



VIP Support Services - Terms & Conditions

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE USING THE SUPPORT SERVICES OFFERED BY AUTOMATTIC, INC. ("AUTOMATTIC"). BY USING THE SUPPORT SERVICES IN ANY MANNER, OR BY SIGNING OR SUBMITTING THE WRITTEN OR ONLINE ORDER FORM TO WHICH THESE TERMS AND CONDITIONS RELATE (THE "ORDER FORM") (AS APPLICABLE) YOU OR THE ENTITY YOU REPRESENT ("CUSTOMER") AGREE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT TO THE EXCLUSION OF ALL OTHER TERMS. CAPITALIZED TERMS USED HEREIN BUT NOT DEFINED SHALL HAVE THE MEANING ASCRIBED TO THEM IN THE ORDER FORM.

- 1. Product.** Customer represents and warrants that it has downloaded from <http://wordpress.org> the WordPress software for which Support (as defined below) is being purchased ("Product") and that it has licensed such Product under the terms of the GNU General Public License.
- 2. VIP Support.** So long as the Support period for a Product remains in effect, all applicable fees have been timely paid for each Support period and Customer otherwise remains in full compliance with the terms of this Agreement, Automattic will use reasonable commercial efforts to provide support services for that Product, as well as Customer's custom code present in their themes and plugins for such Product, as and to the extent described in Automattic's then-current standard Support and Maintenance Services Terms applicable to that Product, as they may change from time to time (and the currently effective version of which is attached hereto as [Exhibit A](#)) ("Support"). Customer will agree to submit Support requests to Automattic via the identified contact set forth on the Order Form, or through one back up contact. Requests outside of these contacts will not be worked by Automattic without consent of the contact. Customer can change the identified contact for this service contract periodically with notification to Automattic.
- 3. Add-on Services.** Subject to the terms and conditions of this Agreement, including Customer's payment of all applicable fees, if Customer has selected one or more other additional services on the Order Form ("Add-on Services"), then Automattic shall use reasonable commercial efforts to provide such Add-on Services as and to the extent described in Automattic's then-current standard Add-on Services Terms applicable to such Add-on Service, as they may change from time to time (the "Add-on Services Terms," the currently effective version of which is available at <https://vip.wordpress.com/support>, which is incorporated herein by this reference).
- 4. Fees and Payment.** Fees for Support ("Support Fees") and Add-on Services ("Add-on Services Fees") are as initially set forth on the applicable Order Form. Automattic may change pricing for any services and shall provide Customer with notice of any pricing changes, provided that such notice must be given at least thirty (30) days prior to the ninety (90) day end-of-term renewal period referenced in Section 5; all pricing changes will become effective as of the beginning of the Renewal Term that immediately follows the pricing change notice. Automattic will invoice all applicable Support Fees and Add-On Services Fees, monthly in advance and Customer shall pay such fees within thirty (30) days of the date of receipt of an invoice from Automattic. All payments shall be made in the currency of, and within the borders of the United States. Any payments more than thirty (30) days overdue will bear a late payment fee of 1.5% per month, or, if lower, the maximum rate



allowed by law. In addition, Customer will pay all taxes, shipping, duties, withholdings, backup withholding and the like; when Automatic has the legal obligation to pay or collect such taxes, the appropriate amount shall be paid by Customer directly to Automatic. Customer will reimburse Automatic for all reasonable travel and other related expenses incurred by Automatic in its performance hereunder, provided that Customer approves such expenses in advance.

5. **Term; Termination.** This Agreement shall commence as of the Effective Date and shall continue for the Initial Term set forth on the Order Form (the "Initial Term"). Following the Initial Term, this Agreement shall automatically renew for additional successive terms of equal length to the Initial Term (each, a "Renewal Term") unless either party gives notice to the other party of its intention not to renew this Agreement no later than ninety (90) days before the end of the Initial Term or then-current Renewal Term, as applicable. The Initial Term, together with any subsequent Renewal Term(s), shall be collectively referred to as the "Term." Either party may terminate this Agreement by written notice to the other party in the event that such other party materially breaches this Agreement and does not materially cure such breach within thirty (30) days of such notice.
6. **Warranty Disclaimer.** All products, Support Services, Add-On Services and any other services are provided "as is" and without warranty of any kind from anyone, including without limitation, any warranty of merchantability or fitness for a particular purpose or non-infringement, all of which are hereby expressly disclaimed. Further, Automatic does not warrant results or freedom from bugs or uninterrupted use.
7. **Limitation of Liability.** Notwithstanding anything else herein or otherwise, and except for bodily injury, neither Automatic nor any of its suppliers or licensors shall be liable or obligated with respect to the subject matter hereof or under any contract, negligence, strict liability or other legal or equitable theory (i) for any amounts in excess in the aggregate of the fees paid to it hereunder with respect to the applicable product or service during the six month period prior to the cause of action; (ii) for any cost of procurement of substitute goods, technology, services or rights; (iii) for any incidental, consequential or punitive damages; (iv) for interruption of use or loss of data; or (v) for any matter beyond its reasonable control. The products and services are not designed, manufactured, or intended for use in hazardous environments requiring fail-safe performance where the failure of the product could lead directly to death, personal injury, or significant physical or environmental damage. The parties agree that this section represents a reasonable allocation of risk and that Automatic would not proceed in the absence of such allocation.
8. **Identification.** Automatic may use Customer's name and logo in client listings. Automatic may issue a press release announcing the relationship contemplated hereby; Customer shall have the right to approve such press release prior to publication, which approval shall not unreasonably be withheld.
9. **Miscellaneous.** The parties shall be independent contractors under this Agreement, and nothing herein shall constitute either party as the employer, employee, agent, or representative of the other party, or both parties as joint venturers or partners for any purpose. Neither this Agreement nor any Support is assignable or transferable by Customer (and any attempt to do so shall be void); Automatic may assign and transfer any rights and/or obligations. The provisions hereof are for the benefit of the parties only and not for any other person or entity. Any notice, report, approval, authorization, agreement or consent required or permitted hereunder shall be in writing or by email; notices shall be sent to the address (physical or email) the applicable party has or may provide by notice or, if there is no such address, the most recent address (physical or email) the party giving notice can locate using reasonable efforts. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. If any provision shall be adjudged by any court of competent



jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this arrangement shall otherwise remain in full force and effect and enforceable. This agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act. These Terms & Conditions, together with the Order Form, the Add-on Services Terms, and any other terms and conditions referenced herein are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter hereof ; however, any pre-printed or standard terms of any purchase order, confirmation, or similar form, even if signed by the parties after the effectiveness hereof, shall have no force or effect. Any waivers by the parties with respect to this Agreement must be made in writing. Other than pricing changes (covered under Section 4), Automattic may amend this Agreement at any time by giving one hundred (100) days prior notice to Customer at the address (email or physical) set forth on the Order Form; provided that any such amendment shall not be effective until the commencement of first Renewal Term to follow such notice. In the event of a conflict between these Terms & Conditions, the Order Form, or the Add-on Services Terms, the following order of precedence shall apply: (1) the Order Form; (2) these Terms & Conditions, and (3) the Add-on Services Terms. Each party's acceptance of this Agreement was and is expressly conditional upon the other's acceptance of the terms contained in the Agreement to the exclusion of all other terms. The substantially prevailing party in any action to enforce this agreement will be entitled to recover its attorney's fees and costs in connection with such action. As defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or otherwise, all Products and accompanying documentation provided by Automattic are "commercial items," "commercial computer software" and/or "commercial computer software documentation."

Exhibit A

VIP SUPPORT AND MAINTENANCE SERVICES TERMS

WHO SHOULD USE VIP SUPPORT?

Anyone who needs extra help or peace of mind running their WordPress installation, though we primarily expect corporate users and other large-scale WordPress deployments to sign up. VIP Support is also required for those who have VIP Hosting and run custom themes and plugins on their sites.

WHO PROVIDES THE SUPPORT?

The core development team behind the WordPress software and the WordPress.com hosted service which operates tens of millions of sites using the WordPress software.

HOW DOES SUPPORT WORK?

When you sign up for VIP Support you get access to our private support desk. A support request is initiated through the support desk or via your site's dashboard.

HOW ARE BUGS FIXED?

For Critical Core Bugs that you report, we will use commercially reasonable efforts to work on a fix and deploy within one business day.



For Custom Code Bugs that you report, we will respond and begin to work on a fix within the Response Time set forth on the Order Form, and will provide you with ongoing progress updates thereafter.

For Non-Critical Bugs that you report, we will use commercially reasonable efforts to develop and push out a fix with the next release.

“Critical Core Bugs” are bugs in the core WordPress software (i.e., not Custom Code Bugs) which prevent you from accessing or using your site, or prevent end users from accessing your site.

“Custom Code Bugs” are bugs in your custom code or themes.

“Non-Critical Bugs” are bugs in the core WordPress software which are not Critical Core Bugs or Customer Code Bugs.

HOW DOES THE ON-SITE VISIT WORK?

We'll fly out to your offices and meet directly with your developers for a full day. A week before the visit, you'll send us an agenda and/or a list of questions that you'd like covered, and as long as it's WordPress related, we'll address them as we work with your team.

WHICH VERSIONS OF WORDPRESS ARE SUPPORTED FOR SELF-HOSTED VIP SUPPORT?

The current versions of WordPress as well as one version previous to the current release.

WHAT DOES PER SEAT MEAN?

One seat equals one contact person. When you sign up for a support contract you will specify a contact person who will be interacting with us. If you would like to have multiple people interact with us, you will need to buy multiple subscriptions. We prefer this model to one that charges per server or per number of sites that you are operating. With a single contact you may also specify an alternate for instances where your main contact is on vacation.

WHAT ISSUES AREN'T COVERED BY VIP SUPPORT?

We cover all issues directly related to WordPress and its plugins and themes, as long as they are either custom or GPL compatible. The goal is to work with your developers to troubleshoot any issues, help optimize your WordPress, and offer best practices. If you have systems issues that fall outside of WordPress—for example, a problem that is specific to your file storage configuration, CSS, javascript, etc.—we may not be able to assist.

CHANGE LOG:

7.26.2012: added the following to Section 8 of Terms & Conditions: “Customer shall have the right to approve such press release prior to publication, which approval shall not unreasonably be withheld”

5.6.2013: revised Section 4 to provide for monthly invoicing.

7.22.2013: revised Section 4 to provide for advance notice of price changes and pre-approval of travel expenses.

8.6.2013: revised Section 9 to clarify that amendments to change price are covered by Section 4.

5.12.2014: revised obligations related to Critical Core Bugs, and related definitions of “Critical Core Bugs” and “Non-Critical Bugs” in Exhibit A.