

# Service Level Agreement – Shared Exchange Hosting

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This Service Level Agreement (this “**SLA**”) governs the use of the Services under the terms of the Master Service Agreement (the “**MSA**”) between Xband Enterprises.Net, Inc. (“**Xband Enterprises**”) and customer (“**You**”) and is incorporated into the MSA by reference. This SLA applies separately to each of Your Accounts. Xband Enterprises may update, amend, modify or supplement this SLA from time to time. A current copy of the SLA is located at <http://www.xbandenterprises.com/terms-of-use/>.

Capitalized terms used herein but not otherwise defined will have their respective meanings set forth in the MSA. In the event of any conflict between this SLA and the MSA, the MSA will govern.

## 1. SERVICE.

Xband Enterprises will use commercially reasonable efforts to provide the Services as defined by the plan or plans purchased or subscribed to under Your Account.

## 2. SERVICE AVAILABILITY.

2.1. Definition. Xband Enterprises will provide at least 99.999% Service Availability, measured on a per calendar-month basis. “**Service Availability**” is defined as the ability of a User under Your Account to (a) access and retrieve information from such User’s Exchange mailbox using the Services, and (b) send and receive messages via the User’s Exchange mailbox using the Services, each on a per Exchange mailbox basis, provided that Your Account is active and enabled. Loss of Service Availability caused by (i) issues beyond Xband Enterprises reasonable control, including, without limitation, denial of service or similar attacks, mail bombs, DNS resolution, domain name expiration, hardware failure, Internet availability, SYN attacks, and other events or any other Force Majeure Event, or (ii) other issues addressed in this SLA, will be excluded from Service Availability calculations.

### 2.2. Calculation.

(a) To calculate Service Availability, Xband Enterprises uses a combination of methods, including analyzing logs from both Xband Enterprises event monitoring system and the actual affected infrastructure components. Xband Enterprises will match these findings with client reports to determine the actual timeframe. Any loss of Service Availability less than five (5) minutes in duration will not be included in the calculation of Service Availability.

(b) Xband Enterprises does not guarantee incoming and outgoing mail delivery time. Any delay in incoming and outgoing mail delivery time, regardless of the cause, is not included in any calculation of Service Availability.

2.3. Service Availability Credit. Subject to Your valid submission of a Service Availability Credit request and the other conditions herein, if Service Availability under Your Account

## Service Level Agreement – Shared Exchange Hosting

for any calendar month is below 99.999%, Xband Enterprises will issue a credit (“Service Availability Credit”) in accordance with the following schedule:

Service Availability	Amount of the refund as a percentage of monthly fee for affected Service
99.0% to 99.999%	3% of monthly fee credited
98.0% to 98.99%	5% of monthly fee credited
95.0% to 97.99%	10% of monthly fee credited
90.0% to 94.9%	25% of monthly fee credited
89.9% or below	2.5% credited for every 1% of lost availability up to the maximum total penalty limit

If the subscription period for an affected Service is less than one (1) calendar month, the Service Availability Credit will be adjusted on a pro rata basis.

1. To request a Service Availability Credit, (a) Your Account must be in good standing with Xband Enterprises, (b) You must open a technical support ticket in the administrative control panel reporting an apparent Service interruption within seventy-two (72) hours of the event, and (c) You must send an email or written Service Availability Credit request to the billing department at [billing@xbandenterprises.com](mailto:billing@xbandenterprises.com) in the month immediately following the month for which You are requesting a Service Availability Credit. Service Availability Credit requests must include Your Account name or Account number and the dates and specific times for which You are requesting Service Availability Credits.
2. Xband Enterprises will compare information provided by You to the data referenced in Section 2.2 above. A Service Availability Credit will be issued only if Xband Enterprises confirms from such data that a Service Availability Credit is available.
3. Xband Enterprises will calculate the Service Availability Credit based on the type of particular Service for which Service Availability was below the prescribed level, the fees for the particular Service, and the percentage of overall individual Exchange mailboxes or other units adversely affected. For example, if the Service Availability Credit pertains to the Service Availability of two (2) Exchange mailboxes out of two hundred (200) Exchange mailboxes purchased, the Service Availability Credit would be calculated as one percent (1%) times the monthly fee for the Exchange mailboxes times the percentage of the monthly fee credited.

### **3. EXCHANGE 2010 AND 2013 RECOVERY CREDIT (APPLIES SOLELY TO EXCHANGE 2010 AND 2013 PLANS).**

## Service Level Agreement – Shared Exchange Hosting

**Note: Xband Enterprises does not (i) maintain historical back-up copies for the purpose of point in time data recovery or (ii) guarantee that backups will be made. Xband Enterprises strongly urges customers to back-up Data (including all mailbox and public folder data) themselves or to arrange for third-party backup services. “Exchange Data” means Data in Your Account that consists solely of Microsoft Exchange 2010 and 2013 mailboxes and public folders. If Your Exchange Data (a) becomes corrupted in Your Xband Enterprises-hosted Exchange 2010 or 2013 database, or (b) is lost due to a direct failure of the relevant Xband Enterprises hardware or datacenter where Your Exchange Data is hosted (each, an “Event”), and Xband Enterprises fails to restore Your Exchange Data to the last known good state, as determined by Xband Enterprises, within five (5) business days of your initial submission of a technical support ticket in the administrative control panel reporting Exchange Data loss, Xband Enterprises will issue a credit (“Recovery Credit”) for the corresponding amount stated in the table:**

Amount of Exchange Data that Xband Enterprises was not able to restore	Recovery Credit
Less than 24 hours of Exchange Data	25% of monthly fee
24 hours to 48 hours of Exchange Data	50% of monthly fee
More than 48 hours of Exchange Data	100% of monthly fee

To request a Recovery Credit, (a) Your Account must be in good standing with Xband Enterprises, (b) You must open a Technical Support Ticket in the administrative control panel reporting Exchange Data loss within seventy-two (72) hours of the Event, and (c) You must send an email or written Recovery Credit request to the Billing Department at [billing@xbandenterprises.com](mailto:billing@xbandenterprises.com) in the month immediately following the month for which You are requesting a Recovery Credit. Recovery Credit requests must include Your Account name or Account number and the dates and specific periods of lost or corrupted Exchange Data for which You are requesting the Recovery Credit.

Xband Enterprises will compare information provided by You to the actual Exchange Data that resides in Your Exchange 2010 or 2013 database. A Recovery Credit is issued only if Xband Enterprises confirms an Exchange Data loss warranting the Recovery Credit. If Xband Enterprises is unable to restore the relevant Exchange Data within five (5) business days of a valid Recovery Credit request, You will receive a monthly fee credit of one hundred percent (100%).

#### **4. TOTAL CREDIT LIMITS; SOLE AND EXCLUSIVE REMEDIES.**

4.1. Total Service Availability Credits. The total Service Availability Credit due to You for any Account may not exceed fifty percent (50%) of the monthly fees charged to that Account during the month for which the Service Availability Credit is to be issued, unless the amount to be credited is less than one dollar (\$1) in which case the credit amount will be one dollar (\$1). Only one (1) Service Availability Credit is available in any given calendar month. Notwithstanding anything set forth in the MSA with the exception of Section 8 of the MSA, or this SLA, the Service Availability Credit described in Section 2 of this SLA will

## Service Level Agreement – Shared Exchange Hosting

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be Your sole and exclusive remedy in connection with any loss of Service Availability as described in such section or breach by Xband Enterprises of the MSA or this SLA.

4.2. Total Recovery Credits. The total Recovery Credit due to You for any Account may not exceed one hundred percent (100%) of the monthly fees charged to that Account during the month for which the recovery Credit is to be issued. Only one Recovery Credit is available in any given month. Notwithstanding anything set forth in the MSA with the exception of Section 8 of the MSA, or this SLA, the Recovery Credit described in Section 3 will be Your sole and exclusive remedy for any losses arising from any Exchange Data loss.

4.3. Total Credit Limit. The total credits that You may be issued with respect to any calendar month, including the aggregate of Service Availability Credits and Recovery Credits, will not exceed one hundred and fifty percent (150%) of the monthly fees charged to the Account during the month for which all such credits are issued.

4.4. No Refund. Credits are applicable only toward use of the Service and are not convertible into cash or any type of refund.

### 5. TECHNICAL SUPPORT.

Xband Enterprises will use commercially reasonable efforts assist You, through Your authorized Account contacts, with setting up and configuring Your Account, accessing the Services, and resolving other issues related to the Services. Only Your authorized Account contacts may request information, changes, or technical support pursuant to the MSA. For more information, visit the technical support page of Xband Enterprises administrative control panel. Xband Enterprises technical support response time depends on the complexity of the inquiry and support request volume.

### 6. MANAGEMENT.

6.1. Account Management Tools. Through Your authorized contacts, You may manage Your Account with Xband Enterprises online management tools, the administrative control panel and end-user control panel. Xband Enterprises will not be required to perform for You any task that can be done through the control panels.

6.2. Custom Configuration. Requests for modification to the standard configuration of the Services will be considered on a case-by-case basis. Approval of such modifications will be at Xband Enterprises sole discretion. Xband Enterprises does not guarantee any particular result from non-standard configurations nor can it be held liable in any way for Service performance changes or failures which result from non-standard configurations.

6.3. Additional Services. For tasks that cannot be performed through the administrative control panel, You may request that Xband Enterprises perform professional services on a time and materials basis. The request will include a detailed description of work and the authorized amount of time, in half hour increments, to perform the work. Xband

## Service Level Agreement – Shared Exchange Hosting

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Enterprises may evaluate and revise the request (including the estimated number of hours to perform the work) and reserves the right, in its sole discretion, to decline any request. Any additional services will be performed at Xband Enterprises standard published rates, provided that any emergency services that require commencement within twenty-four (24) hours will be charged at one and a half (1.5) times Xband Enterprises standard published rate. Xband Enterprises will use commercially reasonable efforts to perform requested additional services. However, it does not guarantee any particular result from performance of additional services or make any representations or warranties regarding such additional services nor can it be held liable in any way (including for any credits) for Service performance changes or failures which result from performing tasks requested by You. Xband Enterprises may require a separate agreement for any of these additional services.

### **7. MAINTENANCE.**

7.1. Scheduled Maintenance. In order to maintain performance and security of the Services, Xband Enterprises performs scheduled maintenance within its published maintenance windows. This may require specific Services to be suspended during the maintenance period. Loss of Service Availability due to scheduled maintenance will not be included in the calculation of Service Availability. Xband Enterprises will use commercially reasonable efforts to notify You in advance of any scheduled maintenance that may adversely affect Your use of the Services.

7.2. Emergency Maintenance. Xband Enterprises may need to perform emergency maintenance, including security patch installation or hardware replacement. Xband Enterprises will not be able to provide You with advanced notice in case of emergency maintenance. Loss of Service Availability due to emergency maintenance will be excluded from calculations for Service Availability.

### **8. STORAGE CAPACITY; DATA TRANSFER; SERVER RESOURCES.**

Each Account is allotted storage capacity and data transfer amounts on Xband Enterprises servers according to the Service and related options selected by You. This storage size and data transfer allotments can be increased through the administrative control panel for an additional charge up to the maximum amount allowed for the Service and related options. The servers may stop accepting, processing, or delivering Data, including email messages, when such set allotment or the purchased limit is reached thus causing a loss of Service Availability or Data loss. Xband Enterprises will not be responsible for such loss of Service Availability or Data losses, and such loss of Service Availability will be excluded from calculations for Service Availability. The amount of data stored in a mailbox or a folder affects client and server performance. Large mailboxes or data storage may respond slower to user requests or cause client non-responsiveness while the data is processed. Unlimited capacity allocation per plan is subject to technical limitations of the

## Service Level Agreement – Shared Exchange Hosting

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software used to access such capacity. Xband Enterprises has no control over software limitations imposed by a software manufacturer. Unlimited mailboxes or data storage capacity may not be used for archiving services; specific archiving products and services need to be purchased for archiving.

### **9. CERTAIN LIMITATIONS.**

9.1. Anti-Virus Checking. Xband Enterprises uses commercially reasonable efforts to maintain thirdparty, anti-virus software. This software is configured to scan all inbound messages sent between Exchange mailboxes on the server. If a virus is detected or if a message attachment cannot be scanned (for example, when it is encrypted or corrupted), the message and its attachments may be permanently deleted. For Secure Mail product customers, encrypted messages will not be deleted except upon Your action to do so. Xband Enterprises advises You to use up-to-date, local anti-virus software. Xband Enterprises is not responsible for any damages to Your hardware, software or systems or for loss of Data due to viruses, including infection of end-user devices or lost or corrupted messages.

9.2. Anti-Spam Message Filter. Xband Enterprises uses commercially reasonable efforts to maintain third-party anti-SPAM software on its servers. This software is configured to check all incoming messages according to the SPAM-detecting heuristics provided with the software. Xband Enterprises is not responsible for any damage, loss or inconvenience You suffer due to anti-SPAM filtering, including lost or corrupted messages. SPAM settings are also configurable by You, and Xband Enterprises is not responsible for any deleted messages or messages not received as a result of SPAM settings configured by You.

9.3. Wireless Exchange Server Access. As an add-on Service, Xband Enterprises may provide wireless access to the Exchange server through the use of third-party software. Limited customer control of wireless Exchange server access and configuration may be available through the administrative control panel. Success in configuration and set up of wireless Exchange server access is highly dependent upon the device and the wireless access provider chosen by You. As a result, Xband Enterprises does not guarantee access through this method and any loss of Service Availability through wireless access will be excluded from calculations for Service Availability.

### **10. DATA RESTORATION FROM BACK-UP REQUEST.**

Xband Enterprises conducts regularly scheduled backups related to the Services but does not guarantee their availability to You. Server backup scope and scheduling is at Xband Enterprises sole discretion. Data restore requests initiated by You may be initiated through the administrative control panel as an extended service request, subject to availability of the relevant Data. XBAND ENTERPRISES DOES NOT MAINTAIN HISTORICAL

## Service Level Agreement – Shared Exchange Hosting

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BACK-UP COPIES FOR THE PURPOSE OF POINT IN TIME DATA RECOVERY. XBAND ENTERPRISES STRONGLY URGES OUR CUSTOMERS TO BACK-UP THEIR ACCOUNT DATA (INCLUDING ALL MAILBOX AND PUBLIC FOLDER DATA) THEMSELVES OR TO ARRANGE FOR THIRD-PARTY BACKUP SERVICES.

### **11. DATA RETENTION.**

Xband Enterprises will not be responsible for retaining any of Your Data after termination of Your Account. Your Data may be deleted promptly after Your Account is terminated and from backups during scheduled backup rotation. **Xband Enterprises** will not restore, provide on any storage media or send out any Data pertaining to terminated Accounts, unless specifically noted in a customized service agreement. **It is Your responsibility to back-up and migrate Your Data prior to termination of Your Account or any other action which can lead to deletion of any of Your Data from the Services. For more information on collection, retention and use of customer information, refer to Xband Enterprises Privacy Policy.** Xband Enterprises does not guarantee compatibility of the Services with any specific configuration of hardware or software. Xband Enterprises encourages You to discuss any technical and compatibility issues with our technical support personnel.