

Terms of Service / Acceptable Use Policy

Use of OMU service(s) constitutes a customer's complete agreement to become familiar with and comply with all of our policies. The customer agrees to pay for all services rendered. This policy is a binding agreement and serves as a customer's terms of service. A customer's use of our network and systems constitutes their complete acceptance of this agreement in its entirety including any modification made during their term of service. Customers are responsible to become familiar with our policies and regularly review this page for changes.

General Use

This Agreement contains the terms and conditions between Owensboro Municipal Utilities (OMU) and the individual or entity purchasing (Customer) OMU products and/or services (Service(s)).

Unacceptable Activities

Customers connected to the OMU network or using its services may not engage in any of the following:

- Hacking -to gain illegal or unauthorized access to a file or network.
- Cracking -to make unauthorized use of a computer, especially to tamper with data or programs.
- Flooding -to send TCP connections requests faster than a machine can process them
- DoS (Denial of Service) Attacks -an attack whose purpose isn't to break into a system, but instead to simply "deny" anybody else from using the system
- DDoS (Distributed Denial of Service) Attacks -the use of numerous computers to carry out a DoS attack.
- SPAM or UCE (Unsolicited Commercial Email), to send or create it.
- Spoofing -the creation of TCP/IP packets using somebody else's IP address
- Any other activity which constitutes a violation of any applicable law or regulation or which would constitute a breach or violation of the terms of any agreement between OMU and another party for dedicated internet access to serve customers.

Customers caught engaging in such behavior will be immediately terminated without refund and may be subject to criminal prosecution. OMU will cooperate fully with all investigations by the appropriate legal authorities.

- **Copyright Violations**

The Digital Millennium Copyright Act ("DMCA") sets forth the requirements for valid copyright infringement notification. If a copyright owner or a person authorized to act on the copyright owner's behalf (the "Claimant") would like to notify OMU of an infringement of their copyright, the DMCA requires:

1. Notification is sent to OMU's designated agent. The following avenues are acceptable for this notification:

- Email to abuse@OMUonline.net
- Mail or courier to OMU Attention: Abuse, PO Box 806, Owensboro, KY, 42302

2. The following information must be included in the notification:

- 1. A physical or electronic signature of the copyright owner or a person authorized to act on the copyright owner's behalf (the "Claimant")
- 2. Identification of the copyrighted work(s) claimed to have been infringed
- 3. Identification of the material claimed to infringe the copyright(s), and enough information for OMU to locate it
- 4. The Claimant's name, address, and telephone number(s)

- 5. A statement that the Claimant has a good faith belief that use of the disputed material is not authorized by the copyright owner or his agent
- 6. A statement, under penalty of perjury, that the information in the notification of copyright infringement is accurate and that the Claimant is authorized to act on behalf of the copyright owner.

SPAM Policy

OMU does not practice, participate in nor condone SPAM of any sort. Offenders of SPAM will be notified in writing by OMU to cease and desist of such activities. Failure to comply will result in termination of mail services.

P2P/FileSharing Policy

It is the policy of OMU that the OMU's network connections may not be used to violate copyright laws. The unauthorized reproduction of copyrighted materials is a serious violation of OMU's Internet Acceptable Use Policy, as well as the U.S. Copyright Laws, as discussed above.

File sharing (P2P) programs include but are not limited to:

KaZaa
iMesh
Limewire
Morpheus
Gnutella
E-Donkey
Bit Torrent

OMU has placed into effect a limit of 5 kilobit per second (Kbps) on the inbound and outbound traffic generated by Peer-to-Peer file-sharing applications.

This restriction is necessary to support the primary usage of the network: residential and enterprise computing. The data network must be available for OMU's customer's and staff to use and for essential daily operations. While OMU does have the option to entirely shut off access to Peer-to-Peer applications, that option is not currently being exercised.

OMU realizes this can result in the delay of downloading files from the internet; however, Peer-to-Peer applications are an incredible consumer of bandwidth and will take as much bandwidth as available, constricting available bandwidth for other applications.

If an artist, author, publisher, the Recording Industry Association of America (RIAA), the Motion Picture Association of America (MPAA), or a law enforcement agency notifies OMU that a customer is violating copyright laws, OMU will provide to the relevant officers information in the form of Internet Protocol (IP) address information and any information from logs to assist in the investigation of the complaint. In some cases, violations of this policy can result in suspension or revocation of network access privileges without refund of network access fees and/or civil or criminal prosecution under state and federal statutes.

Technical Support Desk Policy

The Technical Support Department of OMU is available to assist customers with the technical aspects of getting connected to and using the Internet. Technical support is available at no charge to OMU customers with an account in good standing.

The following Operating Systems are supported by OMU:

Windows 98, NT, ME, 2000, XP
Macintosh OS 9 and up

The following email software is supported by OMU:

Outlook
Outlook Express
Netscape Mail
Mozilla Mail
Mozilla Thunderbird
OMU Web mail (Web mail is limited in functionality and therefore is not to be used as the primary means of email.)

The following Services are covered by this policy:

I. Connectivity

Connectivity items covered by this policy include:

1. Creating an internet connection
2. Installing and setting TCP/IP attributes
3. Network protocols

Technicians will assist customers in configuring their computers to connect to the Internet via OMU. Customers are responsible to

ensure that their computer has the necessary hardware and software in good working order to use the Internet.

II. Browsing the Internet

All major Internet browser software is supported for general configuration and operation, including homepage setting, proxy configuration, and security settings. If the software does not operate as designed the customer will be advised to:

1. Re-install the software
2. Contact the support service of the software product.

III. Email

The supported email software is supported for general configuration and operation, including server settings and basic email functionality. If the software does not operate as designed the customer will be advised to:

1. Re-install the software
2. Contact the support service of the software product.

The following Services are excluded by this policy:

Due to the nature of computers, networks, telecommunications and the popularity of the Internet today, some issues may be deemed to be outside OMU's control and are not covered by this policy. These include, but are not limited to: hardware failure and software failure.

I. Diagnosing Customer PC Failures

Diagnosis of a computer issue over the telephone is limited and based on the information returned from the customer. If at any time in the process it seems apparent that the customer's computer has either a hardware or software issue the client will be informed and advised to take their computer to a local computer technician for a thorough analysis and servicing. This includes failure of any hardware on the customer's system and the failure of the operating system to operate correctly.

II. Tutorials

This technical support policy does not cover training customers on how to use the Internet. Customers are expected to have basic knowledge of the Internet.

III. Third Party Software

Third party software is not supported by OMU's free technical support. Correct installation and configuration of any installed software remains the responsibility of the customer and the software provider.

If a connectivity, browsing, or email issue is deemed to be affected by third party software, the customer will be advised to contact the software manufacturer for assistance.

This includes, but is not limited to:

1. Antivirus programs
2. Download accelerators
3. Firewalls
4. Web design programs
5. Games
6. Software and programs downloaded from the Internet
7. Operating System issues
8. Any non-Internet software
9. Any MS Office feature (apart from the e-mail features of Outlook)
10. Internet Explorer Content Advisor password issues

IV. Viruses

OMU strongly urges all customers to protect themselves from contracting and spreading computer viruses by:

1. Obtaining an antivirus program
2. Keep the antivirus files up to date
3. Exercise caution whenever opening an email attachment.

Virus recovery is not covered by OMU's free technical support and customers contacting OMU after they acquire a virus will be advised of how they can obtain an antivirus program. **Any user found to have a virus on the OMU network will be subject to immediate cessation of service. Customer will be notified of the cessation of service with any suggestions OMU may have to correct the condition. A customer shall not be entitled to any credit or refund of service charges for any period of cessation of service which arises from any virus acquired by customer's use of service.**

Equipment Return

The wireless equipment, including the radio and antenna (Radio) will remain the property of OMU. Customers may not assign, rent, or transfer the Radio or their rights or duties under this Agreement without OMU's written consent. Monthly internet charges will continue to be assessed to a customer's bill until the customer returns the Radio to OMU. Failure to return the Radio in usable condition, upon account cancellation will result in customer being billed for cost of the radio including peripheral devices that support ancillary services. While using the OMU service the customer is responsible for the OMU equipment and agrees to obtain

and keep homeowner's or renter's insurance that will cover damage to or the loss of the OMU subscriber unit.

Automatic Account Renewal

All accounts are automatically renewed and billed on the customer's renewal date unless they are cancelled prior to the renewal date and in accordance with our cancellation policy.

Reporting Network Abuse

Any party seeking to report any abuse of OMU's policy may contact abuse@OMUonline.net or call OMU at (270) 926-3200 x 306

Modification

OMU reserves the right to add, delete, or modify any provision of its Terms of Use at any time without notice.

Actions Taken by OMU

Failure by a customer to meet or follow any of the above Terms of Use is grounds for account deactivation. OMU reserves the right to remove any account without prior notice.

When OMU becomes aware of an alleged violation of its Terms of Use, OMU will initiate an investigation. During the investigation, OMU may restrict a customer's access in order to prevent further potentially unauthorized activity. Depending on the severity of the violation, OMU may, at its sole discretion, restrict, suspend, or terminate a customer's internet account and/or pursue other civil remedies.

OMU does not issue credits for outages incurred through service disablement resulting from Terms of Use violations.

OMU customers agree to indemnify and hold harmless OMU from any claims resulting from the use of our services that damages them or any other party. The OMU service is provided on an as is, as available basis without warranties of any kind, either express or implied, including, but not limited to, warranties of merchantability, fitness for a particular purpose or non-infringement. OMU expressly disclaims any representation or warranty that the OMU service will be error-free, secure or uninterrupted. No oral advice or written information given by OMU, its employees, licensors or the like, will create a warranty; nor may you rely on any such information or advice. OMU and its partners and suppliers will not be liable for any cost or damage arising either directly or indirectly from any transaction or use of the service.

Limitation of Liability

Limitation of Liability and Disclaimer of Warranties. OMU's liability arising out of OMU's provision of Services under this Agreement, delays in restoration of Services under this Agreement or any other telecommunications services, arising out of accidents, mistakes, omissions, interruptions, errors, or defects in transmission, or delays caused by regulatory or judicial authorities shall be subject to the limitations set forth below. IN NO EVENT SHALL OMU BE LIABLE TO CUSTOMER OR ANY OTHER THIRD PERSON OR ENTITY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, OR SERVICES PROVIDED UNDER THIS AGREEMENT UNDER ANY CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR OTHER THEORY FOR ANY LOST PROFITS, LOSS OF BUSINESS, LOST REVENUES, OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT, ACTUAL OR PUNITIVE DAMAGE OR ANY KIND, ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER OR NOT OMU OR CUSTOMER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE FORSEEABLE, EXCEPT AS EXPRESSLY PROVIDED HEREIN. THIS LIMITATION OF LIABILITY APPLIES TO ALL SERVICES PROVIDED BY OMU UNDER THIS AGREEMENT. FURTHER, FOR ANY LIABILITY RELATED TO THE PURCHASE OF SERVICES, OMU IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATED DOLLAR AMOUNT PAID BY CUSTOMER FOR THE CURRENT MONTHS SERVICES UNDER THIS AGREEMENT.

Unless otherwise provided, OMU MAKES NO WARRANTY TO THE CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, OR FITNESS FOR ANY PURPOSE OR ANY SERVICE PROVIDED UNDER THIS AGREEMENT OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY OMU ARE HEREBY EXCLUDED AND DISCLAIMED. FURTHER, OMU DOES NOT WARRANT OR MAKE REPRESENTATIONS ABOUT REGARDING THE USE OF BANDWIDTH IN TERMS OF ACCURACY, RELIABILITY OR OTHERWISE. For the purpose of this section, the term "OMU" shall be deemed to include OMU's affiliates, shareholders, directors, officers, employees, and any other person or entity assisting OMU in its performance pursuant to this agreement. You agree that your sole remedy and OMU Internet's maximum liability under the law is a refund of your current month's internet access fee.

Governing Law and Jurisdiction

The validity and effect of these Terms shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws principles. The parties expressly disclaim application of the United Nations Convention on Contracts for the International Sale of Goods. ANY SUIT, ACTION OR PROCEEDING CONCERNING THE WEB SITE, ITS USE, THESE TERMS AND CONDITIONS, OR CONCERNING ANY OTHER POLICY OR PROCEDURE OF THE COMPANY REGARDING USE OF THE SERVICES, MUST BE BROUGHT IN A STATE OR FEDERAL COURT LOCATED IN DAVIESS COUNTY, KENTUCKY, AND YOU HEREBY IRREVOCABLY CONSENT TO THE JURISDICTION OF SUCH COURTS (AND OF THE APPROPRIATE APPELLATE COURTS THEREFROM) IN ANY SUCH SUIT,

ACTION OR PROCEEDING; AND YOU IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH YOU MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT ANY SUCH SUIT, ACTION OR PROCEEDING WHICH IS BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

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OMU shall not be liable hereunder for any failure of its performance due to causes beyond its reasonable control, including without limitation, acts of god; fire, explosion; cable cut; interruption of dedicated internet service from a third party provider; vandalism; flood; storm or any other similar catastrophe; any law, order or regulation or the United States government or of any governmental, judiciary, regulatory, or civil or military Authority having jurisdiction over the parties; national emergencies; insurrections; riots; wars; strikes, lockouts, or work stoppages.

Term of Service

(a) The term of this Agreement shall commence on the Activation Date and continue for the period of six (6) months, unless terminated earlier by either party as provided herein ("Term"). The Term of this Agreement shall be automatically renewed for additional Term Length periods at OMU's then current fees, unless either party gives the other party written notice of its desire not to renew this Agreement at least thirty (30) days prior to the beginning of a new renewal period.

(b) Either party may immediately terminate this Agreement and/or any Work Order issued under it if: (i) the other party does not cure a material breach of this Agreement within thirty (30) days of written notice of such breach; or (ii) the other party is subject to a bankruptcy proceeding, becomes insolvent or terminates or suspends its business and fails to remedy such termination or suspension within thirty (30) days thereafter.

(c) Customer may terminate this Agreement at any time upon thirty (30) day written notice to OMU.

(d) Upon expiration or termination of this Agreement, Customer's access to the Selected Services, shall immediately terminate.

(e) Notwithstanding anything to the contrary, upon expiration or any termination of this Agreement: (i) all of Customer's payment obligations that were incurred prior to the effective date of expiration or termination shall become immediately due and payable; (ii) Customer shall promptly cease all use of the Selected Services.

Miscellaneous.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement shall remain in full force and effect. Headings used herein are for the convenience only and shall not affect the interpretation of this Agreement. All references in this Agreement to "days" shall mean calendar days. No failure to exercise and no delay in exercising on the part of either Party, any right, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein. Each Party to this Agreement shall be responsible for its own performance under this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be an original, and all of which, taken together, shall constitute one and the same Agreement.