

# KIWILI

## TERMS OF SERVICE

### 1. Application

**Acceptance:** The following Terms of Service (the “Terms”) are between you and Kiwili Inc., 154, Av. Laurier Ouest, Montreal, Québec, H2T 2N7, Canada (“Kiwili”) and constitute a legal agreement that governs your use of Kiwili product, software, services and Websites and your surfing on the Website [www.kiwili.com](http://www.kiwili.com) (the “Website”) (collectively referred to as the “Service”). You must agree to these Terms before you can use the Service. You can agree to these Terms by: a) actually using the Service, or b) clicking a box that indicates you agree to the Service, where such a box is made available to you. If you do not agree to any of the following terms, please do not use the Service. You should print or otherwise save a copy of these Terms for your records.

2. **Legal Authority:** To use and/or register for the Service, you must be of legal age to form a binding contract with Kiwili. Also, you cannot be located in a country where, for any reason whatsoever, the publication or the access to the Service or to the Website are forbidden. By accepting these Terms you represent that you understand and agree to the foregoing. Kiwili makes no representation that the use of the Service and its contents are considered regulatory and is not permitted by law in all countries. You bear all risks associated with the use of the Website. It is your sole responsibility to act in accordance with law and/or regulations in your country of residence.

**Updates:** Kiwili may update or change these Terms from time to time and recommends that you review the Terms on a regular basis. You can review the most current version of the Terms at any time on the Website. If Kiwili makes a change to the Terms, it will post the revised Terms on our Website at the link as herein noted. You understand and agree that your continued use of the Service after the Terms has changed constitutes your acceptance of the Terms as revised. Without limiting the foregoing, if Kiwili makes a change to the Terms that materially impacts your use of the Service, Kiwili may post notice of any such change on the Website and/or email you notice of any such change to your Kiwili account.

### 2. The Service

**Changing the Service:** Kiwili reserves the right to modify or stop the Service (or any part thereof), either temporarily or permanently, at any time or from time to time, with or without prior notice to you. Without limiting the foregoing, Kiwili may post on the Website and/or send email to your Kiwili account, notice of such changes to the Service. It is your responsibility to review our Website and/or check your Kiwili account for any such notices. You agree that Kiwili shall not be liable to you or any third party for any modification or cessation of the Service.

**Availability:** The Service, or any feature or part thereof, may not be available in all languages or in all countries and Kiwili makes no representation that the Service, or any feature or part thereof, is appropriate or available for use in any particular location. To the extent you choose to access and use the Service, you do so at your own initiative and are responsible for compliance with any applicable laws, including, but not limited to, any applicable local laws.

### 3. Use of the Service

**Use of the Website and Member Account:** As a user of the Website, you may freely access the content of the sign up section of the Website, without being bound by any signing up procedure whatsoever. However, the managing section of the Website will only be accessible to you upon signing up to Kiwili and taking an annual membership. When you accept these Terms and complete the Kiwili sign up process, you become a Kiwili “Member Account” holder. You are required to select a unique name upon sign up that will be used for your account (your “Subscriber ID”).

**Security:** Upon creating your Subscriber ID you will be required to select a password. Please choose a strong password and do not reveal your password to others. You agree that you are responsible for keeping your password confidential and secure, and further understand that you are solely responsible and liable for any activities that occur under your Subscriber ID. If you suspect or become aware of any unauthorized use of your account please contact Kiwili Support by sending an email to [info@kiwili.com](mailto:info@kiwili.com).

**Sign Up Obligations:** You agree that all information you provide to Kiwili during the sign up process (“Sign Up Data”) will be true, accurate, complete and current information, and that you shall maintain and update the Sign Up Data as needed throughout your term to keep it accurate and current. Failure to provide accurate, current and complete Sign Up Data may result in the suspension and/or termination of your account.

**No Conveyance:** Nothing in these Terms shall be construed to convey to you any interest, title, or license in a Subscriber ID, email address, domain name, iChat ID, or similar resource used by you in connection with the

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Service. The use of the Service is unique and you are solely responsible for any loan or share access to the Service.

No Survivorship: You agree that your Kiwili account is non-transferable and that any rights to your Subscriber ID or Content within your account terminate upon your death.

No Reproduction or Resale: You agree that you will not reproduce, copy, duplicate, sell, resell, rent or trade the service (or any part thereof) for any purpose whatsoever.

## 4. Content

Content: "Content" means any information that may be generated or encountered through use of the Service, such as data files, written text, software, music, graphics, photographs, images, sounds, videos, messages and any other like materials. You understand that all Content whether publicly posted or privately transmitted on the Service is the sole responsibility of the person from whom such Content originated. This means that you, and not Kiwili, are solely responsible for any Content you upload, download, post, email, transmit, store or otherwise make available through your use of the Service. You understand that by using the Service you may encounter Content that you may find offensive, indecent, or objectionable, and that you may expose others to Content that they may find objectionable. Kiwili does not control the Content posted via the Service, nor does it guarantee the accuracy, integrity or quality of such Content. You understand and agree that your use of the Service and any Content is solely at your own risk.

Trademarks Information: The Website and its components, including text, content, software, animated sequences, music, audio and graphic elements, photographs, illustrations, design, art, names, logos, trademarks and all other components of this type are the property of Kiwili or of the assignors of its license and are protected under the copyrights, databases laws, trademarks laws and/or more generally, any regulation concerning exclusive rights. You shall not purchase on the Website and/or the Content any right or license other than the right to use the Website and the Service under these Terms.

Information on the Content: As part of a strictly private and non-commercial use, you may retrieve and display Content from the Website on a computer screen, print individual pages on paper (but not photocopy them) and keep an electronic version of these pages on a disk (excluding any server or any data storage device connected to a network). You make any downloading or printing of the opinions of copyright appearing on the originals and ensure that they are intact on the copy you've made. In addition, you will remain bound to those labels and notices.

Violation by a third party: You agree to promptly notify Kiwili in writing of any unauthorized access to the Website or the Service or any misuse of these performed by third parties or of any claim that the Website or the Content thereof infringes the rights of copyright, database, trademark law or otherwise.

## 5. Conduct

You agree that you will NOT use the Service to:

- a. upload, download, post, email, transmit, store or otherwise make available any Content that is unlawful, harassing, threatening, harmful, tortious, defamatory, libellous, abusive, violent, obscene, vulgar, invasive of another's privacy, hateful, racially or ethnically offensive, or otherwise objectionable;
- b. stalk, harass, threaten or harm another;
- c. if you are an adult, request personal or other information from a minor (any person under the age of 18 or such other age as local law defines as a minor) who is not personally known to you, including but not limited to any of the following: full name or last name, home address, zip/postal code, telephone number, picture, or the names of the minor's school, church, athletic team or friends;
- d. pretend to be anyone, or any entity, you are not — you may not impersonate or misrepresent yourself as another person (including celebrities), entity, another Kiwili subscriber, a Kiwili employee, or a civic or government leader, or otherwise misrepresent your affiliation with a person or entity, (Kiwili reserves the right to reject or block any Subscriber ID which could be deemed to be an impersonation or misrepresentation of your identity, or a misappropriation of another person's name or identity);
- e. engage in any copyright infringement or other intellectual property infringement, or disclose any trade secret or confidential information in violation of a confidentiality, employment, or nondisclosure agreement;
- f. post, send, transmit or otherwise make available any unsolicited or unauthorized email messages, advertising, promotional materials, junk mail, spam, or chain letters, including, without limitation, bulk commercial advertising and informational announcements;
- g. forge any TCP-IP packet header or any part of the header information in an email or a news group posting, or otherwise putting information in a header designed to mislead recipients as to the origin of any Content transmitted through the Service ("spoofing");

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- h. upload, download, post, email, transmit, store or otherwise make available any material that contains viruses or any other computer code, files or programs designed to harm, interfere or limit the normal operation of the Service (or any part thereof), or any other computer software or hardware;
- i. interfere with or disrupt the Service (including accessing the Service through any automated means, like scripts or web crawlers), or any servers or networks connected to the Service, or any policies, requirements or regulations of networks connected to the Service (including any unauthorized access to, use or monitoring of data or traffic thereon);
- j. plan or engage in any illegal activity; and/or
- k. gather and store personal information on any other users of the Service to be used in connection with any of the foregoing prohibited activities.

**Removal of Content:** You acknowledge that Kiwili is not responsible or liable in any way for any Content provided by others and has no duty to pre-screen such Content. However, Kiwili reserves the right at all times to determine whether Content is appropriate and in compliance with these Terms, and may pre-screen, move, refuse, modify and/or remove Content at any time, without prior notice and in its sole discretion, if such Content is found to be in violation of these Terms or is otherwise objectionable.

**Backup of Content:** You are responsible for backing up, to your own computer or other device, any important documents, images or other Content that you store or access via the Service. Kiwili does not guarantee or warrant that any Content you may store or access through the Service will not be subject to inadvertent damage, corruption or loss. Kiwili disclaims liability for any damage, corruption or loss suffered by any Content you store or that you access using the Service.

**Access to Your Account and Content:** You acknowledge and agree that Kiwili may access, use, preserve and/or disclose your account information and Content if legally required to do so or if we have a good faith belief that such access, use, disclosure, or preservation is reasonably necessary to:

- a. comply with legal process or request;
- l. enforce these Terms, including investigation of any potential violation thereof;
- m. detect, prevent or otherwise address security, fraud or technical issues; or
- n. protect the rights, property or safety of Kiwili, its users or the public as required or permitted by law.

**Violation:** If while using the Service, you encounter Content you find inappropriate, or otherwise believe to be a violation of these Terms, you may report it by sending an email to [info@kiwili.com](mailto:info@kiwili.com).

## **6. Payment**

**Fees:** You agree to pay all fees and charges specified when you signed up for the Service and any part thereof. All fees are exclusive of applicable taxes (e.g. sales, use, or value-added tax), unless otherwise stated.

**Credit Card Authorization:** You may be asked to provide Kiwili with a credit card number from a card issuer that we accept in order to activate and/or pay for any fees related to the Service. Please contact your card issuer if you have additional questions regarding when an authorization amount will be removed from your statement.

**Payment Method:** Kiwili will charge the annual subscription fee and any other additional fees you authorize to the charge or credit card account provided by you. By authorizing Kiwili to charge a credit card for the fees associated with your subscription, you are authorizing Kiwili to automatically continue charging that card (or any replacement card if the original card is renewed, lost, stolen, or changed for any reason by the card issuer, and the issuer informs Kiwili of the new replacement card account) for all fees or charges associated with your subscription including any renewal fees as described below. You authorize the card issuer to pay any amounts described herein and authorize Kiwili, or any other company that acts as a billing agent for Kiwili, to continue to attempt to charge all sums described herein to your credit card account until such amounts are paid in full. You agree to provide Kiwili updated information on your credit card upon Kiwili's request and any time the information earlier provided is no longer valid. If payment is not received by Kiwili from your credit card issuer or its agents, you agree to pay all amounts due upon demand by Kiwili.

**Automatic Renewal of Annual Subscription:** When you sign up online for the Service, your annual subscription will be set to automatically renew upon its expiration. This means that unless you cancel your account or change its renewal settings prior to its expiration, your account will automatically renew for another year. At the time of renewal, we will charge your credit card the then-current fees to renew the Service.

**Changes in Price:** Kiwili may at any time, upon notice required by applicable law, change the price of the Service or any part thereof, or institute new charges or fees. Price changes and institution of new charges

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implemented during your subscription term will apply to subsequent subscription terms and to all new subscribers after the effective date of the change. If you do not agree to any such price changes, then you must cancel your account and stop using the Service. Your continued use of the Service after the effective date of any such change shall constitute your acceptance of such change.

## **7. Content Submitted or Made Available by You on the Service**

License from You: Except for material we may license to you, Kiwili does not claim ownership of the materials and/or Content you submit or make available on the Service. However, by submitting or posting such Content on areas of the Service that are accessible by the public, you grant Kiwili a worldwide, royalty-free, non-exclusive license to use, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display such Content on the Service solely for the purpose for which such Content was submitted or made available. Said license will terminate within a commercially reasonable time after you or Kiwili remove such Content from the public area. By submitting or posting such Content on areas of the Service that are accessible by the public, you are representing that you are the owner of such material and/or have authorization to distribute it.

Changes to Content: You understand that in order to provide the Service and make your Content available thereon, Kiwili may transmit your Content across various public networks, in various media, and modify or change your Content to comply with technical requirements of connecting networks or devices. You agree that the license herein permits Kiwili to take any such actions.

## **8. Confidentiality and Personal Information Protection Policy**

Kiwili may need to collect information about you and or that allows to identify you personally in order to offer its services or, more generally, to facilitate your use of the Website. You acknowledge that by using the Service you consent to the collection and use of certain information about you and your use of the Service solely in order to provide the Service. You further acknowledge and agree that Kiwili may collect, use, transmit, process and store information about your account and all invoices generated by the Website in order to provide the Service and all features included therein. None of this information will be transmitted to third parties without your consent. All data is protected and encrypted according the SSL 128 bit standard. All such information you provide is used by us in strict compliance with the *Personal Information Protection and Electronic Documents Act of Canada* (PIPEDA).

## **9. Termination**

Termination by You: You may terminate your account and/or stop using the Service at any time. Any fees paid by you prior to your termination are non-refundable.

Termination by Kiwili: Kiwili may at any time, under certain circumstances and without prior notice, immediately terminate or suspend all or a portion of your account and/or access to the Service. Cause for such termination shall include, but not be limited to:

- a. violations of the Terms or any other policies or guidelines that are referenced herein and/or posted on the Service;
- o. a request by you to cancel or terminate your account;
- p. discontinuance or material modification to the Service or any part thereof;
- q. a request and/or order from law enforcement, a judicial body, or other government agency;
- r. where provision of the Service to you is or may become unlawful;
- s. unexpected technical or security issues or problems;
- t. your participation in fraudulent or illegal activities; or
- u. failure to pay any fees owed by you in relation to the Service.

Any such termination or suspension shall be made by Kiwili in its sole discretion, without any refund to you of any prepaid fees or amounts, and Kiwili will not be responsible to you or any third party for any damages that may result or arise out of such termination or suspension of your account and/or access to the Service.

Effects of Termination: Upon termination of your account you lose all access to the Service and any portions thereof, including, but not limited to, your Member Account, Subscriber ID and data. In addition, Kiwili shall delete all information and data stored in or as a part of your account(s) including, but not limited to, data files, backups and emails.

## **10. Links and Other Third Party Materials**

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Certain components or features of the Service may include materials from third parties and/or hyperlinks to other web sites, resources or content. Because Kiwili may have no control over such third party sites and/or materials, you acknowledge and agree that Kiwili is not responsible for the availability of such sites or resources, and does not endorse or warrant the accuracy of any such sites or resources, and shall in no way be liable or responsible for any content, advertising, products or materials on or available from such sites or resources. You further acknowledge and agree that Kiwili shall not be responsible or liable in any way for any damages you incur or allege to have incurred, either directly or indirectly, as a result of your use and/or reliance upon any such Content, advertising, products or materials on or available from such sites or resources.

## **11. Disclaimer of Warranties**

Some jurisdictions do not allow the exclusion of certain warranties, as such, to the extent such exclusions are specifically prohibited by applicable law, some of the exclusions set forth below may not apply to you.

You expressly understand and agree that your use of the Service is at your sole risk and the Service is provided on an "as is" and "as available" basis. Kiwili and its affiliates, subsidiaries, officers, directors, employees, agents, partners and licensors expressly disclaim all warranties of any kind, whether express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. In particular, Kiwili and its affiliates, subsidiaries, officers, directors, employees, agents, partners and licensors make no warranty that (i) the Service will meet your requirements; (ii) your use of the Service will be timely, uninterrupted, secure or error-free; (iii) any information obtained by you as a result of the Service will be accurate or reliable; and (iv) any defects or errors in the software provided to you as part of the Service will be corrected.

Any material downloaded or otherwise obtained through the use of the Service is accessed at your own discretion and risk, and you will be solely responsible for any damage to your device or loss of data that results from the download of any such material. You further acknowledge that the Service is not intended or suitable for use in situations or environments where the failure or time delays of, or errors or inaccuracies in, the content, data or information provided by the Service could lead to death, personal injury, or severe physical or environmental damage. No advice or information, whether oral or written, obtained by you from Kiwili or through or from the Service shall create any warranty not expressly stated in the terms.

## **12. Limitation of Liability**

Some jurisdictions do not allow the exclusion or limitation of liability for incidental or consequential damages, as such, to the extent such exclusions or limitations are specifically prohibited by applicable law, some of the exclusions or limitations set forth below may not apply to you.

You expressly understand and agree that Kiwili and its affiliates, subsidiaries, officers, directors, employees, agents, partners and licensors shall not be liable to you for any direct, indirect, incidental, special, consequential or exemplary damages, including, but not limited to, damages for loss of profits, goodwill, use, data, cost of procurement of substitute goods or services, or other intangible losses (even if Kiwili has been advised of the possibility of such damages), resulting from: (i) the use or inability to use the Service (ii) any changes made to the Service or any temporary or permanent cessation of the Service or any part thereof; (iii) the unauthorized access to or alteration of your transmissions or data; (iv) the deletion of, corruption of, or failure to store and/or send or receive your transmissions or data on or through the Service; (v) statements or conduct of any third party on the Service; and (vi) any other matter relating to the Service.

## **13. Indemnity**

You agree to defend, indemnify and hold Kiwili, its affiliates, subsidiaries, directors, officers, employees, agents, partners and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by a third party, relating to or arising from: (a) any Content you submit, post, transmit, or otherwise make available through the Service; (b) your use of the Service; (c) any violation by you of these Terms; or (d) your violation of any rights of another. This obligation shall survive the termination or expiration of these Terms and/or your use of the Service.

You acknowledge that you are responsible for all use of the Service using your account and that these Terms apply to any and all usage of your account. You agree to comply with these Terms and to defend, indemnify and hold harmless Kiwili from and against any and all claims and demands arising from usage of your account whether or not such usage is expressly authorized by you.

## **14. Advertising**

The Service users that do not hold a Member Account accept the emergence of advertising while using the Service. The Service users that do hold a Member Account are exempt from advertising. All users accept that their name, logo, trademark is used by Kiwili for advertising and concede to Kiwili the license to use and reproduce these names, trademarks and logo on all media, all without compensation.

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## **15. Notices**

Kiwili may provide you with notices regarding the Service, including changes to these Terms, by email to your Kiwili email address (and/or other alternate email address if provided), by regular mail, or by postings on our Website and/or the Service.

## **16. Governing Law**

Except to the extent expressly provided in the following paragraph, these Terms and the relationship between you and Kiwili shall be governed by the laws of the province of Québec and of Canada, excluding its conflicts of law provisions. You and Kiwili agree to submit to the personal and exclusive jurisdiction of the courts located within the judicial district of Montreal, Québec, to resolve any dispute or claim arising from these Terms.

## **17. General**

These Terms constitute the entire agreement between you and Kiwili, govern your use of the Service and completely replace any prior agreements between you and Kiwili in relation to the Service. You may also be subject to additional terms and conditions that may apply when you use affiliate services, third-party content, or third-party software. If any part of these Terms is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. The failure of Kiwili to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. You agree that, except as otherwise expressly provided in these Terms, there shall be no third-party beneficiaries to this agreement.