

# END-USER SERVICE AGREEMENT

Attention Apogee Customer: To make your installation of residential services go smoothly, please review this document prior to installation. If you have any questions please call the Apogee Customer Service Center toll free. Alabama: 1-877-478-8861 Florida: 1-877-478-8865 Indiana: 1-866-478-8865 New York: 1-866-478-8861 Rhode Island: 1-877-478-8863 Texas: 1-877-276-4339

## Apogee Residential Customer Agreement

This Apogee Residential Customer Agreement ("Agreement") is entered into between Apogee Telecom, Inc. ("Apogee" or "we"), having an office at 715 West 23<sup>rd</sup> Street Suite M, Austin, TX 78705, and the Customer ("Customer" or "you") set forth below.

### Section 1. INSTALLATION

You hereby authorize Apogee and/or its authorized contractors to install a customer premise unit, software, wiring and other equipment at the address set forth above (the "Premises") necessary to provide Apogee service (the "Services").

### Section 2. SERVICE AND CHARGES

- (a) Apogee will provide the Services to you subject to the terms and conditions of this Agreement and any applicable tariffs. You agree to pay for Services and all other charges described in this Agreement, including the Service Order, and to comply with all of the terms and conditions of this Agreement.
- (b) You hereby verify and acknowledge that Apogee local service is being installed in your dorm room, and will be used only for residential and/or university-related purposes. The username and password provided, however, is confidential and must not be shared.
- (c) Apogee may revise, modify or discontinue any or all aspects of the Services, including but not limited to service and equipment prices, any applicable tariffs, and any Terms and Conditions set forth in this Agreement, upon reasonable notice to you.
- (d) Student customers may be subject to a \$150.00 early termination fee when terminating service before the end of the semester(s) they are signed up for. If canceling between the fall and spring long semesters, Apogee must be notified by the last day of the fall semester.

### Section 3. LEASED EQUIPMENT

- (a) In the event Apogee leases any Equipment to you ("Leased Equipment" including but not limited to modems, network hubs, and wireless devices), the Leased Equipment will remain the property of Apogee at all times.
- (b) You agree not to open, tamper with, alter or remove any Leased Equipment on the Premises, to adequately safeguard it against others, and not to permit anyone other than an accredited representative of Apogee to service it.
- (c) For damage to or loss of any Leased Equipment due to Customer's negligence, Customer will pay Apogee up to the replacement cost of the Leased Equipment.

### Section 4. SERVICE INTERRUPTIONS

- (a) Although Apogee will make commercially reasonable efforts to maintain the Services, you may experience service interruptions. Apogee assumes no responsibility or liability for interruption of the Services, whether due to (without limiting the generality of the foregoing):
  1. Failure or interruption of any part of the Services for any reason, whether related to hardware, software, wiring or any other Equipment;
  2. Interruptions due to periodic testing or system alterations, including modifications to the Equipment;
  3. Power failures, riots, civil unrest, acts of war, or acts of God, including, but not limited to, hurricanes, floods, ice, wind, lightning, and accidents; or
  4. Regulations, orders, decisions or acts of any lawfully constituted authority or court.
- (b) You understand that in providing the Services, Apogee may be using public rights of way, and that their continued use is in no way guaranteed. In the event Apogee is denied the continued use of such public rights of way for any reason, you agree not to make any claims or undertake any action against Apogee, or the officers or employees thereof, together or separately, if the Services are interrupted or discontinued thereby.
- (c) You understand that in providing access to The College or University's educational resources, Apogee is not responsible to interruptions caused by The College or University network.

### Section 5. SERVICE AND REPAIRS

- (a) Apogee assumes no responsibility for the operation, maintenance, or repairs of your telephone.
- (b) Should Apogee damage the Premises during the installation or maintenance of the Services, Apogee will compensate the owner of the Premises, or your housing provider, for reasonable costs of necessary repair.

### Section 6. INTERNET ACCESS

- (a) 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 use of routers, wireless 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, bigoted or otherwise objectionable 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 rightholder.

### Section 6. INTERNET ACCESS (Continued)

- (a) When you use the Services for Internet access, you may not: (Continued)
  6. upload, post, publish, reproduce, transmit or distribute in any way any component of the Services or derivative works with respect thereto, as the Services are copyrighted a collective work under U.S. copyright laws; Apogee will cooperate fully in investigating claims of copyright violation.
  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 an Apogee customer's computer will result in the immediate suspension of ALL services; Apogee reserves the right to scan the network periodically for behavior that fit this description.
  11. send large quantities of unwanted or unsolicited e-mail to individual e-mail accounts (also known as "spamming" or "mailbombing").
  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. This may result in, but is not limited to, temporary suspension of services, fees, and/or termination of service.
  16. log onto more than one computer at a time. This may result in, but is not limited to, temporary suspension of services, fees, and/or termination of service.
  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. use Apogee's Products and Services to interfere with the use of the Apogee network by other customers or authorized users.
  20. violate the law or aid another in any unlawful act.
  21. resell your Services or any other Apogee service to any third parties without prior express written consent.
  22. participate in third party content (CDN) or advertising (ADN) distribution networks; Apogee reserves the right to periodically scan the network for CDN or ADN applications.
  23. 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.
  24. run servers on the Apogee network which are commercial in nature; Apogee reserves the right to scan the network periodically for servers that fit this description.
  25. register domain or make DNS entries that point to Apogee IP addresses.
  26. misuse the connection between Apogee, and The College or University as described in the above restrictions.
- (b) Except for information, products or services clearly identified as being supplied by Apogee, 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.
- (c) 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 The College or University have no control over and accepts no responsibility whatsoever for such materials.
- (d) YOU UNDERSTAND THAT YOU MAY BE HELD LIABLE BOTH UNDER CIVIL AND CRIMINAL LAW FOR INFRINGEMENTS OF THE INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHTS OF OTHERS. YOU MAY BE HELD LIABLE FOR ALL ACTUAL DAMAGES AND PROFITS, ATTORNEY'S FEES, COSTS, OR THE COURT MAY AWARD STATUTORY DAMAGES UNDER THE COPYRIGHT ACT. IN ADDITION, CRIMINAL LIABILITY CAN INCLUDE FINES AND IMPRISONMENT.
- (e) Apogee may deny you access to all or part of the Services without notice if you engage in any conduct or activities that Apogee in its sole discretion believes violates any of the terms and conditions of this Agreement. If Apogee denies you access to the Services because of such a violation, you shall have no right
  1. to access through Apogee any materials stored on the Internet, or
  2. to access third party services, merchandise or information on the Internet through Apogee, and Apogee shall have no responsibility to notify any third-party providers of services, merchandise or information nor any responsibility to any consequences resulting from lack of notification.

#### **Section 6. INTERNET ACCESS (Continued)**

- (f) 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, its customers, or The College or University. 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) If you wish to make purchases on the Internet, you may be asked by the merchant or service provider from whom you are making the purchase to supply certain information, including credit card or other payment mechanism information. You agree that all information you provide any merchant or information or service provider on the Internet for the purposes of making purchases will be accurate, complete and current. The merchants and information and service providers offering merchandise, information and services on the Internet set their own prices and may change prices or institute new prices at any time. You agree to pay all charges incurred by users of your account and credit card or other payment mechanism at the prices in effect when such charges are incurred. You also will be responsible for paying any applicable taxes relating to purchases on the Internet.

#### **Section 7. MISCELLANEOUS**

- (a) You agree to notify Apogee of any change of occupancy or ownership or tenancy. If you vacate the Premises, this Agreement shall be subject to termination and Apogee shall have the right to disconnect the Services.
- (b) You agree that you will not resell your Apogee local service or any other Apogee service to any third parties without prior express written consent from Apogee. You also agree that you will not provide web hosting and/or web server services to any third parties through your Apogee LOCAL service. If you violate this clause, then this Agreement shall be subject to immediate termination, and Apogee reserves the right to take other appropriate legal action against you.
- (c) You agree to allow Apogee to share all account information with the contracted residence you live in and when applicable to their network, The College or University. This information shall include, but is not limited to: directory information, Internet usage/misuse, relocation information, and customer service records.
- (d) 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. Customers found to be infected may be directed to bring their computer to an Apogee representative or other accredited service to confirm that the worms or viruses in question have been removed. Apogee will, when possible, post notifications or publicly accessible web servers about network security problems and provide links to relevant information to help recover from them. After the worm or virus has been eradicated, data services will be restored as quickly as possible. Some schools provide FREE antivirus software and other software to protect your computer; check with The College or University for these resources.
- (e) Upon the termination of this Agreement or the cancellation of Services for any reason, you grant Apogee permission to enter upon the Premises and, at a time to be mutually and reasonably determined by you and Apogee, remove all Leased Equipment. You will indemnify Apogee for any loss or liability caused by a breach of this warranty.
- (f) Returned checks and credit card chargebacks are time consuming and costly to Apogee and may result in, but limited to, fees, temporary loss of services, and/or service termination.
- (g) Illegal and unauthorized attachments to its facilities are costly to Apogee and may create interference and a degradation of the Services to other customers. Apogee will be obligated to seek legal redress and assist in the criminal prosecution in matters involving illegal and unauthorized connections and attachments and injury to its wiring and/or facilities.
- (h) You understand that rates will be substantially faster when connecting to The College or University than when connecting to the public Internet.
- (i) 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.

#### **Section 7. MISCELLANEOUS (Continued)**

- (j) This Agreement shall be governed by and construed in accordance with the laws of the state of Texas, without regard to conflict of law principles.
- (k) You acknowledge that Apogee will setup and support your home local area network provided you are signed up for this level of service and you agree to the installation liability restrictions outlined in section 5. You understand that the use of Apogee's special Long Distance Call Forwarding incurs long distance charges.

#### **Section 8. LIABILITY AND INDEMNIFICATION**

- (a) NEITHER APOGEE NOR THE COLLEGE OR UNIVERSITY NOR THE COMPLEX YOU LIVE IN 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 LOCAL SERVICES. YOU AGREE THAT IT IS YOUR RESPONSIBILITY TO COMPLETELY BACKUP YOUR COMPUTER PRIOR TO INSTALLATION. YOU FURTHER AGREE THAT APOGEE, ITS SUBCONTRACTORS, AND/OR THE COLLEGE OR UNIVERSITY ARE NOT RESPONSIBLE FOR ANY PROBLEMS WITH YOUR COMPUTER FOLLOWING THE INSTALLATION OF OR ANY SUBSEQUENT SERVICE PERFORMED ON YOUR COMPUTER IN SUPPORT OF APOGEE LOCAL SERVICES.
- (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 UP TO THE TIME THE DAMAGE IS DISCOVERED. NEITHER APOGEE NOR ITS SUBCONTRACTORS SHALL BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY NATURE, INCLUDING WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY, DAMAGES TO PROPERTY, OR LOSS OF BUSINESS.
- (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 A 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) IT IS SOLELY YOUR RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS AND USEFULNESS OF ALL OPINIONS, ADVICE, SERVICES AND OTHER INFORMATION, AND THE QUALITY AND MERCHANTABILITY OF ALL MERCHANDISE, PROVIDED THROUGH THE SERVICES OR ON THE INTERNET GENERALLY. UNDER NO CIRCUMSTANCES SHALL APOGEE, ITS AFFILIATES, ITS SUBCONTRACTORS, OR THE COLLEGE OR UNIVERSITY BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT RESULT IN ANY WAY FROM YOUR USE OF OR INABILITY TO USE THE SERVICES OR TO ACCESS THE INTERNET OR ANY PART THEREOF, OR YOUR RELIANCE ON OR USE OF OFFERS, CLAIMS, REPRESENTATIONS, PROMOTIONS AND TRANSACTIONS, INFORMATION, SERVICES OR MERCHANDISE PROVIDED ON OR THROUGH THE INTERNET OR THE SERVICES, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, TRANSMISSION OR ANY FAILURE OF PERFORMANCE.
- (e) It is solely your responsibility to protect your computer from worms, viruses, spyware, and other harmful programs. Apogee does NOT provide and is NOT responsible for providing software to keep your computer safe, clean, and functioning properly.
- (f) In the event any person not a party to this agreement shall make any claim against Apogee, its affiliates, its subcontractors, The College or University, in any way relating to the Equipment or Services that are the subjects of this agreement, or arising out of the use of the Equipment and/or Services by you or an authorized user of your account, including the placement or transmission of any message, information, software or other materials on the Internet, you agree to indemnify and hold Apogee, its affiliates, subcontractors, or The College or University harmless from any and all such claims and lawsuits, including the payment of all damages, expenses, costs and attorney's fees.
- (g) 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.

Please be aware that, as with other services provided through The College or University, use of your Apogee connection is also governed by The College or University policies, including the Student Conduct Code, Computer Use Policy, and other university policies as appropriate. Misuse of your Apogee connection may result in on-campus judicial action in addition to other possible action(s) taken by Apogee Telecom or other entities. Apogee Telecom may share information related to reports of abuse of its services with The College or University.

BY USING APOGEE SERVICES, YOU AGREE TO BE BOUND BY ALL OF ITS PROVISIONS, JUST AS APOGEE DOES. YOU ACKNOWLEDGE THAT PRIOR TO USING APOGEE SERVICES YOU HAVE READ AND UNDERSTOOD A LEGIBLE, EXACT AND COMPLETELY FILLED-IN COPY OF THIS AGREEMENT