



## Terms of Service and AUP

### 1. General:

- 1.1. Codero provides each of its services (“Services”) to you under the terms set forth in certain agreements with you, each of which incorporates this Terms of Service Agreement (referred to in this document as “TOS”) by reference. Any reference to “this TOS” shall be interpreted to mean this TOS and any agreement in which it is incorporated. In addition, the Codero Legal Infringement Policy, Privacy Policy, Price Match Policy, and Special Discount Pricing Policy are each hereby incorporated into this TOS by reference. Please carefully read the TOS, the Legal Infringement Policy, the Privacy Policy, the Price Match Policy, Special Discount Pricing Policy and each agreement that is applicable to you.
- 1.2. If we provide or resell certain software or services to you, you understand and agree that you may be bound by additional terms and conditions imposed by applicable third-party resellers or licensors, which are also incorporated herein by reference.
- 1.3. Your use of the Services constitutes your agreement to abide by the laws of the United States and of the state and country in which you reside, including, but not limited to, all intellectual property laws, tariff regulations, export controls, treaties, and international laws.
- 1.4. If you do not agree to abide by this TOS, you are prohibited from using the Services. This TOS is not a complete representation of all Codero policies or the implementation of all such policies.
- 1.5. We may periodically change, modify, or update this TOS without notice to you. Your continued use of the Services after we post a changed, modified, or updated TOS serves as your acceptance of those updated policies. Please refer to this TOS regularly to remain updated about our current policies.
- 1.6. This TOS was updated on or about June 14, 2010.

### 2. Restrictions: You agree that you will NOT use the Services to:

- 2.1. Violate any applicable state or federal law and regulation, including, but not limited to, any copyright, trademark, patent, anti-piracy, or other intellectual property law or regulation, or encourage or enable others to violate any such law or regulation.
- 2.2. Transmit, distribute, post, store, link, or otherwise traffic in information, software, or materials that is offensive, abusive, inappropriate, malicious, or detrimental, including, but not limited to, those that:
  - 2.2.1. Are pornographic, obscene, fraudulent, or discriminatory, including any containing nudity, erotica, profanity, or obscenities.
  - 2.2.2. Encourage, glorify, or promote illegal activity, violence, cruelty, discrimination, network marketing, or Ponzi-type schemes.

- 2.2.3. Exploit children, facilitate phishing, hacking, or identity theft, or defame, threaten, harass any person or group, or attempt to impersonate the identity of a third party.
  - 2.2.4. Infringe upon a third party business, contractual, privacy, or fiduciary right.
  - 2.2.5. Contain malicious or applications code of any type.
  - 2.2.6. Make or facilitate any form of computer, server, or network attack or disruption.
  - 2.2.7. Compromise, disrupt, or degrade the normal and proper operation of any computer, server, or internet system, including Codero's systems.
- 2.3. Send, post, host, or enable any offensive, abusive, inappropriate, malicious, or detrimental e-mails, blog postings, or instant messages, including, but not limited to, any types of mail-bombs or SPAM ("SPAM" is defined as any type of unsolicited e-mail that does not utilize "Double Opt-In/Single Opt-Out" methodologies).
  - 2.4. Use or provide open proxies or Internet Relay Chat ("IRC").

### **3. Acceptable Use:**

- 3.1. You represent and warrant that all information that you provide to Codero to open or update your Codero account including but not limited to your name, business name, address, e-mail address, telephone number, credit card, and/or ACH/Bank information ("Contact Information"), is accurate and complete. In addition, (a) you agree that you will at all times keep your Contact Information accurate, complete, and up-to-date, (b) you understand that your failure to do so may result in suspension of all of your Codero Services or cancellation of all of your Codero Services and termination of this TOS, and (c) you understand that you will be solely liable for your inability or failure to receive e-mail or other communications from us due to your failure to keep your Contact Information accurate, complete, and up-to-date.
- 3.2. By providing us with your e-mail address, you thereby agree that we may send you service-related or other notices by e-mail rather than by postal mail.
- 3.3. You agree that you will not share your account passphrase, password, security question answers, or any other confidential information about your account with any other person or persons, that you will be solely liable for any actions taken by such person or persons, and that we will not be liable for any actions taken by such person or persons.
- 3.4. If you provide us with a business name for your account, we will consider that business to be the owner of the account and may require certain change authorizations from an officer (if a corporation), authorized member (if a limited liability company), partner (if a partnership), or owner (if a sole proprietorship) of the business. If you do not provide us with a business name for your account, we will consider you to be the owner of the account and we may require certain change authorizations from you.
- 3.5. You understand and agree that (a) Codero or any applicable licensor retains all rights, title, and interest in and to any computer programming, formatting code, operating instructions, or other software used in providing the Services to you ("Programming") and (b) that you will not reverse engineer, disassemble, decompile, or otherwise attempt to derive any source code of the Programming.
- 3.6. You understand and agree that we may access your server without notice to you in the event of an actual or suspected violation of this TOS or to otherwise maintain and protect the security and reliability of our network. You also agree to keep your administrative access credentials in Serverportal.com complete and up to date.

- 3.7. You understand and agree that if you do not respond within three (3) calendar days to a Codero-generated abuse-related inquiry sent to you that, in addition to other rights we have under this TOS or otherwise, at the end of the three (3) calendar days Codero may suspend all of your Codero Services or cancel all of your Codero Services and terminate this TOS without further notice or obligation to you.
- 3.8. You understand and agree that initiating a “chargeback” to your credit card, to your PayPal® account, or via ACH for services provided to you by Codero shall be a violation of this TOS.
- 3.9. You agree to conduct yourself in a professional manner at all times when interacting with Codero employees. You understand and agree that abusing Codero employees, whether by lying, cursing, yelling, threatening, or otherwise, whether over the telephone, via e-mail or chat, or when submitting on-line tickets, shall be a violation of this TOS and may be grounds for suspension of all of your Codero Services or cancellation of all of your Codero Services and termination of this TOS. In addition, making threats of physical violence, either against Codero, its facilities, or any of its shareholders, directors, officers, employees, contractors, or agents will be promptly reported to the authorities and will be grounds for immediate termination of this TOS.

#### **4. Fees and Billing:**

- 4.1. You agree to pay for the applicable fee or fees for each of the Services you order or select, including but not limited to all setup fees, monthly fees, quarterly fees, annual fees, usage fees, web traffic fees, late fees, hourly-rate fees, or other fees.
- 4.2. We accept payments by credit card, check, e-check, PayPal®, or wire transfer, except that (a) customers paying by check or wire transfer will be charged an additional processing fee of \$10.00 for each payment made and (b) customers paying by wire transfer will be charged a wire transfer fee of \$10.00 for each payment made.
- 4.3. Applicable setup fees and the fees due for your first service term (first month, first quarter, or first year, etc.) are both due on your initial Services start date. Codero may change the pricing for new Services at any time and for existing services at the beginning of any new billing period.
- 4.4. You understand and agree that no refunds or reimbursements, in full or in part, will be paid to you at any time.
- 4.5. Each of your Codero Services will be automatically renewed on the anniversary date (monthly, quarterly, annually, or otherwise, whichever is applicable) of the start or last renewal date of that specific Codero Service (“Anniversary Date”). If Codero has a valid credit card or current ACH instructions/banking information on file for your account on a Service’s Anniversary Date your credit card or bank account will be automatically charged at that time for the cost of renewing the Service through its next Anniversary Date. If Codero does not have a valid credit card or current ACH instructions/banking information on file for your account on a Service’s Anniversary Date your Codero account will be automatically charged at that time for the cost of renewing the Service through its next Anniversary Date and you will be liable for those fees.
- 4.6. You are liable for all unpaid amounts due on your account even if Codero cancels your Services or terminates this TOS partway through a billing cycle. Codero may charge your account late fees for overdue payments and Codero may charge you interest on

unpaid balances at the rate of 1.5% per month or the maximum rate allowed by law. In addition, your equipment, domains, web content, or other assets may be retained by Codero as collateral for unpaid charges and penalties until such charges and penalties are paid in full. Also, Codero may use a third-party service to collect unpaid amounts and may charge you attorneys, collection, or other reasonable fees incurred to collect unpaid balances.

- 4.7. If you elect to change your payment frequency in the middle of a billing cycle, (a) the change will not take effect until after the end of your current billing cycle and (b) discounts specifically applicable to your old billing cycle will not apply to your new billing cycle. For example, if you elect to change from paying annually to paying monthly (a) the change will only take effect at the end of your current annual term and (b) discounts that you received because you were paying annually will no longer be available to you.
- 4.8. If you dispute a charge, to avoid interruption of your Services you must (a) pay the entire amount invoiced to you by its due date and (b) notify the Codero billing department about the disputed amount. If Codero validates your claim, your account will be credited with the validated amount.
- 4.9. You specifically understand and agree that for each (a) returned check or (b) Codero fee that you “chargeback” to your credit card, to your PayPal® account, or via ACH that will be liable to Codero (and Codero may collect from you) a “Returned Check Fee” or “Chargeback Fee,” as the case may be, in the amount of \$35.00.
- 4.10. Charges for bundled Services will be “unbundled” if you cancel any part of the bundle of Services. For example, if you receive a free SSL certificate as part of a “bundled” package and you then cancel one or more of the “bundled” services in your selected package you will be charged at that time for the SSL certificate.
- 4.11. You understand and agree that you are responsible for any network bandwidth charges, memory over usage charges, or other overage charges you incur for using the Services, even if such overages arise because your server or account is compromised or “hacked.”
- 4.12. You understand and agree that you will be automatically be assessed a charge of \$50.00 for (a) each IP address assigned to your account that, in Codero’s reasonable discretion, is blacklisted or, if your account is closed, was blacklisted, and for (b) each IP address which was blacklisted because of your action or inaction, even if it was not assigned to your account or if your account has been closed.
- 4.13. We are unable to review or accept any billing error claims you submit more than ninety (90) days after the disputed charges were incurred.

## **5. Term and Termination:**

- 5.1. This TOS will become effective when:
  - 5.1.1. For Codero “click-through” agreements, when you “Accept” online the agreement into which this TOS is incorporated.
  - 5.1.2. For Codero agreements you physically sign, when you affix your signature and return the executed agreement to Codero.
  - 5.1.3. For Codero agreements you sign electronically, when the electronic signature process is complete.

- 5.2. To cancel any of your Codero Services or terminate this TOS (a) your account must be paid in full and be in good standing and (b) you must provide Codero seven (7) days notice. Codero can only accept cancellation and termination instructions submitted through ServerPortal.com. We are unable to accept any cancellation or termination instructions submitted to us in any other manner.
- 5.3. If you provide cancellation or termination notice to Codero less than seven (7) days before the upcoming Anniversary Date of your Codero Services (a) on that Anniversary Date you will still be automatically charged for the cost of renewing your Codero Services through their next Anniversary Date and (b) you will not be eligible to receive any refund, either in part or in full, for any of the amount charged to you on that Anniversary Date.
- 5.4. This TOS will remain in effect until it is terminated by either party under its terms. Termination of this TOS will automatically terminate each agreement into which it is incorporated.
- 5.5. Codero may unilaterally cancel your Codero Services and terminate this TOS at anytime for any reason without compensation to you upon ten (10) days written notice to you sent to the address or e-mail address you currently have on file with Codero. Also, Codero may refuse to open a new account for any person or entity.
- 5.6. Codero may, immediately and without notice or obligation to you, unilaterally suspend all of your Codero Services or cancel all of your Codero Services and terminate this TOS if (a) payment for Services is not received by the Anniversary Date of the start or last renewal date of any Codero Service or (b) we determine, in our sole discretion, that you have or it is alleged that you have otherwise violated this TOS.
- 5.7. You understand and agree that upon cancellation of your Codero Services and termination of this TOS that Codero has the right to immediately bar your access to your server or account and/or delete any and all content on or related to your server or account.

## 6. Server Protection Plan:

- 6.1. **General:** If you (a) purchase the Codero Server Protection Plan (“SPP”) and (b) your Codero server is compromised by a third party, Codero will, at no charge to you, (a) reinstall your operating system and (b) waive any bandwidth overage charges you may have incurred due to the server compromise.
- 6.2. **Limitations:** The following limitations apply to the SPP:
  - 6.2.1. You must notify Codero that your server has been compromised by submitting a ticket at ServerPortal.com no more than fourteen (14) days after your last billing date.
  - 6.2.2. Codero must be able to confirm to its sole satisfaction that your server has been compromised.
  - 6.2.3. Codero will NOT reimburse you for any bandwidth overage charges that directly result from your own actions.
  - 6.2.4. At no time will Codero backup, recover, or reinstall any of your data or be liable for any data loss you may incur at any time.
  - 6.2.5. Codero may terminate SPP service for your account at any time if, in its sole discretion, it appears that your server has been compromised more than once.
  - 6.2.6. Codero may refuse to add the SPP service to any account for any reason.

**7. Plant-A-Tree Program:**

- 7.1. **General:** For each “Plant-A-Tree” package you purchase (your “Purchase Donation”) Codero will make a donation for the exact amount of your Purchase Donation to a reputable not-for-profit reforestation company (“Charity”).
- 7.2. **Limitations:** You understand and agree that:
- 7.2.1. Codero has sole discretion over which organizations qualify as Charities in the Codero “Plant-A-Tree” program.
  - 7.2.2. Codero has sole discretion over which Charity will receive your Purchase Donation.
  - 7.2.3. Codero may donate funds from your Purchase Donation to more than one Charity.
  - 7.2.4. Codero is unable to advise you of which Charity received your Purchase Donation or provide you with a receipt from that Charity.
  - 7.2.5. Codero makes no guarantee whatsoever regarding how your Purchase Donation will be used by the Charity or Charities to which it is donated.
  - 7.2.6. Codero is unable to refund to you your Purchase Donation.

**8. Limitations:**

- 8.1. IN NO EVENT WILL CODERO’S LIABILITY TO YOU IN THE AGGREGATE FOR ANY AND ALL BREACHES, DEFAULTS, OR CLAIM OF LIABILITY UNDER THIS TOS OR AN AGREEMENT INCORPORATED INTO THIS TOS OR FOR AN AGREEMENT INTO WHICH THIS TOS IS INCORPORATED BE EQUAL TO AN AMOUNT GREATER THAN THE FEES PAID BY YOU TO CODERO DURING THE ONE (1) CALENDAR MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO SUCH CLAIM OF LIABILITY.
- 8.2. IN NO EVENT WILL CODERO, ITS PARENTS, SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS, CONTRACTORS OR EMPLOYEES BE LIABLE TO YOU UNDER ANY CIRCUMSTANCES FOR ANY THIRD PARTY, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, MULTIPLE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF DATA, LOSS OF USE, OR INTERRUPTION OF BUSINESS) ARISING OUT OF, OR IN CONNECTION WITH, THIS TOS OR AN AGREEMENT INCORPORATED INTO THIS TOS OR FOR AN AGREEMENT INTO WHICH THIS TOS IS INCORPORATED WHETHER BASED IN CONTRACT, WARRANTY, NEGLIGENCE OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, THE FAILURE OF ANY LIMITED OR EXCLUSIVE REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF CODERO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- YOU ACKNOWLEDGE THAT THESE LIMITATIONS ARE AN ESSENTIAL ELEMENT OF THIS TOS AND WITHOUT SUCH LIMITATIONS CODERO WOULD NOT ENTER INTO THIS TOS.
- 8.3. WE DO NOT WARRANT THAT THE SERVICES WILL BE FREE OF ERRORS, BE UNINTERRUPTED, OR WILL MEET YOUR REQUIREMENTS. THE SERVICES ARE PROVIDED ON AN “AS IS” BASIS AND WE EXPRESSLY DISCLAIM ALL WARRANTIES, CONDITIONS, AND INDEMNITIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR ANY OTHER WARRANTY ARISING FROM THE COURSE OF PERFORMANCE OR COURSE OF DEALING. YOU UNDERSTAND AND AGREE THAT WE WILL NOT BE LIABLE FOR ANY TEMPORARY DELAY, OUTAGE, OR INTERRUPTION OF THE SERVICES, AND YOU HAVE NOT ENTERED INTO THIS TOS IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION EXCEPT THOSE SPECIFICALLY SET FORTH HEREIN. ALL SERVICES PROVIDED UNDER THIS TOS WILL BE DEEMED ACCEPTED WHEN DELIVERED.

- 8.4. YOU HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS YOU MAY HAVE TO A TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS TOS, WHETHER ARISING OUT OF CONTRACT, TORT OR OTHERWISE.
- 8.5. You agree to indemnify, defend by counsel reasonably accepted to Codero, and protect and hold Codero harmless from and against any and all claims, liabilities, losses, costs, damages, expenses, including consultants' and attorneys' fees and court costs, demands, causes of action, judgments, etc. directly or indirectly arising out of or related to the Services.
- 8.6. Nothing in this TOS shall be construed as creating a joint venture, partnership, agency, employment, franchise, or other relationship between you and Codero. Also, neither party to this TOS shall have the right, power or authority to create any obligations or duty, express or implied, on behalf of the other.

## 9. Miscellaneous:

- 9.1. This TOS may not be assigned by you without our express written consent. Codero may assign any or all of its rights and obligations to others at any time.
- 9.2. This TOS is the final expression of the agreement between you and Codero regarding the Services. This TOS may not be modified or amended, nor may it be modified by custom and usage of trade or course of dealing, except by an instrument in writing and signed by you and Codero.
- 9.3. Codero's waiver of your breach of any portion of this TOS shall not operate or be construed as its waiver of any subsequent breach of the same provision or any other portion of this TOS and no remedy available to Codero hereunder is exclusive of any other remedy available to Codero hereunder or otherwise available at law or in equity.
- 9.4. If any provision of this TOS or its application is held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this TOS shall remain in full force and effect enforced to fullest extent consistent with applicable law.
- 9.5. You agree that you will not solicit Codero employees as your employees or contractors. You represent and warrant that you have full power to enter into this TOS and any agreement into which this TOS is incorporated by reference.
- 9.6. The section headings contained herein are for reference purposes and convenience only and shall not in any way affect the meaning or interpretation of this TOS.
- 9.7. Codero shall not be deemed to be in default of or to have breached any provision of this TOS as a result of any delay, failure in performance or interruption of the Services, resulting directly or indirectly from acts of God, acts of civil or military authority, civil disturbance, war, strikes or other labor disputes and disturbances, fire, transportation contingencies, shortages of facilities, fuel, energy, labor or materials, or laws, regulations, acts or order of any government agency or official thereof, other catastrophes, or any other circumstances beyond our reasonable control.
- 9.8. This TOS shall be binding on you and Codero and your or its successors and assigns, and shall be governed by the laws of the state of Kansas without giving effect to such laws' provisions regarding conflict of laws. Any action arising out of or related to this TOS shall be brought in the Kansas state courts located in Johnson County, Kansas, USA or the

Federal court located in Kansas City, Kansas, USA and each party consents to the jurisdiction and venue of these courts. Each party expressly disclaims application of the United Nations Convention on Contracts for the International Sale of Goods to this TOS.

- 9.9. Sections 1.2, 3.2, 3.5, 4.1, 4.6, 4.9, 4.11- 4.13, 5.1, 5.2, 5.3, 5.7, 7, 8, and 9 shall survive termination of this TOS.