



Xurver

Terms and Conditions

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PLEASE READ THE FOLLOWING HOSTING SERVICES TERMS AND CONDITIONS. BY SUBSCRIBING TO XURVER GAME HOSTING'S SERVICES, YOU AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT (the "AGREEMENT"). IF YOU AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK "I ACCEPT," (OR SIMILAR SYNTAX) OR CHECK THE APPROPRIATE BOX MANIFESTING YOUR INTENT TO BE BOUND BY THESE TERMS AND CONDITIONS AND CONTINUE WITH THE ACCOUNT SET-UP PROCESS. ANY USE OF XURVER HOSTING'S SERVICES SHALL CONSTITUTE AN ACT OF ACCEPTANCE OF THE CURRENT HOSTING SERVICES TERMS AND CONDITIONS.

Usage

1. Xurver, the company hereafter referred to as, ("Xurver"), any of its subsidiaries, ("Us"), ("We") and the Client, ("Customer"), ("Client") and ("You").
2. This Agreement ("Terms and Conditions"), ("User Agreement") contains the complete and entire terms and conditions that apply to your use of Xurver, a server hosting provider. Xurver may modify the terms of this Agreement, including the Fees (as defined below) at any time.
3. This User Agreement applies to web sites and interactive services owned or operated by Xurver. These Terms and Conditions apply to visitors and registered members of the Xurver website.
4. By accessing, using, viewing, reading, printing, installing, or downloading any material from us, or becoming a member of Xurver, you agree to be bound by these Terms and Conditions.
5. In order to provide you with an awesome service, we need you to agree to the rules in this document.
6. From time to time, we may revise this Agreement. We reserve the right to do so, and you agree that we have this unilateral right. You agree that all modifications or changes to this Agreement are in force and enforceable immediately upon posting.
7. Clients residing in the EEA are invited to read our Privacy Policy before registering for the Services.

1. Services

At the time of initial registration, you will select from the list of available Services the service plan(s) to which you wish to subscribe. All subscriptions to Services are subject to formal acceptance by Xurver.

Your subscription to the Services will be deemed accepted by Xurver when Xurver delivers a confirmation of the subscription to you. Xurver reserves the right to refuse to provide you with any Service for any reason.

Xurver also reserves the right to interrupt access to the Services to perform regular and emergency maintenance as needed. You may order additional Services at any time, provided that you agree to pay the then-current fees for such additional Services.

All additional Services shall be considered “Services” hereunder. All Services provided are subject to availability and to all of the terms and conditions of this Agreement.

2. Duration Of Agreement And Cancellation Policy

The term shall begin upon confirmation of your subscription or commencement of the services to you and receipt of lawful funds. The term’s length is chosen by you and shall be indicated when you order our services. This agreement may not be terminated by you during the initial term (and any renewals thereof) except in the event of a breach by Xurver. After the initial term, this agreement shall automatically renew for successive terms, equal in length to the initial term, unless terminated or canceled by either party as provided herein.

Xurver may also terminate this Agreement, with or without notice, in its sole discretion at any time for any reason or no reason.

If Xurver cancels this agreement pursuant to any of the terms outlined in this agreement, with the exception of termination without cause, Xurver shall not refund to you any fees paid or prepaid in advance of such cancellation and you shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation. In the event that Xurver terminates the agreement for cause, all prepaid hosting fees will be forfeited and are not refundable. The termination of this agreement does not relieve you of your obligation to pay any fees accrued or payable to Xurver prior to the effective date of termination of this agreement.

In addition to Xurver’s right to terminate this Agreement provided elsewhere in this Agreement, Xurver may terminate this Agreement effective immediately if, based on Xurver’s sole judgment, it determines that You or any of Your end-users:

1. have breached the user Agreement, and incorporated herein,
1. have infringed or violated any intellectual property right or privacy or publicity right of a third party,
2. have not complied with any applicable law, statute or regulation, or
3. have uploaded, published or disseminated any images, text, graphics, code or video which Xurver considers illegal or high risk, in its discretion.

Nothing contained in this Agreement is intended to, or shall, impose any duty or obligation upon Xurver to monitor or review your content or the content of your end-users at any time. You remain solely responsible for your content, and any liability generated therefrom.

The termination of this Agreement will terminate your access to the Services and your license. Xurver shall not be liable to you or to any third party for termination of the Services permitted under this agreement. Upon termination of this Agreement, Xurver reserves the right to maintain copies of your data files and records for archival purposes, but does not undertake any obligation to do so. Xurver reserves the right to impose an early termination charge for all Services terminated prior to the last day of the billing cycle.

If either party terminates this Agreement for any reason, you shall be solely responsible for making all necessary arrangements for securing a replacement host and moving all electronic data, graphics, images, video or text to the new service provider. Upon termination of this Agreement, provisions that by their nature would be expected to survive termination shall survive and remain in full force and effect in accordance with their terms.

3. Account Set Up

When you register for the services, you will choose a login (email) and password. You may use the services or modify your data and content only through such user id and password. You are entirely responsible for maintaining the confidentiality of your user id and password and for any and all activities which occur using those credentials. You agree to immediately notify us of any unauthorized use of your account or any other breach of security known to you.

You must provide us with a primary email address that is checked regularly and frequently. All notices and communications between us will be sent to the email address you provide, and you are therefore required to keep this address current or notify us if your address changes. You should notify us if any of your contact and/or billing information changes so that we may update your account. It is also your responsibility to make sure that our domain(s) are not included in any spam block list used by you or your mail provider.

Providing false or inaccurate contact information of any kind may result in the termination of your account of this agreement.

You are responsible for all activity transpiring under your account. We therefore highly recommend that you secure file, directory, and script permissions to the most restrictive settings possible. You agree that you have the technical ability to properly operate a web site and that you are responsible for any actions performed under your account, including but not limited to, damage caused to your site, Xurver hosting's site and/or equipment, and any other site.

4. Intellectual Property Rights

In connection with performance of the services and at the sole discretion of Xurver, Xurver may provide you with certain materials, including, without limitation, computer software (in object code or source code form), data, documentation or information developed or provided by Xurver or its suppliers under this agreement, domain names, electronic mail addresses and other network addresses assigned to you, and other know-how, methodologies, equipment, and processes used by Xurver to provide you with the services ("host materials"). Subject to the terms and conditions of this agreement, Xurver hereby grants you a limited, revocable, non-transferable, non-exclusive license to use the host materials solely in connection with the services. This license terminates when this agreement terminates.

As between you and Xurver, you acknowledge and agree that Xurver owns all right, title, and interest or otherwise has acquired all applicable licenses for the host materials, and all copyright, trade secret, patent, trademark and other intellectual property rights therein. Any use of the host materials after termination of this agreement is not licensed and strictly prohibited. You agree that you will not upload, transmit, reproduce, distribute or in any way exploit any host materials obtained through the services without first obtaining the express written permission to do so from Xurver.

As between you and Xurver, Xurver acknowledges that it claims no proprietary rights in or to the content (including without limitation, text, software, music, sound, audio visual works, motion

pictures, photographs, animation, video and graphics) supplied by you for use on your web site (“your content”). You hereby grant to Xurver non-exclusive, worldwide and royalty-free license to copy, make derivative works, display, perform, use, broadcast and transmit on and via the internet your content, solely for the benefit of you and to enable Xurver to perform its obligations hereunder.

This agreement does not constitute a license to use Xurver’s trade names, service marks or any other trade insignia. Any use of any of Xurver’s trade names, service marks or any other trade insignia is strictly prohibited, absent Xurver’s prior written consent.

You understand that any damage may require the expenditure of extensive legal fees, travel expenses, costs, and other amounts that may dwarf the liquidated damages themselves. You agree that you will pay all of these fees and costs.

5. Digital Millennium Copyright Act Notice

Xurver respects the intellectual property rights of third parties, and expects others to do the same. As part of our effort to recognize the copyrights of third parties, Xurver complies with the U.S. Digital Millennium Copyright Act (“DMCA”) and is therefore protected by the limitations on liability recognized by 17 U.S.C. § 512; commonly known as the “safe harbor” provisions of the DMCA. Xurver Hosting’s infringement notification procedure, counter-notification procedure, and takedown policies, are set forth below.

If you believe that your work has been copied, reproduced, altered or published in a way that constitutes copyright infringement under federal law, or your copyrights have been otherwise violated, please submit a DMCA notice to Xurver’s Designated Copyright Agent, containing the following:

- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- a description of the copyrighted work or other intellectual property that you claim has been infringed;
- a description of where the material that you claim is infringing is located on Xurver Hosting’s servers (preferably including specific URL’s associated with the material);
- your full name, address, telephone number, and email address;
- a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent(s), or the law; and
- a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner’s behalf.

Claimants may send their Notice of Claimed Infringement to:
contact@xurver.com

Please do not send other inquiries or information to our Designated Agent.

Some of Xurver Hosting’s customers are, themselves, “Service Providers” within the meaning of 17 U.S.C. § 512(k)(1). Accordingly, Xurver requests that any DMCA Notices relating to alleged

infringement by third party users, customers or subscribers of Xurver Hosting's Service Provider Customers be submitted directly to the DMCA Agent designated by such customer.

6. Content And Acceptable Use Policy

Xurver will not actively monitor the content of the websites being hosted by Xurver, although Xurver, at its sole discretion, may elect to electronically monitor its network and may disclose any content or records concerning your account as necessary to satisfy any law, regulation, or other governmental request or to properly operate our network and protect any of Our customers. Xurver will investigate complaints of a violation of a third party right or of the AUP. Xurver will cooperate with those attempting to minimize Internet abuse and reserves the right to institute "filters" or other mechanisms for that purpose. Xurver will cooperate with law enforcement authorities and reserves the right to notify such authorities if it suspects that you or any of your end users are engaged in illegal activities. Nothing contained in this Section, or anywhere in this Agreement, is intended to bestow any rights on any third party, and no third parties shall be entitled to enforce any terms of this Agreement between the Parties.

You acknowledge and expressly agree that Xurver will not be liable to you or any of your end users for any action Xurver takes to remove or restrict access to the Services for any alleged violation of the AUP, or exercising its rights as a Good Samaritan under the Telecommunications Act of 1996 (47 U.S.C. § 230(d)) or under the Digital Millennium Copyright Act of 1998 (See Section 12.8 below).

Xurver may, at its sole discretion, immediately terminate your access to the Services, and terminate this Agreement for cause, if your conduct violates this Agreement, or if any of your end users' or downstream customers' conduct violate such acceptable uses.

7. Payment

Services are billed on an automatic and recurring basis unless and until you follow Xurver's cancellation procedure set forth in this agreement.

Unless separately negotiated by you and us, and confirmed by separate written agreement, the initial and recurring fees for the services selected by you shall be as provided in the initial on-line order form. All set-up fees and special programming fees are non-refundable. Fees for services are payable in advance. Failure to make payment of fees for services when due may result in the suspension or termination of services.

At the time of registration, you must select a payment method. Xurver reserves the right to contract with a third party to process all payments. Such third parties may impose additional terms and conditions governing payment processing. If you do not pay all fees when due, your account will be deemed past due. For any past due fees, Xurver may charge you interest of the highest rate allowed by applicable law, whichever is lower, per month of the unpaid amount, until paid.

You agree to pay any and all taxes, including personal property, value added, or sales taxes, resulting from your use of the services. Xurver is not responsible for any bank fees incurred by you due to your use of check cards, automatic payment services, insufficient funds, and any and

all other fees your financial institution may impose due to your use of the services. If Xurver should receive less than full payment of the fees due to taxes, bank charges, transfer fees, or the like, Xurver will invoice you for the difference between payment received and the fees due.

You also agree to pay all attorney and collection fees arising from Xurver's efforts to collect any past due fees. If you cancel any service prior to the expiration of the pre-paid fees, you understand and agree that Xurver will not issue you any refund whatsoever, including but not limited to any remaining pre-paid fees, set up fees, and/or special programming fees.

From time to time, Xurver may offer coupons or other discount codes which may be used when signing up for hosting with us. Coupons and discount codes are for first-time customers of Xurver and must be used at the time of your initial purchase with us – they may not be applied after your service with us has already been initiated. Unless expressly provided, such coupons and discount codes may not be used toward upgrades to your account. Any account we deem to be attempting unauthorized coupon or discount code use may be subject to termination for cause.

8. Data Back Ups

You agree that your use of Xurver hosting's services is at your own risk, and that Xurver is not liable for any data loss in connection with its services. You are solely responsible for creating backups of your content. If, during our own routine maintenance, we do create a backup of your content which you later request us to restore to your account, we cannot guarantee that we will be able to do so, or that your content will be unharmed as a result of the initial data loss or the subsequent restore procedure. To that end, we highly recommend that you establish your own routine backup procedure and that you periodically test restoring files from your backup media to ensure that you are making viable backups.

Should you wish for Xurver to provide you with routine backup service, in addition to the services provided under this agreement please contact us. We offer many different backup solutions as an add-on service to our regular services, and all such services are provided through a separate, written agreement.

9. System Resources

Xurver does not impose hard set limits on each account's system resources. We do not actively disable accounts until they greatly exceed an acceptable level of usage. There are numerous activities that could cause such problems; these include: cgi scripts, ftp, php, http, etc. Xurver will advise you of a temporary block placed on any account found to be consuming an inordinate amount of system resources, to the point of degrading overall system performance.

Except where expressly permitted by law, you may not translate, reverse-engineer, decompile, disassemble, or make derivative works from the site and/or materials. You hereby agree not to use any automatic device or manual process to monitor or reproduce the site or materials, and will not use any device, software, computer code, or virus to interfere or attempt to disrupt or damage our services and site or any communications on it. If you do not adhere to this provision of this agreement, in addition to monetary damages and other remedies available to Xurver, you

hereby agree to pay liquidated damages of \$5000.00 plus any and all fees associated with recovery of these damages, including attorneys' fees and costs.

Any violation of the security to the site and/or services is prohibited and may result in criminal and civil liability. Unauthorized access of the servers used to provide the site, services, and/or materials (the "servers") is strictly prohibited and is a violation of this agreement. You agree not to engage in such activity or to attempt to breach the servers for the purpose of altering or manipulating the hardware and software, compromising the servers, or for any other unauthorized use commonly known as "hacking." in addition, you are prohibited from the following:

- Any form of unauthorized access to or use of data, systems or networks, including the Site and/or Services;
- Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network;
- Unauthorized interference with service to any user, host or network;
- Introducing a malicious program into the network or server (e.g. viruses and worms), including the Site and/or Services;
- Circumventing user authentication or security of any host, network or account;
- Using an account with another provider to promote your site with us in an abusive manner.
- Utilizing our services for the purpose of compromising the security or tampering with system resources or accounts on computers at our site or any other site.

In the event you are involved in any violation of system security, we reserve the right to release information about you to system administrators at other sites in order to assist in resolving security incidents, and we shall also cooperate with any law enforcement agency investigating a criminal violation of system or network security. Additionally, any violation of these security provisions may, at our sole discretion, be grounds for termination for cause of your account per section 3 of this agreement.

10. Fair Use Policy

We provide specific Services to our Clients and define normal, fair, and reasonable use in terms of our Xurver Servers as use that is consistent throughout any given billing period. We expect regular usage patterns from individual component machines and the client solution as a whole. Should we at our sole discretion determine a Client is not using this Service as defined under this Fair Use Policy, we may take actions to mitigate negative impact to Service delivery systems including but not limited to the following:

- Rate-limit the data the Client may send and/or receive from the individual machine to the entire solution level
- Adjust pricing to a standard bandwidth rate (market-dependent)
- Suspend or terminate Service to any or all Client machines
- Increasable paid RAM storage

11. Price Change

The amount you pay for hosting will never increase during a specific term or time period for which you have signed up for our services. We reserve the right to change prices listed on Xurver at any time, with or without notice, and the right to modify the amount of resources given to plans at any time.

Additionally, if we terminate this agreement, you understand that if we agree to provide services to you in the future, the amount you paid under any prior term or time period is not determinative of the amount you pay should we provide services to you again. It is your responsibility to check our website for plan or price changes should you wish to take advantage of plan or price changes which may have occurred.

Xurver does not automatically update your plan. All upgrades or downgrades will be performed at your request and may include modification fees or require reinitiating service with us.

12. Indemnification

You agree to defend, indemnify, and hold Xurver and its Affiliates harmless from and against any and all claims and liabilities, including reasonable attorneys' and experts' fees, related to or arising from

- any breach of your covenants under this Agreement;
- Your use of the Services;
- any defamatory, libelous or illegal material contained within your content or your information and data;
- any claim or contention that your content or your information and data infringes any third party's patent, copyright or other intellectual property rights or violates any third party's rights of privacy or publicity;
- any third party's access or use of your content or your information and data.

In the event of a claim under this section, Xurver shall be permitted to select legal counsel to provide a defense to such claim. Xurver reserves the right, at its own expense, to participate in the defense of any matter otherwise subject to indemnification from you, but shall have no obligation to do so. You shall not settle any such claim or liability without the prior written consent of Xurver, which shall not be unreasonably withheld.

13. No Warranties

YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE AND EXCLUSIVE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS, WITH ALL FAULTS" AND "AS AVAILABLE" BASIS. XURVER EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. XURVER MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES XURVER MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES OR THAT DEFECTS IN ANY

SOFTWARE, HARDWARE OR THE SERVICES WILL BE CORRECTED. ANY STATEMENTS MADE REGARDING SUCH MATTERS IN PROMOTIONAL MATERIALS SHALL BE CONSIDERED ADVERTISING REFERENCES, AND NOT WARRANTIES. YOU UNDERSTAND AND AGREE THAT ANY USE YOU MAKE OF ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS AT YOUR OWN DISCRETION AND RISK, AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA.

XURVER MAY MAKE THIRD-PARTY GOODS, SERVICES AND/OR SOFTWARE AVAILABLE TO YOU THAT ARE NOT PART OF THE SERVICES ("THIRD-PARTY SERVICES"). XURVER HAS NO CONTROL OVER THE CONTENT OF THIRD-PARTY SERVICES. USE OF ANY THIRD-PARTY SERVICES WILL BE AT YOUR OWN AND SOLE RISK AND SUBJECT TO THE TERMS AND CONDITIONS OF A SEPARATE AGREEMENT BETWEEN YOU AND THE THIRD-PARTY.

XURVER MAKES NO WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE SERVICES OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICES.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM XURVER OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY, WHETHER BY IMPLICATION, ESTOPPEL OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY MARKETING OR PROMOTIONAL MATERIALS DESCRIBING THE SERVICES ON XURVER HOSTING'S WEBSITE.

UNLESS OTHERWISE AGREED TO IN WRITING, XURVER DOES NOT MAKE A BACK-UP OF YOUR SITE(S) AS PART OF THE SERVICES. ACCORDINGLY, WE ENCOURAGE YOU TO MAKE A BACK-UP OF YOUR SITE(S) ON A REGULAR BASIS.

14. Limitation On Liability

YOU ARE SOLELY RESPONSIBLE FOR THE PROPER OPERATION OF YOUR WEBSITE AND/OR CONDUCT OF YOUR BUSINESS AND ALL OTHER MATTERS UNDER YOUR CONTROL. IN NO EVENT SHALL XURVER BE LIABLE TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO YOUR OPERATION OF YOUR WEB-SITE AND/OR BUSINESS OR FAILURE TO OPERATE YOUR WEB-SITE AND/OR BUSINESS.

THIS SECTION APPLIES TO ALL CLAIMS BY YOU OR YOUR END USERS IRRESPECTIVE OF THE CAUSE OF ACTION UNDERLYING THE CLAIM, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, STRICT LIABILITY, FRAUD, AND/OR MISREPRESENTATION.

REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, YOU AGREE THAT IN NO EVENT WILL XURVER, OUR AFFILIATES, CONTRACTORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OR LICENSORS, OR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICES, TECHNOLOGY, OR CONTENT AVAILABLE ON THE SERVICES ("AFFILIATES"), BE LIABLE TO YOU IN ANY MANNER WHATSOEVER: (A) FOR ANY DECISION MADE OR ACTION OR NON-ACTION TAKEN BY YOU IN

RELIANCE UPON THE INFORMATION PROVIDED THROUGH THE SERVICES; (B) FOR LOSS OR INACCURACY OF DATA OR, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (C) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES, LOSS OF PROFITS OR LOSS OF REPUTATION, FOR BUSINESS INTERRUPTION OR SIMILAR ACTION, EVEN IF XURVER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE TOTAL AGGREGATE AND MAXIMUM LIABILITY OF XURVER AND THE AFFILIATES, ARISING FROM OR OTHERWISE RELATING TO THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION OR CLAIM) IS LIMITED TO ANY AMOUNTS YOU HAVE PAID TO XURVER DURING THE SIX (6) MONTHS PRIOR TO THE ACCRUAL OF THE CAUSE OR CAUSES OF ACTION.

15. General Provisions

1. **Jurisdiction.** This Agreement and all matters arising out of or otherwise relating to this Agreement shall be governed by the laws of the State of New York, excluding its conflict of law provisions. The parties hereby submit to the personal jurisdiction of the state and federal courts of New York in the event litigation permitted under this Agreement is initiated. Exclusive venue for any litigation permitted under this Agreement shall be with the state and federal courts located in New York.

The parties agree that this choice of venue, jurisdiction, and forum as set out in the following parts of this Agreement is mandatory and not permissive in nature, thereby precluding any possibility of litigation between the parties with respect to, or arising out of, this Agreement in jurisdiction other than that specified in this Section.

All parties hereby waive any right to assert the doctrine of forum non-conveniens or similar doctrines, or to object to venue with respect to any proceeding brought in accordance with this paragraph or with respect to any dispute under this Agreement whatsoever.

Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it, as contemplated by this paragraph by registered or certified mail, Federal Express, proof of delivery or return receipt requested, to the parties address for the giving of notices as set forth in this Agreement.

1. **Arbitration.** If there is a dispute between the parties arising out of or otherwise relating to this Agreement, the parties shall meet and negotiate in good faith to attempt to resolve the dispute. If the parties are unable to resolve the dispute through direct negotiations, then, except as otherwise provided herein, either party shall submit the issue to binding arbitration in accordance with the then-existing Commercial Arbitration Rules of the American Arbitration Association. Arbitral Claims shall include, but are not limited to, contract and tort claims of all kinds, and all claims based on any federal, state or local law, statute, or regulation, excepting only claims under applicable worker's compensation law, unemployment insurance claims, intellectual property claims, actions for injunctions, attachment, garnishment, and other equitable relief. The arbitration shall be conducted in New York and conducted by a single arbitrator, knowledgeable in Internet and e-Commerce. Except as provided below, the party bringing the action shall be responsible for paying all costs for arbitration, including the arbitrator's fees. Each party shall bear its own attorneys' fees (except if the matter is for the collection of a debt owed, the

prevailing party shall be awarded its attorneys fees, all arbitration costs and arbitrator fees, in addition to all other applicable remedies).

1. **Assignment.** The rights and liabilities of the parties hereto will bind and inure to the benefit of their respective assignees, successors, executors, and administrators, as the case may be. Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned or otherwise transferred, in whole or in part by you.
1. **Severability.** If for any reason a court of competent jurisdiction or arbitrator finds any provision of this Agreement, or any portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible and the remainder of this Agreement will continue in full force and effect.
 - **Complete Agreement.** This Agreement (including all other policies incorporated herein) constitutes the entire agreement between the parties with respect to the Services, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No amendment to or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of both parties.
 - **Force Majeure.** Xurver shall not be responsible for any failure to provide service due to unforeseen circumstances or to causes beyond its reasonable control, including but not limited to: acts of God; war, riot, embargoes, acts of civil or military authority, or terrorism; fire, flood, earthquakes, hurricanes, tropical storms or other natural disasters; fiber cuts; strikes, or shortages in transportation, facilities, fuel, energy, labor or materials; failure of the telecommunications or information services infrastructure; hacking, SPAM, or any failure of a computer, server or software for so long as such event continues to delay Xurver's performance.

15. Contact Us

If you have any further concerns about our terms of service feel free to contact us.

contact@xurver.com