



WordPress VIP Master Services Agreement

This WordPress VIP Master Services Agreement (this "Agreement") is entered into as of **INSERT EFFECTIVE DATE** (the "Effective Date") by and between WPVIP Inc. ("WPVIP") and **INSERT NAME OF CUSTOMER** ("Customer"). The parties agree as follows:

1. **Order Forms.** Subject to the terms of this Agreement, WPVIP will provide Customer the services ("Services") described in one or more order forms entered into by the parties from time to time under this Agreement (each, an "Order Form"). In the event of any conflict between the terms of this Agreement and any Order Form, this Agreement shall control.
2. **Security.** Customer is responsible for maintaining the confidentiality of the user names and passwords it uses to log into its WPVIP accounts. Customer is fully responsible for all actions taken using its user names and passwords. Customer must immediately notify WPVIP if Customer becomes aware of any unauthorized uses of its accounts or any of its websites hosted by WPVIP ("Sites") or any other breaches of security pertaining to its WPVIP accounts or Sites. Customer is responsible for taking precautions as necessary to protect its environment and systems from viruses, worms, Trojan horses, and other harmful or destructive content.
3. **Content.** As between Customer and WPVIP, Customer owns all content that appears on its Sites or is otherwise submitted by Customer to WPVIP. Customer is fully responsible for all actions taken on its Sites. Customer is also fully responsible for all material published or posted to the Sites by either Customer or any third party including all such text, graphics, audio files, pictures, video files, and software ("Content"). Customer is fully responsible for any harm resulting from the Content. If Customer elects the Enhanced Distribution setting of the VIP Hosting Service, Customer grants WPVIP a revocable, non-exclusive, transferable, sublicensable, world-wide, royalty-free license to use, reproduce, modify, display, distribute, adapt, and publish the Content in the WordPress.com Reader.
4. **Restrictions.** Customer shall not use the Services in a manner that places an excessive burden on WPVIP's network or systems or significantly exceeds the usage demands of similarly situated customers. Customer shall not perform any vulnerability or penetration testing of WPVIP's network or systems (including Customer's VIP hosted environment) without WPVIP's prior written approval. Customer shall not try to circumvent any security or authentication measures protecting the Services.
5. **Proprietary Rights; Feedback.** Except for the limited, express licenses granted pursuant to this Agreement, WPVIP owns and retains all right, title and interest, including all intellectual property rights, in and to the Services including the Parse.ly Code. WPVIP may use all comments and suggestions furnished by Customer to WPVIP with respect to the Services. Customer assigns to WPVIP all right, title and interest, including all intellectual property rights, in and to such feedback.
6. **Parse.ly Services.** Sections 6 through 9 apply only to the Parse.ly Services. For clarity, the Parse.ly Services are a part of the Services.
7. **Parse.ly Definitions**
 - a. "Analytics Data" means data collected by Customer from the Monitored Domains and Applications using the Parse.ly Code and provided to WPVIP to enable WPVIP to provide the Parse.ly Services.
 - b. "Documentation" means the Parse.ly user guides and support material made available by WPVIP.
 - c. "Monitored Domains and Applications" means the domains and applications specified in an Order Form that are owned by Customer and for which WPVIP will provide the Parse.ly Services.
 - d. "Parse.ly Code" means WPVIP's proprietary tracking code that is installed on web pages of the Monitored Domains, or installed into the software of the Monitored Applications, for the purpose of collecting Analytics Data, together with any related fixes, updates, and upgrades provided by WPVIP.
 - e. "Parse.ly Services" means the Parse.ly analytics service provided by WPVIP that aggregates, organizes, and generates Reports derived from data collected from Monitored Domains and Applications.

f. "Reports" means the reports regarding the Monitored Domains and Applications prepared by WPVIP and delivered to Customer as part of the Parse.ly Services.

- 8. Analytics Data.** Except for the rights provided pursuant to this Agreement, Customer owns and retains all right, title, and interest in the Analytics Data. Customer hereby grants to WPVIP a royalty-free, transferrable, sub-licensable, and irrevocable worldwide license to use, store, aggregate, reformat, reproduce, transfer, display, disclose, modify, and distribute the Analytics Data: (a) during the Term of this Agreement for the purpose of providing and improving the Parse.ly Services; and (b) on a perpetual basis, for the creation and distribution of reports and compilations of aggregated data and/or statistics such as reports on Internet trends; provided, however, that , WPVIP will not publish Customer-specific statistics in any such reports or compilations, but rather only aggregated trends/rankings and/or references to public Internet content.
- 9. Parse.ly Code.** Customer shall comply with all reasonable WPVIP requests necessary for its operation of the Parse.ly Services. Customer shall include the Parse.ly Code on each page of the Monitored Domains, integrate the Parse.ly Code into the Monitored Applications, and make the Analytics Data available to WPVIP using one of the methods WPVIP designates. WPVIP grants to Customer during the Term a limited, non-exclusive, non-transferable license to install, copy, and use the Parse.ly Code solely in conformance with the Documentation and solely as necessary to operate the Parse.ly Services. Customer shall not, nor will it permit anyone else to: (a) adapt, alter, modify, improve, translate, or create derivative works of the Parse.ly Code or the Parse.ly Services; (b) attempt to access or download the technology used by WPVIP to provide the Parse.ly Services (other than the Parse.ly Code as provided by WPVIP for Customer to use the Parse.ly Services) or reverse engineer, decompile, disassemble, or otherwise attempt to reconstruct or obtain the source code to all or any portion of the Parse.ly Services; (c) provide any third party access to the Parse.ly Services or use the Parse.ly Services on behalf of any third party, including as part of a time-sharing, outsourcing or service bureau environment; (d) remove any proprietary notices or labels in the Reports; or (e) use the Parse.ly Services in any manner detrimental to WPVIP including for the purpose of creating or improving any services or technology that perform functions similar to, or are competitive with, the Parse.ly Services.
- 10. Customer Warranties.** Customer represents, warrants and covenants that:
- its use of the Services will be in accordance with this Agreement, the Order Form and all applicable laws and regulations;
 - the Content will not infringe upon or violate the rights (including intellectual property rights) of any third party;
 - it has fully complied with any third-party licenses relating to the Content and, if applicable, has done all things necessary to successfully pass through to end users any required terms;
 - the Content does not contain or install any viruses, worms, malware, Trojan horses or other harmful or destructive content;
 - it will not transmit any file to WPVIP that contains viruses, worms, malware, Trojan horses or any destructive content;
 - the Content is not spam, is not machine- or randomly-generated, and does not contain unethical or unwanted commercial content designed to drive traffic to third party sites, boost the search engine rankings of third-party sites, commit further unlawful acts (such as phishing) or mislead recipients as to the source of the material (such as spoofing);
 - the Content is not sexually explicit, does not contain threats or incite violence towards individuals or entities, and does not violate the privacy or publicity rights of any third party;
 - it has not assigned keywords to its Sites in a misleading or unlawful manner, including in a manner intended to trade on the name or reputation of others, it being understood that WPVIP may change or remove any description or keyword that it considers inappropriate or unlawful, or that may otherwise cause harm to WPVIP; and
 - None of Customer's Sites are directed to children under the age of 13 (as defined by COPPA).

Without limiting any of the foregoing representations or warranties, WPVIP has the right (though not the obligation) to remove Content from a Site, or suspend or terminate Customer's use of the Services, to prevent harm to WPVIP or its systems.

- 11. Customer Privacy Requirements.** Customer will be solely responsible for complying with all applicable laws in connection with the collection, use and sharing of personal information via its Sites and the Monitored Domains and Applications. Customer shall provide all notices, and obtain all consents, as required under applicable law in connection with the collection, use, and disclosure of personal information via its Sites and the Monitored Domains and Applications. Customer shall post a privacy policy that complies with applicable law on the Sites and Monitored Domains and Applications and comply with such privacy policy.
- 12. Copyright and DMCA Policy.** If WPVIP receives a notification of copyright infringement pertaining to the Sites under Automatic's Digital Millennium Copyright Act ("DMCA") Policy (located at <https://automatic.com/dmca-notice/>) or otherwise, WPVIP will send such notification to Customer ("DMCA Notification"). Customer will be responsible for

taking action with respect to each DMCA Notification within 48 hours by either (a) removing the allegedly infringing Content or (b) determining that the Content at issue is not infringing, notifying WPVIP of the same, and taking sole responsibility for the continued publication of such Content in which case Customer shall be solely liable for any and all damages, expenses and legal fees incurred by Customer, WPVIP and/or third parties as a result of such Content.

- 13. Fees and Payment.** As consideration for the Services, Customer shall pay WPVIP the fees set forth in the applicable Order Form. WPVIP shall invoice Customer per the schedule set forth in the Order Form and all invoices shall be due and payable within thirty days of receipt of invoice. All payments shall be made in US Dollars. Any payments more than thirty days overdue will accrue interest until paid at a rate of 1.5% per month, or if lower, the maximum rate allowed by law. WPVIP reserves the right to suspend its provision of all or part of the Services if Customer fails to timely pay any undisputed amounts due to WPVIP under this Agreement until such amounts have been paid. Customer shall be responsible for all applicable taxes (e.g. sales tax, VAT, GST) imposed by any governmental authority relating to the purchase of the Services (except for any taxes based on WPVIP's income). WPVIP will issue service credits in the event it fails to meet the Performance Requirement set out in the VIP Cloud Hosting Service Level Agreement located at <https://wpvip.com/cloud-hosting-sla-feb-2017/>. These service credits are Customer's sole and exclusive remedy for WPVIP's failure to meet the Performance Requirement.
- 14. Term and Termination.** This Agreement is effective on the Effective Date and shall continue in effect for so long as WPVIP is providing Customer with products or services under one or more Order Forms. Either party may terminate this Agreement by written notice to the other party if the other party materially breaches this Agreement or an Order Form and does not cure such breach within thirty days of receipt of written notice of such breach. If WPVIP fails to achieve a system availability of 98.5% for the VIP Cloud Hosting service over two consecutive 30-day periods, Customer may immediately terminate this Agreement on written notice to WPVIP. Termination of this Agreement shall also result in the termination of all Order Forms entered into under this Agreement.
- 15. WPVIP Warranties; Disclaimer.** WPVIP represents and warrants that it will (a) perform the Services in a timely, professional and workmanlike manner, and (b) comply with all applicable laws in connection with the performance of the Services. Other than the warranties set forth in the previous sentence, all Services are provided "as is" and without warranty of any kind, including, without limitation, any warranty of merchantability, fitness for a particular purpose or non-infringement, all of which are hereby expressly disclaimed. WPVIP also does not warrant results, freedom from bugs or uninterrupted use.
- 16. Indemnification.**
- a. By Customer.** Customer agrees to indemnify, defend and hold harmless WPVIP, and its affiliates, contractors, and licensors, and its and their respective directors, officers, employees and agents from and against any and all claims and expenses (including reasonable attorneys' fees) arising out of or related to (i) Customer's use of the Services, (ii) Customer's breach of this Agreement or an Order Form, and (iii) the Content, including for any actions it takes or fails to take with respect to a DMCA Notification.
 - b. By WPVIP.** WPVIP agrees to indemnify, defend and hold harmless Customer, its affiliates, officers, directors and employees from and against any and all third party claims, and all amounts actually paid to unaffiliated third parties in connection with such claims (including reasonable attorneys' fees), to the extent that the claim alleges that the Services infringe or misappropriate any U.S. patent or copyright (each, an "Infringement Claim"). In the event of any such Infringement Claim, WPVIP may, at its option: (i) obtain a license to permit Customer to continue using the Services; (ii) modify or replace the relevant portion of the Services with a non-infringing alternative having substantially equivalent performance within a reasonable period of time; or (iii) terminate this Agreement by providing notice to Customer, and provide Customer with a pro rata refund of any unearned fees prepaid by Customer. Notwithstanding the foregoing, WPVIP will have no liability for any Infringement Claim to the extent that it results from or relates to: (1) modifications to the Services made by a party other than WPVIP or its agents; (2) the combination, operation or use of the Services with equipment, devices, data or software not provided by WPVIP; (3) Customer's failure to use updated or modified versions of the Services provided by WPVIP to avoid a claim; (4) WPVIP's compliance with any specifications or requirements provided by Customer; (5) Customer's use of the Services other than in accordance with this Agreement; or (6) third party or open source software, including the open source WordPress product available at <http://wordpress.org>. The indemnification obligations set forth in this section are WPVIP's sole and exclusive obligations (and Customer's sole and exclusive remedies) with respect to claims that the Services infringe or misappropriate any third party's intellectual property rights.
 - c. Indemnification Procedure.** A party seeking indemnification hereunder shall promptly notify the indemnifying party in writing of any claim for which indemnification is sought (provided that any failure to provide prompt notification shall not relieve the indemnifying party of its indemnification obligations unless such failure results in material prejudice to such party), grant the indemnifying party the option to assume sole control of the defense

and settlement of the claim, and provide the indemnifying party, at its expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim.

17. Limitation of Liability. Notwithstanding anything else herein or otherwise, and except for bodily injury, gross negligence or willful misconduct, neither WPVIP 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, for (a) any amounts in excess of the aggregate fees paid by Customer to WPVIP hereunder during the six month period immediately prior to the cause of action; (b) any cost of procurement of substitute goods, technology, services or rights; (c) interruption of use or loss of data, revenue, business, savings, or goodwill; or (d) any incidental, consequential or punitive damages. The Services are not designed, manufactured or intended for use in hazardous environments requiring fail-safe performance where the failure of 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 they would not proceed in the absence of such allocation.

18. Publicity. Customer agrees that WPVIP may use Customer's name and logo in client listings.

19. Confidentiality. WPVIP and Customer each acknowledge that they may be furnished with, receive or otherwise have access to information of or concerning the other party that such party considers to be confidential. "Confidential Information" means all information, in any form, furnished or made available directly or indirectly by one party ("Disclosing Party") to the other party ("Receiving Party") that is marked confidential, restricted, or with a similar designation, or which, under the circumstances of its disclosure, a reasonable party would deem to be confidential information. Receiving Party shall not disclose Confidential Information to third parties except as permitted below or use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement. Notwithstanding the foregoing, Receiving Party may disclose Confidential Information to its affiliates, employees, agents, contractors and other representatives having a legitimate need to know such information, provided that they are bound to confidentiality obligations no less protective of Disclosing Party than those set forth herein. Each Party shall take no less than commercially reasonable measures to protect the secrecy of, and avoid the unauthorized disclosure of, the Confidential Information. The provisions of this Section will not apply to Confidential Information that: (a) is or becomes publicly available or enters the public domain through no fault of Receiving Party; (b) is already known by Receiving Party or in its possession without any confidentiality obligations; or (c) is independently developed by Receiving Party without use of or reference to Disclosing Party's Confidential Information. Receiving Party may disclose Confidential Information to the limited extent required to comply with law, regulation or court order.

20. Miscellaneous.

- a. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- b. This Agreement is not assignable or transferable by either party, provided that this Agreement may be assigned in its entirety by either party to a successor in interest, parent or affiliated company, in connection with a sale of all or substantially all of a party's assets or business.
- c. The provisions hereof are for the benefit of the parties only and not for any other person or entity. 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.
- d. The Services provided under this Agreement may allow Customer to download, access or use third-party software or services ("Third-Party Services") including WordPress plugins, themes, or other software applications. The Third-Party Services are provided by third parties independently of the Services and WPVIP is not responsible for the Third-Party Services. Customer shall comply with the applicable terms of use for any Third-Party Services it chooses to use.
- e. If any provision of this Agreement 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 Agreement shall otherwise remain in full force and effect.
- f. 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. Neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act will apply to this Agreement. Any dispute, controversy or claim arising out of or relating to this Agreement will be made exclusively in the state or federal courts located in San Francisco, California, and the parties hereby submit to the jurisdiction and venue of such courts.

- g. This Agreement (including any other documents referenced in this Agreement) and the Order Forms 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. 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.
- h. This Agreement may only be amended in a writing signed by both parties.
- i. The substantially prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.
- j. Any provisions which by their nature should survive termination or expiration of this Agreement will survive, including Sections 3, 5, 8, 11, and 13-20.
- k. All notices must be in English, in writing and sent by email to the other party's email address as indicated on the signature block of this Agreement. Notice will be treated as given on receipt, as verified by electronic log.
- l. Other than with respect to payment obligations, neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement or any Order Form if the delay or failure is due to events which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, spread of communicable disease, power outage, or failure of telecommunications or data networks or services.
- m. Each person signing this Agreement below represents and warrants that they are duly authorized to do so on behalf of the party for whom they are signing.

ACCEPTED AND AGREED:

WPVIP INC.

CUSTOMER

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Email: _____

Email: _____