

ACCEPTABLE USE POLICY (AUP)

Revised 08/26/2003

VailNet's Acceptable Use Policy ("AUP") exists to ensure that all subscribers to VailNet's Internet service have access to the Internet and do not unduly hinder, interfere with, abuse or obstruct other Internet users or systems through their connection to VailNet. All users of VailNet's Internet services (the "Services"), including both those who access some of our Services but do not have accounts as well as those who pay a service fee to subscribe to the Services ("Subscribers") agree to comply with the terms of this AUP as a condition of using our Services.

VailNet supports the free flow of information and ideas over the Internet and does not actively monitor specific Subscribers use of our Services under normal circumstances. In addition, VailNet does not exercise editorial control over the content of our Subscribers Web sites, electronic mail transmission, news group, or other material created or accessible over or through our Services. Notwithstanding the above, VailNet does reserve the right to monitor any connection to its system, to remove any materials that, at our sole discretion, may be illegal, may subject us to liability, to block access in whole or in part to any system or individual whose actions are negatively effecting the normal operation of VailNet or which may violate this AUP. VailNet may cooperate with legal authorities and/or third parties in the investigation of any suspected or alleged crime or civil wrong. Any violation of this AUP may result in the suspension or termination of either Subscribers access to Services and/or Subscribers VailNet account or any other actions as VailNet may, at its sole discretion, deem appropriate.

The following is a list of activities which are UNACCEPTABLE uses of VailNet's service and which violate our acceptable use policy. VailNet reserves the right to update, change, add or remove items from this list at our sole discretion. VailNet agrees to post this AUP on our web site, <http://isp.vail.net>, to ensure that it is readily available for any Subscriber to view and reference. Subscribers use of VailNet's Services indicates Subscribers agreement to abide by our AUP policy:

- a. **Illegal use.** Using the Services to transmit any material (by email, uploading, posting, or otherwise) that, intentionally or unintentionally, violates any applicable local, state, national or international law, or any rules or regulations promulgated thereunder.
- b. **Harm to minors.** Using the Services to harm, or attempt to harm, minors in any way.
- c. **Threats.** Using the Services to transmit any material (by email, uploading, posting, or otherwise) that threatens or encourages bodily harm or destruction of property.
- d. **Harassment.** Using the Services to transmit any material (by email, uploading, posting, or otherwise) that harasses another.

e. **Fraudulent activity.** Using the Services to make fraudulent offers to sell or buy products, items, or services or to advance any type of financial scam such as "pyramid schemes," "Ponzi schemes," and "chain letters."

f. **Forgery or impersonation.** Adding, removing or modifying identifying network header information in an effort to deceive or mislead is prohibited. Attempting to impersonate any person by using forged headers or other identifying information is prohibited.

g. **Transmitting Unsolicited commercial email/Unsolicited bulk email/email address harvesting.** Using the Services to transmit any unsolicited commercial email or unsolicited bulk email. The sending of unsolicited commercial email or unsolicited bulk email, whether or not that email is commercial in nature, is strictly prohibited and is grounds for immediate termination of Services. Any email sent through VailNet's mail servers must conform to the Colorado State anti-spam statute (House Bill 1309), which can be found at <http://www.spamlaws.com/state/co.html>. Email sent, or caused to be sent, to or through VailNet's network that makes use of or contains invalid or forged headers, "made up" return addresses that are not email addresses of the Subscriber, invalid or non-existent domain names or other means of deceptive addressing will be deemed to be counterfeit. Attempts to email to multiple recipients that do not exist or have never existed on a system which slow down or interfere with legitimate email are also a violation of this policy. Any attempt to send or cause such counterfeit e-mail to be sent to or through VailNet is unauthorized. Similarly, attempts to relay e-mail through any third party's mail servers without the permission or knowledge of that third party, or which employs similar techniques to hide or obscure the source of the e-mail, is also an unauthorized use of the VailNet's network. VailNet does not authorize anyone to send e-mail or cause e-mail to be sent to or through VailNet's Network that violates our Terms of Service. VailNet does not authorize the harvesting or collection of email addresses for the purpose of sending unsolicited e-mail. VailNet reserves the right to take all legal and technical steps available to prevent the transmission of or reception of unsolicited bulk e-mail or other unauthorized e-mail from entering, utilizing or remaining within VailNet's Network. Nothing in this policy is intended to grant any right to transmit or send e-mail to, or through, VailNet's network. VailNet reserves the right to block or terminate any email transmissions or computer hosts which are the source of such transmissions in order to protect its network and systems. VailNet's failure to enforce this policy in every instance in which it might have application does not amount to a waiver of VailNet's rights.

h. **Unauthorized access.** Using the Services to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of VailNet or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data. This includes, but is not limited to password cracking, file sharing scans, "port" scans and any attempts to identify valid email addresses through connecting to another systems mail server to "harvest" addresses.

i. **Copyright or trademark infringement.** Using the Services to transmit any material (by email, uploading, posting, or otherwise) that infringes any copyright, trademark, patent, trade secret, or other proprietary rights of any third party, including, but not limited to, the unauthorized copying of copyrighted material, the digitization and distribution of photographs from magazines, books, or other copyrighted sources, and the unauthorized transmittal of copyrighted software.

j. **Collection of personal data.** Using the Services to collect, or attempt to collect, personal information about third parties without their knowledge or consent.

k. **Resale of Services.** Reselling the Services without VailNet's authorization will be considered theft of Services by VailNet and is grounds for immediate termination of Services as well as any legal action or remedy that VailNet, at its sole discretion, may choose to pursue.

l. **Network disruptions and excessive "sustained" use of Services.** Using the Services for any activity, which adversely affects the ability of other people or systems to use VailNet's Services or the Internet. This includes "denial of service" (DoS) attacks against another network host or individual user. Interference with or disruption of other network users, network services or network equipment is prohibited. It is the Subscriber's responsibility to ensure that their network is configured in a secure manner. A Subscriber may not, through action or inaction, allow others to use their network for illegal or inappropriate actions. A Subscriber may not permit their network, through action or inaction, to be configured in such a way that gives a third party the capability to use their network in an illegal or inappropriate manner.

m. **News.** VailNet Subscribers should use their best judgment when posting to any newsgroup. Many groups have charters, published guidelines, FAQs, or "community standards" describing what is and is not considered appropriate. Usenet can be a valuable resource if used properly. The continued posting of off-topic articles is prohibited. Commercial advertisements are off-topic in most newsgroups, especially regional groups not specifically named for such. The presence of such articles in a group is not indicative of the group's "intended" use. Please familiarize yourself with basic Usenet netiquette before posting to a newsgroup.

VailNet considers "multiposting" to 10 or more groups within a two-week sliding window to be excessive. VailNet reserves the right to limit the number of allowable cross-posts.

VailNet Subscribers may not cancel messages other than their own messages. VailNet may cancel any postings, which violate this AUP.

n. **Unattended use of Long Dialup Connections.** Dialup accounts are intended for periodic, active use of email, newsgroups, file transfers, Internet chat, games, and browsing the World Wide Web. Subscribers may stay connected so long as they are **actively** using that connection for the above purposes. This means that the Subscriber is actively on the computer system accessing the Internet through VailNet's service. Using the connection to "stream" content from the Internet to the Subscriber's computer when the Subscriber is not actively in

attendance of that computer (eg: playing audio streams over the internet while not sitting in front of your computer) is a violation of the this AUP. Subscribers may not use the Services on a standby or inactive basis in order to maintain a connection. VailNet reserves the right to end (hang up on) any member's connection following any extended period of inactivity as determined at the sole discretion of VailNet. VailNet also reserves the right to suspend or terminate Subscribers access to its' Services if Subscriber does not adhere to this policy.

o. Multiple Logins. Only one person may actively login using a specific dialup account at any given time (eg: two people cannot simultaneously login as the user "bob"). It is a violation of the AUP to have two different computers log into our Services under the same login name concurrently. VailNet reserves the right to deny any simultaneous logins under the same Subscriber user name.

p. Connection of any virus infected computer. It is Subscriber's responsibility to ensure that any computer or device, which they connect to VailNet's Services remain Virus free. While it is understood that from time to time any Subscriber's computer systems may become infected with a virus, "worm" or "Trojan horse" which then tries to utilize Subscribers system to infect other systems on the Internet through VailNet's Services it is the sole responsibility of Subscriber to remove any infected system from VailNet's network and to "disinfect" them immediately after discovering an infected system or being notified that a computer or device using Subscribers connection to VailNet's network is infected. While VailNet may, at its sole discretion and from time to time contact Subscribers if VailNet believes that a Subscriber has such a virus, this is solely as a courtesy and in no way an obligation on the part of VailNet to fix the Subscribers infected system. Subscriber must either disinfect systems which may have become infected or, at its own expense, hire a third party to assist them in this process. VailNet reserves the right to suspend or terminate any account or access to its Services on which an infected system resides and which appears to be trying to infect other computers or systems on the Internet. Because many viruses act rapidly to try and infect many hosts on the internet it is critical that as soon as a system is identified as being infected that it be removed from the network – time is very much of the essence and Subscriber must take immediate steps to ensure that, at the very least, its computer or computers do not actively continue to infect others on the internet.

q. Open Mail Relays. Any Subscriber, whether dialup or dedicated access, that runs a mail server must ensure that the server is not configured as an open-relay. An open-mail relay is a mail server that will accept an email from a third party (someone on the internet) and deliver to another third party (someone not on the subscribers internal network or computer). SPAMMERS look for such systems and drop thousands of junk emails on them, getting them to deliver the SPAM to other systems and users of the Internet. It is the responsibility of all Subscribers running mail servers to properly configure their servers to prevent open relaying. VailNet may, at its sole discretion, block all outgoing mail from any subscriber's connection found to be an open-mail relay until Subscriber has taken steps, at its own time and expense, to properly configure their systems to prevent open-relaying.

r. FTP Servers & Anonomous FTP. Any Subscriber, whether dialup or dedicated access, that run a File Transfer Protocol (FTP) server must either ensure that the FTP server does not have an anonymous login ('ftp', 'anonymous', 'guest') with no password, or any logins with no passwords AND any folders which such a login can write to. Such systems are scanned for on

the internet and used as “blind drops” for transfer of large files (typically illegal movies or DVD’s), resulting in excessive network bandwidth as these files are transferred into and out of VailNet’s network by third parties who are neither Subscriber’s to VailNet’s services or those of the Subscribers. FTP Servers with login’s and passwords are permitted for Subscribers with “server side” access as long as these are used with the knowledge of Subscriber and as long as the resulting network activity does not exceed the terms of a Subscribers connection to VailNet’s Services (eg: continuous ftp use on a burstable DSL connection, even with a login/password would be a violation of the terms of the Burstable DSL service agreement – occasional ftp use of such a connection, say for clients to ftp in or out a document or job, would not be a violation). VailNet reserves the right, at its sole discretion, to suspend or terminate any FTP session or access.

s. **Web Sites.** Any Subscriber who runs their own web site at the end of a “serve side” VailNet connection must ensure that the web site does not violate the terms of the type of connection that they have. For example, running a web site at the end of a server-side Burstable DSL connection is acceptable, as long as that web site does not result in “continuous” transfer of data over the internet (making the Burstable connection a sustained one). A web site which hosts continuous streaming audio or video would be a violation of this AUP. Further, all web servers are required to be brought up to current service pack or “big fix” levels to prevent them from being infected by viruses which try and infect other computers. All Subscribers must, at their own time and expense, insure that their web servers are secure from infections (eg: nimda, code red, etc). VailNet reserves the right, at its sole discretion, to block or terminate access to any web server on its network which is found to be vulnerable or infected until Subscriber has secured their system.

t. **News Feeds.** The use of any VailNet connection to download a Usenet News Feed is strictly prohibited. Vailnet provides a news server (news.vail.net) for all of its subscribers to use to read and post news with any news client software. Subscriber may also use news client software to read and post news to any other news server on the Internet to which Subscriber has arranged access on, so long as Subscriber is doing so while in front of their computer (no “pre-downloading” of news or pictures from third party servers is permitted as this generates a sustained use of the connection). The automatic download of volumes of news articles to a Subscribers system (typically called a “news feed”) whose action results in continuous unattended flow of data into Subscribers systems is not allowed. VailNet may, at its sole discretion, suspend or terminate the connection of any Subscriber found to be pulling their own news feed.

u. **Use of Robots, Agents or other Streaming Feeds** The use of Robots or Agent programs which run unattended and are used to download large quantities of data, music, video or other shared files from the Internet are a violation of this AUP. This includes, but is not limited to Kazaa, Gnutella, and other automatic file-share/download programs. Use of any such program or process which open multiple concurrent connections to one or more other computers on the Internet are also a violation of the AUP policy. Such programs operate unattended and generate a constant flow of data from the Internet to a Subscribers system. In the case of streaming audio, any unattended use of this type of service results both in a huge use of Internet bandwidth as well as a total loss of such bandwidth (as unattended the ‘music’ isn’t heard by anyone). This would be similar to turning on the water faucet full blast and leaving the house – the water just gets wasted. Further, whether such a program accesses a single source or multiple

sources concurrently, the amount of bandwidth consumed by a single Subscriber tends to be at the expense of other Subscribers, interfering with both VailNet's Service as well as the use of those Services by other Subscribers. VailNet may, at its sole discretion, suspend or terminate Subscribers access who are found to be running unattended robots, agents or streaming feeds.

v. Open File Sharing/Network Drive Mapping. It is Subscriber's responsibility to ensure that any computer that it connects to VailNet's Network that allows its disk drives to be shared or "mapped" assigns a password for read as well as read-write access to their system(s) to prevent third parties from accessing Subscribers computers and/or modifying / infecting those systems by being able to map and write files onto a Subscribers system. Subscriber, at its own time and expense, will ensure that computers it places on VailNet's network, whether through dialup or dedicated connections, either have disabled drive mapping or have assigned passwords to prevent unauthorized third parties from gaining access to Subscribers systems. If VailNet, at its sole discretion, notices a violation of this nature and notifies Subscriber of a vulnerable/mappable system, Subscriber must take immediate steps at its own time and expense to remedy the situation. VailNet may, at its sole discretion, suspend or terminate access to its Services until the vulnerable system is properly fixed.

w. Sending and Receiving Email. Subscriber may not post or transmit any file which contains viruses, worms, "Trojan Horses" or any other contaminating or destructive features. If Subscribers computer or mail system is found to be in violation of this section of the AUP VailNet reserves the right to block outgoing emails, suspend or terminate Subscribers access to our Services. If the transmitted emails containing the destructive element(s) are the result of a virus infection of Subscribers computer system(s) then Subscriber must take steps, at their own time and cost, to resolve the problem (see "**Connection of any virus infected computer**" above).

X. Confidentiality of Subscribers Login/Password. All dialup Subscribers receive a login name and password to use to gain access to the Internet through VailNet's Service. Subscriber and members of Subscribers household or business, if Subscriber has purchased a business account, are the only authorized users of Subscribers VailNet account and must comply with this Agreement. Subscriber must keep your password confidential so that no one else may access the Services through Subscribers account. Subscriber must notify VailNet immediately upon discovering any unauthorized use of Subscribers account so that VailNet can change the password on the account to prevent further unauthorized access. Subscriber remains responsible for any charges, including overage charges, which may be incurred through the use of Subscribers account.

Y. Picking Up Email – All Subscribers with email boxes on Vailnet, ColoradoNet or MountainMax agree to pickup their mail in a timely fashion. Because mailboxes, like PO Boxes at a post office, are not infinite in size, Subscribers are expected to pick up their email and delete it from VailNet's Servers within thirty (30) days of receipt of an email message. VailNet reserves the right, at its sole discretion, to delete any mailboxes whose mail has not been downloaded in more than thirty (30) days. Further, if a Subscriber has selected the "leave mail on

server” option, it is Subscriber’s responsibility to periodically uncheck this option and download/remove all email present on VailNet’s mail servers to make sure that email older than 30 days is not retained on VailNet’s mail servers. VailNet reserves the right to reduce the term of this window from 30 days to a lower number.

Z. USE OF A BURSTABLE CONNECTION IN A SUSTAINED FASHION. The use of any DSL or high-speed connection to move data in a continuous or sustained fashion is a violation of VailNet’s AUP. High-speed connections, unless otherwise specified in writing, are priced and sold as burstable and not sustained connections. Such connections may be used “bursting” up to their maximal allowable bandwidth by Subscriber when the Subscriber is actively using the computers attached to the connection, but MAY NOT be used by unattended robots or programs, or used to stream audio, video, news feeds, other “constant” bandwidth over the internet. This would be equivalent to having a high pressure shower (your high speed connection to the Internet) and being allowed to take long high pressure showers, but not being allowed to leave that high pressure water running once you are done taking your shower (leaving the house for a long weekend and leaving the water running). VailNet reserves the right, at its sole discretion, to suspend or terminate any Subscriber using a burstable connection in a sustained fashion.

AA. DNS CONFIGURATION REQUIREMENTS – SUBSCRIBERS NOT TO ADVERSELY EFFECT DNS SERVERS/LOGS. All Subscriber devices which utilize VailNet’s Domain Name Servers (DNS) systems are required to configure those devices in such a way that they do not attempt to push or “register” their host names and numbers with the DNS Server. Systems which are incorrectly configured adversely effect VailNet’s servers and logs. VailNet reserves the right, at its sole discretion, to suspend or terminate Subscriber’s access to its DNS servers and/or to block access to its DNS servers for any Subscriber or host which is improperly configured or is abusing Vailnet’s DNS servers or logs.

REPORTING VIOLATIONS

To report a suspected violation of VailNet' AUP please email a report to abuse@vail.net or contact us at 970 949-3318 during normal business hours.

Please include as much information as you can about the violation to assist us in researching it. If applicable, please provide the following information:

- The IP address used to commit the alleged violation
- The date and time of the alleged violation, including the time zone the computer logging the event was in (EG: EST, MST, PST)
- Any content or evidence of the violation (eg: copy of full SPAM email, log from a firewall, syslog file entries, etc).

VailNet may take any one or more of the following actions in response to complaints:

- issue warnings: written or verbal
- suspend the Subscriber's newsgroup posting privileges
- suspend the Subscriber's account
- terminate the Subscriber's account
- bill the Subscriber for administrative costs and/or reactivation charges
- bring legal action to enjoin violations and/or to collect damages, if any, caused by violations.

REVISIONS TO THIS ACCEPTABLE USE POLICY (AUP)

VailNet reserves the right to revise, amend, or modify this AUP, our Internet Service Agreement and any of our other policies and agreements at any time and in any manner. Notice of any revision, amendment, or modification will be posted on our web site <http://isp.vail.net>. Notice of any such change shall be placed in the email boxes of any Subscriber whose mailbox resides on vail.net, colorado.net or mountainmax.net, shall be included with any mailed invoice (if Subscriber is billed via paper invoice). Subscribers continued use of Service subsequent to these events is Subscribers agreement to abide by any changes made to VailNet's AUP.