Special Conditions for Dedicated Servers

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Art 1: Subject

The purpose of this document is to define the Specific Conditions, namely the conditions of use and financial conditions, applicable to the subscription service of a **xervers** Dedicated Server (hereinafter, "the Service(s)"). They supplement the **xervers** General Terms of Service in force, which are applicable to the Service. In the event of contradiction, these Particular Terms and Conditions and their appendices take precedence over the **xervers** General Terms and Conditions of Service.

Capitalized terms are defined in the conditions below or in the Glossary accessible on the **xervers** website.

Art 2: Service Description

As part of the Service, **xervers** makes available to the Client different categories of servers whose rates, characteristics and basic configurations (hardware or software) are described and accessible online on the **xervers** website. The Customer also benefits from an inherent public broadband whose capacity, indicated on the **xervers** site, varies according to the offer. These configurations and characteristics evolve regularly. It is up to the Customer to follow these evolutions, particularly within the framework of the new Subscriptions that he/she takes out.

Before choosing and using your Dedicated Server, the Customer agrees to carefully study each available configuration in order to select the one(s) whose characteristics meet his or her needs. The Service's capabilities may be limited. These capacity limits are indicated on the **xervers** site.

The servers subscribed to **xervers** benefit from a fixed and non-transferable public IPv4 address associated to them. The latter remain the property of **xervers**.

Due to the high technical specificity of the Service, **xervers** is only subject to an obligation of means, except with regard to the respect of the Service levels relative to the availability of the infrastructure and the intervention deadlines provided for in the Contract, a situation in which **xervers** has an obligation of results.

Art 3: Subscription and Delivery

xervers informs the Customer by email about the availability of their Dedicated Server. This occurs within a maximum period of fifteen (15) days from the effective payment of the subscription made by the Customer. After this period, if **xervers** has not made the Dedicated Server available, the Customer has the right to request cancellation of the transaction and reimbursement of the sums already paid.

The actual online availability of the Dedicated Server determines the initial date on which invoicing takes effect.

In the event of a customer subscription that is likely to have an impact on the stability of **xervers'** infrastructure or on the performance of the Services provided to other **xervers'** customers (such as saturation of available space within a datacenter, for example), **xervers** reserves the right to consult with the Customer before making the Service available, in order to find an alternative solution that meets the needs and constraints of both Parties.

Art 4: Conditions of Use of the Service

Art 4.1: General

Before using the Service, the Customer is responsible for becoming familiar with all of its features (notably those described on the **xervers** website), as well as the applicable Terms of Service (notably these terms of use), and confirm that these terms meet their needs, taking into account their activities and risk analysis.

The Customer must have an Internet connection to connect to the Management Interface and access the Service, and shall be solely responsible for such Internet connection, in particular for its availability, reliability and security.

Since the network resources made available to the Customer are mutualized, the Customer undertakes not to use the Service in a way that harms other **xervers** customers. In particular, it undertakes not to make intensive use of the public bandwidth from which it benefits. Should this occur, **xervers** reserves the right to apply limitations to the latter, as indicated on the **xervers** website. The Customer may, if desired, subscribe to additional broadband options in order to benefit from an unrestricted guaranteed public broadband.

The Customer has the possibility to install, on its own initiative, some programs on its Dedicated Server. Such installations are done under their sole responsibility. **xervers** cannot be held responsible for a malfunction of the Customer's Dedicated Server following such installations and their configurations.

The Customer is the administrator of the Dedicated Server made available to him/her. In this capacity, the Customer confirms that it has all the technical knowledge necessary to ensure proper administration of the resources made available by **xervers** and to safeguard the data stored on said resources. **xervers** does not safeguard Customer data and Content. It is the Client's sole responsibility to carry out any operation (backup, transfer to a third-party service, Snapshot, etc.) necessary to preserve its Content, taking into account the nature of such Content and its risk analysis, particularly in the event of interruption of the Service or maintenance operations, migration to more recent versions or updating. In this regard, please note that interruption of the Services, regardless of the cause (notably termination of the Contract, non-renewal, lack of payment, interruption of Services by the Client, non-compliance with the Terms of Service in force, etc.), as well as certain reinstallation operations of the Services performed by the Client, lead to the automatic and irreversible removal of all Content (information, data, files, systems, applications, sites and other elements) reproduced, stored, hosted, collected, transmitted, disseminated, published and, in general, used and/or exploited by the Client in the context of the Services, including any possible safeguards.

xervers has no control over the Content stored and used by Customer within the framework of the Services. **xervers** may not be held liable, for any reason whatsoever, including jointly and severally, for the Client's Content and the use made of it in the context of the Service, including transmission, distribution to Internet users, collection, use, updating, etc.

As part of maintenance operations, **xervers** may be required to replace materials in order to keep the Service operational. In this case, **xervers** will replace it with identical material or material with equivalent characteristics. When the material reference is no longer available (obsolescence, end of

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production and/or end of marketing) and it is necessary to replace it with a newer material or with a higher configuration, **xervers** cannot guarantee the compatibility of the replacement material with the Content (namely distributions, systems, programs and applications) installed by the Customer under the Service.

Art 4.2: Distribution

The Dedicated Servers made available to the Customer by **xervers** do not have any distribution (or operating system) pre-installed. It is up to the Customer to acquire - from a publisher, any other authorized third party, or from **xervers** - the rights necessary to use the chosen distribution on his Dedicated Server, and to pay the corresponding fees. In this regard, **xervers** offers Customers several distribution options on its Site.

The versions of the various distributions compatible with the Service are mentioned on the **xervers** Site, as well as in the Customer Management Interface, and are likely to evolve, as is the list of compatible versions thus provided by **xervers**, depending on the Service ranges available.

The Customer is solely responsible for installing the chosen distribution on its Dedicated Server. **xervers** ensures the interoperability of the Service with the compatible versions of the distributions. However, **xervers** is not responsible for the proper functioning of said distributions, which may lead to errors, failures, or cause the Service to malfunction.

It is also up to the Customer to maintain and update the distribution installed on his Dedicated Server. The Customer assumes all responsibility for this. Under no circumstances may **xervers** be held liable in this regard, particularly due to operations (maintenance, upgrades, etc.) carried out in violation of the applicable terms of use and/or license conditions, or due to a malfunction of the Dedicated Server resulting from operations so carried out by the Customer.

Before operating updates or version upgrades of the distribution installed on your Dedicated Server, the Customer must ensure that the evolution or new version is compatible with the Service and implement the necessary measures to ensure the perpetuity of your data.

xervers reserves the right to evolve the Service and to require updates or upgrades of the distribution version in order to maintain the security of the Service and its Infrastructures. In the event of an evolution that requires such an update or version upgrade, the Customer will be informed reasonably in advance, subject to urgent situations such as security risks that require immediate action. If the update or version upgrade of the distribution is not carried out following **xervers**' request, the latter reserves the right to interrupt the Customer's Service connection to the network.

xervers also reserves the right to operate any update and/or version upgrade it deems necessary to maintain the security of its Infrastructures.

Art 4.3: API applications, tools and programs

The API Applications, tools and programs made available by **xervers** in connection with the Service must be used in accordance with the applicable Terms of Service, including, where applicable, the Third-Party Product Terms communicated by **xervers**.

Customer agrees to always use the latest available versions of API Applications, tools and programs made available by **xervers**.

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The Services may be used and interconnected with elements (programs, systems, connected objects, etc.) not provided by **xervers**. The Client is responsible for acquiring the rights necessary for the use of these elements and for making payments directly to the third parties concerned.

Art 4.4: Location

The DataCenters available for granting Dedicated Servers are mentioned on **xervers** Site or at the time of Subscription.

When several locations are available, the Customer chooses the one he/she prefers at the time of Subscription.

The Customer undertakes to comply with the laws applicable to the territory in which his or her Dedicated Server is located and his or her data is stored.

xervers reserves the right to suspend the Customer's Service when it is used for an activity prohibited in the territory of the physical location of the equipment provided by **xervers**.

In the case of geolocated IP addresses, the Customer undertakes not to use the Service in violation of the applicable legislation in the country in which the IP address is declared. Otherwise, **xervers** may be required to suspend any geolocated address associated with the Customer.

Art 5: Measures to Fight SPAM Sending from the xervers network

xervers implements a set of technical measures aimed at combating the sending of fraudulent electronic messages, as well as the sending of SPAM from its infrastructure.

To this end, **xervers** verifies the traffic sent to the Internet from the Service used by the Client to port 25 (SMTP server). This operation consists of checking the traffic through automatic tools.

The submissions are not filtered or intercepted, but checked with a time interval of only a few seconds. These operations are done in parallel and never head-on between the server and the Internet.

xervers reserves the right to block, under certain circumstances, the possibility of sending e-mail.

Likewise, no operation is performed on sent electronic messages. **xervers** does not place any tags in the messages, nor does it alter the electronic messages sent by the Client in any way. No information is stored by **xervers** during these operations, with the exception of statistical data.

This operation is performed regularly and completely automatically. No human intervention is performed when verifying the traffic sent to port 25 (SMTP port).

In case email messages sent by the Customer's Server are identified as SPAM or fraudulent, **xervers** will inform the Customer by email and will block the Server's SMTP port.

xervers does not keep copies of emails sent from the Service's SMTP port, even when they are identified as SPAM.

The Client may request the unblocking of the SMTP port through its Management Interface.

Any new email identified as SPAM will result in a new blocking of the SMTP port for a longer period of time.

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From the third blocking, **xervers** reserves the right to refuse any new request to unblock the SMTP port.

Art 6: Mitigation (Protection against DOS and DDOS attacks)

xervers has implemented a protection against DoS and DDoS (Denial of Service Attacks) type cyber-attacks, provided they are performed massively. This feature is intended to allow the client to keep its Service running during any attack.

This feature consists of checking traffic destined to the Client Service from outside the **xervers** network. Traffic deemed illegitimate will be rejected before it reaches the Customer's Infrastructure, allowing legitimate users to access the applications offered by the Customer despite the cyber-attack. These protection measures cannot intervene against computer attacks such as SQL injection, Bruteforce, exploitation of security vulnerabilities, etc ...

Due to the great complexity of the Protection Service, **xervers** is only subject to an obligation of means. It may happen that the attack is not detected by the implemented tools and that the tools in place do not allow the Service to continue functioning.

Depending on the nature of the attack and its complexity, **xervers** will proceed with different levels of traffic protection to preserve its infrastructure and the Customer Service.

Mitigation is only activated after an attack is detected by **xervers**' tools. Therefore, until mitigation is activated, the Service supports the attack up front, which may lead to its unavailability.

Mitigation is activated indefinitely and automatically deactivated once **xervers** no longer identifies any malicious activity or illegitimate traffic destined to the Customer Service.

Throughout the mitigation activation period, **xervers** cannot guarantee the accessibility of Customer applications, although it will make every effort to limit the impact of this attack on the Customer Service and **xervers** Infrastructure.

If, despite activation of mitigation, the cyber-attack is likely to compromise the integrity of **xervers** infrastructure or other **xervers** Customers, **xervers** will reinforce protection measures, which may result in the degradation of the Customer's Service or impact its availability.

Finally, it is possible that some of the traffic generated by the cyber-attack may not be detected by **xervers**' equipment and reach the Customer Service. The effectiveness of mitigation also depends on the configuration of the Customer's Service; in this sense, it is up to the Customer to verify that he has the necessary skills to ensure its proper administration.

It is important to remember that mitigation in no way exempts the Customer from protecting its Service, implementing security tools (for example, firewall), regularly updating its system, safeguarding its data, or ensuring the security of its software (scripts, codes, etc.).

Art 7: Service Level Agreements (SLA)

When the Service is unavailable or experiences dysfunctions that are the responsibility of **xervers**, the Customer is responsible for contacting **xervers** teams and opening an incident record from its Management Interface.

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xervers undertakes to ensure Service levels regarding Dedicated Server availability and intervention and restoration times, as described on the **xervers** Website. In the event of non-compliance with these SLAs, the following compensations will apply:

Service	Compensations
Dedicated Server Availability	Credit of 5 % of the monthly cost of the unavailable Dedicated Servers, for the period of each hour of unavailability initiated beyond the SLA, to a limit of 100 % of said monthly cost.
Intervention time guarantee, Incident Level 1 (Dedicated Server Hardware)	Credit of 5% of the monthly cost of the unavailable Dedicated Server, for the period of each hour started beyond the SLA, up to a limit of 100% of said monthly cost.
Guaranteed recovery time**, Level 1 Incident (Dedicated Server Hardware)	Credit of 5% of the monthly cost of the unavailable Dedicated Server, for the period of each hour started beyond the SLA, up to a limit of 100% of said monthly cost.
Intervention Time Guarantee*, Incident Level 2 (Dedicated Server Performance)	Credit of 5% of the monthly cost of the Dedicated Server concerned, for the period of each hour started beyond the SLA, up to a limit of 100% of said monthly cost.

(*) The intervention time is calculated from the creation of the occurrence log. "Intervention" means the handling of the occurrence log by **xervers** technical teams, not the resolution of the Incident.

(**) The restoration period shall be calculated from the start of the intervention. "Re-establishment" shall mean solely the restoration of the availability of the unavailable Dedicated Server or the replacement of said Dedicated Server in case of failure, excluding the restoration of the data, systems and applications that were stored and/or installed by the Customer on the unavailable Dedicated Server.

"Level 1 Incident" means any Incident that causes the Dedicated Servers to be completely unavailable, as well as material incidents (power failure, disk failure, etc.).

"Level 2 Incident" means any Incident that causes a substantial degradation of the performance of the Dedicated Servers, such as latency problems, prolonged access times, performance problems, slow applications, etc.

By "monthly availability rate" is meant the total number of minutes of the month considered after deducting the number of minutes of Unavailability of the month in question, the result being divided by the total number of minutes of said month. For the calculation of the compensations, the unavailability time is calculated from the opening of the occurrence record until the resolution of the dysfunction.

"Unavailability" shall mean the impossibility of accessing the public IPv4 address of one or more Dedicated Servers due to a failure or dysfunction of one of **xervers** equipment (network or other). The failures and malfunctions of **xervers** equipment that do not prevent access to the Dedicated Servers are not considered an unavailability.

xervers undertakes the Service level commitments set out above, subject to the cases excluded below, and provided that the Customer cooperates with **xervers** to restore the Service in a situation of Unavailability.

When declaring the Incident and creating the incident record, the Customer shall provide **xervers** with all information useful for diagnosis and intervention by **xervers**. The Client undertakes to remain available to cooperate with **xervers** as soon as necessary, in particular to provide it with any additional information and to perform all necessary tests and checks. If necessary, the Client grants **xervers** access to its Management Interface. If it is not available or does not cooperate with **xervers**, the Client may not benefit from this warranty.

It is expressly agreed that the aforementioned compensation constitutes, for the Client, a pre-established indemnity for all damages resulting from **xervers**' non-compliance with the service commitments in question. The Client hereby waives any other request, claim and/or action.

If a single event entails the non-respect of several of the Service Level Commitments described above, the compensations may not be cumulated. In this case, the most favorable compensation to the Customer shall apply. Likewise, the total amount of compensation awarded in the course of a single month, for all events taken together, may not exceed the total monthly cost of the Service impacted.

Compensation is deducted from the monthly invoice, following receipt by **xervers** of the Customer's request for compensation. One month after the closure of the corresponding occurrence record, the Customer may no longer request any compensation.

The Client may under no circumstances avail himself of this article and claim the above-mentioned compensation in the event that the unavailability results, in whole or in part,

I. from events or factors beyond **xervers**' control, such as, but not limited to, force majeure, acts of third parties, dysfunction or misuse of materials or programs at Customer's expense,
II. of a failure by the Customer to comply with its obligations under this Agreement (namely, failure to cooperate in the resolution of an incident),
III. from misuse or inappropriate use of the Service by the Customer (namely, misconfiguration of the network),
IV. of a scheduled maintenance,
V. suspension occurred under the conditions established in the General Terms and Conditions of Service, or
VI. of hacking or hacking acts.

In such cases, and subject to point (iv), **xervers** reserves the right to invoice the Customer for any intervention carried out to restore availability. This will be the subject of a quote to be submitted to the Customer for validation.

The causes of unavailability, as well as the establishment of the exclusion cases defined above, shall be established by **xervers** by all means, and notably on the basis of the elements of **xervers**' computer system (such as connection data) that, by express agreement, shall be receivable.

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Art 8: Price, Duration, Renewal and Resiliation of the Service

The price varies depending on the server range and the rental duration (the "Initial Duration") chosen by the Customer when subscribing. Only the rate indicated in the order placed by **xervers** corresponds to the total amount payable by the Customer.

Upon subscription, as well as upon each renewal of the Service, an invoice is issued and paid by direct debit on the payment method registered by the Customer. The Customer undertakes to register a valid payment method in his **xervers** Customer Account from among the available payment methods.

It is up to the Client to precisely determine the offer that best meets his or her needs. The latter cannot be subsequently modified during the execution of the contract.

The Initial Term begins on the day the Dedicated Server is actually made available. When the Initial Term comes to an end, the rental term is automatically renewed for successive periods of equal duration (the "Renewal Term(s)"), unless the renewal term is modified or the Service is terminated in accordance with the terms set forth below or the General Conditions of Service in effect.

You may modify the duration of future Renewal Periods of your Services through the Management Interface no later than 24 hours before the end of the Initial Duration or the current Renewal Period.

If you do not wish the rental duration of a Dedicated Server to be renewed at the end of the Initial Term or the current Renewal Period ("Renewal Date"), you must disable the automatic payment feature in the Management Interface no later than 24 hours before the end of the Initial Term or the current Renewal Period.

In case of deactivation of automatic payment under the conditions set out above, the Service in question is automatically terminated and deleted at the end of the Initial Term or Renewal Period in progress ("Expiration Date"). All Content and data stored by the Client in the context of the Service will be deleted no later than seven (7) days after the Expiration Date of the Service. The same shall apply in the event of immediate or early termination. It is the Customer's responsibility to take all necessary measures in order to ensure the conservation of such Content and data before the termination of the Service.

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