

**THIS SERVICE LEVEL AGREEMENT DEFINES THE SERVICE LEVELS PROVIDED TO YOU BY THE COMPANY (“Exchange My Mail”).**

**I. Service Definition.**

Exchange My Mail will provide Hosted Google BES and other Application Services as defined by the plan or plans purchased by You from Exchange My Mail (the “Services”).

**II. Technical Support.**

Exchange My Mail will provide You through Your authorized account contacts with technical support on setting up and configuring Your account, access to the Services, and other issues related to the Services. Only Your authorized account contacts may request information, changes or technical support pursuant to the Agreement.

Exchange My Mail uses commercially reasonable efforts to maintain a standard response time to technical support issues. This response time will depend on the complexity of the inquiry and support request volume. The Technical Support Department assigns the highest priority to customer inquiries related to server unavailability. The estimated time to respond does not apply to inquiries that require extensive research and testing.

**III. Billing Disputes**

Exchange My Mail must receive notice of billing disputes within sixty (60) days of the date Your credit card was charged or Your account was invoiced for the Services or You shall be deemed to have accepted such charges.

**IV. Control Panels and Server Management**

a. **Account Management Tools.** Account holders are provided with Exchange My Mail's online account management tools, the administrative control panel and end-user control panel. These tools are designed to give You control over Your account and the Services. Technical Support personnel can help You to become familiar with control panels; however, Technical Support shall not be expected to perform for You the tasks that can be done through control panel.

b. **Custom Configuration.** Requests for modification to the standard configuration will be considered on a case-by-case basis. Approval of such modifications will be at Exchange My Mail's sole discretion. Exchange My Mail 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.

c. **Additional Services.** For the tasks that cannot be performed through the administrative control panel or for services that are not included in the plan or plans purchased by You, You may request Exchange My Mail perform professional services on a time and materials basis through the administrative control panel or Technical Support. The request shall include a detailed description of work and the authorized amount of time, in half hour increments, to perform the work. Exchange My Mail 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. The services shall be performed at Exchange My Mail's standard published rates, provided that any emergency services that require commencement within 24 hours shall be charged at 1.5x Exchange My Mail's standard published rate. Exchange My Mail will use commercially reasonable efforts to perform requested services. However, it does not guarantee any particular result from performance of services or make any representations or warranties regarding such 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.

**V. Maintenance**

- a. **Scheduled Maintenance.** To ensure optimal performance and security of the Services, Exchange My Mail will routinely perform maintenance on a regularly scheduled basis within its published maintenance windows. This may require specific Services to be suspended during the maintenance period. Exchange My Mail schedules maintenance windows according to its policies, which can be referred to in the administrative control panel. Service unavailability due to scheduled maintenance will be excluded from Your uptime calculations for availability. Exchange My Mail will use commercially reasonable efforts to notify You in advance of any scheduled maintenance that may adversely affect Your Services.
- b. **Emergency Maintenance.** Under certain circumstances Exchange My Mail may need to perform emergency maintenance, such as security patch installation or hardware replacement. Exchange My Mail will not be able to provide You with advanced notice in case of emergency maintenance. Service unavailability due to emergency maintenance will be excluded from the uptime calculations.
- c. **Hardware Replacement.** Exchange My Mail will use industry standard practices to determine whether server hardware is functioning properly and will replace non-functioning hardware with similarly functioning hardware. Exchange My Mail shall use commercially reasonable efforts to implement hardware replacement within four hours from the time the problem is identified. In the case where this time is exceeded, the excess downtime is counted against the Service Availability Credit.

**VI. Service Availability.**

- a. **Uptime.** Exchange My Mail shall provide at least 99.99% Service Availability, measured on a per calendar-month basis. Service Availability is defined as the ability of a user on Your BES account to (a) Send and Receive email from his or her BlackBerry device, and (b) Wirelessly sync contacts and calendar items, provided that Your account is active, in good standing and enabled. Unavailability caused by issues beyond Exchange My Mail's reasonable control, including denial of service or similar attacks, mail bombs, DNS resolution, Domain Name expiration, Internet availability, SYN attacks, Google Outages, and other events or any other Force Majeure event will be excluded from Service Availability calculations.
- b. **Service Availability Monitoring**
1. Exchange My Mail monitors its servers and the Services as a whole but does not monitor individual mailbox or mobile device availability. To verify Service Availability, Exchange My Mail uses a combination of methods to validate availability, including but not limited to port and IP address availability. These checks are run on predetermined intervals with specific failure thresholds with respect to the service being provided
  2. Exchange My Mail does not guarantee incoming and outgoing mail delivery time and thus it is not included in its calculations or considered an outage if mail flow is delayed. If a delay in mail flow is due to a complete Service, server, or network outage, Service Availability will be calculated related to those services only. Exchange My Mail will use commercially reasonable efforts to provide reasonable times for incoming and outgoing mail flow.

**VII. Credit for Service Availability Non-Compliance**

Service Availability, If Service Availability for the first 30 day period (or any calendar month thereafter) is below 99.99%, Exchange My Mail will issue a credit ("Service Availability Credit") to You according to the following schedule:

<u>Service Availability*</u>	<u>Amount of the refund as a percentage of monthly fee for affected Service*</u>
<u>99.0% to 99.98%</u>	<u>3% of monthly fee credited</u>
<u>98.0% to 98.99%</u>	<u>5% of monthly fee credited</u>
<u>95.0% to 97.99%</u>	<u>10% of monthly fee credited</u>

<u>90.0% to 94.9%</u>	<u>25% of monthly fee credited</u>
<u>89.9% or below</u>	<u>2.5% credited for every 1% of lost availability up to the maximum total penalty limit</u>

To receive a Service Availability Credit, (a) Your account must be in good standing with Exchange My Mail, (b) You must open a Technical Support Ticket reporting the service interruption within 72 hours of the event, and (c) You must send an email or written Service Availability Credit request to the Billing Department in the month immediately following the month for which You are seeking a Service Availability Credit. Credit requests must include Your account username (account number) and the dates and specific times that the Service availability was below the prescribed levels.

The Billing Department will compare information provided by You to the monitoring data Exchange My Mail maintains. A Service Availability Credit is issued only if Exchange My Mail confirms from the monitoring data warranting the Service Availability Credit.

\*Exchange My Mail 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 mailboxes or other units adversely affected. For example, if the Service Availability Credit pertains to the Service Availability of two BlackBerry devices of 200 devices, the Service Availability Credit would be calculated as 1% x the monthly fee for the BlackBerry's x the % of monthly fee credited.

*The limits and sole remedies regarding Service Availability and Service Availability Credits are set forth in Section XIII of this Service Level Agreement.*

#### **VIII. Server Software**

- a. **Software Configuration.** Exchange My Mail will exercise industry standard practices to ensure that all pre-installed software is correctly configured.
- b. **Patches, Updates and Service Packs.** Exchange My Mail will use commercially reasonable efforts to promptly install security patches, updates, and service packs. Software updates may change system behavior and functionality and as such may negatively affect the Services purchased by You. Exchange My Mail cannot foresee nor can it be responsible for service disruption or changes in functionality or performance due to implementation of software patches and upgrades. If such disruption or changes occur, Exchange My Mail will use commercially reasonable efforts to remedy the situation as soon as possible after being notified of the problem by You.
- c. **Required Upgrades.** Exchange My Mail may be required by its software licensors to upgrade to the latest versions of the software. Licensor-required upgrades will be performed free of charge and upon reasonable notice to You. Software upgrades on Exchange My Mail's servers will occur at Exchange My Mail's discretion upon reasonable notice to You.
- d. **Incompatibilities.** Exchange My Mail is not responsible for problems that may arise from incompatibilities between new versions of the software and Your content, regardless of whether it was a requested, required or a discretionary upgrade. Nevertheless, Exchange My Mail will use commercially reasonable efforts to assist You in finding a solution.

#### **IX. Storage Capacity;**

**Data Transfer; Server Resources.** Each Account is allowed unlimited bandwidth and server storage equal to the size of their Google Mailbox. Server resources are shared among all customers hosted on the same server(s). Exchange My Mail configures servers, Services and storage in such a way that You are separated from other customers. However, due to its nature, for shared resources, server and service performance levels cannot be guaranteed.

- a. **Anti-Virus Checking.** Exchange My Mail does not provide any type of, anti-virus software on the Google BES servers. Exchange My Mail advises You to use up-to-date, local anti-virus software. Exchange My Mail is not responsible for any damages due to viruses, including infection of end-user devices or lost or corrupted messages.
- b. **Anti-Spam Message Filter.** Exchange My Mail does not provide any type of anti-SPAM software on the Google BES Servers. Exchange My Mail is not responsible for any damages due to anti-SPAM filtering, including lost or corrupted messages.

#### **XI. Privacy; Confidentiality**

- a. **Privacy.** Exchange My Mail is committed to protect Your privacy and the confidentiality of Your data to the maximum extent permitted by law and/or accepted by industry standards. We will not access, view or review any of Your private data accessible to us (including but not limited to that contained in Your web server files, e-mail messages, calendars, notes, contacts, memos or public folders) unless:
  1. either You or a government agency or regulatory body specifically requests us to do so;
  2. when performing routine backup and restore operations, virus scan and virus removal, spam and content filtering; or
  3. if such access, view or review is urgent and necessary to protect personal safety, perform troubleshooting, restore systems operation in the event of a server failure, remove illegal or offending (e.g. pornographic, violating our policies, etc.) content or prevent a server failure, Service outage or other damage.

Under no other circumstances will Exchange My Mail access Your private data or share Your confidential data with any third parties without Your prior permission, except to the extent required by law or governmental or regulatory body or necessary to render our services to You.

#### **XII. Total Credit Limits; Sole and Exclusive Remedies.**

*Total Service Availability Credits.* The total Service Availability Credit due to You for any account may not exceed 100% 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 \$1.00 in which case the credit amount will be \$1.00. Only one Service Availability Credit and credit level is available in any given calendar month.

Notwithstanding anything set forth in the Agreement or this Service Level Agreement, the Service Availability Credit described in Section VII shall be Your sole and exclusive remedy in connection with any service unavailability as described in section VI of this Service Level Agreement or breach by Exchange My Mail of the Agreement or this Service Level Agreement.

#### **XIII. Data Retention.**

Exchange My Mail is not responsible for your data whatsoever, as all data resides on the Google Servers. Google retains 100% responsibility of your data, as the only service we are providing for Hosted Google BES is Wireless Sync to your BlackBerry devices.

#### **XIV. Customer Responsibilities.**

To access Exchange My Mail services You must provide at the very minimum:

- A BlackBerry device with proper wireless and data service plan provided by your wireless carrier.

**XV. Limited Liability**

**Limited liability.** In no event will Exchange My Mail, Inc be liable for any indirect, special, incidental or consequential damages, whether in an action in contract or tort, even if advised of the possibility of such damages. Except with respect to infringement obligations, the total liability of Exchange My Mail, Inc for any claims arising from or in connection with this agreement or service, regardless of the form of action, shall not exceed the amount of services fees paid by the customer either directly to Exchange My Mail, in or through a partner/reseller for service rendered for the prior one (1) month of billing. In no event will either party or its affiliates, partners, suppliers or resellers have any liability to the other party for any lost profits, loss of data, loss of use, or costs of procurement or substitute goods or services.