



Cherryone Service Level Agreement and Service Agreement

Service Level Agreement

Network Availability Guarantee

Cherryone Networks' Service Level Agreement declares that the Network will be available 100% of the time. If Cherryone Networks fails to meet this SLA during any given calendar month, Customer's account will be credited. Upon Customer's request, Cherryone will issue a credit to Customer for Network Outages in an amount equal to one day's worth of the Monthly Fee paid by Customer, multiplied by each hour (or portion thereof rounded to the next hour) of the cumulative duration of such Network Outages during a particular month. 5Megs of bandwidth included per month, additional 1Megs billed \$5.00 per month.

Definitions

1. **"Network"** means the Cherryone owned and operated networking equipment consisting solely of selected Cherryone points of presence at which Cherryone has installed devices that are used to connect the Cherryone network to the internet.
2. **"Network Outage"** means a period of time that the Cherryone Network was not available to deliver content to the internet for two (2) or more consecutive monitoring periods.
3. **"Monthly Fee"** consists solely of the base monthly fee paid by Customer for the affected Cherryone service.

Exceptions

Customer shall not receive any credits under these SLAs in connection with any failure or deficiency caused by or associated with:

- Circumstances beyond Cherryone's reasonable control ("Force Majeure"), including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Cherryone Networks SLAs;
- Failure of access circuits to the Cherryone network, unless such failure is caused solely by Cherryone;
 - Scheduled maintenance
- False SLA breaches reported as a result of outages or errors of any SLA measurement system; or
- Acts or omissions of Customer (or user of Customer's services), including without limitation, any negligence, willful misconduct, or breach of Cherryone's Acceptable Use Policy.

Credit Request and Payment Procedures

- Each request in connection with a Network Outage must be received by Cherryone within thirty (30) days of the date the SLA was not met. authority

- Each valid credit will be applied to an invoice of Customer no later than two billing cycles after Cherryone's receipt and verification of Customer's request. Credits are exclusive of any applicable taxes, duties, fees, or surcharges imposed by any controlling taxing.
- The total amount credited to Customer shall not exceed the Monthly Fee paid by Customer for such month.

Service Agreement

1. **Terms:** This contract is non-cancelable. Customer agrees to purchase from Cherryone services specified on the face of this Agreement. All terms proposed by Customer, different from or in addition to this Agreement are expressly rejected by Cherryone.
2. **Termination:** The Agreement will continue for a period of one year until the end of its initial term unless terminated by Cherryone pursuant to Section 4. It will continue for subsequent one-year terms unless terminated by Cherryone pursuant to Section 4. Any special or discounted rates applied, as a result of long turn commitments will be recalculated at the then prevailing rates. Upon early termination, these rates will be billed to the Customer for immediate payment upon termination of this Agreement.
3. **Notices:** Notices to the Customer will be mailed or faxed to the address on the face of the Agreement. All notices to Cherryone shall be in writing and must be sent by the registered or certified mail and faxed to: Cherryone, Attention: Customer Service, Cherryone, P.O. Box 10173, Chicago, IL 60610; fax number 312-698-5057.
4. **Payment and Delinquency:** Customer agrees to purchase Internet Service for a specified term. Customer agrees to pay all charges identified on the face of this Agreement upon receipt. IF any charges are not paid within thirty (30) days, interest will accrue on unpaid amounts at the rate of 18% per annum or the highest rate permitted by law if less than 18%. Upon Customers non-payment of any charges due (delinquency), Cherryone may terminate this Agreement without notice and all charges payable over the life of the Agreement shall immediately become due and payable. If this Agreement is referred to an attorney or collection agency for collection, Customer agrees to pay all costs for collection, including attorney fees. Upon the occurrence of delinquency, Customer will become directly responsible for payment of any domain name registration and/or maintenance fees. Any delinquency including collection costs or attorneys fees shall result in Customer being required to pay all future charges in advance until the delinquency has been resolved to Cherryone's satisfaction. No acceptance of Cherryone of any payment or instrument marked with any restrictive or other limit on conditional endorsement shall be deemed a waiver of any rights that Cherryone may have or reserve.
5. **Standards:** Cherryone may 1) reject or refuse to produce any Internet Services that are not in compliance with its specifications and standards, laws or regulations and/or public interest standards as determined by Cherryone, and 2) from time to time and without notice, make changes in Internet Service that in its sole judgment will best serve Cherryone's Customers. Cherryone's partial rejection or refusal of any portion of Services shall not release Customer from their obligations with respect to the remaining Services being produced.
6. **Customer Warranties:** Customer warrants to be the owner or duly authorized and appointed agent for or representative of the product or service to be advertised. Customer fully warrants and represents to be in full compliance with any and all laws, including licensing requirements, relating to any manner of the products or services being advertised. Customer warrants that they have the right to use any name, address, photograph, graphic, trademark, service-mark or copy in any advertisements and acknowledges that it is responsible for determining that such usage conforms in all respects to all applicable licenses, laws and regulations, including but not limited to all requirements of all local, state and federal authorities. Customer agrees to immediately notify Cherryone upon withdrawal of or change in Customer's authority to use such proprietary property

7. Web Site Content: The Customer agrees that Cherryone retains the ownership of the website, custom programming, graphics, layout, creative content and all other work product associated with the development of the Customer's web site until the end of the initial term of this Agreement. The Customer also agrees that all monies due to Cherryone must be paid in full before the ownership of the web site, custom programming, graphics, layout, creative content and all other work product can be transferred or used by the Customer.
8. Domain Name Registration: 1) If the requested name is available, Cherryone will attempt to register and maintain domain names requested and ordered in writing by the customer. Customer shall retain ownership of the registered domain name(s) provided Cherryone is paid any outstanding charges associated with any services provided by Cherryone or any balance due as a result of the Agreement the Customer signed with Cherryone. 2) Cherryone reserves the right to change the amount of the domain name registration charges upon thirty (30) days notice to the Customer. 3) Cherryone.com will retain control of the domain until the end of this Agreement. 4) The Customer owns the domain name provided the Customer owns the domain name prior to being a Cherryone Customer. If the domain name is owned by Cherryone prior to the date of this agreement, the Customer may move the web site but not the domain name, owned by Cherryone. It is expressly agreed that the Customer will have to acquire another domain name. If Customer shall possess any pre-existing copyright interests in advertisements or copy, Customer grants Cherryone the right to reproduce, modify, and distribute copies of the advertisement or copy as part of Cherryone's provision of Internet Services. 5) Customer is responsible for placing and warrants that an appropriate copyright notice in form submitted by Customer (or similar thereto depending upon web page makeup and Cherryone's specifications). Customer waives any claim it may have against Cherryone arising out of reproduction, modifications and/or distribution by Cherryone or any of its affiliated companies of such camera ready artwork on which Customer has failed to include a proper statutory copyright notice.
9. Indemnity: Customer shall defend, indemnify and hold Cherryone harmless from any and all claims, losses, damages, settlements, liabilities and expenses (including attorneys fees) arising or resulting from: 1) Producing Customer web site, Internet Services or advertisement, including, but not limited, to, claims for proprietary infringement or false, fraudulent, deceptive or misleading Advertisement, claims relating to Customers ability to use its trade-name, trademark, photograph, graphic, domain name, service-mark or copy, or claims that Customer's ads otherwise fail to comply with any other applicable standard, and 2) Customer's breach of any other term or condition of this Agreement unless such claims and liabilities were caused by Cherryone's sole negligence. Customer's indemnification and payment obligations shall survive termination of this contract.
10. Cherryone's Liability: The amounts payable by Customer are not sufficient to warrant Cherryone's assuming of any risk of consequence, incidental or other special damages. From the nature of the services to be performed, it is impractical and extremely difficult to fix the actual damages, which may result from the failure on the part of Cherryone to perform its obligations herein. Unless the parties negotiate the higher limit of liability, if Cherryone should be found liable for contract, tort, strict liability or otherwise, the liability shall be less, as liquidated damages and not as a penalty, and this liability shall be exclusive. **In no event shall Cherryone be liable for any loses of Customer's business, revenues, profits, the cost to Customer of their advertisement or any other special, incidental, consequential or punitive damages of any nature or for any claim against Customer by any third party.** All express and implied warranties regarding the website and Internet Services are disclaimed, including warranties of merchantability and fitness for a particular purpose. Cherryone shall not be liable for delays or interruption in production and/or presentation in the events of acts of God, by any government or quasi-government entity, fire, flood, insurrection, riot, explosion, embargo, strikes, labor or material shortage, transportation interruption of any kind, temporary interruption of Internet Services due to necessary repair or adjustments, or any condition beyond the direct control of Cherryone. Customer acknowledges that Cherryone cannot guarantee any result of any sort whatsoever as a result of the web site or Internet Services.

11. Service Limitations: Cherryone shall not be responsible for the Customer's web site not being accessible on the Internet due to the circumstances not in the direct control of Cherryone, such as limitations of the Internet users' equipment, Internet Service provider outages and/or browser software limitations. The display of Customer's web site may vary from the submitted proof due to the variety of web browsers, monitors, and Internet access available. Cherryone created web pages will be designed to be viewed by the most commonly used browsers and monitors. In addition, the Customer's web site will not be displayed while the host server is under going maintenance.
12. Law/Severability/Arbitration: This Agreement shall by governed by and construed in accordance with the laws of the State of Illinois. If any term of this Agreement is invalid or unenforceable under and applicable statute, regulation, ordinance, order or rule of law, such term shall me deemed reformed to deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order of rule, and the remaining terms of this Agreement shall remain in full force and effect. Any dispute under this Agreement shall be submitted to arbitration under the commercial rules of the American Arbitration Association at the location closest to Oak Brook, Illinois.
13. Customer agrees to the placement of a link to Cherryone on said web site and no costs to Cherryone. The link will advertise Cherryone as the creator of said web site; Cherryone will creative and install the link at no cost to Customer. Emails generated from contact forms or forms hosted or fixed or created by Cherryone will be utilized for email marketing purposes.
14. Entire Agreement: No agent of Cherryone has any authority to make a representation or promise not contained in this Agreement. The Agreement together with the attachments constitutes the entire Agreement between Customer and Cherryone with respect to the matters contained hereto and supersedes all prior oral or written representations and Agreements. All modifications to this Agreement must be confirmed in writing and signed by the party to be charged.
15. No Implied Waiver: Failure or delay in enforcing any rights under this Agreement shall not constitute a waiver of such rights or effect enforcement of any other rights.
16. The Customer agrees that a web site is considered completed when launched on the designated domain name.
17. Once Cherryone is given content and instruction by the designated contact, the Customers agrees that they cannot change the design of the site after it's been created without additional cost.