

FogBugz for Your Server

Support Terms and Conditions

These Support Terms and Conditions (“Support Terms”) apply to your subscription plan for the Software provided by Service Provider. We may modify the terms and conditions of these Support Terms from time to time by posting the updated terms on our Website, but will provide sixty (60) days advance notice to you before materially reducing the benefits offered under these Support Terms.

1. DEFINITIONS

“**Standard Support**” means the support level as set out in Section 2.

“**Gold Support**” means the support level as set out in Section 3.

“**Issue**” means a failure of the Software to substantially conform to the functional specifications set forth in the documentation. Issues are classified by Service Provider according to severity of impact on the use of the Software, according to the charts below. All disputes regarding severity classification will be resolved by Service Provider in its sole discretion.

“**License Agreement**” means the underlying agreement for the Software located at <https://www.FogBugz/legal>.

“**Platinum Support**” means the support level as set out in Section 4.

“**Response Time**” means the time period in which the assigned support resource (or support system) shall provide you with an initial technical response as a result of an Issue reported by you.

“**Software**” means the certain software program(s) identified in the Quote.

“**Support**” means the support services to be provided by the Service Provider to you in accordance with these Support Terms.

“**Term**” means the duration set forth in your Quote.

“**Quote**” means the ordering document or online form.

2. STANDARD SUPPORT

2.1 Standard Support. Standard Support includes the program features that Service Provider makes generally available to its Standard Support customer base during the applicable Term as follows:

2.2 “Support” Defined. Support consists of assistance provided to customers via the Internet with respect to use of the Software and to resolve Issues. Support cases are tracked and managed through access to a call management system operated by Service Provider’ support center (the “**Customer Support Portal**”). Standard Support is available Monday through Friday during Service Provider’ business hours, excluding local holidays.

Standard Support Response Time Goals

Severity	Impact	Response Time Goal
1	Production system is down, impacting all Software and associated business systems.	4 business hours (via the Customer Support Portal)
2	Production system performance is degraded, but operational; Issue affects essential functions; or Issue is blocking critical systems tests or deliverables.	1 business day
3	General product questions relating to development, feature issues, or documentation.	2 business days

3. GOLD SUPPORT

3.1 Gold Support. Gold Support includes the features that Service Provider makes generally available to its Standard and Gold Support customer base during the applicable Term.

3.2 Electing Gold Support. You may upgrade from Standard Support to Gold Support at any time provided that you pay additional fees indicated on the applicable Quote. Such fees may be prorated if the upgrade is made any time during then-current Term. However, you may only downgrade from Gold Support to Standard Support at the time of renewal. To downgrade from Gold Support to Standard Support, you must provide written notice to Service Provider at least sixty (60) days prior to the expiration of the then-current Term. Upon such downgrade, you shall pay Service Provider' then-current fees for Standard Support.

Gold Support Response Time Goals

Severity	Impact	Response Time Goal
1	Production system is down, impacting all Software and associated business systems.	4 business hours (via the Customer Support Portal)
2	Production system performance is degraded, but operational; Issue affects essential functions; or Issue is blocking critical systems tests or deliverables.	1 business day
3	General product questions relating to development, feature issues, or documentation.	2 business days

4. PLATINUM SUPPORT

4.1 Platinum Support. Platinum Support includes the features that Service Provider makes generally available to its Standard, Gold, and Platinum Support customer base during the applicable Term.

4.2 Electing Platinum Support. You may upgrade to the Platinum Support at any time provided that you pay additional associated fees as indicated on the applicable Quote. Such fees may be prorated if the upgrade is made any time during the then-current Term. However, you may only downgrade from Platinum Support to Gold Support or Standard Support at the time of renewal. To downgrade from the Platinum Support to Gold Support or Standard Support, you must provide written notice to Service Provider at least sixty (60) days prior to the expiration of the then-current Term. Such notice must specify whether the downgrade is to Gold Support or Standard Support and you shall pay Service Provider' then-current fees for that level of Support.

Platinum Support Response Time Goals

Severity	Impact	Response Time Goal
1	Production system is down impacting all Software and associated business systems.	immediate (by phone or voice mail) 1 hour (via the Customer Support Portal)
2	Production system performance is degraded, but operational; Issue affects essential functions; or Issue is blocking critical systems tests or deliverables.	4 hours
3	General product questions relating to development, feature issues, or documentation.	next business day

5. YOUR OBLIGATIONS

5.1 Support Contact. All communications relating to Support will be supervised, coordinated, and undertaken by no more than two (2) designated contact persons per work-shift who will act as your point of contact between you and Service Provider. Each contact must possess or, at your expense, acquire the necessary expertise and training to diagnose and resolve Issues with direction by Service Provider.

5.2 Pre-Call Procedures. Prior to requesting Support from Service Provider, you must comply with all published operating and troubleshooting procedures for the Software. If such efforts are unsuccessful in eliminating the Issue, you must then promptly notify Service Provider of the Issue. You must confirm that the following conditions are true before contacting Service Provider for support:

- a) **Reproduction.** If possible, the situation giving rise to the Issue is reproducible in a single supported Software;
- b) **Support Representative.** Your contact has the technical knowledge regarding the Software and any other software or hardware systems involved, and in the facts and circumstances surrounding the Issue;
- c) **Access.** The entire system, including all software and hardware, is available to your contact without limit during any communication with Service Provider support personnel; and
- d) **Availability.** If requested and required, you must make available to Service Provider a technical representative during support hours of coverage for all Issues. Service Provider reserves the right to suspend all work relating to any Issues during periods for which you do not provide access to a technical representative or requested data to continue work on the Issue.

5.3 Remote Connection. If appropriate, you will cooperate with Service Provider to allow and enable Service Provider to perform Support via remote connection using standard, commercially available remote control software. You will be solely responsible for instituting and maintaining proper security safeguards to protect your systems and data.

5.4 Updates. You acknowledge and agree that Software updates provided by Service Provider pursuant to these Support Terms may, in Service Provider' sole discretion, require additional training of your personnel. Such training will be charged in accordance with our standard fees.

5.5 Disclaimer. Service Provider will not be responsible to provide Support to the extent that Issues arise because you: (a) misuse, improperly use, mis-configure, alter, or damage the Software; or (b) otherwise uses the Software in a manner not in accordance with its terms and conditions.

6. ADDITIONAL PROFESSIONAL SERVICES

6.1 Scope. Customer may purchase supplemental professional services for an additional fee. Fees related to such services will be described in a statement of work signed by both parties. If no fee is stated, then services will be provided at Service Provider's standard rate for equivalent services in effect at the time the statement of work is executed. For clarity, if any services are explicitly included in the Support Level selected by Customer, then such services do not require payment of an additional fee.

- **On-Site Services.** Customer may purchase on-site support services.
- **Training.** Customer may purchase training services with respect to the Software.
- **Consulting.** Customer may purchase consulting services related to defects caused by issues other than the Software.

6.2 Out of Pocket Expenses. Customer shall pay all reasonable out-of-pocket expenses incurred by Service Provider, including costs for meals, lodging, and travel related to these additional services.

7. TERM AND TERMINATION

7.1 Term. The Support services Term shall be as indicated in the Quote. Customer shall be contractually obligated to pay the fees for the full length of the Term and, unless terminated in accordance with the terms herein prior to the expiration of the Term, Service Provider shall be obligated to provide the selected Support Level to the Customer for the duration of the Term.

7.2 Renewal of Lapsed Support. If Customer elects not to renew Support, Customer shall no longer be eligible for Support and there will be no right of reinstatement.

7.3 Termination of Support Terms. If Service Provider or Customer terminate the License Agreement in accordance with the terms provided therein, then the Support hereunder will also terminate. Further, Service Provider may terminate these Support Terms upon the following conditions:

- if Customer fails to make any payments due hereunder within fifteen (15) days after Service Provider delivers notice of default to Customer;
- by giving prior written notice to Customer if Customer fails to perform any material obligation required of it hereunder, and such failure is not cured within thirty (30) days from Customer's receipt of Service Provider's notice to cure such non-performance of material obligation; or
- if Customer files a petition for bankruptcy or insolvency, has an involuntary petition filed against it, commences an action providing for relief under bankruptcy laws, files for the appointment of a receiver, or is adjudicated a bankrupt concern.

7.4 Effect of Termination. All fees already due or payable to Service Provider prior to the date of termination will become immediately payable upon termination.

8. WARRANTY

Service Provider warrants all services performed under these Support Terms shall be performed in a workmanlike and professional manner. EXCEPT AS OTHERWISE STATED IN THESE SUPPORT TERMS, SERVICE PROVIDER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

9. LIMITATION OF LIABILITY AND DAMAGES DISCLAIMER

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SERVICE PROVIDER, ITS AFFILIATES, OR ITS THIRD PARTY LICENSORS OR SUBCONTRACTORS BE LIABLE ON ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), ATTORNEYS FEES AND COSTS OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE SUPPORT SERVICES WHICH GAVE RISE TO SUCH DAMAGES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SERVICE PROVIDER, ITS AFFILIATES OR ITS THIRD PARTY LICENSORS OR SUBCONTRACTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES AND COSTS, NEGLIGENCE, BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL.

THE FOREGOING LIMITATIONS APPLY EVEN IF A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

10. MISCELLANEOUS

10.1 Customer Facilities. To the extent required by Service Provider, Customer will, upon request, promptly make available to Service Provider certain of its facilities, computer resources, software programs, networks, personnel, and business information as are required to perform any service or obligation hereunder. Service Provider agrees to comply with Customer's rules and regulations regarding safety, security, and conduct, provided Service Provider has been made aware of such rules and regulations.

10.2 Purchase Orders. Customer may provide Service Provider with a valid purchase order immediately upon execution of a Quote. Notwithstanding anything to the contrary herein, purchase orders are to be used solely for Customer's accounting purposes and any terms and conditions contained therein shall be deemed null and void with respect to the parties' relationship and this Support Agreement, including any Quotes entered into pursuant hereto. Customer's failure to issue a purchase order or provide such purchase order to Service Provider shall in no way relieve Customer of any obligation entered into pursuant to these Support Terms including, but not limited to, its obligation to pay Service Provider in a timely fashion.

10.3 Foreign Nationals. Customer acknowledges that Service Provider employs foreign nationals, and that these foreign national employees will work, on Service Provider's behalf, to perform its obligations and services hereunder.

10.4 Third Parties. Service Provider shall have the right to use third parties, including offshore entities who employ foreign nationals, as well as employees of Service Provider's affiliates who may also be foreign nationals ("**Subcontractors**") in performance of Service Provider's obligations hereunder and, for purposes of these Support Terms, all references to Service Provider or its employees shall be deemed to include such Subcontractors.

10.5 Technical Data. Customer shall not provide to Service Provider any Technical Data as that term is defined in the International Traffic in Arms Regulations ("**ITAR**") at 22 CFR 120.10. Customer shall certify that all information provided to Service Provider has been reviewed and scrubbed so that all Technical Data and other sensitive information relevant to Customer's ITAR regulated projects has been removed and the information provided is only relevant to bug reports on Service Provider products.

10.6 Suggestions/Improvements to Software. All suggestions, solutions, improvements, corrections, and other contributions provided by Customer regarding the Software or other Service Provider materials provided to Customer shall be owned by Service Provider, and Customer hereby agrees to assign any such rights to Service Provider. Nothing in these Support Terms shall preclude Service Provider from using in any manner or for any purpose it deems

necessary, the know-how, techniques, or procedures acquired or used by Service Provider in the performance of services hereunder.

10.7 Confidentiality. Each party (“**Receiving Party**”) agrees to keep confidential all technical, product, business, financial, and other information regarding the business and software programs of the other party (“**Disclosing Party**”), its affiliates, customers, employees, investors, contractors, vendors, and suppliers (the “**Confidential Information**”). For clarity, the term ‘Confidential Information’ does not include any personally identifiable information. Obligations with respect to personally identifiable information (if any) will be set forth in a separate written agreement between the parties. Receiving Party shall at all times to use all reasonable efforts, but in any case no less than the efforts that Receiving Party uses in the protection of its own Confidential Information of like value, to protect Confidential Information belonging to Disclosing Party and agrees not to disclose, give, transmit, or otherwise convey any Confidential Information, in whole or in part, to any third party, except that each party may disclose any Confidential Information to its directors, officers, and employees (and in the case of Service Provider, to its Subcontractors, as well) provided that such directors, officers, employees, or Subcontractors are bound by confidentiality conditions as restrictive as those contained herein. Receiving Party shall not, by authorized or unauthorized access, review, reverse engineer, disassemble, or decompile any Confidential Information. Except as provided hereunder, Receiving Party agrees that it will not use any Confidential Information for its own purpose or for the benefit of any third party and shall honor the copyrights and other intellectual property rights of the Disclosing Party and will not copy, duplicate, or in any manner reproduce any such copyrighted materials. Upon request of Disclosing Party or upon termination of these Support Terms, the Receiving Party shall promptly deliver to the Disclosing Party any and all documents, notes, or other physical embodiments of or reflecting the Confidential Information (including copies thereof) that are in its possession or control. Within seven (7) days of termination of these Support Terms or upon request by the Disclosing Party, the Receiving Party shall return or destroy all Confidential Information of the Disclosing Party. If Confidential Information is destroyed rather than returned, the returning party shall certify such destruction. Each party acknowledges that any unauthorized disclosure or use of the Confidential Information would cause the other party imminent irreparable injury and that such party shall be entitled to, in addition to any other remedies available at law or in equity, seek temporary, preliminary, and permanent injunctive relief in the event the other party does not fulfill its obligations under this Section.

10.8 Compliance with Laws. Both parties agree to comply with all applicable laws, regulations, and ordinances relating to such party’s performance under these Support Terms.

10.9 Assignment. Customer may not assign these Support Terms or transfer any license created hereunder, by operation of law, change of control, or otherwise without the prior written consent of Service Provider. Any purported assignment of these Support Terms in violation of this Section will be deemed void.

10.10 Governing Law; Venue. The laws of the State of Texas, USA govern the interpretation of these Support Terms, regardless of conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods (1980) and the Uniform Computer Information Transactions Act (UCITA) are hereby excluded in their entirety from application to these Support Terms. The parties agree that the federal and state courts located in Travis County, Texas, USA will have exclusive jurisdiction for any dispute arising under, out of, or relating to these Support Terms. Mediation will be held in Austin, Texas, USA.

10.11 Dispute Resolution.

- **Negotiations.** Where there is a dispute, controversy, or claim arising under, out of, or relating to these Support Terms, the aggrieved party shall notify the other party in writing of the nature of such dispute with as much detail as possible about the alleged deficient performance of the other party. A representative from senior management of each of the parties shall meet in person or communicate by telephone within five (5) business days of the date of the written notification in order to reach an agreement about the nature of the alleged deficiency and the corrective action to be taken by the respective parties.
- **Mediation.** Any dispute, controversy, or claim arising under, out of, or relating to these Support Terms and any subsequent amendments of these Support Terms, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach, or termination, as well as non-contractual claims, and any claims with respect to the validity of this mediation agreement (hereinafter the “**Dispute**”) shall be submitted to mediation in accordance with the then-current WIPO Mediation Rules. The language to be used in the mediation will be English.
- **Opportunity to Cure.** Notwithstanding anything contained hereunder, Customer agrees and acknowledges that no dispute resolution or litigation will be pursued by Customer for any breach of these Support Terms until and unless Service Provider has had an opportunity to cure any alleged breach. Customer agrees to provide Service Provider with a detailed description of any alleged failure and a description of the steps that Customer understands must be taken by Service Provider to resolve the failure. Service Provider shall have sixty (60) days from Service Provider’s receipt of Customer’s notice to complete the cure.
- **Injunctive Relief.** The parties agree that it will not be inconsistent with their duty to mediate to seek injunctive or other interim relief from a competent court. The parties, in addition to all other available remedies, will each have the right to initiate an action in any court of competent jurisdiction in order to request injunctive or other interim relief with respect to a violation of intellectual property rights or

confidentiality obligations. The choice of venue does not prevent a party from seeking injunctive or any interim relief in any appropriate jurisdiction.

- 10.12 Entire Agreement.** The provisions of these Support Terms together with the Quote constitute the entire agreement between the parties with respect to the subject matter herein and supersede all prior agreements, oral or written, and all other communications relating to the subject matter of the Support Terms. Customer acknowledges and agrees that it is not relying on any agreement, representation, statement or warranty (whether or not in writing) made or given prior to commencement of the Term set out on the Quote, except as expressly provided in these Support Terms, with respect to the Support services provided hereunder. These Support Terms may only be modified or supplemented by a writing manually signed by the authorized representatives of the parties. These Support Terms does not in any way amend any portion of the License Agreement except for the portion of the License Agreement that specifically governs Support activities as to the Software. All other terms and conditions of the License Agreement remain in full force and effect, including, but not limited to, all license provisions.
- 10.13 Severability and Reformation.** Each provision of these Support Terms is a separately enforceable provision. If any provision of these Support Terms is determined to be or becomes unenforceable or illegal, such provision shall be reformed to the minimum extent necessary in order for these Support Terms to remain in effect in accordance with its terms as modified by such reformation
- 10.14 Waiver.** Any waiver made by either party of any term or condition of these Support Terms shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof.
- 10.15 Import/Export Laws.** The Software, its related technology and services, and Customer's use of the Software and its related technology and services are subject to U.S. export control and sanctions laws and regulations, including, but not limited to, the Export Administration Regulations, 15 C.F.R. Parts 730-774 (the "EAR"), and sanctions imposed or administered by the Department of the Treasury, Office of Foreign Assets Control ("OFAC"), and the Department of State and may be subject to export or import regulations in other countries. Customer warrants and certifies that: (i) Customer is not a citizen, national, permanent resident of, or incorporated or organized to do business in, and is not under the control of the governments of Iran, North Korea, Cuba, Sudan or Syria, or any country to which the United States embargoes goods; (ii) Customer is eligible under U.S. law to receive exports of the Software, in that it is not included on any list of sanctioned or ineligible parties maintained by the U.S. government, including, but not limited to, OFAC's lists of Specially Designated Nationals and Blocked Persons ("SDN List"), U.S. Department of Commerce's Table of Denial Orders, the Entity List, or the Unverified List; (iii) Customer will not sell, export, re-export, transfer, use, or enable the use of the Software, its related technology and services, or any other items that may be provided by Service Provider, directly or indirectly: (a) to or for end-use in or by the countries listed in (i) above or any citizens, nationals, or permanent residents of such countries; (b) to or for end-use by any person or entity determined by any U.S. government agency to be ineligible to receive exports, including, but not limited to, persons and entities designated on the lists described in (ii) above; and (c) to or for end-uses prohibited by U.S. export or sanctions laws and regulations, including, but not limited to, activities involving the proliferation of chemical, biological, or nuclear weapons, weapons of mass destruction or the missiles capable of delivering such weapons, and their related technology.
- 10.16 Independent Contractor.** Each party is and will remain an independent contractor with respect to all performance rendered pursuant to the Support Terms.
- 10.17 Headings.** The headings of these Support Terms are provided for reference only and will not be used as a guide to interpretation.
- 10.18 Notices.** All notices under these Support Terms will be in writing and will be considered given as of twenty-four (24) hours after sending by electronic means (such as e-mail as duly provided by the authorized representatives of either party for such purpose) or by overnight air courier service, or upon delivery to the party to whom addressed after deposit in the mail (certified, return receipt requested) to the addresses mentioned on the Quote.
- 10.19 Force Majeure.** Service Provider shall not be liable to Customer for any delay or failure of Service Provider to perform its obligations hereunder if such delay or failure arises from any cause or causes beyond the reasonable control of Service Provider. Such causes shall include, but are not limited to, acts of God, floods, fire, utility failure, acts of terrorism, war, etc.
- 10.20 Conflict.** In the event of a conflict between the terms and conditions of these Support Terms, the License Agreement, or a Quote, the terms and conditions of the Quote, these Support Terms, or the License Agreement will prevail, in that order.
- 10.21 Restricted Rights.** Use of the Software by or for the United States Government is conditioned upon the Government agreeing that the Software is subject to Restricted Rights as provided under the provisions set forth in FAR 52.227-19. Customer shall be responsible for ensuring that this provision is included in all agreements with the United States Government and that the Software, when delivered to the Government, is correctly marked as required by applicable Government regulations governing such Restricted Rights as of such delivery.
- 10.22 Survival.** The terms of Sections 7.4, 8, 9, and 10 will survive the Term of these Support Terms.
- 10.23 Payment.** Unless otherwise specified in the Quote, Service Provider may invoice Customer for all fees immediately following the Quote Effective Date and all such fees shall be due and payable within thirty (30) days of such invoice date. Notwithstanding any provision to the contrary, any and all payments required to be made hereunder shall be timely made, and no payments to Service Provider shall be withheld, delayed, reduced, or refunded if Service Provider

has performed its material obligations. Invoices will be sent by electronic delivery unless requested otherwise by Customer, additional fees will apply.

10.24 Late Payment Fees. Any late payment will be subject to any costs of collection (including reasonable legal fees) and bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial periods) or at the maximum rate permitted by law, whichever is less.

10.25 Non-solicitation. During the Term of these Support Terms and for a period of two (2) years thereafter, Customer agrees not to hire, solicit, nor attempt to solicit, the services of any employee or Subcontractor of Service Provider without the prior written consent of Service Provider. Customer further agrees not to hire, solicit, nor attempt to solicit, the services of any former employee or Subcontractor of Service Provider for a period of one (1) year from such former employee's or Subcontractor's last date of service with Service Provider. Violation of this provision shall entitle Service Provider to a liquidated penalty against Customer equal to two hundred percent (200%) of the solicited person's gross annual compensation.

10.26 Marks and Publicity. Service Provider and Customer trademarks, trade names, service marks, and logos, whether or not registered ("**Marks**"), will be the sole and exclusive property of the respective owning party, which will own all right, title and interest therein. Service Provider may: (i) use the Customer's name and/or logo within product literature, press release(s), social media, and other marketing materials; (ii) quote the Customer's statements in one or more press releases; and/or (iii) make such other use of the Customer's name and/or logo as may be agreed between the parties. Additionally, Service Provider may include Customer's name and/or logo within its list of customers for general promotional purposes. Service Provider shall comply with Customer's trademark use guidelines as such are communicated to the Service Provider in writing and Service Provider shall use the Customer's Marks in a manner which is consistent with industry practice. Neither party grants to the other any title, interest or other right in any Marks except as provided in this Section.

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