

# Service Level Agreement

This SERVICE LEVEL AGREEMENT ("SLA") is an agreement between BARAK HOSTING, INC. ("Company"), a Delaware Corporation which can be contacted at Post Office Box 32667, Palm Beach Gardens, FL 33420, and the party set forth in the related order form (ãCustomerä or äyouä) incorporated herein by this reference (together with any subsequent order forms submitted by Customer, the äOrderä) and applies to all dedicated servers and related services ordered by Customer on the Order. Customer acknowledges, understands and agrees that Companyâs internal measurements establish the eligibility for any applicable Performance Credit (as defined herein). In the event that Customer determines that a discrepancy in such measurement exists, Customer shall promptly notify Company and Company and Customer will mutually agree upon the validity and accuracy of the measurement, and upon Customerâs eligibility for any applicable Performance Credits. This SLA may be amended at any time by Company. Updated copies of the SLA will be located at [http://www.BarakHosting.com/sla\\_main.html](http://www.BarakHosting.com/sla_main.html).

## W I T N E S S E T H :

WHEREAS, the parties entered into a certain Dedicated Services Agreement effective when you click the acknowledgment of purchase button ("Submit", "Buy Now", or "Purchase") (the "Agreement");

WHEREAS, the parties now desire to enter into this SLA in order to monitor and measure the services rendered by Company under the Agreement; and

WHEREAS, the parties wish to agree upon the measures to be taken in the event of systems problems affecting the delivery of Content (as defined in the Agreement) to Users (as defined in the Agreement).

NOW THEREFORE, the Parties have agreed as follows:

1. **APPLICABILITY OF SLA.** This SLA shall be directly applicable to the equipment, software and facilities within the Company network segment, including Company contracted ISP service to which the Company network segment is connected, collectively used by Company to provide the services to Customer herein and related to the Agreement (ãCompany Networkä). Company agrees to provide the maintenance and support as described herein necessary for the functioning and performance of the dedicated server for Customer or Customer's end-users that is hosted by Company under the Agreement (the "Server").
2. **INFRASTRUCTURE PERFORMANCE**
  1. Company will use commercially reasonable efforts to provide Customer with at least ninety-nine point nine percent (99.9%) of network availability during each calendar month that Company is available through the Internet, provided that Customer has established connectivity ("Service Availability"). Company takes responsibility for the Service Availability within Company Network, but cannot be held liable for upstream problems. The Company Network will be available to Customer free of Network Outages for 99.9% of the time, excluding excusable Service Downtime or Scheduled Service Downtime.
  2. Service Downtime shall mean any unplanned interruption in Service Availability during which Customer is unable to access the services as described above in section 2.1 that is determined to have been caused by a

problem in the Company Network as confirmed by Company. Service Downtime is measured as the total length of time of the unplanned interruption in Service Availability in a calendar month. Company provides direct support and expertise in the software it provides, any unplanned outages due to software failure are the direct responsibility of the software publisher and not of Company.

3. Scheduled Service Downtime shall mean any Company interruption of services to perform maintenance or upgrades. Company will use commercially reasonable efforts to schedule these outages at non-peak hours and limit their occurrence to strictly necessary upgrades and required maintenance.
  4. Service Downtime and Scheduled Service Downtime may be referred collectively to herein as Downtime.
  5. Server Downtime is not recorded and no credit will be issued during scheduled or emergency system maintenance, outages caused by the actions beyond Company's control including but not limited to DOS attacks or other forms of intrusion are excluded from the uptime/downtime calculations, applications, equipment or facilities of Customer or acts or omissions by Customer.
  6. In the event of Service Downtime in which monthly Service Availability is less than 99.9%, Customer will receive a Performance Credit as described below in this SLA. Downtime is measured from the time a Trouble Ticket (as defined herein) is opened by Customer to the time the Server is once again able to transmit and receive data.
  7. This SLA does not cover Service Downtime caused by problems related to (i) a Customer's local area network; (b) Customer-provided Internet connectivity or end-user software;; or (c) anything inside Customer's internal network, including, but not limited to, firewall configuration and bandwidth to internet, local area workstations, servers, software, and configuration
  8. The following are excluded from the monthly calculation of Service Availability: (i) any utilized Scheduled Service Downtime; (ii) any problems outside Company Network; (iii) any interruptions, delays or failures caused by Customer or Customer's employees, agents, or subcontractors, such as, but not limited to, the following (a) inaccurate configuration; (b) non-compliant use of any software installed on the Server; (c) Customer initiated server over-utilization; or (d) any problems related to the attacks on the machine such as hacking, attacks, and exploits.
3. **SECURITY LEVEL AND BACK-UPS.** Customer shall be solely responsible for purchasing and installing any security hardware and software. Customer shall also be solely responsible for back-ups of any Content maintained on the Server.
1. Company will ensure that the performance and availability of the Server is monitored on a continuous basis. Company will employ commercially available fault monitoring systems to identify and act on failures experienced in the Company's Network. Reports of performance and availability shall be available to Customer through the proper use of standard PLESK interface. Fees for this service are billed out at rate as set forth on the Order and are not provided by Company as part of the standard service included with a standard Server cost.
  2. Billable System Administration is operation, configuration, performance tuning, security configurations, and any interaction with the Operating System or software installed on the Server. Support provided to Customer that requires Company to login to the Server can be considered Billable System Administration. Fees for this service are billed out at a one hour minimum charge with hourly rates of \$75.00. Billable System Administration includes but is not limited to System administration of the Server, software installations

performed by Company for Customer, virus and security Scans of the Server, configuration of the Operating System, web server, and custom software installed on the Server, security audit and reports of the Server and patches, upgrades, and service pack installations.

4. UPTIME MONITORING, REPORTING AND BILLABLE SERVICES;

1. Company will ensure that the performance and availability of the Server is monitored on a continuous basis. Company will employ commercially available fault monitoring systems to identify and act on failures experienced in the Company's Network. Reports of performance and availability shall be available to Customer through the proper use of standard PLESK interface. Fees for this service are billed out at rate as set forth on the Order and are not provided by Company as part of the standard service included with a standard Server cost.
2. Billable System Administration is operation, configuration, performance tuning, security configurations, and any interaction with the Operating System or software installed on the Server. Support provided to Customer that requires Company to login to the Server can be considered Billable System Administration. Fees for this service are billed out at a one hour minimum charge with hourly rates of \$75.00. Billable System Administration includes but is not limited to System administration of the Server, software installations performed by Company for Customer, virus and security Scans of the Server, configuration of the Operating System, web server, and custom software installed on the Server, security audit and reports of the Server and patches, upgrades, and service pack installations.

5. CUSTOMER'S RESPONSIBILITIES.

1. Customer is solely responsible for the quality, performance and all other aspects of the Customer Content and the goods or services provided through the Server.
2. Customer will cooperate fully with Company in connection with Company's performance of the Services. Customer must provide any equipment or software that may be necessary for Customer to use the Services. Delays in Customer's performance of its obligations under this SLA or the Agreement will extend the time for Company's performance of its obligations that depend on Customer's performance on a day for day basis. Customer will notify Company in writing of any change in Customer's mailing address, telephone, e-mail or other contact information.
3. Customer assumes full responsibility for providing its end users with any required disclosure or explanation of the various features of the Customer web site and any goods or services described therein, as well as any rules, terms or conditions of use.
4. Because the Services permit Customer to electronically transmit or upload content directly to the Server, Customer shall be fully responsible for uploading all content to the Server and supplementing, modifying and updating the Server, including all back-ups. Customer is also responsible for ensuring that the Customer Content and all aspects of the Customer materials are compatible with the hardware and software used by Company to provide the Services, as the same may be changed by Company from time to time. Specifications for the hardware and software used by Company to provide the Services will be available on Company's Web site. Customer shall periodically access Company's Web site to determine if Company has made any changes thereto. Company shall not be responsible for any damages to the Customer Content, the Customer Web site or other damages or any malfunctions or service interruptions caused by any failure of the Customer Content or any aspect of the Customer Web site to be compatible with the hardware and software used

by Company to provide the Services.

5. Customer is solely responsible for making back-up copies of the Customer Web site and Customer Content.

6. CUSTOMER’S REPRESENTATIONS AND WARRANTIES.

1. Customer hereby represents and warrants to Company, and agrees that during the Initial Term and any Term thereafter Customer will ensure that: (i) Customer is the owner or valid licensee of the Customer Content and each element thereof, and Customer has secured all necessary licenses, consents, permissions, waivers and releases for the use of the Customer Content and each element thereof, including without limitation, all trademarks, logos, names and likenesses contained therein, without any obligation by Company to pay any fees, residuals, guild payments or other compensation of any kind to any person; (ii) Customer’s use, publication and display of the Customer Content will not infringe any copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any person, or constitute a defamation, invasion of privacy or violation of any right of publicity or any other right of any person, including, without limitation, any contractual, statutory or common law right or any “moral right” or similar right however denominated; (iii) Customer will comply with all applicable laws, rules and regulations regarding the Customer Content and the Server and will use the Customer web sites only for lawful purposes; (iv) Customer has used its best efforts to ensure that the Customer Content is and will at all times remain free of all computer viruses, worms, Trojan horses and other malicious code; and (iv) Customer shall be solely responsible for the development, operation and maintenance of Customer’s web site, online store and e-commerce activities, for all products and services offered by Customer or appearing online and for all contents and materials appearing online or on Customer’s products, including, without limitation the accuracy and appropriateness of the Customer Content and content and material appearing in its store or on its products, ensuring that the Customer Content and content and materials appearing in its store or on its products do not violate or infringe upon the rights of any person, and ensuring that the Customer Content and the content and materials appearing in its store or on its products are not defamatory or otherwise illegal. Customer shall be solely responsible for accepting, processing and filling customer orders and for handling customer inquiries or complaints. Customer shall be solely responsible for the payment or satisfaction of any and all taxes associated with its web site and online store.
2. Customer grants Company the right to reproduce, copy, use and distribute all and any portion of the Customer Content to the extent needed to provide and operate the Services.

7. TERMINATION.

1. This SLA and the agreement may be terminated by either party by giving the other party thirty (30) days prior written notice subject to a \$50.00 early cancellation fee payable by Customer.
2. Customer may terminate the SLA and Agreement if: (i) Customer experiences more than seventy-two (72) consecutive hours of Downtime in any given calendar month; (ii) Customer experiences at least five (5) separate instances of greater than twelve (12) hours Downtime in any given calendar month. In the event of such termination, Customer shall not be liable for terminating the Agreement.
3. This SLA and the agreement may be terminated by Company (i) in the event of nonpayment by Customer, (ii) at any time, without notice, if, in Company’s sole and absolute discretion and/or judgment, Customer is in violation of any

term or condition of the this SLA, the Agreement and related agreements, AUP, or Customer's use of the Services disrupts or, in Company's sole and absolute discretion and/or judgment, could disrupt, Company's business operations and/or by Company under the Acceptable Use Policy ("AUP"), as amended, modified or updated from time to time by Company. Company does not intend to systematically monitor the content that is submitted to, stored on or distributed or disseminated by Customer via the Service ("Customer Content"). Customer Content includes content of Customer's customers and/or users of Customer's website. Accordingly, under this SLA and the Agreement, Customer shall be solely responsible for its customers' content and activities on the Server. Notwithstanding anything to the contrary contained in this SLA or the Agreement, Company may immediately take corrective action, including removal of all or a portion of the Customer Content, disconnection or discontinuance of any and all Services, or termination of this SLA or the Agreement in the event of notice of possible violation by Customer of the AUP. In the event Company takes corrective action due to a violation of the AUP, Company shall not refund to Customer any fees paid in advance of such corrective action. Customer hereby agrees that Company shall have no liability to Customer or any of Customer's customers due to any corrective action that Company may take (including, without limitation, disconnection of Services).

4. Company may terminate this Agreement, without penalty, (i) if the Services are prohibited by applicable law, or become impractical or unfeasible for any technical, legal or regulatory reason, by giving Customer as much prior notice as reasonably practicable; or (ii) immediately, if Company determines in good faith that Customer's use of the Server and services or the Customer Content violates any Company term or condition, including this SLA, the Agreement, AUP, User Agreement, Spamming Policy, or Domain Policy. If Company cancels this Agreement prior to the end of the term for your breach of this SLA or the Agreement and related agreements, including the AUP, User Agreement, Spamming Policy, or Domain Policy or Customer's use of the Services disrupts Company Network, Company shall not refund to you any fees paid in advance of such cancellation and you shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation. Further, Customer shall be obligated to pay 100% of all charges for all Services for each month remaining in the term and Company shall have the right to charge you an administrative fee, the amount to be determined at the sole discretion of the company
5. Customer agrees that Customer shall not use excessive amounts of CPU processing on any the Server. Any violation of this policy may result in corrective action by Company, including assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this SLA or the Agreement, which actions may be taken in Company's sole and absolute discretion. If Company takes any corrective action under this section, Customer shall not be entitled to a refund of any fees paid in advance prior to such action.
6. Customer agrees that bandwidth and disk usage shall not exceed the number of megabytes per month for the Services ordered by Customer on the Order Form (the "Agreed Usage"). Company will monitor Customer's bandwidth and disk usage. Company shall have the right to take corrective action if Customer's bandwidth or disk usage exceeds the Agreed Usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this SLA or the Agreement, which actions may be taken in Company's sole and absolute

discretion. If Company takes any corrective action under this section, Customer shall not be entitled to a refund of any fees paid in advance prior to such action.

7. If Customer cancels this SLA or the Agreement, upon proper written notice to Company, prior to the end of the term set forth in the Order, (i) Customer shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation; (ii) Company may refund to Customer all pre-paid fees for services for the full months remaining after effectiveness of cancellation (i.e., no partial month fees shall be refunded), less any setup fees and any discount applied for prepayment, provided that, Customer is not in breach of any terms and conditions of this SLA, the Agreement, AUP, User Agreement, Spamming Policy or Domain Policy as set forth on Company's web site; and/or (iii) Customer shall be obligated to pay 100% of all charges for all Services for each month remaining in the term. Any cancellation request shall be effective thirty (30) days after written receipt by Company, unless a later date is specified in such request.
8. Upon termination of this Agreement for any cause or reason whatsoever, neither party shall have any further rights or obligations under this Agreement, except as expressly set forth herein.

#### 8. SYSTEMS TESTING, MONITORING AND ESCALATION

1. Upon written receipt of a Customer request relating to issues with the Company Network and/or Server related to services and products supplied by Company to Customer ("Trouble Ticket"), Company will investigate in a timely manner. Each written request will be classified as either a Company system error or external problem, and, if it is determined to be a Company system error, after investigation, Company will promptly designate appropriate management and engineering support personnel to take corrective action with respect to any such error. Company supports the Server up to and including the proper functioning of the PLESK interface and the inherent features and functions of the Server. Company does not ensure the functioning of any other hardware, software or the Server which may be affected by any changes or modifications made by Customer. Corrective action may initially include a temporary fix or work-around solution.
2. A Critical Severity Level refers to a condition in the Company Network that makes the general use of the Server impossible and that cannot be circumvented or avoided on a temporary basis. The condition requires an immediate solution that is not already available. Company will initiate commercially reasonable efforts to replicate and verify the reported technology platform within an appropriate timeframe dependent upon availability of staff and severity of issue, after receiving a written problem report from Customer, provide continuous efforts to arrive at a fix or work-around, and will use commercially reasonable efforts to provide Customer with a fix or work around depending upon availability of staff and the severity of the issue after receiving the written problem report. Customer shall be updated as relevant results and updates are available at the sole discretion of Company.
3. A Major Severity Level refers to a condition in the Company Network that makes the general use of the Server difficult and that can be circumvented or avoided on a temporary basis. Company will initiate commercially reasonable efforts to replicate and verify the reported system problem within thirty (30) minutes of receiving a written problem report from Customer, and will provide Customer with a fix or work-around within the fastest, most commercially reasonable timeframe possible.
4. A Minor Severity Level refers to all other reported errors in the Company Network that is not covered by Critical or Major Severity Levels. Company

will begin work on such problem identification and verification within one (1) business day of receipt of a written report of the problem from Customer, and will provide Customer with a proposed fix or work-around within two (2) business days.

9. TROUBLE TICKETS. A Trouble Ticket will be assigned to all written problem notifications. The priority of a Trouble Ticket shall be established based on Company's reasonable assessment of the criticality of the problem. Within each priority grouping, problems will be worked according to criteria including date reported, number of consumers impacted and availability of existing workarounds.
10. REMEDIES FOR TROUBLE TICKETS
  1. In the event that a Trouble Ticket is not resolved within two (2) hours, Company will refund Customer five percent (5%) 5% of the monthly fee from the Customer next invoice cycle. In the event that the Company has not cured the issue within the following four (4) hours, Company will refund Customer an additional two percent (2%) of the monthly fee from the Customer next invoice cycle and additional two percent (2%) shall be added for each four (4) hour period the Trouble Ticket is not resolved up to a total maximum of thirty percent (30%) deduction from the monthly fee for the calendar month affected. In the event that Company is unable to resolve the Trouble Ticket within sixteen (16) hours, then thirty percent (30%) of the monthly fee for the affected calendar month shall be waived and Customer reserves the right to terminate this SLA and the Agreement. Customer understand, acknowledges and agrees that the maximum credit Customer can receive for any Trouble Ticket in a given calendar month is thirty percent (30%) of the affected monthly fee.
  2. The remedies outlined in this Section 8 shall not be applicable in the event that any Trouble Ticket is due to a force majeure or circumstances beyond Company's control including but not limited to any interruptions, delays or failures caused by Customer or Customer's employees, agents, or subcontractors, inaccurate configuration by Customer; non-compliant use of any software installed on the Server; Customer initiated server over-utilization; any problems related to the attacks on the machine such as hacking, attacks, and exploits, emergency system maintenance, outages caused by the actions beyond Company's control applications, equipment or facilities of Customer or acts or omissions by Customer.
11. STANDARD MAINTENANCE WINDOW. Company will establish a standard maintenance window to perform updates, fixes, and other modifications to the system, software, and Company Network. Any Downtime occurring during the maintenance window will be excluded from any SLA credits.