

Terms and Conditions of Service

Apogee Strategies LLC

This document ("Terms and Conditions of Service" and "Terms"), as it appears online at www.apogeestrategies.com/about/legal.aspx, contains terms and conditions of service with Apogee Strategies LLC ("Apogee"). Client has accepted and agreed to the Terms and Conditions of Service by signing a proposal (an "Approved Proposal") or upon entering into an agreement for the provision of services (a "Service Agreement") with Apogee. Client's use of Apogee's network and Apogee's products and services is subject to Client's acceptance and compliance with these Terms. Apogee hereby reserves the right to amend, alter, modify, replace or suspend, from time to time at its sole discretion, all or any portion of the Terms and Client's use of Apogee's network and Apogee's products and services following any such changes shall constitute Client's acceptance thereof. By signing any proposal, thereby creating an Approved Proposal, or entering in a Service Agreement, Client hereby represents and warrants that it has read, understood and accepted the Terms. Apogee will provide hard copies of the Terms to Client at any time upon request.

Products & Services:

All projects and expenditures will be approved by Client, either verbally or in writing as an Approved Proposal. Such approval shall bind Client to the terms of the project, including the payment terms outlined in the Approved Proposal and herein. Apogee shall use commercially reasonable efforts to provide services as agreed upon in any Approved Proposal; however, from time to time technology or services may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs; or (iii) causes beyond the control of Apogee. Client is advised to purchase business interruption insurance to protect against lost revenue in case of prolonged disruption of services or catastrophe. CLIENT HEREBY AGREES THAT APOGEE'S COMMITMENTS REGARDING SERVICE LEVEL ARE SET FORTH HEREIN IN THE SECTION ENTITLED SLA, AND THAT CLIENT'S SOLE REMEDY IN ANY EVENT OF INACCESSIBILITY, INOPERABILITY OR LOSS IS CERTAIN CREDITS FOR FEES PAID AS SET FORTH IN THE SLA. ALL PRODUCTS AND SERVICES PROVIDED BY APOGEE ARE PROVIDED, "AS IS" AND EACH OF APOGEE AND CLIENT EXPRESSLY DISCLAIMS ANY WARRANTIES AND CONDITIONS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY WARRANTIES THAT ANY PRODUCTS OR SERVICES, INCLUDING ANY SOFTWARE, WILL BE FREE OF INTERRUPTIONS OR ERRORS.

Term & Termination:

Unless specifically provided otherwise in the Approved Proposal or Service Agreement, Client may terminate at any time with thirty (30) days written notice to Apogee; upon receipt of notice, Apogee will provide Client with a final invoice for all outstanding fees and expenses for the products or services at Apogee's sole discretion which must be paid in full prior to termination. Apogee may terminate any and all Approved Proposals or Service Agreements and discontinue services upon five (5) days prior written notice if Client fails to pay any invoices when due ("Payment Default"). Such termination in the event of Payment Default shall not release Client from Client's obligation to pay all outstanding invoices. Apogee shall have the right to immediately suspend or terminate any products or services, or any agreement with Client, for any of the following reasons: (i) during any investigation of non-compliance of the Terms; (ii) a violation by Client of the Terms; or (iii) nonpayment of any fees. Client agrees that Apogee has the right to delete all data, files or other information that is stored on Apogee owned equipment, on behalf of Client, upon such termination. Client may elect to have Apogee produce an archive of any data, files or other information that is stored on Apogee owned equipment, provided that such election is made in writing to Apogee prior to termination. Client will be responsible for all expenses associated with such archival, including, without limitation, media costs and Apogee labor at Apogee's standard hourly rate (the "Archival Costs").

Payment & Fees:

Project scope, timeline, goal or process changes may result in cost and completion date changes; Client assumes responsibility for all additional costs associated with project changes. All service invoices are due on 30 day terms and all product invoices are due upon receipt; a due date will be posted on all invoices. Client agrees that any refusal to make payment on any invoice must be made in writing to Apogee within 15 (fifteen) days of the date posted on the invoice, including details of non-performance or other error; failure to do so will constitute Client's express acceptance of the invoice and Client's express obligation to make payment in full according to the terms posted on the invoice. Client agrees to reimburse Apogee for all reasonable expenses, including, without limitation, collection expenses and legal expenses, incurred by Apogee during any attempt to collect any fees from Client in Payment Default. Upon a Payment Default, Apogee may exercise any and all of the following rights and remedies at Apogee's discretion: (i) terminate upon 5 (five) days notice as provided above; (ii) delete all data, files or other information that is stored on Apogee owned equipment, on behalf of client, with 7 (seven) days notice to Client ("Deletion Notice"); Client may elect to have Apogee produce an archive of any

data, files or other information that is stored on Apogee owned equipment, provided that such election is made in writing to Apogee within three (3) days following the Deletion Notice; Client will be responsible for the Archival Costs; (iii) Apogee may reduce the services provided to Client with notification to Client; and (iv) Apogee may invalidate any of these Terms, including terms of the SLA, with notification to Client. The exercise by Apogee of one of the foregoing remedies does not prohibit Apogee from subsequently terminating any Approved Proposal or Service Agreement or pursuing the other remedies provided herein.

Liability:

Third Parties: As part of its services, from time to time Apogee resells certain third party products and services, including, without limitation, hardware and software. Apogee may also be relying upon the products or services of third party vendors or service providers (such as internet service providers) that contract directly with Client. Apogee makes no representations, guarantees or warranties with respect to the products or services of any third parties. Apogee shall not have any liability to Client for the nonperformance of any third parties, and the nonperformance of third parties shall not excuse Client from its obligations.

Limitation of Liability: Apogee will perform its services in a workmanlike and professional manner in accordance with reasonable industry standards. Apogee makes every attempt to preserve client data and to maintain system functionality; however, in some cases due to the nature of technology, data is not recoverable and systems become unavailable. Apogee assumes no responsibility for the integrity of Client's data or productivity, either on-site or off-site. CLIENT HEREBY AGREES THAT APOGEE WILL NOT BE LIABLE TO CLIENT FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, LOSS OF USE OF EQUIPMENT OR FACILITY, AND LOSS OF PROFITS OR REVENUE, FROM ANY CAUSE WHATSOEVER.

CLIENT HEREBY AGREES THAT APOGEE'S TOTAL LIABILITY TO CLIENT FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT FROM ANY CAUSE OR CAUSES INCLUDING BUT NOT LIMITED TO APOGEE'S NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY SHALL NOT EXCEED THE TOTAL FEES PAID FOR A PERIOD OF SIX MONTHS FOR THE SPECIFIC APPROVED PROPOSAL OR SERVICE AGREEMENT AGAINST WHICH THE CLAIM, AS RECEIVED BY APOGEE, IS BEING MADE.

IN ADDITION TO THE FOREGOING, CLIENT HEREBY AGREES TO THE FOLLOWING SPECIFIC LIMITATION OF LIABILITY AND SOLE REMEDY FOR DAMAGES IN CONNECTION WITH ANY SERVICES: APOGEE'S LIABILITY FOR ANY LOSSES OR DAMAGES SUFFERED BY CLIENT WITH RESPECT TO ANY SERVICES, WHETHER DIRECT OR INDIRECT, FROM ANY CAUSE WHATSOEVER, SHALL BE LIMITED TO THE AMOUNT PAID BY CLIENT TO APOGEE DURING A SINGLE BILLING PERIOD AS FURTHER SET FORTH IN THE SECTION BELOW TITLED SLA. CLIENT ACKNOWLEDGES AND AGREES THAT THE RECEIPT OF A SERVICE CREDIT AS PROVIDED FOR IN THE SECTION TITLED SLA HEREIN CONSTITUTES CLIENT'S SOLE AND EXCLUSIVE REMEDY, AND APOGEE'S SOLE AND EXCLUSIVE LIABILITY, FOR ANY FAILURE OF APOGEE'S NETWORK, APOGEE'S HARDWARE, APOGEE'S SERVICES OR APOGEE'S INFRASTRUCTURE OR THE FAILURE BY APOGEE TO PROVIDE CLIENT WITH ANY SERVICES.

Indemnification: Client shall indemnify, defend and hold harmless Apogee, its subsidiaries, and each of their respective directors, officers, employees, members and agents (each, an "Indemnified Party") against any losses, claims, damages, liabilities, penalties, actions, proceedings, judgments, 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 any agreement between Apogee and Client, Client's use of the products and services, use or misuse of the Equipment, breach of any confidentiality obligation or any alleged infringement of any trademark, copyright, patent or other intellectual property right, and will reimburse any Indemnified Party for all legal and other expenses, including reasonable attorneys' fees incurred by such Indemnified Party, in connection with investigating, defending, or settling any Loss.

Force Majeure:

Apogee's failure to perform any term or condition of these Terms or any Approved Proposal or Service Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, natural disasters, acts of God, governmental restrictions, acts of terrorism, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a breach of these Terms or any Approved Proposal or Service Agreement.

Confidentiality:

Client, its employees, agents and subcontractors may have received prior to, and may also receive confidential information concerning Apogee, Apogee's clients, Apogee's employees, trade secrets and the like (collectively, "Confidential Information"), which is proprietary in nature to the other party and non-public. Client, on behalf of itself and its employees, agents and subcontractors, hereby represents and warrants to Apogee that none of them have reproduced, duplicated, delivered, published or otherwise disclosed or used for their own purposes or their own account (collectively, "Disclose" or "Disclosed"), will Disclose or will cause to be Disclosed any Confidential Information to any person, except in connection with the

services to be provided under any Approved Proposal or Service Agreement or as required by any regulatory authority, law or regulation or by valid legal process including search warrant, subpoena, court order and the like, and after providing notice to Apogee.

Acceptable Use Policy "AUP":

All computer software and hardware systems in operation at Client's facilities ("Client Systems") or at Apogee's facilities ("Apogee Systems") that are delivered as part of an Approved Proposal shall be subject to this Acceptable Use Policy. Any of the following shall constitute non-compliance with this Acceptable Use Policy and a violation of these Terms:

- (a) Any act that attempts to or does violate any law of the United States or its states, counties, municipalities or territories, or any applicable foreign law;
- (b) Any violation of any applicable license agreements or other agreements between Client and any other person or company;
- (c) Harassment of any sort;
- (d) Violation of any rights of any person or company, including those protected by copyright, trade secret, patent or other intellectual property, or similar laws or regulations, including, but not limited to, the installation or distribution of "pirated" or other software products that are not appropriate licenses for use by Client;
- (e) Making fraudulent offers of products, items or services;
- (f) Misuse of electronic mail (email) or other internet protocols, including transmitting unsolicited bulk email (SPAM), chain letters, pyramid schemes, disseminating unlawful material or other content that contains racist, extreme political, hatred, illegal or violence inciting language, images or symbols;
- (g) Introducing any malicious programs or executable code into any network or host, including the Hosting Environment or a Client System;
- (h) Effecting security breaches, including, without limitation, circumventing user authentication or security of any host, network or account, accessing data of which the user is not an intended recipient or logging into a host or account that the user is not expressly authorized to access;
- (i) Effecting disruptions of or interference with network communication or telecommunications services to any user, host or network, including, without limitation, denial of service attacks, host or network flooding, overloading a service, improper seizing of operator privileges, abuse of operator or user privileges, network sniffing, packet spoofing, forging routing information or attempts to "crash" a host;
- (j) Conducting any type of network, host or account testing, including, without limitation, load testing, stress testing, security testing, penetration testing or vulnerability testing, without express written consent from Apogee for each instance;
- (k) Installing any software, utility, patch, executable code or services on any Apogee host, server or network, Hosting Environment or Client System, without the express written consent of Apogee or as agreed upon in an Approved Proposal or Service Agreement.

Logging and Monitoring:

While Apogee desires to provide a reasonable level of privacy, Client should be aware that through the normal course of providing services, Apogee, its employees and approved third party service providers have access to all data stored on Apogee Systems and Client Systems. For security and network maintenance purposes, authorized individuals within Apogee may monitor computer systems and network traffic at any time. Apogee reserves the right to routinely or sporadically monitor, audit and log any or all data and user activity in Apogee Systems or Client Systems, including, but not limited to, logins, network access, internet activity, electronic mail, client data and other internet-based communications. Any and all logging and monitoring as outlined herein may be used by Apogee, at Apogee's sole discretion, to detect and determine whether Client is in non-compliance with the Acceptable Use Policy or these Terms. Apogee's privacy statement applies to Apogee's monitoring of Apogee Systems and Client Systems as outlined in this section.

Network Operations:

Apogee reserves the exclusive right to limit or restrict network traffic through Apogee Systems as necessary to maintain normal network operations for all of Apogee's clients, and any such limit or restriction shall not constitute any Unavailability for the purposes of the Service Level Agreement herein. Apogee reserves the exclusive right to limit or restrict the flow of electronic mail (email) for the purposes of malware, virus or malicious content scanning, and any such limit or restriction shall not constitute any Unavailability for the purposes of the Service Level Agreement herein. No limit or restriction imposed per this section shall constitute any failure of Apogee to deliver any service or services agreed upon under any Approved Proposal.

Security:

Client is responsible for the security of all user account data, including specifically usernames and passwords issued to and maintained by Client. Client shall set, or have Apogee set, a strong password. Client shall maintain the security of all such usernames and passwords, ensuring that no username or password is compromised. Client shall bear sole responsibility for any loss or damages resulting from any unauthorized access to Client Systems or Apogee Systems resulting from the use or misuse of any username and password issued to and maintained by Client.

Compliance with Laws:

Client may not use Apogee Systems or Client Systems in connection with any illegal or inappropriate activity. Client may not transmit, distribute, download, copy, cache, host, or otherwise store on the Client Systems or Apogee Systems any information, data, material, or work that infringes the intellectual property rights of others or violates any trade secret right of any other person, or that is in violation of any international law, U.S. law, state law, or other governmental regulation. This includes, but is not limited to, material legally judged to be threatening or obscene, or material protected by trade secret or privacy laws. Client represents and warrants to Apogee that Apogee Systems and Client Systems do not and shall not contain any content, material, data, work, trade or service mark, trade name, link, advertising or services that violates any applicable law or regulation or infringes upon or misappropriates any proprietary, intellectual property, contract or tort right of any person and that Client owns, or has valid license to such, content and all proprietary or intellectual property rights therein.

Service Level Agreement ("SLA"):

This Service Level Agreement ("SLA") sets forth ALL service level guarantees that Apogee makes to Client with respect to all services delivered under any Approved Proposal, including accessibility to Client Systems or Apogee Systems.

(A) 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 Approved Proposal which may include any services delivered from Apogee Systems;

"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 Proposal and in relation to the total, the total monthly recurring fee set out in the Approved 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.

(B) Systems Availability:

Client Systems and Apogee Systems may be comprised of 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 Systems or Apogee Systems, Client is entitled to a credit of 2.5% of the Monthly Recurring Fee for the affected 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.

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 services, Apogee Systems or Client Systems 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.

(C) Data Backup Availability:

Apogee maintains both on-site and off-site data backups for all Client Data stored in Apogee Systems. "On-site Backups" are incremental daily backups of Client Data that are maintained exclusively at Apogee's 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 3 (three) 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 5 (five) business days from the date of request only if On-site Backups are unavailable.

Sole Remedy: In the event that Apogee fails to perform data backups or data backup restoration in accordance with the service level set forth 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.

(D) Credits and Remedy:

The SLA does not apply for any month during which Client is in Payment Default, or is in violation of the Terms. 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 (fourteen) 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 Terms 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 that are not within Apogee's direct control.

General:

These Terms and all Approved Proposals and Service Agreements shall be governed by, and shall be enforced and interpreted in accordance with the laws of the State of Illinois and venue for any litigation or claim hereto shall be Cook County, Illinois, USA. If any provision of these Terms, any Service Agreement or any Approved Proposal or the application thereof to any entity, person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of these Terms, the Service Agreement and those of the Approved Proposal and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. In the event litigation is required to force compliance with, or address any breach of these Terms, a Service Agreement or any Approved Proposal, the parties agree that the prevailing party shall be entitled to attorneys' fees and costs actually incurred. Notices required herein, in any Service Agreement or in any Approved Proposal shall be made by overnight delivery (FedEx or UPS) or by electronic mail confirmed by telephone, at the addresses set forth in the Approved Proposal or Service Agreement. In the event of any conflict between the provisions of these Terms and those of the Service Agreement or an Approved Proposal, the terms of the Service Agreement or Approved Proposal shall control.