

TERMS AND CONDITIONS

Last Revised 08/26/2002

This document describes the Terms and Conditions that all Subscribers to VailNet's Internet Service are required to agree to in order to make use of VailNet's Services to gain access to the Internet. Please familiarize yourself with both these Terms and Conditions as well as VailNet's Acceptable Use Policy (AUP) in order to understand your obligations and responsibilities in using VailNet's Services.

Subscriber's continued use of VailNet's Services constitute agreement to abide by these Terms and Conditions and the AUP policy as well as the terms of any other agreements executed with VailNet.

All Subscribers must be at least 18 years of age or older, or Subscribers account must be co-signed by a legal guardian.

Current prices for VailNet's Services may be obtained by calling (970) 949-3318. VailNet reserves the right to change prices and institute new fees at any time upon 30 days prior notice.

SIGNING UP FOR SERVICE

To initiate new dialup or email service with VailNet, Subscriber must fill out a current account form application, providing VailNet with legal name, address, telephone number, credit card/billing information. Forms may be downloaded from our web site at <http://isp.vail.net> or VailNet can fax a copy of the necessary paperwork to you on request. A copy of a credit card imprint and/or a faxed copy of a credit card must be included with the account request.

ONE-TIME FEES

All new dialup accounts are charged a one-time non-refundable \$15 setup fee to cover the administrative costs of VailNet setting up the account in our billing, accounting and Internet systems. Once VailNet has begun the process of setting up an account, this fee is non-refundable, even if you later decide to cancel service.

When a Subscriber requests DSL Service from VailNet, VailNet is required to submit a request with the local telephone company whose wires connect VailNet's DSL network hardware to Subscribers home or business telephone wires/location. A non-refundable service charge, included in the startup fees for DSL service, and is charged when Subscriber requests DSL service from VailNet. Subscriber must fill out a DSL service form, which specifies this charge, whenever placing an order for DSL service.

All Subscribers to high speed service which require a VailNet supplied high speed modem (eg: DSL modem or router) will be charged for the hardware and its configuration by VailNet prior to delivery of the equipment to Subscriber. Unless otherwise indicated in a Service Agreement/Contract hardware sold to Subscriber becomes the property of Subscriber upon receipt of hardware. On termination of service such owned hardware remains the property of Subscriber. VailNet is under no obligation to repurchase the hardware or issue any type of credit to Subscribers at any time.

Annual dialup accounts receive an effective discount from the month-to-month dialup rate in exchange for the one-year term commitment. Once an annual account has been activated, the annual fee charged for this service is non-refundable, even if Subscriber later decides to cancel the account prior to the end of the twelve-month term.

After an account with VailNet/ColoradoNet has activated, any changes to an e-mail address or account name will incur a non-refundable \$5.00 service charge. Password changes to an account may be done without service charge by calling our office at 970-949-3318.

VailNet/ColoradoNet does not make house calls, but we gladly accept computers brought by on a walk-in basis for basic Internet diagnostic tests. VailNet/ColoradoNet will perform a free diagnostic check, but only after you complete a release form. Any more advanced computer related issues (installation of other types of software, anti-virus software, hardware problems) cannot be resolved by VailNet, but we will be happy to provide Subscribers with a list of local consulting companies which (for a fee) can help with such problems.

VailNet may change its dialup modem access numbers at any time.

VailNet reserves the right to take any measures necessary to protect its Service and network, including but not limited to modifications to our network, services and connections at any time with or without advanced notice. VailNet reserves the right to suspend, monitor, interrupt or terminate any connection to its network.

COMMUNICATIONS WITH SUBSCRIBERS

Most Subscribers receive an email box on VailNet, ColoradoNet or MountainMax. VailNet will, from time to time, send emails regarding important system updates or will use this email address to notify subscribers of any billing issues (such as failure of a credit card to go through, policy updates or system maintenance windows). Customer agrees to read emails in a timely fashion. All Subscribers further agree to provide VailNet with current contact information, including preferred email address, US Postal address, work and/or home telephone number. VailNet's ability to contact customer is dependant on this information.

REPORTING PROBLEMS TO VAILNET

For new accounts, if Subscriber experiences **any** difficulty gaining a connection to VailNet/ColoradoNet, please advise VailNet's office by calling 970 949-3318 immediately to avoid charges to account. Billing for all new accounts begins the business day after you initiate service. When notified of problems, we will suspend accounts or change startup date on a Subscriber's account to the date Subscriber successfully gains a connection to VailNet's Service. **VailNet/ColoradoNet will not issue any credit unless notified of a problem within one month of your original signup date.** For dialup Subscribers, under no circumstances will any credit be issued if VailNet's computers records indicate that a Subscriber's account was actually able to successfully authenticate with VailNet's system and stayed on line for more than a few minutes. Further, credits will not be issued if Subscriber has trouble accessing the service but fails to contact technical support to seek assistance.

PAYMENT FOR SERVICE /

Subscribers PAYMENT OBLIGATIONS

(a) Subscribers must (i) provide VailNet with accurate and complete billing information including legal name, address, telephone number, and credit card/billing information, and (ii) report to VailNet all changes to this information within thirty (30) days of the change. Subscribers are responsible for any charges to their account.

(b) Subscribers having questions regarding charges to an account, should contact VailNet at (970) 949-3318, send email to billing@vail.net or a fax to (970) 949-3380. All charges are considered valid unless disputed in writing within sixty (60) days of the billing date. **Adjustments will not be made for charges that are more than 60 days old.**

(c) Charges are usually billed to Subscribers credit cards or debit cards, as applicable, each month for the basic service and any additional usage or services. VailNet is not responsible for any charges or expenses (e.g for overdrawn accounts, exceeding credit card limits, etc.) resulting from charges billed by VailNet. All basic dialup accounts holders will receive 160 hours of connection time per month for a fixed monthly service charge. If a dialup Subscriber exceeds 160 hours of connection time in a calendar month, then Subscriber understands that they are obligated to pay an overage fee of \$1.00 per each additional hour of connection time in that calendar month. Such "overage" charges, if incurred, will be billed in the month subsequent to the month that the Subscriber exceeded 160 hours of usage. Unused hours out of the 160 hours do not accrue or "roll over" to subsequent months.

(d) Delinquent accounts may be suspended at VailNet's sole discretion; however, charges will continue to accrue until the account is terminated. VailNet may bill an additional charge to reinstate a suspended account.

(e) In the event that Subscriber terminates service on an account, which is under term contract, Subscriber is obligated to pay any past amounts due as well as any early termination penalties specified under the term agreement. VailNet will bill Subscriber, either by credit card on file or by invoice, for any such amounts on receipt of written notice of cancellation by Subscriber. In the event that Subscriber is terminated by VailNet for violation of VailNet's Acceptable Use Policy or any terms of their service agreement with VailNet, and if Subscriber is under a term agreement for the services with VailNet, then all past due charges any early termination penalty will also be due.

(f) All dialup account and high speed service setup fees (configuration of VailNet database, systems, accounts on our servers, ordering any services on behalf of subscribers from telephone carriers like Qwest or Centurytel) whether for dialup or high speed dedicated services are non-refundable. VailNet charges all of its dialup Subscribers a one-time setup fee of \$15 to cover the labor costs associated with entering customer accounts into our computer databases and setting up user accounts and passwords on our systems. **This is a non-refundable fee.** Likewise any service orders placed with telephone carriers (typically for DSL service requests) are also carry a **non-refundable** processing, administrative and telco fee.

(g) In the event VailNet/ColoradoNet cannot process Subscribers credit card, VailNet's billing department will inform Subscriber by e-mail. Subscriber will have ten business days to contact VailNet's office with a new credit card number or other form of payment for the given billing month. No response may result in suspension of Subscriber account, until payment is received.

(h) In the unfortunate event that Subscribers credit card becomes lost, stolen, the number changes or the expiration date changes, please advise VailNet's billing department immediately.

(i) When using a dialup modem to call VailNet's modem banks, Subscribers are solely responsible for determining if connecting to VailNet's Services will incur additional third party charges (eg: long distance charges when calling from outside of Eagle or Summit Counties, hotel charges for calling long distance, etc). Subscriber is solely responsible for payment of any such charges to the telephone company or long distance carrier if any are incurred. Under no circumstances will VailNet be held responsible for any third party charges (such as long distance), which may be incurred by Subscriber when trying to connect to VailNet's Services. In addition, if Subscriber utilizes "Ipass" to connect to the Internet through a third

party Subscriber also agrees to pay VailNet for any Ipass charges incurred by Subscriber.

TERMINATION OF SERVICE

In order to terminate Services with VailNet, Subscriber must submit **written or email** notice of intent to terminate service. Written notices must be mailed to VailNet, PO Box 2812, Avon Colorado 81620 or faxed (with a signature) to (970) 949-3380. Email requests for termination must be emailed to cancel@vail.net. Please be sure and include a return email address, fax number or mailing address to which confirmation of Subscribers request to terminate may be sent. Receipt of a valid cancellation confirmation code from VailNet is Subscribers proof of cancellation.

Subscribers termination will only be complete upon the issuance of a cancellation confirmation number FROM VailNet.

Charges to Subscribers account will stop accruing once VailNet provides Subscriber with a cancellation confirmation number. Based on Subscribers billing cycle, charges accrued prior to Subscribers termination request may apply even after Subscriber receive a cancellation confirmation as VailNet does not pro-rate monthly service charges. Subscriber remains responsible for all services and charges incurred prior to Termination request, including but not limited to monthly service charges, overage fees or domain fees. Service charges for Internet Access apply even if the account is not accessed (much like a health club membership).

Without prior notice, VailNet may terminate this Agreement, Subscribers password, Subscribers account, or Subscribers use of the Services, for any reason, including, without limitation, if VailNet, in its sole discretion, believes Subscriber has violated this Agreement, VailNet's Acceptable Use Policy, or any of the applicable user policies, or if Subscriber fails to pay any charges when due. VailNet will provide termination notice to Subscriber by sending an email to Subscribers vail.net, colorado.net or mountainmax.net email address for those Subscribers who pay by credit card or will send written notice via US Postal service on any delinquent invoices still unpaid. Accounts terminated by VailNet but under term agreements may also be subject to any early terminations penalties specified in such an agreement.

WARRENTIES

Certain hardware may be sold by VailNet to its Subscribers to enable to Subscriber to access VailNet's Services (eg: DSL Modems, routers, etc). This equipment may be subject to third party warranties, which may be passed through VailNet to Subscriber at no additional charge. VailNet will take all reasonable steps to affect the pass through of the warranty to Subscriber. If such a warranty is provided by third party it will not cover defects resulting from acts outside of VailNet's control, use contrary to specifications or instructions, repair or modification by anyone other than VailNet or the manufacturer, problems caused by flood, power surges, lightening, earthquakes, fire or other acts of God. VailNet reserves the right to modify this warranty at any time.

The Services provided by VailNet are on an "AS IS" and "AS AVAILABLE" basis. VailNet does not warrant that its Services will be uninterrupted, error-free or free of viruses or other harmful components. VailNet makes no express warranties and waives all implied warranties, including but not limited to, warranties of title, non-infringement, merchantability and fitness for a particular purpose regarding any merchandise, information or service provided through VailNet or the Internet generally. No advise or information given by VailNet or its representatives shall create any warranty. VailNet and its employees are not liable for any costs or damages arising directly or indirectly from Subscribers use of the Services or the Internet including any indirect, incidental, exemplary, multiple, special, punitive, or consequential damages. In any event, VailNet's cumulative liability to Subscriber for any and all claims relating to the use of the Services shall not exceed the total amount of service fees paid by Subscriber in the one-month period in which Subscriber claims that such liability occurred.

VailNet shall have no liability whatsoever for any claims, losses, actions, damages, suits, or proceedings resulting from other users accessing Subscribers computer, security breaches, eavesdropping, denial of service attacks, interception of traffic sent or received using the services; Subscribers reliance on or use of the equipment or services, or the mistakes, omission, interruptions, deletion of files, errors, defects, delays in operation, transmissions, or any failure of performance of the equipment or services; the use of the equipment or services by Subscriber or a third party that infringes on the copyright, patent, trademark, trade secret, confidentiality, privacy, or other industrial or intellectual property rights, proprietary rights or contractual rights of any third party; the accuracy, completeness and usefulness of all services, products and other information and the quality and merchantability of all merchandise provided through the service or the internet.

THE FOREGOING LIMITATION APPLIES TO THE ACTS, OMISSIONS, NEGLIGENCE AND GROSS NEGLIGENCE OF VAILNET, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR REPRESENTATIVES WHICH, BUT FOR THIS PROVISION, WOULD GIVE RISE TO THE CAUSE OF ACTION AGAINST VAILNET IN CONTRACT, TORT, OR ANY OTHER LEGAL DOCTRINE. SUBSCRIBERS SOLE AND EXCLUSIVE REMEDIES UNDER THIS AGREEMENT ARE AS EXPRESSLY SET OUT IN THIS AGREEMENT. ANY WARRANTY GIVES SUBSCRIBER SPECIFIC LEGAL RIGHTS. SUBSCRIBER MAY ALSO HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.

JURISDICTION

This Agreement is governed by Colorado law without regard to conflict of law provisions. The courts located in Eagle, Colorado alone have jurisdiction over all disputes arising out of or related to this Agreement and the Service. Subscriber consents to the personal jurisdiction of such courts sitting in Eagle, Colorado with respect to such matters or otherwise between Subscriber and VailNet, and waives any rights to removal or consent to removal.

MISCELLANEOUS

This Agreement, the Acceptable Use Policy, and any other term agreement executed between Subscriber and VailNet constitute the entire agreement between Subscriber and VailNet with respect to Subscribers use of the Service.

Should any part or portion of these Terms and Conditions or VailNet's Acceptable Use Policies be found invalid, the balance of the provisions shall remain unaffected and shall be enforceable.

Subscriber (printed): _____

Subscriber: (signed): _____

Dated: _____