

BETWEEN

This document, including its schedules, and the Quote forms an agreement (Agreement) between you and Leonie Waldron t/as Chameleon Marketing Collective and/or Chameleon Copywriting (ABN 39 902 814 536) **Chameleon Marketing**) for the provision of copyrighting, marketing and design services. By engaging Chameleon Marketing to provide the Services, you agree to be bound by these terms and conditions.

1. Definitions & Interpretation

1.1. In this Agreement the following terms have the following meanings:

Additional Services means services out of the scope of the Services work or not specifically specified in the Quote but which you may request or necessary for Chameleon Marketing to provide in furtherance of the delivery of the Services.

Background Intellectual Property means Intellectual Property developed prior to or independently of, and without reference to, the provision of the Services;

Business Day means a day on which all banks (as defined in the Banking Act 1959) with offices in the City of Sydney are open for business in the City of Sydney.

Business Hours means between the hours of 9.00am and 5.00pm (Sydney time).

Confidential information means and includes any information that by its nature is confidential, is designated by a party as confidential, or the recipient knows or ought to know is confidential but does not include information which:

- (a) is or becomes public knowledge other than by breach of this Agreement;
- (b) was known by the recipient as at the date of this Agreement; or
- (c) has been independently developed or acquired by the recipient without reference to the disclosing party's Confidential Information.

where the burden of establishing any of the exceptions referred to in (a), (b) and (c) shall be upon the recipient.

Commencement date means the date for the commencement of this Agreement as specified in the Quote or in the absence of a fixed date the date you shall approve our Quote in writing.

Client Intellectual Property means Intellectual Property provided by you to Chameleon Marketing for use in the provision of the Services;

Customer or You means the person, partnership, corporation or other entity (including trust) purchasing the Service as identified on the Quote, and their heirs, executors, administrators, successors and assigns of such party or parties.

Expiry Date means the date which this Agreement shall terminate as specified in the Quote or in the absence of a fixed date 12 months from the Commencement Date unless extended in accordance with this Agreement

Fees mean the amount you will pay to Chameleon Marketing for the Services and Additional Services as specified in the Quote, which may either be a fixed price, calculated on a time costing basis or on such other basis specified in the Quote. If a basis for calculating the Fees for the Additional Services is not specified in the Quote then Chameleon Marketing may charge a reasonable fee commensurate with their ordinary hourly and/or commercial rates.

GST Law means A New Tax System (Goods and Services Tax) Act 1999 as amended or replaced from time to time and also includes any associated legislation and delegated legislation.

Intellectual Property includes all statutory and other proprietary rights in respect of copyright and neighbouring rights, all rights in relation to inventions (including registered and not yet registered patent rights), plant varieties, circuit layouts, registered and unregistered trademarks, designs, the right to have Confidential Information (including trade secrets and know-how) kept confidential, and all other rights resulting from intellectual activity in industrial scientific, literary or artistic fields.

Quote means the quote or statement of works Chameleon Marketing provided to you contemporaneously with this Agreement, any subsequent Quote and any further Quote provided by Chameleon Marketing for the provision of additional Services that may be

requested and agreed. The Quote shall specify the Services to be completed by Chameleon Marketing, the timeframes and any milestones of those Services along with Chameleon Marketing's fees and/or charges for providing the Services.

Retainer means an arrangement, as specified in the Quote, where you shall commit to pay a fixed monthly Fee to Chameleon Marketing in exchange for a commitment to provide a certain number of hours or specific Services per month, whether you use that allowance or not.

Services means the services specified in the Quote to be provided by Chameleon Marketing to you along and a reference to Services includes the Additional Services unless otherwise specified.

Services Intellectual Property means any Intellectual Property created in the course of delivering and performing the Services, but for the avoidance of doubt does not include any Intellectual Property you may create utilising the Services but independent of them.

1.2. Unless the contrary appears:

The singular includes the plural and vice versa and words importing a gender include other genders; Reference to any legislation or any provision of any legislation includes any amendment, modification, consolidation or re-enactment of the legislation or any legislative provision substituted for and all legislation and statutory instruments of and regulations issued under the legislation; Other grammatical forms of defined words and expressions have corresponding meanings; A reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement and a reference to this Agreement includes its schedules and annexures; Words importing persons include firms, bodies corporate, unincorporated associations or authorities; A reference to a person includes a reference to the person's executors, administrators, successors, substitutes and assigns; An agreement, representation, warranty or indemnity given or undertaken by 2 or more persons binds them and is given jointly and severally; Headings are for ease of reference only and do not affect the construction of this Agreement; A reference to an amount of money is a reference to the amount in a lawful currency of the Commonwealth of Australia; A reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia even if the obligation is to be performed elsewhere; any 'Explanatory Notes' are just for reference only and do not affect the construction of this Agreement;

2. These Terms

- 2.1. You acknowledge, having had fair opportunity to read, understand and negotiate with Chameleon Marketing, these terms.
- 2.2. Subject to any special written offer by Chameleon Marketing, that may be agreed in writing, these terms form part of each Agreement for Chameleon Marketing to supply Services to you and these terms negate any terms you may issue.
- 2.3. Your failure to acknowledge these terms is not evidence these terms do not apply.
- 2.4. You accept these terms if after receipt of a copy of them you instruct Chameleon Marketing to proceed with the provision of Services or upon Chameleon Marketing effectively notifying you that they will commence the Services and you do not object.
- 2.5. At any time Chameleon Marketing may change or replace these terms by notifying you. Any such change or replacement applies to any Agreement that forms after the change was so notified.
- 2.6. If there is any conflict, ambiguity or inconsistency between the parts of this Agreement, then the following order of precedence shall apply:
 - 2.6.1. this document;
 - 2.6.2. the Quote.

3. Term

- 3.1. This Agreement shall commence on the Commencement Date and shall continue until the Expiry Date unless terminated in accordance with clause 15, or extended in accordance with clause 3.2.

- 3.2. The parties may extend the Term by negotiating a variation to the Expiry Date, at least one month before the end of the Term.
- 3.3. In absence of either, the parties agreeing to extend the Expiry Date, or a party notifying the other party of its intention to allow the Agreement to expire at the Expiry Date, at least one month before the end of the Term, the Term shall be extended by a further 1 month and so on until either party may terminate the Agreement in accordance with clause 13.

4. Basis of engagement

- 4.1. Chameleon Marketing will provide to you the Services in accordance with:
 - 4.1.1. the requirements specified in the Quote but is otherwise entitled to use its discretion in relation to the provision of the Services;
 - 4.1.2. any timelines agreed in writing between the parties; and
 - 4.1.3. reasonable skill and care.
- 4.2. Chameleon Marketing will provide you Additional Services at your request or if necessary where required to deliver the Services, but Chameleon Marketing may in their absolute discretion decline to provide the Additional Services.
- 4.3. (If you have engaged us on a Retainer) for any reason that a particular task we agree to supply is outside the Retainer, or if hours worked or Service level Quoted for exceeds the monthly allowance for that period, our reasonable hourly rates will apply to all tasks performed by Chameleon Marketing.
- 4.4. In consideration for the Services and Additional Services, you will pay the Fees.
- 4.5. Chameleon Marketing may use sub-contractors in the provision to you of the Services. Where this occurs, Chameleon Marketing will remain responsible for the actions of those sub-contractors.

5. Variation of Quote & Delay

- 5.1. A variation to the Quote may be proposed at any time by either party (a Variation).
- 5.2. Any proposed Variation must be made in writing, and be communicated to the other party as soon as reasonably practicable.
- 5.3. Upon receipt, or communication, of a proposed Variation, Chameleon Marketing will issue an estimate of any changes to the Fees occasioned by the Variation.
- 5.4. A Variation shall only be made once agreed to by both parties in writing.
- 5.5. By written notice you may request that Chameleon Marketing delay the delivery of the Services, however we reserve the right to issue a progress invoice for our Fees reasonably incurred to date, being proportional to the work completed. All further delay requests are subject to acceptance by Chameleon in writing, at our sole discretion.

6. Your obligations

- 6.1. You will provide Chameleon Marketing with:
 - 6.1.1. the information required by Chameleon Marketing to provide the Services and within a reasonable time; and
 - 6.1.2. feedback and approval of the Services within a reasonable time.
- 6.2. You are responsible for the accuracy and completeness of the information and instructions you give to us.
- 6.3. Chameleon Marketing will not be responsible for any delay caused by your failure to provide us with accurate and timely responses to our queries.
- 6.4. You will not take any action which has, or would be likely to have, a negative impact upon the operations of Chameleon Marketing including:
 - 6.4.1. using the Services for unlawful purposes;

6.4.2. using the Services in a manner likely to bring Chameleon Marketing into disrepute;
or

6.4.3. using the Services to infringe any third party's intellectual property rights.

6.5. You must not use, on-sell or otherwise on-supply the Service in a manner not fit for purpose.

7. Service Delivery

7.1. Where the Services include support services, support will be provided in accordance with the service levels specified in the Quote.

7.2. If Chameleon Marketing quotes or proposes a delivery date or timeframe for provision of the Services that proposal is an estimate only and is subject to factors that include, but not limited to:

7.2.1. If Chameleon Marketing need order in, a component of the Service to fill the Quote and then the availability of that component;

7.2.2. If Chameleon Marketing is to carry out onsite work as part of the Service which may be impacted by factors outside Chameleon Marketing's control, for instance, but not limited to, weather and access; and

7.2.3. Workload capacity and availability of Chameleon Marketing's staff;

and Chameleon Marketing shall not be penalised by such delay.

7.3. Chameleon Marketing adopts ordinary business hours and whilst after hours work and urgent requests may be considered, Chameleon Marketing reserves the right to refuse to provide Services outside of standard business hours or on an urgent basis.

7.4. Upon reselling any Service we provide you agree to:

7.4.1. ensuring that the provision of the on-sold product or service is free from defect and is of merchantable quality;

7.4.2. be responsible for addressing any complaints received from your customers or the third parties supplied to;

7.4.3. however if a defect or other claim is made that Chameleon Marketing may be responsible for then you shall notify us promptly and the provisions stipulated in clause 8.4 shall apply and our liability to you shall be limited in accordance with this Agreement; and

7.4.4. as a continuing obligation you agree to indemnify and hold harmless Chameleon Marketing against any claim for any loss, damage, personal injury or death to the extent caused by your improper distribution or use of the Service or any other reasons that are not our responsibility.

8. Acceptance, Defects and Changes

8.1. You may accept any of the Services and materials produced by us by notifying Chameleon Marketing in writing, but you're deemed to accept the Services within 30 Business Days of delivery if you do not:

8.1.1. request changes to it in accordance with clause 4.4(b); or

8.1.2. reject the Services in accordance with clause 4.4(c).

8.2. You may, within 30 Business Days of delivery, request changes to the Services by:

8.2.1. written notice in writing specifying the changes;

8.2.2. acknowledging that we have applied artistic skill and judgment in the creation of the Services and any changes should not be based solely on artistic merits unless:

a) the Service contains a factual or typographical error;

b) the Service is different from the Quote or reasonable feedback, note or direction which you may reasonably give during its creation; and/or

- c) the Services do comply with any applicable laws, ordinances and/or regulations or industry standards;

and unless rejected by us as an unreasonable change in accordance with this clause we shall make those changes within a reasonable time.

- 8.3. Unless otherwise specified in the Quote, changes in accordance with clause 8.2 shall be limited to twice per Service deliverable, all further work, changes or revisions shall be treated as Additional Services and charged accordingly.
- 8.4. Subject to applicable laws (if any):
 - 8.4.1. a claim that the Service is defective for reasons that are our responsibility is not valid unless advised in writing (with reasonable details) to Chameleon Marketing within 10 working days after the defect was first known to you;
 - 8.4.2. no later than 14 days after making a claim you must advise Chameleon Marketing what action (if any) you require to resolve the claim;
 - 8.4.3. Chameleon Marketing may decline a claim for defective Service if you do not take reasonable steps to preserve the Service pending an inspection by us (if Chameleon Marketing requires an inspection).
- 8.5. If a claim for defective Service is found or admitted to be without merit, Chameleon Marketing may recover from you as a debt all reasonable costs Chameleon Marketing incurs investigating the claim.
- 8.6. If you are a consumer (as defined in the Australian Consumer Law) in relation to the Agreement, the following provisions of this term shall apply in relation to that Contract as to comply with section 102 of the Australian Consumer Law and regulation 90 of the Competition and Consumer Regulations 2010:
 - 8.6.1. Chameleon Marketing is the person giving the warranty;
 - 8.6.2. a defect in the Service must appear within 12 months;
 - 8.6.3. you bear the expense of claiming the warranty against defects.
 - 8.6.4. If the Service is defective Chameleon Marketing honours its warranty against defects by taking one or more of the following actions:
 - a) replace the Service with a new Service;
 - b) repair the Service;
 - c) refund the Cost of the Service; or
 - d) pay for the cost of a replacement Service.
 - 8.6.5. The benefits given by the warranty are in addition to other rights and remedies of the Customer under a law in relation to the goods or services to which the warranty relates.
- 8.7. Subject to applicable laws, any claim for any defective Service not made within time is barred for all purposes.

9. Fee

- 9.1. The Fees specified in the Quote are payable at the times and in the manner specified in the Quote.
- 9.2. Invoices are to be paid within 7 days following delivery of the invoice, unless otherwise agreed with Chameleon Marketing in writing and:
 - 9.2.1. You waive the right to dispute anything on an invoice not notified in writing (giving reasonable details) to Chameleon Marketing within 7 days you receive that invoice;
 - 9.2.2. Chameleon Marketing may issue an invoice for payment prior to the provision of the Service; and
 - 9.2.3. Chameleon Marketing may issue separate invoices throughout the delivery of the Service at key on stages or on a periodic basis, being no more than once per any 14 day period.

- 9.3. Interest on overdue payments will be charged at the Reserve Bank of Australia Cash Rate Target as at the date of the invoice, plus four percent. Interest begins to run on our invoices once they have remained unpaid for 28 days.
- 9.4. Chameleon Marketing may suspend provision of any Services until payment of an overdue invoice is made.
- 9.5. Unless otherwise stated in the Quote the Fees include usual delivery costs and insurance.
- 9.6. Unless otherwise stated the Fees are exclusive of GST.
- 9.7. In addition to rights of set off under the general law, Chameleon Marketing may set off any debt or liability you (alone or with others) owes to Chameleon Marketing on any account against any debt or liability Chameleon Marketing owes you on any account. If a liability is unliquidated or otherwise unascertained, Chameleon Marketing may set off an amount estimated by Chameleon Marketing in good faith on account of such liability, without prejudice to the obligation of the parties to account for any shortfall or excess.
- 9.8. Chameleon Marketing may adjust our rates listed in the Quote, including for Retainers, by providing you with 30 days' written notice of such an adjustment.

10. Confidential Information

- 10.1. A party may not disclose any Confidential Information to any person except:
 - 10.1.1. with the consent of the other party;
 - 10.1.2. to the extent necessary to enforce its rights and carry out its obligations under this Agreement;
 - 10.1.3. to its officers, employees and professional advisers; and
 - 10.1.4. as required by an applicable law, after first consulting with the other party about the form and content of the disclosure, and in any event must use its best endeavours to ensure that all permitted disclosures are kept confidential.

11. Intellectual Property

- 11.1. Ownership of Background Intellectual Property and Client Intellectual Property is not transferred by virtue of this Agreement.
- 11.2. Unless specified otherwise in the Quote, all Services intellectual property will be, from the time of creation, owned by and vested in Chameleon Marketing.
- 11.3. Chameleon Marketing grants you a perpetual, irrevocable, royalty free, non-exclusive, world-wide, non-sub-licensable licence to use the Services Intellectual Property for the purpose of enjoying the benefits of the Services.
- 11.4. Chameleon Marketing grants you a revocable, royalty free, non-exclusive, non-sub-licensable licence to use the Background Intellectual Property for so long as Chameleon Marketing is providing you with the Services.
- 11.5. You grant Chameleon Marketing a perpetual, irrevocable, royalty-free, non-exclusive, world-wide, assignable and sub-licensable licence to use the Client Intellectual Property in providing you with the Services.

Explanatory Note: Whilst we reserve ownership of all Intellectual Property we create, we're willing to discuss the assignment of ownership to you if you request. This may affect our Fee.

12. Force Majeure

- 12.1. Neither party will be liable for any delay or failure to perform its obligations under this Agreement (other than any obligation to pay an amount) if such failure or delay is due to an act, omission, or circumstances over which the party affected by it could not have reasonably exercised control or taken steps to anticipate or avoid (Force Majeure).

- 12.2. Following a Force Majeure event, each party must take such actions as are reasonable to mitigate against any delay or failure of performance of an obligation caused by a Force Majeure event.

13. Term and Termination

- 13.1. This Agreement, including a Retainer, may be terminated on the Expiry Date (as extended by clause 2, above), by either party providing written notice of your intention to terminate the Agreement at least calendar one month before that date.
- 13.2. Chameleon Marketing may terminate this Agreement if:
- 13.2.1. you breach this Agreement and do not remedy the breach within 14 days, or such other time is agreed, by written notification; or
 - 13.2.2. an invoice remains outstanding for more than 28 days.
- 13.3. Either party may terminate this Agreement, including a Retainer, for convenience, by providing 30 days written notice.
- 13.4. In the event that you terminate this Agreement during the Term, you will make payment of an amount proportional to our work to date.
- 13.5. In the event that you terminate a Retainer under this Agreement, in accordance with clause 13.3, your liability to us will be limited to the payment of the monthly Retainer Fee payable during the notice period.
- 13.6. On termination, Chameleon Marketing will render an invoice for such Services and as have been completed or incurred as at the date of termination.
- 13.7. Chameleon Marketing shall not be liable to repay to you any amount that has been prepaid for services in advance of termination.
- 13.8. Chameleon Marketing shall return all your Confidential Information and Background Intellectual Property within 14 days of termination.
- 13.9. You must return all documents in your possession or control relating to the Services to Chameleon Marketing within 14 days of termination.

14. No inducement

- 14.1. You agree that during the Term, and for a period of six months following the termination or expiry of the Term, you will not induce, solicit, or attempt to induce or solicit, any employee or contractor of Chameleon Marketing to leave their employment with Chameleon Marketing or contract directly to you.

15. Publicity

- 15.1. You grant us a limited, revocable, royalty free, non-assignable, non-sub-licensable licence to feature your business name, logo, testimonials, feedback, Services deliverable (so long as the deliverable has been made publically available by you first) in our marketing materials (including our website and social media) and portfolio of work so long as we follow your reasonable direction as to how those materials may be featured.
- 15.2. We grant you a limited, revocable, royalty free, non-assignable, non-sub-licensable licence to feature Chameleon Marketing's business name, logo, testimonials and feedback in your marketing materials (including our website and social media) so long as you follow our reasonable direction as to how those materials may be featured.

16. Warranties

- 16.1. Chameleon Marketing warrants that the Services it provides to you will be provided diligently, and will meet comparable industry standards, subject to any qualification in the Quote.
- 16.2. Chameleon Marketing does not guarantee that the Services, when published online, will meet any standard of search engine optimisation either now or in the future and you acknowledge that:
- 16.2.1. search engine rankings/optimisation cannot be 'gamed' or 'hacked' and that your website's ranking may be adversely affected by factors beyond its content;

- 16.2.2. Chameleon Marketing has no influence or control over search engine policies or algorithms for search optimisation;
- 16.2.3. At no fault of Chameleon Marketing your website may be blocked or excluded by a search engine or website host from viewing; and
- 16.2.4. Chameleon Marketing is not responsible for any changes made by you or other parties to your website which may adversely affect your search engine optimisation
- 16.3. Chameleon Marketing does not warrant that the Services will be fit for any specific purpose, unless stated in writing.
- 16.4. Where the provision of services is based upon assumptions specified in the Quote, in the event any of the assumptions listed are incorrect it may impact the appropriateness or fitness for purpose of the Services, or their effectiveness or accuracy.
- 16.5. To the greatest extent permissible by law, Chameleon Marketing disclaims any and all implied warranties with respect to the provision of the Services beyond the warranty contained in clause 16 of this Agreement.
- 16.6. Where a warranty cannot be excluded, you agree that our liability will be limited to the resupply of the Services to you, or the cost of resupplying the Services to you.
- 16.7. Where you may supply to us any specifications, materials and documents to assist in the supply of the Services you warrant to us that they do not infringe third party rights and that Chameleon Marketing is not obligated to check or test such materials.

17. Indemnity

- 17.1. You indemnify (and agree to keep indemnified) Chameleon Marketing and Chameleon Marketing's personnel and sub-contractors from and against any loss (including legal costs and expenses on a solicitor/own Client basis) or liability incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified arising out of or in connection with your use of the Services.
- 17.2. The above indemnity will not apply to the extent that the demand, claim, action or proceeding has resulted from the negligence of Chameleon Marketing.
- 17.3. Subject to the Australian Consumer Law if it applies, in no case is Chameleon Marketing liable for any loss of revenue / profits / goodwill or any incidental, consequential or punitive damages as a result of any claim in connection with its supply of the Service.

18. Occupation Health & Safety

- 18.1. If Chameleon Marketing or its employees, agents or contractors, shall be physically engaged on your premises, site or location(s) controlled by you then you shall ensure:
 - 18.1.1. That all proper and reasonable workplace health and safety standards and policies are in place;
 - 18.1.2. All of Chameleon Marketing's employees, agents and/or contractor's on-site are properly inducted;
- 18.2. and Chameleon Marketing shall ensure it and its employees, agents and contractors comply with the site work health and safety policies and procedures.
- 18.3. If either Chameleon Marketing or you become aware of a workplace incident occurring on site then they shall notify the other party promptly and co-operate in the investigation of the incident and any remedial action necessary.
- 18.4. Either party may, acting reasonably, suspend the performance of the Agreement if they are reasonably concerned about the health and safety of persons on a site or following an incident until satisfied that the site is safe.

19. General

19.1. Notice

Any notice or other communication given under or in relation to this Agreement must be in writing, signed by the party giving it or by its duly authorised officer and delivered personally

or by pre-paid registered post or email to the addresses listed in the Quote, or such other address notified to each party from time to time. Notices will be deemed to have been delivered on the third business day after they have been sent (if by post), or on the next business day after they have been sent (if by email).

19.2. GST

19.2.1. Unless otherwise specified in this Agreement, the consideration expressed in this Agreement or the Quote for any taxable supply made under or in connection with this Agreement does not include GST.

19.2.2. The recipient of a taxable supply under or in connection with this Agreement must, in addition to and at the same time as the GST exclusive consideration is payable, pay to the supplier an amount equal to the amount of GST imposed by the GST law from time to time on taxable supply.

19.2.3. The additional amount is not payable unless the supplier provides to the recipient a tax invoice which is an approved form for GST purposes.

19.3. Entire Agreement

This Agreement, together with the Quote, contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

19.4. Amendment

No amendment or variation of this Agreement is valid or binding on Chameleon Marketing unless it has agreed to that variation in writing.

19.5. Assignment

19.5.1. Chameleon Marketing may assign its rights and obligations under this Agreement on providing written notice to you of its intention to do so.

19.5.2. Your rights and obligations under this Agreement are personal and may not be assigned without Chameleon Marketing's prior written consent, which shall not be unreasonably withheld.

19.6. Governing law and jurisdiction

19.6.1. This Agreement is governed by the laws of New South Wales.

19.6.2. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales in connection with matters concerning this Agreement.

19.7. Relationship

The relationship between the parties is that of independent contractors. The parties are not partners, joint-venturers, or principal and agent.

19.8. Severability

If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.