



## **Acceptable Use Policy.** \_\_\_\_\_

### **Balsamwest Acceptable Use Policy**

#### IMPORTANT CUSTOMER INFORMATION

Balsamwest has adopted the following Acceptable Use Policy to enhance and protect the use of the Internet and Balsamwest Services for all users of the Services. Please read carefully.

#### BALSAMWEST FIBERNET ACCEPTABLE USE POLICY

This Acceptable Use Policy ("Policy") is intended to: (a) promote and protect the availability, integrity, security, reliability and privacy of the systems, networks, services, and products (collectively, the "Services") of Balsamwest, and its subsidiaries, joint ventures, affiliates, partnerships, and any other entities controlled, or partially controlled, by Balsamwest, (collectively, "Balsamwest"); (b) maintain an image and reputation of Balsamwest as a responsible provider of the Services; and (c) encourage responsible, and discourage harmful or illegal, use of the Services and/or the Internet. This Policy sets forth principles, guidelines, and requirements governing or affecting the use by customers and any other users (collectively, "Users") of the Services or Balsam West's website. The term "User" also includes any person visiting Balsamwest's website, whether such person is a Balsamwest customer, a visitor to a public area of our Services, or a participant in one of Balsamwest' promotional offerings.

#### ACCEPTANCE OF THIS POLICY

Your use of the Services shall constitute acceptance of the terms and conditions of this Policy, as it may be modified by Balsamwest from time to time. Balsamwest expects Users to use the Services and the Internet courteously and responsibly.

#### MODIFICATIONS TO THIS POLICY

Balsamwest may modify this Policy at any time, effective upon the sooner of posting of the modified Policy on its website or written notice to Users. You agree to comply with such modifications and are advised to review this Policy regularly.

#### ENFORCEMENT OF THIS POLICY

BALSAMWEST MAY, IN ITS SOLE DISCRETION, SUSPEND OR TERMINATE THE PROVISION OF THE SERVICES OR ANY PART THEREOF TO A USER AT ANY TIME AND WITHOUT WARNING FOR ANY VIOLATION OF ANY PART OF THIS POLICY. BALSAMWEST MAY ALSO BRING LEGAL ACTION TO ENJOIN VIOLATIONS AND/OR COLLECT DAMAGES CAUSED BY VIOLATIONS OF ANY PART OF THIS POLICY.

## PROHIBITED ACTIONS

User must use the Services only in a manner that, in Balsamwest' sole discretion, is consistent with the purposes of such Services. User shall not engage in any activity (whether legal or illegal) that results in harm to Balsamwest, the Services or any User or that interferes with Balsamwest' provision, or any User's use or enjoyment of, any of the Services.

A User will be deemed in violation of this Policy if Balsamwest determines, in its sole discretion, that any action of such User, in connection with the use of the Services is: (a) inconsistent with the purposes of such Services or (b) violates any local, state, federal or international law, statute, agency decision, regulation, ordinance, executive order or any other legally binding governmental directive, including without limitation the federal Can Spam Act of 2003, the Computer Fraud and Abuse Act (18 U.S.C. 1030 et seq.), the Telephone Consumer Protection Act (47 U.S.C. 227), the Telemarketing Consumer Fraud and Abuse Prevention Act (15 U.S.C. 1601-1608) and the Federal Trade Commission's amended Telemarketing Sales Rule, (collectively, "Laws or Regulations")..

A User will also be deemed in violation of this Policy if Balsamwest determines, in its sole discretion, that that any action of such User, whether or not in connection with such User's use of the Services, has resulted in: (i) any harm to Balsamwest, its reputation, Services or Users; (ii) any third party blacklisting, blocking, filtering, or refusing any e-mail or any other network application or communications protocol from Balsamwest or Users; or (iii) interference in any manner with the free flow of e-mail or any other network application or communications protocol from or to Balsamwest or Users.

INDIRECT OR ATTEMPTED VIOLATIONS OF THIS POLICY, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON ANY USER'S BEHALF, WILL BE DEEMED VIOLATIONS OF THE POLICY BY SUCH USER.

The following are some, but not all, of the actions prohibited under this policy if taken: (i) in connection with User's use of the Services or (ii) in any other manner that results in harm to Balsamwest, the Services or any User (as determined solely by Balsamwest):

1. Creating, posting, storing, displaying, transmitting, retransmitting, forwarding, or distributing any material that, in the sole judgment of Balsamwest, is or facilitates:

1. obscene, indecent, profane, pornographic, threatening, libelous, defamatory, or otherwise objectionable information of any kind, including material that restricts a civil liberty;
2. an action that restricts or inhibits any person, whether a User of the Services or otherwise, in its use or enjoyment of the Services or any other systems, services or products;
3. deceptive or misleading advertising or marketing;
4. intended to solicit Balsamwest customers for any competitive service;
5. a violation of any rights of any person, including but not limited, to rights

protected by copyright, trademark, trade secret, patent, or other intellectual property or similar Laws or Regulations, such as the dissemination or

distribution of "pirated" or other software products that are not appropriately

licensed for use by the User;

6. a violation of any Laws or Regulations;
7. a violation of any guidelines or rules of any other online service provider or

interactive service;

8. a violation of any accepted industry standards, whether or not expressly

mentioned in this Policy, designed to prevent interference with privacy rights, prohibit misuse of any system resources (including, without limitation, spamming), or stop illegal or otherwise unethical Internet usage;

9. false data on the signup form, contract, or online application, including, but not limited to, fraudulent use of credit card numbers;

Any known abuse of these policies should immediately be reported to [abuse@balsamwest.net](mailto:abuse@balsamwest.net).

2. Creating, facilitating, transmitting, retransmitting, forwarding or distributing any:
  1. "Spam" e-mail as that term is generally understood;
  2. unwanted bulk e-mail, whether commercial or otherwise, including, but not limited to, bulk mailing of commercial advertising, informational announcements, and political tracts;
  3. e-mail that contains material that otherwise violates or facilitates a violation of this Policy;
  4. e-mail that falsifies or hides or is routed so as to falsify or hide the original sender's address;
  5. e-mail that falsifies any information for the purpose of defrauding the recipient;
  6. any harassing e-mail, whether through language, frequency, or size of messages;
  7. any e-mail "chain letters" or other "pyramid schemes;"
  8. e-mail relayed without the express permission of that site, service, system or network;
  9. e-mail volume deemed by Balsamwest to be excessive;
  10. commercial or bulk e-mail containing false or misleading subject line, statements, claims, or representations;
  11. e-mail that violates any Laws or Regulations; or
  12. e-mail containing forged header information including, but not limited to, any attempt to circumvent the approval process for posting to a moderated newsgroup;
3. Consuming excessive resources of the Services, including CPU time, memory, disk space and session time or using the resource-intensive programs that negatively impact other Users or the performance of Balsamwest' Services, systems or networks;
4. Advertising (including, without limitation, by hosting a website), transmitting, or

otherwise making available any software, program, product, or service that is designed to violate this Policy, which includes the facilitation of the means to Spam, initiation of pinging, flooding, mailbombing, denial of service attacks, and piracy of software;

5. Sharing the Services' passwords or accounts of others without their express consent;
6. Attempting, or facilitating any attempt - whether or not successful - to violate the security

of any system, network, or service (examples of system or network security violations include, without limitation, the following: unauthorized access to or use of data, including any attempt to circumvent User authentication or security of any host, network, or account (including, without limitation, hacking, cracking, port scans, or flood pings); unauthorized monitoring of data or traffic; interfering with service to any user, host, system or network; conducting denial of service attacks; and any attempt to disrupt any service (including, without limitation, distributing or introducing viruses, trojan horses, worms, or other harmful software));

7. Collecting or facilitating collection of replies to messages that violate this policy or that would violate this Policy if they had been sent via the Services;
8. Sending an unsolicited advertisement to a facsimile machine or any other device capable of receiving facsimiles without the prior express consent of the recipient;
9. Making any call that is prohibited under the Telephone Consumer Protection Act (47 U.S.C. 227), the Telemarketing Consumer Fraud and Abuse Prevention Act (15 U.S.C. 1601-1608) or the Federal Trade Commission's amended Telemarketing Sales Rule or that otherwise violates any Laws or Regulations;
10. Invading, or facilitating the invasion of, the privacy of any third party in any way;
11. Harvesting personal information about other Users, including Internet addresses,

without express consent of such Users;

12. Gathering or using, without express consent, contact information that is made available

through the Services for unwanted mass communications, whether through e-mail, direct mail, telephone, or facsimile;

## MONITORING

Balsamwest does not intend to actively monitor the content of websites, e-mail, news groups, or other materials created or accessible over its Services and is not responsible for the content thereof. Balsamwest, however, reserves the right to monitor such Services, and to take any action it deems appropriate based on information discovered in connection with any such monitoring. Balsamwest may investigate incidents involving alleged violations of this Policy, may cooperate with law enforcement and other third parties, and may take any action it deems appropriate based on information discovered in such investigations. User acknowledges that failure by Balsamwest to take action in response to any violation by any User of this Policy will not be deemed a waiver of Balsamwest' right to take action in response to any other violation of this Policy by that or any other User.

## NO WARRANTIES

BALSAMWEST PROVIDES THE SERVICES "AS IS" WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. BALSAMWEST DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY ARISING OUT OF USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. USER IS SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF

THE SERVICES, AND BALSAMWEST HAS NO LIABILITY THEREFOR. BALSAMWEST DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THEY WILL MEET USER'S REQUIREMENTS OR PREVENT UNAUTHORIZED ACCESS. BALSAMWEST MAKES NO WARRANTIES AND IS NOT RESPONSIBLE FOR THE CONTENT OF WEB SITES, E-MAIL, NEWS GROUPS, OR OTHER MATERIALS CREATED (OTHER THAN BY BALSAMWEST) OR ACCESSIBLE OVER ITS SERVICES.

#### LIMITATION OF LIABILITY

IN NO EVENT WILL BALSAMWEST BE LIABLE TO ANY USER OR THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES FOR ACTIONS TAKEN OR NOT TAKEN PURSUANT TO THIS POLICY, INCLUDING, BUT NOT LIMITED TO, ANY LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR OTHER DATA, OR OTHERWISE, EVEN IF BALSAMWEST WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY AFFORDED BALSAMWEST HEREIN ARE IN ADDITION TO ANY LIMITATIONS SET FORTH IN ANY WRITTEN AGREEMENT BETWEEN BALSAMWEST AND THE APPLICABLE USER ("Customer Agreement") AND WILL APPLY WHETHER THE ACTION IN WHICH RECOVERY IS SOUGHT IS BASED (A) IN CONTRACT OR TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY), OR (B) ON ANY LAWS OR REGULATIONS.

#### COMPLAINTS

Please report any activity in violation of this Acceptable Use Policy to: [abuse@balsamwest.net](mailto:abuse@balsamwest.net) or mail to:

Balsamwest Abuse Department  
52 Colonial Square Sylva, NC 28779

Each complaint must include a valid return address. To enable Balsamwest to independently verify each instance of abuse, and where possible, please include in your complaint:

- • The IP address used to commit the alleged violation,
- • The date and time of such violation, and
- Evidence of the violation including, if applicable, the complete text of the objectionable message, including all headers. Please do NOT send excerpted parts of a message. Sending a copy of the entire message, including headers, helps to prevent misunderstandings based on incomplete information, or information used out of context. Full headers demonstrate which path the message has taken, and may enable Balsamwest to determine whether any part of the message has been forged.

#### CUSTOMER AGREEMENTS

User expressly acknowledges that nothing in this Policy will act as a limitation or be deemed a waiver of any of Balsamwest' rights and protections under any Customer Agreement. This Policy shall be read in concert, and not in conflict, with any such Customer Agreement. User acknowledges and agrees that this Policy, in concert with such Customer Agreement, supercedes any other oral or written representations or agreements made by BalsamWest or its representatives regarding the Services.

#### GOVERNING LAW AND FORUM

Subject to any arbitration, forum and choice of law provisions in an applicable Customer Agreement: (i) this Policy will be governed by and interpreted in accordance with the laws of the State of North Carolina, without regard to conflict of laws principles.

#### SEVERABILITY

If any provision of this Policy, or part thereof, is held to be illegal, invalid or unenforceable by a tribunal of competent jurisdiction, then the remaining provisions, or parts thereof, shall remain in full force and effect. To the extent legally permissible, any illegal, invalid or unenforceable provision of this Policy shall be blue-penciled or replaced by a valid provision which will implement the purpose of the illegal, invalid or unenforceable provision.