

# Service Level Agreement - ShareSync

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This Service Level Agreement (this “**SLA**”) governs the use of the ShareSync service 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. The terms and conditions of this SLA are applicable to the Xband Enterprises ShareSync service only, and “**Service**” or “**Services**” as used in this SLA refers only to the Xband Enterprises ShareSync service.

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. Xband Enterprises does not guarantee compatibility of the Services with any specific customer configuration of hardware or software. You are encouraged to discuss any technical and compatibility issues with our technical support personnel.

## 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 files from such User’s ShareSync account through at least one of the following interfaces: (i) a ShareSync desktop application, (ii) the ShareSync web interface, or (iii) a ShareSync mobile application, and (b) share files on the User’s ShareSync account using the Services, from at least one such interface, in all cases provided that Your Account is active and enabled.

### 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 speed of file synchronization and timing. As a result, a delay in file upload and download time, regardless of the cause, is not included in any calculation of Service Availability.
- (c) 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, or any other Force Majeure Event, or (ii) other issues addressed in this SLA, will be excluded from Service Availability Credit calculations, set forth in Section 2.3.
- (d) Maintenance set forth in Section 7 of this SLA shall be excluded from Service Availability Credit calculations.

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## 2.3. Service Availability Credit.

- (a) Credits. Subject to your valid submission of a Service Availability Credit request and the other conditions herein, if Service Availability under Your Account 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

Service Availability Credits for partial calendar months of Your subscription for Your Account will be adjusted on a pro rata basis.

- (b) Requests for Credits. To request a Service Availability Credit, (i) Your Account must be in good standing with

Xband Enterprises, (ii) 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 (iii) 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.

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, in Xband Enterprises sole discretion, from such data that a Service Availability Credit is available.

- (c) Calculation of Credits. Xband Enterprises will calculate the Service Availability Credit based on the, the fees for the

Service and the percentage of overall individual ShareSync user accounts adversely affected. For example, if the Service Availability Credit pertains to the Service Availability of two (2) ShareSync user accounts out of two hundred (200) ShareSync user accounts purchased, the Service Availability Credit would be calculated as one percent( 1%) times the monthly fee for all of Your ShareSync user accounts times the percentage of monthly fee credited (as set forth above).

- (d) Total Credits; Sole Remedy. The limits regarding total Service Availability Credits available under this SLA are set forth in Section 4 of this SLA.

## 3. **SHARESYNC DATA RECOVERY CREDIT.**

- (a) Backups. 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 our customers to back-up their Data (including all files and folders) themselves or to arrange for third-party backup services.

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(b) ShareSync Data. “**ShareSync Data**” as used in this SLA means Data in ShareSync Accounts that is files and folders that contain files.

(c) Data Recovery. If Your ShareSync Data (i) becomes corrupted in Your Xband Enterprises-hosted ShareSync account, due to an act or failure to act by Xband Enterprises; or (ii) is lost due to a direct failure of the relevant Xband Enterprises hardware or datacenter where Your ShareSync Data is hosted (each, an “**Event**”), and Xband Enterprises fails to restore Your ShareSync Data to the last available good state, as determined by Xband Enterprises, in its sole discretion within five (5) business days of your initial submission of a Technical Support Ticket in the administrative control panel reporting ShareSync Data loss, Xband Enterprises will issue a credit (“**Recovery Credit**”) for the corresponding amount stated in the table:

Amount of ShareSync Data that Xband Enterprises was not able to restore	Recovery Credit
Less than 24 hours of ShareSync Data	25% of monthly fee
24 hours to 48 hours of ShareSync Data	50% of monthly fee
More than 48 hours of ShareSync 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 ShareSync 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 identify the name associated with Your Account (such as Your legal corporate name) or Your Account number and the dates and specific periods of lost or corrupted ShareSync Data for which You are requesting the Recovery Credit.

Xband Enterprises will compare information provided by You to the actual ShareSync Data that resides in Your ShareSync account. By submitting a request for a Recovery Credit, you authorize Xband Enterprises to make this comparison. A Recovery Credit is issued only if Xband Enterprises confirms an ShareSync Data loss warranting the Recovery Credit, as set forth above. If Xband Enterprises is unable to restore the relevant ShareSync Data within five (5) business days of Xband Enterprises determination that Recovery Credit request is valid, You will receive a monthly fee credit of one hundred percent (100%).

The limits regarding total Recovery Credits under this SLA are set forth in Section 4 of this SLA.

#### 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 (\$1.00) in which case the credit amount will be one dollar ( \$1.00). Only one (1) Service Availability Credit is available in any given calendar month. Notwithstanding anything set forth in the MSA or this SLA, Service Availability Credits are the sole remedy available to you under this SLA and the MSA for Xband Enterprises failure to reach the Service Availability levels or otherwise make the Services available.

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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 (1) Recovery Credit is available in any given month. Notwithstanding anything set forth in the MSA or this SLA, Recovery Credits are the sole remedy available to you for Xband Enterprises loss of or corruption of ShareSync Data or failure to restore ShareSync Data under this SLA and the MSA.

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 Refunds. Credits are applicable only toward future fees for 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 initial set up and configuration of Your Account, issues relating to your ability to access the Services and troubleshooting other issues related to Xband Enterprises delivery of 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 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

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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. In certain circumstances, Xband Enterprises may need to perform emergency maintenance, including in the event of a security event, or for 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. The determination that an event is an emergency will be made at Xband Enterprises sole discretion.

### 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 user's files and folders, 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 an account or a folder affects client and server performance. Large user accounts or data storage may respond slower to user requests or cause client non-responsiveness while the data is processed.

### 9. CERTAIN LIMITATIONS.

9.1. Retention Policy for File Versions and Deleted Files. ShareSync provides account administrators ability to limit the retention period for file versions and files in the ShareSync 'Recycle Bin.' File versions and contents of the 'Recycle Bin' are automatically deleted based on this policy. Contents of the Recycle Bin can also be manually permanently deleted by end-users. Xband Enterprises is not responsible for any data loss You suffer due to the aforementioned Retention Policy settings and manual permanent deletion of files from the 'Recycle Bin.'

### 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.

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XBAND ENTERPRISES DOES NOT MAINTAIN HISTORICAL 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 FILE & FOLDER CONTENTS) 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.