

# P & E MICROCOMPUTER SYSTEMS, INC.

## TERMS OF SERVICE

[https://www.pemicro.com/terms\\_of\\_use.cfm](https://www.pemicro.com/terms_of_use.cfm)

Last updated April 20, 2023

This Terms of Service sets forth the terms, conditions and limitations that apply to your use and access of the websites located at [www.pemicro.com](http://www.pemicro.com), [cloud.pemicro.com](http://cloud.pemicro.com), and associated sub-domains of each (the “Site”), our downloadable computer applications (the “App”), and the products or services that we provide (the “Services”).

In this Terms of Service, “PEmicro”, the “Company”, “we”, “us” or “our” means P & E Microcomputer Systems, Inc., a Massachusetts corporation and (as the context suggests) its stockholders, directors, officers, employees, agents, representatives, affiliates, contractors, service providers, and/or designees; “both of us” means both you and us; “Terms of Service” or “TOS” means this Terms of Service and other documents incorporated herein by reference; “Platform” means the Site, the Apps and the Services, collectively or individually as the context suggests, offered by us; “you” or “your” means the person or company using the Platform. By using our Platform, you agree to be bound by this TOS and our Privacy Policy.

By accessing or using the Platform, you understand and agree to be bound by the terms and conditions of this TOS and the Privacy Policy (as defined below), as each may be amended at any time and from time to time. If you do not agree to this TOS, then you may not use the Platform. You agree and represent that: (a) you have the authority to enter into and be bound by this TOS, and you will not use the Platform in any manner or attempt to use the Platform in any manner that will violate this TOS; and (b) you are 18 years or older, or have reached the age of majority in the jurisdiction in which you are located, and you will not access or use the Platform unless you have reached the legal age of majority in the jurisdiction where you are located.

### DESCRIPTION OF THE SERVICES

We provide you with a variety of content and access to products and commercial services through the Platform. More specifically, our goal is to provide you with embedded system tools and cloud-based programming job management services.

### THIRD PARTY SITES AND SERVICES

To facilitate the function of certain areas of the Platform, including to store, process, and/or transmit information and data, we may license software, tools and services from third party providers. By accessing and using the Services, you expressly authorize and direct us, on your behalf, to electronically retrieve information maintained by third party sites.

We cannot always foresee or anticipate technical or other difficulties which may result in failure to obtain data or loss of data, personalized settings or other service interruptions. We assume no responsibility for the timeliness, accuracy, deletion, non-delivery or failure to store any user data, communications or personalized settings.

At any time and from time to time, we may revise this TOS as requested by our third party providers and require that you agree to additional pass-through terms and conditions with respect to such third party providers. In the event that any use of the services of such third party provider results in you

leaving our Platform and entering the site of a third party provider, then you will be subject to the terms of service or use and privacy policy of such third party provider, so please review such terms carefully.

## **USE OF THE PLATFORM**

Except as set forth in “Other Agreements; Software, Services or Access”, below, we grant you a nonexclusive, limited, royalty-free, revocable license during the term of this TOS to use our Services. You may not assign (or grant any sub-license of) your rights to use the Platform, grant a security interest in or over your rights to use the Platform, or otherwise transfer any part of your rights to use the Platform.

You agree that you will NOT do any of the following: (i) engage in behavior that will put your personal information at unnecessary risk, such as leaving, transmitting, publishing, or otherwise making available to others your username, password, cryptographic keys, and remote access credentials to access the Platform (collectively, your “Credentials”); (ii) use our Platform or any of your accounts for illegal purposes; (iii) use our Platform to transmit anything that is unlawful, libelous, intended to harass or violate the rights of another; (iv) copy, distribute, modify, resell or make any commercial use of the Platform, as the Platform is intended solely for your use as an end user; (v) decipher, decompile, disassemble or reverse engineer any technology associated with the Platform, including but not limited to any software applications, Java applets or plug-ins associated with the Services; (vi) use any robot, spider, web crawler, scraper, deep link or similar automated extraction or data gathering mechanism, program or tool to access, copy or monitor our Platform or any portion thereof without our prior written consent; (vii) post or transmit any file or email which contains viruses, worms, Trojan horses or any other damaging or destructive elements; (viii) create/register accounts with the Platform or otherwise access the Platform through unauthorized means, including, but not limited to, by using an automated device, script, bot, spider, crawler, scraper or through any interface not provided by us; (ix) circumvent, disable or otherwise interfere with security-related features of the Platform; or (x) disrupt servers or networks connected to the Platform.

Your access and use of the Platform may be interrupted at any time and from time to time for any of several reasons, including, without limitation, the malfunction of equipment, periodic updating, maintenance or repair of the Platform or other actions that we, in our sole discretion, may elect to take. In no event will we be liable to you or any third party for any loss, cost, or damage that results from any scheduled or unscheduled downtime for any reason.

Your sole and exclusive remedy for any failure or non-performance of the Platform, including any associated software or other materials supplied in connection with the Platform, shall be for us to use commercially reasonable efforts to effectuate an adjustment or repair of the Platform.

## **REGISTRATION DATA AND PROVIDED DATA**

In order to allow you to use the Platform, you will need to sign up for an account with us. We may verify your identity. You authorize us to make any inquiries we consider necessary to validate your identity. If you do not provide the information requested by us or we cannot verify your identity, we reserve the right to refuse to allow you to use the Platform. Accurate Registration Data (as defined below) and Provided Data enable us to provide the Services to you. In addition, in order for the Services to function effectively, you must also keep your Registration Data and Provided Data up to date and accurate. If you do not do this, the accuracy and effectiveness of the Services will be affected. Accordingly, you agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the Platform’s registration form (such information being the “Registration Data”) and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or we have reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, we have the

right to suspend or terminate your account and refuse any and all current or future use of the Platform (or any portion thereof). You represent that you are a legal owner of, or otherwise have the authority to provide us with, all Registration Data and Provided Data, and other information necessary to facilitate your use of the Platform.

## **ACCOUNT, PASSWORD AND SECURITY**

You agree and understand that (i) you are responsible for maintaining the confidentiality of your Credentials that allow you to access and use the Platform upon completing the Platform's registration process; and (ii) you are fully responsible for all activities that occur under your account. You should also maintain appropriate anti-virus and anti-malware software on your computer or other device which you use to access the Platform, so that your Registration Data, password and/or username are not compromised through your own negligence. If you become aware of any unauthorized use of your Registration Data, password and/or username, you agree to notify us immediately at the email address: [technical-info@pemicro.com](mailto:technical-info@pemicro.com). We cannot and will not be liable for any loss or damage arising from your failure to comply with this Section.

## **PRIVACY POLICY; USE OF PERSONALLY IDENTIFIABLE INFORMATION**

Your Registration Data, Provided Data and certain other information about you is subject to our privacy policy ("Privacy Policy"). For more information, you can review our full Privacy Policy at [https://www.pemicro.com/privacy\\_policy.cfm](https://www.pemicro.com/privacy_policy.cfm). By your use of the Platform, you agree to the Privacy Policy and any changes to the Privacy Policy, as it may be amended from time to time in the future. You agree to the collection and use of this information (as set forth in the Privacy Policy), including (i) the combination of your information you enter or upload on the Platform with that of other users of the Platform, and (ii) the transfer of this information to the United States and/or other countries for storage, processing, and use by us and our affiliates.

## **FEES**

Except as expressly set forth in this TOS, your general right to access and use the Platform is currently for free, but we may charge a fee for certain access or usage in the future, and we reserve all rights to do so. You will not be charged for any such access or use of the Platform unless you first agree to such charges to be incurred by you in purchasing products or services through the Platform or otherwise in connection with your use of the Platform (any and all such fees are defined herein as "Charges").

In the event that we assess such Charges, you will be responsible for all Charges incurred, including applicable taxes and purchases made by you or anyone who is using an authorized user account that you have caused to be created or for which you have otherwise indicated your agreement to be responsible for payment. This means that, unless your account or credit card information is obtained unlawfully or fraudulently, you will be responsible for all usage and purchases made on your account.

A service charge, up to the maximum allowed by the state you reside in, will be assessed to your account for any Charge that is denied or for which you otherwise fail to make when payment becomes due. If your account is delinquent, your account (and your use of the Platform) may be suspended or canceled at our sole discretion. If any unpaid balance remains outstanding more than thirty (30) days after the date in which the unpaid balance first became due and payable, then we reserve the right to charge the highest rate permitted by law but not greater than 1% per month, to accrue daily, on any such unpaid balance, until paid in full. You agree to pay all sales and use taxes, duties, or levies which are required by law as well as all attorney and collection fees arising from our efforts to collect any unpaid balance on your account.

You agree to inform us about any billing problems or discrepancies within ninety (90) days after they first appear on your account statement. If you do not inform us within ninety (90) days, you agree that you waive your right to dispute such problems or discrepancies. Additionally, for any Charges being collected by us on behalf of a vendor, then such vendor shall be an express third party beneficiary of this Section.

All currency references on the Platform or in this TOS are in U.S. dollars. All fees are exclusive of all taxes, levies, or duties imposed by taxing authorities. You, and not us, are responsible for any such taxes, levies, or duties related to your transactions, excluding only our United States federal or state income taxes.

All payments for Charges will be non-refundable, and no refunds will be due to you for any reason, even if, without limitation, you are not satisfied with the Platform, or the products or services that you purchase through the Platform, you are not able to access the Platform, the Platform changes, or we freeze, change, or terminate your account.

### **CONTENT UPLOADED, STORED, SUBMITTED OR MADE AVAILABLE FOR INCLUSION ON THE PLATFORM**

In connection with our Services, you may upload, transmit, and/or store binary programming jobs, descriptions, program keys, software, metadata, and other content (your “Content”) to our Platform. We do not claim ownership of, or any other property rights to, the Content you submit or otherwise make available for inclusion on the Platform. You understand that all Content is the sole responsibility of the person from whom such Content originated. This means that you, and not us, are entirely responsible for all Content that you upload, transmit, and/or store (or that we upload, transmit, and/or store for you). You are responsible for any lost or unrecoverable Content. We do not control the Content and, as such, do not guarantee the accuracy, integrity or quality of such Content. By submitting Content to us, you represent that you have all necessary rights in such Content, without any obligation by us to pay any fees or be subject to any restrictions or limitations, and hereby grant us a perpetual, worldwide, non-exclusive, royalty-free, sub-licensable and transferable license to host and reproduce the Content you submit to us as is reasonably necessary in connection with our Services.

### **CONTENT SUBMITTED BY YOU OR MADE AVAILABLE ON SUPPORT FORUMS, BLOGS, COMMENTS, OR OTHER PUBLICALLY AVAILABLE CONTENT**

We do not claim ownership of the Public Content (as defined below) you submit or otherwise make available for inclusion on the Platform. You understand that all Public Content, whether publicly posted or privately transmitted, are the sole responsibility of the person from whom such Public Content originated. This means that you, and not us, are entirely responsible for all Public Content that you upload (or that we upload for you), post or otherwise make available publicly. You are responsible for any lost or unrecoverable Public Content. We do not control the Public Content posted through the Platform and, as such, do not guarantee the accuracy, integrity or quality of such Public Content. You must provide all required and appropriate warnings, information and disclosures for Public Content you submit to us. By submitting Public Content to us, you represent that you have all necessary rights in such Public Content, without any obligation by us to pay any fees or be subject to any restrictions or limitations, and hereby grant us a perpetual, worldwide, non-exclusive, royalty-free, sub-licensable and transferable license to use, host, reproduce, distribute, prepare derivative works of, modify, display, and perform all or any portion of the Public Content that you submit to us in connection with the Platform and our business, including without limitation for promoting and redistributing part or all of the Platform (and derivative works thereof) in any media format and through any media channels.

You understand that by using the Platform, you may be exposed to Public Content that is offensive, indecent or objectionable. Under no circumstances will we be liable in any way for any Public Content, including, but not limited to, for any errors or omissions in any Public Content, or for any loss or damage of any kind incurred as a result of the use of any Public Content posted, emailed, transmitted, stored or otherwise made available through the Platform.

We may or may not pre-screen Public Content, but that we and our designees shall have the right (but not the obligation) in our sole discretion to pre-screen, refuse, or move any Public Content that is available through the Platform. Without limiting the foregoing, we and our designees shall have the right to remove any Public Content that violates this TOS or is otherwise objectionable. You must evaluate, and bear all risks associated with, the use of any Public Content, including any reliance on the accuracy, completeness, or usefulness of such Public Content. In this regard, you acknowledge that you may not rely on any Public Content created by us or submitted to us.

We may access, preserve, and disclose your account information and Public Content if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce this TOS; (c) respond to claims that any Public Content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect our (or our users or the public's) rights, property, or personal safety.

The technical processing and transmission of the Services, including any Public Content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

You may voluntarily provide (in connection with your use of the Platform or related Services) suggestions, comments or other feedback. We are not required to hold such feedback in confidence, and such feedback may be used by us for any purpose without obligation to you of any kind; provided, that we will not disclose the source of specific feedback without your consent; and nothing in this TOS restricts the use by you of such feedback or ideas that you provide to us.

“Public Content” means Provided Data, information, data, text, software, photographs, images, graphics, videos, messages or other materials that you or other users upload, post, email, transmit, store or otherwise make available to the public on the Platform.

## **OUR PROPRIETARY RIGHTS**

The technology and content used to offer, or provided in connection with, the Platform, including its “look and feel” (e.g., text, graphics, images, logos and button icons), photographs, music, sounds, data, videos, messages, illustrations, tutorials, promotional materials, editorial content, notices, proprietary software (including html-based computer programs) and other content that we may make available through the Platform are either owned by us or licensed by us from third party licensors (collectively, “Our Materials”). The Platform and Our Materials are protected under both United States and other applicable copyright, patent, trademark and other intellectual property laws. As between you and us, we own the Platform and Our Materials, and all underlying software, inventions, ideas, trade secrets, trademarks and services marks related to the Platform and Our Materials. P & E Microcomputer Systems, Inc., PEmicro, PEcloud, Cyclone Production Programmer, and USB Multilink are our trademarks and service marks. All other product names and company logos found on promotional materials presented to you through the Platform are the copyrights, trademarks or service marks of their respective owners. You agree not (and to not allow any third party) to copy, modify, reverse engineer, reproduce, duplicate, perform, create derivative works from, republish, upload, post, transmit, sell, trade, exploit or otherwise distribute in any way whatsoever any of Our Materials, information, trademarks or service marks without

our express, written consent. You agree not to use, or permit any third party to use, the Platform or Our Materials in any manner that violates any applicable law, regulation or this TOS

## **GENERAL PRACTICES REGARDING USE AND STORAGE**

You acknowledge that we may establish general practices and limits concerning use of the Platform, including without limitation the maximum number of days that messages or other uploaded Content will be retained by the Platform, the maximum number and size of postings that may be made through an account on the Platform, and the maximum number of times (and the maximum duration for which) you may access the Platform in a given period of time. We have no responsibility or liability for the deletion or failure to store any posting and other communications or other Content maintained or transmitted by the Platform. We may modify these general practices and limits at any time and from time to time.

The Platform and software embodied within the Platform may include security components that permit digital materials to be protected, and use of these materials is subject to usage rules set by us and/or content providers who provide content to the Platform. You may not attempt to override or circumvent any of the usage rules embedded into the Platform. Any unauthorized reproduction, publication, further distribution or public exhibition of the materials provided on the Platform, in whole or in part, is strictly prohibited.

## **TERMINATION**

This TOS will continue to apply until terminated either by you or us as set forth below. If you want to terminate your legal agreement with us, you may do so by closing your account.

Please use the directions below to close your account:

Email [technical-info@pemicro.com](mailto:technical-info@pemicro.com) from the email address associated with your account, indicating "CANCEL" in the subject line of the message. After confirming you are the account owner, we will remove your accounts, transactions, and login information from our records and will only continue to retain such information as we are required by law to retain.

We may, under certain circumstances and without prior notice, immediately terminate your account and access to the Platform. Cause for such termination shall include, but not be limited to, (a) breaches or violations of this TOS or other incorporated agreements or guidelines, (b) requests by law enforcement or other government agencies, (c) discontinuance or material modification to the Platform (or any part thereof), (d) unexpected technical or security issues or problems, (e) extended periods of inactivity, (f) you have engaged in fraudulent or illegal activities, (g) nonpayment of any Charges owed by you in connection with the Platform, or (h) for any other reason or no reason, in our and absolute discretion.

Termination of your account includes (i) removal of access to all offerings within the Platform, (ii) deletion of your password and username, and (iii) barring further use of the Platform. The termination of this TOS will not affect any of our rights or your obligations arising under this TOS prior to the date of termination.

## **INDEMNITY**

You hereby agree to defend, indemnify and hold us and our subsidiaries, affiliates, officers, members, stockholders, co-branders, and employees, consultant and agents harmless from any claim or demand (including reimbursing us any reasonable attorneys' fees incurred by us in the defense of any such claim or demand), made by any third party due to or arising out of Content you submit, post,

transmit, store or otherwise make available through the Platform, your infringement of any intellectual property rights, your use of the Platform, your connection to the Platform, your purchase of products or services through the Platform, your violation of this TOS, or your violation of any rights of another. We retain the right to retain counsel of our choosing in our sole discretion. Furthermore, you must cooperate in good faith to assist us in our defense and any settlement negotiations related thereto, and to reimburse us for reasonable settlement amounts, if any.

#### **DISCLAIMER OF WARRANTIES AND LIABILITY**

- YOUR USE OF THE PLATFORM AND ALL RELATED SERVICES, INCLUDING ALL INFORMATION, PRODUCTS AND OTHER CONTENT (INCLUDING THAT OF THIRD PARTIES) INCLUDED IN OR ACCESSIBLE FROM OUR PLATFORM IS AT YOUR SOLE RISK. THE PLATFORM IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT WARRANTY OF ANY KIND. WE ASSUME NO RESPONSIBILITY FOR ERRORS OR OMISSIONS MADE BY YOU OR ERRORS OR OMISSIONS IN THE CONTENT, INFORMATION OR OTHER DATA AND DOCUMENTS WHICH ARE REFERENCED BY, LINKED TO OR PROVIDED BY OR THROUGH THE PLATFORM AND ALL RELATED SERVICES. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

- Use of the Platform may be available through a compatible device, internet, and/or network access and may require software. You may be required to download our application in order to use the App. Users of the App will be governed by the terms and conditions provided to you at the time you download the App. You agree that you are solely responsible for these requirements, including any applicable equipment, changes, updates and fees as well as the terms of your agreement with your mobile device and telecommunications provider. WE MAKE NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED AS TO ANY DISCLOSURE OR INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS OR SETTINGS CONNECTED WITH THE SERVICES.

- WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE WILL NOT BE LIABLE FOR AND MAKE NO WARRANTY THAT (i) THE PLATFORM WILL MEET YOUR REQUIREMENTS, (ii) YOUR USE OF THE PLATFORM OR THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE PLATFORM WILL BE ACCURATE, RELIABLE OR COMPLETE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE PLATFORM WILL MEET YOUR EXPECTATIONS, AND (v) ANY ERRORS IN THE PLATFORM OR ANY SOFTWARE THAT WE PROVIDE OR THAT WE USE IN OFFERING THE PLATFORM WILL BE CORRECTED.

- ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE PLATFORM IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

- NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH OR FROM THE PLATFORM SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS TOS.

## **LIMITATION OF LIABILITY; RELEASE**

WE SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE PLATFORM; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE PLATFORM; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE PLATFORM; OR (v) ANY OTHER MATTER RELATING TO THE PLATFORM OR ANY SERVICES OFFERED THROUGH THE PLATFORM. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS TOS, OUR LIABILITY TO YOU FOR ANY CAUSE WHATEVER AND REGARDLESS OF THE FORM OF THE ACTION, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY RECEIVED BY US FROM YOU DURING THE SIX (6) MONTHS PRECEDING THE EVENT WHICH GAVE RISE TO SUCH LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE OR EXTEND THIS LIMIT.

**To the fullest extent permitted by applicable law, you, on behalf of your heirs, executors, administrators, legal and personal representatives, hereby release, waive, acquit and forever discharge us from and against, and covenant not to sue us or any party associated with us for, all claims you have or may have arising out of or in any way related to these terms or the food and supplements provided by us. If you are a California resident, you hereby waive your rights under California Civil Code 1542, which states “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

## **EXCLUSIONS AND LIMITATIONS**

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF MAY NOT APPLY TO YOU.

## **NOTIFICATIONS**

We may at any time and from time to time provide certain communications to you such as service announcements, administrative messages and other notifications (“Alerts”). Alerts may be sent to you following certain changes to our Platform or your account. You understand and agree that any Alerts provided to you through the Platform may be delayed or prevented by a variety of factors. We will make commercially reasonable efforts to provide Alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any Alert. We will not be liable for any delays, failure to deliver, or misdirected delivery of any Alert; for any errors in the content of an Alert; or for any actions taken or not taken by you or any third party in reliance on an Alert.

Alerts may be sent by means of a general notice through the Platform, electronic mail to your email address designated in your account, or telephone or text message to any phone number provided in connection with your account. If your email address or your mobile number changes, you are responsible for informing us of that change.



Because Alerts may not be encrypted, we will never include your password. However, some Alerts may include your username and some information about your account. Anyone with access to your email will be able to view the contents of these Alerts.

By providing us with your email address, you consent to receive all required Alerts regarding our Platform and other offerings electronically. All Alerts in electronic format will be considered to be in “writing,” and to have been received no later than five (5) business days after posting or dissemination, whether or not you have received or retrieved the communication. Your consent to receive Alerts electronically is valid until you end your relationship with us. You may print a copy of any electronic Alerts and retain it for your records. We reserve the right to terminate or change the terms and conditions on which we provide electronic Alerts and will provide you notice thereof in accordance with applicable law.

You also consent to the recording of any electronic or written Alerts and any or all telephone conversations between you, us or any of our affiliates in connection with this TOS or the Platform and agree and understand that recordings may be submitted in evidence in any legal proceeding relating to this TOS.

Any notice you desire to send to us must be sent exclusively by submitting an electronic message through the Platform, the Contact Us section at [https://www.pemicro.com/contact\\_us/](https://www.pemicro.com/contact_us/) or via email at [contact@pemicro.com](mailto:contact@pemicro.com), unless explicitly instructed to do otherwise in this TOS.

## **MODIFICATIONS**

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Platform (or any part thereof) with or without notice to you. We shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Platform. We may also revise this TOS at any time without prior notice, and therefore we suggest that you check this TOS from time to time. We may notify you of any changes at the email address associated with your account. If you do not agree to the changes after receiving notice of the changes to the Platform, you may stop using the Platform and terminate your account. Your continued access or use of the Platform indicates your agreement to be bound by any such changes.

## **ENTIRE AGREEMENT**

This TOS constitutes the entire agreement between both of us and governs your use of the Platform, superseding any prior agreements between both of us with respect to the Platform. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other services, affiliate services, third party content, or third-party software. The foregoing does not apply to Partners who are subject to separate Partner Agreements.

## **CHOICE OF LAW AND FORUM**

This TOS and the relationship between both of us shall be exclusively governed by the laws of the United States and the Commonwealth of Massachusetts without regard to its conflict of law provisions. Your exclusive forum for bringing any claim or cause of action against us is the courts located in Boston, Massachusetts. You hereby accept and submit to the personal and exclusive jurisdiction of such courts in any proceeding or action. With respect to any such proceeding or action brought in such courts, you hereby irrevocably waive, to the fullest extent permitted by law: (a) any objection you may have now or in the future to such jurisdiction or venue, and (b) any claim that such action or proceeding has been brought in an inconvenient form. Nothing limits our right to commence and prosecute any legal or equitable action or proceeding before any court of competent jurisdiction to obtain injunctive or any other form of relief.

## **ARBITRATION**

Notwithstanding anything herein, if we elect in our sole discretion to resolve any claim through arbitration, you must cooperate fully with and be bound by such arbitration, without further recourse of any kind. The American Arbitration Association (“AAA”) shall preside over such arbitration. Such arbitration shall be exclusively governed by the laws of the United States and the Commonwealth of Massachusetts without regard to its conflict of law provisions. All proceedings shall take place in Boston, Massachusetts. If there is a conflict between the rules of the AAA and any provision of this TOS, this TOS shall govern. You are responsible for all costs that you incur in the arbitration, including without limitation, expert witnesses or attorneys. The reasonable filing fees and arbitrator’s costs and expenses shall be advanced by us. However, if the arbitration is decided in our favor, you must reimburse us for all of our fees, costs, and expenses related to the arbitration, including without limitation, all fees, costs, and expenses related to filing, arbitrators, expert witnesses, attorneys, and other third parties.

## **WAIVER AND SEVERABILITY OF TERMS**

We do not waive our rights by delaying or failing to exercise them at any time. If any provision of this TOS shall be determined to be invalid or unenforceable under any rule, law, or regulation of any local, state, or federal governmental agency, the validity or enforceability of any other provision of this TOS shall not be affected, and the other provisions of the TOS remain in full force and effect.

## **NO THIRD-PARTY BENEFICIARIES**

Except as otherwise expressly provided in this TOS, there shall be no third party beneficiaries to this TOS.

## **NO RIGHT OF SURVIVORSHIP AND NON-TRANSFERABILITY**

Your account is non-transferable and any rights to your account or contents within your account terminate upon your death or dissolution. Upon receipt of a copy of a death certificate or certificate of dissolution, your account may be terminated and all contents therein permanently deleted.

## **STATUTE OF LIMITATIONS**

Notwithstanding any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Platform or this TOS must be filed within one (1) year after such claim or cause of action arose or be forever barred.

## **SECTION HEADINGS**

The section titles in this TOS are for convenience only and have no legal or contractual effect.

## **CLAIMS OF COPYRIGHT AND TRADEMARK INFRINGEMENT**

If you believe that your intellectual property is being used on the Platform in a way that constitutes copyright infringement, please provide our Designated Agent (set forth below) the following information (as required by Section 512(c)(3) of the Digital Millennium Copyright Act):

- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material on our Platform;

- Information reasonably sufficient to permit us to contact you, such as an address, telephone number, and, if available, an electronic mail address, if different from your registered account with us;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by you, your agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

The information specified above must be sent to our Designated Agent, whose contact information is as follows:

Attention: Privacy & Security  
P & E Microcomputer Systems, Inc.  
98 Galen St - 2<sup>nd</sup> Floor  
Visit: <https://www.pemicro.com/support/index.cfm>  
Call us at 617-923-0053 (Monday to Friday, 9am-5pm ET)  
Email us at [dataprotection@pemicro.com](mailto:dataprotection@pemicro.com)

Please note that Section 512(f) of the Digital Millennium Copyright Act may impose liability for damages on any person who knowingly sends meritless notices of infringement. Please do not make false claims. Any information or correspondence that you provide may be shared with third parties, including the person who provided the allegedly infringing material. Upon receipt of a bona fide infringement notification by the Designated Agent, we will remove or disable access to the infringing material, notify the user that it has removed or disabled access to the material, and, for repeat offenders, to terminate such user's access to the Platform.

If you believe that your content should not have been removed for alleged copyright infringement, you may send our Designated Agent a written counter-notice with the following information:

- Identification of the copyrighted work that was removed, and the location on the Platform where it would have been found prior to its removal;
- A statement, under penalty of perjury, that you have a good faith belief that the content was removed as a result of a mistake or misidentification; and
- Your physical or electronic signature, together with your contact information (address, telephone number and, if available, email address).

If a counter-notice is received by the Designated Agent, we may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed material or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the user, the removed material may be replaced or access to it restored in 10 to 14 business days or more after receipt of the counter-notice, at our discretion.