

Print This Page

Terms of Service

Last Updated: August 17, 2018

PLEASE READ THESE TERMS OF SERVICE CAREFULLY PRIOR TO USING THE SERVICE. YOUR USE OF THE SERVICE(S) CONSTITUTES YOUR ACCEPTANCE OF THESE TERMS OF SERVICE. THESE TERMS OF SERVICE INCLUDE, AMONG OTHER THINGS, AN ARBITRATION PROVISION CONTAINING A CLASS ACTION WAIVER.

These terms of service (this "Agreement" or "TOS") set forth a legally binding contract between You and KIXEYE Inc., a Delaware corporation headquartered in San Francisco, CA ("KIXEYE," "we," "our," or "us"), governing Your access and use of all our websites, including affiliated websites owned and operated by us (collectively, our "Site"), our applications, games, and any related services (collectively, the "Service"), whether provided directly by us or by any third-party (e.g. Facebook, Apple App Store, third-party game website, etc.). "You," "Your," and "Yourself" mean the person who uses the Service.

By using the Service, You agree that You have read, understand, and agree to be bound by the terms of this Agreement. In addition, when accessing or using certain elements of the Service, You will be subject to any additional terms, as applicable, which are hereby incorporated by reference into this Agreement, including, without limitation, our Privacy Policy, our Forum Rules, and any end user license agreements for any of our

software that You use to access to the Service. In case of any conflict between this Agreement and the Forum Rules or other published terms related to the Service, this Agreement will prevail.

1. Requirements for Accessing and Using the Service. Without limiting any other provisions of this Agreement, in order to use the Service, You must (a) be at least 13 years old and able to enter into this legally binding Agreement with KIXEYE; (b) obtain the permission of Your parent or legal guardian to use the Service if You are under 18 years old (or older if residing in a state or country where the majority age is older); (c) accept and agree to all the terms of this Agreement; and (d) comply with all of the terms and conditions of this Agreement and all applicable law.
2. Your Limited Right To Use the Service. Subject to the terms of this Agreement, and only as long as You fully comply with its terms, You are granted the non-exclusive, non-transferable, revocable, limited, personal license (expressly subject to the limitations below) to access and use the Service solely for Your personal, non-commercial entertainment purposes. The Service and the Site are protected by federal and common law copyrights (for the images, content, music, and associated source code), federal and common law trademark rights (including, without limitation, Vega Conflict™, TOME: Immortal Arena®, Battle Pirates®, War Commander®, War Commander: Rogue Assault™, and KIXEYE® (name and logo)), trade secret and other proprietary rights and laws (collectively, the "Intellectual Property Rights"). You acknowledge and agree that: (a) the

Intellectual Property Rights are and will remain the sole and exclusive property of KIXEYE, (b) You do not acquire any ownership rights in or to the Intellectual Property Rights, except as expressly granted in this Agreement, and (c) You will not use the Service in any way other than as expressly permitted in this Agreement or with prior written permission from KIXEYE. Any rights not expressly granted in this Agreement are reserved by KIXEYE.

3. Prohibited Activity. Without limiting any other terms of this Agreement, You agree that You will not, under any circumstances:

- Create more than one Account (as defined below) for using the Service per platform outside Kixeye.com;
- Misrepresent Yourself to us or any other user of the Service;
- Sell, rent, gift, trade, barter, exchange, or otherwise transfer or commercialize any Virtual Items (as defined below), or other rights to the Service, except as expressly provided in this Agreement;
- Create, use, distribute, or promote any cheats, hacks, tools, or other computer programs that alter gameplay or the Service or use any other game file other than those provided by KIXEYE to access the Service;
- Use the Service to send "spam" messages or advertise or promote goods or services;

- Use any macros, auto-looters, bots, auto-refreshers, or other software programs or add-ons to automate gameplay or the Service;
- Exploit glitches, bugs, errors in design, or undocumented features in the Service to gain access to restricted content or features, avoid payments, or obtain a gameplay advantage;
- Attempt to bypass encryption, security, or game control measures in the Service;
- Hack, interfere with, or disrupt the Service or any computers or networks connected to or enabling the Service;
- Use the Service to post or otherwise transmit (a) any email addresses, personally identifying information (other than Your User Information (as defined below)), or content that is threatening, abusive, bullying, harassing, defamatory, obscene, pornographic, invasive of another's privacy, or discriminatory; (b) any content that You are prohibited by applicable law or contract from posting or transmitting; (c) any content that poses or creates a privacy or security risk to any person; or (d) any content that You did not create or to which You do not have sufficient rights to post or transmit;
- Upload any files containing viruses or any other computer code, files, or programs designed to interfere with the functioning of the Service, including, but not limited to,

- any software, hardware, or communication system related thereto;
- Post content or engage in conduct that, in KIXEYE's sole judgment, may expose KIXEYE or its users to any harm or liability;
 - Reverse engineer, copy, frame, distribute, sell, modify, de-compile or disassemble, or otherwise attempt to discover any source code of, in whole or in part, or create a derivative work of the Service (including, without limitation, any software underlying the Service), except as expressly permitted by applicable law or applicable, valid open source license; or
 - Engage in or use any data mining, robots, scraping, or other automated data gathering or extraction methods in connection with the Service.
4. **Your Account.** In order to access certain aspects of the Service, You may need to create an account (an "Account") on the Site or on Facebook, Google+, Apple iTunes, or another third-party platform authorized by us. If You access or download any portion of the Service through a third party, You will be subject to such third party's terms and conditions in addition to this Agreement. To create an Account, You must select a password and provide certain user information that may contain personally identifying information and payment account information ("User Information"). All User Information You provide us from time to time must be truthful, accurate, current, and complete.

You agree to promptly notify us of any changes to Your User Information. Our Privacy Policy governs our collection, use, and storage of Your User Information. You are solely responsible for ensuring the confidentiality of Your Account credentials (i.e., Your Account password and login information) and maintaining the security of such information. You agree not to authorize any other person to use Your Account credentials to access the Service. EXCEPT AS OTHERWISE REQUIRED BY APPLICABLE LAW, YOU ARE SOLELY RESPONSIBLE FOR ALL TRANSACTIONS AND OTHER ACTIVITIES AUTHORIZED OR PERFORMED USING YOUR ACCOUNT CREDENTIALS, WHETHER AUTHORIZED BY YOU OR NOT, INCLUDING, BUT NOT LIMITED TO, ACTUAL OR ALLEGED FRAUD, TRANSACTIONS INVOLVING VIRTUAL CURRENCY, AND UNAUTHORIZED PAYMENTS. You must notify KIXEYE immediately at support@kixeye.com if: (1) You believe any of Your Account credentials have been obtained or used by any unauthorized person or (2) You become aware of any other breach or attempted breach of the security of the Service or Your Account. In order to use certain aspects of the Service, You may need certain equipment and/or hardware and You may need to download and update certain third-party software for which certain third-party fees may apply. You are solely responsible for any and all third-party fees that You may incur in connection with Your use of the Service, including, but not limited to, any fees for cellular data usage or Internet use.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, YOU ACKNOWLEDGE AND AGREE THAT YOU SHALL HAVE NO OWNERSHIP OR OTHER PROPERTY INTEREST IN ANY ACCOUNT STORED OR HOSTED ON OUR SYSTEM AND THAT ALL RIGHTS IN AND TO SUCH ACCOUNTS SHALL AT ALL TIMES BE OWNED BY AND INURE TO THE BENEFIT OF KIXEYE.

5. **Suspension and Termination.** Except as otherwise prohibited by applicable law and without limiting any other provisions of this Agreement or our rights or remedies under applicable law or this Agreement, You agree that KIXEYE, in its sole discretion, may suspend or terminate Your Account and/or Your access to and use of the Service, without notice and liability to You or any third party, at any time and for any reason, including, but not limited to, Your actual or suspected violation of this Agreement or applicable law. Upon any such suspension or termination, Your license to use the Service will immediately be suspended or terminated (including Your license to Virtual Items), and KIXEYE may immediately deactivate or delete Your Account and all related information and files in Your Account, except as otherwise prohibited by applicable law. If You wish to terminate this Agreement, You must stop using the Service. The provisions of Sections 2, 4-12, and 14 shall survive any termination of this Agreement for any reason.
6. **Your Content.** You are solely responsible for all content You upload, transmit, post, publish on or through the Service (collectively, "User Content").

By posting User Content on or through the Service, You hereby grant KIXEYE and its affiliated companies a nonexclusive, worldwide, royalty free, fully paid up, transferable, sublicensable, perpetual, and irrevocable license to copy, display, transmit, perform, distribute, store, modify, sublicense, and otherwise use Your User Content in any way and for any purpose in connection with the Service in accordance with our Privacy Policy, and, to the extent permitted by applicable law, You hereby completely and irrevocably waive any moral rights or similar interest(s) with respect to KIXEYE's use of Your User Content used by KIXEYE. The license for User Content granted to KIXEYE in this Section, and the related waiver of any applicable moral rights, shall survive any termination of this Agreement.

When You post User Content on or through the Service, You represent and warrant that You have the right, power, and authority to post that User Content and grant the license in this Section. You further represent and warrant that by posting such User Content You are not violating any third-party rights of any kind, including, without limitation, any intellectual property rights, rights of publicity, and privacy rights. To the extent Your User Content may be copyrightable, You represent, warrant, and covenant that You are the owner of all the copyright rights to such User Content and that KIXEYE may exercise the rights to Your User Content granted under this Agreement without any liability or obligation for any payment to You or any third parties.

You agree that You must evaluate, and bear all risks associated with, the use of any User Content uploaded, transmitted, posted, published on or through the Service by others, including any reliance on the accuracy, completeness, or usefulness of such User Content. You are solely responsible for Your interactions with any other user. KIXEYE reserves the right, but not the obligation, to become involved in any disputes between users in connection with the Service.

Before publishing any User Content on or through the Service, You should keep in mind that other users may view, use, reproduce, or appropriate Your User Content in ways that You may not approve or authorize. All User Content is deemed non-confidential public information in which You should have no expectation of privacy. We cannot be responsible for any third party use or misuse of Your User Content You make available on or through the Service.

Without undertaking any obligation to screen or monitor User Content, KIXEYE has the right (but not the obligation) to edit, modify, refuse to post or remove any User Content that it determines, in its sole discretion, violates this Agreement or is otherwise objectionable. You acknowledge and agree that KIXEYE may, but is not obligated to, preserve User Content and may also disclose User Content to the extent permitted by applicable law and as provided in our Privacy Policy.

KIXEYE does not wish to receive and will not accept unsolicited ideas or suggestions as a general matter of policy. Any suggestions, feedback, or

data that You submit, post, publish, or otherwise publicize on, through, or in connection with the Service are deemed User Content and are governed by this Agreement. You acknowledge that we have no obligation to accept, use, return, evaluate, or consider such ideas or suggestions, and we will be entitled to use and disseminate such ideas and suggestions without restriction and for any purpose whatsoever without acknowledgment or compensation to You or any third party.

7. Digital Millennium Copyright Act.

- Notice of Infringement. If You are a copyright owner or agent thereof and believe any User Content infringes upon Your copyrights, You may submit a written notice pursuant to the Digital Millennium Copyright Act ("DMCA") to our copyright agent at DMCANotice@kixeye.com. In order to take action, Your notice must: (a) include Your physical or electronic signature; (b) identify the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notice, a representative list of such works at that site; (c) identify the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and provide information reasonably sufficient to permit us to locate the material; (d) provide a way for us to contact You, such as Your address, telephone number, or email address; (e) provide a statement that You have a good

faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or applicable law; and (f) provide a statement that the information in the notice is accurate, and under penalty of perjury, that You are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. We cannot take action unless You give us all required information, and You acknowledge that if You fail to comply with all of the requirements of this Section, Your DMCA notice may not be valid. Without limiting any other provisions of this Agreement, we may terminate Your Account if You repeatedly infringe upon third-party copyright rights.

- Counter-Notice. If You believe that Your User Content that was removed (or to which access was disabled) is not infringing, or that You have the authorization from the copyright owner, the copyright owner's agent, or pursuant to applicable law, to post and use such material, You may submit a written counter-notice to our copyright agent at DMCANotice@kixeye.com. In order to take action, Your counter-notice must: (a) include Your physical or electronic signature; (b) identify Your User Content that has been removed or to which access has been disabled and the location at which Your User Content appeared before it was removed or access to it was disabled; (c) include a statement, under penalty of perjury, that You have a good faith belief

that Your User Content was removed or disabled as a result of mistake or a misidentification of Your User Content; and (d) include Your name, address, and telephone number, and a statement that You consent to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if Your address is outside of the United States, for any judicial district in which we may be found, and that You will accept service of process from the person who provided the DMCA notice to us or an agent of such person. If a proper counter-notice is received by our copyright agent, we may send a copy of the counter-notice to the original complaining party informing that person that we may replace the removed User Content or cease disabling it in ten business days. We may, in our discretion, replace or restore access to the removed User Content and cease disabling access to it in 10 to 14 business days or more after receipt of the counter-notice, unless our designated agent first receives notice from the person who submitted the DMCA notice that such person has filed an action seeking a court order to restrain the owner of the removed User Content from engaging in infringing activity relating to such User Content.

8. Fees. KIXEYE reserves the right to charge for any portion of the Service and to change its fees or subscription rates (if any) from time to time in its sole discretion. Except as otherwise prohibited by applicable law, You are responsible for all charges

or debits to any payment method linked to Your Account (including any third-party fees associated therewith) for transactions and other activities authorized or performed using Your Account credentials. Any fees or charges paid by You for or in connection with the Service, including enhanced gameplay features or Virtual Items, are deemed fully earned by KIXEYE when paid by You.

We may offer some of our Services on a subscription basis ("Subscription") to You. If You purchase a Subscription, the Subscription will have immediate effect and you agree to an automatically renewing monthly (or other term as agreed to) subscription term at the rate displayed at the time of your purchase. Subscriptions purchased through a third-party platform, such as Apple, may be charged to you by the third-party (iTunes Account) and the third-party's payment terms shall apply. Your account will be charged for your Subscription renewal 24-hours prior to the end of the current term period. You may cancel your Subscription by turning off auto-renew at least 24-hours prior the end of the current term period in Your account settings.

9. Virtual Items. KIXEYE may, in its sole discretion, offer You the ability to purchase or earn a limited license to virtual goods and/or virtual currency for use in connection with the Service ("Virtual Items"). If KIXEYE offers the ability to purchase or earn such a license, KIXEYE hereby grants You a non-exclusive, non-transferable, revocable, personal, limited right and license to use Virtual Items only for Your personal, non-commercial,

entertainment use exclusively in connection with the Service, subject to the terms of this Agreement.

Such limited license may be earned by performing certain specified tasks in connection with the Service and may be purchased within the Service or through a third-party authorized by KIXEYE. Once earned or purchased, Virtual Items will be reflected in Your Account. KIXEYE may, in its sole discretion, limit the amount of Virtual Items that may be purchased, earned, or redeemed. The Service is constantly changing and evolving to keep the games fun and challenging for all. Rules, attributes, goals, missions, power balance, and gameplay features will change over time, often without notice, as part of this natural creative and game balance/optimization process. Accordingly, You acknowledge and agree that KIXEYE, in its sole discretion, may engage in actions that may impact the perceived value or purchase price, if applicable, of Virtual Items at any time, except as prohibited by applicable law. KIXEYE makes no guarantee as to the nature, quality, continuity or value of any game play features or Virtual Items (or the availability or supply thereof).

Virtual Items may only be used in connection with the Service. You may not distribute, lease, license, sell, rent, gift, exchange, convert, or otherwise transfer or assign Your license to Virtual Items or Your Account, without KIXEYE's prior express consent or as expressly permitted by this Agreement or through the Service. Any attempted disposition of Virtual Items in violation of this Agreement shall be null and void and will terminate Your license.

Except for the limited licenses granted under this Agreement or as otherwise required by applicable law, You do not have any right, title, or interest in Your Account or any Virtual Items associated therewith. Except as otherwise prohibited by applicable law, all rights not expressly granted under this Agreement are reserved by KIXEYE, including, but not limited to, all rights, title, and interest in and to in Your Account and any Virtual Items associated therewith.

Except as otherwise required by applicable law, Virtual Items are not redeemable for cash or other monetary value from KIXEYE, another user of the Service, or any other person. Virtual Items do not have an equivalent value in real currency and do not act as a substitute for real currency. Neither KIXEYE nor any other person or entity has any obligation to exchange Virtual Items for anything of value, including, but not limited to, real currency. Except as prohibited by applicable law, You are solely responsible for all transactions made through Your Account regardless of whether or not such transactions were authorized by You.

EXCEPT AS OTHERWISE PROHIBITED BY APPLICABLE LAW, YOU ACKNOWLEDGE THAT KIXEYE MAY SUSPEND OR REVOKE YOUR LICENSES TO VIRTUAL ITEMS AT ANY TIME AND FOR ANY REASON WITHOUT NOTICE, REFUND, OR COMPENSATION TO YOU. ALL PURCHASES OF VIRTUAL ITEMS ARE FINAL AND ARE NOT REFUNDABLE, TRANSFERABLE, OR EXCHANGEABLE UNDER ANY CIRCUMSTANCES, EXCEPT AS OTHERWISE

REQUIRED BY APPLICABLE LAW. YOU ACKNOWLEDGE THAT YOU WILL NOT RECEIVE CASH OR OTHER COMPENSATION FOR UNUSED VIRTUAL ITEMS IF YOUR ACCOUNT AND/OR YOUR ACCESS TO AND USE OF THE SERVICE ARE SUSPENDED OR TERMINATED.

10. Our Warranties and Disclaimers; Service is Provided on an "As-Is" and "As-Available" Basis. FROM TIME TO TIME THE SERVICE MAY HAVE BUGS, ERRORS, AND INTERRUPTIONS. THESE BUGS ERRORS AND INTERRUPTIONS MAY ADVERSELY IMPACT YOUR GAMEPLAY, THE PERCEIVED VALUE OF YOUR USED AND UNUSED VIRTUAL ITEMS. KIXEYE ONLY PROVIDES THE SERVICE ON STRICTLY AN "AS IS" AND "AS-AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KIXEYE EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY REGARDING THE SERVICE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, QUIET ENJOYMENT, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, KIXEYE DOES NOT REPRESENT OR WARRANT THAT THE SERVICE OR ITS USE WILL (A) WILL BE UNINTERRUPTED, TIMELY, OR SECURE, (B) WILL BE FREE OF BUGS, INACCURACIES, OR ERRORS, (C) WILL MEET YOUR REQUIREMENTS, (D) WILL OPERATE IN THE CONFIGURATION OR WITH THE

HARDWARE OR SOFTWARE YOU USE, OR
(E) WILL BE ACCURATE OR RELIABLE.

YOU UNDERSTAND AND AGREE THAT
KIXEYE SHALL BEAR NO RISK WITH
RESPECT TO ANY THIRD-PARTY LINKS,
SERVICES, OR INFORMATION
INCORPORATED INTO, LINKED WITH, OR
USED WITH THE SERVICE.

SOME STATES DO NOT ALLOW THE
EXCLUSION OF OR LIMITATIONS ON
IMPLIED WARRANTIES, SO THE ABOVE
EXCLUSIONS AND LIMITATIONS MAY NOT
APPLY TO YOU. HOWEVER, ANY
LIMITATION WILL BE CONSTRUED TO
MAXIMUM EXTENT PERMITTED UNDER
APPLICABLE LAW.

11. Our Liability.

- Indemnification and Release. You agree to release, indemnify, and hold KIXEYE, its affiliates, and its and their employees, officers, and agents harmless from and against any and all claims, suits, liabilities, damages (actual and consequential), losses, fines, penalties, costs, and expenses (including reasonable attorneys' fees) arising from or in any way related to: (i) Your use of the Services, (ii) Your violation of this Agreement, applicable law, or any third-party rights, or (iii) Your fraud or willful misconduct. Such indemnified parties reserve the right to assume the exclusive defense and control of any matter subject to indemnification by You, in which event You

will cooperate in asserting any available defenses.

- Release. If You are a California resident, You waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." If You are a resident of another jurisdiction, You waive any comparable statute or doctrine.
- Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU EXPRESSLY UNDERSTAND AND AGREE THAT, IN CONNECTION WITH YOUR USE OF THE SERVICE (OR INABILITY TO USE OR ACCESS THE SERVICE), KIXEYE, ITS AFFILIATES, AND ITS AND THEIR EMPLOYEES, OFFICERS, DIRECTORS, AND AGENTS SHALL NOT BE LIABLE FOR: (I) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY DAMAGES, OR OTHER DAMAGES (INCLUDING, WITHOUT LIMITATION, FOR LOSS OF PROFITS, GOODWILL, OR DATA) EVEN IF SUCH PERSONS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (II) ANY DAMAGES, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, IN

EXCESS OF THE AMOUNT YOU HAVE PAID KIXEYE IN THE SIX (6) MONTHS PRIOR TO SUBMITTING NOTICE OF YOUR CLAIM OR, IF GREATER, ONE HUNDRED DOLLARS (US\$100).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. ACCORDINGLY, SOME OF THE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU.

THE INDEMNITY, RELEASE, AND LIMITATION OF LIABILITY REPRESENT A MATERIAL INDUCEMENT FOR KIXEYE TO PROVIDE THE SERVICE. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICE OR WITH THIS AGREEMENT, YOU MUST IMMEDIATELY DISCONTINUE USE OF THE SERVICE.

- No Liability for Third-Party Websites and Services. The Service may provide, or third parties may provide, links or other access to third-party websites and resources on the Internet. KIXEYE provides such links and connections for Your reference only. KIXEYE has no control over such websites and resources, and KIXEYE is not responsible for and does not endorse such websites and resources. You further acknowledge and agree that KIXEYE will not be liable, directly or indirectly, for any

damages or losses caused or alleged to be caused by Your reliance on any content, events, goods, or services available on any such websites or resources. All dealings You have with third parties found while using the Service are between You and the third party, and You agree that KIXEYE is not liable for any loss or claim that You may have against such third party. You should review any applicable third-party terms and conditions, including third-party privacy policies, carefully as those terms may apply to Your use of third-party websites and recourses.

12. **DISPUTE RESOLUTION BY BINDING ARBITRATION; JURY TRIAL WAIVER; CLASS ACTION WAIVER.** For any and all controversies, disputes, demands, claims, or causes of action between You and us (including the interpretation and scope of this Section and the arbitrability of the controversy, dispute, demand, claim, or cause of action) relating to the Service or this Agreement (as well as any related or prior agreement that You may have had with us), You and we agree to resolve any such controversy, dispute, demand, claim, or cause of action exclusively through binding and confidential arbitration. For United States residents, the arbitration will take place in the federal judicial district of Your residence. For international residents, the arbitration will take place within 50 miles of any KIXEYE office. As used in this Section, "we" and "us" mean KIXEYE and its subsidiaries, affiliates, predecessors, successors, and assigns and all of its and their respective employees, officers, directors, agents, and representatives. In addition, "we" and "us"

include any third party providing any product, service, or benefit in connection with the Service or this Agreement (as well as any related or prior agreement that You may have had with us) if such third party is named as a co-party with us in any controversy, dispute, demand, claim, or cause of action subject to this Section.

Arbitration will be subject to the Federal Arbitration Act and not any state arbitration law. The arbitration will be conducted before one commercial arbitrator from the American Arbitration Association ("AAA") with substantial experience in resolving commercial contract disputes. As modified by this Agreement, and unless otherwise agreed upon by the parties in writing, the arbitration will be governed by the AAA's Commercial Arbitration Rules and, if the arbitrator deems them applicable, the Supplementary Procedures for Consumer Related Disputes (collectively, the "Rules and Procedures"). Where no claims or counterclaims exceed \$10,000, the dispute will be resolved by the submission of documents without a hearing, unless a hearing is requested by a party or deemed necessary by the arbitrator, in which case, a party may elect to participate telephonically.

You should review this provision carefully. To the extent permitted by applicable law, You are GIVING UP YOUR RIGHT TO GO TO COURT to assert or defend Your rights EXCEPT for matters that You file in small claims court in the state or municipality of Your residence within the jurisdictional limits of the small claims court and as long as such matter is only pending in that

court. Additionally, notwithstanding this agreement to arbitrate, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark, or trade secret shall not be subject to this arbitration agreement. Such claims shall be exclusively brought in the state or federal courts located in San Francisco County, California. Additionally, notwithstanding this agreement to arbitrate, You or us may seek emergency equitable relief before the state or federal courts located in San Francisco County, California in order to maintain the status quo pending arbitration and hereby agree to submit to the exclusive personal jurisdiction of the courts located within San Francisco County, California for such purpose. A request for interim measures shall not be deemed a waiver of the right to arbitrate.

Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. You are entitled to a FAIR HEARING, BUT the arbitration procedures may be SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT. Arbitrators' decisions are as enforceable as any court order and are subject to VERY LIMITED REVIEW BY A COURT.

You and we must abide by the following rules: (A) ANY CLAIMS BROUGHT BY YOU OR US MUST BE BROUGHT IN THE PARTY'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING; (B) THE ARBITRATOR MAY

NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING, AND MAY NOT AWARD CLASS-WIDE RELIEF; (c) in the event that You are able to demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, we will pay as much of Your filing and hearing fees in connection with the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive as compared to the cost of litigation, (d) we also reserve the right, in our sole and exclusive discretion, to assume responsibility for any or all of the costs of the arbitration; (e) the arbitrator will honor claims of privilege and privacy recognized at law; (f) the arbitration will be confidential, and neither You nor we may disclose the existence, content, or results of any arbitration, except as may be required by applicable law or for purposes of enforcement of the arbitration award; (g) subject to the limitation of liability provisions of this Agreement, the arbitrator may award any individual relief or individual remedies that are expressly permitted by applicable law; and (h) You and we will pay our respective attorneys' fees and expenses, unless there is a statutory provision that requires the prevailing party to be paid its fees and litigation expenses and the arbitrator awards such attorneys' fees and expenses to the prevailing party, and, in such instance, the fees and costs awarded will be determined by the applicable law.

This Section will survive termination of Your Account and this Agreement as well as any

voluntary payment of any debt in full by You or any bankruptcy by You or us. With the exception of subparts (a) and (b) above of this Section (prohibiting arbitration on a class or collective basis), if any part of this arbitration provision is deemed to be invalid, unenforceable, or illegal, or otherwise conflicts with the Rules and Procedures, then the balance of this arbitration provision will remain in effect and will be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting part was not contained herein. If, however, either subpart (a) or (b) above of this Section is found to be invalid, unenforceable, or illegal, then the entirety of this arbitration provision will be null and void, and neither You nor we will be entitled to arbitration. If for any reason a claim proceeds in court rather than in arbitration, the dispute shall be exclusively brought in state or federal court located in San Francisco County, California.

For more information on the AAA, the Rules and Procedures, or the process for filing an arbitration claim, You may call the AAA at 888-778-7879 or visit the AAA website at <http://www.adr.org>.

13. Amendments. We are constantly modifying, updating, expanding, and improving our Service. KIXEYE reserves the right, subject to applicable law, to make changes, modify, or add or remove portions of this Agreement, the Forum Rules, our Privacy Policy, and other incorporated terms and policies at any time, in our sole discretion. Material changes to this Agreement shall not be applied retroactively. If we update this Agreement, You will be required to either accept the terms or

choose not to accept the terms. If You do not agree to the terms of this Agreement or any modified version of this Agreement, Your sole recourse is to terminate Your use of the Service, in which case You will no longer have access to Your Account. No one at KIXEYE is authorized to modify this Agreement with You or otherwise enter into an agreement with You that conflicts with this Agreement, except by means of written agreement signed by an authorized agent of KIXEYE, and any other purported modifications or alterations or conflicting terms shall be null and void.

14. General Terms.

- Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, consistent with the Federal Arbitration Act, without giving effect to any principles that provide for the application of the law of another jurisdiction.
- Entire Agreement. This Agreement constitutes the entire and sole agreement between You and KIXEYE with respect to the Service and supersedes all prior understandings, arrangements, or agreements, whether written or oral, regarding the Service, whether written, verbal or established, assumed, or inferred by prior use, custom, or practice. The section titles in this Agreement are for convenience only and have no legal or contractual effect.

- Assignment. We may assign, delegate, or transfer any or all of our rights and obligations under this Agreement to any third party at our discretion without any prior notice to You. All Your rights and obligations under this Agreement are personal to You and may not be assigned, delegated, or transferred without our prior written consent (which may be withheld for any or no reason), and any purported assignment that does not satisfy such requirement shall be null and void.
- Force Majeure. KIXEYE shall not be liable for a failure or delay to perform resulting from causes outside its reasonable control, including, without limitation, natural disasters, war, terrorism, government action/intervention, accidents, strikes, labor issues, geopolitical conflicts, or disruptions to transportation, supplies, power, or network infrastructure.
- Waiver and Severability. Any waiver of any provision of this Agreement, or a delay by any party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver nor create an expectation of non-enforcement of that or any other provision or right. Any purported waiver must be in a written instrument signed by each of You and KIXEYE. Except as otherwise expressly provided in this Agreement, if any provision of this Agreement is held to be invalid under any applicable statute or rule of law, then, that

provision (or portion thereof) notwithstanding, this Agreement shall remain in full force and effect and such provision or portion thereof shall be deemed omitted.

- Statute of Limitations. To the maximum extent permitted by applicable law, any claim or cause of action arising out of or related to Your use of the Service or this Agreement must be filed within one year after such claim or cause of action arose or be forever barred.
 - Notices. Subject to the terms of our Privacy Policy and applicable law, we reserve the right, in our sole discretion, to determine the form and means of providing notices to You. For example, we may provide notices to You in writing or electronically by sending You emails, "push" mobile device notifications, and text messages and/or by posting notices on the Site. All notices to us that are intended to have a legal effect must be in writing and delivered in writing to the following address: KIXEYE, Inc., 333 Bush Street, Fl 19, San Francisco CA 94104, ATTN: Legal Department, which will be deemed to be given upon our actual receipt thereof.
15. Contact Information. You may contact us at support@kixeye.com to report any violations of this Agreement or if You have any questions regarding this Agreement or the Service.