MyGet Terms of Service

IMPORTANT! READ CAREFULLY:
This License Agreement contains the terms and conditions that govern your access to and use of the Service and Software (as defined below) and is an agreement between MyGet and you or the legal entity you represent ("Subscriber" as defined below). You represent to MyGet that you are lawfully able to enter into contracts. If you are entering into this Agreement for an entity, such as the company you work for, you represent to MyGet that you have legal authority to bind that entity. Please see section "Definition" for definitions of certain capitalized terms used in this Agreement.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU CANNOT USE OUR SERVICE AND SOFTWARE.

1. Definitions

Any reference in this agreement to "day" will be a calendar day.

"Documentation" means the online Documentation for the Service accessible at MyGet Site, as updated from time to time.

"MyGet" means MyGet bvba (TechTomato), having its principal place of business at Biartlei 107, 2950 Kapellen, Belgium, Commercial Register Nr. 0501.515.635

"MyGet Site" means web sites operated by MyGet, in particular, but not limited to, www.myget.org and docs.myget.org.

"Service" means access to the Software hosted by MyGet on Hosting System and provided to Subscriber by MyGet via Internet.

"Subscription Plan" means a set of certain parameters of the Service published on MyGet Site and specifying the extent of the Service available to Subscriber, including, but not limited to, the number of Users and Subscriber's Data storage limits.

"Software" means the software programs and computer code, including downloadable parts of software and computer code, provided by MyGet in binary form.

"Subscriber" means individual, the company or other legal entity specified in the Subscription Confirmation, exercising rights under, and complying with all of the terms of this Agreement. Subscriber includes any entity which directly or indirectly controls, is controlled by, or is under common control with Subscriber. For purposes of this definition, "Control" means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Subscriber's Data" means all electronic data or information submitted by Subscriber via the Service and stored by MyGet on Hosting System.

"Hosting System" means any server, real or virtual, network, internet connection, infrastructure, hardware and applications used by MyGet to host the Software.

"Subscription Confirmation" means an email message sent by MyGet to Subscriber to confirm Subscriber's rights to use Service.

"URL" means a URL to MyGet Site provided by MyGet that allows Subscriber to use the Service.

"Users" means individuals who are authorized by Subscriber to use the Service and who have been granted by Subscriber certain permissions for accessing the Service.

2. Subscribers' Responsibilities

(a) Subscriber agrees to:

(i) register on MyGet Site for using the Service, except for the sole purpose of consuming packages from public repositories. Subscriber shall provide MyGet with a name for Subscriber's identification, a valid e-mail address and other information required by the registration form on MyGet Site to enable MyGet to create Subscriber's subscription;

(ii) obtain internet connection, any equipment necessary for Internet connection, and any third party software necessary for using the Service, including, but not limited to, browser software, that supports a data security protocol compatible with the protocol used by MyGet, and;

(iii) use the Service in compliance with Documentation and the obtained Subscription Plan. If a Subscription Plan obtained by Subscriber does not meet Subscriber's needs, Subscriber may switch to an alternative Subscription Plan as set forth in Section 4 of this Agreement. Any newly obtained Subscription Plan shall replace the previous Subscription Plan.

(b) Subscriber shall not, and will make sure that Users will not:

(i) modify, alter, tamper with, repair, or otherwise create derivative works of the Service or associated Software (except to the extent the Software or any or its parts are provided to Subscriber under a separate license that expressly permits the creation of derivative works);

(ii) reverse engineer, disassemble, or decompile the Service or apply any other process or procedure to derive the source code of the Service or associated Software;

(iii) use the Service in a way intended to avoid incurring fees or exceeding Subscription Plan limits;

(iv) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortuous material, or to store or transmit material in violation of third-party privacy or copyrights, or;

(v) attempt to gain unauthorized access to the Service or to Hosting System.

(c) Subscriber shall be responsible for:

(i) User's compliance with this Agreement. If Subscriber becomes aware of any violation of Subscriber's obligations under this Agreement by a User, Subscriber shall immediately terminate such User's rights to use the Service;

(ii) legality of Subscriber's Data and of the means by which Subscriber acquired Subscriber's Data. If Subscriber becomes aware of any Subscriber's Data violating this Agreement or any third party rights, Subscriber shall immediately remove such Subscriber's Data from the Service;

(iii) compliance with applicable laws and government regulations;

(iv) configuring and using the Service, and;

(v) the confidentiality and use of Subscriber's URL, any Subscriber's Data, passwords and user names by Users;

(vi) Subscriber's Data backup when using Service with a storage account that is not owned or provided by MyGet.

3. MyGet Responsibilities

(a) If Subscriber has subscribed for using Service on MyGet Site, MyGet will provide Subscriber with a URL and other details required for using the Service.

(b) MyGet shall provide the Service to Subscriber during the Service subscription term specified in Subscription Confirmation and to the extent permitted by Subscription Plan obtained by Subscriber.

(c) MyGet will use commercially reasonable efforts to make the Service available to Subscriber 24 hours a day, 7 days a week, except for:

(i) planned downtime;

(ii) Hosting System failures, including Internet software provider failures or delays, or;

(iii) any unavailability caused by circumstances beyond MyGet's reasonable control (force majeure).

4. Subscriptions for using the Service

Subscription for using the Service in accordance with the obtained Subscription Plan shall be the period of one (1) month, three (3) months, six (6) months, or one (1) year as chosen by Subscriber when subscribing for using the Service on MyGet Site. Service subscription term shall commence on the subscription start date and continue for the subscription term specified in the Subscription Confirmation. Except as otherwise specified in the Subscription Confirmation, Service subscription shall automatically prolong for the additional period equal to the current Service subscription term, unless either party gives the other notice of non-renewal at least 30 days before expiration of the current Subscription term.

5. Free Trial

(a) Subject to the terms of this Agreement, Subscriber is granted the right to use the Service for evaluation purposes free of charge for a period of fourteen (14) days from the date of registration on MyGet Site, unless otherwise specified by MyGet in the trial Subscription Confirmation ("Trial Period"). MyGet will make Service available to Subscriber on a trial basis until the earlier of:

(i) expiration of Trial Period, or;

(ii) obtaining any of the available Subscription Plans by Subscriber.

(b) Subscriber's use of the Service during Trial Period shall be limited to the internal evaluation of the Software for the sole purpose of determining whether the Service meets Subscriber's requirements and whether Subscriber desires to continue using the Service.

(c) MYGET DOESN'T WARRANT THAT ANY SUBSCRIBER' DATA ENTERED BY SUBSCRIBER DURING TRIAL PERIOD AND ANY CUSTOMIZATIONS MADE TO THE SERVICE BY OR FOR SUBSCRIBER DURING FREE TRIAL WILL BE STORED OR AVAILABLE UPON EXPIRATION OF TRIAL PERIOD, UNLESS SUBSCRIBER OBTAINS APPROPRIATE SUBSCRIPTION PLAN TO CONTINUE USING THE SERVICE. Subscriber is responsible for taking measures to prevent Subscriber's Data loss or damage upon expiration of Trial Period.

6. Fees and Payments

(a) Fees for using the Service shall be as set forth on MyGet Site. If applicable to the Subscription Plan obtained by Subscriber, MyGet will charge Subscriber for using Service on the basis of monthly or yearly subscriptions for using the Service and pursuant to payment terms published on MyGet Site. All amounts payable to MyGet will be paid by Subscriber without setoff or counterclaim, and

without any deduction or withholding. MyGet may charge Subscriber interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments.

(b) To ensure uninterrupted availability of the Service, Subscriber shall pay the applicable Service subscription fee by the due date set forth by MyGet in purchase documents or any payment reminders. If Subscriber does not pay the applicable subscription fee by the due date, MyGet will have the right to:

(i) switch availability of the Service to Subscriber and Users to "read only" mode upon expiration of two (2) calendar weeks following the payment due date;

(ii) suspend or terminate the Service in accordance with Sections 11 and 12 of this Agreement.

(c) Subscriber will reimburse MyGet any additional costs incurred by MyGet to collect any late payment for using the Service by Subscriber and resulting from Subscriber's breach of this Section 6.

7. Ownership

(a) MyGet retains ownership of all proprietary rights in the Service and the Software associated or displayed with the Service, and in all related trade names, trademarks and service marks.

(b) MyGet doesn't acquire any rights in Subscriber's Data transmitted, collected or created by Subsciber via the Service. Subscriber retains ownership of all proprietary rights in the Subscriber's Data.

(c) Subscriber grants MyGet a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber and its Users in regards to the the Service or the Software.

8. Indemnification

(a) Subscriber will defend, indemnify, and hold harmless MyGet, its affiliates, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning:

(i) Subscriber's or any User's use of the Service (including any activities under Subscriber's URL and use by Subscriber's employees and personnel);

(ii) breach of this Agreement or violation of applicable law by Subscriber or any User;

(iii) Subscriber's Data or the combination of Subscriber's Data with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Subscriber's Data or by use, development, design, production, advertising or marketing of Subscriber's Data; or

(iv) a dispute between Subscriber and any User.

(b) MyGet will promptly notify Subscriber of any claim subject to previous section above, but MyGet's failure to promptly notify Subscriber will only affect Subscriber's obligations to the extent that MyGet's failure prejudices Subscriber's ability to defend the claim. Subscriber may:

(i) use counsel of Subscriber's own choosing (subject to MyGet's written consent) to defend against any claim; and

(ii) settle the claim as Subscriber deem appropriate, provided that Subscriber obtains prior written consent from MyGet before entering into any settlement. MyGet may also assume control of the defense and settlement of the claim at any time.

9. Disclaimer

SERVICE AND THE ASSOCIATED SOFTWARE ARE PROVIDED "AS IS." MYGET MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE AND/OR SOFTWARE, INCLUDING ANY WARRANTY THAT THE SERVICE AND/OR SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING SUBSCRIBER'S DATA, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, MYGET DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

10. Limitiations of Liability

(a) MYGET WILL NOT BE LIABLE TO SUBSCRIBER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, MYGET WILL NOT BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH:

(i) SUBSCRIBER'S INABILITY TO USE THE SERVICE AND/OR SOFTWARE, INCLUDING AS A RESULT OF ANY TERMINATION OR SUSPENSION OF THIS AGREEMENT OR SUBSCRIBER'S USE OF THE SERVICE AND/OR SOFTWARE;

(ii) MYGET DISCONTINUATION OF PROVIDING THE SERVICE AND/OR SOFTWARE;

(iii) ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICE AND/OR SOFTWARE FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS;

(iv) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICE OR SOFTWARE;

(v) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY SUBSCRIBER IN CONNECTION WITH THIS AGREEMENT OR SUBSCRIBER'S USE OF OR ACCESS TO THE SERVICE AND/OR SOFTWARE; OR

(vi) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF SUBSCRIBER'S DATA.

(b) IN ANY CASE, MYGET AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT THAT SUBSCRIBER ACTUALLY PAID TO MYGET UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM.

(c) MyGet will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

11. Temporary Suspension

MyGet may suspend Subscriber's right to use the Service or any portion of the Service immediately upon a notice to Subscriber if MyGet determines that:

(i) Subscriber's or User's use of the Service may adversely impact or poses security or legal risks to MyGet, the Service, Hosting System, or any third party;

(ii) Subscriber does not comply with payment obligations under Section 6 of this Agreement; or

(iii) Subscriber have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Subscriber's assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

12. Term and Termination

(a) This Agreement takes effect when Subscriber creates an account on MyGet Site (the "Effective Date") and shall continue until terminated by either party as provided herein.

(b) Either party may terminate this Agreement for cause:

(i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or

(ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

(c) Upon termination of this Agreement for cause by Subscriber, MyGet shall refund to Subscriber any prepaid fees covering the Service subscription term remaining after the Agreement termination date. Upon any termination for cause by MyGet, Subscriber shall pay any unpaid fees covering the remainder of the Service subscription term after the Agreement termination date.

(d) MyGet may terminate this Agreement immediately upon notice to Subscriber if MyGet decides to cease providing the Service due to any business, economical, legal or regulatory reason.

(e) MyGet agrees to store Subscriber's Data and make it available to Subscriber for export during the 3 months period after the Agreement termination date. Upon expiration of such 3-months period, MyGet will have no obligation to store or make available to Subscriber any of Subscriber's Data and, unless legally prohibited, will have the right to remove Subscriber's Data from Hosting System.

13. Notices

(a) MyGet may provide any notice to Subscriber under this Agreement by posting a notice on the MyGet Site or sending a message to Subscriber's email address. Notices that MyGet provides by posting on the MyGet Site will be effective upon posting and notices MyGet provides by email will be effective when MyGet sends the email message. It is Subscriber's responsibility to keep Subscriber's email address current.

(b) To give MyGet any notice under this Agreement, Subscriber shall contact MyGet by email at sales@myget.org, or by personal delivery, overnight courier or registered or certified mail to MyGet as specified in this Agreement. MyGet may update the address or email for notices to MyGet by posting a notice on MyGet Site. Notices provided by personal delivery will be effective immediately. Notices provided by overnight courier will be effective one business day after they are sent. Notices provided by registered or certified mail will be effective three business days after they are sent. Notices provided by email will be effective next business day after they are sent.

14. Closing Provisions

(a) Subscriber agrees to be identified as a customer of MyGet and that MyGet may refer to Subscriber by name, trade name and trademark, if applicable, and may briefly describe Subscriber's business in MyGet marketing materials, on MyGet Site, in public or legal documents. Subscriber hereby grants MyGet a license to use Subscriber's name and any of Subscriber's trade names and trademarks solely pursuant to this marketing section.

(b) Except to the extent applicable law, if any, provides otherwise, this Agreement, any access to or use of the MyGet Site will be governed by the laws of Belgium. Except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any competent court), any dispute arising under this agreement shall be finally settled, in accordance with the Belgian law, in a Belgian court.

(c) MyGet may modify this Agreement at any time by posting a revised version of the Agreement on the MyGet Site. The modified terms will become effective upon posting of a revised version of the Agreement on MyGet Site. By continuing using the Service after the effective date of any modification to this Agreement, Subscriber agrees to be bound by the modified terms. It is Subscriber's responsibility to check the MyGet Site regularly for modifications to this Agreement.

(d) The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

(e) Sections 6, 8, 9, 10, 12 (c), 12(d), 14(a), 14(b), and 14(c) shall survive any termination or expiration of this Agreement.

(f) There are no third-party beneficiaries to this Agreement.

(g) If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

For exceptions or modifications to this Agreement, please contact MyGet at:

Address: Biartlei 107, 2950 Kapellen, Belgium
E-mail: sales@myget.org