

## OrbisPay - Terms of Service

Updated: September 1, 2020

Thank you for using OrbisPay. These terms of service ("Terms of Service") constitute a legal agreement between you and Orbis Financial Technologies Inc., ("OrbisPay") a Delaware corporation. As used in these Terms of Service, the words "you" and "your" refer to you, the user of the OrbisPay Services (as defined below), as the party agreeing to these Terms of Service. The words "we", "us", "our" and any other variation thereof refer to OrbisPay. Any reference to "OrbisPay" in this document includes our directors, officers, employees, contractors, owners, agents, licensors, or licensees. As used in these Terms of Service, the term "OrbisPay Services" includes all services associated with OrbisPay's websites and all devices or applications that we operate that link to these Terms of Service, pages within each such website, device, or application, any equivalent, mirror, replacement, substitute or backup website, device, or application, and pages that are associated with each such website, device, or application. The use of the word "including" in these Terms of Service used to refer to specific examples will be construed to mean "including, without limitation" or "including but not limited to" and will not be construed to mean that the examples given are an exclusive list of the topics covered.

Capitalized terms not defined in the applicable paragraph will have the meaning set out in Section 15 below.

### 1. Acceptance of Terms

**PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY ACCESSING OR USING THE ORBISPAY SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF SERVICE. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS OF SERVICE, YOU MAY NOT ACCESS OR USE THE ORBISPAY SERVICES.** You may not use the OrbisPay Services or accept these Terms of Service, if (a) you are not of legal age to form a binding contract with OrbisPay; (b) you are prohibited by law from receiving or using the OrbisPay Services; or (c) you are not a U.S. resident.

OrbisPay may modify these Terms of Service from time to time. Any and all changes to these Terms of Service will be posted on the OrbisPay website. The Terms of Service will always indicate the date they were last revised. When you use the OrbisPay Services after those changes are posted, you are deemed to have accepted the new Terms of Service and agree to be bound by any changes to the Terms of Service.

## 2. Privacy and your Personal Information

For information about OrbisPay's data protection practices, please read OrbisPay's [Privacy Policy](#), which is hereby incorporated into this Terms of Service. This policy explains how OrbisPay treats your Information (as defined in Section 3) when you use the OrbisPay Services. The policy may be updated from time to time at our discretion. Changes will be effective upon posting to the site.

The Privacy Policy is hereby incorporated into these Terms of Service, and your acceptance of the Terms of Service also constitutes an acceptance of the Privacy Policy.

## 3. Your Information

You agree to provide accurate profile information, including, as applicable, your name, physical address, email address, work history and related information, and any additional information required for the provision of the OrbisPay Services (your "Information"). You further agree to promptly update all your Information whenever the information provided to us is no longer accurate. You can update your Information by clicking on the settings link after you log in. If you need help in changing your information, please email us at [support@orbispay.me](mailto:support@orbispay.me). If you do not do this, the accuracy and effectiveness of the OrbisPay Services provided to you will be affected. You represent that you are a legal owner of, and that you are authorized to provide us with, all Information and other information necessary to facilitate your use of the OrbisPay Services. We are not responsible for any payment processing errors or fees or other OrbisPay Services-related issues arising from your failure to keep your Information current.

In order to allow you to use certain OrbisPay Services, we may be required to verify your identity. You authorize us to make any inquiries we consider necessary to validate your identity. These inquiries may include asking you for further information, requiring you to provide a taxpayer identification number, requiring you to take steps to confirm ownership of your email address or financial instruments or verifying information you provide against third party databases or through other sources. If you do not provide this information or we cannot verify your identity, we can refuse to allow you to use the OrbisPay Services.

If you believe that your Information or a device that you use to access any site has been lost or stolen, that someone is using your account without your permission, or that an unauthorized transaction has occurred, you must notify us immediately at [support@orbispay.me](mailto:support@orbispay.me).

#### 4. Disclosure and Consent to Electronic Communications

You understand and agree that you are entering into these Terms of Service electronically and that certain categories of information (“Communications”) may be provided by OrbisPay to you by electronic means (e.g., email, through the OrbisPay Service or to your mobile device), unless and until you withdraw your consent as described below. The categories of Communications that may be provided by electronic means include:

- these Terms of Service and any amendments, modifications, or supplements;
- records of any payment and other transactions you handle through the OrbisPay Services, including payment histories and transaction confirmations;
- disclosures or notices provided in connection with the OrbisPay Services, including any required by federal or state law (including initial disclosures, periodic statements, periodic and annual error resolution notices, initial and annual privacy notices, opt-out notices, and change-in-terms notices);
- any customer service communications, including communications with respect to claims of error or unauthorized use of the OrbisPay Services; and
- any other communication related to the OrbisPay Services.

Although we reserve the right to provide Communications in paper format at any time, you agree that we are under no obligation to do so. All Communications in either electronic or paper format will be considered to be “in writing.” You should print a paper copy of these Terms of Service and any Communication that is important to you and retain the copy for your records. If you do not wish to receive these Terms of Service or the Communications electronically, you may not use the OrbisPay Services.

If you have opened an account with us and you wish to withdraw your consent to have Communications provided electronically, you must close your account by contacting [support@OrbisPay.me](mailto:support@OrbisPay.me) and stop using the OrbisPay Services. There are no fees to close your account with us. Any withdrawal of your consent to receive electronic Communications will be effective only after we have a reasonable period of time to process your withdrawal and only after all outstanding transactions have been settled.

We reserve the right, in our sole discretion, to discontinue the provision of your electronic Communications, or to terminate or change the terms and conditions on which we provide electronic Communications. We will provide you with notice of any such termination or change as required by law.

## 5. Fees

### **Processing Fee**

**You will be charged a flat fee (the “Processing Fee”) in the amount shown at the time you request your On-Demand Wages from OrbisPay. The Processing Fee will be payable at the time of payment of your On-Demand Wages.**

**The Processing Fee is the charge for participating in OrbisPay’s wage access program and it represents OrbisPay’s costs associated with processing your request.**

**The Processing Fee is not dependent on the amount that you request from OrbisPay. You incur the Processing Fee for each request of On-Demand Wages that you make. We want you to get the most from our service, and so we recommend that you keep this in mind. Two access entries of \$100, for example, will cost twice as much as one access entry of \$200.**

### Additional Fees

There are no additional fees for using the OrbisPay Services.

## 6. OrbisPay Services

Your right to access and use OrbisPay Services is personal to you and is not transferable by you to any other person or entity, and you may only access and use the OrbisPay Services for lawful purposes. OrbisPay has partnered with your Payroll Provider, Employer, or both to provide you access to the OrbisPay Services.

Upon distribution of your On-Demand Wages, you, or OrbisPay on your behalf, will notify your Payroll Provider that you have received On-Demand Wages. Such notice will represent your acknowledgment that you have received a portion of your Receivable Wages in an amount equal to the distribution and paid the Processing Fee and

constitute your authorization for the Payroll Provider and Employer to withhold an equal amount from your next Distribution.

**Upon receipt of the On-Demand Wages, you acknowledge that you have fully received your Receivable Wages in an amount equal to the On-Demand Wages and Processing Fee (together, your "Paid Wages"). By using the OrbisPay Services, you warrant that the Receivable Wages are just and due and that the amount of Receivable Wages is greater than the amount of Paid Wages. You acknowledge and agree that this disbursement of wages represents full and complete payment of your Receivable Wages up to an amount equal to the Paid Wages.**

In the event that you have received On-Demand Wages, it may constitute fraud for you to notify your Payroll Processor or Employer that you have not received a portion of your Receivable Wages through your use of the OrbisPay Services.

OrbisPay uses a number of variables to determine your earned wages, which may include but is not limited to, earnings history, time and attendance data, and employer confirmation. In rare instances, the determination of your earned wages may be incorrectly calculated. As a result, our system may distribute an amount of On-Demand Wages that are in excess of your earned wages. In such an instant, you authorize such amounts to be deducted from your next following Distribution. In the event that this would create any financial issue for you, please reach out to OrbisPay 'support@OrbisPay.me' where our support staff will work with you on this issue. **You may withdraw this authorization at any time. For clarity, you will never incur additional fees as a result of this, and you will not be charged any additional amounts.**

Your access and use of OrbisPay Services may be interrupted from time to time for any of several reasons, including the malfunction of equipment, periodic updating, maintenance or repair of the OrbisPay Service, or other actions that OrbisPay, in its sole discretion, may elect to take. In no event will OrbisPay be liable to any party for any loss, cost, or damage that results from any period of downtime of the sites or Services.

#### 7. Modification to OrbisPay Services

OrbisPay reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the OrbisPay Services with or without notice. We reserve the right to change the OrbisPay Services, including applicable fees, in our sole discretion and from time to time. In such event, if you are a member of the OrbisPay

Services, we will provide notice to you. If you do not agree to the changes after receiving a notice of the change to the OrbisPay Services, you may stop using the OrbisPay Services. Your use of the OrbisPay Services after you are notified of any change(s) will constitute your agreement to such change(s). You agree that OrbisPay shall not be liable to you or to any third party for any modification, suspensions, or discontinuance of the OrbisPay Services.

#### 8. Rights You Grant to Us

By submitting information, data, passwords, usernames, PINs, other log-in information, materials and other content to OrbisPay through the OrbisPay Service, you are licensing that content to OrbisPay solely for the purpose of providing the OrbisPay Service. OrbisPay may use and store the content for the purpose of providing the OrbisPay Service to you. By submitting this content to OrbisPay, you represent that you are entitled to submit it to OrbisPay for use for this purpose, without any obligation by OrbisPay to pay any fees or other limitations.

By using the OrbisPay Service, you expressly authorize OrbisPay to access your Information, including any maintained by identified third parties, on your behalf as your agent. OrbisPay will submit information including usernames and passwords that you provide to log you into the site. You hereby authorize and permit OrbisPay to use and store information submitted by you to the OrbisPay Service (such as account passwords and usernames) to accomplish the foregoing and to configure the OrbisPay Service so that it is compatible with the third party sites for which you submit your information. For purposes of these Terms of Service and solely to provide the Information to you as part of the OrbisPay Service, you grant OrbisPay a limited power of attorney, and appoint OrbisPay as your attorney-in-fact and agent, to access third party sites, retrieve and use your information with the full power and authority to do and perform each thing necessary in connection with such activities, as you could do in person. YOU ACKNOWLEDGE AND AGREE THAT WHEN ORBISPAY IS ACCESSING AND RETRIEVING ACCOUNT INFORMATION FROM THIRD PARTY SITES, ORBISPAY IS ACTING AS YOUR AGENT, AND NOT AS THE AGENT OF OR ON BEHALF OF THE THIRD PARTY. You understand and agree that the OrbisPay Service is not sponsored or endorsed by any third parties accessible through the OrbisPay Service.

#### 9. No Unlawful or Prohibited Use

As a condition of your use of the OrbisPay Services, you represent and warrant to OrbisPay that you will not use the OrbisPay Services for any purpose that is unlawful or prohibited by these Terms of Service.

You agree that you will not:

- request Receivable Wages in which you do not have complete right, title and interest;
- use the OrbisPay Services in any manner that could damage, disable, overburden, or impair the OrbisPay Services;
- obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the OrbisPay Services;
- access the OrbisPay Services by any means other than through the interface that is provided by OrbisPay for use in accessing the OrbisPay Services;
- use or attempt to use any engine, software, tool, agent, or other device or mechanism (including without limitation browsers, spiders, robots, avatars or intelligent agents) to navigate or search the OrbisPay Services; or
- attempt to decipher, decompile, disassemble, or reverse-engineer any of the software comprising or in any way making up a part of the OrbisPay Services.

If OrbisPay, in its sole discretion, believes that you may have engaged in any activities restricted by these Terms of Service or by law, we may take various actions to protect OrbisPay, other users, and other third parties from fees, fines, penalties, and any other liability. The actions we may take include the following:

- we may close, suspend, or limit your access to your account or ability to use the OrbisPay Services;
- we may update inaccurate information you provided us;
- we may refuse to allow you to use the OrbisPay Services in the future;
- OrbisPay will not report your payment history to a credit bureau; and
- we may hold you liable to OrbisPay for the amount of OrbisPay's damages caused by your violation of these Terms of Service.

OrbisPay, in its sole discretion, reserves the right to terminate these Terms of Service or your access to the OrbisPay Services for any reason and at any time with or without notice to you.

#### 10. OrbisPay's Intellectual Property Rights

All content included or available in connection with the OrbisPay Services, including any and all materials, information, text, data, contents, names, trade names, trademarks, trade dress, service marks, layout, logos, designs, images, graphics, illustrations, artwork, icons, photographs, displays, sound, music, video, animation, organization, assembly, arrangement, interfaces, databases, technology, and all intellectual property of any kind whatsoever (collectively, the "Content") and the selection and arrangement thereof is owned exclusively by OrbisPay or the licensors or suppliers of OrbisPay and is protected by U.S. and international copyright and other intellectual property laws. All rights are hereby reserved. Without limiting the foregoing, no Content on the OrbisPay Services may be copied, reproduced, duplicated, published, or distributed in any form or by any means whatsoever without the express prior written permission of OrbisPay or the appropriate licensor or supplier.

Any feedback, questions, comments, suggestions, ideas, or the like that you send to OrbisPay will be treated as being non-confidential and non-proprietary, and OrbisPay will be free to use such information for any purpose whatsoever including developing, manufacturing, and marketing products and services incorporating the information.

#### 11. Disclaimer of Presentation and Warranties

THE ORBISPAY SERVICES, INFORMATION, DATA, FEATURES, AND ALL CONTENT IS OFFERED AND MADE AVAILABLE ON AN "AS IS" AND "AS AVAILABLE" BASIS. ORBISPAY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE CONTENT OR OPERATION OF THE ORBISPAY SERVICES. YOU EXPRESSLY AGREE THAT YOUR USE OF THE ORBISPAY SERVICES IS AT YOUR SOLE RISK.

ORBISPAY MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, RELIABILITY, COMPLETENESS, OR CONTINUED AVAILABILITY OF THE CONTENT ON THE ORBISPAY SERVICES, AND EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. ORBISPAY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE THAT THE CONTENT THAT MAY BE AVAILABLE THROUGH THE SITES OR SERVICES IS FREE OF BUGS, DEFECTS, OR ERRORS, OR INFECTION FROM ANY VIRUSES OR OTHER CODE OR COMPUTER PROGRAMMING ROUTINES THAT



CONTAIN CONTAMINATING OR DESTRUCTIVE PROPERTIES OR THAT ARE INTENDED TO DAMAGE, SURREPTITIOUSLY INTERCEPT, OR EXPROPRIATE ANY SYSTEM, DATA, OR PERSONAL INFORMATION.

ORBISPAY AND THE ORBISPAY SERVICES ARE NOT INTENDED TO PROVIDE LEGAL, TAX, OR FINANCIAL ADVICE. ORBISPAY IS NOT A FINANCIAL PLANNER, BROKER, OR TAX ADVISOR. Before making any final decisions or implementing any financial strategy, you should consider obtaining additional information and advice from your accountant or other financial advisers who are fully aware of your individual circumstances.

OrbisPay does not assume any responsibility for the timeliness, accuracy, deletion, non-delivery, or failure to store Information. Any information made available through the OrbisPay Services will only reflect the information that we most recently accessed, and as such, may not reflect activity that occurred after we last accessed the applicable Third Party Site or any pending transactions.

You understand and agree that any alerts provided to you through the OrbisPay Services may be delayed or prevented by a variety of factors. OrbisPay makes commercially reasonable efforts to provide alerts in a timely manner with accurate information, but we cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. OrbisPay shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert.

## 12. Limitation of Liability

ORBISPAY SHALL IN NO EVENT BE RESPONSIBLE OR LIABLE TO YOU OR TO ANY THIRD PARTY, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, LIQUIDATED, OR PUNITIVE DAMAGES YOU MAY INCUR IN CONNECTION WITH THE SITES, THE ORBISPAY SERVICES, YOUR USE THEREOF, OR ANY OF THE USER SUBMISSIONS, INFORMATION, DATA, OR OTHER MATERIAL TRANSMITTED THROUGH OR RESIDING ON THE ORBISPAY SERVICES, OR ANY ERRORS, DEFECTS, INTERRUPTIONS, DELETIONS, OR LOSSES RESULTING THEREFROM, INCLUDING LOSS OF PROFIT, REVENUE, OR BUSINESS, ARISING IN WHOLE OR IN PART FROM YOUR ACCESS TO OR USE OF THE ORBISPAY SERVICES, EVEN IF ORBISPAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNLESS OTHERWISE EXPRESSLY SET FORTH IN THESE TERMS OF SERVICE, ORBISPAY'S LIABILITY TO YOU FOR ANY CAUSE

WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO US \$500.00 (FIVE HUNDRED UNITED STATES DOLLARS).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN SUCH STATES LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF THIS SECTION AND THE PREVIOUS SECTION MAY NOT APPLY TO YOU.

### 13. Indemnification of OrbisPay

You shall defend, indemnify and hold harmless OrbisPay and its officers, directors, shareholders, and employees, from and against all claims and expenses, including but not limited to attorney's fees, in whole or in part arising out of or attributable to any breach of these Terms of Service by you.

### 14. Governing Law & Forum for Disputes

These Terms of Service, and your relationship with OrbisPay under these Terms of Service, shall be governed by the laws of the State of Delaware without regard to its conflict or choice of laws' provisions. Any dispute with OrbisPay, or its officers, directors, employees, agents or affiliates, arising under or in relation to these Terms of Service shall be resolved exclusively through the small-claims court of the Justice of the Peace Court of Delaware except with respect to imminent harm requiring temporary or preliminary injunctive relief in which case OrbisPay may seek such relief in any court with jurisdiction over the parties. You understand that, in return for agreement to this provision, OrbisPay is able to offer the OrbisPay Services at the terms designated, and that your assent to this provision is an indispensable consideration to these Terms of Service.

You also acknowledge and understand that, with respect to any dispute with OrbisPay, its officers, directors, employees, agents or affiliates, arising out of or relating to your use of the OrbisPay Services or these Terms of Service:

- YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY; and
- YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT INVOLVING ANY SUCH DISPUTE.

## 15. Definitions

In these Terms of Service, including the recitals, the following words and phrases will have the following meaning

“Distribution” means the final processing and settlement of wages or salary to you by Payroll Processor at the end of a pay period;

“On-Demand Wages” means the amount of accrued wages that you have requested for payment by OrbisPay. In no event will the On-Demand Wages exceed 60% of the Receivable Wages;

“Payroll Processor” means the company that provides you with payroll settlement processing, including but not limited to Distribution;

“Receivable Wages” mean the net wages that are payable, but not yet paid, for work that has been performed by you.

## 16. Miscellaneous

If any portion of these Terms of Service is deemed unlawful, void or unenforceable by any arbitrator or court of competent jurisdiction, these Terms of Service as a whole shall not be deemed unlawful, void or unenforceable, but only that portion of these Terms of Service that is unlawful, void or unenforceable shall be stricken from these Terms of Service.

You agree that if OrbisPay does not exercise or enforce any legal right or remedy which is contained in these Terms of Service (or which OrbisPay has the benefit of under any applicable law), this will not be taken to be a formal waiver of OrbisPay’s rights and that those rights or remedies will still be available to OrbisPay.

All covenants, agreements, representations and warranties made in these Terms of Service shall survive your acceptance of these Terms of Service and the termination of these Terms of Service.

These Terms of Service represent the entire understanding and agreement between you and OrbisPay regarding the subject matter of the same, and supersede all other previous agreements.

