

# SUPPORT PLUS

## GENERAL TERMS & CONDITIONS



### 1. INTERPRETATION

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- 1.1 In these terms and conditions and in any contract to which these terms and conditions apply, unless the context otherwise requires:
- 1.1.1 **Agreement** means a contract for the performance of the Services, comprised of these Terms and a Letter of Engagement accepted by Pegasus in accordance with clause 3.1 as may be amended by Pegasus from time to time;
- 1.1.2 **Customer** means the purchaser of the Services from Pegasus;
- 1.1.3 **Letter of Engagement** means the letter signed by the parties outlining the terms of the Services;
- 1.1.4 **Pegasus** means Pegasus Health (Charitable) Limited;
- 1.1.5 **Services** means the services to be performed by Pegasus for the Customer under an Agreement; and
- 1.1.6 **Specific Terms** means the specific terms and conditions set out in a Letter of Engagement;
- 1.1.7 **Terms** means these general terms and conditions, as may be amended by Pegasus from time to time;
- 1.2 **Conflict of Terms:** In the event of any conflict arising between these Terms and a Letter of Engagement, the Letter of Engagement will prevail.

### 2. SERVICES

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- 2.1 Subject to clause 3.1, the Customer appoints Pegasus to provide the Services upon the Terms.
- 2.2 Pegasus shall carry out and complete the Services and in doing so, shall devote such time, resources, care, diligence, attention and skill as are reasonably necessary for the proper and efficient provision of the Services.
- 2.3 Pegasus' duties under these Terms are owed solely to the Customer. Pegasus does not accept any responsibility to any third parties who may be affected by the performance of the Services or who may rely on any advice given as part of the Services, except as expressly agreed in writing.
- 2.4 The Services will commence and terminate in accordance with the Letter of Engagement.
- 2.5 Pegasus may subcontract any of the Services. In such case Pegasus will remain liable to you for the performance of those subcontracted Services.

### 3. FORMATION OF AGREEMENT

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- 3.1 No Agreement will come into existence until the Letter of Engagement has been signed by both Pegasus and the Customer.
- 3.2 Each Letter of Engagement signed by both Pegasus and the Customer creates a new and separate Agreement between Pegasus and the Customer.
- 3.3 The Customer cannot cancel a Letter of Engagement once it has been accepted by Pegasus and will be bound to pay the quoted or other, price for the Services stipulated by Pegasus.

### 4. FEES

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- 4.1 The Customer will pay the fees set out in the Letter of Engagement (**Fees**).

- 4.2 In addition to the Fees, Pegasus may charge the<sup>1</sup> Customer for any reasonable disbursements incurred by it to third parties on the Customer's behalf. Pegasus may request payment of these disbursements from the Customer in advance of performing the Services.

- 4.3 The Customer acknowledges that if the price for the Services is quoted as an estimate only, the actual price of the Services invoiced by Pegasus and payable by the Customer may be higher. Pegasus will use all reasonable endeavours to promptly advise the Customer if the price of the Services will exceed the estimate.

### 5. PAYMENT

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- 5.1 The Customer will be invoiced on either a monthly basis or upon completion of the Services as set out in the Letter of Engagement. All payments must be made on the 20<sup>th</sup> day of the month following the date of invoice.
- 5.2 Time for payment is of the essence and, without prejudice to any other rights of Pegasus, if the Customer fails to pay any sum payable pursuant to any Agreement when due:
- 5.2.1 Pegasus may treat the Agreement as repudiated by the Customer or may until payment in full is made, suspend performance of the Services;
- 5.2.2 the Customer will (if required by Pegasus) pay interest to Pegasus at the default interest rate of 10 percent above the business overdraft rate set from time to time by Pegasus's bankers. Interest will be calculated daily and payable monthly until payment is received; and
- 5.2.3 the Customer will be liable for all expenses and costs (including legal costs and debt collection costs) in relation to Pegasus enforcing or attempting to enforce an Agreement or any provision of these Terms.
- 5.3 The Customer is not entitled to make any deduction from the price of the Services in respect of any set-off or counterclaim or to withhold any payment.

### 6. INTELLECTUAL PROPERTY

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The Customer acknowledges that all intellectual property rights held by Pegasus before the Commencement Date and developed in the course of the Services are Pegasus' sole and exclusive property.

### 7. WARRANTIES

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- 7.1 To the fullest extent permitted by law:
- 7.1.1 Pegasus gives no representation or warranty whatsoever as to the quality of the Services;
- 7.1.2 all statutory and implied conditions and warranties are excluded; and
- 7.1.3 Pegasus excludes all liability to the Customer or any person claiming through the Customer (whether in contract, tort or otherwise) for any loss (including without limitation, loss of profits and consequential loss) expense, compensation, damage, injury or delay of any kind whatsoever arising out of or in connection with the Services.

### 8. INDEMNITY

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- 8.1 The Customer indemnifies Pegasus against all costs, claims, demands, expenses and liabilities of any nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profits),

made against Pegasus or which Pegasus may sustain, pay or incur as a result of or in connection with the supply of the Services, unless such cost, claim, demand, expense or liability will be directly and solely attributable to the negligence of Pegasus or the negligence of a duly authorised employee, agent or sub-contractor of Pegasus.

8.2 In the event Pegasus is held to be liable to the Customer, the liability of Pegasus will be limited to the Fee payable under the Agreement.

## 9. **DEFAULT**

9.1 In the event that:

9.1.1 the Customer breaches any terms and conditions of an Agreement; or

9.1.2 the Customer becomes insolvent, enters into voluntary administration has a receiver appointed in respect of all or any part of its assets, makes or is likely to make an arrangement with its creditors or has a liquidator appointed or is placed under statutory management; or

9.1.3 the Customer ceases or threatens to cease carrying on business; or

9.1.4 the ownership or effective control of the Customer is transferred or the nature of the Customer's business is materially altered, then:

9.1.5 Pegasus will be entitled to cancel any and all Agreements it has with the Customer; and

9.1.6 all amounts outstanding under any Agreement, whether or not due for payment, immediately become due and payable.

## 10. **TERMINATION**

10.1 In the event the Customer breaches any of these Terms or any term of an Agreement, Pegasus may immediately in writing, either suspend delivery of the Services or terminate any Agreement it has with the Customer at which point all money due and owing to Pegasus by the Customer will become immediately payable. Suspension or termination of any Agreement will not prejudice or affect the rights of Pegasus to make a claim against the Customer.

10.2 The Customer may terminate this Agreement on not less than three months written notice to Pegasus.

## 11. **CONSUMER GUARANTEES ACT**

The parties agree that where the supply of Goods and/or performance of Services under an Agreement are a supply for business purposes that the provisions of the Consumer Guarantees Act 1993 do not apply.

## 12. **CONFIDENTIALITY**

Subject to any disclosures required by reason of legislative compliance, neither party, its employees, other personnel, agents or subcontractors will divulge to any third party any confidential information without the other party's prior written approval.

## 13. **DISPUTES**

13.1 In the event that a dispute or difference between the parties in relation to or arising out of these Terms cannot be settled by negotiation between the parties, the dispute

or difference may, if the parties agree, be referred to mediation.

13.2 If a dispute is not settled under clause 13.1 within 14 days then the dispute will be submitted to, and settled by, arbitration by a sole arbitrator in accordance with the provisions of the Arbitration Act 1996. The arbitrator will be appointed by the parties or failing agreement within 5 working days after the request to appoint an arbitrator by one party to the other, the arbitrator will be appointed by the president for the time being of the New Zealand Law Society.

## 14. **MISCELLANEOUS**

14.1 If any part of these Terms or any Agreement is held to be unenforceable, the part concerned will be deleted or modified to the minimum possible extent necessary to ensure that the remainder of these Terms or any Agreement remain enforceable.

14.2 No delay or failure by Pegasus to exercise its rights under an Agreement operates as a waiver of those rights.

14.3 The Customer may not assign or transfer any of its rights or obligations under or in connection with any Agreement to any third party without the prior written consent of Pegasus.

14.4 Pegasus reserves the right to sub-contract the performance of any Agreement or any part of any Agreement to any other party or person.

14.5 Any variation to an Agreement must be agreed in writing between the parties. Pegasus may amend these Terms from time to time by giving the Customer notice in writing of such amendments.

14.6 The Customer agrees that Pegasus may obtain information about the Customer from any source including credit assessment and debt collecting and the Customer consents to any person providing Pegasus with such information.

14.7 The Customer will pay all costs and expenses (including legal fees) incurred by Pegasus in exercising any of its rights under any Agreement.

14.8 Any notice given by one party to the other will be deemed to have been delivered 48 hours after posting to the recipient's registered office or last known address and immediately, if forwarded by facsimile or email.

14.9 All Agreements made between Pegasus and the Customer will be governed by and construed in accordance with the laws of New Zealand and the Customer agrees to submit to the non-exclusive jurisdiction of the New Zealand Courts.