Terms of Service

Thank you for choosing Codero! We look forward to working with you. This Terms of Service, and the documents that are incorporated into it, are referred to collectively as the “Agreement.” The Effective Date of this Agreement is the date you click “I agree” as that date is captured by our servers.

1. Services.

1.1. We agree to provide to you the services, technology, equipment and materials (Services) set out on the product pages of our web site or any order form used to select the Services (Order).

1.2. We will use good faith efforts to implement the Services as set out in the Order. It may be necessary for you to assist us in this implementation before and during the Term (defined below) of this Agreement. You agree to provide reasonable cooperation and assistance, and to cause any of your third-party providers to do so as well.

1.3. 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 vendors or licensors, which are also incorporated into this Agreement by reference.

1.4. You may purchase backup services from us (Back Up Services). Back Up Services are provided to supplement your own backup activities. You agree that you are responsible for maintaining your own set of backups independently of the Back Up Services. If we provide data to you from a backup, it will be provided as raw data, and you may be required to reformat that data so that it reflects a prior configuration or use.

2. Our Obligations.

2.1. In addition to providing the Services to you as set out in this Agreement, we also provide an industry leading Service Level Agreement (SLA) located here http://www.codero.com/legal. Our SLA sets out our commitments to you, the customer.

2.2. We agree to provide the Services set out on the Order. However, from time-to-time we may modify the Services should a vendor no longer provide components of them to us, the technology change, or to account for our operational needs. We will use reasonable efforts to secure substitute services for the remainder of your Term. Should we be unable to secure those services in a reasonable manner we may terminate the Services, or that aspect of the Services so affected.

2. Your Obligations.

2.1. Serverportal.com is your gateway to the Services. We rely on the information you provide to us there, and in the Order. You agree (a) to keep this information up-to-date, and (b) that we may rely on the accuracy of this information.

2.2. Our Acceptable Use Policy (AUP) is here http://www.codero.com/legal. Please review it; it is part of this Agreement, as amended from time to time. Any amendments to the AUP are governed by Section B of that document.

2.3. This Agreement grants you a license to use the Services, and any third-party components 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.

2.4. You agree to treat our staff members professionally. We may refuse to provide support to you, or terminate the
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Services, should you use abusive, unprofessional, or derogatory language in your interactions with our staff.

3. Payment.

3.1. Our fees for the Services are set out on your Order (Fees). Fees will begin as set out in this Agreement. Fees do not include taxes, which may be added to the Fees. You are responsible for all taxes, other than those on our income, unless you provide us with a tax exemption form.

3.2. On your Order, you may select monthly billing, quarterly (every three months) billing, semi-annual (every six months) billing, or annual billing for your account. You may qualify for advertised price discounts (Prepayment Discounts) if you select quarterly, semi-annual, or annual billing for your account. We will accept payment 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 ten dollars for each payment made, and (b) customers paying by wire transfer will be charged a wire transfer fee of ten dollars for each payment made. We do not accept PayPal, Pre-Paid Credit Cards, or Virtual Credit Cards as valid forms of payment for initial orders for new clients. After you have established a three-month history of successful payment, Codero may choose to accept PayPal, Pre-Paid Credit Cards, or Virtual Credit Cards as valid forms of payment.

3.3. Applicable setup fees and the fees due for your first billing period (first month, first quarter, first six months, or first year) are both due on the initial start date of your Services. Codero may change the pricing for new Services at any time and for existing Services at the beginning of any new billing term. Unless you choose another billing period, Fees will be invoiced to you monthly. All fees are due on the date set out on your invoice (Due Date). Your payment obligation is absolute: you may not withhold, deduct or set-off Fees unless expressly set out in this Agreement. Failure to pay an invoice in full within seven days of the Due Date can result in immediate account suspension.

3.4. You are liable for all unpaid amounts due on your account even if Codero terminates your Services or this Agreement for cause, as set out in this Agreement, partway through a billing period. 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, whichever is less. In addition, your equipment, domains, web content, IP address or other assets may be retained by Codero as collateral for unpaid charges and penalties until such charges and penalties are paid in full. If you fail to pay the Fees when due, we may, at our discretion, (i) require you to pay a security deposit; and/or (ii) impose a reconnection charge. Also, Codero may use a third-party service to collect unpaid amounts and may charge you reasonable, actual attorneys’, collection, or other reasonable fees incurred to collect unpaid balances.

3.5. You understand and agree that Codero will manually reboot your servers, if requested, up to five times each calendar month at no charge, but that for each additional manual reboot of your servers Codero will automatically charge you five dollars per reboot.

3.6. During the Term (as defined below), we will only increase the Fees in the following circumstances: (i) the parties agree in writing; (ii) you purchase additional Services and those Services have additional Fees; (iii) a regulated entity, such as a utility, increases their charges to us; or (iv) a vendor adds surcharges or additional fees based on your use of the Services. We will provide you with written notice of such an increase thirty days prior to such an increase; you may terminate the affected Services without penalty if you reject the increase.

3.7. You understand and agree that you are responsible for any network bandwidth charges, storage 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.”
3.8. We strive to bill you accurately. If you believe that a Fee charged in your bill is not accurate, you agree to provide us with written notice no later than twenty-nine calendar days before the Fee is due. Your written notice must contain information that allows us to investigate the disputed Fee. You agree to pay any Fees not in dispute when they are due. If we disagree with your dispute, we agree to work with you in good faith to resolve the dispute. If, after sixty business days, we are unable to resolve the dispute, our determination will be final. If you initiate a chargeback rather than initiating a dispute, or following its resolution, the Services that are the subject of the dispute may be suspended.

3.9. Any new Services that receive a discount covered by any promotion, which are started and then canceled within the first thirty days, will be billed at our standard, non-discounted promotional fee.

3.10. Discounts are available for new Services only, and cannot be applied to existing Services. Existing Services that are cancelled and reordered are not eligible to receive the current discounted promotional rate.

4. **Term.**

4.1. We will begin providing the Services described in an Order on the date set out on such Order. As to those Services, this Agreement will be effective on the Effective Date and continue for the term set out on such Order (Initial Term). After the expiration of the Initial Term for a particular Service, the term shall renew for additional periods equal to the Initial Term (Renewal Term). Together the Initial Term and any Renewal Term(s) are referred to as the “Term.”

4.2. Each of your Services will renew automatically. If you select monthly billing, each of your Services will automatically renew on the one-month anniversary date of the start or last renewal date of that Service. If you select quarterly billing, each of your Services will automatically renew on the three-month anniversary date of the start or last renewal date of that Service. If you select semi-annual billing, each of your Services will automatically renew on the six-month anniversary date of the start or last renewal date of that Service. If you select annual billing, each of your Services will automatically renew on the one-year anniversary date of the start or last renewal date of that Service. Each monthly, quarterly, semi-annual, or yearly anniversary date (as applicable) shall be a “Renewal Date.”

4.3. On the Renewal Date of each of your Services, you will be automatically charged for the cost of renewing the applicable Service through the next Renewal Date.

4.4. Orders may have different Terms. As long as one Order remains in effect, this Agreement shall continue in effect. However, either party may cancel individual Orders pursuant to the terms of this Agreement, without terminating all Orders, or this Agreement. Charges for bundled Services will be “unbundled” if you cancel any part of the bundle of Services. For example, if you receive a free control panel license 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 control panel license.

5. **Termination.**

5.1. Either of the parties may terminate this Agreement if:

5.1.1. the other party breaches any material obligation under it (other than our obligations covered by an SLA), and fails to begin to cure such a breach within ten days of written notice of such a breach from the non-breaching party, or fails to completely cure such a breach within thirty days of the original written notice; or
5.1.2. a force majeure event continues for more than thirty days.

5.2. Either of the parties may terminate a Service if it gives the other written notice of its intent to terminate no later than seven calendar days prior to the expiration of the Initial Term or any Renewal Term.

5.3. We may terminate this Agreement or an Order, or cease providing particular Services to you (each at our discretion), if:

5.3.1. You fail to pay any undisputed Fees by the Due Date;

5.3.2. You violate our AUP or Privacy Policy; or

5.3.3. We are prohibited from offering a Service to you, or a critical aspect of the Service ceases to be available to us at a reasonable cost.

5.4. Effect of a Termination.

5.4.1. When this Agreement or an Order terminates, we will have no further duties to you and you will have no obligations to us under this Agreement or such Order, as applicable (other than for unpaid and/or accrued Fees), unless this Agreement expressly provides otherwise.

5.4.2. Upon termination of this Agreement, it is your responsibility to ensure that you configure technical aspects of your business, such as mail, WHOIS, and items outside of our control, to ensure that those items are directed away from us. You agree to point DNS for your domain names away from us prior to your termination of relevant Services, or if we terminate them, within five calendar days of our termination. We have no responsibility to maintain back ups following termination, nor to forward email to another provider.

5.4.3. The IP addresses assigned to you in association with the Services are owned by us. On termination, we will recycle these addresses. It may be necessary for us to change these addresses. If it is, we will provide you with reasonable notice.


6.1. 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.

6.2. You represent and warrant to us that: (i) you have the experience and knowledge necessary to use the Services; (ii) you will comply with the terms of any licenses required for your use of the Services; (iii) you will draft agreements with your customers having terms that are no less protective of our interests than the terms of our AUP; (iv) 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 Services; and (v) your customers 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 Services, and have agreed to indemnify us if they do not.

6.3. NOTWITHSTANDING ANY ORAL OR WRITTEN COMMUNICATIONS BETWEEN YOU AND CODERO ABOUT OR IN CONNECTION WITH THE SERVICES, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR IN THE PRODUCT DESCRIPTION, 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 PRODUCTS AND SERVICES WILL BE COMPLETELY SECURE OR ERROR-FREE; OF NON-INTERUPTION, NON-INTERFERENCE OR NON-INFRINGEMENT. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR IN AN INDIVIDUAL PRODUCT DESCRIPTION, THE SERVICES AND EQUIPMENT PROVIDED UNDER OR ASSOCIATED WITH THIS AGREEMENT ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS.

7. Limitations of Liability.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WILL CODERO BE LIABLE TO YOU OR ANY THIRD PARTY MAKING A CLAIM BASED ON OUR PROVIDING THE SERVICES TO YOU FOR: (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF REVENUES; (IV) LOSS OF DATA OR INTERRUPTION OR CORRUPTION OF DATA; (V) ANY CONSEQUENTIAL OR INDIRECT DAMAGES; OR (VI) ANY INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY OR PUNITIVE DAMAGES (IF APPLICABLE). THIS LIMITATION APPLIES EVEN IF CODERO IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ANY OTHER TYPE OF DAMAGES OTHER THAN DIRECT DAMAGES. OUR MAXIMUM LIABILITY SHALL BE ONE MONTH’S FEES ACTUALLY RECEIVED BY US DURING THE BILLING TERM PRIOR TO YOUR CLAIM. IF THIS DISCLAIMER IS PROHIBITED BY THE LAW GOVERNING THIS AGREEMENT, OUR LIABILITY SHALL BE LIMITED TO THE FULLEST EXTENT ALLOWED BY THAT LAW.

TO THE EXTENT THE SERVICES CONTAIN SOFTWARE PROVIDED BY MICROSOFT, NEITHER MICROSOFT, NOR ITS SUPPLIERS, SHALL BE SUBJECT TO ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE MICROSOFT PRODUCTS OR SOFTWARE.

8. Indemnification.

You shall indemnify and defend Codero, its affiliates, directors, officers, employees and agents (for the purpose of this paragraph only, “Codero”), and hold Codero harmless from and against all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative) and expenses (including, but not limited to, reasonable actual attorneys’ fees) asserted against Codero based on (i) your use of the Services, or providing them to a third party; (ii) infringement of any patent, copyright, proprietary right and/or trademark and such a claim is based on your use of the Service, or any data or content transmitted by the Service based on your use of it; or (iii) any personal injury, death or physical damage to, or loss or theft of, tangible personal property caused by your gross negligence or willful misconduct, or that of your employees, agents or subcontractors.

9. Confidential Information.

9.1. During the term of this Agreement and for two years thereafter, neither party shall disclose any terms or pricing contained in this Agreement or any confidential or proprietary information disclosed by the other party (Confidential Information), other than as necessary to provide Services to you. Confidential Information shall remain the property of the disclosing party and shall be labeled as either “confidential” or “proprietary” at the time of disclosure. Notwithstanding the foregoing, all information concerning either party’s traffic volume or distribution, data, pricing, customer lists, network maps, and financial information is hereby deemed to be Confidential and Proprietary regardless of whether it is marked. Confidential Information may not be disclosed to any person or entity except for the recipient’s employees, contractors, consultants, lenders and/or financial advisors who have a need to know and who are bound in writing to protect the information from unauthorized use or disclosure. “Confidential Information” does not include any information which: (i) was already known by the receiving party free of any obligation to keep it confidential at the time of its disclosure; (ii) becomes publicly

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known through no wrongful act of the receiving party; (iii) is rightfully received from a third person without knowledge of any obligation of confidentiality; or (iv) is independently acquired or developed without violating any of the obligations under this Agreement. Further, the recipient may disclose Confidential Information pursuant to a judicial or governmental request, requirement, or order. Confidential Information shall remain the property of the disclosing party and shall be returned to the disclosing party or destroyed upon request of the disclosing party. The recipient shall use the Confidential Information only for the purposes of this Agreement and shall protect it from disclosure using the same degree of care used to protect its own confidential or proprietary information, but in no event less than a reasonable degree of care.

10. **Intellectual Property.**

Each party retains the intellectual property owned by, or licensed to, them. However, each grants to the other a limited license to use and distribute that intellectual property only as strictly necessary to provide or use the Service. Unless expressly stated 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 a party. Upon written request, you agree to promptly provide us of evidence that you have the right to use the intellectual property that is the subject of our request. If you make suggestions to us about how we can improve our services, we will acquire the intellectual property rights in any improvements we make.

11. **Compliance with Laws, Regulations and Standards.**

The technology used to provide the Services 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 Services to do business with individuals, 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 Services meet any particular industry standard.

12. **Security.**

We will use industry standard methods to secure the Services. However, many of the resources associated with the Services are co-managed with you. You agree to provide us with information that will allow us to configure the Services in a way that meets your security needs. Should we determine that there has been unauthorized access to the Services (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 Services, 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. 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 Fees.

13. **General Provisions.**

13.1. We will use your name and email address to send newsletters on occasion to you. These newsletters may include information on promotions, services, and the company. Out of respect for your privacy, we provide you a way to unsubscribe in each promotional email. We will send you strictly service-related announcements on occasion when it is necessary to do so; for example, if there is network maintenance you will receive an email. You may opt out of these communications by clicking the unsubscribe link provided.

13.2. This Agreement will be construed and controlled by the laws of the State of Kansas, and each party consents
to exclusive jurisdiction and venue in the federal courts sitting in Kansas City, Kansas, unless no federal subject matter jurisdiction exists, in which case the parties consent to exclusive jurisdiction and venue before the Kansas state courts in Johnson County, Kansas. 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.

13.3. This Agreement may only be amended in writing upon agreement of the parties, except that the AUP and Privacy Policy (which is also incorporated into and made a part of this Agreement) may be amended by Codero as stated in this Agreement. However, the Privacy Policy may be amended as provided in this Agreement.

13.4. 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.

13.5. Either party may assign this Agreement to an affiliate if the original signatory to the Agreement remains fully responsible for the rights and obligations of the affiliate. Otherwise, you may only assign this Agreement with our written consent. However, the Services may be performed by Codero’s corporate subsidiaries, its agents or subcontractors, without your consent. This Agreement shall be binding upon and inure to either party’s benefit and their respective successors and permitted assigns.

13.6. 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.

13.7. This Agreement, together with all documents incorporated by reference, states the entire agreement between the parties. Except for pre-existing obligations of confidentiality, non-disclosure and non-competition, with respect to the subject of this Agreement, it supersedes all previous proposals, negotiations and other written or oral communications between the parties.

13.8. If there is a conflict between the terms of this Agreement, Order, Product Description and Privacy Policy, they shall have the following precedence: provisions of the AUP set out in this Agreement, Privacy Policy, Product Description set forth on Codero’s website, Agreement and Order.

13.9. 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.

13.10. 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 through ServerPortal.com, or as set out in the applicable Order. If you are not satisfied with the resolution provided by Codero, you may contact, in writing, Codero at the address set out in paragraph 13.12, 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 1-916-445-1254. The charges for the Services are set out in the applicable Order. This paragraph shall not change, alter or indicate a waiver of the parties’ choice of jurisdiction and venue set out in
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13.11. 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. In particular, but without limiting the preceding sentence, the parties' rights and obligations under the following sections of this Agreement shall survive: 3.4, 6.3, 7, 8, 9, 13.2, 13.4 through 13.9, 13.11 and 13.12.

13.12. We will provide you with notices to the address set out in your Server 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
Attention: Codero Legal
5750 W 95th Street – Suite #300
Overland Park, Kansas 66207

13.13. The following provisions apply to specific Services:

13.13.1. Server Protection Plan:

13.13.1.1. 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, (i) reinstall your operating system, and (ii) waive any bandwidth overage charges you may have incurred due to the server compromise.

13.13.1.2. Limitations: The following limitations apply to the SPP:

13.13.1.2.1. You must notify Codero that your server has been compromised by submitting a ticket at ServerPortal.com no more than fourteen days after you discover, or reasonably should have discovered, that your server has been compromised.

13.13.1.2.2. Codero must be able to confirm to its sole satisfaction that your server has been compromised.

13.13.1.2.3. Codero will not reimburse you for any bandwidth overage charges that directly result from your own actions.

13.13.1.2.4. 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 for any reason.

13.13.1.2.5. 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.

13.13.1.2.6. Codero may refuse to add the SPP service to any account for any reason.

13.13.1.2.7. The SPP is not available for Codero Cloud Services.

13.13.2. Dedicated Servers: If your Order states that the Services included “Dedicated Servers,” the following paragraphs apply to those Services described as Dedicated Servers, and only to those Services. Should any of these paragraphs differ from prior paragraphs, these paragraphs shall prevail:

13.13.2.1. For Dedicated Servers, the Service includes the equipment, facilities, programming, data files, software, services and resources that we use to enable you to outsource your data and Internet requirements with access through our network.
13.13.2.2. You agree to provide to us any material that is necessary for us to configure, and if set out in the Order, customize the Service (Dedicated Material). The Dedicated Material must be provided to us in a server-ready manner, capable of being placed on the Services without more than administrative effort on our part.

13.13.2.3. You shall provide to us administrative access to the operating system on the managed service.

13.13.2.4. We will promptly replace any defective hardware used on the Service as set out in our SLA.

We reserve the right to relocate the equipment used to provide the Service at any time. You will have no physical access to this equipment. During any relocation, we will take commercially reasonable steps to ensure that Service disruptions are kept to a minimum.

13.13.3. Cloud Services: If your Order states that the Services include “Cloud Services,” the following paragraphs apply to those Services described as Cloud Services, and only to those Services. Should any of these paragraphs differ from prior paragraphs, these paragraphs shall prevail:

13.13.3.1. Cloud Services may have limitations on both the bandwidth and/or throughput you may use. These limitations are generally set out on your Order. However, you may not use the Services in a way that jeopardizes our ability to provide services to other Customers or the stability of our network. Should we determine that you have used the Services in this manner, we reserve the right to limit your use of the Services to minimize these effects. Following our limitation of this use, we will notify you in writing of steps you may take to mitigate these effects. If you do not accept these steps, we reserve the right to impose permanent limitations on your use of the Services.