



## WEB SITE USER AGREEMENT

### **1. ACCEPTANCE OF TERMS**

Kyäni, Inc. and its affiliates (collectively Kyäni) provides access to the Kyäni Web Site located at [www.Kyäni.net](http://www.Kyäni.net) subject to the terms and conditions, and your acceptance of, this Web Site User Agreement (the "Agreement"). Kyäni may amend this Agreement from time to time in its sole and complete discretion without any further notice to you. You should review this Agreement often to educate yourself regarding any new changes to the Policy.

By accessing, browsing, framing, using and/or linking to the Kyäni Web Site (hereafter "Web Site" or "Site"), you become a User as defined in Section 2 below and you agree to be bound by the terms of this Agreement. You further agree to be bound by any and all posted guidelines, rules, terms of service, acceptable use policies, privacy policies, or other contractual provision as noted. In the event of a conflict between any other agreement, rule, policies, or terms of service and this Agreement, the provisions of this Agreement shall govern.

### **2. TYPES OF USERS**

Any person accessing, browsing, or otherwise using the Kyäni Web Site, either manually or via any computer, hand held device, personal digital assistant, or other automated device or program, shall be deemed a "User" under this Agreement.

### **3. PRIVACY**

You agree that you have read and understand the terms of the Kyäni Internet Privacy Policy, which is available at [www.Kyäni.net](http://www.Kyäni.net), the terms and conditions of which are incorporated herein by reference as if set forth in full herein.

### **4. USE OF THE SITE**

You understand that Kyäni cannot and does not guarantee or warrant that files available for downloading from the Site will be free of infection, viruses, worms or other types of programs that are intended to maliciously damage your device, or improperly or illegally collect your personal data or information. You are responsible for implementing sufficient procedures and safeguards to satisfy your own particular requirements for accuracy of data input and output, and for maintaining a means external to the Kyäni Web Site for the reconstruction of any lost data.

### **5. SYSTEM INTEGRITY**

You may not use any device, software or routine to interfere with the proper working of the Web Site. You may not take any action that imposes an unreasonable burden upon the infrastructure used to support the efficient operation of the Web Site including but not limited to unsolicited e-mail (i.e. "Spam").

## **6. RISK; INTERNET USE**

YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THE WEB SITE AND THE INTERNET. YOU ACKNOWLEDGE AND AGREE THAT ANY UPLOADS OR TRANSMISSIONS YOU MAKE MAY BE INTERCEPTED AND USED BY AN UNAUTHORIZED THIRD PARTY AND THAT ALL OF THE RISK ASSOCIATED THEREWITH IS SOLELY YOURS.

## **7. NO WARRANTIES**

Kyäni DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR NON-INFRINGEMENT, OR THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) WITH REGARD TO THE WEB SITE, THE WEB SITE CONTENT, ANY MERCHANDISE OR SERVICES PROVIDED THROUGH THE WEB SITE OR ON THE INTERNET GENERALLY, UNLESS SPECIFICALLY STATED ON THE WEB SITE FOR A PARTICULAR PRODUCT OR SERVICE AND Kyäni SHALL NOT BE LIABLE FOR ANY COST OR DAMAGE ARISING EITHER DIRECTLY OR INDIRECTLY FROM ANY TRANSACTIONS ENTERED INTO THROUGH THE SITE. SOME STATES MAY NOT PERMIT THE DISCLAIMER OF IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMER MAY NOT APPLY TO YOU. Kyäni DOES NOT WARRANT THAT THE SITE OR SERVICES WILL MEET USER REQUIREMENTS, OR THAT THE SITE OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS IN THE SITE WILL BE CORRECTED. THE SITE AND THE CONTENT AND SERVICES MADE AVAILABLE ON THE SITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

## **8. SYSTEM OUTAGES**

Kyäni periodically schedules system downtime for maintenance and other purposes. Unplanned system outages also may occur. Kyäni shall have no liability whatsoever for the resulting unavailability of the Web Site or for any loss of data or transactions caused by planned or unplanned system outages or the resultant delay, misdelivery, nondelivery of information caused by such system outages, or any third party acts or any other outages of web host providers or the Internet infrastructure and network external to the Web Site.

## **9. INDEMNIFICATION**

You agree to indemnify, defend and hold Kyäni and its officers, directors, employees and agents harmless from and against any and all claims, demands, actions, costs, liabilities, losses and damages of any kind (including actual attorneys' fees) resulting from (i) your use, misuse or abuse of the Web Site, (ii) your use or purchase of services or goods provided through the Web Site, or (iii) your breach of any provision of this Agreement. You will cooperate as fully as reasonably required in Kyäni defense of any claim. Kyäni reserves the right, at its own expense, to assume the exclusive defense and control of any matter

otherwise subject to indemnification by you and you shall not in any event settle any matter without the written consent of Kyäni.

## **10. INTELLECTUAL PROPERTY**

The contents of the Site, such as text, graphics, logos, audio clips, video, photographs, software, and other information (the "Content") is the property of Kyäni and/or its affiliates or partners, and is protected by federal and international copyright and trademark laws, or other proprietary rights. These rights are protected in all forms, media and technologies existing now or hereinafter developed. You may print and download portions of material from the different areas of the Web Site solely for your personal non-commercial use or your non-commercial use within your organization or as otherwise permitted. No portion of the Content may be reprinted, republished, modified, or distributed in any form without the express written permission of Kyäni. You may not, and this Agreement does not give you permission to, reproduce, reverse engineer, decompile, disassemble, modify, transmit, sell, distribute, license or create derivative works with respect to the Site. Certain content may be licensed from third parties and all such third party content and all intellectual property rights related to the content belong to the respective third parties. You may not remove, alter or modify any copyright, trademark or other intellectual property or proprietary notice or legend contained on the Site or the Content. Any rights not expressly granted by this Agreement or any applicable end-user license agreements are reserved by Kyäni.

Nothing contained herein shall be construed as conferring by implication, estoppel or otherwise any license or right under any patent or trademark of Kyäni or any third party. Except as expressly provided above, nothing contained herein shall be construed as conferring any license or rights under any Kyäni copyright.

## **11. LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES SHALL Kyäni NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DISTRIBUTING THE SITE BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) THAT RESULT FROM (I) THE USE OF OR INABILITY TO USE THE SITE (II) THE COST OF PROCUREMENT OF SUBSTITUTE MERCHANDISE OR SERVICES RESULTING FROM ANY MERCHANDISE, DATA, CONTENT OR SERVICES PURCHASED OR OBTAINED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SITE; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SITE; OR (V) ANY OTHER MATTER RELATING TO THE SITE. YOU HEREBY ACKNOWLEDGE THAT THIS PARAGRAPH SHALL APPLY TO ALL CONTENT, MERCHANDISE, AND SERVICES AVAILABLE THROUGH THE SITE. IN NO EVENT SHALL Kyäni TOTAL CUMULATIVE LIABILITY UNDER THESE TERMS EXCEED THE LESSER AMOUNT OF ANY FEES PAID, IF ANY TO Kyäni FOR THE USE OF THE SITE BY YOU, OR \$50. BECAUSE SOME STATES MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES LIABILITY IS LIMITED TO THE LEAST AMOUNT PERMITTED BY LAW. THE LIMITATIONS OF LIABILITY PROVIDED IN THIS AGREEMENT INURE TO THE BENEFIT OF Kyäni, AS

WELL AS TO ITS OFFICERS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS AND AGENTS.

## **12. YOUR ACCOUNT OBLIGATIONS**

In consideration of your use of the Site you agree to: (i) provide true, accurate, and current and complete information about yourself or your organization as prompted by the Site (the "Registration Information"); and (ii) maintain and update the Registration Information to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or we have reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, we may suspend or terminate your account and decline to permit your continued use of the Site and future access to the Site. You are responsible for maintaining the confidentiality of your password and account number, and are fully responsible for all activities that occur under your account number and password. You agree that your password may be used to attribute an electronic record and electronic signature to you. Therefore, you shall not disclose your passwords or account identification information to third parties. You agree to immediately notify us of any unauthorized use of your password or any other breach of security. Kyäni shall not, in any manner, be responsible or liable for fraudulent purchases that are made using your compromised password.

## **13. PRODUCT PRICING**

In the event a product is listed at an incorrect price or with incorrect information due to typographical error or error in pricing or product information, Kyäni shall have the right to refuse or cancel any orders placed for product listed at the incorrect price. Kyäni shall have the right to refuse or cancel any such orders whether or not the order has been confirmed and the User's credit card charged. If your credit card has already been charged for the purchase and your order is canceled, Kyäni shall immediately issue a credit to your credit card account in the amount of the charge.

## **14. NO ENDORSEMENT OF CONTENT AND LINKS TO OTHER WEB SITES**

Any links to other sites are provided as merely a convenience to the Users of this Site. This Site may provide links or references to other sites but Kyäni has not reviewed all of these other sites, has no responsibility for the content of such other sites and shall not be liable for any damages or injury arising from any such content. Kyäni does not endorse or make any representations about these sites, or any information or other products or materials found there, or any results that may be obtained from using them. If you decide to access any of these other sites linked to this Site, you do so entirely at your own risk.

## **15. LINKING AND FRAMING THE SITE**

Unless a User has a written agreement in effect with Kyäni that states otherwise, a User may only provide a hyperlink to the Site on another web site if the User complies with all of the following: (a) the link must be a text-only link clearly marked "Kyäni" or the link must "point" to the URL <http://www.Kyäni.net> and not to other pages within the Site; (c) the link, when activated by a User, must display the Site full-screen and not within a "frame" on the linking web site; and (d) the appearance, position and other aspects of the link must not be such as to damage or dilute the goodwill associated with the Kyäni name and trademarks or

create the false appearance Kyäni is associated with, or a sponsor of, the linking web site. By providing this consent, Kyäni is not foregoing its ownership or rights in any trademarks, copyrights, patents or any other forms of intellectual property associated with the Site. Kyäni reserves the right to revoke its consent to any link at any time in its sole discretion.

## **16. GOVERNING LAW**

This Agreement and access to the Site shall be governed by and construed in accordance with the law of the state of Idaho, except for such matters as shall involve or affect Kyäni copyrights, trademarks and patents which shall be governed under the applicable laws and regulations of the United States of America.

## **17. CHOICE OF FORUM**

You hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the state of Idaho, and of the United States of America located in Idaho for any litigation arising out of or relating to use of the Site or purchases of services made through the Site (and agree not to commence any litigation relating thereto except in such courts). You hereby irrevocably and unconditionally waive any objection to the laying of venue of any such litigation in the courts of the state of Idaho and agree not to plead or claim in any court in the state of Idaho that such litigation brought therein has been brought in an inconvenient forum.

## **18. INTERNATIONAL USERS**

Kyäni makes no claims that the Content is appropriate or may be downloaded outside of the United States. Access to the Content may not be legal in certain countries or for certain persons. If you access the Web Site from outside of the United States, you do so at your own risk and are responsible for compliance with the laws of your jurisdiction, notwithstanding sections 16 and 17 above.

## **19. USER FEEDBACK**

Should any User respond to Kyäni with information including feedback, such as questions, requests, opinions, comments, suggestions, or the like regarding the content of any Kyäni document, the Web, or any related services, such information shall be deemed to be non-confidential and Kyäni shall have no obligation of any kind with respect to such information and shall be free to reproduce, use, disclose and distribute the information to others without limitation. Kyäni shall be free to use any ideas, concepts, know how or techniques contained in such information for any purpose whatsoever including but not limited to developing, manufacturing and marketing products incorporating such information. In the event Kyäni elects to do so, the User shall not be entitled to any fee or compensation for such information, technique or idea.

## **20. ACCEPTABLE AND LAWFUL USE OF THE SITE**

Any information provided to Kyäni in connection with use of the Site: (a) shall not be false, inaccurate or misleading; (b) shall not be obscene or indecent; (c) shall not contain any viruses, worms or other malicious programming intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (d)

shall not infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (e) shall not be defamatory, libelous, unlawfully threatening or harassing; and (f) shall not create liability for Kyäni or cause us to lose the services of our Internet service providers or other suppliers. The sender of any communications to this Site or otherwise to Kyäni shall be responsible for the content and information contained therein, including its truthfulness and accuracy. This Site is provided as a service to its visitors. Kyäni reserves the right to delete, modify or supplement the Content of this Site at any time for any reason without notification to anyone.

## **21. SEVERABILITY**

In the event that one or more portions of this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such validity, illegality or unenforceability shall not affect any other provision contained in this Agreement.

## **22. HEADINGS**

The headings used throughout this Agreement are solely for the convenience of reference and are not to be used as an aid in the interpretation of this Agreement.

## **23. NO WAIVER**

Any delay or failure by Kyäni to require performance or enforce any provision hereof shall in no manner affect Kyäni's right at a later time to enforce such provision. No delay or failure by Kyäni in exercising any right hereunder shall constitute a waiver of such right or any other rights hereunder.

## **24. ENTIRE AGREEMENT, UPDATES AND MODIFICATIONS**

This Agreement and any documents expressly incorporated by reference constitute the entire agreement between Kyäni and you pertaining to the subject matter hereof. In its sole discretion, Kyäni may unilaterally amend or modify this Agreement or any other documents referenced herein at any time by posting on the Site. Any amended or modified terms will be effective upon posting. Continued use of the Site constitutes acceptance of any modified terms and conditions.

## **25. ASSIGNMENT**

You may not assign your rights or delegate your responsibilities hereunder without the express written permission of Kyäni. Kyäni may, at any time, assign its rights or delegate its obligations hereunder without notice to you.

## **26. THIRD PARTY BENEFICIARY RIGHTS**

No person not a party to this Agreement is intended to be a beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

## **27. ENTIRE AGREEMENT**

## Web Site User Agreement

This document represents the entire agreement between the parties as of the effective date regarding the subject matter contained herein, and supersedes all other agreements, discussions or other memorandum regarding the same.