

Chameleon Creator Terms of Use

1. Application of these Terms

- 1.1 These Terms of Use (**Terms**) are binding and apply to any use of the Services by you, whether you are:
 - 1.1.1 a Customer who pays for a Subscription;
 - 1.1.2 a User of the Platform through a Customer account; or
 - 1.1.3 accessing and using our Website.
- 1.2 By signing an Order Form, setting up an account, clicking I agree and/or accessing or using the Platform or our Website, you irrevocably agree to these Terms.
- 1.3 Where your access and use is on behalf of another person (e.g. your employer), you agree to these Terms on that person's behalf and that you are authorised to agree to these Terms on that person's behalf.
- 1.4 Please also read our [privacy policy](#) because it will apply to all the information provided to us. By accepting these Terms, you also acknowledge and agree to our privacy policy.
- 1.5 If you do not agree to be bound by these Terms, including our privacy policy, you must not use the Services.

2. Changes

- 2.1 We may revise these Terms at any time by notifying you of the changed terms via our Website, email or by any other messaging facility. Continued use after that notification constitutes your agreement to the revised terms. Any change takes effect from the date set out in the notice, or if there is none stated, from the date of the notice.
- 2.2 If a change to these Terms is detrimental to you, you may terminate these Terms and your right to access and use the Service on no less than 10 days' notice, provided the notice is received by us before the date that the change takes effect. If you give notice under this clause, the previous version of the Terms will apply to your access to and use of the Service during the notice period. If you do not exercise your termination right under this clause, and you continue to access and use the Service from the date on which the Terms are changed, you agree to be bound by the changed Terms.
- 2.3 These Terms were last updated on 31 October 2023.

3. Definitions and interpretation

- 3.1 The following words and phrases have specific meanings wherever you see them used in these Terms as follows:

Affiliate for a party, any other person that controls, is controlled by, or under common control with, the party. The term *control* means the direct or indirect power to direct the affairs of the other party through at least 50% of the shares, voting rights, participation, or economic interest in the other party.

Confidential Information in relation to a party means information of a confidential nature including information about its business, operations, strategy, administration, technology, affairs, clients, customers, employees, contractors or suppliers, but does not include any information which is:

- in the public domain other than through a breach of confidence;
- independently developed by the receiving party; or

- is received by the receiving party from a third party who is not bound by obligations of confidence in relation to that information.

Customer	the customer named in the Order Form, or such other person that has agreed with us to pay for the provision of the Services.
Documentation	means the user instructions, manuals, policies, specifications, acceptable use terms and other documentation for the Services, as updated from time to time, including the documents specified or referenced in the Order Form.
Fees	the fees set out on our pricing page on the Website, or as otherwise set out on the Order Form or agreed to in writing.
including	does not imply any limitation, nor does any similar word.
Intellectual Property	all trade marks, domain names, copyright, patents, registered designs, circuit layouts, rights in computer software, databases and lists, rights in inventions, know-how, and trade secrets and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world, and all rights of action, powers and benefits of the same.
Learning Content	the learning material that you create through the use of the Platform, which may incorporate User Data and Platform Content.
Order Form	a document outlining the pricing and other commercial details that apply to your subscription to the Platform that references these Terms and is agreed to in writing or signed by us and you.
Personal Information	information about an identifiable, living person, and includes personal data, personally identifiable information and equivalent information under applicable privacy and data protection laws.
personnel	means employees, directors, agents, contractors and subcontractors, including employees and contractors (who are individuals) of subcontractors.
Plan	the particular features of the Platform and the related services that apply to your Subscription specified on the Website at the time you signed up for a Subscription, or as set out on the Order Form.
Platform	the software-as-a-service platform called Chameleon Creator with the core functionality described on the Website.
Platform Content	the content provided by us and made available to you on the Platform to use in your Learning Content.
Sales Tax	means all taxes, levies, rates, charges, imposts of any kind whatsoever, including withholding tax.
Services	<ul style="list-style-type: none"> • if you are a User or Customer, the Platform, the Support Services, any other service made available to you through the Website, and any other services set out in the Order Form or otherwise agreed between the parties in writing; and • if you are a user of the Website, the Website.

Subscription	the right for you (and, if you are a Customer, your Users) to access and use the Services.
Subscription Period	the duration of your Subscription specified in the Order Form or selected when you signed up for a Subscription via the Website.
Support Services	the support services set out in the Schedule, and any other support services agreed between the parties in writing.
User	a person who has been authorised by a Customer to access the Platform under the Customer's Subscription, which could include: <ul style="list-style-type: none"> • one of your or your Affiliate's personnel; or • a third party who accesses your Learning Content on the Platform.
User Data	means all data (including metadata), information, videos, audio files, text, photographs, written posts and comments, software, scripts, graphics, interactive features, works and materials uploaded to or stored on the Platform by you or one of your Users, transmitted by the Platform at your or your User's instigation, supplied by you or a User to us for uploading to, transmission by, or storage on, the Platform or generated by the Platform as a result of the use of the Platform by you or a User.
Website	the website at https://www.chameleoncreator.com/ .
we, us or our	the Chameleon Creator entity you contract with under these Terms, as determined by clause 21.1.

3.2 **Interpretation.** In the interpretation of these Terms:

- 3.2.1 a reference to a statute is (unless the context indicates otherwise) a reference to a statute under New Zealand law, and includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them; and
- 3.2.2 in the event of any inconsistency between the terms of an Order Form and these Terms, the terms of the Order Form will prevail to the extent of that inconsistency.

4. **Use of the Services**

- 4.1 If you have signed up for a Subscription, we will provide the Platform and related Services to you in accordance with these Terms until termination of your Subscription or, if you are User, until your access is revoked by us or by the Customer.
- 4.2 Our provision of the Services to you is non-exclusive. Nothing in these Terms prevents us from providing the Services to other persons.
- 4.3 We grant to you a non-exclusive, non-transferable and non-sublicensable licence to use the Services for your internal business purposes until termination or suspension of your Subscription in accordance with these Terms. You agree to access and use the Services only in accordance with these Terms and the Documentation.
- 4.4 The Documentation may specify minimum technical requirements and third party service integrations that are required in order for you to access and use the Platform. It is your responsibility to ensure you satisfy the minimum technical requirements. We take no responsibility for any third party products or services that we use in connection with the Platform.

5. **Use of the Website**

- 5.1 Despite anything in these Terms, if you access and use the Website without a current Subscription:

- 5.1.1 we may change, suspend, discontinue, or restrict access to, the Website without notice or liability; and
- 5.1.2 to the maximum extent permitted by law:
 - (a) we provide the Website to you on an *as-available* and *as-is* basis;
 - (b) you access and use the Website at your own risk; and
 - (c) we are not liable or responsible to you or any other person for any loss, claim, damage or expense under or in connection with the Website, or your access and use of (or inability to access or use) the Website. This exclusion applies regardless of whether our liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise.

6. **Availability, maintenance, updates and account access**

- 6.1 We will use reasonable efforts to ensure that the Platform is available on a 24/7 basis. However, it is possible that on occasion the Platform will be unavailable to for scheduled maintenance, or for some other reason out of our control. We will use reasonable efforts to give you advance notice of any scheduled maintenance.
- 6.2 We will maintain and update the Platform as and when we consider it appropriate to do so.
- 6.3 The Platform will evolve over time. We reserve the right to change how the Platform operates, including adding or removing features or functionality, and updating the Documentation.
- 6.4 The Platform may be integrated with, or make available to you, a range of third party service applications and/or features (**Third Party Features**). We do not make any warranty or representation on the availability or functionality of any Third Party Feature. If a licensor of a Third Party Feature ceases to allow us to provide that Third Party Feature to you via the Platform, or ceases to make that Third Party Feature available to us on reasonable terms, we may remove that Third Party Feature from the Platform. If we cease to provide any Third Party Feature, you are not entitled to any refund, discount or other compensation.
- 6.5 Without limiting clause 6.4, we are not responsible for the integration of the Platform with your learning management system (**LMS**) or the performance or availability of your LMS.

7. **Support**

- 7.1 If you are a Customer, we will provide Support Services to you. The Support Services set out in the Schedule apply to all Plans. You may also have access to upgraded Support Services based on your Plan, as specified on your Order Form or otherwise agreed to in writing. Please contact us if you would like to upgrade the level of your Support Services.

8. **Your obligations**

- 8.1 Subject to the remainder of these Terms and the Order Form, you must:
 - 8.1.1 use the Services only for your own lawful internal business purposes; and
 - 8.1.2 you must not resell or otherwise commercially exploit the Services, or make the Platform available to anyone else.
- 8.2 You agree to use the Platform only in accordance with the Documentation (if any).
- 8.3 You must provide true, current and complete information to us (including when setting up an account), and must promptly update that information so that the information remains true, current and complete. You must not impersonate another person or misrepresent authorisation to act on behalf of others or us, and correctly identify the sender of all electronic transmissions.
- 8.4 You must not attempt to view, access or copy any material or data other than that which you are authorised to access.

9. Users

- 9.1 You agree to provide accurate, current and complete information during the account registration process and to update such information so that it remains accurate, current and complete at all times. If you provide any false or misleading information, we may suspend or terminate your Subscription.
- 9.2 You must not allow others to access or use your user account without our prior written consent. No matter whether anyone using your account is authorised to use it or has obtained unauthorised access, you will remain responsible for their actions and omissions.
- 9.3 You must tell us immediately if you think that someone has used or has unauthorised access to your account or password, or there has been some other security breach.
- 9.4 If you are a Customer, your Plan may allow for you to provide access to a number of Users on your Subscription. You must ensure that all of your Users (including any Users who are not your personnel) comply with these Terms. Any breach of these Terms by a User is deemed to be a breach of these Terms by you.

10. User Data

- 10.1 User Data that you upload to the Platform must comply with all applicable laws and regulations.
- 10.2 While you are entitled to access and use the Platform, we will use reasonable commercial efforts to back-up User Data. On termination of your access to the Platform, we will have no further responsibility to you in connection with the User Data. We recommend that you keep a backup copy of the User Data.
- 10.3 You grant us an irrevocable, perpetual, worldwide, royalty-free licence (including the right to sub-licence) to use, copy, adapt, display, store, exploit, and commercialise:
 - 10.3.1 any ideas, suggestions or improvements relating to the Services that are communicated by or on behalf of you to us;
 - 10.3.2 data and information relating to your and your Users' use of the Services (**usage information**) for our internal business purposes; and
 - 10.3.3 the usage information for our external business purposes, including to provide reports and services to third parties, provided that:
 - (a) the usage information is aggregated or anonymised; and
 - (b) any materials incorporating usage information that are provided to a third party do not identify you or any Users without your prior written consent.
- 10.4 You confirm that the User Data will not:
 - 10.4.1 generate obscene, offensive, objectionable or inappropriate content;
 - 10.4.2 damage, interfere with or degrade the functioning of the Platform;
 - 10.4.3 create or send verbal, physical, written or other abuse or unsolicited commercial communications (including threats of abuse or retribution or spam) to any person or cause harm to any person in any way;
 - 10.4.4 breach any Intellectual Property rights of others;
 - 10.4.5 contain negligent, illegal or unlawful material; or
 - 10.4.6 breach the privacy, publicity, or other personal rights of others.
- 10.5 We will not be responsible or liable to any third party for the User Data, including its accuracy. You indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a

third party that any User Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the User Data is objectionable, incorrect or misleading.

- 10.6 As between you and us, you are solely responsible for procuring all licences, authorisations and consents required for you and your Users to use the Services, including to use, store and input User Data into, and process and distribute User Data through, the Service. You warrant that in respect of all Personal Information which is contained in User Data, you have the right to collect and use that Personal Information and to make it available to us and any of our third party service providers (**Service Providers**) so that we can deliver the Services to you. You further confirm that the collection, storage, distribution, disclosure and other use of that Personal Information by us and our Service Providers to deliver the Services will not breach any privacy, data protection or other similar or equivalent law in any jurisdiction.
- 10.7 You acknowledge and agree that to the extent User Data contains Personal Information, in collecting, holding and processing that information through the Platform or in providing the Services to you, we are acting as your agent and/or data processor.
- 10.8 You agree that we may store data (including any Personal Information) in secure servers in the United States of America and may access that data in the United States of America, New Zealand and Australia from time to time.

11. **Platform Content and Learning Content**

- 11.1 While you have access to the Platform, you may use the Platform Content, which may include fonts, artwork and layouts, to incorporate into your Learning Content. Your Learning Content may include a combination of User Content and Platform Content. While you retain ownership of your Learning Content, when you use Learning Content that contains Platform Content, you must at all times (including after termination of your Subscription) comply with the restrictions and limitation applicable to Platform Content set out in these Terms.
- 11.2 We may remove or change Platform Content at any time without any liability to you. We are not responsible to you for any unavailability of any Platform Content.
- 11.3 The Platform may allow you to publish or share Learning Content with others within the Platform, via a third party service, or via a link. We are not responsible or liable for the accessibility or performance of your Learning Content when you share it with third parties. If we share your Learning Content with third parties at your instruction, then despite anything in these Terms, we will not be responsible for any breach of confidentiality or be deemed to have breached these Terms.
- 11.4 Subject to the remainder of these Terms we grant you a perpetual, non-transferrable, non-sublicensable license to use, copy or modify the Platform Content to the extent incorporated into your Learning Content to share, publish or display that Learning Content, solely for your own internal learning and development purposes.
- 11.5 You must not:
 - 11.5.1 use the Platform Content as part of any trade mark, trade name, registered design, trade dress or similar;
 - 11.5.2 other than as set out in clause 11.6, sub-license, transfer or distribute the Platform Content;
 - 11.5.3 use Platform Content, or permit the Platform Content to be used, for any other purpose than incorporation into your Learning Content to deliver learning, training and education;
 - 11.5.4 use the Platform Content in any way that competes with our business; or
 - 11.5.5 use or display the Platform Content in any manner that enables it to be downloaded, exported or distributed via mobile devices or shared in any peer-to-peer or similar file sharing arrangement.

11.6 If the Order Form indicates, or we agree in writing, that you may use Learning Content for commercial purposes (e.g. if the Order Form states “sub-tenancy”, “multi-org management”, “hosting” or similar), you may make available Learning Content that contains Platform Content to one of your clients for the client’s own internal learning and development purposes, subject to the following terms:

11.6.1 you will enter into a written agreement with your client that restricts the client’s use of the Learning Content to only its own internal learning and development purposes, and lawful purposes;

11.6.2 you must ensure that your client complies with these Terms;

11.6.3 you will be responsible for any breach of your client as if the client were you; and

11.6.4 to avoid doubt, you must not transfer or sub-license the Platform Content to any person on a standalone basis or for use outside of the Learning Content into which it is incorporated.

12. **Intellectual Property**

12.1 Title to, and all Intellectual Property in, the Services, our Website, and the Platform Content remains our property (and that of our licensors). You must not contest or dispute that ownership, or the validity of those Intellectual Property rights.

12.2 As between you and us, you retain all Intellectual Property rights in the User Data. You grant us a non-exclusive, worldwide, royalty-free licence (including the right to sub-licence) to use, copy, transmit, display and store the User Data to the extent required for us to necessary for us to perform our obligations and exercise our rights under these Terms, and we may authorise our personnel to access the User Data for this purpose.

13. **Infringement**

13.1 We may, with prior notice to you, remove any User Data from the Platform or block access to the Platform (totally or partially) where we have received a notice of Intellectual Property infringement in respect of such User Data or notice of takedown in respect of User Data or where we consider User Data to be illegal, inappropriate or otherwise in breach of these Terms.

13.2 If you become aware of a claim of infringement of a third party’s Intellectual Property rights for which we may be liable, you must:

13.2.1 notify us in writing as soon as possible; and

13.2.2 immediately stop using the Services and any Platform Content to which the claim relates.

14. **Payment**

14.1 If you are the Customer, this clause 14 applies.

14.2 You must pay us any Fees applicable to your Plan which we have agreed to on the Order Form, or otherwise agreed to in writing.

14.3 The Fees exclude Sales Tax, which you must pay on taxable supplies.

14.4 We will issue you a valid tax invoice in respect the Fees. We may issue our invoice for the Fees 30 days’ prior to the start of each Subscription Period, or as otherwise set out on the Order Form.

14.5 You must pay the Fees in accordance with the payment terms set out on the Order Form or if there are none, within 20 days from the date of our invoice.

14.6 You must pay the Fees by bank transfer to our nominated account, by credit card, or by any other method set out in the Order Form. Any bank or other charges incurred in connection with the payment are your responsibility.

14.7 We may increase the Fees to take effect at the beginning of a Subscription Period by giving you at least 30 days' notice prior to the start of that Subscription Period. If you do not terminate your Subscription in accordance with clause 19.3, you are deemed to have accepted the increased Fees.

14.8 If at any time you do not make a payment to us on or before the date that payment is due (including on or after your Subscription is suspended or terminated), we may (without limitation to any other rights we may have available):

14.8.1 suspend or terminate your Subscription as set out in clause 18.1.3 or 19.5; and/or

14.8.2 require you to pay, on demand, default interest on any amount you owe us at 10% per annum calculated on a daily basis from the date when payment was due until the date when payment is actually made by you (both inclusive). You must also pay all expenses and costs (including our full legal costs) in connection with us trying to recover any unpaid amount from you.

15. **Confidentiality**

15.1 Each party (receiving party) must keep confidential, and not disclose, any Confidential Information of the other party (disclosing party) except:

15.1.1 as permitted under these Terms;

15.1.2 where the receiving party has obtained the prior written permission of the disclosing party;

15.1.3 to the receiving party's personnel, professional advisers, auditors, and insurers who have a need to know the Confidential Information and agree to keep it confidential on terms consistent with these Terms;

15.1.4 to the receiving party's Affiliates;

15.1.5 to the receiving party's auditors;

15.1.6 by us in connection with a sale of our business, provided that the third party recipient of such information is bound by confidentiality obligations in respect of the information; and

15.1.7 where the receiving party is compelled to do so by applicable law, provided that where possible it gives the disclosing party written notice prior to disclosure.

15.2 Each party must only use Confidential Information of the other party to the extent required to exercise its rights and perform its obligations under these Terms.

15.3 Except as permitted under clause 15.4, each party must not make any public statement or issue any press release concerning or relating to these Terms or its relationship with the other party without the prior written consent of the other party.

15.4 We may publicly identify or otherwise disclose to third parties that you are a user of the Platform, including by publishing your trade mark on our Website. We may ask you to collaborate with us for further promotional purposes (e.g. in case studies and promotional content), which we will not make publicly available without your consent.

15.5 On termination of your Subscription or these Terms, on request from the disclosing party, the receiving party must return or destroy all copies of the Confidential Information of the disclosing party in its power, possession or control. The foregoing does not require either party to return or destroy any materials, information or data for which it has an ongoing perpetual right to use.

16. **Viruses and bugs**

16.1 We recommend that you use virus protection software. We will implement appropriate processes and technical security measures in accordance with standard industry practice and all privacy laws to ensure the protection of the User Data and the software, systems and other

infrastructure associated with the Services from unauthorised disclosure, access, use, alteration, modification, damage or loss. Such processes and measures will include appropriate back-ups, firewalls, anti-virus software and security patching.

- 16.2 You must not misuse the Platform by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful. You must not attempt to gain unauthorised access to the Platform, the server on which the Platform is stored or any server, computer or database connected to the Platform. You must not attack the Platform (if applicable) via a denial-of-service attack or a distributed denial-of service attack.
 - 16.3 You must not otherwise attempt to undermine the security or integrity of the systems and networks or software used to provide the Platform (**underlying systems**), or use, or misuse, the Services in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Services.
 - 16.4 You acknowledge that complex software, such as the software underlying the Platform, is never wholly free from defects, errors and bugs and we give no warranty or representation that the Services or the Platform will be wholly free from defects, errors and bugs, or available on an uninterrupted basis.
 - 16.5 You acknowledge that the Services are designed to be compatible only with that software and those systems advised by us from time to time and we do not warrant or represent that the Services will be compatible with any other software or systems.
17. **Warranties, disclaimers and limitation of liability**
- 17.1 Each party warrants that it has full power and authority to enter into and perform its obligations under these Terms.
 - 17.2 Other than as provided in these Terms, we make no warranty or representation about the suitability or quality of the Services, either express or implied. You must satisfy yourself as to the suitability and functionality of the Services for your intended use. To the extent permitted by law, we exclude all conditions, warranties, representations or other terms which may apply to the Services, whether express or implied, including those specified under the Contract and Commercial Law Act 2017 or any other applicable consumer protection law.
 - 17.3 We make no representation concerning the quality of the Services and do not promise that the Services will:
 - 17.3.1 meet your requirements or be suitable for a particular purpose; or
 - 17.3.2 be secure, free of viruses or other harmful code, uninterrupted or error free.
 - 17.4 You agree and represent that you are acquiring the Service, and accepting these Terms, for the purpose of trade. The parties agree that to the maximum extent permissible by law, no consumer protection legislation (including the Consumer Guarantees Act 1993) applies to the supply of the Services or these Terms.
 - 17.5 Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms. However, our liability for any breach of that condition or warranty is limited, at our option, to:
 - 17.5.1 supplying the Services again; and/or
 - 17.5.2 paying the costs of having the Services supplied again.
 - 17.6 With the exception of any breach of confidentiality (for which our liability is unlimited), and without limiting clauses 17.2 to 17.5:
 - 17.6.1 we are not liable for:
 - (a) any loss of profits, loss of business and depletion of goodwill; or

- (b) any special, indirect or consequential loss, costs, damages, charges or expenses of any kind

however arising under these Terms; and

17.6.2 in no event will our aggregate liability arising out of or in connection with these Terms and any use of or inability by you to use the Services exceed the aggregate of the Fees paid or payable by you to us in the 12 months prior to the event giving rise to such liability.

17.7 Neither party will be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under these Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms, or by the negligence or misconduct of the other party or its personnel.

17.8 Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with these Terms or the Services.

18. **Suspension**

18.1 Without limiting clause 19, we have the right to suspend your Subscription on prior written notice at any time where we consider it is required to do so in accordance with good industry practice. We are required to disclose to you the reason for such suspension. The reasons for suspension of an account may include situations where you have:

18.1.1 used the Services for inappropriate or objectionable activities;

18.1.2 breached these Terms;

18.1.3 not paid any amount due under these Terms where you have been notified in writing of such non-payment; or

18.1.4 breached any law in any jurisdiction which is, or may be, harmful or detrimental to us or the Services.

18.2 We will not be liable for any loss of revenue or opportunity or any damage, cost or other liability, suffered or incurred by you in connection with a suspended Subscription.

18.3 If we exercise our discretion under this clause to suspend your Subscription, you and your Users will not be able to access any part of the Services, including your Platform account and the User Data.

19. **Termination**

19.1 If you are a User, the Customer may terminate your access to the Services at any time without providing any notice to you. The remainder of this clause applies only if you are a Customer.

19.2 Your Subscription will continue to renew automatically on the same terms until it is terminated under this clause 19. Until termination, your Subscription starts on the date that you set up an account or first access or use the Services, and:

19.2.1 continues for the Subscription Period; and

19.2.2 subject to clause 19.3, automatically renews at the end of the Subscription Period for successive further Subscription Periods of the same length as the initial Subscription Period.

19.3 You may terminate your Subscription by giving us at least 15 days' notice before the end of any Subscription Period. Termination will take effect from the end of that current Subscription Period. If notice of termination is received outside that period, your Subscription will automatically renew as set out in clause 19.2.2, and termination will take effect at the end of that subsequent Subscription Period.

19.4 Either party may, by notice to the other party, immediately terminate these Terms and your Subscription if the other party:

19.4.1 breaches any material provision of these Terms and the breach is not:

- (a) remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or
- (b) capable of being remedied; or

19.4.2 becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.

19.5 We may terminate these Terms and your Subscription immediately at any time by giving written notice to you if:

19.5.1 any amount due to be paid by you to us under these Terms is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and

19.5.2 we have given you at least 7 days' written notice, following the failure to pay, of our intention to terminate your Subscription under this clause 19.4.

19.6 Termination of these Terms does not affect either party's rights and obligations that accrued before that termination.

19.7 You are not entitled to a refund of any Fees that you have already paid on termination of your Subscription for any reason.

20. Breach of a User or Affiliate

20.1 If you are a Customer, you must ensure that your personnel and Users use the Services in a manner consistent with these Terms. A breach of these Terms by your Users is a deemed to be a breach of these Terms by you.

20.2 If you are a limited company and a member of a corporate group, then you must ensure that any Affiliate, and any personnel of an Affiliate use the Services in a manner consistent with these Terms. You acknowledge that you are liable for the acts and omissions of any personnel of your Affiliates as if they were your own acts or omissions.

21. General

21.1 The Chameleon Creator entity contracting with you under these Terms is as follows:

If you reside in...	Contracting entity
Australia	CHAMELEON CREATOR PTY LTD
New Zealand	CHAMELEON CREATOR LIMITED
Rest of the world	CHAMELEON CREATOR LIMITED

21.2 Where you are required or permitted to provide notice to us under these Terms, you must do so by emailing info@chameleoncreator.com . We may provide notices to you to any email address supplied by you when you signed up for an account or a Subscription or by posting a notice on the Website.

21.3 Neither party is liable to the other for any failure to perform its obligations under these Terms to the extent caused by means an event that is beyond the reasonable control of a party, excluding an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care, or a lack of funds for any reason.

21.4 No person other than you and us has any right to a benefit under, or to enforce, these Terms.

- 21.5 Clauses which, by their nature, are intended to survive termination of these Terms, including clauses 11.4, 11.5, 12, 15, 17 and 20, continue in force.
- 21.6 No breach of any provision of these Terms will be waived except with the express written consent of the party not in breach. No waiver of any breach of any provision of these Terms will be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of these Terms.
- 21.7 If a provision of these Terms is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.
- 21.8 These terms constitutes the entire agreement between the parties about the subject matter of these Terms, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 21.9 Except as otherwise provided for in these Terms, a variation of these Terms will only be effective if agreed to in writing by each party.
- 21.10 The parties must use all reasonable endeavours to negotiate a satisfactory outcome to any dispute under these Terms prior to filing court proceedings.
- 21.11 These Terms are governed by and construed in accordance with New Zealand law, and the parties submit to the exclusive jurisdiction of the New Zealand courts.

Schedule

Support Services

1. Definitions

1.1 In this Schedule:

Defect means a failure of the Platform to materially comply with the requirements of the Documentation, or any other material defect, error or problem with the Platform.

Help Desk means a telephone and email help desk facility, as further described in section 4 below.

Support Hours means from 9am to 7pm New Zealand Time on a Business Day.

Support Representative means the Customer's support representative notified in writing by the Customer to us.

2. Scope of Support Services

2.1 We will use reasonable efforts to provide you access to our Help Desk as set out in this Schedule. You may have access to higher level of support services if stated on your Order Form or otherwise agreed in writing. Please contact us for further information if you are unsure.

2.2 You acknowledge and agree that we are not:

2.2.1 responsible for resolving faults caused by software, hardware or other components that are outside of its networks or beyond our reasonable control (or which are due to scheduled outages); or

2.2.2 required to respond to queries made by customers related to third party platforms.

3. Reporting Defects

3.1 The Support Representative (and no other person) may report any Defect of which the Customer becomes aware to Chameleon Creator by contacting the Help Desk.

3.2 The Help Desk can be contacted via the in-app Zendesk widget or by emailing support@chameleoncreator.com.

4. Help Desk

4.1 We will, during the term of your Subscription, make a Help Desk available to the Customer during Support Hours to enable the Customer to:

4.1.1 report Defects to Chameleon Creator; and

4.1.2 seek answers to technical and user questions relating to the Platform.

4.2 We will use reasonable efforts to:

4.2.1 promptly respond to support requests from the Support Representative that are made to the Help Desk; and

4.2.2 promptly answer technical and user questions relating to the Platform submitted by the Support Representative to the Help Desk.