



# MASTER SERVICES AGREEMENT

Effective November 4<sup>th</sup>, 2024 to December 26<sup>th</sup>, 2024

## TABLE OF CONTENTS

- 1. Term..... 2
- 2. Services and Payment Terms ..... 2
  - 2.1 Interest on Overdue Payments..... 2
  - 2.2 Taxes..... 2
- 3. Project Pricing and Change Control ..... 2
  - 3.1 Fixed Firm Price Projects ..... 3
  - 3.2 Time and Materials Projects..... 3
- 4. Conditions of Services ..... 3
  - 4.1 Independent Contractor Status ..... 3
  - 4.2 Non-Solicitation of Employment ..... 3
  - 4.3 Quality of Work..... 3
  - 4.4 Communication Providers ..... 3
  - 4.5 Data ..... 3
  - 4.6 Marketing and Publicity ..... 3
  - 4.7 Confidentiality and Security ..... 4
  - 4.8 Cloud Partner..... 4
  - 4.9 Active Directory Synchronization..... 4
  - 4.10 Communication ..... 4
  - 4.11 Termination With Cause..... 4
  - 4.12 Intellectual Property ..... 4
  - 4.13 SSL Certificate Renewal ..... 5
  - 4.14 Termination ..... 5
- 5. SMS Communication Consent..... 5
  - 5.1 Implied Consent for Existing Business Relationships..... 5
  - 5.2 Explicit Consent for New Clients and Additional Purposes ..... 5
  - 5.3 PCI’s Opt-Out/Do Not Contact Process..... 5
  - 5.4 Clearance to Use SMS for Service Delivery..... 6
  - 5.5 B2B Considerations..... 6
  - 5.6 Responsibility to Inform and Obtain Consent..... 6
- 6. Warranties, Disclaimers, and Liability ..... 6
  - 6.1 Warranties and Covenants..... 6
  - 6.2 Indemnification ..... 6
  - 6.3 Limitation of Liability ..... 6
  - 6.4 Social Security and Fair Labor Standards ..... 6
  - 6.5 Equal Employment Opportunity ..... 6
  - 6.6 Warranty of Authority..... 6
  - 6.7 Non-Waiver..... 7
  - 6.8 Successors and Assignment..... 7
  - 6.9 Governing Law and Legal Actions ..... 7
- 7. Counterparts..... 7
- 8. Headings and Draftings..... 7
- 9. Severability..... 7
- 10. Entire Agreement..... 7

This Agreement is between Personal Computers, Inc., a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1 W. Seneca Street, Suite 3000, Buffalo, New York 14203 ('PCI'), and the Client agreeing to these terms ('Client').

This Agreement becomes effective upon the Client's acceptance of the Statement of Work (SOW) that references the current version of the PCI Terms and Conditions as published on the PCI website at the time of acceptance.

## **1. TERM**

The duration of this Agreement ('Term') commences upon the Client's acceptance of the Statement of Work ('SOW') that references the current version of the PCI Terms and Conditions available on the PCI website at the time of acceptance. The Term shall continue as specified in the applicable SOW, unless earlier terminated as provided in this Agreement. Specific start and end dates for services under each SOW will be outlined within the respective SOW.

## **2. SERVICES AND PAYMENT TERMS**

During the Term of the Agreement, PCI will provide services ("Services") to the Client in accordance with associated SOWs. All services provided by PCI will be billed monthly and are due Net 30 from the date of invoice. The Client agrees to reimburse PCI for any reasonable and customary out-of-pocket expenses incurred while providing services, including but not limited to travel expenses, software licensing fees, and third-party vendor costs.

Notwithstanding any other provision of this Agreement, PCI reserves the right to adjust the prices of its Products and/or Services based on significant changes in market conditions. Such adjustments shall not occur more frequently than once in any twelve (12) month period. PCI will provide the Client with written notice of any such price adjustment at least thirty (30) days prior to the effective date of the adjustment. In the event of a price adjustment, the new pricing will become effective on the date specified in PCI's written notice.

### **2.1 Interest on Overdue Payments**

If any payment due under this Agreement is not received by PCI within the agreed upon payment terms, Client shall be liable to pay interest on the overdue amount. The interest shall accrue at the rate of 1.5% per month (18% per annum) or the maximum rate permitted by applicable law, whichever is lower, until the overdue amount is paid in full. Interest shall be calculated from the due date of the invoice until payment is received.

### **2.2 Taxes**

The Client is responsible for all legally required taxes, including sales and use tax on Services rendered under this Agreement. PCI will itemize on the invoice all applicable taxes and the jurisdiction to which the tax is remitted. If the Client disputes the validity or applicability of any invoiced taxes, the Client may deduct such disputed amount from the payment, provided the dispute is reasonable and made in good faith.

PCI shall not be responsible for taxes levied on the Client's net or gross income, property, or employees. If applicable law entitles the Client to a tax exemption, the Client must provide PCI with the necessary evidence of such exemption, and PCI agrees to act in accordance with the exemption acknowledged by the appropriate taxing authority.

Should the Client contest any tax liability assessed in relation to the Services, PCI agrees to reasonably cooperate with the Client in contesting such taxes. However, PCI shall not be obligated to take legal action or bear any costs associated with such a dispute.

For the avoidance of doubt, delivery of Services by PCI under this Agreement shall not be contingent upon the resolution of any tax dispute. It is understood that Services will be furnished as per the terms of the Agreement notwithstanding any such tax-related disputes.

## **3. PROJECT PRICING AND CHANGE CONTROL**

PCI will quote projects to the Client using either a Fixed Firm Price or Time and Materials basis, as appropriate.

For both Fixed Firm Price and Time and Materials projects, if there is a change in the project scope, PCI will use a project change control methodology. This involves providing a detailed description of the scope change and the anticipated cost impact to the Client. If the actual time spent on the project due to the scope change exceeds the anticipated impact, PCI will bill the Client for the additional time spent.

### **3.1 Fixed Firm Price Projects**

These are typically projects that PCI routinely performs, where PCI is in control of most project variables and the IT environment does not significantly impact the project execution. The price quoted for such projects will be a fixed amount, which will not change unless the scope of the project changes.

### **3.2 Time and Materials Projects**

These are typically one-time projects or projects with several unknowns and/or risk factors that could lead to scope changes and/or unforeseen challenges. For these projects, PCI will bill the Client for the actual time spent and materials used on the project.

## **4. CONDITIONS OF SERVICES**

### **4.1 Independent Contractor Status**

PCI operates as an independent contractor and is not an employer, employee, agent, partner, or legal representative of the Client.

### **4.2 Non-Solicitation of Employment**

Neither PCI nor the Client will solicit or hire any employee of the other party without written authorization from an officer of the other party for a period of twelve (12) months following the termination of this Agreement.

### **4.3 Quality of Work**

PCI guarantees that services will be performed professionally and competently.

### **4.4 Communication Providers**

PCI will assist with connectivity issues but is not responsible for any downtime or data loss caused by any third-party communication provider's services.

### **4.5 Data**

The Client owns all rights to their data. PCI is not responsible for any downtime or data loss outside of PCI's care, custody, or control. Examples include downtime or data corruption due to third party public cloud providers, application and/or database administration, third party operating system and application software updates and/or whole point version upgrades, the failure of Client to act based on PCI's system recommendations, malicious hackers, the actions of Client's disgruntled employees, e-mail, data, or network corruption due to new strains of viruses for which there is no known virus pattern update.

### **4.6 Marketing and Publicity**

Client hereby grants PCI a limited, non-exclusive, revocable, non-transferable license during the term of this Agreement to use Client's name, trademarks, and logos (the "Client Marks") in PCI's marketing materials, website, and other promotional communications solely for the purpose of identifying Client as a customer of PCI and describing the services provided by PCI to Client under this Agreement.

PCI agrees to comply with any usage guidelines provided by Client with respect to the Client Marks and to obtain Client's prior written approval for any use of the Client Marks not expressly authorized by this Agreement. Client may withdraw its consent to any particular use of the Client Marks at any time by providing written notice to PCI, and upon receipt of such notice, PCI shall promptly cease the disputed use.

Nothing in this Agreement shall confer in PCI any ownership rights in the Client Marks, and all use thereof shall inure to the benefit of Client.

PCI agrees to indemnify, defend, and hold harmless Client from and against any claims, damages, liabilities, costs, and expenses (including reasonable attorney's fees) arising out of or related to PCI's use of the Client Marks in violation of this Agreement.

Client acknowledges and agrees that PCI may, at its sole discretion, include Client's name and logo in its customer list, press releases, and/or other marketing materials.

#### **4.7 Confidentiality and Security**

Both parties agree to hold all confidential information in strict confidence. Each party agrees not to disclose any Confidential Information of the other party to third parties or to employees of the party receiving Confidential Information, other than directors, officers, employees, consultants, and legal advisors who need to know such Confidential Information for the purpose of carrying out its obligations under this Agreement, and to cause such directors, officers, employees, consultants, and legal advisors to comply with these confidentiality obligations. Each party agrees to notify the other promptly of any unauthorized use or disclosure of the other party's Confidential Information and to assist the other in remedying such unauthorized use or disclosure.

#### **4.8 Cloud Partner**

If the Client purchases any cloud services from PCI, PCI will be listed as the Digital Partner of Record and/or Partner Admin Link (PAL) for such services. With this designation, PCI is able to support and troubleshoot any issues with your public cloud provider's services, optimize your service plan to increase value from your cloud subscriptions, access regular updates on the latest features, changes, and licensing options from your public cloud provider, communicate directly with your public cloud provider on your behalf, manage your cloud licenses to ensure compliance and cost-effectiveness, advocate with your public cloud provider to meet your requirements, and assure that your data remains secure unless explicit permission is given for access.

#### **4.9 Active Directory Synchronization**

The Client must enable Active Directory synchronization with PCI to receive user-based services. Client shall take all necessary actions to ensure that Active Directory synchronization is established and maintained throughout the term of this agreement. The Client acknowledges that failure to enable Active Directory synchronization may result in the Client not receiving the full benefits of the Services.

#### **4.10 Communication**

All official notices and communications should be sent to the appropriate party at the specified addresses. For PCI: Personal Computers, Inc., 1 W. Seneca Street, Suite 3000, Buffalo, New York 14203, Attention: Legal Department.

#### **4.11 Termination With Cause**

If either party fails to perform any of the obligations under this agreement, the other party may send a written notice indicating the breach. The notified party has 30 days to remedy the breach. If the breach is not remedied within such 30-day period, the non-breaching party may terminate this Agreement immediately upon written notice to the breaching party.

#### **4.12 Intellectual Property**

Intellectual Property includes concepts, inventions, improvements, works of authorship, trademarks, service marks, trade names, trade dress, publicity rights, names, likenesses, signatures, trade secrets, know-how, ideas, and any other subject matter protected under any legal framework. PCI hereby transfers, assigns, and conveys to the Client all worldwide right, title, and interest in and to all Intellectual Property created, made, conceived, reduced to practice, or authored by PCI, either solely or jointly with others, during the performance of this Agreement with the use of information, materials, or facilities of the Client received by PCI during the term of this Agreement.

#### **4.13 SSL Certificate Renewal**

When SSL certificate procurement and management are designated as PCI's responsibilities under the terms of an associated SOW, PCI will oversee the renewal of these certificates to ensure uninterrupted service. To streamline the renewal process, the Client hereby grants PCI preapproval to incur costs for renewing SSL certificates as necessary, provided such costs are within a reasonable market value for the services rendered.

The Client acknowledges that this preapproval negates the need for additional quotes or express approval for each renewal, provided that the costs are within a range typical for market rates of SSL certificates at the time of renewal. In the event that market conditions result in renewal costs that substantially exceed standard market rates, PCI will obtain express approval from the Client before proceeding.

PCI will include the costs of SSL certificate renewals in the Client's invoice for the billing cycle during which the renewal occurs. This approach is intended to minimize administrative overhead and ensure that certificate renewals are managed efficiently and without service interruption.

#### **4.14 Termination**

Upon termination or expiration of this Agreement, all documentation, procedures, policy manuals, and data created during its performance shall become the property of the Client. PCI commits to providing services at the fees stated in this Agreement for an additional sixty (60) days post-termination if necessary, enabling the Client to secure alternative services. If the Client requests assistance in transitioning services to another provider, PCI agrees to provide such support, contingent upon the Client agreeing to and making an upfront payment for the estimated costs of the offboarding services as determined by PCI. This payment must be completed prior to the commencement of any transition activities. A detailed payment schedule and terms will be provided and must be agreed upon by both parties to ensure clear expectations and financial accountability. The Client must return any equipment owned by PCI within 10 business days after the service concludes and bear costs for any unresolved third-party obligations, including but not limited to, licensing, cellular contracts, service contracts, and related fees.

### **5. SMS COMMUNICATION CONSENT**

In the context of the business-to-business (B2B) services provided under this Agreement, PCI acknowledges the unique considerations regarding the use of individual mobile numbers belonging to employees or representatives of Client. This clause outlines the framework for obtaining consent to communicate via SMS (Short Message Service), detailing explicit and implied consent mechanisms, and specifies the process for opting out of such communications.

#### **5.1 Implied Consent for Existing Business Relationships**

For Clients with whom we have an established business relationship, we imply consent to use the mobile numbers previously provided to us by your employees or representatives for sending SMS messages directly related to the execution and delivery of our services. This includes updates, notifications, and other relevant service-related communications.

#### **5.2 Explicit Consent for New Clients and Additional Purposes**

We require explicit consent to send SMS messages for marketing purposes or any non-service-related communications to your employees or representatives. Such consent must be obtained directly from the individual(s) whose mobile number(s) will be used for these communications. Consent will be documented and maintained according to industry standards and applicable legal requirements.

#### **5.3 PCI's Opt-Out/Do Not Contact Process**

To respect the preferences of your employees or representatives, we provide a clear and accessible process for opting out of SMS communications. Individuals wishing to opt out must complete a specified form, accessible via a link provided in this Agreement and on our website at <https://www.pciconnected.com/opt-out>. Upon submission of this form, the individual's mobile number will be promptly removed from our SMS communication lists.

## **5.4 Clearance to Use SMS for Service Delivery**

This Agreement clarifies that, by providing mobile numbers of your employees or representatives, you authorize us to use SMS as a legitimate means to deliver our contracted services. This includes transactional messages, service alerts, and other communications essential to the services we provide.

## **5.5 B2B Considerations**

We understand and respect that the mobile numbers provided are associated with individual people representing your business. We commit to using these numbers responsibly, solely for the purposes consented to, and in line with this Agreement's terms. We will also comply with all relevant privacy and telecommunications regulations in our use of SMS communications.

## **5.6 Responsibility to Inform and Obtain Consent**

You agree to inform your employees or representatives whose mobile numbers are provided to us about the contents of this clause and to obtain any necessary consents from them for the use of their mobile numbers for receiving SMS messages as described herein.

# **6. WARRANTIES, DISCLAIMERS, AND LIABILITY**

## **6.1 Warranties and Covenants**

Each party represents and warrants to the other that it has the legal power to enter and perform under this Agreement without violating the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

## **6.2 Indemnification**

Each party shall defend, indemnify and hold harmless the other party and its affiliates and their officers, directors, employees, and managers from and against all actions, suits, claims, losses, liabilities, and damages, costs, expenses, including, but not limited to, reasonable attorneys' fees, arising from or relating to any negligent act, omission or intentional misconduct of the indemnifying party.

## **6.3 Limitation of Liability**

Neither party shall be liable for any indirect, special, incidental, exemplary, punitive, treble, or consequential damages. Each party's total, aggregate liability to the other party arising out of or in connection with this Agreement in no event shall exceed the total amount of payments made from the Client to PCI during the initial twelve (12) months of this agreement.

## **6.4 Social Security and Fair Labor Standards**

PCI agrees to observe and perform all duties required under the Social Security Act, the United States Fair Labor Standards Act, and all other applicable local, state, and federal laws, ordinances, and regulations.

## **6.5 Equal Employment Opportunity**

PCI complies with the Rules and Regulations of the Office of Federal Contracts Compliance regarding Equal Employment Opportunity.

## **6.6 Warranty of Authority**

PCI warrants that it is authorized to do business in the State of New York. PCI further warrants that neither it nor its employees are subject to any non-competition agreement that would be applicable to this Agreement and/or services to be performed hereunder.

## **6.7 Non-Waiver**

Failure of either party to act or exercise its rights under this Agreement upon the breach of any other items, hereof, by the other party shall not be construed as a waiver of such a breach or prevent said party from thereafter enforcing strict compliance with any or all their terms thereof.

## **6.8 Successors and Assignment**

This Agreement shall benefit and be binding upon the parties hereto and their respective successors. The rights and obligations under this agreement may not be assigned or transferred to another party without the prior written consent of both parties.

## **6.9 Governing Law and Legal Actions**

The laws of the State of New York shall govern this Agreement, without giving effect to conflict of law rules. The venue of any action under this Agreement shall be in Erie County.

## **7. COUNTERPARTS**

This Agreement and any SOWs that reference it are agreed to digitally by the Parties. The parties acknowledge and agree that digital acceptance of this Agreement and any associated SOWs, referencing the current version of the Terms and Conditions available on the PCI website at the time of acceptance, is legally binding. Such digital acceptance shall be treated with the same legal validity and enforceability as a manually executed signature or traditional paper document.

## **8. HEADINGS AND DRAFTINGS**

The headings in this Agreement shall not be used to construe or interpret the Agreement.

## **9. SEVERABILITY**

If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

## **10. ENTIRE AGREEMENT**

It is understood that this Agreement represents the entire agreement between PCI and the Client with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, between the parties. Any waiver, amendment, or modification of any provision of this Agreement or any right, power, or remedy hereunder shall not be effective unless in writing and signed by both parties. For the purposes of this Agreement, 'in writing' includes digital communications and agreements made through electronic means, and 'signed' includes any form of digital or electronic signature that is legally recognized and enforceable.