

COMPANY PROFILE

Please complete the interactive form and print, sign and email it to accounting@omnimetrixconnect.com, or fax it to 770.209.0719. (Adobe Reader 8 or newer required. You may download the latest version [here](#)).

Legal Business Name of Applicant: _____

DBA: _____
(If different from Legal Business Name)

Phone: _____ **Fax:** _____

Street Address: _____

City: _____ **State:** _____ **Zip:** _____

Years in Business: _____ **State Incorporated:** _____ **Date Formed:** _____

☐ Corporation ☐ Partnership ☐ Sole Proprietorship ☐ LLC ☐ Other _____

List names of any affiliated, subsidiary or parent companies of Applicant: _____

Name of Principal or Owner: _____

Title: _____ **Phone:** _____ **ext.:** _____

Business Type: _____ **Federal Tax ID #:** _____ **D&B #:** _____

BILLING INFORMATION

Contact Name: _____ **Email:** _____

Title: _____ **Phone:** _____ **ext.:** _____ **Fax:** _____

Billing Address: _____
(Required if different from street address)

City: _____ **State:** _____ **Zip:** _____

Preferred method of payment: ☐ Check ☐ Credit Card

We require PO Numbers for renewal billing? ☐ Yes ☐ No

Renewal billing PO contact information: **Name:** _____ **Email:** _____

SALES TAX INFORMATION

Exempt from Sales Tax? ☐ Yes* ☐ No

*Please send copy of exemption certificate(s) along with this form.

*All new customers must send a copy of W9 form

Article 1 – Products and Services

1.1 Acceptance. The sale of the products and services described with this document are expressly made solely on the Terms and Conditions (the "Terms and Conditions" or the "Agreement") contained herein, and take precedence over any additional terms, unless accepted by OmniMetrix®, LLC in writing. By placing an order for OmniMetrix's products and/or services, Client is agreeing to these Terms and Conditions. If Client is participating in any OmniMetrix promotion, the terms of such promotion are incorporated herein by reference and shall supersede these Terms and Conditions to the extent of any conflict.

1.2 Inspection of Products. Client shall inspect and accept or reject products upon receipt. If Client fails to notify OmniMetrix in writing of its rejection and the reasons for such rejection within fifteen (15) days of receipt, Client will be deemed to have accepted such shipment and waives any right to reject the products at a later date.

1.3 Access to Applications. OmniMetrix's remote monitoring and data management services are provided through OmniMetrix's proprietary software applications (the "Applications"). If Client has placed an order for OmniMetrix's remote monitoring or data management services, OmniMetrix hereby grants Client a limited, non-exclusive, non-transferable and revocable license to remotely access and use the Applications. Client acknowledges and agrees that the foregoing license only grants Client the right to use and access the Applications and does not entitle Client to receive a copy of the Applications or any other software of OmniMetrix. Client agrees that it will comply with user guides, instructions, manuals, help files and other documentation of OmniMetrix, which may be amended by OmniMetrix from time to time, in connection with Client's use of the Applications.

1.4 Additional Equipment and Services. Client shall be solely responsible for obtaining any equipment, supplies or services that are not included in or made a part of OmniMetrix's products or services that may be required for Client to access and use such products and services.

1.5 Product Maintenance. OmniMetrix may revise, update or upgrade any Firmware in its delivered products at any time, without prior notice, but will endeavor to provide notice wherever possible. OmniMetrix is not obligated to provide any updates or upgrades to OmniMetrix products. Any future Firmware release, update, or other addition to functionality of OmniMetrix products shall be subject to the terms of this Agreement, unless OmniMetrix expressly states otherwise.

1.6 Data Retention. Client acknowledges and agrees that it, not OmniMetrix, is solely responsible for maintaining copies or backups of any critical data, information and/or records which Client or its regulators requires to be retained, including product or equipment telemetry or usage data. Without limitation, Client understands that OmniMetrix may limit access to or permanently delete data or information accessible via the Applications, or produced by or in connection with OmniMetrix's products or services, including purchased equipment, (1) upon termination or expiration of these Terms and Conditions for any reason, (2) upon Client's failure to promptly pay any amounts when due or owed; (3) upon 90 days' advance notice by OmniMetrix for any reason; or (4) in any case, when product or equipment telemetry or usage data is 5 years old or older.

Article 2 – Payment and Fees

2.1 Payment Terms. All invoices are due and payable thirty (30) days from date of invoice. A late fee equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by applicable law shall be due with respect to any invoice that is not timely paid.

2.2 Reservation of Rights. OmniMetrix reserves the right to change the terms of payment at any time and require full or partial payment in advance. OmniMetrix reserves the right to ship any order on a C.O.D. basis or to cancel any order prior to shipment. OmniMetrix also reserves the right to recover from Client any additional fees or expenses that arise from Client's cancellation of an order or the failure to make timely invoice payments.

2.3 Billing for Services. Monitoring service and billing for such service will automatically renew beyond the initial period (typically one year) unless terminated by either party with proper notification, as defined in Article 12. Payment terms for data monitoring services are defined on quotations submitted by OmniMetrix.

2.4 Taxes. All prices are exclusive of taxes or import/export duties (including brokerage fees) applicable to the product or services furnished to Client. Where applicable, such taxes shall be added to the invoice and paid by Client, except when proper tax exemption certification is provided to OmniMetrix. Client is responsible for all import and export duties.

2.5 Reconnection Fees. Fees apply to reconnect any monitor that has been removed from service (SIM deactivated) and also apply if any functional monitor is transferred to a new location. All fees for reconnection and transfer of any functional monitor shall be at OmniMetrix's then-current rates.

2.6 Costs of Collection. Client shall be responsible for attorneys' fees, courts costs and other expenses incurred by OmniMetrix in pursuing and collecting any overdue payments from Client.

2.7 Returns of hardware are not permitted other than for warranty repair or paid repairs. Following the first twelve (12) months of the parties' business relationship, if the customer cancels our monitoring services a credit will be applied to the Client's account for any unused portion of monitoring services that can be applied to future purchases of OmniMetrix products and services. Refunds will not be issued under any circumstances for unused periods of cancelled monitoring services.

2.8 Restocking Fees. OmniMetrix reserves the right to charge a restocking fee of up to twenty-five (25%) percent of the purchase price of a product in the event Client cancels any product order.

Article 3 – Warranties

3.1 New Products. OmniMetrix warrants, for a maximum of twelve (12) months from date of shipment, new products shall be free from defects in material and workmanship under normal use and will conform to OmniMetrix's applicable written specifications subject to the limitations set forth in this Article 3. OmniMetrix's obligation for a breach or violation of the foregoing warranty shall be limited to either repairing or replacing any new product, provided that as conditions precedent to any obligation of OmniMetrix under this Section 3.1: (a) Client shall provide written notice of the defect to OmniMetrix within a reasonable time after Client discovers the defect; (b) Client must return OmniMetrix's products to OmniMetrix, with freight charges prepaid; and (c) OmniMetrix must determine, in its reasonable discretion, that the products are defective. OmniMetrix shall decide whether to repair or replace any new product covered by this warranty. Any repair or replacement shall not extend the original warranty period, unless otherwise noted or agreed to in writing by OmniMetrix. This warranty shall not apply to products OmniMetrix determines to have been subjected

to operational and/or environmental conditions by the Client in excess of defined specifications, or subjected to misuse, improper installation, alteration/repair, or damage. This warranty also does not cover products returned by Client that are damaged in shipment, whether it be the fault of the carrier or due to insufficient packaging, and it is the responsibility of Client to file claims with its carrier for products received damaged. OmniMetrix recommends using the original shipping box or similar packaging that requires individual packaging for each product returned and offers proper protection of the merchandise during transportation.

3.2 Repairs. OmniMetrix warrants that any repaired products shall be free from defects in material and workmanship under normal use for a period of thirty (30) days from date of shipment. OmniMetrix's obligation for a breach of the foregoing warranty shall be limited to either repairing or replacing any repaired product, provided that as conditions precedent to OmniMetrix's obligations under this Section 3.2: (a) Client shall provide written notice of the defect to OmniMetrix within a reasonable time after Client discovers the defect; (b) Client must return OmniMetrix's products to OmniMetrix, with freight charges prepaid; and (c) OmniMetrix must determine, in its reasonable discretion, that the repaired products are defective. OmniMetrix shall decide whether to repair or replace any repaired product covered by the warranty. This warranty shall not apply to repaired products OmniMetrix determines to have been subjected to operational and/or environmental conditions by the Client in excess of defined specifications, or subjected to misuse, improper installation, alteration/repair, or damage. This warranty also does not cover products returned by Client that are damaged in shipment, whether it be the fault of the carrier or due to insufficient packaging, and it is the responsibility of Client to file claims with its carrier for products received damaged. OmniMetrix recommends using the original shipping box or similar packaging that requires individual packaging for each product returned and offers proper protection of the merchandise during transportation.

3.3 RMA Numbers. Return Material Authorization (RMA) numbers applied to products scheduled to be returned to OmniMetrix are valid for 60 days, after which time the RMA number shall expire.

3.4 Limitations. The warranties set forth in this Article 3 may be asserted only by the Client, are not transferable and are expressed in lieu of all other warranties.

3.5 Disclaimer. **EXCEPT AS SET FORTH IN SECTIONS 3.1 AND 3.2 ABOVE, ALL PRODUCTS AND PARTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND OMNIMETRIX MAKES NO WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO ANY PRODUCTS OR PARTS, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS AND WARRANTIES RELATING TO DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR A PARTICULAR PURPOSE. OMNIMETRIX HEREBY FURTHER DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO ANY SERVICES PROVIDED TO CLIENT OR OTHERWISE DESCRIBED HEREIN, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR A PARTICULAR PURPOSE OF SUCH SERVICES. OMNIMETRIX MAKES NO WARRANTIES OR REPRESENTATIONS, AND ACCEPTS NO LIABILITY, WHETHER EXPRESS OR IMPLIED, REGARDING AVAILABILITY OR CONTINUED AVAILABILITY, QUALITY, ACCURACY, COMPLETENESS, OR RETENTION OF ANY DATA OR INFORMATION, INCLUDING DATA OR INFORMATION ACCESSIBLE THROUGH OMNIMETRIX SERVICES OR WITH RESPECT TO ANY PRODUCT OR PARTS, AND INCLUDING TELEMETRY OR OTHER USAGE DATA AVAILABLE FROM PARTICULAR PRODUCTS, EQUIPMENT OR PARTS.**

Article 4 – Shipping and Delivery

FOB Point and Delivery. Unless otherwise specified, all sales are made FOB point of shipment, at which time title passes to Client. OmniMetrix's liability to delivery ceases upon transfer of products to carrier at shipping point. All delivery or shipment dates are estimates only. OmniMetrix reserves the right to make partial shipments of product and any delay in delivery of outstanding product shall not relieve Client of its obligation to accept and pay for the remaining deliveries.

Article 5 - Limitations

5.1 Types of Damages. **IN NO EVENT SHALL OMNIMETRIX BE LIABLE FOR OR OBLIGATED TO PAY ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING LOSS OF PROFITS OR LOSS OF BUSINESS), WHETHER SUCH DAMAGES ARE IN THE NATURE OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE AND WHETHER OR NOT OMNIMETRIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE OTHERWISE FORESEEABLE.**

5.2 Limitation of Liability. **OMNIMETRIX'S TOTAL LIABILITY FOR ANY CLAIM OR LOSS SHALL BE LIMITED AS FOLLOWS: (A) OMNIMETRIX'S TOTAL LIABILITY WITH RESPECT TO ANY PRODUCT OR PART SHALL NOT EXCEED THE TOTAL PRICE APPLICABLE TO THE PRODUCT OR PART THAT GIVES RISE TO THE CLAIM OR LOSS, AND (B) OMNIMETRIX'S TOTAL LIABILITY WITH RESPECT TO SERVICES SHALL NOT EXCEED THE AMOUNT PAID BY CLIENT FOR ANY SERVICES DURING THE TWO (2) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM OR LOSS AROSE.**

Article 6 – Confidentiality and Intellectual Property

6.1 Confidential Information. Client agrees that neither Client nor any of its affiliates, shareholders, members, managers, officers, directors, employees, agents, contractors and subcontractors will at any time disclose to any person or entity or use for its or their own benefit, Confidential Information without the prior express written consent of OmniMetrix. Upon termination of the discussions and/or business relationship between Client and OmniMetrix, Client agrees to promptly deliver to OmniMetrix any Confidential Information, including documents, schematics, specifications, disks, and software reflecting or containing Confidential Information, and all copies of such Confidential Information. As used herein, "Confidential Information" shall include, but is not limited to, any and all information which is not public knowledge and which is proprietary to OmniMetrix or its affiliates or other third parties such as business and marketing plans, pricing and marketing policies and practices, financial information, trade secrets of OmniMetrix and its affiliates and their activities and information or other proprietary information relating to know-how, purchasing, finance, marketing and selling activities.

6.2 Intellectual Property. Ownership of all applicable copyrights, trade secrets, trademarks, patents, know-how, and other intellectual property rights in and to the Confidential Information of OmniMetrix, the Applications and the other products and services of OmniMetrix shall remain vested in OmniMetrix, and Client shall not acquire any ownership or other rights therein. Client shall not use, copy, modify, enhance, reverse engineer, reverse assemble, decompile, reverse compile,

disassemble, translate, make extras, or in any way alter the Applications, products or services of OmniMetrix.

6.3 Equitable Relief. Client acknowledges that a breach or violation of this Article 6 would cause irreparable harm to OmniMetrix and that monetary damages would be insufficient to remedy such harm. Accordingly, Client agrees that in the event of any actual or threatened breach or violation of this Article 6, OmniMetrix shall have the right to obtain an injunction or other equitable relief, without the necessity of posting bond or similar security. OmniMetrix's rights to equitable relief pursuant to this Section 6.3 shall be in addition to such other rights and remedies as OmniMetrix may have at law or in equity.

Article 7 - Third Party Services

7.1 Third Party Carrier Services. In connection with the provision by OmniMetrix of wireless monitoring services to Client, OmniMetrix utilizes wireless communication services (which may include cellular, satellite and other forms of wireless communications) provided by third party carriers. Client acknowledges and agrees that it has no contractual relationship with any underlying wireless service carrier. Client is not a third party beneficiary of any agreement between OmniMetrix and an underlying carrier and no underlying carrier shall have any legal, equitable, or other liability of any kind to Client.

7.2 Interruption of Communication Services. Client acknowledges and agrees that wireless communication services provided by third party carriers may be temporarily unavailable, interrupted, curtailed or limited because of atmospheric, terrain, or other natural or artificial conditions and may be temporarily interrupted or curtailed due to usage concentrations, modifications, upgrades, relocation and repairs. Neither OmniMetrix nor any of its third party carriers shall be responsible for the unavailability of or interruptions to such services or the inability to use the services of a third party carrier. Client acknowledges and agrees that neither OmniMetrix nor any of its third party carriers can guarantee the security of wireless transmissions made using the wireless communication services and that OmniMetrix and its third party carriers shall not be liable for any lack of security relating to the use of the wireless communication services. Wireless communication services are available only within the markets, geographies and current technologies (2G, 3G, LTE, etc.) served by OmniMetrix's third party carriers, which may change from time to time. Client waives all existing and future rights and claims against OmniMetrix relating to or resulting from the unavailability or interruption of wireless communication services.

7.3 Hold Harmless. Client shall hold harmless the underlying wireless service carrier and its officers, employees, and agents against any and all claims, including, without limitation, claims for libel, slander or any property damage arising in any way, directly or indirectly, in connection with OmniMetrix's agreement with such carrier or the use, failure to use, or inability to use the service except where the claims result from the underlying carrier's gross negligence or willful misconduct. This provision shall survive the termination of OmniMetrix's agreements with the underlying carrier and with Client.

Article 8 - Reseller and Distributor Arrangements

8.1 Payment by Reseller. If Client is purchasing from a reseller or distributor rather than directly from OmniMetrix, Client's license to use OmniMetrix's products and services is contingent upon payment to OmniMetrix of the applicable fees owed by such reseller or distributor to OmniMetrix. In the event that any such reseller or distributor fails to make payment of such fees to OmniMetrix, then OmniMetrix may, in its discretion, suspend or terminate the use of OmniMetrix products and services. Client agrees to hold OmniMetrix harmless for any such suspension or termination. Client acknowledges and understands that it may be referred to as an "end user" in its agreements with any reseller or distributor.

8.2 Conflict with Reseller Agreements. To the extent that these Terms and Conditions conflict with any agreement, order form or other contract between the Client and any reseller or distributor, the provisions of these Terms and Conditions shall control.

8.3 Transfer of Ownership. OmniMetrix has the right to transfer our business relationship from the original purchaser to another entity should the original purchaser default on payment or contractual obligation, or if the end user requests the transfer of the data sharing relationship to another business.

Article 9 - Limitations and Restrictions

Client shall not, except as expressly permitted by this Agreement:

- (a) bypass or breach any security device or protection used by the Applications;
- (b) access or use the Applications other than through the use of valid access credentials;
- (c) allow, permit or encourage any unauthorized person to access or use the Applications;
- (d) share its credentials to access the Application with any person or entity that is not authorized to use and access the Application;
- (e) input, upload, transmit, or otherwise provide to or through the Applications, any information or materials that are unlawful or injurious, or contain, transmit or activate any viruses, worms, Trojan horses or other harmful components;
- (f) damage, destroy, disrupt, disable, interfere, with or otherwise impede or harm in any manner the Applications, in whole or in part;
- (g) remove, delete, alter or obscure any marks, warranties, disclaimers or notices appearing the Applications;
- (h) access or use the Applications in a manner that violates applicable law; or
- (i) access or use the Applications for purposes of competitive analysis, the development, provision or use of a competing software service or product or any other purpose that is to the detriment or commercial disadvantage of OmniMetrix.

Article 10 - Indemnification

In addition to such other indemnification obligations as Client may have hereunder, if any, to the maximum extent allow by applicable law, Client shall indemnify, defend and hold OmniMetrix harmless from and against any and all claims, losses, liabilities, damages, fees, costs and expenses, including attorneys' fees and costs, arising out of or relating to (a) any breach or violation of these Terms and Conditions by Client, (b) any infringement or misappropriation by Client of a third party's intellectual property rights and (c) a violation by Client of any law, rule or regulation.

Article 11 - Termination and Suspension

11.1 Termination with Notice. Either party may terminate the provision of Applications or services by OmniMetrix to Client upon sixty (60) days' written notice to the other party of such termination. In the case of such termination, OmniMetrix shall be paid in full for all products, Applications, and services provided through the effective date of termination.

11.2 Immediate Termination. OmniMetrix may immediately terminate its provision of services to Client in the event Client materially breaches any of these Terms and Conditions.

11.3 Suspension of Services. In the event Client fails to make payments to OmniMetrix when due, OmniMetrix may suspend the provision of services and any other performance that may be due to Client by OmniMetrix. If the payment delinquency is not cured within thirty days of notification, OmniMetrix may then disconnect the product rendering it unable to transmit data.

Article 12 - Miscellaneous

12.1 Force Majeure. OmniMetrix shall not be liable for non-performance or delays caused by acts of God, terrorism, wars, hostilities, riots, strikes, fires, floods, shortages of labor or materials, labor disputes, governmental orders or restrictions, epidemics, pandemics or similar influenza (which is defined by the United States Center for Disease Control as virulent human influenza that may cause global outbreak, or pandemic, or serious illness), national or regional emergencies, emergency states, shortages of power or transportation or any other causes beyond the reasonable control of OmniMetrix. In the event of any such delay or failure of performance, the date of delivery shall, at the request of OmniMetrix, be deferred for a reasonable period, which shall in any event be no less than the time lost by reason of the delay. OmniMetrix shall notify Client in writing of any such event or circumstance within a reasonable period of time.

12.2 Assignment. Any assignment or attempted assignment of this Agreement or Client's rights and obligations under this Agreement, in whole or in part, without prior written consent of OmniMetrix shall be void. OmniMetrix may assign its rights and obligations without prior written notice.

12.3 Governing Law and Forum. The validity, performance and construction of the Agreement shall be governed by the laws of the State of Georgia (without giving effect to the conflicts of law provisions thereof), including, without limitation, the Uniform Commercial Code as adopted in the State of Georgia, and all matters shall be adjudicated in the state or federal courts located in Atlanta, Fulton County, Georgia. Client consents to the jurisdiction of such courts and waives any right it may have to transfer or change the venue of any litigation brought in such courts.

12.4 Waiver. The waiver by Client or OmniMetrix of any breach or a default of any provision of this Agreement by the other shall not be construed as a waiver of any subsequent breach of the same or any other provision, nor shall any delay or omission on the part of either Client or OmniMetrix to exercise or avail itself of any right, power or privilege that it has, or may have, under this Agreement, operate as a waiver of any right, power, or privilege by such party. 12.5 Severability. The provisions of this Agreement shall be severable. If any provision in this Agreement is invalid or unenforceable, that provision shall be construed, limited, modified, or severed to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain in full force and effect.

12.5 Status of Parties. Client and OmniMetrix are independent parties contracting for the provision of products and services. Nothing contained in this Agreement shall create, or be deemed to create, any joint venture, partnership or relationship other than independent parties contracting for the provision of products and services.

12.6 Entire Agreement. These Terms and Conditions constitute the entire agreement between the parties relating to the sale and use of OmniMetrix's products and services.

12.7 Modifications. No modification or amendment to these Terms and Conditions shall be binding on OmniMetrix unless such modification or amendment is set forth in a writing signed by OmniMetrix. OmniMetrix reserves the right to modify or amend these Terms and Conditions in its sole discretion and without prior consent or notice.

12.8 Publicity. OmniMetrix shall have the right to use or display the name, logos and marks of Client in brochures, marketing materials, announcements and other similar publications and on its website for the purpose of recognizing Client as a client or customer of OmniMetrix. Client hereby grants OmniMetrix a fully paid up, irrevocable and non-transferable license to use Client's name, logos and marks for the limited purposes described in this Section. Applications;

12.9 Compliance with Law. Client agrees that it shall comply with all applicable laws, rules and regulations in connection with its performance under the Agreement and Client's use and enjoyment of OmniMetrix's products, applications and services.

12.10 Survival. Those provisions of this Agreement which by their nature should apply beyond the term of the parties' business relationship shall survive termination of any order submitted by Client and the business relationship of parties, such provisions include, but are not limited to, the following Articles and Sections: 2.6 (Costs of Collection), 3.5 (Disclaimer), 5 (Limitations), 6 (Confidentiality and Intellectual Property), 8.3 (Hold Harmless), 11 (Indemnification) and all of this Article 12 (Miscellaneous).