

## SERVICE LEVEL AGREEMENT

### General:

This Service Level Agreement ("SLA") sets forth ALL service level guarantees that Apogee makes to Client with respect to all Hosting Services that Apogee provides to Client. This Service Level Agreement ("SLA") shall define CLIENT'S SOLE REMEDY IN THE EVENT THAT HOSTING SERVICES OR HOSTING ENVIRONMENT ARE INACCESSIBLE OR ARE INOPERABLE. This SLA is incorporated by this reference into each Client's General Service Agreement ("GSA") and Acceptable Use Policy ("AUP") This SLP should be read in conjunction with Apogee's GSA and AUP. Capitalized terms used herein without being defined herein shall have the meaning ascribed to such capitalized term in the GSA or AUP, as applicable. Current copies of Apogee's AUP may be reviewed or printed by Client at the legal section of Apogee's website. By using Apogee's products and services, Client represents and warrants that it has read, understood and accepted the terms of the SLA and AUP. Apogee reserves the right to amend or modify this SLA from time to time, and a Client's use of Apogee's network and Apogee's products and services after changes to the SLA are posted on the legal section of Apogee's web site (<http://www.apogeestrategies.com/about/legal.aspx>) will constitute Client's acceptance of the changes.

### Definitions:

**"Availability"** means the opposite of Unavailability;

**"Catastrophic Datacenter Failure"** means a failure that occurs at Apogee's datacenter facility that results from Force Majeure, as defined in the General Service Agreement.

**"Client Data"** means all user data stored in the Hosting Environment as part of Client's Hosting Services, including file data, email data and relevant databases.

**"Hosting Environment"** means the Client's cumulative Hosting Services and related servers/equipment which will be used in connection with the Hosting Services;

**"Hosting Services"** means those hosting services Apogee has agreed to provide to Client pursuant to an Ongoing Services Approved Proposal which may include [Chris to complete definition]

**"Month"** means a 30 day month and all Availability calculations shall be based upon a 30 day month;

**"Monthly Recurring Fee"** means in relation to a Hosting Services component, the monthly recurring fee for that component set out in the Approved Hosting Proposal and in relation to the total, the total monthly recurring fee set out in the Approved Hosting Proposal;

**"Unavailability"** means the Hosting Services component or Hosting Environment is unavailable for your use from the public internet, such unavailability beginning at the earliest of (i) an interruption being recorded in our monitoring systems or (ii) your opening of a trouble ticket and ending when the interruption is no longer recorded in our monitoring systems. Scheduled Maintenance is excluded from Unavailability.

**"Scheduled Maintenance"** means any system or network maintenance that Apogee performs on Apogee's network and/or client Hosting Environments that is scheduled at least 24 hours in advance with notice to Client.

### Hosting Environment Availability:

Client's Hosting Environment may consist of multiple Hosting Services components, each of which has independent availability. Apogee tracks Availability for each component individually and any guarantee or remedy is specific to each component.

Service Level: Apogee guarantees that each Hosting Services component of Client's Hosting Environment shall be available to Client from the public internet 99.99% of the time in each Month, not including any Scheduled Maintenance that may result in Unavailability.

Sole Remedy: In the event that any individual Hosting Services component's Availability fall below 99.99% in a Month, and this failure directly and adversely affects Client's Hosted Environment or Hosting Services, Client is entitled to a credit of 5% of the Monthly Recurring Fee for the affected Hosting Services component per two (2) hours of Unavailability up to a maximum of 50% (fifty percent) of the Monthly Recurring Fee. All credits shall be applied to Client's next invoice for the affected Hosting Services component.

Limitations: Unavailability due to any of the following will not result in any service credit, remedy or other liability:

- (a) Periods during which Scheduled Maintenance takes place;

- (b) Maintenance performed at Client's request outside of Scheduled Maintenance;
- (c) Maintenance performed by Client or Client's agents;
- (d) Unavailability or interruptions in Hosting Services occurring due to design flaws, programming errors or security deficiencies in Client's or third parties applications, application code, or data structures or for software bugs within Client applications, system software, operating system, or any vendor supplied patches.
- (e) Unavailability due to a Catastrophic Datacenter Failure.

**Data Backup Availability:**

Apogee maintains both on-site and off-site data backups for all Client Data stored in Client's Hosting Environment. "On-site Backups" are incremental daily backups of Client Data that are maintained exclusively at Apogee's datacenter facility. "Off-site Backups" are full weekly backups of Client Data that are maintained at an off-site location. "On-site Backups" are taken daily and are retained for a period of 7 (seven) days before being deleted. "Off-site Backups" are taken weekly and are retained for a period of 14 (fourteen) days before being deleted.

Service Level: Apogee guarantees that Client Data will be available for restoration from On-site Backups for a historical period of seven (7) days and that Apogee will perform the restoration within 2 (two) business days from the date of request. Apogee guarantees that Client Data will be available for restoration from Off-site Backups for a historical period of fourteen (14) days and that Apogee will perform the restoration within 4 (four) business days from the date of request.

Sole Remedy: In the event that Apogee fails to perform data backups or data backup restoration in accordance with the service level set out above, and such failure directly and adversely affects Client Data, Client is entitled to a service credit of 10% of the Monthly Recurring Fee for the affected Hosting Services component for each such failure up to a maximum of 50% (fifty percent) of the Monthly Recurring Fee. All credits shall be applied to Client's next invoice for the affected Hosting Services component.

**Limitations:**

Unavailability of Client Data backups due to any of the following will not result in any service credit, remedy or other liability:

- (a) Unavailability due to Client's failure to make Apogee aware of the request to restore data within the retention period for the backup type as outlined above;
- (b) Unavailability of On-site Backups due to a Catastrophic Datacenter Failure;
- (c) Unavailability of Off-site Backups due to Force Majeure as defined in the General Service Agreement.

**Credits and Remedy:**

This SLA does not apply for any month during which Client is in Payment Default, or is in violation of the AUP. Apogee will automatically apply service credits to Client's account. If requesting clarification of service credits applied during the previous month, Client must submit a written request to Apogee within 14 days following the date of Apogee's invoice or notification of service credits for the month in question. Notwithstanding anything contained in this SLA or the General Service Agreement to the contrary: (i) the maximum total credit for any calendar month shall not exceed 100% of Client's total Monthly Recurring Fee; and (ii) the maximum total credit per affected Hosting Services component for any calendar month, shall be limited to 100% of the total Monthly Recurring Fee for the affected Hosting Services component. Service credits or remedy will not be granted for Unavailability or interruptions resulting from denial of service attacks, virus attacks, hacking attempts, or any other circumstances including Force Majeure, as defined in the General Service Agreement, that are not within Apogee's direct control. CLIENT'S RIGHT TO RECEIVE SERVICE CREDITS AS DESCRIBED IN THIS SLA IS CLIENT'S ONLY REMEDY FOR ANY FAILURE BY US TO MEET THE PROMISES, GUARANTEES AND WARRANTIES PROVIDED IN THIS AGREEMENT.