

## **TERMS OF USE KTU Worldwide, INC. INTRANET (Owner's Resource)**

KTU Worldwide, Inc. has developed a password controlled, restricted access, secure intranet that allows our franchisees to view and print portions of our confidential Policy and Procedure Manual, news articles and corporate forms, to communicate with each other. We call this facility Owner's Resource. The following are the terms and conditions of use of Owner's Resource ("Terms of Use"). Please read them carefully. When you respond to this message with this statement: "I AGREE TO BE BOUND BY ALL OF THE OWNER'S RESOURCE TERMS OF USE", we will issue a special User ID and password to you. By logging onto Owner's Resource the first time and each subsequent log-on, you confirm that you are eligible to access Owner's Resource and you agree to observe and be bound by all these Terms of Use, as may be amended from time to time.

### **Section 1: Introduction**

Because Owner's Resource will continually evolve and because we may change, supplement or delete any of its functions, we reserve the right to modify these Terms of Use.

Owner's Resource is owned and operated by KTU Worldwide, Inc. Questions concerning Owner's Resource or its operation should be directed to the system administrator at the contact point listed below.

We provide Owner's Resource "AS-IS" and "AS AVAILABLE". We assume no responsibility for the timeliness, deletion, mis-delivery or failure to store any of your communications or settings.

To use Owner's Resource, you must be able to access the World Wide Web, and you must pay any Internet access fees associated with your access. You must also provide all equipment necessary to connect to the World Wide Web, including a computer and modem or other access device.

### **Section 2: Passwords and Security**

You will receive your User ID and password from the system administrator for Owner's Resource. Because anyone who uses your User ID and password gains access to our confidential Policy and Procedure Manual and other confidential information, you must take care to maintain the confidentiality of your password and User ID.

Your User ID and password is unique to you. You may not provide this password or access to this password to any other person. You should memorize your User ID and password. If you need to write them down, do not record your User ID at the same place you record your password. You are responsible for maintaining the confidentiality of your User ID and password, and you are responsible for all activities that occur under your User ID and password.

You agree (a) to notify the system administrator immediately of any unauthorized use of your User ID or password, or any other breach of security that comes to your attention, and (b) to log out of your Owner's Resource account at the end of each session.

We cannot and will not be liable for any loss or damage arising from your failure to comply with the requirements stated in this Section 2.

### **Section 3: Privacy and Data Collection**

We will record your User ID and password when we issue them to you. We record each instance that your User ID and password are used to access Owner's Resource. We may also record the time and duration of each session of your User ID's use of Owner's Resource. We may also record when and the number of instances that you access certain information on Owner's Resource, such as when you open an update to the Policy and Procedure Manual or the number of instances and how often you access the Policy and Procedure Manual. We will not provide information you provide about your customer base, customer profile and other demographic information to our advertisers and vendors. In addition, we will not provide your email address to any other entity or any person. However, your email address and other personal information as provided on the Intranet will be available for other users of the Intranet.

### **Section 4: Confidentiality of Certain Information**

You hereby acknowledge that KTU Worldwide, Inc. is the sole owner of all proprietary rights in and to the KTU Worldwide, Inc. System and each and every part thereof and all material and information now or hereafter revealed to you under the KTU Worldwide, Inc. Franchise Agreement(s) entered into between you and KTU Worldwide, Inc. (collectively, the "Franchise Agreement") relating to the KTU Worldwide, Inc. System (as defined therein). You acknowledge that the products, methods of doing business, and other elements of the KTU Worldwide, Inc. System, which may or may not be disclosed on Owner's Resource, are unique and distinctive and have been developed by KTU Worldwide, Inc. at great effort, time and expense. You further acknowledge that the KTU Worldwide, Inc. System, in its entirety, constitutes trade secrets of KTU Worldwide, Inc., which are revealed to you on Owner's Resource in confidence, solely for the purpose of enabling you to establish and operate your Kitchen Tune-Up business(es) in accordance with the terms of the Franchise Agreement. Such trade secrets include, but are not limited to, product catalogs, price lists, training manuals, policy manuals, sales promotion aids, business forms, accounting procedures, marketing reports, informational bulletins. You agree that you (a) will not reveal any of such trade secrets to any other person, firm, or entity, and (b) will not use any of such trade secrets in connection with any business or venture in which you have a direct or indirect interest, whether as a proprietor, partner, joint venture, shareholder, officer, director, or in any other capacity whatever, other than in connection with the operation of your Kitchen Tune-Up business(es). All confidentiality non-disclosure and

non-competition provisions in the Franchise Agreement shall apply to confidential and proprietary information and trade secrets disclosed to by us on Owner's Resource.

## **Section 5: Conduct and Content**

As a condition of your continuing use of the Owner's Resource, you promise that you will not use Owner's Resource for any purpose that is unlawful or prohibited by these Terms of Use. We provide Owner's Resource to franchisees only for exchanges of information and other uses directly related to the KTU Worldwide, Inc. System. You may use Owner's Resource only for purposes related to the operation of your franchise and not for personal or unrelated business use. Any unauthorized use of Owner's Resource is expressly prohibited, and we reserve the right to delete inappropriate material and to suspend the account of any person who uses Owner's Resource for an unauthorized purpose.

You should understand that all messages, data, text, photographs, graphics, video and other materials or information transmitted via Owner's Resource (except information that we post), whether posted for general viewing or transmitted privately ("User Content"), are the sole responsibility of the person from which an item of User Content originated.

You agree not to use Owner's Resource to:

1. upload, post, send in a message or otherwise transmit any User Content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise offensive;
2. impersonate any person or entity;
3. disguise the authorship or origin of any User Content you transmit;
4. interfere with or disrupt servers or networks connected to Owner's Resource;

We reserve the right, in our sole discretion, to block or remove any objectionable User Content that you transmit available via Owner's Resource. Without limiting the breadth of our right, you are advised that we have the right to remove any User Content that violates these Terms of Use, your Franchise Agreement or is otherwise objectionable (in our sole determination).

We store and preserve User Content in accordance with established policy and may disclose it if required by law or in the good faith belief that such disclosure is reasonably necessary (a) to comply with legal process, (b) to enforce these Terms of Use, (c) to respond to claims that any User Content violates the rights of third-parties, or (d) to protect the rights, property and personal safety of KTU Worldwide, Inc. and its employees, and its franchisees.

We may transmit and store your User Content over various networks, computer servers and other technological means, and we may modify your User Content to conform and adapt it to technical requirements of connecting networks or devices.

We will immediately suspend or terminate the rights of any User ID that we believe, in our sole discretion, is being used to disseminate spam or other unsolicited bulk messages. In addition, because damages are difficult to quantify, you agree to immediately pay us liquidated damages of \$5 for each piece of spam or unsolicited bulk messages transmitted under or otherwise associated with your User ID.

We have the right, in our sole discretion, to discontinue sending hard copies of any material, notices, etc. provided or made available to you on Owner's Resource unless otherwise required by the Franchise Agreement.

## **Section 6: Ownership of User Content**

Any User Content that you transmit via Owner's Resource shall be our property, and we may reproduce, distribute, transmit, publish, sell or otherwise commercially exploit any such User Content in any manner or through any medium we choose.

## **Section 7: Indemnity**

You are responsible for maintaining the confidentiality of your User ID and password, and for all activities that occur under your account. You indemnify and agree to defend and hold us, and our subsidiaries, affiliates, officers, directors, agents, co-branders or other partners, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party with respect to or arising out of User Content that you submit, post to or transmit through Owner's Resource, your use of Owner's Resource, your violation of these Terms of Use, or your violation of any rights of another. You agree not to settle any such claim or incur any liability or admission of guilt on our behalf without our consent. We reserve the right, at our expense, to assume the defense and control of any matter subject to indemnification by you.

## **Section 8: Use and Storage**

We may establish general practices and limits concerning use of KTU Worldwide, Inc. or Owner's Resource. We disclaim any responsibility or liability for the deletion or failure to store any messages and other communications or other User Content maintained or transmitted by Owner's Resource. We have the right to change these general practices and limits at any time, in our sole discretion, with or without notice.

Owner's Resource and the information contained or referred to herein do not constitute an offer or a solicitation of any offer for the purchase or sale of any securities or franchises.

Owner's Resource may contain information and press releases about and by Kitchen Tune-Up franchisees. While information prepared by us was believed to be accurate as of the date so prepared, we disclaim any duty or obligation to update such information or to verify the accuracy of information prepared by others.

## **Section 9: Modifications to Owner's Resource**

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, Owner's Resource (or any of its features), with or without notice. You agree that we shall not be liable to you or to any third party for any modification, suspension or discontinuance of Owner's Resource.

## **Section 10: Termination**

We may suspend your password, your user account or other use of Owner's Resource, and remove and discard any of your User Content if you violate any of these Terms of Use. If you repeatedly breach these Terms of Use, we may terminate your password, user account or other use of Owner's Resource and thereafter supply you paper copies of bulletins and other materials that we may provide you in connection with your Franchise Agreement. We will terminate your password, user account and other use of Owner's Resource when you are no longer a Kitchen Tune-Up franchisee. We shall not be liable to you or any third-party for any termination or suspension of your access to Owner's Resource. We will suspend your User ID and Password if a franchisee is in default of payment.

## **Section 11: Links and Advertising**

Owner's Resource may provide links to other World Wide Web sites or resources. We are not responsible for the availability of such external sites or resources, and we neither endorse nor assume any responsibility for any content, advertising, products, or other materials on or available from such sites or resources. Use of such third party websites is at your own risk. KTU Worldwide, Inc. has no control over the content or policies of such third party websites. We will not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such website or resource.

Your business dealings with, or participation in promotions of, advertisers found on or through Owner's Resource, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and the advertiser. We shall not be responsible or liable for any loss or damage of any kind you incur as the result of any such dealings or as the result of the presence of such advertisers on Owner's Resource.

We may place legal notices, disclaimers, our corporate logos and slogans, advertisements, endorsements, trademarks, and other identifying information on Owner's Resource, all of which we may modify, expand or eliminate at our option. All consideration (monetary and non-monetary) received by us on account of the placement or sale of advertisements, endorsements and sponsorships on Owner's Resource will belong only to us.

## **Section 12: Intellectual Property Rights**

We grant you a personal, non-transferable and non-exclusive right and license to use the object code of the Software (defined below) on your computers. You promise not to copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, or to sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software, either directly or through your employees or independent contractors. You agree not to modify the Software in any manner or form, or to use modified versions of the Software for any purpose, including (without limitation) that of obtaining unauthorized access to Owner's Resource. You agree not to access Owner's Resource by any means other than the interface that we provide for use in accessing Owner's Resource.

KTU Worldwide, Inc. is the primary licensee of, and will retain all right, title and interest in and to the Software and all Owner Content (as defined below) prepared for, or used on, Owner's Resource, and all intellectual property rights in or to any of them.

"Owner Content" means all text, images, sounds, files, videos, designs, animations, layouts, color schemes, trade dress, concepts, methods, techniques, processes and data used in connection with, displayed on, or collected from or through Owner's Resource that we post or provide.

"Software" means computer programs and computer code (e.g., HTML, Java) used for, with or on Owner's Resource, excluding any software programs owned by third parties.

Except as provided for herein, nothing on Owner's Resource shall be construed as conferring any license under any intellectual property right, including any right in the nature of trademark or copyright, of KTU Worldwide, Inc. or any third party, whether by estoppel, implication or otherwise. All brands and names are the property of their respective owners.

## **Section 13: Disclaimer of Warranties**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

1. YOUR USE OF OWNER'S RESOURCE IS AT YOUR SOLE RISK. OWNER'S RESOURCE IS PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS. WE 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.
2. WE MAKE NO WARRANTY THAT (i) OWNER'S RESOURCE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (ii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF OWNER'S RESOURCE WILL BE ACCURATE OR RELIABLE, (iii) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL YOU PURCHASE OR OBTAIN THROUGH OWNER'S RESOURCE WILL MEET YOUR EXPECTATIONS, AND (iv) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.

## **Section 14: Limitation of Liability**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT NEITHER WE NOR OUR AFFILIATES, CONTRACTORS, VENDORS OR LICENSORS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) YOUR USE OF OR INABILITY TO USE OWNER'S RESOURCE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM OWNER'S RESOURCE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS, DATA OR OTHER USER CONTENT; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON OWNER'S RESOURCE; OR (v) ANY OTHER MATTER RELATING TO OWNER'S RESOURCE.

## **Section 15: Notices**

Notices to you or us may be made by any manner permitted in your Franchise Agreement. In addition, Owner's Resource may also provide notices of changes to these Terms of Use or other matters by displaying notices or links to notices to you generally on Owner's Resource.

## **Section 16: General**

These Terms of Use constitute the entire agreement between you and us relating to your use of Owner's Resource and govern your use of Owner's Resource, superseding any prior agreements between you and us. You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content or third-party software. These Terms of Use and the relationship between you and us shall be governed by the laws of the State of Wisconsin without regard to its conflict of law provisions. You and we agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Milwaukee, Wisconsin. Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of Owner's Resource or these Terms of Use must be filed within one year after such claim of action arose or be forever barred.

Any unauthorized access, modification or change of any information, or any interference with the availability of or access to Owner's Resource is strictly prohibited. We reserve all legal rights and remedies available to us and this disclaimer shall in no way be deemed a limitation or waiver of any other rights we may have.

Our failure to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision. If any provision of these Terms of Use is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms of Use remain in full force and effect. The Section titles in these Terms of Use are for convenience only and have no legal or contractual effect.

## **Section 17: Violations**

Please report any violations of these Terms of Use to the system administrator.

## **Section 18: Contact Information**

Devin Pike, System Administrator  
KTU Worldwide, Inc.  
813 Circle Dr.  
Aberdeen, SD 57401  
Phone Number: (605) 225-4049  
Facsimile Number: (605) 225-1371  
devin@kitchentuneup.com