

OMNETWORKS



A COMPLETE INTERNET SOLUTION  
WWW•DSL•WIFI•T1/T3  
WWW.OMSOFT.COM

## OMVERSE INTERNET ACCESS CONTRACT TERMS

This OmVerse Internet Access Terms of Service ("Contract") is entered into by and between the end user customer ("end user") and Om Networks Inc., dba Omsoft ("Omsoft,") and sets forth the terms and conditions for the OmVerse product line offered by Omsoft. As part of service initiation and ordering, and by the opt-in check box selected at initial order processing, or receiving the OmVerse Internet Service, the end user accepts and abides by this Contract. Other policy documents available at <https://www.omsoft.com> and include our Acceptable Use Policy, Billing Policy, Privacy Policy, and any other materials specifically referenced in this Contract.

### OMVERSE INTERNET ACCESS PRODUCT

Omsoft provides a variety of Internet Access services. The OmVerse product is provided through a third party telecommunications provider, while Omsoft provides account management, billing, customer support, and service assurance. End User recognizes all end user service issues will be evaluated and diagnosed by Omsoft customer service staff, but may be ultimately referred to the third party telecommunications carrier provider for resolution. Omsoft staff has no access to nor ability to look at any DSLAMs, servers, or any other other typical ISP infrastructure to isolate and resolve issues, and is entirely at the schedule of the third party telecommunications services. The third party telecommunications provider may modify or terminate the OmVerse Service at its discretion at any time during the term of the service.

### NO WARRANTIES

The OmVerse Internet Access Service is a general commodity product, best-effort service with no guarantees as to service speeds or availability. The OmVerse Internet Access Services do not include a provision for down time, and is provided "as-is" delivered from the third party telecommunications provider. Omsoft has no control over repair windows, repair time lines, or maintenance activities carried out by the third party telecommunications provider. Omsoft provides alternate Internet Services such as OmFiber and T1 services that do provide for service level agreements that offer service protection, downtime credits, and up time guarantees. Omsoft provides no warranty that the service will be uninterrupted or error free or that any information, software or other material accessible on the service is free from viruses or other harmful components. Omsoft is held harmless and is not liable in any direct, indirect, consequential, or any damages resulting from End Users use of or inability to use access to Internet access products sold by Omsoft to End User.

## **ACCESS SPEEDS NO GUARANTEES**

Internet connectivity capacity is subject to a variety of factors and will including purchased service level, outside plant metallic line conditions (e.g. loop length, line consistency and quality, copper wire age and gauge) or on premise wiring (e.g. failing splices, old copper, bad jacks). Primarily the determining factor, is the end user premise distance from the third party telecommunications' provider central office, wireless network congestion, the upload and download speed of your destination server, and many other factors. The rated capacity on the purchased plan is the queued port speed at the third party telecommunications provider's ISP infrastructure, and this stated capacity is subject to approximately 15% overhead for Internet packet encapsulation. Purchased circuits are provisioned at the rated speed rate for their specific line and come with no minimum speed guarantees. All speed tests to assess connection rate should be done by computer directly connected with a network cable, (also known as hardwired) to the provided Internet equipment, with no other devices connected and no other usage. For instance, an end user purchasing a 6 Mbps plan should see about 5.1 Mbps on a speed test, such as <http://www.fast.com>. For best possible performance Omsoft recommends the use of Gigabit hardwired network cabling, or the 5Ghz WiFi band available through dual band WiFi routers. OmVerse does not have a monthly cap or limit on any bandwidth or downloads, but reserves the right to change this policy at its sole discretion.

## **END USER ACKNOWLEDGMENTS**

The OmVerse Internet Access Service is provided either as 'Consumer' or 'Business' and must be specified at the time of ordering. Business orders will need to provide the business name in addition to primary account holder. If you choose consumer services, the end user is representing that the Services provided to the end under this Contract will primarily be personal/family use. Consumer Services are intended primarily for family use, but may also accommodate after hours or an occasional work from home type scenario. Primary teleworking and employment, for a home based business office, or employment by a third party at a residence should request business service if that is the primary activity of the connection is used as. If not a substantial or regular use for business of the Services, then a Consumer account with an occasional or informal business usage shall not constitute a 'Business Service'). If at any time it is determined by Om Networks and its 3rd party data provider that the end user is using the consumer services as "business services," the end user is responsible for any additional charges and fees applicable to those Business Services, up to and including any early termination or new equipment charge that may apply if such Business Services are not available. Similarly, if you improperly order consumer Service for a business location and this is

identified, you will be liable to pay additional fees applicable to those different services as well as potential termination charges.

By ordering and OmVerse, end user represents they have authorization to order OmVerse at the location it is ordered from. End user represents that they are at least eighteen (18) years of age, have the legal capacity and authority to be a party to the Contract, and that correct and accurate information is provided. End User acknowledges that Omsoft relies on the information to supply the 3rd party data vendor and that providing inaccurate information could result in OmVerse provisioning delays, missed appointment fees, early termination fees, or possibly lead to suspension or termination of OmVerse. End User will notify Omsoft whenever billing information changes; Omsoft requires accurate and correct name, address, telephone number, email address, and billing/payment CC number information on file for end user account. OmVerse may be suspended if account payments fail or account information expires.

## **FEES AND TERM**

Omsoft provides the OmVerse service in conjunction with a 3rd party data provider and carries over to the end user, in full, any miscellaneous fees aside from the normal monthly fee, that would be charged to Omsoft on behalf of the end user. Normal monthly recurring charges may be found here: <https://www.omsoft.com/OmVerse>.

Omverse Internet equipment, depending on the product ordered, carries either, a one time \$100 plus tax equipment fee, OR a \$5 monthly equipment rental fee. Although very rare and highly unlikely, the following miscellaneous fees could accrue to the end user if certain events happen. Omsoft Staff will do its best to inform the end users of the possibility of these fees, and work with the end user as it can to mitigate possible fees, for instance the No Trouble Found fee, or challenging fees with the 3rd party data provider as appropriate, and after the end user has paid the fee as charged and in full. Should Omsoft have a favorable resolution to the credit request with the 3<sup>rd</sup> party data provider, Omsoft will refund in full any miscellaneous fee charged to an end user. Omsoft is in no way liable for any of the miscellaneous fees below as it pertains to the end user Internet connection.

- Early Termination Fee (applies between day 30 and day 365 of the initial OmVerse term): \$250
- Move (if moving OmVerse between day 30 and 365 of the initial OmVerse term): \$100
- Missed Appointment (either at installation or a scheduled service repair visit): \$100
- No Trouble Found (An authorized repair visit where the primary issue or cause is with End User equipment (not the ATT router)): \$100

All OmVerse service plans carry a one year contract term, beginning on the 1st day of the month after the date of the actual installation of the service and ending 12 months later.

The end user will experience fixed monthly price stability, and acknowledges and accepts responsibility for all monthly recurring charges during the term, and any applicable miscellaneous charges should they apply from the 3rd party data provider. Should end user not be satisfied with the OmVerse service, cancellation without penalty may be requested within the first 30 days of the installation of the product. This window begins with the installation date of the service and ends 30 days after that period. All equipment must be returned to Omsoft's customer support office at the address below.

Thereafter service extends on a month to month basis, Internet access continues to be delivered to the end user on a month-to-month basis at our current general price for such Services. Internet access prices may be increased as circumstances dictate, with at least a 60 day notice to the end user. End users may contact Omsoft Billing Department and recommit to a new "1 Year Term" Plan, to preserve price stability, and current rate, provided Omsoft is capable of extending a similar one year term rate to the End User, and maintains its relationship with the 3rd party data provider.

### **BILLING PRACTICES**

Omsoft handles all payments for OmVerse services electronically via an on file credit card or debit card, additional payment options are available provided a valid credit card is on file with the account. The first bill for OmVerse service will come at the beginning of the month after the OmVerse install completes for the end user. As Omsoft bills "ahead" the first bill sent at the beginning of the month is for that current month, and will include the prorated partial amount due for the past month just completed, plus any equipment fees, and the full month charge for service going forward. Depending on the end user plan, this initial charge could be \$125 or more. Omsoft accepts a 3 month payment plan to pay the \$100 equipment fee if it applies to your service order, and if requested in writing to [billing@omsoft.com](mailto:billing@omsoft.com). For more information see the Omsoft billing policy at <https://www.omsoft.com/policy/ar>

### **SERVICE TERMINATION AND CHANGES**

All service terminations must be provided in written form including the name, date, service address and the date the End User would like the service to end. Written notice may be delivered via email, in person, or postal mail. Omsoft will not honor any cancellation requests that do not come via the established channels above. OmVerse service terminations can take up to 30 days to complete, and end user billing for the OmVerse service will end, and be prorated to, the date that 3rd party data provider closes out the service and billing to Omsoft. Omsoft will do its best to accommodate desired service termination dates, but actual cancellation happens within 30 days of the written notice, subject to the terms and schedules of the 3rd party data provider. Omsoft will prorate the amount charged in that final month of service to the cancellation date on

the bill Omsoft receives from the 3rd party data provider.

Written cancellations may be provided to

EMAIL:

[billing@omsoft.com](mailto:billing@omsoft.com)

POSTAL/WALK IN:

Omsoft

1930 5th ST Suite C

Davis CA 95616

End user may cancel their service before the one year term completes, but is subject to and agrees to pay in full, the \$250 early termination fee and return the equipment. Omsoft reserves the right to terminate end users for non-payment, or reported violations to its Acceptable Use Policy (AUP) which may be found at <https://www.omsoft.com/policy/aup> at its sole discretion. End user accounts canceled by Omsoft for these reasons, which are under a contract term, are subject to the early termination fee, payable in full of \$250.

The 3rd party data provided we partner with to provide OmVerse manages End User locations through the equipment provided, and services may not be moved to a new location without new equipment. Should a new tenant or resident at your location wish to retain service after the initial user moves out, Omsoft should be able to accommodate that request, provided the new tenant agrees to this acceptable use policy, and may or may not initiate a new one year term depending on the circumstances.

### **HOLD HARMLESS**

Omsoft will not be liable for any delays, damages or failures in performance due to causes outside its influence, including, but not limited to, acts of a governmental body, acts of God, acts of third parties, strikes or other labor-related disputes, anything outside the direct capabilities of staff, or an inability to obtain necessary equipment or services. End user agrees that it shall defend, indemnify, and hold Omsoft harmless from any and all demands, liabilities, losses, costs and claims, including attorney's fees asserted against Omsoft, its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold to the End User, its agents, employees or assigns. End User agrees to defend, indemnify and hold harmless Omsoft against liabilities arising out of; (1) any injury to person or property caused by any products or services sold or otherwise distributed in connection with Microsoft's services (2) any material supplied by End User infringing or allegedly

infringing on the proprietary rights of a third party; (3) copyright infringement and (4) any defective products sold to End User from Omsoft. Omsoft is not liable in any way for any lost productivity or business while using any of its products or services.

### **ASSIGNMENT AND SURVIVAL**

End user agrees not to assign or otherwise transfer this Agreement in whole or in part, without the express written permission from Omsoft billing department staff. Omsoft may assign this Agreement without notice and end user agrees to make all payments as directed to the new vendor. All obligations of the parties under this Agreement, which, continue beyond the termination, cancellation or expiration of this Agreement, including without limitation, those provisions relating to No Warranties, Limitations of Liability, survives such termination, cancellation, or expiration.

### **JURISDICTION AND COMPLIANCE**

This Agreement will be governed by and interpreted in accordance with the laws of the State of California, exclusive of its choice of law rules. Should any provision of this Agreement be found to be invalid, the remainder of articles shall remain in effect. Except as otherwise required by law, including California laws relating to consumer transactions, any cause of action or claim you may have with respect to the Service must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action is barred.

Omsoft's failure at any time to insist upon strict compliance with any of the provisions of this Agreement in any instance shall not be construed to be a waiver of such terms in the future. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the unenforceable portion shall be construed as nearly as possible to reflect the original intentions of the parties.

### **AGREEMENT**

This Agreement, including all policies posted on Omsoft's website, which are fully incorporated into this Agreement by reference, constitutes the entire agreement between the end user and Omsoft with respect to the subject matter hereto and supersedes any and all prior or contemporaneous agreements whether written or oral. Any changes by you to this Agreement, or any additional or different terms in your purchase orders, acknowledgments or other documents, written or electronic, are void.

**SIGNATURES and AUTHORIZATIONS**

This agreement is represented in full force under the laws of the State of California and is entered between Om Networks Inc. dba Omsoft and its end user customer \_\_\_\_\_ . (PRINT NAME)

The End User Customer acknowledges and agrees that their one year term is in effect from their service installation activation date until the one year anniversary of that date.

Initial\_\_\_\_\_

The End User Customer acknowledges and agrees this Agreement is in effect until 30 day written notice is provided for service disconnection, via email, postal mail, or walk-in.

Initial \_\_\_\_\_

End User Customer

\_\_\_\_\_ (SIGNATURE)

\_\_\_\_\_ (DATE)