

TERMS AND CONDITIONS

1. **DEFINITIONS:** All capitalized terms used in this Agreement and not defined herein shall have the meanings ascribed to them in “*Appendix-1: Definitions*”, which is attached hereto and incorporated herein by reference.

2. **GUEST BOOKINGS:**

- a. **Guest Bookings.** For each Guest Booking, Apogee will act as a facilitator of such booking. Apogee will collect advance payments from guests at the time of each Guest Booking and will provide the relevant information about each Guest Booking to the Property as further discussed in Section 5(a). To provide payment processing services, Apogee may use a third-party payment processing services provider and a third-party merchant acquirer. The use of such payment processing services is subject to the Property’s agreement to and compliance with all terms and conditions required by such payment processor service provider which shall be made available to the Property. To the extent there is a failure, error, or issue with respect to the payment processing services and the Property suffers any losses, Apogee shall use all reasonable endeavors to recover such losses from the payment processing services provider and/or the third-party merchant acquirer (as applicable). Apogee’s liability for all such losses shall be limited to the amount it is able to recover from the payment processing services provider and/or third-party merchant acquirer (as applicable). In addition, as part of each Guest Booking, Apogee will provide both guests and the Property the opportunity to select a bona fide 501(c)3 Charitable Organization to receive the cash benefit of a Donated Room (as discussed in the Lodging Contract and in Section 3). For each Guest Booking, Apogee shall retain its Guest Booking Compensation, and the Property shall be entitled to an amount equal to the Room Price minus the Guest Booking Compensation (the “**Remittance**”, which, for the avoidance of doubt, shall include all necessary Taxes paid by the guest, except to the extent Apogee is required to pay such Taxes directly to the applicable Tax authorities).

b. **Payments for Bookings.**

- i. When the Property is the Merchant of Record
- a. The Property is responsible for the entirety of the Guest Booking transaction. The Property will process the guest’s payment and collect the amount due for each Guest Booking from guests via the Property’s accounting system. This may include the Room Price, Taxes and Fees directly associated with the booking.
 - b. For each Guest Booking that includes a Donated Room Night, Apogee shall recover the portion of the Guest Booking that is attributable to the Donated Room Night via the Apogee System. This recovery transaction will occur once the Property collects payment for the Guest Booking. Accordingly, the Property shall maintain a valid payment method (ie. ACH account information, business credit card, etc.) in the Apogee System to enable timely recovery of the Donated Room Night amount.
 - c. “No shows” and Cancellations – when the Property is the Merchant of Record and the Guest Booking involves a Donated Room Night, the Property shall not allow a guest to cancel a reservation directly with the Property that has been made through the Apogee platform. Alternatively, should the guest “no show” or cancel the reservation directly with the Property regardless, then the Property shall promptly inform Apogee of the “no show” or cancellation so that the corresponding donation recovery transaction is voided in the Apogee System.
 - d. If Apogee performs a donation recovery due to the Property’s failure to notify Apogee of the Guest Booking “no show” or cancellation, then the Property has thirty (30) days to inform Apogee of the “no show” or cancellation from the date that the Donation Recovery transaction is consummated.
- ii. When Apogee is the Merchant of Record
- a. Apogee shall remit payment for each Guest Booking (the “**Remittance**”) to the Property in accordance with this Section 2(b)(ii).
 - b. Apogee will collect the amount due for each Guest Booking from guests via the Apogee System. This may include the Room Price, Taxes, and Fees directly associated with the booking.

- c. Apogee will hold in reserve the collected Room Price, Taxes, and Fees for each Guest Booking until the date of guest check-in, unless the Guest Booking is cancelled and payment is to be refunded to the guest in accordance with the Property's cancellation policy at the time the Guest Booking was made.
 - d. Apogee will associate a virtual card ("**Virtual Card**") with each Guest Booking to facilitate payment to the Property. Upon guest check-in, the Property may collect the Remittance electronically directly from the card on file.
 - e. The Property agrees that the Virtual Card provided by Apogee shall only be authorized for the total amount of the Room Price, Taxes, and Fees directly associated with the Guest Booking. The Property explicitly agrees that the Virtual Card shall not be authorized for any additional or incidental charges. Payment of any additional or incidental charges shall be the direct responsibility of the guest, and the Property shall be responsible for obtaining a payment method for such charges directly from the guest.
 - f. If the Property does not accept or dispute the Remittance for any amounts with respect to a Guest Booking within sixty (60) days after check-out, cancellation, or no-show of such Guest Booking, then neither Apogee nor the relevant guest will have any further obligation with respect to such Guest Booking.
- iii. Apogee reserves the right to make changes or updates to its invoicing system, payment methods and/or invoicing requirements at any time.
- c. **Rooms Rate.** The Property agrees that the Rates the Property provides to Apogee will be equal to or better than those made available through the Property's own or any other third-party booking or distribution channels, unless the Property is contractually prohibited from offering equal to or better Rates, then the Property shall offer the best Rate that is available to be offered. Any rules, restrictions, policies, and/or conditions (including cancellation policies) applicable to any room that the Property makes available through the Apogee System shall be no more restrictive than those applicable to any comparable room that the Property makes available through the Property's own or any other third-party booking or distribution channels. Unless otherwise set forth in this Agreement or mutually agreed by the parties in writing, Apogee agrees that it will not display standard Guest Bookings with a Rack Rate lower than the relevant Best Available Rate.

3. **DONATED ROOM BOOKINGS:**

- a. **Donated Room Availability.** Except for the specific dates defined in the Property's black out date list, the Property agrees and will allocate at least two (2) rooms, or two percent (2%) of the Property's total room inventory, whichever is greater, to be available for Donated Room Bookings exclusively through the Apogee System for each day of the year capable of being booked during the Term (the "**Donated Room Inventory**"). The Property agrees that it will at all times make all unbooked rooms allocated for Donated Room Bookings available for display on and booking through the Apogee System. If the Property is unable to provide the full Donated Room Inventory for a particular date during the Term that is not defined in the Property's black out date list, the Property will immediately notify Apogee of such inability to provide the Donated Room Inventory, and the Property will be required to pay Apogee the room revenue for the unavailable room(s), less the Apogee typical Donated Room Compensation, so that Apogee may fulfill its obligation to the partner charities.
- b. **Recovery or Retention of Donated Room Night.** For each Guest Booking that includes a Donated Room Night, Apogee shall either recover or retain the portion of the Guest Booking that is attributable to the Donated Room Night via the Apogee System, depending on who is the Merchant of Record. This recovery or retention transaction will occur once the Property collects payment for the Guest Booking.
 - i. When the Property is the Merchant of Record – the Property shall maintain a valid payment method (ie. ACH account information, business credit card, etc.) in the Apogee System to enable timely recovery of the Donated Room Night amount by Apogee.

- ii. When Apogee is the Merchant of Record – Apogee shall retain the portion of the Guest Booking payment that is attributable to the Donated Room Night, and remit the remaining balance for each Guest Booking (the “Remittance”) to the Property in accordance with Section 2(b)(ii).
- c. **Charitable Donation Report.** By January 31 of each year of the Term and for the Property’s records, Apogee shall provide to the Property a detailed summary of the total monetary value of the donated room nights made during the preceding calendar year due to Donated Room Bookings.

4. **GUEST RELATIONS:**

- a. **Guest Experience.** The Property acknowledges that the Property will not treat any guest that books a room through the Apogee System differently than the Property treats any other guest that books a room through the Property’s own or any third-party booking or distribution channels. This includes with respect to the handling of overbooking (i.e. “walk”) situations, the allocation of room types (including, but not limited to room views, bedding options, size of rooms, etc.), the provision of customer service, the amenities available, and the amount and charging of Hotel Fees.
- b. **Cancellation.** The Property agrees that the cancellation and no-show policies the Property offers through the Apogee System will be at least as favorable as any cancellation or no-show policies offered by the Property through the Property’s own or any third-party booking or distribution channels. Subject to the terms and conditions of the Property’s cancellation policy, Apogee reserves the right to cancel a Guest Booking or a Donated Room Booking at any time. Except as otherwise set forth in the Property’s cancellation policy, the Property shall not cancel any Guest Booking or Donated Room Booking and shall not encourage guests to cancel. Any Guest Booking or Donated Room Booking cancelled by Apogee or a guest will, at Apogee’s option, be reallocated as an available Guest Room or a Donated Room (as applicable) unless Apogee already has filled the allocation of Guest Rooms or Donated Rooms for the date that such booking is cancelled. For the avoidance of doubt, Apogee is entitled to the Guest Booking Compensation Percentage of any penalty amounts charged to guests for no-shows, cancellations, or similar booking modifications, in addition to the Donated Room Compensation for each Donated Room Booking underlying such no-shows, cancellations or similar booking modifications.
- c. **Breakage.** In the event that a guest who has booked through the Apogee System (i) properly checks-in at the Property, and (ii) the Property subsequently fails to accurately register the guest within 60 days of the check-in, such that (iii) Apogee is not notified of the need to disburse to the Property the guest’s fees paid to Apogee, then the guest’s fees shall be deemed remitted to Apogee, and Apogee shall have no obligation to remit those fees to the Property.
- d. **Relocations.** If the Property is, or reasonably believes that the Property will be, unable to honor a Guest Booking or Donated Room Booking due to direct action or gross negligence of the Property, the Property agrees to immediately (i) notify Apogee of such inability; (ii) relocate the affected guest to a comparable property with an equivalent or higher Apogee rating, if a comparable property within the Apogee network is an available option; (iii) pre-pay or make other arrangements to cover the room charges at such property for the nights in question and all transportation and associated relocation costs to such property, and (iv) waive any additional fees or other payments that would otherwise be payable to the Property by Apogee or the guest as a result of the Guest or Donated Room Booking. Apogee reserves the right to perform items (ii) and/or (iii) above directly, in which case the Property agrees to reimburse Apogee for all expenses (including any Taxes) incurred by Apogee in securing such alternative arrangements, including applicable room charges at the alternative property and associated guest relocation costs.
- e. **Complaints.** The Property agrees to respond to any guest complaints relating to the Property in a prompt and reasonable manner. If a guest cancels all or part of a Guest Booking because of dissatisfaction with the Property’s accommodations or services, the process for determining and handling refunds is dependent on which party is the Merchant of Record for payment of the Guest Booking.

- i. When the Property is the Merchant of Record – it is the Property’s exclusive responsibility to determine whether a refund is appropriate, the amount of the refund, and the method of repayment to the guest.
 - ii. When Apogee is the Merchant of Record – Apogee may refund some or all of the amounts paid by such guest for the Guest Booking (subject to reasonable transaction fees) in accordance with the Property’s policy. In the event that Apogee is so obligated to provide a refund of some or all amounts paid by the guest, but Apogee has already transmitted the Remittance to the Property prior to the guest’s cancellation, Apogee shall notify the Property of the refund issued to the guest within fourteen (14) business days. The Property shall reimburse a pro-rata portion of the Remittance to Apogee within seven (7) business days of the receipt of notice of the issued refund.
- f. **Merchandising; Intellectual Property.** The Property grants Apogee and its Affiliates the worldwide, nonexclusive, royalty-free, fully paid right and license, in any and all media now known or hereafter discovered or developed, to use, reproduce, distribute and display the Hotel and Room Information for purposes of identifying, promoting, merchandising and/or obtaining Guest or Donated Room Bookings for the Property. In addition, the Property agrees to provide Apogee reasonable free access to the Property to obtain images for purposes of identifying, promoting, merchandising and/or obtaining Guest or Donated Room Bookings for the Property. The Property represents and warrants that the Property and/or the Hotel are the owner or authorized licensee of all Hotel and Room Information and that such content, and Apogee’s and its Affiliates’ use, reproduction, distribution, and display of such content, does not and will not violate the rights of any third party. To the extent Property’s consent is required for Apogee to utilize the right and license above, the Property hereby represents that the Property has all necessary rights and provides the Property’s consent and agrees that the Property’s consent may be shared directly with third parties. Any additional advertising or marketing to be performed for the Property or the Hotel shall be governed by Apogee’s then-standard marketing terms and conditions. Apogee may remove any Hotel or Room Information, or edit any Hotel and Room Information that Apogee believes to be inaccurate or inappropriate. This Agreement does not grant to the Property or the Hotel any ownership interest in, or any express or implied license or right to, any of the materials or to any software or intellectual property rights owned by or licensed to Apogee or its Affiliates. The Hotel and Room Information that the Property provides to Apogee under this Agreement will be equal to or better than what the Property makes available through the Property’s own or any third-party booking or distribution channels. Such limited license is subject to any third-party contractual obligations of the Property and will be limited in such capacity that will not subject Property to any infringement or violation of copyright or trademark rights of which Property may be contractually restricted.
- g. **Display; Special Programs and Discounts.** Rooms will be displayed on the Apogee System in an order determined by Apogee in its sole discretion, based upon and influenced by numerous factors (including, but not limited to hotel location, general availability, room type(s), KPI metrics, etc.). In addition, the Property agrees that Apogee and/or certain of its Affiliates may also on occasion offer discount pricing for the Property’s rooms (e.g., through limited offers of general coupons or limited promotions on fenced channels); provided that (i) any such offers shall be available with respect to a broad number of properties and not limited to the Property and (ii) to the extent the Property and Apogee have not agreed otherwise with respect to any particular offer, any such discount will be funded by a reduction to the Guest Booking Compensation otherwise payable by the Property to Apogee or retained by Apogee. At the Property’s request and upon reasonable notice, Apogee will meet with the Property to discuss any such offers and the Property’s participation in them. The Property acknowledges and agrees that benefits offered to guests by Apogee and its Affiliates through their respective loyalty programs or through customer service coupons shall not be a violation of this Agreement.

5. OPERATIONAL MATTERS:

- a. **Booking Process.** Apogee will provide notice of each Guest and Donated Room Booking processed through Apogee’s connection to a Global Distribution System (the “GDS”). *Each Party bears sole responsibility for their*

respective fees associated with utilization of the GDS. The Property will provide Apogee confirmation of receipt of every Guest or Donated Room Booking notification within forty-eight (48) hours of Apogee's notification being delivered to the Property. The Property must honor every Guest or Donated Room Booking for which the Property receives a Guest or Donated Room Booking notification.

- b. **Anti-Fraud Cooperation.** The Property is solely responsible for ensuring that the identification presented by any guest is valid and matches the Guest Booking or Donated Room Booking information provided to the Property by Apogee. If a Party believes a Guest Booking or Donated Room Booking may be or is fraudulent, or certain data provided by a guest cannot be verified, then the Parties will work in good faith to address such fraudulent or potentially fraudulent Guest Booking or Donated Room Booking. In the event of a fraudulent or potentially fraudulent Guest Booking or Donated Room Booking, either party may cancel such Guest Booking or Donated Room Booking at any time. If cancellation of a fraudulent or potentially fraudulent Guest Booking or Donated Room Booking occurs prior to or within eight (8) hours after check-in, neither Apogee nor any of its Affiliates shall be obligated to pay any cancellation fee or penalty. If the cancellation of a fraudulent or potentially fraudulent Guest Booking or Donated Room Booking occurs after such eight (8) hour period following check-in, the maximum penalty that may be charged to Apogee will be the relevant Remittance for the room, up to and including the date the Guest Booking or Donated Room Booking was cancelled, plus any applicable Taxes.
- c. **Data Security.** The Property will be solely responsible for and will process, store, transmit and access any guest information that includes payment information (including, without limitation, credit card, debit card, or financial account information) or other personally identifiable information in compliance with applicable law including, without limitation, the data security rules of the Payment Card Industry Data Security Standard for protecting credit and debit cardholder information applicable to the Property, and all applicable Data Protection Laws, in each case as the same may be amended, updated, replaced or augmented. The Parties acknowledge and agree that in no event shall Apogee be responsible or liable for the Property's processing, storing, transmission, and/or access of any guest information including, but not limited to, personally identifiable information.
- d. **Taxes.** The Property is solely responsible for the accuracy of Tax rate information, the identification of applicable Taxes, and any changes to the Tax rates entered in the GDS. The Property is also responsible for reporting to the relevant tax authorities any Taxes applicable to amounts received in consideration for the Property's services. The Guest Booking Compensation is exclusive of Tax, and where Tax applies it shall be retained by Apogee, with the understanding that Apogee will be fully responsible for payment of such Tax to the applicable authorities.
- e. **Disputes; Other Charges.** If a dispute arises with respect to any payment obligation under this Agreement, the Parties will work together in good faith to resolve such dispute. Until such dispute has been resolved in a manner satisfactory to the Parties, the Property will not (i) apply any payment received for any other Guest Booking or invoice to the disputed Guest Booking or invoice, (ii) charge or attempt to charge the guest directly for the disputed amount, (iii) refuse to honor any Guest Booking, or (iv) take any other action likely to interfere with the fulfillment or enjoyment of any guest's Guest Booking. The Property is responsible for any changes or services requested by a guest directly from the Property and the Property is solely responsible for collecting from the guest any charges for such changes or services.
- f. **Books and Records.** Apogee's books and records disclosed to Property, including without limitation, any information contained in the Apogee System, or in any facsimile or electronic communication submitted by the Property or Apogee, will constitute evidence of the receipt by the Property of Guest Bookings or Donated Room Bookings made by guests, through the Apogee System and the amount of the applicable Guest Booking Compensation, Remittance, and/or associated Guest Donations, in respect of such Guest Bookings or Donated Room Bookings. Furthermore, the Property acknowledges that Apogee generally has no knowledge of (i) guests' actual arrival or departure dates, (ii) any cancellation notice that may be given by guests directly to the Property, or whether any such cancellation notice as may be given is sufficient under the Property's policies to

relieve guests (and Apogee) of any or all portion of the charges otherwise due to the Property, and/or (iii) any adjustment that may be negotiated by the Property directly with guests with respect to reductions in rate, duration of stay, or otherwise. Accordingly, the Property agrees that Apogee and its Affiliates shall be entitled to rely upon and accept as accurate any information relating to Guest Bookings or Donated Room Bookings received by Apogee from the Property.

6. TERM; TERMINATION:

- a. **Term.** This Agreement shall commence on the Effective Date and shall continue for a period of ten (10) years (the “**Initial Term**”). Thereafter, this Agreement will automatically renew each year on the Effective Date for successive periods of twelve (12) months (each, a “**Renewal Term**” and together with the Initial Term, the “**Term**”). After the Initial Term’s first twelve (12) months, either Party may provide the other Party with written notice no less than sixty (60) days before the end of the then-current term, that it does not wish to renew either the Initial Term or a Term. During such sixty-day period, the Parties may mutually agree to extend the Term of this Agreement or enter into a new agreement on different terms.
- b. **Termination for Breach.** The non-breaching Party may terminate this Agreement if the other Party materially breaches any terms and conditions of this Agreement and does not cure the breach within thirty (30) days after receipt of written notice of the breach.
- c. **Termination for Insolvency.** A Party may terminate this Agreement upon thirty (30) days’ written notice to the other Party if the other Party becomes insolvent or bankrupt, admits in writing its inability to pay its debts as they mature, or takes any action for the purpose of entering into winding-up, dissolution, bankruptcy, reorganization (other than a bona fide solvent amalgamation or reconstruction), or similar proceedings analogous in purpose or effect thereto, or any order shall have been made by any competent court or any resolution shall have been passed for the appointment of a liquidator or trustee in bankruptcy or such Party shall have appointed or suffered to be appointed any receiver or trustee of the whole or any material part of its assets or business or shall have entered into any composition with its general creditors.
- d. **Termination by Apogee.** Apogee may immediately terminate this Agreement upon written notice to the Property should the Property close for business or should any government regulatory entity or any of its agencies, including but not limited to any state gaming commission, require that Apogee be investigated, registered or licensed in any form as a result of this Agreement.
- e. **Effect of Termination.** On termination of this Agreement for any reason, all licenses granted under this Agreement shall immediately terminate and each Party shall return and make no further use of any property (including, but not limited to, the Party’s Confidential Information) and other items (and all copies of them) belonging to the other Party. The Property agrees to honor any Guest Booking or Donated Room Booking that is booked during the Term of this Agreement, even if such booking has a scheduled check-in and/or check-out date that will occur after the scheduled termination of this Agreement, and Apogee agrees to honor its duties and commitments under this Agreement in connection with such post-termination check-in and/or check-out scheduled booking.

7. CONFIDENTIALITY:

- a. Each Party may be given access to the Confidential Information of the other Party to perform its obligations under this Agreement. “**Confidential Information**” includes non-public and confidential information regarding a Party and/or its Affiliates, or its and/or its Affiliate’s business that is not generally known to the public, and which is designated as “confidential” or that a reasonable person knows or reasonably should understand to be confidential, whether disclose in oral, written, visual, electronic, or other form, and to which the receiving Party has access. Confidential Information includes (but is not limited to), the following: (i) information provided by a guest in connection with any Guest or Donated Room Booking; (ii) a Party’s business plans,

strategies, forecasts, research, ratings, projections, memoranda, notes, studies, and analyses; (iii) financial information and accounts; (iv) employee, customer, and supplier information; (v) the provisions of this Agreement; (vi) business methods and technology; and (vii) information related to the Apogee System and [Apogee Partner Central]. Each Party shall hold the other Party's Confidential Information in the strictest confidence and without the express written consent of the Party whose information will be disclosed, during and after the Term, no Party will disclose or allow the disclosure of any Confidential Information of another Party to any third party, except that a Party may disclose Confidential Information to its employees, directors, agents, independent contractors and consultants on a need-to-know basis (the Party's "**Representatives**"), provided that said Party has executed appropriate written agreements with each such Representative with all the provisions of this Section or other confidentiality obligations no less strict than those set forth in this Agreement. For the avoidance of doubt, "**Confidential Information**" does not include any information that (A) becomes publicly available without the receiving Party's breach of any obligation of confidentiality, (B) was known to the receiving Party prior to the disclosing Party's disclosure of such information, (C) became known to the receiving Party from a source other than the disclosing Party where such source did not breach an obligation of confidentiality, or (D) is independently developed by the receiving Party without reference to or reliance on the other Party's Confidential Information. A Party may disclose another Party's Confidential Information if required to do so to comply with a court order or other government demand that has the force of law; provided, that prior to disclosure, the disclosing Party must seek the highest level of protection available and provide the other Party with reasonable notice to seek a protective order. All Confidential Information will remain the exclusive property of the disclosing Party. The Parties acknowledge and agree that any Confidential Information provided to the other shall be furnished and returned, in its entirety, to the other Party within twenty-four (24) hours, or as soon as it is practicable under the circumstances upon completion and/or termination of this Agreement.

- b. Each Party acknowledges and agrees that the Confidential Information constitutes valuable proprietary property of the other Party and that the other Party may suffer irreparable harm which may not be capable of adequate compensation by means of damages alone if any unauthorized third party accesses or uses Confidential Information, or if Confidential Information is used other than as strictly necessary for the performance of this Agreement. Each Party agrees that if any Confidential Information is disclosed or used (or threatened to be disclosed or used) in breach of this Agreement, then the Party to whom such Confidential Information belongs will have, in addition to any other remedies available to it, the right to equitable relief (including but not limited to specific performance and injunction).

8. REPRESENTATIONS AND WARRANTIES: In addition to any other representations and warranties made by the Property in this Agreement, the Property hereby represents and warrants that (i) the Property has authorized the individual entering into this Agreement on the Property's behalf to take such action on the Property's behalf, (ii) this Agreement constitutes a valid and binding obligation enforceable against the Property in accordance with its terms, (iii) the performance of the Property's obligations under this Agreement will not violate any agreement or obligation between the Property and any third party, (iv) the Property's performance under this Agreement will comply with the terms of this Agreement, and (v) the Property holds all licenses, permits and authorizations required to make the Property's rooms available for booking through the Apogee System and to otherwise comply with the Property's obligations under this Agreement.

9. DISCLAIMERS; LIMITATIONS:

a. **Disclaimers.**

- i. Apogee may, at any time and in its sole discretion, refuse to offer, display, or list for booking any of the Property's rooms made available by the Property through the Apogee System, but shall promptly notify the Property accordingly and use commercially reasonable efforts to re-offer and/or re-list for booking any of the Property's rooms made available by the Property through the Apogee System. Apogee makes no representations or warranties regarding the Apogee System or the Property's rooms, including any

temporary or permanent interruption of the operation of the Apogee System, or with respect to the number, frequency, or type of rooms booked through the Apogee System. Apogee, however, agrees to use commercially reasonable efforts to honor any Guest Booking or Donated Room Booking that is booked during the Term of this Agreement. With respect to Guest Bookings and Donated Room Bookings, nothing in this Agreement constitutes a sale or rental of rooms to or by Apogee.

- ii. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES AND THE APOGEE SYSTEM ARE PROVIDED ON AN “AS IS,” “AS AVAILABLE,” AND “WITH ALL FAULTS” BASIS. APOGEE MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, RESULTS, ACCURACY, USE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE OPERATION OF THE SERVICES (INCLUDING THE APOGEE SYSTEM) WILL BE UNINTERRUPTED OR ERROR-FREE OR ENTITLED TO SPECIFIC TAX TREATMENT OR THAT ALL ERRORS CAN OR WILL BE CORRECTED. THE APOGEE SYSTEM MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, TELEPHONIC AND ELECTRONIC COMMUNICATIONS. APOGEE IS NOT RESPONSIBLE OR DEEMED TO BE IN DEFAULT FOR ANY DELAYS OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS, OR UNAVAILABILITY RELATED TO NON-APOGEE APPLICATIONS, DATA, OR THE PROPERTY’S EQUIPMENT, OR THE ACTS OR OMISSIONS OF ANY USER OF THE APOGEE SYSTEM. APOGEE SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY DAMAGE OR LOSS OF DATA.
- iii. Except as expressly described in this Agreement, no Party makes any warranties of any kind, whether express, implied, statutory or otherwise, and each Party specifically disclaims all implied warranties, including any warranties of merchantability or fitness for a particular purpose, to the maximum extent permitted by applicable law.

b. Limitations.

- i. Except as expressly described in this Agreement, to the maximum extent permitted by law, the Property acknowledges that Apogee will not be liable for any indirect, special, incidental, or other consequential damages arising out of or relating to this Agreement or for any direct or indirect lost profits or revenue or business, or lost or corrupted data or lost anticipated savings or goodwill or reputation, including costs or expenses (including attorneys’ fees and expenses).
- ii. In no event shall Apogee’s total aggregate liability arising out of or relating to this Agreement exceed an amount equal to the fees owed or owing to Apogee in the twelve (12) month period prior to the event giving rise to the claim brought under this Agreement. In no event will Apogee be liable for any claim more than twelve (12) months after the Property knew or reasonably should have known of the issue giving rise to the claim.
- iii. Nothing in this Agreement shall limit or exclude either Party’s liability for fraud, death, or personal injury caused by negligence or any other liability which cannot be limited by law.

- 10. EXCLUSIVITY:** Until the termination or expiration of the Term, and for an additional period of twelve (12) months thereafter, the Property explicitly acknowledges that it shall not directly or indirectly provide, facilitate, enable, engage, and/or enter into any relationship or agreement (whether any of the foregoing are done via the Property’s own or any other third party booking or distribution channels) with an individual or substantially similar entity to Apogee, *namely one that offers or seeks to offer to sell allocations of hotel room inventory whereby charitable organizations are the cash beneficiary*, of which such Property is not currently involved as of the Effective Date.

In consideration for the Property receiving a low fixed commission rate, Apogee shall be the exclusive distributor of Donated Rooms. This arrangement is mutually beneficial to both Parties: so long as Apogee remains the sole distributor of Donated Rooms, the Apogee commission rate remains unchanged.

11. INSURANCE; INDEMNIFICATION:

- a. **Insurance.** The Property represents and warrants that the Property has liability insurance coverage in an amount that is consistent with best industry practice. To the extent permitted by law, The Property will deliver to Apogee (i) certificates of insurance that verify compliance with the preceding clause, or (ii) provide other evidence of insurance acceptable to Apogee. The Property will provide Apogee with thirty (30) days prior written notice before such insurance is cancelled or expires. No later than ten (10) days prior to the date of cancellation or expiration of an existing insurance policy, the Property will deliver new certificates (or other evidence) of insurance to Apogee for any renewal policies. Apogee may terminate this Agreement immediately upon written notice to the Property if the Property fails to comply with this Section 11.a.
- b. **Mutual Indemnification.** The Parties each agree, at their expense, to indemnify, defend and hold harmless the other Party, each of its Affiliates and any of the other Party's or any of its Affiliates' officers, directors, employees, or agents against any third-party claim, action, loss, damage, expense or other liability (including without limitation, attorneys' fees and expenses) arising from or relating to (i) the accommodations or services offered to guests under this Agreement, or (ii) the performance of the indemnifying Party's duties and obligations under this Agreement or any material breach or default by the indemnifying Party under this Agreement, including, without limitation, a material breach of any representation, warranty or covenant, or (iii) any allegation that a Party or any of its Affiliates' use, reproduction, distribution or display of the Hotel and Room Information as permitted under this Agreement infringes or misappropriates the intellectual property rights of any third party. The indemnifying Party agrees not to consent to the entry of any settlement or judgment without the indemnitee Party's prior written consent, which consent will not be unreasonably withheld.

12. MISCELLANEOUS:

- a. **Notices.** All notices must be in English, in writing, and will be deemed duly given (i) on the date of delivery if delivered personally, (ii) when sent by e-mail transmission on the date of sending if sent before 5:00pm EST and accompanied by acknowledgment of complete transmission, (iii) on the first business day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier, or (iv) on the earlier of confirmed receipt or the fourth business day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. Apogee's notice address is: partners@ApogeeTravel.com. The Property's notice address and/or electronic mail address will be the Property's then-current address and/or electronic mail address as entered into [Apogee Partner Central] by the Property.
- b. **Amendment.** Apogee reserves the right to modify and impose new or additional terms and conditions to this Agreement at any time. Apogee will provide sixty (60) days written notice of any such changes to the terms in accordance with the notice provisions included in Section 12.a of this Agreement. If the Property does not accept such modifications or new or additional terms and conditions, the Property may terminate this Agreement upon written notice to Apogee. The Property's failure to exercise the Property's right to terminate this Agreement within thirty (30) days after notice of any modification or new or additional terms and conditions to this Agreement will constitute the Property's acceptance of such changes. The Property agrees that the termination right provided in this Section 12.b does not apply to updates to the table included in the definition of "Apogee" or, if applicable to the Property. No modification of this Agreement by the Property shall be binding upon Apogee without its prior written consent.
- c. **Governing Law; Venue.** This Agreement will be governed by and construed in accordance with the internal laws of the State of Delaware (without giving effect to the principles of conflicts of law of such State). Each Party consents to the exclusive jurisdiction of the state and federal courts located in Wilmington, Delaware for all disputes arising out of or relating to this Agreement.

- d. **Compliance with Law.** Each Party will fully comply with all international, national, state, federal or local laws, regulations, and treaties applicable to its business and operations.
- e. **Apogee Relationships.** The Property acknowledges that Apogee provides bookings for multiple properties, including the Property's competitors, that Apogee has no obligation to disclose any terms relating to Apogee's relationship with other properties, and that Apogee does not have any duty to disclose or segregate in any manner any amounts collected by Apogee from guests under this Agreement.
- f. **Relationship of the Parties.** This Agreement is not intended to and does not create a partnership or joint venture relationship between or among the Parties.
- g. **Force Majeure.** A Party's failure to perform under this Agreement, other than the obligations set forth in Section 4.d, is excused if the failure results from a Force Majeure Event. A Party whose performance is impaired as a result of a Force Majeure Event shall promptly notify the other Parties of such Force Majeure Event and shall use commercially reasonable efforts to resume performance as soon as possible.
- h. **Assignment.** Neither Party shall assign any portion of this Agreement without the other Party's prior written consent. However, in connection with the transfer or sale of all, or substantially all, of the Property's assets and/or business, the Property shall, and Apogee consents to, assign this Agreement in whole to subsequent owners. Apogee may assign any of its rights or obligations to any of its Affiliates or in connection with a sale of Apogee's securities, a merger, a reorganization, or other sale of all or substantially all of Apogee's assets. Any purported assignment in contravention of the preceding sentence will be void and of no force or effect. This Agreement is binding upon, and inures to the benefit of, the Parties and their respective permitted successors and assigns.
- i. **Waiver; Severability.** No provision in this Agreement may be waived, unless such waiver is confirmed in a writing signed by the Parties. No waiver of any of the provisions of this Agreement, in any one or more instances, will be deemed or be construed as a further, continuing, or subsequent waiver of any such provision or as a waiver of any other provision of this Agreement. If any part of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement continues in effect.
- j. **Payments.** Except as otherwise agreed upon by the Parties, all payments contemplated under this Agreement will be made in U.S. Dollars ("USD").
- k. **Survival.** Any other definitions, and any terms that, expressly state that they survive or by their nature, are intended to survive, will survive termination or expiration of this Agreement.
- l. **Entire Agreement.** This Agreement (including any amendments or addenda hereto) is the Parties' entire agreement respecting the subject matter hereof and supersedes all prior agreements, written and oral, respecting the subject matter.

APPENDIX 1: DEFINITIONS

Capitalized words used but not defined in the Agreement shall have the meanings set forth below:

“Affiliate” means (a) Apogee Travel, LLC, and any entity that is directly or indirectly controlled by Apogee, or (b) any third party that facilitates bookings through the Apogee System or other booking channels. For purposes of this definition, “control” shall be the beneficial ownership of 50% or more of any class of the voting securities of the relevant entity.

“Apogee System” means the web-based platform enabling guests to review, reserve, book and/or pay for Guest Bookings and related services (including any mobile application(s) for the foregoing).

“Best Available Rate” means for each room night booked by a guest through the Apogee System, the lowest restricted or unrestricted price (as applicable), not including Taxes, or other government-imposed fees or surcharges or Hotel Fees, at which such room night was offered by the Property through any booking channels, including the Property’s own and those of any third party, on the date such room night was booked, including, without limitation, any special, discounted, and/or promotional rates.

“Black Out Dates” means specific days of the year that the Property Owner may designate as not being available for “Donated Rooms.” These dates shall be no more restrictive than what is established by the Property with any other third party booking platforms. These dates shall be listed in accordance with the Property’s entry into the Apogee System and may be updated upon each anniversary date.

“Charitable Organization” means bona fide charitable 501(c)(3) organizations as published by the Internal Revenue Service.

“Data Protection Laws” means all applicable local, state, federal and international privacy and data protection laws, regulations, rules and guidelines pertaining to the collection, use, disclosure, storage, and disposal of any Personal Data under this Agreement, including without limitation (if and as applicable), the United States’ Massachusetts 201 CMR 17.00, California Consumer Privacy Act of 2018, and Canada’s Personal Information Protection and Electronic Documents Act, and the European General Data Protection Regulation (EU) 2016/679.

“Donated Room” means a Guest Booking for a room, that may be made through the Apogee System, and for which the Room Price will be donated to a designated Charitable Organization(s).

“Donated Room Booking” means a booking for a Donated Room through the Apogee System, which is only applicable if (i) an donated room allocated to Apogee is available for the dates of stay, and (ii) the length of stay is two nights or longer.

“Force Majeure Event” means an unforeseeable act or event beyond that Party’s reasonable control, such as war, work stoppage, fire, weather events, air carrier interruption, or act of government; provided, that a Force Majeure Event does not include economic hardship, changes in market conditions or insufficiency of funds.

“Guest Booking” means a booking for a room made by a guest through the Apogee System.

“Guest Booking Compensation” means the cash amount due to Apogee and is calculated as the Room Price multiplied by the Apogee’s commission rate.

“Hotel” means the hotel, inn, resort or other accommodation at which the Property’s rooms are located.

“Hotel Fees” means all mandatory fees, costs or charges imposed by the Property on guests (other than the base Room Price and Taxes) that such guests must pay in order to stay at the Property, including without limitation resort fees and extra-person charges, whether collected directly by the Property or not. Hotel Fees do not any additional optional services or amenities that guests choose to pay for (e.g., room service or spa appointments) or any service charges or other fees Apogee may charge to guests.

“Hotel and Room Information” means all information, including availability information, photographs, trademarks, names, trade names, logos, descriptions, and other content or material (a) provided by the Property, (b) entered into [Apogee Partner Central] by the Property, (c) displayed or otherwise made available by the Property on the Property’s website(s) or any third-party or social networking site, or (d) otherwise obtained by Apogee or any of its Affiliates with the Property’s knowledge and/or consent.



"Materials" means all text, graphics, animation, audio and/or digital video components that reside on or are accessible from or through the Apogee System.

"Party" or **"Parties"** means the Property and Apogee, individually or collectively, as the case may be.

"Property" means collectively, the Hotel, the Hotel's owner, and if applicable, the entity managing the Hotel on behalf of the Hotel's owner.

"Rate" or **"Room Price"** means the amount paid or payable by a guest in respect of the relevant room, not including Taxes, or any charges or fees imposed on guests by Apogee. **"Room Price"** shall include any and all applicable Hotel Fees.

"Rate Plan" means the applicable Rate and associated booking conditions, including Hotel Fees, attached to each relevant room type for a Guest Booking.

"Remittance" means the amount due to the Property calculated as the Room Price minus the Guest Booking Compensation, including all necessary Taxes paid by the guest, except to the extent Apogee is required to pay such Taxes directly to the applicable Tax authorities.

"Tax" or **"Taxes"** means value-added tax or any other sales, turnover or transaction-based tax in any country, state or locality and also includes permitted deductions for charitable contributions to qualified tax-exempt organizations.