

TERMS OF SERVICE KISSBUDGET

Last update: 04/21/2022

Please read the following terms and conditions carefully. By subscribing to the services, you agree that you are presenting a legally binding offer aimed at concluding a contract with the company PYXWEB INC which publishes KISSBUDGET, a Canadian federal company, registered in the province of Quebec under number 855888897RC0001, whose head office is located at 545, rue Jacques Parizeau, Québec, QC, G1R-2G3 Canada (hereinafter "KISSBUDGET").

KISSBUDGET has no significant relationship of a capital or commercial nature with institutions promoting financial products and services (credit institutions, payment institutions, investment service providers).

1. DEFINITIONS

Terms beginning with a capital letter will have the meaning given to them in this contract:

Client: refers to the client necessarily having the status of professional, who has subscribed to this Contract.

Contract: refers to this Services subscription contract including in particular the special conditions, the general conditions of use and their appendices.

Account: refers to the Customer's account allowing him to access the Services offered by the Application from his login credentials.

Application: refers to the solution developed by KISSBUDGET and accessible in SaaS mode from the website <https://kissbudget.com>, the KISSBUDGET mobile application as well as from the application <https://kissbudget.com/app>.

User(s): designates any person authorized by the Customer to connect to the Application from the connection identifiers, within the framework of this Services subscription contract.

Services: designates all the services offered by the Application within the framework of the subscription taken out by the Customer.

2. PURPOSE

2.1 The purpose of this KISSBUDGET Subscription Contract is to define the conditions under which the Client subscribes on his behalf and that of his Users, for the duration of the Contract and for the needs of his professional activities to the Services.

2.2 The Customer acknowledges that access to certain features of the Application may vary depending on the scope of the Services to which he has subscribed via his subscription.

2.3 The fact of registering with KISSBUDGET implies the Customer's full and unreserved acceptance of the Contract, to the exclusion of all other documents in its possession.

2.4 In the event of a contradiction between the provisions of the special conditions of the Contract and these general conditions of use, the relevant provisions of the special conditions shall prevail over the general conditions of use.

2.5 The Contract fully governs the relationship between KISSBUDGET and the Client. No general conditions of purchase may prevail or be opposed by the Customer to KISSBUDGET and no particular condition communicated by the Customer to KISSBUDGET can prevail over the Contract.

2.6 Any reservation concerning the Contract, put forward by the Customer will therefore, in the absence of express acceptance by KISSBUDGET, be unenforceable against the latter, regardless of when it may have been brought to its attention.

2.7 The fact that KISSBUDGET does not avail itself at a given time of any condition of the Contract cannot be interpreted as a waiver to subsequently avail itself of any of the said conditions.

3. CONDITIONS OF REGISTRATION

3.1 The Client acknowledges being a regularly declared and registered professional. As such, the Customer acknowledges that he does not have the status of non-professional or consumer, within the meaning of the provisions in force.

3.2 The Customer who wishes to subscribe to the Services is required to:

- complete the following identification information: company name, RCS registration number, corporate form, share capital, address of the registered office, identity of the legal representative, email address, telephone number and any information requested by KISSBUDGET. The Customer acknowledges and accepts that the email address entered constitutes his login ID.
- choose a password. The Customer has the option of changing his password at any time. It is recommended to change the password regularly.
- follow the procedure that will be indicated to him for the validation of his email.
- follow the procedure that will be indicated to him to proceed to the payment of the Services by through the payment provider chosen by KISSBUDGET.

3.3 The Customer declares to have provided the information in a sincere and accurate manner and undertakes to update the said information without delay in the event of a modification. KISSBUDGET cannot under any circumstances be held responsible for the non-veracity of the information transmitted and/or communicated by the Client.

3.4 The Customer undertakes to use the Services personally, and not to allow any third party to use them in its place or for its own account, with the exception of Authorized Users and subject to bearing full responsibility.

3.5 The Client is solely responsible for the proper use of the Services and the Account by the Users of its staff in compliance with these terms.

3.6 The Customer is also responsible for maintaining the confidentiality of his username and password and expressly acknowledges that any use of the Services from his Account will be deemed to have been made by him. In the event that the Client finds that his account is or has been used without his knowledge, he undertakes to notify KISSBUDGET as soon as possible.

4. DURATION AND TERMINATION

4.1 For any registration, KISSBUDGET offers the right to use the Application free of charge for a period of seven (7) days. Beyond that, the Customer is required to subscribe to a paid subscription with KISSBUDGET.

4.2 The duration of a subscription to the Services will therefore depend on the subscription period to which the Customer has subscribed. To avoid any interruption of use of the Services, the Subscription will be automatically renewed for a new period of the same duration or, if otherwise agreed, for a period of 30 days.

4.3 The Client may cancel his subscription at any time, by sending an email to clients@kissbudget.com and this before the expiration of the subscription period. In this case, the Customer will still be able to use the Services until the expiration of his subscription. No refund will be made if the Customer decides to terminate his subscription, as the Services will remain available until the end of the subscription period.

4.4 KISSBUDGET reserves the right, at its sole discretion, to modify the price of the subscription. In this case KISSBUDGET will send the Customer a notification by email at least thirty (30) days before the price change. The notification will remind the Customer that if he continues to use the Services after the end of the subscription period, it will mean that he accepts the new subscription price. However, this new price will only come into effect on the automatic renewal date of the subscription. If the Client refuses this price change, he may cancel his subscription by sending an email to clients@kissbudget.com. This cancellation must be made before the entry into force of the price change, otherwise it will be considered as having accepted these changes.

4.5 This Agreement may also terminate if the Customer fails to comply with any of the essential obligations imposed on it by this Agreement. In this case, KISSBUDGET may, after sending a formal notice by registered letter with acknowledgment of receipt recalling this clause and the unexecuted obligation, not acted upon within a period of fifteen days from the presentation of the letter, terminate the Contract without completing any legal formality. In the event of termination, KISSBUDGET may then temporarily or permanently interrupt all or part of the Services and consequently access to the user account.

4.6 The termination of the Contract does not entail a waiver by the Parties of the exercise of any other rights and actions which they may avail themselves of.

5. PRICE, TERMS OF PAYMENT AND INTEREST ON DELAY

5.1 Access to the Services requires payment by the Customer of the subscription price according to the terms agreed between the Parties.

5.2 Services are sold on a prepaid basis. Payment is due at the time of order and, in the case of automatic renewal of a subscription, at the start of the new subscription period.

5.3 The payment of the price of the Services will be made by direct debit via the payment provider chosen by KISSBUDGET. As such, the Customer undertakes to indicate, within the framework of the payment procedure, the exact and valid banking information.

5.4 Prices are payable in Canadian dollars.

5.5 The price of the subscription does not include any travel or specific development costs that could be invoiced in addition by KISSBUDGET to the customer

5.6 In the event of termination, the sums already paid will remain acquired by KISSBUDGET, without prejudice to any action for compensation for damages suffered.

6. SCOPE OF LICENSE

6.1 By subscribing to this Agreement, KISSBUDGET grants the Client and its Users for the duration of the Agreement, a personal, non-transferable and non-exclusive license allowing them to access and use the Application in its existing version on the date of taking out the subscription, and only for their professional use within the framework of the Services provided under this Agreement.

6.2 This License only covers the subscription taken out by the Customer as well as any modification relating to corrections, adaptations or updates of the Application during the term of the Contract. Consequently, the additions of a new functionality or the new versions of the Application are not included in the subscription and will be the object, if necessary, the object of a new estimate which the Customer will be free to accept or refuse.

6.3 To be able to use the Application, the Customer must have, at his own expense, an Internet access subscription and ensure that the configuration of his computer equipment is suitable and compatible. All costs relating to the equipment and the internet connection are therefore the sole responsibility of the Customer.

6.4 The Customer is also informed of the limits of the Internet and that data transmissions on the Internet only benefit from relative reliability and that no one can guarantee the proper functioning of the Internet. Consequently, and in full knowledge of the characteristics of the Internet, the Customer acknowledges having been sufficiently informed of the IT conditions required to access the Services and waives the liability of KISSBUDGET regarding the facts set out above.

6.5 The Customer may not under any circumstances decompile, disassemble, modify, use, reverse engineer, in any way whatsoever, the source code of the Application or modify, translate, locate, adapt, rent, assign, lend, create or produce derivative works, or file patents based on all or part of the Application.

6.6 As this License to use the Application is neither assignable nor transferable, the Client agrees not to allow any third party to benefit from it, with the exception of Users authorized under the Contract.

6.7 This license does not grant the Customer any ownership rights over the Application. The Customer is therefore prohibited from any action or act likely to directly or indirectly infringe the intellectual property rights held by KISSBUDGET on the Application.

7. INTELLECTUAL PROPERTY

7.1 KISSBUDGET is the exclusive holder of the intellectual property rights to the Application without this affecting any third-party software that may be present in the Application for which KISSBUDGET declares in any case that it has sufficient rights.

7.2 This contract does not grant the Client and the Users any intellectual property rights of any kind whatsoever over the Application and the software making it up and any content of any kind used on the Application. All the elements making up the Application thus remain the exclusive property of KISSBUDGET, as do all the corrections, updates and new versions made.

7.3 The Client and the Users undertake not to commit any act that could affect KISSBUDGET's intellectual property rights over the Application and its component elements, whether by reproduction, representation or adaptation, modification, transformation. Any use and/or access not authorized by KISSBUDGET hereunder and/or not in accordance with the provisions of the Intellectual Property Code is unlawful and would constitute the offense of counterfeiting.

7.4 KISSBUDGET also remains the sole owner of the rights to its names, trademarks, logos, signs and designs and none of the stipulations in the Contract shall be interpreted as characterizing a transfer or assignment of rights over them for the benefit of the other Party. The Client and the Users undertake to respect the property rights of KISSBUDGET on its distinctive signs, and in particular, refrain from creating any analogy and/or confusion in the minds of the public for any purpose whatsoever and by any fashion whatsoever.

8. ADVERTISING

8.1 The Customer authorizes KISSBUDGET to make use, in particular by quotation and/or reproduction, of its distinctive signs, as a commercial reference and/or for the proper execution of these presents, in particular in its commercial or advertising documents and on its website, in any form whatsoever, for the duration of this Agreement and three (3) years following the expiration of the Agreement.

8.2 Any use by the Client of KISSBUDGET's distinctive signs must be authorized in advance by KISSBUDGET.

9. OBLIGATIONS AND RESPONSIBILITIES OF THE SUBSCRIBER

9.1 Customer will use the Services under its sole direction, control and responsibility.

9.2 Without prejudice to the other obligations provided for herein, the Customer undertakes to comply with the following obligations:

- the Customer undertakes, in its use of the Services, to respect the laws and regulations in force and not to infringe the rights of third parties or public order;
- the Customer acknowledges having read the characteristics and constraints, in particular technical, of the Application and the Services;
- the Customer undertakes to provide KISSBUDGET with all the elements, data and information necessary for the proper performance of the Services. More generally, the Customer undertakes to cooperate actively with KISSBUDGET with a view to the proper execution of these presents and to inform it of any difficulties related to this execution.

9.3 The Customer is strictly prohibited from using the Services for the following purposes, without this list being exhaustive:

- the exercise of illegal, fraudulent activities or which infringe the rights or the security of third parties;
 - harm to public order or violation of the laws and regulations in force;
 - intrusion into a third party's computer system or any activity likely to harm, control, interfere with, or intercept all or part of a third party's computer system, violate its integrity or security; aiding or inciting, in any form and in any manner whatsoever, one or more of the acts and activities described above;
- and more generally any practice diverting the Services for purposes other than those for which they were designed.

9.4 If it appears that the Client has violated or is likely to violate the provisions of the Contract, KISSBUDGET may, at any time and without limitation of any other action, suspend or terminate the defaulting account and/or use any means to obtain the forced execution of the provisions of the Contract.

10. OBLIGATIONS AND RESPONSIBILITIES OF KISSBUDGET

10.1 KISSBUDGET undertakes to carry out the obligations for which it is responsible with all the care customary in its profession and to comply with the rules of the art in force. Its liability is exclusively limited to the provision of the Services according to the terms described herein, to the exclusion of any other service.

10.2 The Customer is solely responsible for the use he makes of the Services. As such, it is understood between the Parties that the cash forecasts provided in the context of the use of the Services are given for information purposes only, on the basis of the information provided by the Customer. The Client is required to adjust these cash forecasts according to its activity and according to its own knowledge.

10.3 KISSBUDGET will be liable according to the rules of common law, for all direct damages caused to the Client within the framework of the Contract and duly proven, excluding indirect damages. Consequently, KISSBUDGET cannot under any circumstances be held liable for damage resulting from:

- non-performance or poor performance by the Client of the obligations made available to him charge under this Subscription Agreement;
- improper use of the Services by the Customer;
- a malfunction of the Service which (i) would be caused by modifications made to the Service and/or to the materials operating with them, by the Customer or any unauthorized third party; or (ii) would follow a refusal by the Customer to implement corrections, revisions and/or updates and/or workarounds relating to the Services to put an end to the malfunctions or prevent their generation. In these cases, KISSBUDGET can in no way be held responsible:
 - o the results of its use;
 - o damage to property separate from the Service;
 - o the adequacy of the Service to the Customer's needs (which is in fact at the latter's discretion);
 - o loss of or damage to information, files or databases or any other element for which the Customer hereby undertakes to ensure backup; any contamination by a virus of the Client's files and the potentially harmful consequences of this contamination.

10.4 KISSBUDGET will not be liable for unforeseeable damages, nor for indirect and/or immaterial damages such as in particular loss of earnings, financial damages, commercial damages, loss of customers, loss of orders, resulting from the use of the Service .

10.5 In any case, KISSBUDGET and the Customer agree that compensation for the damage that would have been suffered by the Customer and its Users due to a fault attributable to KISSBUDGET and duly proven, will be limited to the amount of the subscription in course subscribed by the Client.

11. FORCE MAJEURE

The Parties cannot be considered responsible or have failed in their contractual obligations, when the failure to perform the respective obligations originates in force majeure as defined by the case law of the French courts. The Contract between the parties is suspended until the extinction of the causes having generated the force majeure. Force majeure takes into account irresistible facts or circumstances, external to the parties, unforeseeable and beyond the control of the parties, despite all reasonably possible efforts to prevent them. The Party affected by an event of force majeure will notify the other Party within five (5) working days following the date on which it becomes aware of it. The two Parties will then agree on the conditions under which the performance of the Contract will be continued.

12. CUSTOMER SERVICE

KISSBUDGET provides remote assistance by email to support Users in using the Application between 9 a.m. and 9 p.m. Monday to Friday at clients@kissbudget.com

13. INSURANCE

Each of the Parties undertakes to maintain in force, throughout the duration of the Contract, with a reputedly solvent insurance company, a policy covering its professional liability, so as to cover the financial consequences of bodily injury, material and immaterial for which they would have to answer, caused by any event and which would be the fact of its collaborators and/or possible partner companies during the execution of the Contract.

14. CONFIDENTIALITY

Each Party undertakes, both on its own behalf and on behalf of its employees and partner companies, to preserve the confidentiality of the confidential information exchanged (the "Confidential Information"). Confidential Information is deemed to be all information, whatever its nature, form or medium, to which each Party will have access in the context of the performance of the Contract, and in particular, without this list being exhaustive, any means made available to the provision of KISSBUDGET to the Client and of the Client to KISSBUDGET, any technical, industrial, financial or commercial data, or any other information and any documents relating to the activities of each Party. Confidential Information does not cover documents, data or other information that is:

- known by one of the Parties on a non-confidential basis before their disclosure by the other Party;
- fallen or which will fall into the public domain on the day of their disclosure;
- legitimately obtained from a third party not bound by an obligation of confidentiality;
- independently developed by the Receiving Party which has not had access to no information from the Disclosing Party;
- disclosed under a legislative or regulatory provision.

Each Party undertakes:

- to apply to Confidential Information the same protection measures as those it applies to its own confidential information;
- to communicate the Confidential Information only to its employees and employees brought to know them in the context of the performance of the Services;
- not to disclose, publish or transmit to third parties the Information Confidential, in any form whatsoever, without the prior written consent of the other Party;
- to use the Confidential Information only for the purposes of carrying out services.

15. PERSONAL DATA

When using the Application, KISSBUDGET is required to collect, as data controller, personal data concerning the Client.

KISSBUDGET complies, in the collection and management of this data, with the law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, in its current version as well as with the General Regulations on the Data Protection ("GDPR"). In this regard, the Customer is invited to read the [Privacy Policy](#).

16. INDEPENDENCE OF THE PARTIES

16.1 Each of the Parties is legally and financially independent, acting in particular in its own name, for its own account and under its sole responsibility.

None of the stipulations of this Agreement may be interpreted as creating between the Parties a company, a joint venture, a joint venture, a mandate, a subsidiary, a relationship of agents or employees to employer, an association.

16.2 Each Party remains responsible for its actions, allegations, commitments, services, personnel, data. None can engage the responsibility of the other Party in any way whatsoever because of its acts, allegations, commitments, services, personnel, data.

17. MODIFICATION OF THE TOS

17.1 KISSBUDGET may have to modify the Contract in order to adapt them to its technical and commercial environment or in order to comply with the legislation in force.

17.2 In this case KISSBUDGET will send the Client a notification by email at least thirty (30) days before the modification of the Contract. The notification will remind the Customer that if he continues to use the Services after the end of the subscription period, this will mean that he

accepts the new conditions of the Contract. The new provisions will come into force on the date of automatic renewal of the subscription. If the Client refuses this modification, he may cancel his subscription by sending an email to clients@kissbudget.com. This cancellation must be made before the entry into force of the new provisions of the Contract, otherwise it will be considered as having accepted the new provisions of the Contract.

18. APPLICABLE LAW AND JURISDICTION

18.1 The law of the Contract is Canadian law.

18.2 In the absence of an amicable solution found between the Parties, the courts within the jurisdiction of the Court of Quebec will have sole jurisdiction to hear disputes of all kinds or disputes relating to the interpretation or execution of this Contract, notwithstanding plurality of defendants, incidental or summary claim or warranty claims, unless otherwise mandatory rules of procedure.

19. GENERAL PROVISIONS

19.1 Previous documents or other agreements The Contract replaces any other previous document, any other written or verbal agreement in relation to the same subject, with the exception of the estimate, the special conditions and prevails over any contrary provision which could be contained in the documents issued by the Client.

19.2 Autonomy of the clauses If any provision of the Contract or its application to any person or circumstance is deemed null, this nullity will not concern the other provisions or applications of the Contract, which will remain in force, separately from the provision deemed null.

19.3 Language of the Contract The Contract is written in French. A foreign language translation can be provided for information. In case of contradiction, only the French version will prevail between the Parties.
