

This Master Customer Agreement (“MCA”), together with any applicable supplemental terms and conditions attached to or part of any Order or Addendum (collectively, this “Agreement”), states the terms under which Codero will provide Service(s) to a Customer and governs the rights, responsibilities and legal obligations of Codero and the Customer entering into an Order for Service(s) with Codero. The Customer placing an Order for Service(s) is referred to in this MCA as “Customer”, “you” or “your” and is the individual or entity designated as the “owner” in our records. The entity providing the Service(s) is referred to as “Codero”, “we”, “us” or “our”. The individual or entity using the Service(s), if different than the Customer, is referred to as the “End User” or “them”.

1. SERVICES.

- a) Services; Order; Addendum. We agree to provide to you the services, software, technology, equipment, and/or materials (“Service” or “Services”) as summarized in any order form (“Order”) or addendum agreement (“Addendum”) describing the Service(s). Each Order and Addendum is incorporated into this Agreement by reference and made part hereof.
- b) Pricing; Terms and Conditions. We agree to provide the Service(s) in accordance with the terms, and conditions of this MCA, together with any supplemental pricing, terms, and conditions set forth in any Order or Addendum.
- c) Effective Date. This Agreement is effective as of the date you click “I agree” as that date is captured by our servers, the first day that you begin the Service(s), or the effective date as set forth in the Order or Addendum, whichever is earliest (“Effective Date”).
- d) Customer Assistance. We will use good faith efforts to implement the Service(s) as set out in this Agreement. It may be necessary for you to assist with this implementation before and during the Term. You agree to provide reasonable cooperation and assistance, and to cause any of your third-party providers to do so as well.
- e) Additional Services. We may perform additional technical, supplemental, or professional services for you under the terms of this MCA at either our published rates or at rates mutually agreed to in writing between you and us.
- f) Changes to Service(s). We may make changes to the Service(s) during the Term if 1) required by law, 2) a Third-Party Vendor who provides components or aspects of the Service(s) to us makes changes, modifies, discontinues or revises those components or aspects or the manner in which, or cost at which, they are provided to us, or 3) if we, in our sole judgement, believe a change is necessary for operational considerations.
- g) Third-Party Vendor. Service(s) provided, licensed, or sold by us may be subject to additional terms and conditions imposed by applicable third-party vendors and licensors (“Third-Party Vendor”). Those additional terms and conditions are incorporated into this Agreement by reference and may be subject to update without notice during the Term of this Agreement.

2. YOUR OBLIGATIONS

- a) General Obligations. You agree that you will:
- (i) use the Service(s) in accordance with this MCA; any supplemental terms and conditions attached, or incorporated by reference, to any Order or Addendum; and all applicable laws;
 - (ii) remain responsible for the use of and access to the Service(s) by End Users and reasonably ensure their compliance with the obligations under this Agreement where applicable to them;
 - (iii) comply with our policies and guidelines including our AUP and our Privacy Policy. Copies of these documents can be found at <http://www.codero.com/legal>;
 - (iv) cooperate with our investigations of allegations of intellectual property violations, outages, security problems, and any suspected breach of this Agreement;
 - (v) immediately notify us of any unauthorized use of the Service(s), and any other breach or suspected breach of the security of the Service(s);
 - (vi) treat our employees and representatives in a respectful and professional manner; and
 - (vii) pay all undisputed Fees and applicable taxes in accordance with the terms of this Agreement.
- b) my.codero.com. As a customer, you will have access to our online portal, my.codero.com (“Portal”), which provides tools for you to access, configure and/or administer your account and Service(s), order or cancel Service(s), access billing information, and initiate service tickets. You understand that we rely on this information and you agree to keep this information accurate and up to date, including by providing current contact information at all times.
- c) Customer Requirements. You acknowledge and agree that it is your responsibility to assess whether the Service(s) are appropriate and suitable for your requirements. Where we provide advice about your service requirements or the configuration of any equipment used in connection with any Service, such advice is a good faith recommendation made using reasonable skill and care, but without any guarantee or warranty of performance.
- d) Monitoring Your Activity and Content. You, and your End Users, voluntarily engage in the use of the Internet and are responsible for the risks associated with that activity. You acknowledge and agree that we exercise no access or control over any information passing through or stored on the Service(s), including our host computers, network hubs, points of presence, the internet, or any content any End User may display or post on any website, and are under no obligation to monitor you, your End Users, or our other customers with respect to their use of the Service(s). You remain responsible for content or information made available for distribution using the Service(s). Notwithstanding the foregoing, we reserve the right to take remedial action in the event any activity or content comes to our attention that does not comply with our AUP, including removing such non-compliant content from any Codero systems, equipment, or resources.
- e) System Monitoring. We utilize a monitoring platform (including the use of native platform integrated commands, scripted commands, and/or remote updating of local monitoring agents) to monitor the health and performance of our systems and Service(s), including customer equipment obtained through us or otherwise connected to our network and systems, for the purpose of obtaining operational insight, or performance telemetry, or managed licensing within hosted environments. This functionality is critical to our ability to provide scalable proactive managed and/or unmanaged support. You agree not to

remove, disable, or otherwise render unavailable or unusable any such monitoring platform or tools, either intentionally or otherwise. The removal or disablement of our ability to remotely monitor or transmit operational performance telemetry is a breach of this agreement and may subject the customer to suspension or termination. In such case, you expressly release us from any/all liability arising from such action(s), up to and including the permanent and irretrievable loss of data due to the subsequent inability to remotely monitor the conditions of a Service

- f) Indemnity for Third-Party Claim. You agree to indemnify and hold harmless Codero, its subsidiaries, their affiliates and each of their respective directors, officers, employees, shareholders and agents (each an “Indemnified Party”) against any losses, claims, damages, liabilities, penalties, actions, proceedings, judgements, or any and all costs thereof (collectively “Losses”) to which an Indemnified Party may become subject and which Losses arise out of, or relate to this Agreement; your or any End User’s use of or access to the Service(s), including any unauthorized access to your data, computers or network systems by a third-party; breach of any confidentiality obligation; or any alleged infringement of any trademark, copyright, patent, or other intellectual property right. You will reimburse an Indemnified Party for all legal and other expenses, including reasonable attorney’s fees incurred by such Indemnified Party, in connection with investigating, defending, or settling any Losses, whether or not in connection with pending or threatened litigation in which such Indemnified Party is a party.

- g) Title. This Agreement grants you a license to use the Service(s), and any third-party components provided by us and incorporated into them. Title remains with us or our licensors. You may not reverse engineer, decompile, or otherwise attempt to derive the code underlying these items.

3. FEES AND BILLING.

- a) Fees. The amount that we will charge you for the Service(s) are set forth in the Order (“Fees”). You may not withhold, deduct or off-set Fees.

- b) Billing; Due Date. Payment for Service(s) and all other information related to the assessment and collection of amounts owed are set forth in the Order or Addendum. The Order or Addendum may specify alternate billing options (e.g., monthly, quarterly (every three months), semi-annual (every six months), or annual billing) for a specific Service or for your account. If the Order or Addendum does not provide a specific due date, Fees are billed and payment is due monthly in advance. Full payment of the initial invoice for a Service, including applicable Set Up Fees, as defined below, is due prior to the initial start date for that service.

- c) Set Up Fees. Fees charged for the initial set up of your Service(s) (“Set Up Fees”) will be outlined in the Order or Addendum. Set Up Fees will be billed on the first invoice rendered for the applicable Service(s).

- d) Incremental Charges; Overages. You understand and agree that you are responsible for any incremental charges, including without limitation network bandwidth charges, storage over usage charges, or other overage charges you incur for using the Service(s), including any Service(s) provided by Third-Party Vendors and marketplace purchases, even if such overages arise because your server or account is compromised or subject to a security breach, or caused by human error.

- e) Taxes. You are responsible for the payment of all governmental assessments, surcharges and fees pertaining to your use of the Service(s) (other than taxes on our net income). We will not invoice you for taxes if you provide us with, and maintain, valid and properly executed certificate(s) of exemption for the taxes. Such certificate(s) of exemption must be reasonably acceptable to us.

- f) Late Payment. If you fail to pay Fees when due, or any resulting charges or penalties, we may, at our discretion:
 - (i) immediately suspend your account;
 - (ii) charge your account late fees for overdue payments;
 - (iii) charge you interest at the rate of 1.5% per month or the maximum amount allowed by law, whichever is less;
 - (iv) retain your equipment, domains, web content, IP addresses or other assets as collateral for unpaid Fees, charges and penalties;
 - (v) impose a reconnection charge;
 - (vi) require you to pay a security deposit; and/or
 - (vii) use a third-party service to collect unpaid amounts and may charge you attorney, collection and other reasonable charges incurred by us to collect unpaid balances.

- g) Fee Changes. We may increase or decrease the Fees that we charge you for Service(s) at the beginning of any Renewal Term. Otherwise, we will only increase the Fees if one or more of the following circumstances applies:
 - (i) we agree in writing;
 - (ii) you purchase additional Service(s), or modify the component parts of existing Service(s), and those Service(s) or component parts have additional fees;
 - (iii) a regulated entity, such as a utility, increases their charges to us; or
 - (iv) a Third-Party Vendor imposes additional charges or fees on us as a result of your use of the Service(s).

We agree to provide you thirty (30) calendar days notice prior to any change in the Fees. Notice will be provided to the then current email address you entered in the Portal. You may terminate the affected Service(s) without penalty if you reject the increase by providing written notice to us within fourteen (14) days of the date of the notice of increase; provided that, if you continue to use such Service(s) thereafter, you will be deemed to have accepted the increase.

- h) Payment. We accept a credit card (other than a pre-paid or virtual credit card), check, e-check or wire transfer as valid forms of payment for initial orders by new customers. After you have established a three-month history of successful payment, we may choose to accept PayPal, prepaid credit cards, or virtual credit cards as valid forms of payment. If you pay by check or wire transfer, you may be charged additional fees for processing and wire transfer fees.

- i) Disputes. We will make best efforts to make sure that invoices rendered to you are complete and accurate. It is your responsibility to review all invoices rendered and notify us if you believe there are any errors in the Fees or amounts charged to you. Should you notice an error, you agree to notify our

billing department within fourteen (14) days of the errant invoice and provide sufficient information to enable us to investigate the disputed Fee. After 15 days, all invoices are assumed correct and no further billing adjustment will be made. You agree to pay any Fees not in dispute when they are due. We will work with you in good faith to resolve any dispute. If after sixty (60) business days we are unable to resolve the dispute, our determination will be final.

- j) Refunds. Except as otherwise provided herein or in the applicable Service Level Agreement (“SLA”), Fees are not refundable.

4. TERM

- a) Initial Term. The Order shall state your minimum committed term thereunder from the date that such Service(s) are made available to you (“Initial Term”). If the Order does not provide a specific term, the Initial Term shall be month-to-month.
- b) Renewal. Upon expiration of the Initial Term, the Service(s) shall renew for successive terms (each, a “Renewal Term”) each equal in length to the Initial Term unless you notify us in writing via the Portal no later than thirty (30) calendar days prior to expiration of the then current term your intent to terminate the Service(s). Our required termination procedure is set forth in Section 5 below. We may cancel or elect not to renew the applicable Service(s) for any reason or no reason at all by delivering to you a written notice of non-renewal prior to the expiration of the Initial Term or the then current Renewal Term, as applicable.
- c) Term. The Initial Term and all Renewal Terms for a particular Service or set of Services shall be referred to herein as the “Term” for such Service(s).

5. TERMINATION AND CANCELLATION

- a) Codero Termination. We may immediately terminate this Agreement (together with all then current Orders or Addendums hereunder) at any time, and without liability, upon the occurrence of any of the following events:
 - (i) your failure to pay any amount when due hereunder;
 - (ii) your material breach or violation of any provision of this Agreement (other than such violations set forth in clauses (iii) through (viii) below) that is not cured within fifteen (15) days of your receipt of written notice from us referencing such breach or violation;
 - (iii) you cease to carry on business as a going concern, become insolvent, commit an act of bankruptcy, become or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or if a receiver or similar officer is appointed with respect to the whole or a substantial part of your assets, or an event similar to any of the foregoing occurs under applicable law;
 - (iv) a third-party ceases to make aspects of the Service(s) available to us, and we are unable to procure appropriate replacement services;
 - (v) you violate one or more of our policies;
 - (vi) we determine, in our sole discretion, that you engage in any business or conduct which is unethical, illegal or could subject us to liability, embarrassment or cause damage to our business or reputation;
 - (vii) you exhibit abusive behavior towards our representatives via phone or online communication. We will determine, in our sole discretion, what behavior is considered abusive and subject to

- immediate termination;
- (viii) we are legally required to do so; or
- (ix) as otherwise provided in this Agreement.

Upon termination, you will remain liable to us for any amounts owed for the remainder of the then current Term, including, but not limited to, early termination fees, if any, as described in this Agreement. Upon termination, we shall have no obligation to refund any amounts paid in advance by you.

- b) Customer Cancellation. In order to cancel or elect not to renew any Service(s), you must login to the Portal, go to the Service(s) you wish to cancel, click the cancellation button, and complete the required information. All account cancellations must be received in the above manner at least thirty (30) days in advance of the date of renewal. Accounts cancelled with less than thirty (30) days notice shall be cancelled at the end of the next term and shall be charged accordingly. When a cancellation request is made, we will remove all configuration information as well as all contents of the account on the date of the next renewal of the account. We will remove all files, which may include unread email left on the server.

YOU ACKNOWLEDGE AND AGREE THAT ALL SERVICE(S) SHALL CONTINUE TO RENEW AND THAT YOU WILL CONTINUE TO BE BILLED FOR ALL SERVICE(S) UNLESS YOU CANCEL THE SERVICES AS PROVIDED IN THIS SECTION.

- c) Customer Termination. You may terminate this Agreement with respect to all, and not less than all, of the Service(s) without liability (except for Fees due through the effective date of such termination) upon the occurrence of a material breach by us of our obligations to provide the Service(s) according to the terms of this Agreement that is not cured within fifteen (15) business days following our receipt of written notice from you describing such breach in detail is received by us ("Customer Termination"). In the event of a Customer Termination, you shall pay (1) all outstanding amounts payable through the effective date of such termination, and (2) if the Service(s) include software for which we do not then provide general customer support, you shall pay to us an amount equal to our cost of such software for the entire Term. If you terminate this Agreement for any reason other than a Customer Termination, you shall pay us an amount equal to all unpaid Fees through the effective date of such termination and (A) in the case of any Service(s) subscribed for on a month-to-month basis, all Fees for the Service(s) through the remainder of the Term, as applicable, and (B) in the case of any Service(s) subscribed for other than on a month-to-month basis, all Fees for the Service(s) through the remainder of the Term, as applicable.

YOU ACKNOWLEDGE THAT YOU WILL NOT BE ENTITLED TO ANY REFUND OR CREDIT IN THE EVENT THAT ANY SERVICE(S) IS TERMINATED, WITH OR WITHOUT CAUSE, PRIOR TO THE EXPIRATION OF THE TERM. YOU HEREBY WAIVE ALL RIGHTS TO ANY SUCH REFUND OR CREDIT.

- d) Actions Upon Termination. Upon termination of this Agreement, we will have no further obligation to you and you will have no further obligation to us, except as otherwise provided for in this Agreement. Upon termination of this Agreement, you shall:
- (i) pay all Fees and other amounts due and owing to us under this Agreement;
 - (ii) immediately remove from our premises all property owned by you, including, but not limited to, immediately removing all of your data from our network (including all servers owned or operated by us), and
 - (iii) return to us all software, access keys, and any other property provided to you by us under this Agreement.
- e) Abandoned Property. Any physical property of yours not removed from our premises within thirty (30)

days after such termination shall become our property. We may, among other things, dispose of such property without the payment of any compensation to you.

6. WARRANTIES

Each party warrants to the other that it has the power, authority and legal right to enter into this Agreement and to perform its obligations set out in it and pursuant to any provisions or agreements incorporated into it. You represent and warrant that:

- a) you have the experience and knowledge necessary to use the Service(s);
- b) you will comply with the terms of any licenses required for your use of the Service(s);
- c) you will draft agreements with your End Users having terms that are no less protective of our interests than the terms of the Agreement and our AUP;
- d) you own the entire right, title and interest to, or have an appropriate license to use, all materials provided to us, or which may be accessed or transmitted using the Service(s); and
- e) your End Users have warranted that they own the entire right, title and interest to, or have an appropriate license to use, all materials provided to you, or which may be accessed or transmitted using the Service(s), and have agreed to indemnify us if they do not.

NOTWITHSTANDING ANY ORAL OR WRITTEN COMMUNICATIONS BETWEEN YOU AND US ABOUT OR IN CONNECTION WITH THE SERVICE(S), EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT AND TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, NEITHER CODERO NOR ANY OF ITS EMPLOYEES, AFFILIATES, AGENTS, SUPPLIERS, SUBCONTRACTORS OR LICENSORS MAKE ANY WARRANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION; THAT THE SERVICES WILL BE COMPLETELY SECURE OR ERROR-FREE; OF NONINTERRUPTION, NON-INTERFERENCE OR NON-INFRINGEMENT. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR IN AN INDIVIDUAL PRODUCT DESCRIPTION, THE SERVICES PROVIDED UNDER OR ASSOCIATED WITH THIS AGREEMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

7. DISCLAIMERS; LIMITATIONS ON COMPANY LIABILITY

WE SHALL NOT BE LIABLE FOR (i) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS OR LOSS OF REVENUE RESULTING FROM THE USE OF THE SERVICE(S) BY YOU, ANY END USER, OR ANY OTHER THIRD PARTY OR FROM ANY FAILURE OF THE SERVICE(S) OR (ii) ANY LOSS OF DATA OR CORRUPTION OF DATA, INCLUDING LOSS OF DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, SERVICE INTERRUPTIONS, FAILURE OF OUR NETWORK, RECLAMATION OF SERVERS BY US, FAILURE OF SERVERS, THE RELOADING OF AN OPERATING SYSTEM OR OTHER SOFTWARE ON A SERVER OR OUR NEGLIGENCE. CUSTOMER IS SOLELY RESPONSIBLE FOR SAFEGUARDING, BACKING UP, AND ARCHIVING ALL DATA OWNED, CONTROLLED, OR TRANSMITTED BY CUSTOMER THAT RESIDES ON OUR NETWORK OR ANY SERVER OWNED OR OPERATED BY US. IN NO EVENT SHALL OUR AGGREGATE LIABILITY FOR ANY CLAIM UNDER THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY YOU TO US IN THE BILLING CYCLE IMMEDIATELY PRECEDING SUCH CLAIM. YOU SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE, AND SUITABILITY OF THE SERVICE(S) AND WE SHALL HAVE NO LIABILITY THEREFORE. NO CLAIM MAY BE ASSERTED BY YOU AGAINST US MORE THAN TWO (2) YEARS FOLLOWING THE DATE OF THE EVENT THAT UNDERLIES ANY SUCH CLAIM. YOU ACKNOWLEDGE AND AGREE THAT THE RECEIPT OF A SERVICE CREDIT AS PROVIDED FOR IN THE SLA CONSTITUTES YOUR SOLE AND

EXCLUSIVE REMEDY, AND OUR SOLE AND EXCLUSIVE LIABILITY, FOR ANY FAILURE OF OUR NETWORK, OUR HARDWARE, OR OUR INFRASTRUCTURE, OR THE FAILURE BY US TO PROVIDE YOU WITH THE SERVICE(S) PURCHASED BY YOU IN ACCORDANCE WITH THIS AGREEMENT WHICH RESULTS FROM A QUALIFIED NETWORK DOWNTIME EVENT OR ANY OTHER QUALIFIED DOWNTIME EVENT, AS DEFINED IN THE APPLICABLE SERVICE LEVEL AGREEMENT.

8. CONFIDENTIAL INFORMATION

- a) Confidential Information. Confidential Information includes, but is not limited to, a party's inventions, trade secrets, customer information, business plans, designs, programs, product or marketing data, customer lists and histories, sources of supply, production plans, financial statements, pricing data, test results, business strategies, manuals, materials, systems, financial information, non-public methods, processes and techniques, any Order or Addendum to this MCA, any information marked "Confidential" and all other non-public business and technical information, whether related to past, present or future services.
- b) Duty of Care; Use of Confidential Information. Each of the parties agree that if one party ("Disclosing Party") provides Confidential Information to the other party ("Receiving Party"), that Confidential Information shall be held in confidence, and the Receiving Party shall give the Confidential Information the same care and protection as it gives generally to its own confidential and proprietary information, but no less than reasonable care, in order to avoid disclosure to, or unauthorized use by, any third party. All Confidential Information, unless otherwise specified in writing, shall remain the property of the Disclosing Party, and shall be used by the Receiving Party only for its intended purpose. All Confidential Information, including all copies of it, shall be either returned to the Disclosing Party or destroyed after the Receiving Party's need for it has expired, or upon the request of the Disclosing Party, each at the option of the Disclosing Party. The provisions of this paragraph shall not apply to any Confidential Information which:
 - (i) Is or becomes publicly available, other than through disclosure by the Receiving Party;
 - (ii) is independently developed by the Receiving Party; or
 - (iii) becomes available to the Receiving Party without restriction from a third party.

If any Confidential Information is required to be disclosed by any governmental authority, applicable law or court order, the party required to make such a disclosure shall, where legally permitted, immediately inform the other party of the requirements of such a disclosure to enable the Disclosing Party to take protective measures to preserve the confidentiality of such Confidential Information as fully as possible in the context of such a permitted disclosure. It is not a violation of this paragraph for a party to disclose Confidential Information to its employees or agents, its legal, financial and accounting advisors, and to its lenders which need to know that Confidential Information, provided that the Disclosing Party notifies any recipient of its confidential and proprietary nature and ensures such recipient is bound by obligations of confidentiality at least as stringent as this Section 8.

9. INTELLECTUAL PROPERTY

Each party retains the intellectual property owned by, or licensed to, it. To perform, and use, the Service(s) the parties each grant to the other a limited license to use and distribute that intellectual property only as strictly necessary to provide or use the Service(s). Other than as set out in the prior sentence, or in this Agreement, neither party grants to the other, and neither shall have, any right, title, claim or interest in, or to, the other party's intellectual property, or that which is licensed to any party, nor will a party decompile, disassemble, or reverse engineer the other party's intellectual property, or that which is licensed to a party. Suggestions provided to us or used by us to improve the Service(s) and are agreed to be our intellectual property.

10. COMPLIANCE WITH LAWS, REGULATIONS, AND STANDARDS

The technology used to provide the Service(s) is governed by the laws of the United States. You may not export this technology in violation of U.S. export laws, nor may you use the Service(s) to do business with individuals or companies or in countries prohibited by U.S. law. Unless specifically set out in your Order, we do not warrant, nor have we represented to you, that the Service(s) meet any particular industry standard.

11. SECURITY

We will use industry-standard methods to secure the Service(s). Many of the resources associated with the Service(s) are co-managed with you. You agree to provide us with information that will allow us to configure the Service(s) in a way that meets our mutual security needs. You acknowledge that all internet usage carries some security risk, no matter how carefully it is secured.

Should we determine that there has been unauthorized access to the Service(s) (“Breach”), we agree to notify you as soon as we have determined our course of action with regard to a Breach (“Breach Notification”). We may take action, including suspending all, or part of the Service(s), to isolate and mitigate the cause of a Breach. The Breach Notification may contain preliminary and unconfirmed information; However, it is provided to you to assist in your efforts to mitigate the effects of a Breach. We each agree to reasonably cooperate with each other to investigate the facts and circumstances involved in a Breach and agree to maintain confidentiality of such Breach except as required under agreements with End Users. To the extent our cooperation requires us to devote time and resources above and beyond those extended by us in conjunction with a typical Breach investigation, or should we be asked to cooperate with a governmental investigation, you will be billed at our standard consulting rates, which will be disclosed with you prior to the initiation of any billable or invoiced activities.

You are highly encouraged to stay on a fully supported service pack to ensure they are on the latest and most secure version. Should you wish to have your hosted system use an operating system that has reached “End Of Life” status (the point in which the operating system no longer receives new security updates, or software vulnerability patches, or other updates) you may be required, at our sole discretion, to purchase a firewall or similar security service at your own expense so as to ensure the protection of your environment or other hosted systems that could potentially be put at risk should your end of life operating system be allowed to operate without protection.

12. GENERAL PROVISIONS

- a) Controlling Law. This Agreement will be construed and controlled by the laws of the State of Texas, and each party consents to exclusive jurisdiction and venue in the federal courts sitting in Austin, Texas, unless no federal subject matter jurisdiction exists, in which case the parties consent to exclusive jurisdiction and venue before the Texas state courts in Travis County, Texas. The parties waive all defenses of lack of personal jurisdiction and forum non-conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. In any action or suit to enforce any right or remedy under this agreement or to interpret any provision of this Agreement, the prevailing party will be entitled to recover its reasonable actual attorneys’ fees, costs, and other expenses.
- b) Amendments. We may amend this Agreement, in our discretion, from time to time and at any time, upon notice to you. The AUP, Privacy Policy and Data Processing Addendum (if applicable) are also made part of and incorporated into this Agreement and may also be amended, in our discretion, from time to time

and at any time. We will provide you with notice of material changes via the Portal and by posting online at <http://www.codero.com/legal>. It is your responsibility to check for any such notices. Your continued use of any Service following notification of any amendments described in this paragraph shall be deemed to be your consent to be bound by the amended documents.

- c) Waiver. The fact that one party fails to exercise, partially exercises, or delays exercising a right, remedy or power available to it in this Agreement is not a waiver or preclusion of a right to do so in the future. The waiver by a party of time for performance, or extension of the time to do so, shall not constitute a waiver of the act or condition itself.
- d) Assignment. You may not assign this Agreement or any of your rights or obligations under this Agreement, without our prior written consent. We may assign this Agreement in whole or in part upon written notice to you. This Agreement shall be binding upon and accrue to the benefit of any permitted assignee, and any such assignee shall agree to perform the obligations of the assignor.
- e) Severability. Should a particular provision of this Agreement be held to be illegal or unenforceable in any jurisdiction, that provision shall be effective to the extent of such illegality or unenforceability, without invalidating the remaining provisions, and the provision at issue shall be restated to reflect the original intentions of the parties, to the greatest extent possible, and in accordance with law.
- f) Entire Agreement. This Agreement, together with all documents incorporated by reference, states the entire agreement between the parties and replaces and supersedes all prior or contemporaneous writings, negotiations, and discussion with respect to the subject matter hereof.
- g) California Customers. If you are based in the state of California, you are advised that, if applicable under California Civil Code Section 1789.3, you may initiate a complaint about the Service(s) through the Portal or as set out in the applicable SLA. If you are not satisfied with the resolution provided by us, you may contact, in writing, us at the address set forth in section 12 k), and the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs at 1020 N Street, #501, Sacramento, CA 95814, or by telephone at 916-445-1254. The Fees for the Service(s) are set out in the applicable Order or Addendum. This section shall not change, alter or indicate a waiver of the parties' choice of jurisdiction and venue set out in section 12 a).
- h) No Agency. The parties are independent contractors. Under no circumstances will either party have the authority to make any representations, claims, or warranties of any kind on behalf of the other party, its affiliates, agents, subcontractors, licensors or third-party suppliers.
- i) Publicity, Use of Marks. You agree that we may publicly disclose that we are providing Service(s) to you and may use your name and logo to identify you in promotional materials, including press releases.
- j) Survival. The rights and obligations of the parties set out in this Agreement that would by their nature or context be intended to survive the expiration or termination of this Agreement, shall survive.
- k) Notices. We will provide you with notices to the email address set out in the Portal. All notices to us must be in writing and are deemed to have been received on actual receipt. All notices, requests, consents and other communications to us shall be delivered to:

APH, Inc., d/b/a Codero
6805 N. Capital of Texas Hwy #210
Austin, TX 78731

Attn: Legal Department

- l) Force Majeure. Neither party shall lose any rights hereunder or be liable to the other party for damages or losses on account of failure of performance by the defaulting party if the failure, other than failure of payment by you, is occasioned by any occurrence or contingency beyond its reasonable control, including without limitation war, strike, fire, Act of God, earthquake, flood, lockout, embargo, governmental acts or orders or restrictions, failure of suppliers, public health emergency such as a pandemic or disease outbreak, or any other reason where failure to perform is beyond the reasonable control of the nonperforming party; provided that such party shall use commercially reasonable efforts to promptly mitigate any damages or losses.

- m) Application of Privacy Laws. If you engage in the processing of “personal data” (as that term is defined in the European Union’s General Data Protection Regulation 2016/679 (“GDPR”)) or “Protected Health Information” (as that term is defined in the Health Insurance Portability and Accountability Act of 1996 and its implementing rules and regulations (“HIPAA”)), you agree to:
 - (i) notify us before using the Service(s) to process such personal data or Protected Health Information;
 - (ii) ensure that the Service(s) are appropriate and are configured appropriately for the intended processing of personal data or Protected Health Information;
 - (iii) comply with GDPR, HIPAA, and/or other applicable privacy laws; and
 - (iv) enter into an appropriate Data Processing Addendum or Business Associate Agreement, as applicable, in the form supplied by us.

- n) Non-Solicitation. During the term of this Agreement and for twelve (12) months following termination of this Agreement, you agree that you will not solicit for employment with you (or any other party) any employee of Codero or interfere with the employment relationship between Codero and any of our employees with whom you have had contact with in connection with this Agreement.