TERMS OF TRADE

1. **GENERAL**

1.1 These Terms of Trade (**Terms**) govern the supply by The Management Mentors Limited, NZBN 9429034147573 (**our, us** or **we**) to you (referred to as the **Customer**, **you** or **your**) of Services from time to time. By engaging us to provide the Services, you are deemed to have agreed that the Services are supplied subject to these Terms.

1.2 In the event of any inconsistency between these Terms and any Proposal, the provisions of these Terms shall prevail.

2. **PRICE**

2.1 Unless we have agreed in writing to be bound by a set price for the Services, you will pay to us our actual cost of completing the Services (**Actual Cost**) which will be calculated by totalling the following:

(a) the number of hours of service multiplied by the hourly rates for the workers involved on the date which the Service is undertaken or if the supply occurs over more than one day, the relevant hourly rates on the last day on which Services are rendered;

(b) any disbursements (including without limitation delivery costs) incurred by us on your behalf.

2.2 The Actual Cost and all prices are plus GST and other taxes which are payable by you in New Zealand dollars.

2.3 Disbursements incurred by us on your behalf may include a reasonable mark-up by us.

2.4 In the event these Terms of Trade are terminated in accordance with clause 11, you must immediately pay us the Actual Cost at the termination date.

3. **PAYMENT**

3.1 We require you to pay a deposit or payment in full, being an advanced payment for the Services, before we commence the Services.

3.2 Payment for the Services (and any associated expenses and disbursements) is due within 7 days following the date of our invoice except where we have agreed in writing that other terms will apply (**Due Date**).

4. **DEFAULT**

4.1 If payment is not made on the Due Date, then we may charge default interest at the rate of 12% per annum. The interest will be calculated on a daily basis from the date payment was due until the date payment is received by us. Any failure or delay by us to charge interest on any unpaid account or to exercise any of its rights will not operate as a waiver of those rights. You will also be liable to pay all expenses and legal costs incurred by us as a result of your default in payment, including debt recovery costs or charges of a debt collection agency. We may apportion payments to outstanding accounts as we see fit.

4.2 Notwithstanding clause 4.1, if payment is outstanding for 7 days from the Due Date, we may suspend providing the Services on credit until the date of payment in full (subject always to clause 4.3). You must pay in cash for any Services supplied by us until payment is made in full (together with any accrued interest).

4.3 We may notify you at any time that we have ceased to provide the Services on credit. This cessation does not relieve you for amounts owing up to the date on which the contract is terminated.

5. **PERFORMANCE OF SERVICES**

5.1 We will:

(a) perform the Services with reasonable skill, care and diligence in a professional manner;

(b) endeavour to ensure that the Services are performed in accordance with any time frames agreed in writing with you;

(c) liaise with you during the course of performing the Services in accordance with your reasonable requirements.

5.2 You will give reasonable assistance to enable us to perform the Services by:

(a) giving clear instructions;

(b) promptly providing any information or content required from you for us to complete the Services;

(c) ensuring that the Services and products derived from the Services are fit for the purpose you intend to use them for and meet any appropriate statutory, regulatory, governmental and industry and environmental controls, standards or practices.

5.3 If we have given you a time frame for completion of the Services, unless agreed in writing to the contrary such time frame is approximate only and is not deemed to be of the essence of the contract.

5.4 As soon as either party becomes aware of anything that will materially affect the scope or timing of the Services, that party must notify the other party in writing and where we consider a direction from you or any other circumstance is a variation, we will notify you accordingly.

5.5 Further to clause 5.4. if we suffer delay in the completion of the Services or incur additional cost arising from the activity of separate contractors or other third parties (including, but not limited to, government agencies) that is:

(a) not provided for in the Proposal; and/or

(b) is out of our control,

then the effect of that activity shall be treated as if it was a variation.

6. **HEALTH AND SAFETY**

6.1 We will operate under our own Health and Safety Plan. You must provide us with all relevant information regarding work place specific health and safety issues. In circumstances where potential health and safety hazards are not covered by our Health and Safety Plan, we reserve the right to revise any set price for the Services to cover any additional cost.

6.2 We do not and will not assume any duty imposed on you pursuant to the Health and Safety at Work Act 2015 in connection with these Terms.

6.3 If we become aware of any risk to the health and safety of our employees, contractors or agents while on the work place, we may require those employees, contractors or agents to cease providing the Services until that risk is addressed to our satisfaction and will not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from our rights under this clause 6.3.

7. **LIMITATION OF LIABILITY**

7.1 Except as set out in these Terms or as provided in any separate written agreement signed by us, any and all conditions, guarantees, warranties or representations which might otherwise be implied by law, trade, custom or otherwise are expressly excluded to the maximum extent permitted by law. In particular, the Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.

7.2 Where any of the Services are supplied by any third-party contractor engaged by us, we will not be liable for any loss or damage caused howsoever by that third party contractor in relation to the Services supplied.

7.3 Any defects resulting from the Services supplied must be notified to us in writing.

7.4 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms of Trade or for any other reason, such liability is limited to the Actual Cost or set price (as the case may be).

7.5 Further to clause 7.4, if we are found liable for whatever reason and you and/or a third party engaged by you has contributed to the loss or damage, we will only be liable to the proportional extent of our contribution.

7.6 We may, at our sole discretion, re-perform any defective Services, or refund the amount of those Services, provided that clause 7.3 has been complied with and further provided that:

(a) you must supply the date and number of any invoice relating to the Services; and

(b) we must have a reasonable opportunity to inspect the issue resulting from Services complained of; and

(c) we must have no obligation to remedy any damage or defect caused by:

(i) any wilful act or negligence of yours or any other person other than us or our agents, employees or subcontractors;

(ii) faulty materials or workmanship other than the work or materials provided by us;

(iii) design faults, errors or discrepancies where we were not responsible for design.

7.7 Without limiting any defences available under the Limitation Act 2010, we will not be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made by you within 6 years from completion of the Services.

8. INTELLECTUAL PROPERTY

8.1 In respect of Intellectual Property used in or arising from the Services:

(a) all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date of these Terms of Trade (whether you or us); and

(b) any new Intellectual Property will be dealt with in accordance with clause 8.3.

8.2 In respect of any pre-existing Intellectual Property:

(a) of ours used in or provided as part of the Services, we grant you a perpetual, non-exclusive, worldwide, royalty free, non-transferrable license to use such pre-existing Intellectual Property only to the extent that it is necessary to enable you to obtain the benefit of the Services for the purposes for which they were provided; and

(b) of yours provided to us for the purposes of the Services, you grant us a perpetual, non-exclusive, worldwide, royalty free, non-transferrable license to use such pre-existing Intellectual Property only to the extent necessary to enable us to perform the Services.

8.3 Subject to clause 8.1(a), all new Intellectual Property created or developed by the Company in providing the Services, is owned by the Client on payment in full of all our fees relating to those Services.

8.4 In respect of any new Intellectual Property:

(a) You grant a perpetual, worldwide, royalty free, non-exclusive and transferable licence (with the right to sub-licence) to us to use the new Intellectual Property for the purposes of our business.

8.5 Unless we agree otherwise with you in writing, you agree:

(a) that the final form of any work created in connection with or arising from the Services may be showcased on our social media and website portfolios once the project has been completed; and

(b) you must not attribute the Services to anyone other than us or remove any of our trade marks, logos or similar from any documents or work product that we provide you.

9. CONFIDENTIALITY

9.1 You undertake and agree to treat as secret and confidential, and not at any time for any reason, other than for the purpose of the Terms or as required by law, to disclose or permit to be disclosed to any person, or otherwise make use of, or permit to be made use of, any information relating to our technical processes, trademarks, business affairs or finances or of any suppliers, agents, distributors, licensees or customers of ours where such knowledge or details were received during the term of these Terms.

10. CREDIT INFORMATION

10.1 You consent to us and any financier or credit-rating agency making enquiries of and obtaining any information about your financial standing and creditworthiness.

11. DEFAULT AND TERMINATION

11.1 If we have reasonable grounds to believe:

(a) you are in material breach of these Terms;

(b) you have committed an act of bankruptcy or is placed into liquidation;

(c) a receiver or manager has been appointed in respect or any part or the whole of your assets,

we may:

(d) withhold delivery of the Services; or

(e) treat any order for the Services to have been cancelled.

(f) immediately terminate these Terms of Trade by notice in writing to you.

11.2 Termination or cancellation of any order will not affect the rights, powers, remedies, obligations, duties and liabilities of either Party which have accrued before termination.

12. NOTICES

12.1 Any notice may be given in person, posted or sent by fax or email (or where you are a company, to any of its directors, agents or employees at the Customer's address).

13. PRIVACY OF INFORMATION AND AUTHORISATIONS

13.1 We will collect personal information about you for the purpose of providing the Services and for the purposes set out in our Privacy Policy, located at www.themanagementmentors.co.nz/privacy. You authorise us to:

(a) collect, retain and use information about you from any person for the purpose of assisting its creditworthiness;

(b) disclose information about you:

(i) to any person who guarantees, or who provides insurance, or who provides any credit support, in relation to your obligations to us;

(ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of its rights, remedies and powers under these Terms.

14. DISPUTE RESOLUTION

14.1 Where any dispute arises in connection with these Terms the complaining party must promptly give full written particulars of the dispute to the defaulting party. The Parties must then endeavour to meet and resolve the dispute in good faith.

14.2 Where any dispute remains unresolved within 20 working days of written particulars being given, either party is free to seek resolution of the dispute by whatever means available at law.

14.3 This clause 14 does not apply to:

(a) any dispute arising in connection with any attempted renegotiation of these Terms of Trade; or

(b) an application by either party for urgent interlocutory relief.

14.4 Pending resolution of any dispute the parties will perform these Terms of Trade in all respects including performance of the matter which is the subject of dispute but a payment due may be withheld if it is in dispute.

15. VARIATIONS TO SERVICES

15.1 Should any additional Services be required by you (including the broadening of the scope of the Services) all such requests must be made in writing by you.

15.2 We may accept a variation to the Services in our sole discretion.

15.3 In the event that we request a variation to the Services or you request a variation under clause 15.1, we will give you a written variation document detailing the amended Services, the amended set price (as the case may be), the estimated time to undertake the variation, the likely delay (if any), and require written acceptance by you of the variation before commencing the Services on the variation.

15.4 For the avoidance of doubt, unless we have agreed in writing to be bound by a set price for the Work, you shall pay to us the Actual Cost for any variation to the Work.

16. GENERAL

16.1 We will be entitled at any time by notice in writing to vary any provision of these Terms and you will be bound by such variation.

16.2 You must pay us costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms.

16.3 If any of these Terms is held to be invalid, void, unenforceable or illegal for any reason, such provision must be deemed to be severed from these Terms and the remaining provisions must continue in force.

16.4 A failure or delay in enforcing a right pursuant to these Terms is not a waiver of that right. Any waiver must be in writing and signed by the party granting the waiver.

16.5 You must not assign or subcontract any of your rights, powers or obligations under these Terms without our prior written consent.

16.6 If we have given a time frame for completion of Services, such time frame is approximate only and is not deemed to be of the essence.

16.7 We are not liable to you for any defect, loss, damage or delay caused by a Force Majeure Event.

16.8 These Terms will be governed by the laws of New Zealand and are subject to the non-exclusive jurisdiction of New Zealand.

16.9 These Terms apply in preference to any terms supplied by you. Except as may be set out in a separate written and signed agreement between you and us, these Terms represent the entire agreement of the parties in relation to the supply of Services.

17. **INTERPRETATION**

Definitions

17.1 In these Terms of Trade, unless the context indicates otherwise:

Force Majeure Event means an act, event or cause reasonably beyond our control including:

(a) an action or inaction of Government, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; or

(b) an act of God, fire, earthquake, storm, flood, landslide, explosion, power failure, sabotage, cyber- attack, national emergency, epidemic, quarantine, radiation or radioactive contamination, or act or war but does not include financial management difficulties or any risk or event, including those listed above, the effects of which could have been prevented by the taking or reasonable care by us,

to the extent that the act, event or cause directly or indirectly results in us being prevented from or delayed in performing one or more of its material obligations under these Terms of Trade.

GST means goods and services tax chargeable or for which a person may be liable under the Goods and Services Tax Act 1985.

Intellectual Property means all intellectual property rights (including, without limitation, copyright, patent and design rights, drawings, documents, data, ideas, artistic styles, methods of working, techniques, ideas, skills and know-how, procedures and calculations).

Parties means us and the Customer and "party" means either one of us or the Customer.

Proposal means any document provided by us to you setting out the details of the Services we expect to provide which may include the scope of the Services, our set price or hourly rates, as well as estimated timing.

Services means all services we agree to provide, or arrange for a third-party sub-contractor to provide, to you from time to time, including (but not limited to) mentoring and consulting services.

working day means any day other than a Saturday or Sunday or Public Holiday observed in New Zealand.

Work place means any location in which the Services are to be performed.

Interpretation

17.2 In these Terms of Trade, unless the context indicates otherwise:

(a) terms given a defined meaning have that meaning where the context permits.

(b) words referring to the singular include the plural and vice versa.

(c) any reference to any of the Parties includes that party's executors, administrators or permitted assigns.

(d) everything expressed or implied in these Terms of Trade which involves more than one person binds and benefits those people jointly and severally.

(e) clause headings are for reference purposes only.

(f) a reference to a person includes any other entity or association recognized by law.

(g) all references to dollars and $ are references to New Zealand dollars unless otherwise stated.

(h) all periods of time or notice exclude the days on which they are given and include the days on which they expire.

(i) except as expressly provided in these Terms, time is of the essence.