

SERVICE LEVEL COMMITMENT

- 1. Service Level Commitment:** OpenAir hereby commits to Customer that it will maintain server availability at 99.5%, calculated on a monthly basis, excluding any regularly scheduled maintenance time on the OpenAir site, which will not exceed four (4) hours per month and will not be conducted during the hours of 8:30 a.m. to 8:30 p.m. Eastern Standard Time (“Normal Business Hours”).
- 2. Customer Notification of Performance Related Problems:** In the event Customer determines that it is unable to access the OpenAir services and/or the data therein because of the unavailability of the OpenAir site (a “Performance Related Problem”), Customer shall have the affirmative obligation to notify OpenAir of such performance problem. Such notice shall be provided as follows: by telephone, facsimile, email, or written notice, sent as soon as is practical from the time Customer recognizes such Performance Related Problem.
- 3. Response to Customer Notification:** The Service Level Commitment shall not apply to any services other than Services supplied by OpenAir, and, shall not apply to performance issues (i) caused by factors outside of OpenAir’s reasonable control; (ii) that resulted from any actions or inactions of Customer or any third parties; or (iii) that resulted from Customer’s equipment and/or third party equipment (not within the sole control of OpenAir). Specifically, OpenAir does not and cannot control the flow of data to or from OpenAir’s network or other portions of the Internet. Such flow depends in large part on the performance of the Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer’s connections to the Internet (or portions thereof). Although OpenAir will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, OpenAir cannot guarantee that such events will not occur. Accordingly, OpenAir disclaims any and all liability resulting from or relating to such events.