until after the estimated completion date.

## 28) Equipment

- a) CBS is not liable for any equipment failures, be it CBS's equipment or equipment on **THE CLIENT's** site.



### 29) Viruses

- a) While CBS endeavours to have all its hardware virus-free, **THE CLIENT** is expected to have current virus protection. CBS is not liable for any accidental infection of **THE CLIENT'S** hardware.

### 30) Dispute Resolution

- a) A party will notify the other party of any dispute between them as soon as reasonably practicable.
- b) Outside of disputes resulting from a letter of notification, claims and disputes against CBS, including any breach or default by CBS, must be made within ten (10) Business Days.
- c) If there is a dispute, the parties will attempt to resolve the dispute within a maximum of ten (10) Business Days of receiving notice of the dispute.
- d) If, following the dispute resolution process, the parties do not resolve the dispute, they will attempt to settle their dispute by mediation. Either party may initiate arbitration by giving written notice to the other party. Such mediation process will not, unless otherwise agreed by the parties, extend beyond ten (10) Business Days following the appointment of a mediator. For example, suppose the parties cannot agree on a mediator within a maximum of three (5) Business Days of the notice. In that case, each party shall appoint one mediator, and these two mediators will then appoint a third mediator.
- e) If either party fails to appoint a mediator within three (5) Business Days after the other has appointed its mediator, then the party appointed an arbitrator may notify the defaulting party that the defaulting party has defaulted on its right to appointment. Upon service of such notice, the party who has already appointed a mediator will be entitled to appoint that mediator as the sole mediator in the dispute.
- f) Any mediator:
  - i) will be suitably qualified for such purpose in matters relevant to the dispute;
  - ii) will be as independent of either party as possible;
  - iii) will not be an ex-employee of either party; and
  - iv) will not have entered into significant contracts or arrangements with either party
- g) Any mediation will be by a majority decision of the mediators.
- h) Pending the resolution of any dispute, the parties will continue to perform their obligations in any valid Project Definition which are not directly at issue.

### 31) Severability

Each of the above clauses is severable and enforceable separately. If one or more clauses are deemed unenforceable, this does not affect the validity of the rest of the contract.