**TERMS OF SERVICE

Patch My PC, LLC**
Last Updated: January 18, 2021

These Terms of Service ("Terms") cover every user’s and organization’s (collectively, “Customer”) use and access to the products, services, software, and websites (collectively, "Services") provided by Patch My PC, LLC (“PMP” or “Patch My PC”). If you use PMP’s Software Services as the employee or affiliate of an organization, you are accepting these Terms on behalf of that organization; you represent that you have authority to bind the organization.

***The statements set forth under the "Simply put" headings are provided as a courtesy for your convenience and are neither legally binding nor designed to modify these Terms.***

***Recitals Simply put:*** Your use of Patch My PC's website or services means that you agree to our Terms of Service on behalf of you and the organization you are working for.

**Section 1: Grant of License**

**1.1 Software Subscription.** If Customer purchases a Software Subscription, then Patch My PC will grant the Customer unlimited access to its Software. PMP shall make all software, installs, and updates available via digital download; Customer may retain backup copies when applicable. However, this license does not grant Customer the right to sublicense or to use the object code of the Software.

**1.2 Trial License.** If Patch My PC provides Customer with Software under a Trial Subscription License, then PMP grants Customer a non-exclusive, limited, royalty-free, nontransferable license. Trial Subscription License is not for production use. The Trial Subscription License automatically terminates on the end date of the pre-determined evaluation period. Patch My PC reserves to right to immediately revoke the Trial Subscription License upon Notice to Customer.

**1.3 Not For Resale License.** If Patch My PC provides Customer with Software under a Not for Resale License, then Patch My PC grants Customer a non-exclusive, limited, royalty-free, nontransferable evaluation license. Customer shall not use the Not for Resale License for production or use with its customer. The Not for Resale License automatically terminates on the end date of the pre-determined evaluation period. Patch My PC reserves to right to immediately revoke the Not for Resale License upon Notice to Customer.

**1.4 Automated Software Updates.** The Software will automatically use the internet to search and apply updates for the Software; updates will install automatically. Customer may disable self-updates within the Software.

***§ 1, Simply put:*** We license our software on a subscription basis. We also have certain conditions for free trials.

**Section 2: Restrictions**

**2.1 General License Restrictions.** Customer may not use, copy, or install, or deploy the Software to more Devices than licensed device count, except as provided in Section 2.2.

**2.2 License Increase Exception.** Patch My PC allows Customers who purchase a Software Subscription to use 25% more licenses than the Customer purchased to allow for normal growth within a subscription term. Customer shall Notify Patch My PC if it needs to exceed 125% of their licensed device count to determine if a modification to the license count and payment is required for the current subscription.

**2.3 Reverse Engineering.** Customer may not decompile, "reverse-engineer", disassemble, or otherwise attempt to derive the source code for any of Patch My PC’s Software.

**2.4 Non-Transferable.** Customer shall not transfer, assign or sublicense their license to any other person or organization. Any attempted transfer, assignment, sublicense or use shall void their original license.

**§ 2 - Simply put: You aren’t permitted to do certain things when using our software.**

**Section 3: Ownership and Rights Reserved**

**3.1 Software Licensed, not Sold.** The Software is licensed, not sold. These Terms do not grant the Customer any rights, title, or interest in or to Software, documentation, trademarks, service marks, or trade secrets, or corresponding intellectual property (including without limitation any images, video, and text incorporated into the Software, the accompanying printed materials, and any copies of the Software) of Patch My PC. All rights, title, and interest in and to the Software, documentation, and corresponding intellectual property shall remain the property of Patch My PC.

**3.2 Ownership.** Patch My PC reserves all rights not expressly granted in this Terms of Service. All title, rights, and interest in and to content, which may be accessed through the Software, is the property of the respective owner and may be protected by applicable laws and treaties, including intellectual property laws. These Terms do not grant Customer any rights to such content, including the use of the same.

**3.3 Open Source Software.** The Software contains third party software using open-source licenses that may supersede these Terms to the extent required by that open source license. All open-source software is provided “AS IS” without any warranty. PMP currently uses, but is not limited to the following open-source software sources.

**(a) Json.NET Notice and Conditions.** The Software may include or utilize certain software which is owned by Json.NET (the “Json.NET Code”), the source code of which is available under the MIT License. PMP may make modifications to this Json.NET Code. The license for the Json.NET Code is included here as Exhibit A. Those terms are fully applicable to the use of those portions of the Software that consist of or are derived from the Json.NET Code.

**(b) Prism Notice and Conditions.** The Software may include or utilize certain software which is owned by Prism (the “Prism Code”), the source code of which is available under the MIT License. PMP may make modifications to this Prism Code. The license for the Prism Code is included here as Exhibit A. Those terms are fully applicable to the use of those portions of the Software that consist of or are derived from the Prism Code.

**(c) System.ValueTuple Notice and Conditions.** The Software may include or utilize certain software which is owned by System.ValueTuple (the “System.ValueTuple Code”), the source code of which is available under the MIT License. PMP may make modifications to this System.ValueTuple Code. The license for the System.ValueTuple Code is included here as Exhibit A. Those terms are fully applicable to the use of those portions of the Software that consist of or are derived from the System.ValueTuple Code.

**3.4 Customer Ideas.** Patch My PC shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to implement in the Software any idea, feature requests, recommendation or other feedback provided by the Customer or any third party, including affiliates, relating to the operation, features, design, or functionality of the Software.

**3.5 Access to the Software.** To use the Software, Customer must provide Devices and operating systems necessary to utilize the Software. Customer is responsible for ensuring that its Device and software do not disturb or interfere with the operation of the Software. If any update requires changes in Customer’s Device or software, the Customer must implement these changes at their own expense. Every update shall be subject to these Terms.

**3.6 Software Delivery.** Patch My PC will deliver the initial access to the subscription through an email that will allow the use of the Software. The Software will be considered accepted by Customer upon delivery of email.

***§ 3 - Simply put:*** We own our software and we only provide customers with a license.

**Section 4: Confidentiality**

**4.1 Confidential Information.** Both PMP and Customer shall keep confidential, and not disclose to any third party any Confidential Information which may be provided in connection with these Terms.

**4.2 Compelled Disclosure.** Both the PMP and Customer may disclose Confidential Information pursuant to applicable court order or other legal process if they are compelled by law to do so. The disclosing party must provide the other party with Notice before such mandatory disclosure to the extent legally permitted.

**§ 4: Simply put:** This is how we keep your confidential information safe.

**Section 5: Fees, Payments, and Refunds**

**5.1 Software Subscription Fees.** Customer shall pay all charges specified within every invoice. All charges are quoted and payable in United States dollars unless designated otherwise on the invoice. All payment obligations are non-cancelable, except as provided in Section 5.5.

**5.2 Invoicing and Payment.** Customer is responsible for providing complete and correct billing information. Invoices are due net 30 days unless stated otherwise in the invoice. Any terms and conditions on any purchase order are not a part of these Terms, nor are they binding on Patch My PC.

**5.3 Overdue Payments and Software Suspension.** Customer shall pay a late fee equal to an 18% APR for any balance that is over 30 days overdue. Patch My PC, may, in its sole discretion, suspend the Customer’s access to the Software for any Overdue Invoice without limiting its other rights and remedies. PMP shall unsuspend Customer’s access to Software upon full payment of Overdue Invoice.

**5.4 Taxes.** Patch My PC will collect sales tax , where applicable, starting August 1, 2020.

**5.5 Refund.** All refund requests must be made within 180 days of purchase. Patch My PC wants you to be 100% satisfied with our Services. If you are less than satisfied or believe there has been an error in billing, please contact our Customer Service Department by emailing PMP or call us at (866) 343-3083. PMP will offer Customer’s reseller a full refund if Customer requests a refund within the 180 day window to try and facilitate the refund process. Provided however that PMP cannot ensure that a reseller will comply with this section.

**5.6 Requesting Refund.** When contacting us, please include all details relating to the Software you have purchased so that we can ensure you are completely satisfied with your experience. PMP, at its discretion, will seek to solve the issue, provide a refund, or offer a credit that can be used for future Software.

**5.7 Third-Party Refund Exception.** PMP does not offer refunds on payments submitted to other third parties with a role in processing Customer’s order, such as a reseller.

**§ 5 - Simply put:** These are the terms we use for payments and these are some reasons we can suspend subscriptions.

**Section 6: Service Level Agreement**

**6.1 Purpose.** Patch My PC will use commercially reasonable efforts to make its File Hosting Service available. This Section sets minimum levels of service for its File Hosting Service.

**6.2 Monthly Uptime Targets.** Customer may view and export past and current uptime reports at: <https://uptime.com/s/patchmypc>. Monthly uptime targets are calculated based on calendar months.

Monthly uptime targets are as follows:

* Less than 99.0% but greater than or equal to 95.0% = 10% Service Credit
* Less than 95.0% but greater than or equal to 90.0% = 25% Service Credit
* Less than 90.0% = 50% Service Credit

**6.3 Remedy.** The Service Credit set forth in this Section are Customer’s sole remedy for performance below the set targets. Customer must submit a claim within the following calendar month where PMP failed to meet a monthly uptime target.

**6.4 Credit Claim Process**. Customer must submit a claim to PMP within one calendar month of the failure to meet a monthly uptime target. Claims must be submitted to PMP’s Contact Us form: <https://patchmypc.com/contact-us>. Customer’s claim must let PMP know that 1) it is inquiring about a “SLA Credit Request,” 2) identify the billing cycle where PMP failed to meet its monthly uptime target, and 3) provide evidence that PMP failed to meet the monthly uptime target (e.g., a PDF of the relevant uptime report).

**6.5 Customer Credits.** PMP shall issue any Service Credit within 60 days of Customer’s submission via the Contact Us Form. Service Credits cannot be turned into cash back; Service Credits can only be used for future services with PMP.

**6.6 Exclusions.** PMP shall not issue Service Credits for any unavailability, suspension, or termination of its File Hosting Service due to either 1) factors outside PMP’s reasonable control, or 2) that result from any actions or inactions of Customer, or 3) that result from Customer’s equipment or software malfunction. Claims that are not submitted by Customer according to Section 6.4 will disqualify Customer from receiving a Service Credit.

**§ 6 - Simply put:** Service Credits are your sole remedy for PMP’s failure to meet a monthly uptime target and you must notify PMP if it failed to meet a monthly uptime target.

**Section 7: Limitation of Liability and Indemnification**

**7.1 Limitation of Liability.** In no event will Patch My PC be held liable to Customer or any third party for any special, incidental, indirect, punitive or exemplary or consequential damages, or damages for loss of business, loss of profits, business interruption, or loss of business information arising out of the use or inability to use the program or for any claim by any other party even if Patch My PC has been advised of the possibility of such damages. Patch My PC's entire liability with respect to its obligations under these Terms or otherwise with respect to the Software shall not exceed the amount paid by the Customers to PMP.

**7.2 Indemnification.** Customer and Patch My PC agree to indemnify, defend, and hold harmless the other party, its officers, directors, employees, agents, and third parties, for any losses, costs, liabilities, and expenses (including reasonable attorney's fees) relating to or arising out of Customer’s inability to use the Software, the other party’s violation of these Terms or the rights of a third party, or the other party’s violation of any applicable laws, rules, or regulations. The indemnified party reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by the other party, in which event the other party will fully cooperate in asserting any available defenses.

**§ 7 - Simply put:** We cannot be held liable if our software or services cause issues within your environment.

**Section 8: Termination**

**8.1 Mutual Termination.** These Terms are effective until terminated by either party. Either party may terminate these terms at any time by providing Notice to the other party.

**8.2. Customer’s Obligation Upon Termination.** Upon termination, Customer shall destroy all copies of Software and give Notice to PMP certifying that all copies have been destroyed.

**8.3 Patch My PC Termination.** Patch My PC may terminate these Terms for any reason, including but not limited to Customer’s breach of these Terms.

**8.4 Payment after Termination.** Termination of these Terms for any reason shall not affect any payment obligations due under these Terms.

**8.5 Surviving Provisions.** All provisions relating to confidentiality, proprietary rights, non-disclosure, and limitation of liability shall survive any termination of these Terms.

**§ 8 - Simply put:** We have the right to cancel your subscription if you break the terms of service.

**Section 9: General**

**9.1 Warranty Disclaimer.** Patch My PC represents that the Software will operate as it is advertised. Patch My PC does not represent that its Software is or warrant that future versions of its Software will be error-free. The Software is provided "AS IS" without warranty of any kind, including the warranties of merchantability and fitness for a particular purpose and without warranty as to the performance or results you may obtain by using the Software.

Customers are responsible for determining the appropriate use of the Software and assume all of the risks associated with the use of it, including but not limited to the risks of program errors, damage to or loss of data, programs or equipment, and unavailability or interruption of operations.

**9.2 Changes to Terms.** Patch My PC reserves the right to change the Terms. The most current version of these Terms will supersede all previous versions. Patch My PC encourages you to periodically review the Terms to stay informed of our updates.

**9.3 Governing Law.**  These Terms will be construed and enforced in accordance with, and governed by, the State of Colorado laws without giving effect to principles of conflicts of law. Customer and Patch My PC unconditionally waive all rights to a trial by jury for any dispute arising in connection with these Terms.

**9.4 Customer Identification.**  Customer permits Patch My PC to use Customer’s logo(s) for the purpose of customer identification in sales presentations and/or marketing materials. However, Customer may revoke this permission by giving Notice to Patch My PC.

**9.5 Contact Us.** Patch My PC welcomes your questions or comments regarding the Terms:

Attn: Legal Department

Patch My PC, LLC

PO Box 1436

Castle Rock, CO 80104

**§ 9 - Simply put:** Please contact us if you have any questions about these terms of service.

**Section 10: Definitions**

**Confidential Information:** Any non-public information disclosed by one party to this contract to the other party, either directly or indirectly, (including, without limitation, pricing, trade secrets, product roadmaps, services, customers, Software, inventions, engineering, hardware information, marketing or financial information), which is designated as "Confidential," "Proprietary" or an alike designation, or should reasonably be understood to be confidential or proprietary information given the nature of the information and the circumstances of disclosure.

**Customer:** Every person and company that purchases a Software Subscription, is granted a Not for Resale License or a Trial License, uses any of Patch My PC’s Software, or agrees to these Terms.

**Devices:** Every device owned by Customer that can be updated by Patch My PC’s Software.

**File Hosting Service:** PMP’s update catalog of third party software.

**Not for Resale License:** A license provided to Customer for evaluation in a lab environment.

**Notice:** Formal, written notice, can be provided via email to legal@patchmypc.com or by certified mail to this address: Attn: Legal Department, Patch My PC, LLC, PO Box 1436, Castle Rock, CO 80104. PMP may provide formal written notice to Customer at the address or email address provided on the Customer’s invoices.

**Overdue Invoice:**  Anything payment that is more than 30 days overdue.

**Service Credit**: A dollar credit, calculated as set forth above, that PMP may credit back to an eligible Customer account.

**Software:** Any Patch My PC software and all Patch My PC cloud-based services.

**Software Subscription:** Any software and all cloud-based services provided by Patch My PC, LLC on an annual licensing model, allowing the Customer to pay a per-device fee. The Customer will pay the initial subscription fee upfront and is entitled to use the Software during the subscription term.

**Taxes:** All taxes, levies, duties or similar governmental assessments in any type, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction.

**Trial Subscription License:** A license provided to Customer for evaluation prior to purchase or implementation.

**§ 10 - Simply put:** Patch My PC defines capitalized words found in the terms of service in this section.

IN WITNESS WHEREOF, the parties hereto have caused these Terms to be executed as of Date

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| --- | --- |
| **cOMPANY NAME**  | **PATCH MY PC, LLC**  |
| By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   | By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    |

**EXHIBIT A**

1. **Json.NET MIT NOTIFICATION.** Copyright (c) 2007 James Newton-King. Permission is hereby granted, free of charge, to any person obtaining a copy of this software and associated documentation files (the "Software"), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the following conditions:
	1. The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.
	2. THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.
2. **Prism Notification**. The MIT License (MIT). Copyright (c) .NET Foundation. All rights reserved. Permission is hereby granted, free of charge, to any person obtaining a copy of this software and associated documentation files (the "Software"), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the following conditions:
	1. The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.
	2. THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.
3. **System.ValueTuple Notification.** The MIT License (MIT). Copyright (c) .NET Foundation and Contributors. All rights reserved. Permission is hereby granted, free of charge, to any person obtaining a copy of this software and associated documentation files (the "Software"), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the following conditions:
	1. The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.
	2. THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.

**EXHIBIT B – MSP LICENSE ADDENDUM**

This Managed Service Provider License Addendum (“Addendum”), effective as of the execution date below (the “Effective Date”), is entered into between Patch My PC, LLC, a Colorado Limited Liability Company with its mailing address at PO Box 1436, Castle Rock, CO 80104 (“PMP”), and the undersigned party (the “MSP”).

The parties agree to this Addendum to enter into a beneficial relationship where PMP provides licenses to the MSP which will manage licenses and support services for its customers (“MSP Customers”).

1. **Minimum Orders.** The MSP shall maintain 500 devices per month and has one year from the effective date of this agreement to reach its 500 device minimum.
2. **MSP as End User.** MSP shall not have the ability to resell its licenses and agree to not market PMP’s product as their own. MSPs agree that they are the End Users of PMP’s software are subject to PMP’s Terms of Service; provided, however, that this Addendum supersedes any conflict with the Terms of Service. The MSP must manage its license count and provide support for MSP Customers. MSPs agree to not share the license information with its customers.
3. **Additional Services.** MSP shall be the point of contact for the MSP Customer technical support issues and provide best effort support.

	1. MSP shall have an onboarding call with a Patch My PC engineer and may be required to attend additional training of no more than three hours annually.
	2. MSP shall provide support for MSP Customers including, but not limited to product installation, setup, compliance reporting, maintenance , and providing support and education as necessary for its customers. For escalations, the MSP will contact PMP for support.
	3. MSP shall subscribe to PMP’s newsletter for information regarding updates and feature additions.
4. **Device Reporting and Subscription Term.** The MSP shall receive a report of the number of devices managed during the previous month by the last business day of every month. The MSP agrees to contact PMP if the reported device count is incorrect by the tenth day of the month. PMP shall invoice the MSP for the previous month’s subscription based on the MSP’s device count previously described. The MSPs may terminate its subscription by notifying PMP in the first 5 business days of the month. PMP will send the invoice by the fifteenth day of the month which is due NET 30.

The Parties, by signing below, agree to be bound by the terms of this Addendum.

**PATCH MY PC, LLC**

Name of Representative: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**COMPANY NAME:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Representative: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Effective date of Agreement: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_