



#### INTRODUCTION

Management Toolbox Ltd ("MTB") has set out in this document basic terms of business (the "Terms"), which, together with our Project Charter form the Agreement (the "Agreement"), and will apply to all work Management Toolbox undertakes for the Client (the "Client"). In the event of any conflict between the Terms & Conditions of Business and the Project Charter, the Project Charter document shall prevail.

#### PERFORMANCE OF SERVICES

MTB will provide the services set out in the Project Charter ("the Services") and will use all commercially reasonable efforts to provide the Services in an efficient and timely manner, using the necessary skill and expertise to an appropriate professional standard. MTB will formally report to the project on a regular basis (as agreed with the Project Sponsor). The Client shall, where necessary, provide office facilities and services as required and appropriate for MTB resource to perform the role.

#### INFORMATION

The Client will provide in a timely fashion all information and documents reasonably required to enable MTB to provide the Services. Unless otherwise required in the Project Charter, MTB will not independently verify the accuracy of such information and documents. The Client will also provide MTB personnel working at the Client's workplace such access to its IT network and systems as may be reasonably required to enable such personnel to operate effectively and efficiently. MTB will not be liable for any loss or damage arising (whether in contract, tort or otherwise) from any inaccuracy, incompleteness or other defect in any information or documents supplied by the Client or from the use of the Client's network and systems by MTB personnel.

#### HEALTH & SAFETY

The Health & Safety in Employment Act 1992 obliges MTB to take all practical steps to ensure the health and safety of its staff engaged on any assignment. MTB and the Client will be jointly responsible to ensure the safety of MTB's staff and to see no harm is caused to them in the Client's workplace. The Client shall ensure that such Act is fully complied with when MTB staff visit Client sites and, if necessary, will provide a safety briefing at the beginning of an engagement to include procedures for hazard management, accident reporting and emergencies.

#### NON EXCLUSIVITY

Nothing in this contract will prevent or restrict any MTB party from providing services to other persons (including services which are the same or similar to the Services) or using or sharing for any purpose any knowledge, experience and skills used in, gained or arising from performing the Services subject to the obligations of confidentiality, even if those other persons' interests are in competition with those of the Client.

The Client agrees that, to the extent that a MTB Party possesses the confidential information of another client or other third party, that MTB Party will not be obliged to

disclose it to the Client or make use of it for the Client's benefit, however relevant it may be to the Services.

#### PAYMENT

MTB's fee for the services shall be calculated in accordance with the rates and terms specified in the Project Charter and presented to the Client on a monthly basis. Such rates are exclusive of GST which shall be charged to the Client on invoice. The Client agrees to pay by electronic funds transfer, and without set-off or deduction of any kind, to an account nominated by MTB.

#### EXPENSES

The Client shall pay for travel and expenses incurred by the MTB resource to complete the services, as set out in the Project Charter.

#### CONFIDENTIAL INFORMATION

The parties shall at all times keep confidential all confidential information made available to them and shall not, without the prior written consent of the other party, or unless compelled to do so by any legal or regulatory requirement, or where such information is in the public domain, disclose any such confidential information to any person not involved in the provision of the Services.

The confidential information shall remain the property of the party that supplied it, and neither party will copy, disclose or store any such confidential information without the prior written consent of the owner of such confidential information.

Notwithstanding the above provisions, the Client agrees that MTB may use any initiatives identified during the project for a reference site.

#### ELECTRONIC MAIL

If MTB transmits any documents to the Client electronically, the Client agrees to release MTB from any claim as a result of any unauthorised copying, recording, reading or interference with that document after transmission, for any delay or non-delivery of any document and for any damage caused to the Client's system or any files by the transmission (including by any computer virus).

#### TERM AND TERMINATION

This Agreement shall continue until all services outlined in the Project Charter have been provided or unless terminated by agreement earlier or as set out below.

MTB or the Client may terminate this Agreement by notice effective immediately if either party has breached any of the terms of the Agreement and fails to remedy the breach satisfactorily within fourteen (14) days of receipt of notice in writing requiring the breach to be remedied.

Specifically the Client may terminate the Agreement by notice of one (1) month if the services are not performed expeditiously and with all reasonable care, skill and diligence in the reasonable opinion of the Client.



#### FORCE MAJEURE

Neither party shall be liable for any failure or delay in complying with any obligation imposed on it under the Agreement if:

- (a) the failure or delay arises from a cause beyond the reasonable control of that party including, but not limited to, acts of God, landslides, lightning, earthquakes, floods, storms, washouts, fires, volcanic eruptions, epidemics, wars, sabotage, terrorism, riots, public disorders, or the acts, rules, regulations, orders or directives of any government body (including any agent subdivision thereof) whether or not valid or any other cause beyond the reasonable control of either party;
- (b) that party, on becoming aware of the cause, promptly notifies the other party advising of the nature and expected duration of, and the obligation affected by, the cause; and
- (c) that party uses its reasonable endeavours to:
  - (i) mitigate the effects of the cause on that party's obligations under this Agreement; and
  - (ii) perform that party's obligations under this Agreement on time despite the cause.

Where an event described above prevents a party from carrying out any obligations under the Agreement for a continuous period of sixty (60) working days then this Agreement may be terminated by the other party giving seven (7) days' written notice.

#### RELATIONSHIP

The Client acknowledges and agrees that MTB will perform all Services in connection with the Project Charter as an independent contractor. Nothing in the Agreement shall create, constitute or evidence any partnership, joint venture, agency, trust or employer/employ relationship between MTB and the Client, and MTB shall not have the authority to act for, or to incur any obligation on behalf of, the Client, except as expressly provided for in the Project Charter.

#### RESTRAINT

Neither Party shall offer the other Party's staff or sub-contractors any independent assignment or permanent position anytime during the continuation of this Agreement, and for a period of six (6) months thereafter, without first seeking the prior consent of the other Party.

#### ISSUE OR DISPUTE RESOLUTION

All issues and differences between the parties in relation to the interpretation or performance of the Agreement shall, in the first instance, be attempted to be resolved at the earliest opportunity through the Project Steering Committee, who should attempt resolution.

If the dispute remains unresolved, then the question, dispute or difference must be referred to the arbitration of a single arbitrator to be appointed by the parties or failing agreement to be appointed by the current president of the New Zealand Law Society. Such arbitration must be carried out in New Zealand in accordance with the provisions of the Arbitration Act 1996.

#### VARIATION

No amendment or variation of this Agreement shall be binding unless it is in writing and signed by both parties.

#### INDEMNITY

Each party indemnifies the other against any liability for any direct injury, loss, cost (including legal costs) or damage (excluding any indirect or consequential loss, cost or damage, or loss of profits) that a party may suffer as a result of any negligence, dereliction of duty or fraud by the other party or the other party's servants or agents in the performance of its obligations under this Agreement.

Notwithstanding anything to the contrary in this Agreement or in law under contract or tort (including negligence) or under statute or otherwise, in no event shall MTB, its agents, or subcontractors, be liable to the Client or its servants or agents, in any way whatsoever, for amounts in excess of \$500,000.

#### INTELLECTUAL PROPERTY

The Client acknowledges that MTB is the exclusive owner or authorised user of the Intellectual Property and that the Client will not (and must ensure that its servants and agents do not) copy, alter, modify, reproduce or permit any other person to do the same or in respect of the Intellectual Property.

The Client further acknowledges that it will not in any way (other than as authorised by this Agreement) use the Intellectual Property without first gaining the written consent of MTB to the use and such use will always be in accordance with and only pursuant to such consent.

For the avoidance of doubt, the Parties agree that any Intellectual Property developed by MTB during the continuation of this Agreement for use in the provision of the Services, whether actually used or not, will at all times remain the sole and exclusive property of MTB.

For the purposes of this Agreement, Intellectual Property shall mean all intellectual property rights in any methodology, process, checklist, approach or related document provided or developed by MTB; or constituted by statute or rule of law in New Zealand relating to or arising out of the business operated by MTB, including any trade marks and all goodwill rights associated with it, registered designs, patents, applications for any of these, know how, trade secrets, and software.

#### NOTICES

Notices or communication documents or demands required to be made or served pursuant to this Agreement shall be in writing signed by the party giving notice or by any officer or solicitor of that party. Any notice or document shall be deemed to be duly given or made:

- (a) if delivered by hand, when so delivered
- (b) if sent by facsimile, when receipt is confirmed by the recipient
- (c) if sent by post, on the third business day following posting
- (d) if sent by e-mail, when the message has been sent and confirmed as "opened" by return email communication.

#### GOVERNING LAW

This Agreement shall be governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts.