

## Terms of Service

These **Terms of Service** apply to the services you have engaged us to provide, as stipulated in our **Letter of Engagement**. Our **Letter of Engagement** and these **Terms of Service** form the entire agreement between us with respect to those services. They replace any earlier agreements, representations or discussions. If anything in these **Terms of Service** is inconsistent with our **Letter of Engagement**, our **Letter of Engagement** takes precedence.

### 1. Our services

- 1.1. **Application** – By accessing and using our services you agree to be bound by these **Terms of Service**.
- 1.2. **Scope** – Our services will be of high quality and completed in a timely and efficient manner, in conformity with all applicable State and Federal laws, and in alignment with established ethics and best practice, and in accordance with these **Terms of Service**.
- 1.3. **Location** - Unless otherwise agreed, services will be delivered remotely via digital platforms. Where an in-person presence is requested and mutually agreed – whether expressly or by established practice – we may attend meetings or work on site at your premises.
- 1.4. **Deliverables**
  - a. **Availability** - All products and services are subject to availability. We will inform you as soon as possible if the product or service you have ordered is not available.
  - b. **Transmission** - All resources produced as a part of this agreement will be transmitted to you electronically and/or saved at a cloud location of your choosing.
    - i. We will not be responsible for delivery delays caused by any network or other failure beyond our control including if your software is incompatible or your network protection system blocks delivery.
- 1.5. **Modification** – We may modify these **Terms of Service** at any time,
  - a. You will be notified of all modifications that affect the nature of our services or our business relationship to you by email.
  - b. The notification email will include a reference number and a link to our digital signature page. You will be asked to acknowledge receipt and acceptance via electronic signature.
  - c. Modifications do not apply retroactively to active contracts, unless expressly agreed in writing by both parties via a **Contract Alteration**. Modifications will only take effect from the next contractual renewal, whether that is a manually agreed re-engagement or an **Automatic Renewal** (see §13).
  - d. If a modification is issued during an active subscription with **Automatic Renewal**, and no acceptance is received before the applicable **Notification of Automatic Renewal** (see 13), we will issue a second notice informing you that your **Automatic Renewal** will be cancelled unless acceptance is received. If no acceptance is received by the **Final Automatic Renewal Cancellation Date** (see §13.1.b), the **Automatic Renewal** will be cancelled.

### 2. Your responsibilities

- 2.1. **Generally** – You agree to:
  - a. provide us promptly with all information, instructions and access to third parties we reasonably require to perform the services.
  - b. provide reasonable facilities for us when we work at your premises.
  - c. ensure we are legally entitled to use any third-party information or intellectual property you require us to use to perform the services.
- 2.2. **Information** – You agree to:
  - a. ensure that information provided to us is accurate, complete and not misleading (we will rely on this information to perform the services and will not verify it in any way, except to the extent we have expressly agreed to do so as part of the services).
  - b. alert us to changes to information provided to us.
  - c. let us know if you expect us to use information from other engagements in connection with this one (otherwise, we are not required to use that information and will not be deemed to know it for the purposes of this agreement).
- 2.3. **Access and responsiveness** – To ensure efficiency in our engagement, we will require access to relevant senior management, and we will expect timely responses to queries and requests for clarification or further information that may be required in the pursuit of our engagement with you.

- 2.4. **Materials** – You agree that all and any materials provided to us, including audio and video recordings, documents, text and images are either,
  - a. in the public domain
  - b. belong to you, having been obtained legally and with appropriate licensing.
- 2.5. **Interdependence** – Our performance depends on you also performing your obligations under this agreement. You agree that we are not liable for any default that arises because you do not fulfil your obligations.

### 3. Fees, expenses and hours

- 3.1. **Quotes** – Rates quoted to you remain in force for four weeks from the initial date of our **Letter of Engagement**.
- 3.2. **Invoices** – We will invoice you
  - a. for fixed-fee projects, upon signature of the **Letter of Engagement**.
  - b. for subscription services, upon signature of the **Letter of Engagement** and then on a 14 day cycle, unless otherwise specified in the **Letter of Engagement**.
- 3.3. **Payment for services** – You agree to pay the invoiced amount
  - a. for fixed-fee projects, in advance – project commencement is dependent upon receipt of full payment.
  - b. for all other invoices, within 7 days of the invoice date, unless otherwise specified in the **Letter of Engagement**.
- 3.4. **Expenses** – You agree to pay any reasonable expenses we incur in connection with the services, plus GST at the prevailing rate (to the extent applicable).
- 3.5. **Late or Urgent Engagement Surcharge** – Where you ask us to prepare, support, review or contribute to a time-sensitive opportunity (for example, a grant with a submission deadline), we may apply a **Late or Urgent Engagement Surcharge** if the timing of your request compresses the available preparation period, requires us to reprioritise other work, increases delivery risk, or requires work to be performed under unusual urgency.

In deciding whether a surcharge applies, we may consider the opportunity publication date, the submission deadline, the scale and complexity of the work, your preparedness and the availability of required information.

Unless otherwise agreed in writing, the surcharge will not exceed:

- a. for fixed-fee work, 35% of the applicable fixed fee; or
- b. for subscription, retainer or hourly work, the equivalent of three standard working days at our standard hourly rate.

You will be notified in writing of the surcharge before it is invoiced, where practicable. It will be invoiced separately and is payable in accordance with the payment terms applying to the relevant services.

We may decline to accept late or urgent work where, in our reasonable opinion, the remaining time is insufficient to deliver the services to an appropriate standard.

- 3.6. **Travel** – Where travel is required and has been mutually agreed, you agree to reimburse all reasonable associated costs, including transport to and from departure points (e.g. airport transfers), accommodation if applicable, and incidentals such as meals where necessary. We reserve the right to choose our own airline or travel provider.
- 3.7. **Compliance costs** – If we are required to provide information regarding you or the services to comply with a statutory obligation, court order or other compulsory process, you agree to pay the reasonable costs and expenses we incur in doing so. This includes time spent by professional staff and our reasonable legal costs.

### 4. Subscription Levels and Tasking

- 4.1. **Subscription levels** – Subscription services provide you with access to a maximum number of hours per week, as stipulated in the **Letter of Engagement**.
- 4.2. **Task allocation** – It is your responsibility to allocate tasks that utilize the available hours within your subscription tier.
  - a. We will not proactively notify you of unused hours unless specifically requested to do so.
  - b. Unused hours do not entitle you to refunds.
- 4.3. **Overtasking** – If you are a subscription client, and you submit task requests that exceed your subscribed weekly hour limit for four consecutive weeks, we will notify you and may, at our discretion, bill additional services at our standard hourly rate and/or suggest an appropriate subscription adjustment.

## 5. Refunds and Returns

- 5.1. Given the nature of our products and services, we do not offer returns or refunds unless required under Australian consumer law. If you deem a product or service to be significantly different to that described in our **Letter of Engagement**, please contact us.
- 5.2. We do not accept returns or provide refunds for change of mind.
- 5.3. Our services come with guarantees that cannot be excluded under the Australian consumer law. Nothing in these **Terms of Service** purports to modify or exclude the conditions, warranties, undertakings and legal rights under the **Australian Competition and Consumer Act** and other local laws. Any and all other warranties or conditions are expressly excluded, including liability for incidental or consequential damages caused by breach of any express or implied warranty or condition.

## 6. Intellectual Property

### 6.1. Your Intellectual Property

- a. **Ownership** – We acknowledge that all **Intellectual Property** created or developed for you by us in the execution of this agreement, as well as anything derived from that **Intellectual Property** in future, belongs solely to you.
- b. **Disclosure** – We must immediately upon creation of **Intellectual Property** disclose to you the subject matter of that **Intellectual Property**.
- c. **Assignment** – We assign to you all rights to any **Intellectual Property** created for you, throughout the world, as from the date of creation, including all documents that incorporate, relate to or concern any part of that **Intellectual Property**.
- d. **Reasonable endeavour** – To the extent that we do not own all the rights to the **Intellectual Property**, we will use best endeavours to obtain an assignment to you of those rights.
- e. **Registration and enforcement** – We will, at your reasonable expense, execute all documents and carry out any other tasks reasonably requested by you in order to apply to register your **Intellectual Property** or to assist you in the enforcement of your **Intellectual Property**.
- f. **Moral rights** – We acknowledge that you, your suppliers, clients or customers may use materials that we have developed as part of this agreement – over which we therefore have **Moral Rights** – in any manner and without expressly acknowledging our contribution or creation.

### 6.2. Our Intellectual Property

- a. Our website and its content including our products and services, may represent or contain **Intellectual Property** owned by us, including trademarks, copyrights and proprietary information.
- b. You may not modify, publish, transmit, participate in the transfer or sale of, create derivative works from, distribute, display, reproduce or perform, or in any way exploit in any format whatsoever any of our **Intellectual Property**, in whole or in part, without our prior written consent.

## 7. Confidentiality and privacy

- 7.1. **Confidential information** – The parties agree not to disclose each other's **Confidential Information** under any circumstances, except
  - a. where the parties have agreed in writing that such disclosure may occur;
  - b. for disclosures required by law.
- 7.2. **Uncertainty** – The parties agree that if there is any uncertainty as to whether any information is **Confidential Information**, the parties will treat it as **Confidential Information** unless and until written acknowledgement is received indicating that it is not **Confidential Information**.
- 7.3. **Referring to you** – We may wish to refer to you and the nature of the services we have performed for you when marketing our own services. You agree that we may do so, where doing so does not breach any of the provisions of this agreement.
- 7.4. **Privacy** – The parties agree to comply with the **Privacy Act 1988 (Cth)** when exchanging information. The parties agree to co-operate with each other in addressing our respective privacy obligations in connection with this agreement.

## 8. Conflict of Interest

- 8.1. **Conflict** – We may engage in other work during the term, provided it does not conflict with our obligations as stipulated in our **Letter of Engagement**.
- 8.2. **Notice & resolution** – If we become aware of any conflict of interest between the agreement that we have with you and any other work we have been offered or are undertaking, we will inform you immediately in writing and take all steps as reasonably agreed with you to resolve the conflict.

## 9. Liability

- 9.1. **Insurance** – We hold current Public Liability and Professional Indemnity insurance appropriate to the services we offer. Evidence of coverage is available upon request.
- 9.2. **Indemnity** – The parties agree to indemnify and hold harmless the other, and its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this agreement. This indemnification will survive the termination of this agreement.
- 9.3. **No liability to third parties** – We accept no liability or responsibility to any third party in connection with our services. You agree to indemnify us against any liability (including legal costs) that we incur in connection with any claim by a third party arising from your breach of this agreement.

## 10. Electronic communications and tools

- 10.1. **Electronic communications** – The parties agree to take reasonable precautions to protect their own information technology systems, including implementing reasonable procedures to guard against viruses and unauthorised interception, access, use, corruption, loss or delay of electronic communications.
- 10.2. **Electronic tools**
  - a. We may develop or use electronic tools (e.g. spreadsheets, databases, software) in providing the services.
  - b. We are not obliged to share these tools with you, unless they are specified as a deliverable in the **Letter of Engagement**.
  - c. If they are not a specified deliverable, and we do share them with you, you agree that:
    - i. they remain our property
    - ii. we developed them solely for our use
    - iii. you use them at your own risk
    - iv. you may not provide them to any third party.
- 10.3. **Artificial Intelligence**
  - a. We may use public domain **Artificial Intelligence (AI)** tools in the drafting of written text unless you expressly request that this not occur.
  - b. We will not be held liable for any breach of confidentiality caused by the companies who manage such tools.

## 11. Brand visibility

- 11.1. **Communications** – We reserve the right to use our own branding on all communications conducted in the course of our engagement, including those sent to your clients on your behalf.
- 11.2. **Documentation** – We reserve the right to place discrete brand identification on any prepared documents.

## 12. Termination

- 12.1. **By notice** – The parties may terminate this agreement by giving the other party at least 45 days' notice in writing. The termination date for this Engagement will be 45 days from the date of issuance of the termination notice.
- 12.2. **Breach of terms** – Without prejudice to any other right or remedy available to either party, if either party considers that the other party has breached these Terms of Service, either party may immediately and without notice, suspend or terminate access to services.
- 12.3. **Fees payable to us on termination**
  - a. **Fixed-term projects** – Where we have a defined project fee for services, and the services are not completed before the termination date (see 12.1), you agree to pay us for the services that we have performed on the basis of the time spent at the termination date, at our current hourly rate, up to but not exceeding the amount of the originally agreed fixed fee.
  - b. **Subscriptions**
    - i. Fixed-term engagements (subscriptions) terminated before the contracted end date will incur a **termination penalty** equal to 50% of the unpaid portion of the total contract value.
    - ii. The termination penalty will be calculated on a pro rata basis across the entire original subscription period, starting at the termination date (see 12.1), and taking into account any outstanding invoices at the date of issuance of the termination notice.

## 13. Automatic Renewal

- 13.1. Subscription clients may agree, either in the **Letter of Engagement** or via a written **Contract Alteration**, to an **Automatic Renewal** of their contract. This means that upon reaching the termination date, the contract will renew automatically on the same terms and conditions, for the same duration, and at the same subscription level, without requiring a new **Letter of Engagement**.
- a. **Notification** – We will issue a **Notification of Automatic Renewal** by email at least:
    - i. 42 calendar days (6 weeks) before the termination date for a 12-month contract
    - ii. 28 calendar days (4 weeks) before the termination date for a 6-month contract
    - iii. 14 calendar days (2 weeks) before the termination date for a 3-month contract
  - b. **Cancellation** – You may cancel an **Automatic Renewal** by written notice via email at any time prior to the **Final Automatic Renewal Cancellation Date**, which will be:
    - i. 14 calendar days (2 weeks) prior to the contract renewal date for 12-month contracts
    - ii. 7 calendar days (1 week) prior to the contract renewal date for 3-month and 6-month contracts

## 14. Resolving disputes

- 14.1. For us to waive a right under these **Terms of Service**, the waiver must be in writing.
- 14.2. If a dispute arises, before any proceeding is commenced, the party claiming that a dispute has arisen must give 14 days' notice to the other party setting out the dispute and seeking discussion and compromise to resolve the dispute.
- 14.3. If after 14 days, the dispute is not resolved then it must be referred to mediation on the same terms as those ordered by the **Supreme Court of NSW** and the costs of the mediation shall be borne by the parties equally.
- 14.4. Notwithstanding the preceding provisions of this clause, we will continue to provide the services and perform our obligations under this agreement pending resolution of the dispute.
- 14.5. Nothing in this clause will prevent either party from seeking urgent interlocutory relief.

## 15. Relationship

- 15.1. We are your independent contractor. You agree that we are not in a partnership, joint venture, fiduciary, employment, agency or other relationship with you. Neither party has power to bind the other.

## 16. Force majeure

- 16.1. Neither party is liable to the other for delay or failure to fulfil obligations (other than an obligation to pay) to the extent that the delay or failure arises due to an unforeseen event beyond their reasonable control which is not otherwise dealt with in this agreement.
- 16.2. The parties agree to use reasonable endeavours to remove or overcome the effects of the relevant event without delay.

## 17. Assignment

- 17.1. Neither party may assign or deal with our rights under this agreement without the other's prior written consent.

## 18. Applicable law

- 18.1. Unless the **Letter of Engagement** states otherwise, the law applying to this agreement is the law of the State of New South Wales, Australia.
- 18.2. The parties submit to the exclusive jurisdiction of the courts of the state stipulated in §18.1, and waive any right either party may have to claim that those courts do not have jurisdiction or are an inconvenient forum.
- 18.3. If any part or provision of these terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If a modification is not possible, the part or provision must be treated for all purposes as severed from these **Terms of Service**. The remainder of these terms will be binding on you.

## 19. Karaoke

- 19.1. Under no circumstances will we be required to perform karaoke at any event organised by you, to which we have been invited.

## 20. Definitions

In this agreement the following words and expressions have the meanings given to them below:

- 20.1. **this Engagement** – all stipulations of these Terms of Service and the Letter of Engagement that has been electronically signed by you.

- 20.2. **you** – the client named in our Letter of Engagement, and their Related Entities.
- 20.3. **we/us** – H C Maia Services and anyone working on our behalf on tasks assigned within the scope of the Engagement.
- 20.4. **party/the parties** – the parties named in the Letter of Engagement.
- 20.5. **Intellectual Property** – copyright; patents; trademarks; registered designs; Confidential Information; trade secrets; business, company or domain name; know-how; inventions or processes; and any other proprietary, licence or personal rights arising from activity in the business, industrial, scientific or artistic fields.
- 20.6. **Confidential Information** – all hard-copy or electronically stored information, regardless of format, which is not already in the public domain, and which pertains to any information that can reasonably be interpreted as confidential, including, but not limited to the following:
- a. Intellectual Property
  - b. business strategies and plans
  - c. policies and procedures
  - d. recruitment, training, staff retention and remuneration practices
  - e. any identifiable information regarding staff, customers, clients, suppliers, or partners
- 20.7. **Automatic Renewal** – A mutual agreement, recorded in writing, that allows subscription contracts to renew automatically on their termination date with all parameters unchanged, subject to the notification and cancellation provisions outlined in §13.1.a and §13.1.b.