

## **BPS Networks**

### **Acceptable Use, Network Management and Conditions of Service Policy**

#### **Application of this Policy**

This Agreement is between BPS Networks and Subscriber and is applicable to Subscriber and all users of Subscriber's account. This Agreement supersedes all representations, agreements and other communications with respect to the subject matter except as expressly set forth in this document. This Agreement can be amended at the sole discretion of provider without prior notice to, or permission of subscriber. The terms and conditions of this Acceptable Use Policy posted on the BPS Networks' web site shall supersede all previous agreements, representations, or understandings and shall prevail notwithstanding any variance with terms and conditions set forth previously. Subscriber's continued use of the service after changes to the Acceptable Use Policy are posted to the BPS Networks' web site constitute acceptance of any changes, modifications, or additional terms. If any term of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, the Agreement shall be construed in such a way as to eliminate the offending term while giving as much effect as possible to the intentions of the parties. Provider may authorize or allow its contractors and other third parties to provide services necessary or related to performance under this Agreement and may collect payment on their behalf. Notice under this Agreement may be made by any reasonable means, including email, postal service or publication over the Service.

#### **The Service**

The Service consists of the transmission of data communications via the network infrastructure and access to content stored on servers owned or operated by BPS Networks or on BPS Networks behalf. This Agreement specifies the actions prohibited by BPS Networks to users of our network. This Agreement, also, outlines recourses and rights reserved by BPS Networks under this policy.

## **Fees and Payment**

Subscriber shall pay all taxes, fees, charges and other amounts for the Service at the rates in effect for the current billing period. BPS Networks may require a deposit prior to providing new service or as a condition of continued service. BPS Networks shall make available to Subscriber a statement for each billing cycle showing payments, credit purchases and other charges. Payment is due in full each month. If payment is not received before the due date shown on the statement, then Subscriber's access to the Service shall be restricted. Prior to activation of new service or reconnection of existing service, payment for previous balances owed to BPS Networks or its affiliates may be required. Subscriber may be charged a late fee and may be subject to other fees and charges or termination of the account. Credit amounts shall not accrue interest. Subscriber shall pay the reasonable costs of any collection agency, attorney or court used by BPS Networks to collect past due amounts or to enforce this Agreement. A reactivation fee will be required before Service is reactivated after termination. BPS Networks may sell, assign or transfer Subscriber's account to a third party without notice to Subscriber. In the absence of notice, Subscriber must continue to make all required payments in accordance with Subscriber's billing statement.

## **Open Internet Rules**

BPS Networks commits to the open and non-discriminatory use of the Internet by its customers and commits to use reasonable network management practices to ensure an open Internet. BPS Networks will manage its network and provide access in accordance with the Federal Communications Commission's (FCC's) Rules.

## **Transparency**

BPS Networks makes available information on its website regarding its network management practices, performance, and commercial terms of its service in order to allow consumers to make an informed choice regarding their use of such services. The version located at (<http://www.bpsnetworks.com/node/2>) shall be considered the current and applicable version of this Agreement.

## **Network Security and Congestion Management**

BPS Networks uses generally accepted technical measures to provide acceptable service levels to all customers, such as application-neutral bandwidth allocation, as well as measures to address service attacks, illegal content, and other harmful activities to protect network integrity and reliability.

BPS Networks reserves the right to prioritize traffic based on real time and non-real time applications during heavy congestion periods based on neutral and generally accepted technical measures. BPS Networks may use other traffic management tools to help ensure efficient and equitable access to the BPS Networks network for all customers.

BPS Networks reserves the right to monitor customer usage to efficiently manage the performance of the network to ensure a sustainable quality broadband service is provided. Peak network usage is between 4 pm and 11 pm Monday – Friday and 10 am – 11 pm Saturday and Sunday. Congestion due to malfunctioning hardware and/or software will be remedied as quickly as network engineers can diagnose and identify the offending hardware / software.

Congestion due to malice will be remedied using any technique available, including protocol-aware filtering and rate-limiting, to control and limit the offending source. BPS Networks may seek criminal charges against those who inflict network malice. BPS Networks may also attempt to recover costs incurred from network malice.

## **Blocking**

BPS Networks shall not block access to lawful content, applications, services or non-harmful devices, subject to reasonable network management.

## **Throttling**

BPS Networks shall not impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or use of a non-harmful device, subject to reasonable network management.

## **Unreasonable Interference or Disadvantage**

BPS Networks shall not unreasonably interfere with or unreasonably disadvantage Subscriber's ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice, subject to reasonable network management practices.

## **Illegal Use**

The BPS Networks' network may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws. Some laws (such as the Digital Millennium Copyright Act and child protection laws) place special obligations on Internet service providers. Obtaining, distributing, or storing some types of files (especially those related to certain types of pornographic materials) may result in criminal or civil litigation. BPS Networks will assist federal, state, or local law enforcement agencies to monitor the traffic of some or all of its customers if a law enforcement agency presents BPS Networks with a lawful order for such surveillance. BPS Networks will comply with lawful subpoenas from authorized federal, state, or local government agencies.

Illegal use may result in immediate action, including temporary or permanent disconnection of Internet service.

## **Copyright Infringement/DMCA**

Copyright Infringement: Some of the information available on the Internet is protected by copyright laws. Unless you have permission from the copyright holder, you are not allowed to copy or redistribute this information to others via any format, including use of this information on radio, television or printed media, such as newspapers, magazines or newsletters, and electronically. In accordance with the Digital Millennium Copyright Act (DMCA), an agent has been designated to receive notification of a claimed copyright infringement for BPS Networks. Any claims of copyright infringement should be directed to:

Robert Haas, Network Administrator:  
BPS Networks  
120 Stewart Street  
PO Box 550  
Bernie, MO 63822

Voice: 1-573-293-2638  
Fax: 1-573-293-2299

### **System and Network Security**

Violations of system or network security are prohibited, and may result in criminal and civil liability. BPS Networks will investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:

- Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.
- Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network.
- Interference of service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks.
- Forging of any TCP-IP packet header or any part of the header information in an email. Forging unique identifiers including mac-addresses.
- Abuse of limited resources including but not limited to IP Addresses, Bandwidth or Disk Space.
- Generation of Internet traffic that is harmful or invasive to the network, whether intentional or unintentional.

## Sharing of Service

Sharing of service is prohibited. Subscriber may not resell the Service to a third party. Subscriber may not allow a third party to utilize his/her connection. Subscriber is responsible to protect his/her password. Subscriber's account is intended for the use of Subscriber and members of his/her IMMEDIATE HOUSEHOLD ONLY. Service may not be extended beyond the physical address of the demarcation point, regardless of ownership.

## Email/SPAM

Sending Unsolicited Bulk Email ("UBE", "spam"). The sending of any form of Unsolicited Bulk Email through BPS Networks' servers is prohibited and grounds for immediate account termination without notice. Likewise, the sending of UBE from another service provider advertising a web site, email address or utilizing any resource hosted on BPS Networks' servers, is prohibited and grounds for immediate account termination without notice. BPS Networks accounts or services may not be used to solicit customers from, or collect replies to, messages sent from another Internet Service Provider where those messages violate this Policy or that of the other provider.

Running Unconfirmed Mailing Lists. Subscribing email addresses to any mailing list without the express and verifiable permission of the email address owner is prohibited. All mailing lists run by BPS Networks customers must be Closed-loop ("Confirmed Opt-in"). The subscription confirmation message received from each address owner must be kept on file for the duration of the existence of the mailing list. Purchasing lists of email addresses from 3rd parties for mailing to from any BPS Networks-hosted domain, or referencing any BPS Networks account, is prohibited and grounds for immediate account termination without notice.

Operating an account on behalf of, or in connection with, or reselling any service to, persons or firms listed in the Spamhaus Register of Known Spam Operations (ROKSO) database at [www.spamhaus.org](http://www.spamhaus.org), is prohibited and grounds for immediate account termination without notice.

## **Unacceptable Use**

Use of BPS Networks' service to harass, intimidate, or threaten the health or safety of individuals or groups of individuals is a violation of this Acceptable Use Policy

## **Email/File Storage**

BPS Networks is not responsible for any E-mail messages or files left on its servers. E-mail messages or files stored on any server or device owned by BPS Networks is done so at Subscriber's own risk. All E-mail and files belonging to a Subscriber is automatically deleted from servers and devices owned by BPS Networks upon the termination of the Subscriber's account.

## **Servers**

Users are not permitted to establish servers on any BPS Networks connection without prior, written consent from BPS Networks. Types of servers specifically banned include, but are not limited to:

- File Sharing Servers
- Mail servers (SMTP or POP3/IMAP servers)
- Web Servers

## **Rights Reserved by BPS Networks Under This Policy**

BPS Networks reserves the right to monitor the connections of its Subscribers for the purpose of enforcing this policy. BPS Networks reserves the right to impose additional fees to cover the cost of such monitoring if, in the course of our investigation, Subscriber is found in violation of this policy. BPS Networks reserves the right to terminate, at our sole discretion, the account of any Subscriber for any reason, including, but not limited to violation of this policy. In the event that a subscriber's account is terminated under this policy due to abuse, illegal activity or other violation of this policy, subscriber may be subject to termination fees as outlined in subscriber's contract. BPS Networks reserves the right to perform network management as it deems fit, this includes but is not limited to QOS measures and bandwidth allocation.

## **Data Rates**

The data upload and download speeds advertised and offered by BPS Networks reflect the maximum data rate limitations imposed within its network. Factors beyond the control of BPS Networks may affect speeds, both internally (within the Subscribers' computing and electronic devices) and upstream (beyond BPS Networks' facilities). Thus, BPS Networks does not guarantee actual data transfer rates.

## **No Endorsement**

BPS Networks does not endorse or in any way vouch for the accuracy or completeness of any content made available through the Service. BPS Networks does not recommend that such content be relied on by Subscriber without appropriate verification.

## **DISCLAIMER OF WARRANTIES**

ACCESS TO THE SERVICE IS NOT GUARANTEED. THE SERVICE IS DISTRIBUTED 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 OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.

## **LIMITATION OF LIABILITY**

NEITHER PROVIDER NOR ANY OF ITS AFFILIATES, INFORMATION OR CONTENT PROVIDERS, SERVICE PROVIDERS, LICENSORS, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF SUBSCRIBER'S USE OF THE SERVICE OR INABILITY TO USE THE SERVICE OR ANY BREACH OF ANY REPRESENTATION OR WARRANTY. IN ANY EVENT, NO SUCH LIABILITY SHALL EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY SUBSCRIBER FOR SERVICES PROVIDED UNDER THIS AGREEMENT FOR THE PRIOR TWO (2) MONTH PERIOD.



## **SUBSCRIBER LIABILITY**

INDIRECT OR ATTEMPTED VIOLATIONS OF THIS POLICY AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON BEHALF OF A BPS NETWORKS SUBSCRIBER SHALL BE CONSIDERED VIOLATIONS OF THE POLICY BY SUCH SUBSCRIBER OR END USER.

### **Indemnity**

Subscriber assumes all risk and liability for any use of the Service. Subscriber agrees to indemnify BPS Networks against all claims, liability, damages, costs and expenses, including but not limited to reasonable attorneys fees, arising out of or related to the Subscriber's use of the Service.

### **Mediation**

BPS Networks and Subscriber ("the Parties") agree to use their best efforts to resolve any disputes that may arise out of the operation of this Agreement amicably to avoid the expense of litigation. If the Parties are unable to resolve a disputed issue, then the Parties shall pursue non-binding mediation. The mediator shall be chosen by agreement of the Parties and the expense shared equally. The Parties agree, in good faith, to commit the resources necessary to mediate the matter in accordance with procedures to be established by the mediator. If mediation is unsuccessful, then the Parties further agree that all actions or proceedings arising directly or indirectly from this Agreement shall only be commenced and litigated in a Circuit Court of the State of Missouri with jurisdiction over the dispute. The Parties hereby expressly consent to the jurisdiction over them of Missouri's Circuit courts, in all actions or proceedings arising directly or indirectly from this Agreement. All disputes shall be based upon and apply Missouri law.

### **Commercial Pricing**

Please click on the following website link for pricing information including monthly prices, usage-based fees, and fees for early termination or additional network services:  
<http://www.bpsnetworks.com/node/8>.

## Contact Information

If you have any questions regarding this policy, please contact BPS Networks customer service at: 800-785-8630, 573-293-2277 or <http://bpstelephone.com/contact>