



**PEGASUS TECHNOLOGY PTY. LTD.**

A.B.N. 65 001 754 490

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## **Terms and Conditions**

**Version 5.4**

**July 2022**

The following terms are the complete and exclusive agreement between the parties in respect of supply of products or services by Pegasus Technology Pty Ltd (Pegasus Technology) ABN 65 001 754 490

Proprietary and Confidential

Outsourced IT – Managed Services – Systems Integration  
Storage & Virtualisation – Disaster Recovery – Security & Identity

## 1. Definitions

- 1.1 **Affiliate(s):** any entity that is under the effective control of the entity that ultimately has effective control of the first-mentioned entity.
- 1.2 **Agreement:** the Agreement formed by the Pegasus Technology Contract, Proposal or Quote, Service Description, these Terms and Conditions, and (subject to clause 6 Amendments) your purchase order.
- 1.3 **Customer:** the agency or eligible user that purchases commodities or contractual services pursuant to the contract.
- 1.4 **Deliverable:** any materials that are created during the performance of the professional services and which are required to be provided to Customer as a result of the performance of the professional services. The term Deliverable does not include any pre-existing IP.
- 1.5 **Emergency:** any event or circumstance which, in Pegasus Technology's reasonable opinion, threatens or causes a major disruption or degradation to any Services which requires immediate remedial or avoidance action.
- 1.6 **Intellectual Property Rights:** includes copyright, trademark, service mark, patent, design, semiconductor, circuit layout right, or other proprietary right, any right to registration of such rights, or any similar rights protected by statute, from time to time existing in Australia or elsewhere.
- 1.7 **Maintenance Service(s):** Pegasus Technology agrees to restore Products to good working order and will perform any other maintenance activities detailed in the selected Service Description, including service levels (if any).
- 1.8 **Management Service(s):** Pegasus Technology agrees to provide ongoing services (such as Managed Desktop, datalink(s) and hosted PABX), support, monitoring and maintenance.
- 1.9 **Minimum Term:** The period of time for which you have agreed to receive the service under a fixed-length agreement.
- 1.10 **Onsite Support:** any support that is not classified as Remote Support - including but not limited to support performed at:
  - a. Customer main office;
  - b. Customer staff dwellings;
  - c. Pegasus Technology's office;
  - d. collections and delivery by our staff;
  - e. third party site – on your conference site.
- 1.11 **Personnel:** a party's (and its Affiliates') directors, officers, employees, agents, contractors and suppliers.
- 1.12 **Prepaid Time and Materials(s):** Pegasus Technology agrees to perform ad hoc based on a drawdown on prepaid invoice.
- 1.13 **Product(s):** are the hardware, software and license which are resold, maintained, or supported by Pegasus Technology subject to manufacturer's specifications, software licences and warranties.
- 1.14 **Project Service(s):** Pegasus Technology agrees to perform work that has been quoted for as a project.
- 1.15 **Public Holidays:** Any day or part-day declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory (or a region of the State or Territory) as a public holiday.
- 1.16 **Purchase Order(s):** (PO) means a Customer purchase order.
- 1.17 **Reasonable Excuse:** including but not limited to
  - a. a failure or degradation of performance or malfunction resulting from scripts, data, applications, equipment, infrastructure, software, penetration testing, performance testing, or monitoring agents provided or performed by Customer;
  - b. outages initiated by Pegasus Technology at the request or direction of Customer for maintenance, activation of configurations, backups or other

- purposes that require the service to be temporarily taken offline;
- c. outages or degradation of services occurring as a result of any actions or omissions taken by Pegasus Technology at the request or direction of Customer;
- d. outages or degradations in service occurring as a result of any actions or omissions of any of Customer's Personnel;
- e. outages or degradations in service occurring as a result of any third party software that is used by Pegasus Technology to perform the Services;
- f. events resulting from an interruption or shut down of the Services due to an Emergency;
- g. outages due to system administration, commands, or file transfers performed by Customer's users or Personnel;
- h. inability to access the services or outages caused by Customer's conduct, including failing to follow Pegasus Technology's reasonable advice;
- i. any outage or failure caused by any negligent act or omission of Customer or its Personnel;
- j. any outage or failure caused by Customer's breach of any of its obligations under the Service Agreement;
- k. lack of availability or untimely response time of Customer to respond to incidents that require Customer's reasonable participation for source identification and/or resolution, including meeting Customer responsibilities for any Services;
- l. outages or degradations caused by acts or omissions of third parties (other than Pegasus Technology's Personnel), including damage to networks or infrastructure caused by third parties (other than Pegasus Technology's Personnel);
- m. any other circumstance or event set out as a "Reasonable Excuse" in the relevant Schedule or service order.

1.18 **Remote Support** – any Support provided using a remote support agent, or support provided verbally by phone.

1.19 **Schedule(s):** This means a Pegasus Technology Maintenance Schedule, which contains details of the Products, Maintenance Services and other relevant details.

1.20 **Service(s):** the services provided by Pegasus Technology, which may include consultancy, installation, training, internet, network, voice and auditing services.

1.21 **Service Description:** a document describing services, service levels and any other relevant terms and conditions, which forms part of these Terms and Conditions.

1.22 **Time and Materials Service(s):** Pegasus Technology agrees to provide services and resources based on the agreed hourly rate for time taken and any cost for resources.

1.23 **Warranty:** This means the repair of manufacturing defects of Products during the manufacturer's stated warranty period, which are generally return to depot services.

## 2. Charges and Payment

- a. All charges are due and payable within 14 days of the date of invoice;
- b. Overdue payments will attract interest at the rate of CBA overdraft rate plus 2%;
- c. Maintenance Services charges are billed annually in advance and are not refundable;
- d. Management Services charges are billed monthly in advance;
- e. Pre-paid Time and Materials will be billed 100% upon receipt of Customer PO. Pegasus Technology will provide a monthly statement showing amount consumed against this PO for the previous month.

Pre-paid Time and Materials will be valid for 12 months from the date of acceptance of a PO by Pegasus Technology. A new PO will need to be provided after that time;

- f. Time and Materials Service charges are billed monthly in arrears and based on timesheet entries. Pegasus Technology will provide a statement at time of invoicing with itemised timesheet entries;
- g. Project Services charges are billed on order value as follows:
  - i. \$0 - \$10K: 100% on delivery of Services.
  - ii. \$10K - \$100K: 50% payment on receipt of order and 50% on delivery of Services.
  - iii. >\$100K as per the following milestones:
    - (a) Receipt of order 20%;
    - (b) Design/plan 30%;
    - (c) Implementation 40%;
    - (d) Practical completion 10%;
  - iv. Or as separately agreed in writing.
- h. Product charges are billed on order and are due 100% on part or full shipment to Pegasus Technology or direct to Customer premises.

## 3. CPI

Subject to initial contract terms, Pegasus Technology reserves the right to increase its charges annually by 3% or the increase in the Australian Consumer Price Index (CPI), whichever is the greater.

## 4. Exchange Rate Fluctuation

Product(s) are subject to exchange rate fluctuation. Pegasus Technology may (if the products or services have not yet been delivered to you) vary its price to take into account the changes in exchange rate as at invoice date.

## 5. Taxes

Charges are exclusive of GST unless otherwise stated. All GST Amounts, as stipulated by the Australian Tax Office, are payable by the Customer.

## 6. Amendments

No customer invoice or Purchase Order terms override these Terms and Conditions. Any amendments must be in writing signed by both parties.

## 7. Time and Materials

Time and Materials Services are also provided on the following terms:

- a. Pegasus Technology standard working week is Monday to Friday (excluding public holidays), 9:00 am to 5:00 pm, with a standard 1/2 hour lunch break;
- b. For contracts specifying "Extended Care", SLA hours of support are defined in the contract;
- c. Work outside Pegasus Technology standard working hours can be mutually agreed between the Customer and the Pegasus Technology resource involved. Out of hours work is billed at 1.5 times the standard rate;
- d. Travel time is charged at the applicable Time and Materials rates. Travel costs including airfares, taxi, motor vehicle and accommodation are charged out at cost plus a 10% administration fee;
- e. At least 2 business days' notice is required to schedule out of hours work;
- f. There is a minimum 4 hour engagement (including any travel time) for on-site work;
- g. There is a minimum 2 hour engagement for remote consultancy.

## 8. Term and renewals

- 8.1 Hardware and Software Warranty, Maintenance Services and Charges commence on the date of delivery of the Product and are payable, in advance, for the initial 12 month term. Warranty and Maintenance Services pricing for subsequent terms are subject to variations in Supplier pricing.
- 8.2 Management Services terms are defined within the contract and automatically renew annually for successive twelve-month terms unless terminated by either party by giving at least 60 days written notice prior to the next renewal date.
- 8.3 For Management Services that involve network and data link services the Minimum Term commences on the earlier of
  - a. The date on which we first notify you that the Service is ready for use; and
  - b. The date on which you first use the Service.

## 9. Delivery and Performance

If Pegasus Technology is unable to deliver all or any part of the Product or perform the Services within (in Pegasus Technology's opinion) a reasonable time or at all, Pegasus Technology may terminate the Agreement, in whole or in part. In this event, you will have no claim against Pegasus Technology for any damage, loss or expense incurred in connection with the delay in delivery or performance or the termination.

## 10. Delays

Pegasus Technology shall not be liable for the consequences of any delays or inability to perform caused by circumstances or events beyond the reasonable control of Pegasus Technology or its suppliers. The date for performance of any obligations will automatically be extended by the period of the delay.

## 11. Installation and Commissioning

You must provide Pegasus Technology with all assistance reasonably requested in respect of installation and commissioning of the Product or provision of the Service.

## 12. Delivery and Installation charges

Charges, unless otherwise stated, exclude delivery and installation fees. Any non-standard delivery requirements (e.g. stairs, difficult or narrow access) will require a site inspection and additional charges may apply.

## 13. Acceptance

You are deemed to have accepted the Products and/ or Services unless Pegasus Technology receives written notice within 10 working days, providing details of your non acceptance.

## 14. Customer Obligations

You are required to provide assistance, access to site, resources, facilities and conduct reviews and approvals as set out in the project plan (if any) by the time and dates agreed. In the event of delays, the schedule will be adjusted, and any additional costs incurred will be payable by you. You are responsible for all site approvals (including landlord and council if any), cabling, power and/or environment preparation required.

## 15. Service Delivery

### Services

15.1 Pegasus Technology must perform the Services set out in the Service Agreement:

- a. with due skill and care;
- b. in accordance with any timescales set out in the Service Agreement, or if no time scales are set out, within a reasonable time.

15.2 Pegasus Technology must ensure that its Personnel who carry out the work or perform duties under the Service Agreement are at all times properly qualified and experienced for the tasks that they are to perform. If Customer believes that any individual Personnel is not performing their tasks properly or is behaving in an unprofessional manner Customer must immediately bring this to the attention of the Pegasus Technology project manager and they must attempt resolve the issue promptly. If Customer is not satisfied with the resolution of the issue, then Customer may require the individual Personnel to be removed from working on the Services, and Pegasus Technology must promptly replace that individual Personnel, at Pegasus Technology cost.

15.3 Unless stated otherwise on the Service Order:

- a. the Services are provided to Customer for Customer benefit and for the benefit of Customer's Affiliates; and
- b. Customer must ensure that only its (and those of its Affiliates) Personnel and their invitees are accessing the Service and Customer Data.

15.4 If the Service Order states that Customer may use the Services for the benefit of one or more third parties then Customer must ensure that it enters into an agreement with each third party which is consistent with the Service Agreement prior to giving the third-party access to the Service.

15.5 Customer must ensure that each person who is accessing the Service (other than Pegasus Technology or its Personnel) uses the Service in accordance with the Service Agreement. Customer is responsible for the acts and omissions of all persons (other than Pegasus Technology or its Personnel) who access and/or use the Service and any Customer Data.

15.6 Pegasus Technology is not in breach of the Service Agreement to the extent that the failure, delay or other breach arises from, or is contributed to by, a Reasonable Excuse.

### Service Levels

15.7 Pegasus Technology must meet or exceed any Service Level that is applicable to the Services acquired under the Service Agreement, except to the extent that the failure, delay or other breach arises from, or is contributed to by, a Reasonable Excuse.

15.8 All Service Levels will be measured using Pegasus Technology's measurement tools, the results of which will be final and binding on Customer.

### Moves, adds, changes

15.9 Customer may request that Pegasus Technology makes additions, moves or changes to the Services Customer is receiving under the Service Agreement for an additional Fee. To do this, Customer may agree a new Service Agreement, send Pegasus Technology an email.

If Pegasus Technology agrees to make the addition, move or change Pegasus Technology will charge Customer an additional Fee which Pegasus Technology will notify Customer of the additional Fees for the addition, move or change at the time of Customer's request.

### 15.10 Scheduled Maintenance and Emergencies

Pegasus Technology will use its best efforts to carry out Scheduled Maintenance:

- a. within the times set out in the relevant Schedule;

b. at other times with at least 3 Business Days prior notice from Pegasus Technology;

c. with a minimum disruption to Customer's business.

15.11 Where Pegasus Technology needs to respond to an Emergency Pegasus Technology will provide Customer with as much notice as is practical in the circumstances. The Service may not be available during an Emergency. Pegasus Technology will use its best efforts to restore Services as soon as possible after an Emergency.

### Disaster Recovery and Backup

15.12 Where the Schedule expressly states that the Service includes the provision of backups of Customer Data:

- a. Customer acknowledges and agrees that the backup and restoration of Customer Data only restores the version of Customer Data that existed at the time of the relevant backup, and that if this data is corrupted or damaged, only the same corrupted or damaged data can be restored;
- b. the obligation to take a backup is limited to an obligation to run backup software at the agreed intervals and ensuring that if the backup software provides a record that advises that the backup has failed Pegasus Technology must re-run the backup after addressing the root cause of the failure until the backup software provides a record that the backup has been successfully completed;
- c. unless expressly included, the provision for the backup of Customer Data does not include the provision to recover data in the event of loss of data or system recovery.

15.13 Where the Services do not include the provision of backups of Customer Data:

- a. Customer must take regular and complete backups of Customer Data in accordance with industry best practice; and
- b. Customer must ensure that it has duplicate copies of all data that is provided to Pegasus Technology.

15.14 Where the Schedule expressly states that the Service includes the provision of disaster recovery services (known as Datto BCDR) the obligation to provide disaster recovery services is limited to the restoration of Customer Data and Software that is the subject of the agreed Restore Time Objective and Recovery Point Objective as set out in the relevant Schedule.

### Virus and Malware Protection

15.15 Except to the extent that a Service Description states that Pegasus Technology is responsible for installing, configuring and operating anti-virus software of a particular item of equipment, Customer must install, configure and operate anti-virus software on all Customer Network Equipment, Customer Managed Equipment and other equipment that interfaces with any of the Services or Pegasus Technology technology in accordance with industry best practice.

## 16. Customers' right to suspend or cancel

The Customer may ask Pegasus Technology to suspend or cancel a service and/or terminate any or all Agreement(s) by notice if:

- a. Pegasus Technology breaches a material provision which, in the Customers opinion, cannot be remedied;
- b. Pegasus Technology breaches a material provision which is not remedied after 30 days' notice to do so;
- c. Pegasus Technology is insolvent or unable to pay our debts when due;
- d. Pegasus Technology purports to assign any of your rights without the prior written consent of the Customer.

## 17. **Pegasus Technology right to suspend or cancel**

Pegasus Technology may immediately refuse or suspend services and/or terminate any or all Agreement(s) by notice if you:

- Breach a material provision which, in Pegasus Technology's opinion, cannot be remedied;
  - Breach a material provision which is not remedied after 30 days' notice to do so;
  - Are insolvent or unable to pay your debts when due;
  - Fail to make any payment when due;
  - Purport to assign any of your rights without the prior written consent of Pegasus Technology.
- No termination for convenience applies.

## 18. **Early Termination**

Early termination of the contract prior to the expiry of the Minimum Term in the following circumstances.

- The Customer may terminate a service prior to expiry of the Minimum Term, provided it gives the Supplier sixty (60) days' written notice.
- The Supplier may terminate a service that it provides under this Agreement on thirty (30) days written notice where the Customer has not remedied a material breach, for which it was notified by the Supplier in the above clause.

In either (a) or (b), the Customer will pay to the Supplier an early termination fee in respect of that service, in an amount equal to the recurring charges payable for that service for the remainder of the Minimum Term.

## 19. **Termination**

Upon termination of a contract, all hardware and software installed by Pegasus Technology that was required to conduct network support services are the property of Pegasus Technology and will be surrendered and returned to Pegasus Technology at the termination of the Agreement.

## 20. **Warranties**

- Pegasus Technology warrants that it will perform the Services using all requisite care and skill and workmanship.
- Pegasus Technology makes and the Customer receives no warranty, express or implied, and all warranties of merchantability and fitness for a particular purpose are expressly excluded.
- Parts that contain refurbished or second hand components are provided with a 30 day warranty and will apply to replacement parts and associated repair services.
- For Product(s), Pegasus Technology assigns to you the benefit received by Pegasus Technology of any end user warranty period and warranties provided by the manufacturer. Warranty uplift service is an additional Maintenance Service provided by Pegasus Technology to supplement the manufacturer's warranty and you assign to Pegasus Technology the right to claim under that manufacturer's warranty.

## 21. **Third Party Products and Services**

Third party products (including software and maintenance) are resold by Pegasus Technology on the basis that they are not returnable, are sold "as is" subject to manufacturer's specifications and warranty is on a return to manufacturer basis. Any support services in respect of third party products will be subject to the manufacturer service description and service levels (if any).

## 22. **Title and Risk**

Risk passes to you on delivery of the Products. Title passes to you when Pegasus Technology receives payment in full for each Product. For replacements parts provided under Maintenance Services, title in parts will pass and vest between the parties upon exchange.

## 23. **Software**

All software is licensed and subject to the original licensor terms and conditions generally supplied with the software or available on request. Any support or warranty is as offered by the original licensor.

## 24. **Exclusions**

Maintenance Services exclude:

- Items which are not listed in a Pegasus Technology invoice or Schedule.
- Service for items that are not at a minimum current hardware and software version configuration.
- Upgrading, modifying or refurbishing.
- New versions or releases of software, including microcode except as specifically detailed in a Schedule.
- Supply and installation of consumables (including user replaceable items).
- Updates to documentation unless normally supplied by the manufacturer.
- Repairs required due to:
  - Misuse or abuse;
  - Damage or malfunction caused by fire, smoke, heat, water, flood, storm, lightning, electrical failure and any other Act of God;
  - Repairs or modifications by any party other than Pegasus Technology;
  - Use other than in manufacturer's specified operating environment;
  - Products being moved by any person (other than Pegasus Technology) who has not complied with manufacturer's instructions;
  - Use in excess of its rated life span, becoming unserviceable or worn out;
  - Manufacturer recalls including product or parts replacement or substitution;
- Manufacture Warranty parts and labour claims.
- For warranty uplift services, inability or refusal of the manufacturer to provide services or spares under any warranty that you have assigned to Pegasus Technology.

Where the above exclusions apply, Pegasus Technology will advise you and may offer to provide continue to provide service on a chargeable time & materials basis.

## 25. **Change Control**

The parties will agree on a change control process to ensure that all changes are requested and performed in a controlled and audited manner. Specifically, the party requesting the change will provide detailed requirements and specifications to allow the responding party to properly access and quote on the change. If Pegasus Technology deem the change as within scope and a minor variation, the responding party will perform the analysis at no additional charge. If Pegasus technology deem the change as major or out of scope, the responding party may provide an indicative order of magnitude and estimate the additional costs of preparing a formal quote, and if requested to proceed with a formal quote, the costs are payable by the requesting party regardless of whether the actual change proceeds or not.



## 26. Site Safety

You will ensure that the site where the Products are located is safe and complies with all relevant health and safety laws and regulations. Pegasus Technology may suspend, terminate or refuse service if conditions at the site are in its reasonable opinion unsafe.

## 27. Indemnity

The Customer agrees to indemnify and hold harmless Pegasus Technology, its employees, agents representatives, directors and shareholders against any liability, loss, claim, actions, suits, charge, damages, cost or expense whatsoever, whether arising under statute or common law, incurred or sustained by the Pegasus Technology in respect of:

- a. Any infringement of any software or hardware licence, copyright, trademark or patent;
- b. Any breach of privacy or confidential information,
- c. Any infringement of any Australian Law, by reason of any fraud or negligent act or omission of the Customer, except the extent that the loss, damage or expense has been caused solely by a breach of the Service Agreement by Pegasus Technology or the negligence of Pegasus Technology or its Personnel.

## 28. General Liability

28.1 Notwithstanding any other provisions in these Terms and Conditions or implied by law, Pegasus Technology's cumulative liability during the term (and any renewals) for all actions, claims and defaults including negligence will be limited as follows:

- a. For injury to natural persons (including death), is not limited;
- b. For damage to or loss of physical property, is limited to an amount of \$100,000; and
- c. For any other damage or loss, is limited to the lesser of either:
  - i. The amount of actual direct damage or loss; or
  - ii. The amount paid by you to Pegasus Technology in the last 3-month period in relation to actual the Services and/or Products that gave rise to the claim.

28.2 Notwithstanding any provisions of these Terms and Conditions, in no event shall Pegasus Technology its employees, agents, representatives, directors and shareholders be liable for any special, incidental, indirect economic or consequential damages or for loss of profit, third party claims or revenue or data howsoever caused, regardless of whether Pegasus Technology was advised of the possibility or likelihood of such loss or damage.

28.3 Pegasus Technology shall not be responsible to the Customer for loss of use of their systems or for any other liabilities arising from alterations, additions, adjustments or repairs to those systems which were not been made by an authorized representative of Pegasus Technology.

28.4 Products and Services supplied by Pegasus Technology are not designed to be used in high risk and/or life support environments where errors or failures could lead to injury or death without adequate fail safe and redundancy systems.

## 29. Legal Fees

In any action between the parties to enforce any of the terms of these Terms and Conditions, the prevailing party shall be entitled to recover all expenses, including reasonable legal fees.

## 30. Statutory Rights

Notwithstanding the above, if Pegasus Technology is in breach of a condition or warranty implied by the Australian Consumer Law ("ACL") then Pegasus Technology's liability, to the extent permitted by law, is limited at its option:

- a. Goods: to the repair or replacement of the goods or paying the cost of having the goods repaired or replaced;
- b. Services: to resupply the Services or paying the cost of resupplying the Services.

## 31. ACL Consumer Notice

The following applies to a "consumer" as defined under the ACL - "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."

## 32. Force Majeure

Pegasus Technology shall not be liable for any problems due to external causes beyond its control including, but not limited to, terrorist acts, natural catastrophe, fire, flood, or other act of God, and/or power failure, virus propagation, improper shut down of the Network and related Network Systems/ Services.

## 33. Intellectual Property Rights

33.1 This provision shall survive termination of any and all Agreement(s) between the Customer & Pegasus Technology.

### Pre-existing IP

33.2 Each Party owns its Pre-existing IP and nothing in the Service Agreement transfers to the other Party any right, title or interest in that Party's Pre-existing IP.

### Customer's Property

33.3 As between Pegasus Technology and Customer, Customer owns all right, title and interest in all Customer Data and Customer Records and nothing in the Service Agreement conveys to Pegasus Technology any right, title or interest in Customer Data or Customer Records.

33.4 Customer grants Pegasus Technology and its Personnel a non-exclusive limited licence to use, copy, adapt and translate Customer Data, Customer Records, Customer Software and any other Intellectual Property Rights in material it provides to Pegasus Technology solely for the purpose of performing its obligations and exercising its rights under the Service Agreement for the period of the Service Period.

### Pegasus Technology

33.5 Subject to clause 33.6, Pegasus Technology does not grant, nor does Customer obtain, any right in any item, including any Pre-existing IP that is used by Pegasus Technology to perform any of the Services. Customer is not granted any right of ownership in any such item, nor is Customer granted any right to transfer, sub-license or provide access to, or disclose any such item to any third party, nor is Customer permitted to copy, adapt, translate, commercialise, communicate to the public or otherwise deal with that item. All such items are the Confidential Information and incorporate Intellectual Property Rights of Pegasus Technology or its licensors and must be returned to Pegasus Technology at the end of the Service Period, or on demand, if sooner.

- 33.6 Pegasus Technology grants Customer a non-exclusive, non-transferrable, royalty-free licence for Customer (and any Personnel acting on behalf of Customer) to run any Performance Tools that are installed on Customer Managed Equipment for Pegasus Technology's use in connection with the Services during the Service Period.
- 33.7 Upon receipt of full payment of the Fees, expenses and Taxes for the relevant Deliverable under a Service Agreement, Pegasus Technology grants Customer a worldwide, royalty free, non-exclusive licence for the Customer and its Affiliates to use, copy and adapt, for Customer's internal use during the Service Period:
- all Intellectual Property Rights that have been newly created through the performance of the professional services in that Deliverable; and
  - any Pegasus Technology Owned IP that is incorporated in the Deliverable.
- 33.8 Customer is not granted any right of ownership in any Deliverable, nor is Customer granted any right to transfer, sublicense or provide access to the Deliverable to any third party (other than any Affiliate or any Personnel acting on behalf of Customer or an Affiliate). Customer must not use Pegasus Technology Owned IP in any manner other than as an integral part of the Deliverable.
34. **Confidentiality**
- 34.1 This Confidentiality, Privacy and Compliance portion of these Terms and Conditions is in addition to other terms and conditions set forth in any and all contracts currently existing or hereafter created between the Customer and Pegasus Technology. These Terms and Conditions shall under no circumstances be deemed to alter any such contract except as specifically provided below.
- 34.2 Pegasus Technology acknowledges that in the course of providing services to the Customer, Pegasus Technology may learn from the Customer certain non-public personal and otherwise confidential information relating to the Customer, including its customers, consumers or employees. Pegasus Technology shall regard any and all information it receives which in any way relates or pertains to the Customer, including its customers, consumers or employees as confidential.
- 34.3 Pegasus Technology shall take commercially reasonable steps to not disclose, reveal, copy, sell, transfer, assign, or distribute any part or parts of such information in any form, to any person or entity, or permit any of its employees, agents, or representatives to do so for any purpose other than purposes which serve the Customer or as expressly and specifically permitted in writing by the Customer or as required by applicable law.
- 34.4 The Customer acknowledges that it also has responsibility to keep records and information of its business, customers, consumers, and employees, confidential.
- 34.5 The Customer also acknowledges that all information and services, consulting techniques, proposals, and documents disclosed by Pegasus Technology or which comes to its attention during the course of business and provided under these Terms and Conditions constitute valuable assets of, and confidential and/or proprietary to Pegasus Technology.
- 34.6 This provision shall survive termination of any and all Agreement(s) between the Customer & Pegasus Technology.

## 35. **Publicity**

The parties agree to co-operate and reasonably consent in writing to the other party before using their name, relationship and details of any project or services for reasonable promotional purposes.

## 36. **Poaching**

Each party agrees that,

- For the duration of the agreement and for one year after its expiry,
- For the Provision of products or services and for one year after its completion,

neither will directly or indirectly employ or engage as an employee or contractor nor solicit the employment of each other's employees or contractors that are or were connected with or have come into contact with the other as a result of the above interaction, unless the other party's prior written approval is obtained. Should a party advertise a position and the employee of the other party is successful in obtaining that position, a placement fee of six months annual salary is payable.

## 37. **Export Laws**

Products, including technical information, software and services of United States origin may be subject to US and Australian export and re-export control laws. You agree to comply with these in the use and export of the same.

## 38. **Captions**

The captions of the paragraphs of these Terms and Conditions and associated Agreement(s) are for convenience only and shall not affect in any way the meaning or interpretation of these Terms and Conditions and associated Agreement(s) or any of the provisions hereof.

## 39. **Assignment**

Any agreement(s) between the Customer and Pegasus Technology and the rights and duties thereunder shall not be assignable by either party hereto except upon written consent of the other.

## 40. **Waiver**

Any failure of either party to comply with any obligation, covenant, agreement, or condition herein or associated contract may be expressly waived, but only if such waiver is in writing and signed by the other parties. Any such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement, or conditions shall not operate as a waiver of and/or set precedence with respect to any subsequent and/or other failure

## 41. **Governing Law**

Notwithstanding the place where this Agreement may be executed by any party, this Agreement, the rights and obligations of the parties, and any claims and disputes relating hereto shall be subject to and governed by the laws of the State of New South Wales and the parties hereby waive all questions of personal jurisdiction and venue of such courts, including, without limitation, the claim or defence therein that such courts constitute an inconvenient forum.

- 41.1 This provision shall survive termination of any and all Agreement(s) between the Customer & Pegasus Technology.