



The Kelly Domaille Team Advertising Terms and Conditions

Introduction. This Agreement ("*Agreement*") between You ("*Preferred Service Provider*") and KDT ("*The Kelly Domaille Team*") consists of the following KDT Advertising Terms and Conditions ("*Terms and Conditions*").

- 1. Program.** As a Preferred Service Provider for KDT, You will have the option to choose one of two display options on the KDT web site.

The '*Basic Display*' option allows for a continuous **FREE** single-spaced regular type, non-bold listing which displays the following information:

(Owner Name)
(Company Name)
(Company Address)
(Company Phone Number)

The '*Enhanced Display*' option offers a yearly **PAID**, bold type display with linked email addresses, web site URL and color logo displaying the following information:

(Owner name)
(Company Name)
(Company Address)
(Company Phone Number)
(Email address)
(Web Site Address)

***Your
Logo
Here***

- 2. Program Participation.** Participation in the Program is subject to KDT's prior approval. KDT reserves the right to refuse participation to any applicant or participant at any time at its sole discretion.
- 3. Payment.** The '*Enhanced Display*' option shall be billed in January of each year. Payment in full shall be due and payable by January 31st of the year billed and shall constitute a prepayment for that year. For new subscribers, participation costs for enrollment between January 1st and September 30th shall be at the yearly rate. For subscriptions requested between October 1st and December 31st, cost shall be one-half yearly rate.
- 4. Implementation and Operation of displays and linked logos.** You agree to allow KDT to list Your service/company on its web site under one or more appropriate Preferred Service Provider headings. You also agree to provide correct contact information for all display purposes. If You chose the '*Enhanced Display*', You agree to additionally provide a valid email address, web site URL and high resolution .jpeg formatted logo for Your display. All links must be valid and unbroken and shall only be allowed to link to the web site and/or email address specifically used by and for the Preferred Service Provider.

5. **Parties' Responsibilities.** You are solely responsible for the display content provided to KDT. If any of Your display information changes, it is Your responsibility to notify KDT in writing immediately. Changes to the display will usually be made within 48 hours of receipt of notification of any changes.
6. **Termination; Cancellation.** You may terminate this agreement with or without cause at any time by sending written notice of Your desire to cancel Your Preferred Service Provider display(s) to info@kellydomaille.com. This Agreement shall be deemed terminated within ten (10) business days of KDT's receipt of Your notice. KDT may at any time, at its sole discretion, terminate all or part of the Program or terminate this Agreement for any reason. No refund from the '*Enhanced Display*' option shall be given for Program termination or early termination of the Agreement.
7. **No Guarantee.** KDT makes no guarantee regarding the level of impressions, click-throughs or the timing of delivery of such impressions and/or clicks. In addition, for the avoidance of doubt, KDT does not guarantee the Program will be operable at all times or during any down time (i) caused by outages to any public Internet backbones, networks or servers, (ii) caused by any failures of Your equipment, systems or local access services, (iii) for previously scheduled maintenance or (iv) relating to events beyond KDT's control such as strikes, riots, insurrection, fires, floods, explosions, war, governmental action, labor conditions, earthquakes, natural disasters, or interruptions in Internet services to an area where KDT or Your servers are located or co-located.
8. **No Warranty.** KDT MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WITH RESPECT TO ADVERTISING, LINKS, SEARCH, REFERRALS, AND OTHER SERVICES, AND EXPRESSLY DISCLAIMS THE WARRANTIES OR CONDITIONS OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR ANY PARTICULAR PURPOSE. TO THE EXTENT LINKS AND SEARCH RESULTS ARE BASED ON OR DISPLAYED IN CONNECTION WITH NON-KDT CONTENT, KDT SHALL NOT HAVE ANY LIABILITY IN CONNECTION WITH THE DISPLAY OF SUCH LINKS AND SEARCH RESULTS.
9. **Limitations of Liability; Force Majeure.** IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. Each party acknowledges that the other party has entered into this Agreement relying on the limitations of liability stated herein and that those limitations are an essential basis of the bargain between the parties. Without limiting the foregoing and except for payment obligations, neither party shall have any liability for any failure or delay resulting from any condition beyond the reasonable control of such party, including but not limited to governmental action or acts of terrorism, earthquake or other acts of God, labor conditions, and power failures.
10. **Publicity.** You agree that KDT may use Your name and logo in presentations, marketing materials, Preferred Service Provider lists, Web site listings of Preferred Service Providers, Search Results Pages, and Referral Pages. If You wish to use KDT's trade names, trademarks, service marks, logos, domain names, and other distinctive brand

features ("**Brand Features**"), You may do so, so long as such use is in compliance with this Agreement.

- 11. Representations and Warranties.** You represent and warrant that (a) all of the information provided by You to KDT to enroll in the Program is correct and current; (b) You are the owner of the service/company or You are legally authorized to act on behalf of the owner of such service/company for the purposes of this Agreement and the Program; (c) You have all necessary right, power, and authority to enter into this Agreement and to perform the acts required of You hereunder. You further represent and warrant that all information provided including but not limited to email addresses, web sites and logos displayed on the KDT web site: (i) comply with all applicable laws, statutes, ordinances, and regulations; (ii) do not breach and have not breached any duty toward or rights of any person or entity including, without limitation, rights of intellectual property, publicity or privacy, or rights or duties under consumer protection, product liability, tort, or contract theories; and (iii) are not pornographic, hate-related or otherwise violent in content.
- 12. Your Obligation to Indemnify.** You agree to indemnify, defend and hold KDT, its agents, affiliates, subsidiaries, directors, officers and employees (collectively "**Indemnified Person(s)**") harmless from and against any and all third party claims, liability, loss, and expense (including damage awards, settlement amounts, and reasonable legal fees), brought against any Indemnified Person(s), arising out of, related to or which may arise from Your use of the Program and/or Your breach of any term of this Agreement.
- 13. KDT Rights.** You acknowledge that KDT owns all right, title and interest in and to the Program and that You will not acquire any right, title, or interest in or to the Program except as expressly set forth in this Agreement. You will not attempt to derive source code from any KDT service, software, or documentation.
- 14. Information Rights.** You understand that KDT will be providing the information You have supplied to any and all third parties for the sole purpose of promoting Your service. You agree that KDT may transfer and disclose to third parties personally identifiable information about You for the purpose of promoting Your service, including to third parties that reside in jurisdictions with less restrictive data laws than Your own. KDT may also provide information in response to valid legal process, such as subpoenas, search warrants and court orders, or to establish or exercise its legal rights or defend against legal claims. KDT disclaims all responsibility, and will not be liable to You, however, for any disclosure of that information by any such third party. KDT may share non-personally-identifiable information about You, including web site URLs and email addresses collected by KDT, with advertisers, business partners, sponsors, clients, and other third parties.
- 15. Miscellaneous.** This Agreement shall be governed by the laws of Minnesota, except for its conflicts of laws principles. Any dispute or claim arising out of or in connection with this Agreement shall be adjudicated in Olmsted County, Minnesota. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof. Any modifications to this Agreement must be made in a writing executed by both parties, by Your online acceptance of updated terms, or after Your continued participation in the Program after such terms have been updated by KDT. The failure to require performance of any provision shall not affect a party's right to require

performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself. If any provision herein is held unenforceable, then such provision will be modified to reflect the parties' intention, and the remaining provisions of this Agreement will remain in full force and effect. You may not resell, assign, or transfer any of Your rights hereunder. Any such attempt may result in termination of this Agreement, without liability to KDT. Notwithstanding the foregoing, KDT may assign this Agreement to any affiliate at any time without notice. The relationship between KDT and You is not one of a legal partnership relationship, but is one of independent contractors.

07-01-2009