

Payflow Terms of Service

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Contents

Terms of Service	1
Terms	1
Subscription and payments	1
<i>Subscription fee amount</i>	1
<i>Automatic renewal</i>	1
<i>Fees for multiple accounts</i>	1
<i>Non payment</i>	1
<i>VAT number</i>	2
Closing an account	2
<i>Cancellation by you</i>	2
<i>Suspension and closure by us</i>	2
Providing to you	2
<i>Product updates</i>	2
<i>Uptime and maintenance</i>	2
<i>Client compatibility</i>	2
Who owns what	3
<i>Rights in your data</i>	3
<i>Data Extract</i>	3
<i>Our rights to use your data</i>	3
<i>Our software</i>	3
<i>Third party features</i>	3
Your rights.....	4
<i>Your rights</i>	4
<i>Conditions</i>	4
Obligations	4
<i>You must</i>	4
<i>You must not</i>	4
<i>Security</i>	4
<i>Technical Requirements</i>	4
<i>Fair Use Policy</i>	5
<i>Accessing the account</i>	5
API usage.....	5
<i>Third party applications</i>	5
<i>API usage disclaimer</i>	5
Disclaimer.....	5



<i>No guarantees</i>	5
<i>Exclusion of our liability</i>	6
<i>Limitation of our liability</i>	6
<i>Liability to us</i>	6
Legal Matters	6
<i>Entire agreement</i>	6
<i>Third party features</i>	6
<i>Changes to this contract:</i>	7
<i>Transfer of rights & obligations</i>	7
<i>Waiver and severability</i>	7
<i>Resolving disputes</i>	7
<i>Modern Slavery Act</i>	7
<i>Bribery, Fraud and Corruption</i>	7
Data Protection	7
<i>Roles</i>	7
<i>Responsibilities</i>	8
<i>Subject Access Request</i>	8
<i>Sub-contractors</i>	8



Terms of Service

Terms

- “The Service” means the Service which is accessed via our website or API.
- “Account Holder” means the legal entity which is contracting for The Service and is usually a company.
- “Account” means a current subscription to The Service.
- “us”, “we” and “our” refers to NewOrbit Ltd, a company registered in England with registered number 04990082 and the registered address Archway House, 27 Station Road, Chinnor OX39 4PU.
- “you” means you, the user accessing The Service
- “Payroll Service Client” means a legal entity which receives Payroll Services from the Account Holder and who may be granted limited access to The Service by the Account Holder.
- “API” means Application Programming Interface and is a means for programmatically accessing The Service.

Subscription and payments

Subscription fee amount

A subscription fee for use of The Service is payable monthly in arrears by the Account Holder. The subscription rates are provided on request and we may vary these from time to time. Prices are quoted in UK pounds Sterling and exclude VAT, which is also payable.

The subscription fee is based on the high-water mark during the month. For example, if you start the month with two users and after one week you add another user, you will be charged for three users for the whole month.

Automatic renewal

Once any ‘free trial’ or ‘beta trial’ period is over, we will automatically renew the Account Holder's subscription and bill them every month using the payment details provided to us, until the account is closed.

Fees for multiple accounts

If you would like to use The Service to manage more than one business, you will need to sign up for multiple accounts and pay the subscription fee charged by us for each additional Payflow account.

Non payment

We shall be under no obligation to provide The Service if the subscription fee (plus VAT) is not paid to us on time. The Account Holder must ensure that we have complete and accurate billing and contact information throughout the subscription period, including the full name of the Account Holder, the business address, and a billing contact email address. If subscription fees become overdue, because for example the Account Holder's credit card has expired, we reserve the right to suspend your access to The Service until the balance is paid and we may close the Account Holder's account permanently.



VAT number

Our VAT number is 831326258

Closing an account

Cancellation by you

You can close the Account Holder's account at any time by notifying your account manager in writing. As the service is billed in arrears, we will bill you for the month in which you cancel. After that no further subscription fees will be billed and no refund will be made of any subscription fees already billed.

Suspension and closure by us

If you (or any other user of the Account Holder's account) fails to abide by these Terms of Service, or if payment of the subscription fees is not paid on time, we reserve the right to suspend your access to The Service or permanently cancel the Account Holder's account. If we withdraw access to The Service because these Terms of Service have been breached, no refund will be payable by us. We also reserve the right to close any account (including during any 'free trial' or 'beta trial' period) for any reason, by giving one month's notice.

Providing to you

Product updates

We reserve the right to make changes and updates to The Service at our discretion. This is primarily adding new features and enhancements but may also include changes to the way the system looks or works and may include removal of features in certain circumstances.

Uptime and maintenance

We will try to keep disruptions to a minimum but we may suspend The Service from time to time to carry out maintenance, update and support work and to investigate unauthorised use.

In the case of more than two hours cumulative downtime between the hours of 8:30 am and 18:00 Monday to Friday in any one calendar month, we will refund you 50% of that month's subscription fee. In the case of more than four hours downtime measured in the same way, we will refund 100% of that month's subscription fee.

Downtime means that you are substantially unable to use the system, whether that is because it significantly slower than usual, unavailable or has errors that prevent you from using the key functionality of the system. For avoidance of doubt, problems caused by issues with your IT infrastructure is not classified as downtime.

Client compatibility

In order to provide the best possible experience for the majority of users we will continually evolve the system to take advantages of advances in browser and device functionality. In so doing the system may stop working or have reduced functionality on legacy browsers or devices.

NewOrbit will support the use of Payflow on the last two major versions of mainstream browsers. Older versions may be supported on a best efforts basis.



Who owns what

Rights in your data

The Account Holder has sole responsibility for the accuracy and reliability of your Data. The Account Holder retains ownership of any copyright, trademarks, database rights and any other intellectual property rights it has in your Data (such as rights in its logo, for example). Intellectual property rights in your Data will not be transferred to us. We reserve the right to only disclose your Data to law enforcement officials in the investigation of fraud or other alleged unlawful activities if so requested.

NewOrbit both comply with and abide by all aspects of the Data Protection Act [DPA] and the General Data Protection Regulations (GDPR). The required processes are embedded into our Security Information Management System. However it should be noted that NewOrbit is a Data Processor and not a Data Controller.

NewOrbit will not pass on or share your data with third parties.

Six months after expiry or termination of the contract, or earlier if requested by you, we will delete your data from the system.

For technical reasons your data will remain in backups and log files until such time those logs and backups are purged, but will not be available in the live system. The retention period for backups and log files depend in part on compliance requirements and may change from time to time. However, we will not retain them longer than reasonably necessary.

Data Extract

Account Holders have the right to a data extract of the full data set, at a reasonable charge at any time.

In the event of cancellation, the Account Holder has the right to request a data extract up to the end of the month in which you cancel, at the same charge as at any other time.

Our rights to use your data

We will use the data you supply to provide The Service to you, including but not limited to reflecting that data to you in the system and analysing the data to send you or your clients notifications.

We may also analyse your data in aggregate to extract insights into how the system is being used across Account Holders.

Our software

Rights in our software and our website: All copyright, database rights, trade marks and other intellectual property rights in The Service (including any such rights in our website) are either owned by or licensed to us and nothing in these Terms of Service shall transfer any ownership rights to you or to the Account Holder.

Third party features

All copyright, database rights, trade marks and other intellectual property rights in any external data sources or embedded third party services used in are the intellectual property of the relevant third party provider.



In case of any dispute arising about any such rights, which are caused entirely by us, we will fully indemnify you against any claims made against you. The indemnity will only apply if you notify us promptly about any claim made to you and allow us full control over the response to and management of the claim.

Your rights

Your rights

If the business you represent is an Account Holder or is a Payroll Service Client of the Account Holder and you are authorised by it to use The Service, we grant you a non-transferable, non-exclusive licence to use The Service in accordance with these Terms of Service.

Conditions

The above licence is strictly subject to compliance with these Terms of Service by you (and by the Account Holder whose account you are accessing and by all other users of that account.)

Obligations

You must

- Only access an Account Holder's account by using a password and username which that Account Holder authorises you to use.
- Only use The Service on behalf of the Account Holder or on behalf of a Payroll Services Client of the Account Holder whose account you are accessing and solely for purposes relating to that Account Holder's business or for the provision of Payroll Services from the Account Holder to the Payroll Services Client.
- Only use The Service for purposes which are legal.
- Ensure clients to whom you extend system functionality are bound by similar Terms

You must not

- Do anything which could reasonably be expected to damage, disable, overburden, or materially impair The Service or our website generally or which is likely to interfere with any other party's use or enjoyment of The Service.
- Question or dispute our ownership of the intellectual property rights in The Service.

Security

The Account Holder is ultimately responsible for administering and safeguarding any passwords created to control access to its account, including those of its Payroll Services Clients: please keep any password issued to you secure.

Technical Requirements

The Account Holders must ensure that the browser used to access Payflow is one of the major browsers, (e.g. Firefox, Safari, Chrome, Internet Explorer and Edge), and is one of the two latest major versions.



Fair Use Policy

You are obliged to only use The Service in ways which can reasonably be expected when the system is used for its primary purpose. For example, if you used The Service to share a significant number of videos then this would not constitute fair use, although a small number of videos designed to help users to use the system would be considered fair use.

We reserve the right to ask you to desist from unfair use and ultimately to suspend your account if the unfair use does not cease.

Accessing the account

You will not be able to access and use The Service without a username and password for an account. There are two ways you can obtain these:

Once an account has been created, we will issue the initial user (whose details were provided to us when the account was applied for) with a username and password.

Additional users can obtain their own usernames and passwords if the initial user accesses The Service and uses the "New User" function on the "People" page. (Some subscription packages may have limitations on the number of additional users which can be added - please check our Pricing Page for details.)

API usage

The Service provides access through an API which you can use to upload data and interact with the system in various ways. Amongst other options, we provide a sample Powershell Script which you can use to automate the upload of files to the system.

Third party applications

Any third party application which you use to access the Service via the API has the ability to access to your Data. Before using any third party application, you should carefully assess whether or not you are happy with the assurances provided by the developer regarding your privacy and security.

You should only enable API access if you have the permission of the Account Holder

API usage disclaimer

We accept no responsibility for any loss suffered by you as a result of the use of any third party application to access The Service

Disclaimer

IMPORTANT: This section restricts the extent to which we are liable for any losses which may be suffered in connection with your use of The Service. It also requires the Account Holder to compensate us for any loss we suffer as a result of your failure to comply with these Terms of Service.

No guarantees

We make no guarantee that The Service will be suitable for your intended use, neither do we guarantee that it will be error-free, timely, reliable, entirely secure, virus-free or available, especially since we are dependent on the reliability of the Internet and your use of your own computer to



access The Service. We will try to keep disruptions to a minimum but we may suspend The Service from time to time to carry out maintenance and support work and to investigate unauthorised use.

Exclusion of our liability

You use The Service entirely at your own risk.

We do not restrict our liability (if any) for personal injury or death resulting from our negligence, for fraud, bribery or corruption committed by us or for any matter which it would be illegal to limit or to attempt to restrict.

We restrict our liability to a maximum of £500,000 for matters arising from our failure to comply with our obligations under the General Data Protection Regulations.

We exclude all other liability and responsibility for any amount or kind of loss or damage arising in connection with The Service (even if we have been advised of their possibility).

Limitation of our liability

Where we are not legally entitled to exclude our liability, our total liability for any loss or damage relating to The Service (or to our website generally) shall not exceed an amount equal to the subscription fees which the Account Holder has paid to us in the previous month.

Liability to us

If you access The Service using a password created to control access to the Account Holder's account, then the Account Holder shall be held liable for any reasonable costs and expenses incurred by us as a result of breach of these Terms of Service by you. Otherwise, you shall be personally held liable for any reasonable costs and expenses incurred by us as a result of breach of these Terms of Service by you.

Legal Matters

Entire agreement

These Terms of Service describe the entire agreement between you, the Account Holder and us regarding The Service, and supersede any prior understandings or agreements. The headings are for convenience only and shall not affect the construction or interpretation of these Terms of Service.

Third party features

In order to use certain optional features of which relies on external data sources or embedded third party services you will be required to accept the terms and conditions of the relevant third party provider. These will be notified to you within The Service at the point of first use of the relevant feature and thereafter where those terms are subsequently updated from time to time.

By agreeing to these terms and conditions you agree, if you use the relevant features, to be bound by the terms and conditions listed above (and as subsequently amended from time to time) and any other third party terms subsequently accepted by you while using The Service ("third party terms"). Any breach by you of the third party terms shall, without limiting any other remedy available to the third party provider, be deemed to be a breach of these Terms of Service.



For the avoidance of doubt this section applies to integrations with third party products which are optional extras and which you would have the choice to enable or not, such as integrations with payroll products or time tracking systems.

Changes to this contract:

We reserve the right to change these Terms of Service from time to time and therefore we may impose new or different terms and conditions on your use of The Service. The Account Holder will be notified of these additional terms to the Account Holder's registered email and will be effective from the Account Holder's next monthly subscription. Your continued use of The Service will be deemed to constitute acceptance by the Account Holder of all of the new terms. These Terms of Service may not otherwise be changed without our written consent.

Transfer of rights & obligations

We shall be entitled to transfer our rights and/or obligations under these Terms of Service to another party. Neither you nor the Account Holder may transfer any of your rights or obligations under these Terms of Service without our written consent.

Waiver and severability

If either you or we ignore any breach of these Terms of Service, it doesn't mean that any further breach cannot be enforced. Similarly, if any part of these Terms turn out to be invalid or unenforceable for some reason, then it will be replaced with a provision which, as far as possible, achieves the same purpose as the original, and the remainder of the agreement will still be binding.

Resolving disputes

These Terms of Service shall be governed by and interpreted in accordance with English law. If any party wants to take court proceedings in relation to The Service, it must do so in England. You are responsible for compliance with any applicable laws of the country from which you use or otherwise access The Service.

Modern Slavery Act

We will not engage in any practice or omit to do any act or thing that amounts to modern slavery as defined under the Modern Slavery Act 2015 (the MSA), or otherwise breach the MSA during the term of this Agreement.

Bribery, Fraud and Corruption

We will not commit any act that would be considered to be bribery, fraud or corruption under UK Law, including as specified in the Bribery Act 2010.

Data Protection

Roles

The Data Protection Act and the General Data Protection Regulation (GDPR) defines a Data Controller and a Data Processor. You or your client are the Data Controller, meaning that you own the data and we are a Data Processor, meaning we process data on your behalf.



Responsibilities

We undertake to carry out the Data Processing in accordance with the requirements set out in the GDPR;

- We will only process your data to the extent that is required to provide The Service to you.
- We will notify you promptly if we receive a request to disclose your data, unless we are legally prohibited from doing so.
- We will notify you promptly if we become aware of a data breach.
- We will ensure we have appropriate technical and organisational measures in place to protect your data and ensure compliance with the GDPR.
- We will not export or process your data outside the European Union.
Emails sent from the system may pass through servers outside the European Union.

Subject Access Request

The GDPR provides a right to “data subjects” to request all data that you hold about them. The Service does not directly have records on Data Subjects, but you may have files, messages or reports uploaded to or made available in the system which contains information about an individual.

If you receive a Subject Access Request from an individual, you may therefore be required to provide data held in the Service.

We will provide you with a means to download all the data stored in your subscription, including all Notes, Messages, Online Forms and uploaded Files, but not including processes, tasks, payrolls, organisations and other non-personal data. We will provide the information in a common electronic format such as JSON or similar.

Sub-contractors

We use the following subcontractors to help provide the Service. They are also classed as Data Processors in the GDPR;

- Microsoft Azure provides the Hosting. Azure is GDPR compliant in the way they provide hosting services.
- Postmark is used for sending emails. Postmark is based outside the EU but are committed to be GDPR compliant by the deadline.

We will not use other sub-contractors without giving you notice.