**TERMS OF SERVICE

Patch My PC, LLC**
Last Updated: July 27, 2023

These Terms of Service ("Terms") cover your organization’s (“Customer”) use of and access to the software and services provided by Patch My PC, LLC (“Patch My PC”). You are accepting these Terms on behalf of your organization, and 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 software means that you agree to these Terms of Service on behalf of your organization.

**Section 1: Grant of License**

* 1. **Software Subscription.**
1. **Software License.** Patch My PC grants Customer and its wholly or majority-owned affiliates a non-exclusive, limited license to use its Software for the subscription term. Patch My PC will make all software, installs, and updates available via digital download; Customer may retain backup copies when applicable. However, Customer may not sublicense or use the source code of the Software.
2. **Trial Period.** Patch My PC may provide Customer access to the Software for an trial period before purchase. A trial license is a non-exclusive, limited, nontransferable license to use the Software for the pre-determined trial period. Patch My PC may immediately revoke this trial license upon Notice to Customer.
3. **Not For Resale License.** Patch My PC may provide access to the Software under a Not for Resale License which Customer may not use for production or use with its own customers. A Not for Resale License is a non-exclusive, limited, nontransferable license to use its Software for the pre-determined trial period in a lab environment. Patch My PC reserves the right to immediately revoke the Not for Resale License upon Notice to Customer.

**1.2 Automated Software Updates.** The Software will automatically update itself. These updates will install automatically, but Customer may disable self-updates within the Software.

***§ 1, Simply put:*** We offer our software on a subscription basis and our free trials are full featured, but for a limited time period.

**Section 2: Restrictions**

**2.1 General License Restrictions.** Customer may not use the Software for more Devices than licensed device count purchased, except as provided in Section 2.2.

**2.2 License Increase Exception.** Customers who purchase a Software Subscription may use the Software for 10% more Devices than originally purchased to allow for normal growth within the subscription term. Customer agrees to notify Patch My PC if it needs to exceed 110% of its licensed device count to determine if a modification to the license count and payment is required for the current subscription term.

**2.3 Reverse Engineering.** Customer will not reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, underlying ideas, underlying user interface techniques, or algorithms of the Software by any means whatsoever, whether directly or indirectly. Customer will use its best efforts to prevent its employees and contractors and any third parties from attempting to do any of the foregoing. Patch My PC may immediately terminate Customer’s license for any failure to comply with this section.

**2.4 Non-Transferable.** Customer will not transfer, assign, or sublicense their license to any other person or organization. Any attempted transfer, assignment, sublicense, or use will void their original license. However, all rights extended to Customer under these Terms will extend and inure to the benefit of Customer’s affiliates, as permitted by law.

**§ 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 and Patch My PC reserves all rights not expressly granted in these Terms. All intellectual property rights such as, but not limited to copyrights, database rights, patents, trademarks, trade names, logos, domain names, and derivative rights relating to the Software, including new developments, and underlying software, and any services (hereafter also the “Intellectual Property Rights”) are and will remain the exclusive property of Patch My PC.

Notwithstanding any language in any Customer-issued purchase order and terms and conditions, all right, title, and interest in and to the Software, documentation, and corresponding intellectual property remains the property of Patch My PC.

**3.2 Ownership of Third-Party Content.** All rights, title, and interest in and to third-party patches which may be accessed through the Software is the property of the respective owners and are protected by applicable laws and treaties, including intellectual property laws. These Terms do not grant Customer any rights to such content.

**3.3 Open-Source Software.** The Software uses third party software based on 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. Patch My PC 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. Patch My PC 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. Patch My PC 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. Patch My PC 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.

1. **Polly Notice and Conditions.** This software may include or utilize software that was copyrighted in 2015 by App vNext.

**3.4 Customer Ideas.** Patch My PC will have a royalty-free, worldwide, transferable, sub-licensable, 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, operating systems, and licenses necessary to utilize the Software including the licenses for applications and software downloaded or installed through the Software. Customer will use commercially reasonable steps to ensure that its Device and software do not disturb or interfere with the operation of the Software. If any Software update requires changes in Customer’s Device or software, the Customer must implement these changes at their own expense.

**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 Patch My PC and Customer will 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 Patch My PC 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 will promptly provide the other party 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 will pay all undisputed 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 otherwise 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 from receipt 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 will pay a late fee equal to an 6% APR for any balance that is over 30 days overdue (“Overdue Invoice”). Patch My PC, may, in its sole discretion, suspend the Customer’s access to the Software for any balance that is more than 90 days overdue without limiting its other rights and remedies. Patch My PC will unsuspend Customer’s access to Software upon full payment of Overdue Invoice and late fees.

**5.4 Taxes.** Patch My PC will collect and remit sales tax where applicable in the United States.

**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 Patch My PC or calling us at (866) 343-3083. Patch My PC 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 Patch My PC 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. Patch My PC, 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 Reseller Refunds.** Patch My PC cannot guarantee refunds on payments submitted to other third parties with a role in processing Customer’s order, such as a reseller. However, Patch My PC will offer the refund as outlined in Section 5.5.

**§ 5 - Simply put:** Our fees, payments, and refunds terms are firm but fair, and these are some of the 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 Patch My PC failed to meet a monthly uptime target.

**6.4 Credit Claim Process**. Customer must submit a claim to Patch My PC within one calendar month of the failure to meet a monthly uptime target. Claim emails must be submitted to sales@patchmypc.com. Customer’s claim must let Patch My PC know that 1) it is inquiring about a “SLA Credit Request,” 2) identify the billing cycle where Patch My PC failed to meet its monthly uptime target, and 3) provide evidence that Patch My PC failed to meet the monthly uptime target (e.g., a PDF of the relevant uptime report).

**6.5 Customer Credits.** Patch My PC will issue any Service Credit within 60 days of Customer’s submission. Service Credits cannot be turned into cash back, they can only be used to extend the subscription term with Patch My PC.

**6.6 Exclusions.** Patch My PC will not issue Service Credits for any unavailability, suspension, or termination of its File Hosting Service due to either 1) factors outside Patch My PC’s reasonable control, 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 in accordance with Section 6.4 may disqualify Customer from receiving a Service Credit.

**§ 6 - Simply put:** Service Credits are your sole remedy for a failure to meet a monthly uptime target and you must promptly notify Patch My PC 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, 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. Except for its indemnification obligations below, Patch My PC's entire liability with respect to its obligations under these Terms or otherwise with respect to the Software will not exceed the amount paid by the Customer to Patch My PC.

**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 from their violation of any applicable laws, rules, or regulations. Further, Patch My PC agrees to indemnify Customer for claims brought against Customer alleging that the Software violates or infringes upon the intellectual property rights of a third party. 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 Termination for Convenience.** Either party may terminate these Terms at any time without cause by providing sixty days prior written Notice to the other party. If Patch My PC terminates pursuant to this section it will, within thirty business days, repay a pro rata refund for unused fees which were prepaid by Customer. No refund is due if Customer terminates pursuant to this section, except as provided in Section 5.5.

**8.2 Termination for Cause.** Either party may terminate these Terms due to the other party’s material breach of these Terms by providing notice and a 30-business day window to cure the material breach. If Patch My PC does not cure its material breach, then Customer may terminate these Terms and Patch My PC will within thirty business days repay a pro rata refund for unused fees which were prepaid by Customer. If Customer does not cure its material breach, then Patch My PC may suspend its license, terminate these Terms, and pursue any other remedy at law.

**8.3 Customer’s Obligation Upon Termination.** Upon termination, Customer will destroy all copies of Software, and upon request by Patch my PC, certify that all copies have been destroyed, except as retained by Customer’s disaster recovery system.

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

**§ 8 - Simply put:** We have the right to cancel your subscription if you materially violate these Terms without curing the breach.

**Section 9: General**

**9.1 Warranty.** Patch My PC represents that the Software will operate as it is advertised and that it uses commercially reasonable efforts to develop the Software. Patch My PC warrants that it has conducted penetration testing of its environment and will conduct annual penetration testing. However, it does not represent or warrant that its Software is error-free. Except as provided herein, the Software is provided "AS IS" without any 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 is 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. Any installation or download of third-party updates through the Software will be the sole responsibility of the Customer and it will be solely responsible for complying with the terms and conditions governing such applications or software.

**9.2 Disclaimer of Recommendations.** Patch My PC does not endorse or sponsor any commercial product, service, or activity of any third-party vendor. Customer agrees that nothing in these Terms will be construed to imply that Patch My PC is in any way liable for the products or services of a third-party vendor regardless of whether such product or service employs Patch My PC-developed technology, or is recommended by Patch My PC employees.

**9.3 Changes to Terms.** Patch My PC reserves the right to change these 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.

**9.4 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.

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

**9.6 Supersede Clause.** These Terms supersede all previous oral and written agreements including any terms and conditions included Customer’s purchase order and it constitutes the complete and entire agreement of the parties.

**§ 9 - Simply put:** If you have any questions about these Terms of Service, please send your questions to: legal@patchmypc.com.

**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 the 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:** Patch My PC’s update catalog of third-party software.

**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. Patch My PC may provide formal written notice to Customer at the address or email address provided on the Customer’s invoices.

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

**Service Credit**: A dollar credit, calculated as set forth above, that Patch My PC 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 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 specified in the Customer’s quote for the subscription term.

**§ 10 - Simply put:** Capitalized words in this section are defined and found throughout our Terms of Service.

|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |

**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 will 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 WILL 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 will 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 WILL 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 will 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 WILL 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.
4. **Polly BSD-3-Clause License.**  Copyright (c) 2015-2023, App vNext
	1. Redistribution and use in source and binary forms, with or without modification, are permitted provided that the following conditions are met:
		1. Redistributions of source code must retain the above copyright notice, this list of conditions and the following disclaimer.
		2. Redistributions in binary form must reproduce the above copyright notice, this list of conditions and the following disclaimer in the documentation and/or other materials provided with the distribution.
		3. Neither the name of the copyright holder nor the names of its contributors may be used to endorse or promote products derived from this software without specific prior written permission.
	2. THIS SOFTWARE IS PROVIDED BY THE COPYRIGHT HOLDERS AND CONTRIBUTORS “AS IS” AND ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. IN NO EVENT WILL THE COPYRIGHT HOLDER OR CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.