

## **Apogee End-User Internet Service Agreement**

This Apogee End User Agreement ("EUA") is a legal agreement entered into between Apogee Telecom Inc. ("Apogee" or "we"), having an office at 715 West 23rd St Suite M, Austin, TX 78705, and the Customer ("Customer" or "you"). If you are a student, faculty, or staff member using Apogee services, you are also bound to the Terms of Use Policies provided herein.

BEFORE ACCESSING OR USING APOGEE INTERNET SERVICES YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS CONTAINED IN THIS EUA. YOU ACKNOWLEDGE AND AGREE THAT (1) YOU HAVE READ THIS EUA (2) YOU UNDERSTAND IT; (3) YOU ARE BOUND IT; AND (4) YOU MAY RECEIVE, WITHOUT FURTHER NOTICE OR PROMPTING, UPDATED VERSIONS OF THE SOFTWARE. IF YOU DO NOT AGREE TO THE FOREGOING, YOU AGREE THAT YOU DO NOT HAVE A LICENSE TO, AND YOU WILL NOT USE THE SERVICES.

### **Section 1. SERVICES**

(a) You hereby verify and acknowledge that Apogee service is being installed on your property, and will be used only for residential consumer Internet services. (b) By accessing, or using the Services, you represent and warrant that (i) all information you submit (if any) is complete and accurate; (ii) you are at the legal age of majority in accordance with the laws of the territory of your residency. (c) You can sign up for upgraded service at any time. Upgrades are done at the time of the request and cannot be scheduled for a future date. (d) Optional user Internet downgrades must be made by contacting the support center. (e) If phone service is provided, the account holder is responsible for any long distance or other phone fees incurred as a result of using the phone service.

### **Section 2. SERVICE INTERRUPTIONS**

Although Apogee will make reasonable efforts to maintain the Services, you may experience service interruptions. Apogee assumes no responsibility or liability for interruption of the Services. If you experience a service interruption call your designated call center support line or notify

your campus's technology services department. Apogee may change, suspend or discontinue any or all of the Services for any reason, without notice, at any time. Suspension or discontinuation without notice may also occur for failure to pay for the services, for an investigation by a law enforcement agency or for an actual or suspected violation of this EUA.

### **Section 3. GENERAL UNDERTAKINGS**

You accept sole responsibility for all of your activities you undertake in connection with your use of the Services, including, without limitation, with respect to any and all content you are exposed to, submit, post, or share via the Services or on the Website (if applicable). You will not use the Services for any unauthorized or illegal purpose.

As with all services provided through the paying entity, use of your Apogee connection is also governed by paying entity's policies, including the Conduct Codes, Computer Use Policies, and other policies as appropriate.

Misuse of your Apogee connection may result in judicial action in addition to other possible action(s) taken by Apogee or other entities. Apogee may share information related to reports of abuse of its services with the paying entity or law enforcement agencies.

#### **Section 4: RESTRICTIONS**

When you use the Services for Internet access, you may not:

1. restrict or inhibit any other user from using and enjoying the Internet; this includes but is not limited to, the abuse of personal routers, and other such devices that jeopardize network performance.
2. post or transmit any unlawful, threatening, abusive, libelous, defamatory, vulgar, obscene, indecent, pornographic, profane, hateful, or bigoted information of any kind, including without limitation any transmissions, constituting or encouraging, conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, national or international law, including without limitation U.S. export control laws and regulations.
3. post or transmit any information or software which contains a virus, spyware, or other harmful components.
4. post, publish, transmit, reproduce, distribute or in any way exploit any information, software or other material obtained through the Services for commercial purposes.
5. upload, post, publish, transmit, reproduce, or distribute in any way, information, software or other materials, or other proprietary right, or derivative works with respect thereto, without obtaining permission of the copyright owner or right-holder.

6. Apogee will cooperate fully in investigating claims of copyright violation. Accounts receiving DMCA notices are subject to both Apogee's and, if residing in school owned property, their school's DMCA policy.

7. remove or alter copyright management information including, without limitation, name or identification information of the author or owner, copyright note or terms & conditions for use of a work.

8. avoid, bypass, remove, deactivate or circumvent by any means, any process or system such as copy protection systems that are intended to protect the rights of a copyright owner.

9. send unsolicited e-mail that causes complaints from the recipients of such e-mails.

10. run open proxy/SMTP relay servers; any complaints about spam originating on a Apogee customer's computer will result in the immediate suspension of the user's services; Apogee reserves the right to scan the network periodically for behavior that fit this description.

11. send large quantities of unwanted or unsolicited email to individual e-mail accounts {also known as "spamming" or "mail-bombing") including sending content or emails which do not comply with the CAN-SPAM Act of 2003 or applicable local law.

12. make any unauthorized attempt to gain access to any account or computer resource, including The College or University's resources, not belonging to that user {e.g., "spoofing").

13. obtain or attempt to obtain service by any means or device with intent to avoid payment.

14. statically configure your IP address.

15. share or allow others to obtain or attempt to obtain your service by any means or device with intent to avoid payment; this includes, but is not limited to giving out your Apogee username and password.

16. User is allowed one username/password for their computer. That username/password is not to be shared by anyone and should only be used.

17. access, alter or destroy, or attempt to access, alter or destroy, any information of any Apogee customers or end-users by any means or device without appropriate authorization.

18. knowingly engage in any activities that will cause a denial of service (e.g., synchronized number sequence attacks).

19. resell Apogee Services to any third parties.

20. participate in third party content (CON) or advertising (ADN) distribution networks; Apogee reserves the right to periodically scan the network for CON or ADN applications.

21. run programs or servers that provide network services to others through the Services ("web hosting"), which includes, but is not limited to, operating a web/mail/ftp server to serve external connections.

22. run servers on the Apogee network which are commercial in nature.

23. register domain or make DNS entries that point to Apogee IP addresses.

24. misuse the connection between Apogee, and Customer as described in the above restrictions.

25. intentionally or unintentionally violate, attempt to violate, or avoid any applicable regulation or policy (including ICANN).

## **Section 5. WARRANTY DISCLAIMER**

(a) Except for information, products or services clearly identified as being supplied by Apogee under the Customer's Master

Services Agreement, Apogee does not operate or control any information, products or services on the Internet and except for such Apogee-identified information, products or services, all merchandise, information and services offered or made available or accessible through the Services or on the Internet generally are offered or made available or accessible by third parties who are not affiliated with Apogee or its affiliates.

(b) The Internet contains unedited materials, some of which may be offensive or objectionable to you. You access such materials at your own risk. Apogee and Customer have no control over and accepts no responsibility whatsoever for such materials.

(c) Apogee has no obligation to monitor the Services. You agree that Apogee has the right to monitor the Services electronically from time to time, and you consent to Apogee's access, use and disclosure of any information as necessary to satisfy any law, regulation or other governmental request, to operate the Services properly, to improve the Services, or to protect itself, or Customer. Apogee reserves the right to refuse or to remove any information or materials, in whole or in part, that in its sole discretion, are unacceptable, undesirable, or in violation of this Agreement.

(g) The Internet speed in which the account holder signs up for is for the Services and is quoted as the maximum obtainable speed via direct wired Ethernet connection. For locations where wireless Internet is provided, wireless service is an amenity and compatibility, connection, or speeds cannot be guaranteed

**Section 6. MISCELLANEOUS**

- (a) You agree to install an antivirus software onto your computer, frequently obtain updates for your antivirus, and scan your system. Failure to comply may lead to your computer becoming infected and result in, but not limited to, temporary loss of services, fees, and/or service termination.
- (b) Apogee's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between parties nor trade practice shall act to modify any provision of this Agreement.
- (c) This Agreement shall be governed by and construed in accordance with the laws of the state of where the Premises are located.
- (d) User agrees to only create only ONE Apogee account. User may register multiple devices that are all part of user's one account.
- (e) Only NAMED persons on an account may access account information.
- (f) Apogee is not responsible for outdated, incorrect, invalid, or missing information in regards to the account holder. It is the account holder's responsibility to keep their Apogee account up-to-date with correct, current information.

**Section 7. LIMITED LIABILITY AND INDEMNIFICATION**

- (a) NEITHER APOGEE NOR THEIR SUBCONTRACTORS SHALL BE LIABLE FOR ANY LOSS OF DATA OR DAMAGE TO HARDWARE THAT OCCURS DURING INSTALLATION OF OR ANY SUBSEQUENT SERVICE PERFORMED ON YOUR COMPUTER

IN SUPPORT OF APOGEE SERVICES. IT IS YOUR RESPONSIBILITY TO COMPLETELY BACKUP YOUR COMPUTER.

- (b) YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY AND ALL LOSS OR DAMAGES RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING APOGEE'S OR ITS SUBCONTRACTOR'S NEGLIGENCE, SHALL BE A REFUND OF ANY SERVICE CHARGES AND FEES PAID TO APOGEE BY THE INJURED PARTY UP TO THE TIME THE DAMAGE IS DISCOVERED.
- (c) THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY APOGEE SHALL CREATE A WARRANTY. NEITHER APOGEE, ITS AFFILIATES, NOR THE COLLEGE OR UNIVERSITY WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY INFORMATION, SOFTWARE OR OTHER MATERIAL ACCESSIBLE ON THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.
- (d) The limitations on liability and the indemnification provisions expressed herein shall inure to the benefit of and apply to Apogee's parent, subsidiary and affiliated companies, as well as to any subcontractors performing work on behalf of Apogee.