

Lawrence B. Steinberg (State Bar No. 101966)
LSteinberg@buchalter.com
 BUCHALTER, A Professional Corporation
 1000 Wilshire Boulevard, Suite 1500
 Los Angeles, CA 90017-2457
 Telephone: (213) 891-0700
 Facsimile: (213) 896-0400

Brent V. Manning (admitted *pro hac vice*)
bmannings@mc2b.com

Jess M. Krannich (admitted *pro hac vice*)
jkrannich@mc2b.com

C. Seth Ensign (admitted *pro hac vice*)
sensign@mc2b.com

MANNING CURTIS BRADSHAW
 & BEDNAR PLLC
 136 East South Temple, Suite 1300
 Salt Lake City, UT 84111
 Telephone: (801) 363-5678
 Facsimile: (801) 364-5678

Attorneys for defendants KYÄNI, INC.,
 MICHAEL BRESHEARS and KIRK HANSEN

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

YAN GUO, an individual;
 JU JIN GUO, an individual; and all
 those similarly situated,

Plaintiff,

vs.

KYÄNI, INC., an Idaho corporation;
 MICHAEL BRESHEARS, an
 individual; KIRK HANSEN, an
 individual; and DOES 1-100,

Defendants.

Case No. CV 2:17-08257-JAK-GJS

NOTICE OF MOTION AND MOTION
 TO COMPEL ARBITRATION AND
 TO DISMISS OR STAY;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT
 THEREOF

Date: July 2, 2018
 Time: 8:30 a.m.
 Courtroom: 10B

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD HEREIN:

PLEASE TAKE NOTICE that on July 2, 2018 at 8:30 a.m., or as soon
 thereafter as the matter may be heard in Courtroom 10B of the United States

1 District Court for the Central District of California, located at 350 West First Street,
 2 Los Angeles, California 90012, defendants KYÄNI, INC., MICHAEL
 3 BRESHEARS and KIRK HANSEN (collectively, “Defendants”) will and hereby
 4 do move the Court for an order compelling plaintiffs YAN GUO and JU JIN GUO
 5 to pursue their claims against Defendants in separate, individual arbitrations before
 6 the American Arbitration Association in Idaho Falls, Idaho, and dismissing this
 7 action with prejudice, or staying these proceedings pending the completion of the
 8 arbitrations.

9 This motion is made pursuant to the Federal Arbitration Act, 9 U.S.C.
 10 §§ 1-14, and particularly 9 U.S.C. § 3 and 9 U.S.C. § 4, and pursuant to this Court’s
 11 order dated May 1, 2018 (Docket No. 75).

12 This motion is made following conferences of counsel which took place on
 13 January 4, 2018 and February 12, 2018 in compliance with Local Rule 7-3.

14 This motion is based on this notice of motion and motion, the attached
 15 Memorandum of Points and Authorities, the previously filed Declaration of Kristen
 16 Pearson (Docket No. 17-1), the previously filed Supplemental Declaration of
 17 Kristen Pearson (Docket No. 32-1), all documents in the Court’s file, and on such
 18 other arguments as may be presented to the Court at the hearing on this motion.

19 DATED: May 14, 2018

20 MANNING CURTIS BRADSHAW
 21 & BEDNAR PLLC

22 BUCHALTER
 23 A Professional Corporation

24 By /s/
 25 Lawrence B. Steinberg
 26 Attorneys for defendants KYÄNI, INC.,
 27 MICHAEL BRESHEARS and
 28 KIRK HANSEN

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By this motion, defendants KYÄNI, INC., MICHAEL BRESHEARS and KIRK HANSEN seek an order compelling individual arbitration of the claims of plaintiffs YAN GUO and JU JIN GUO, as alleged in their First Amended Complaint, (the “Complaint”) and dismissing the Complaint with prejudice or, alternatively, staying proceedings in this action pending the completion of arbitration.

In its May 1, 2018 order (Docket No. 75), in which this Court considered one aspect of the alternative dispute resolution provisions in the Distributor Agreements between Kyäni, Inc. (“Kyäni”) and Plaintiffs (*i.e.*, the incorporation of the AAA Rules), the Court ordered briefing on the scope and applicability of the Distributor Agreement’s arbitration clause. That clause, included in the Distributor Agreements of every Kyäni distributor, states in plain terms that “all disputes and claims relating to Kyäni . . . shall be settled totally and finally by binding arbitration in Idaho Falls, Idaho.” Each Kyäni distributor further agrees that if he or she files any claim against Kyäni, they will “do so on an individual basis and not with any other Distributor or as part of a class action.”

As the Court has already recognized, the arbitration clause is broad. It covers “*all disputes and claims relating to Kyäni*” including—but not limited to—“all disputes and claims relating to . . . the Distributor Agreement, the Kyäni Global Compensation Plan or its products, the rights and obligations of an independent Distributor and Kyäni, or any other claims or causes of action relating to the performance of either an independent Distributor or Kyäni under the Agreement or the Kyäni Policies and Procedures.” The clause is comprehensive, and it requires that *any* substantive claim “relating to Kyäni” that a distributor might assert be pursued in “binding arbitration in Idaho Falls, Idaho,” and that it be pursued “on an individual basis and not . . . as part of a class action.”

1 Here, Plaintiffs are Kyäni distributors who seek to pursue a class action on
 2 behalf of all Kyäni distributors, in violation of the class waiver provision they
 3 agreed to. They assert a multitude of federal and state law claims, all arising from
 4 the allegation that Kyäni’s compensation plan rewards Plaintiffs for recruiting other
 5 Distributors, not selling products, and is unfair and illegal. Under black letter
 6 principles of contract interpretation, these claims are plainly subject to the broad
 7 arbitration clause; they “relat[e] to Kyäni, the Distributor Agreement, the Kyäni
 8 Global Compensation Plan [and] . . . the rights and obligations of an independent
 9 Distributor and Kyäni,” and they are “claims or causes of action relating to the
 10 performance of either an independent Distributor or Kyäni.”

11 Notwithstanding the straightforward language in their Distributor
 12 Agreements, Kyäni distributors Yan Guo and Ju Jin Guo baldly assert in their
 13 operative Complaint that the arbitration clause and class waiver provisions are
 14 inapplicable. But the governing law does not permit Plaintiffs to pick and choose
 15 which provisions in their contracts they wish to comply with or enforce. There is
 16 no possible construction of the arbitration provision that would not cover all of
 17 Plaintiffs’ claims, particularly since “any doubts concerning the scope of arbitrable
 18 issues should be resolved in favor of arbitration.” *Moses H. Cone Memorial*
 19 *Hospital v. Mercury Constr. Corp.*, 40 U.S. 1, 24-25 (1983). Indeed, an “order to
 20 arbitrate [a] particular grievance should not be denied unless it may be said *with*
 21 *positive assurance* that the arbitration clause is *not susceptible of an interpretation*
 22 *that covers the asserted dispute.*” *AT&T Techs., Inc. v. Commc’ns Workers of Am.*,
 23 475 U.S. 643, 650 (1986) (quoting *Steelworkers v. Warrior & Gulf Navigation Co.*,
 24 363 U.S. 574, 582-583 (1960)) (emphasis added). Nor can Plaintiffs avoid the
 25 arbitration clause merely by claiming they entered into their Distributor
 26 Agreements on the false premise that Kyäni is a lawful business—as they have
 27 done thus far. Plaintiffs have no basis to contend they were falsely deceived into
 28

1 agreeing to a particular procedure and place to resolve any disputes with Kyäni, and
 2 thus no basis to claim the arbitration clause is unenforceable.

3 In sum, Plaintiffs are parties to a straightforward arbitration agreement that
 4 governs all of their claims in this case. The agreement is presumptively valid under
 5 the FAA, and there is no legal basis for finding that the agreement is invalid.
 6 Accordingly, this Court should (1) compel Plaintiffs to arbitrate all of their claims
 7 on an individual basis, and (2) either dismiss the case or stay the case pending
 8 arbitration pursuant to 9 U.S.C. § 3.

9 II. STATEMENT OF FACTS

10 A. The Distributor Agreement Between Plaintiffs and Kyäni

11 As the Court is already aware from prior filings, Plaintiffs are Kyäni
 12 distributors who are parties to the “Kyäni Independent Distributor Agreement
 13 Terms & Conditions” (hereinafter, the “Distributor Agreement”). *Compare*,
 14 Declaration of Kristen Pearson (“Pearson Decl.”), Ex. A, Docket No. 17-1,
 15 with Supplemental Declaration of Kristen Pearson, Exh. A, Docket No. 32-1. The
 16 Distributor Agreement contains a binding and mandatory arbitration clause that
 17 provides as follows:

18 Except as set forth in the Kyäni Policies and Procedures,
 19 or unless the laws of the state in which I reside expressly
 20 prohibit the consensual jurisdiction and venue provisions
 21 of this Agreement, in which case its laws shall govern, all
 22 disputes and claims relating to Kyäni, the Distributor
 23 Agreement, the Kyäni Global Compensation Plan or its
 24 products, the rights and obligations of an independent
 25 Distributor and Kyäni, or any other claims or causes of
 26 action relating to the performance of either an
 27 independent Distributor or Kyäni under the Agreement or
 28 the Kyäni Policies and Procedures shall be settled totally
 and finally by binding arbitration in Idaho Falls, Idaho or
 such other location as Kyäni prescribes, in accordance
 with the Federal Arbitration Act and the Commercial
 Arbitration Rules of the American Arbitration
 Association.

Distributor Agreement at ¶ 12, Pearson Decl., Exh. A, Docket No. 17-1. This
 clause is followed by another important provision that will define the scope of this

1 case: “If a Distributor files a claim or counterclaim against Kyäni, a Distributor
2 shall do so on an individual basis and not with any other Distributor or as part of a
3 class action.”¹ *Id.*

4 B. Plaintiffs’ Claims

5 All of Plaintiffs’ claims arise from their relationship with Kyäni as
6 independent distributors, stemming from their enrollment pursuant to the
7 Distributor Agreement. Indeed, all of Plaintiffs’ claims center on the same
8 unfounded allegation that Plaintiffs thought they could earn money as Kyäni
9 distributors, but did not, allegedly because Kyäni’s compensation plan is an illegal
10 pyramid scheme under which Plaintiffs could earn money only by recruiting other
11 distributors, rather than selling products. *See*, First Amended Complaint
12 (“Complaint”) ¶ 1, Dkt. No. 24.

13 III. ARGUMENT

14 The Federal Arbitration Act (“FAA”) provides that an arbitration agreement
15 “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law
16 or in equity for the revocation of any contract.” 9 U.S.C. § 2. “Under the FAA, the
17 court’s initial inquiry in connection with a motion to compel arbitration is limited to
18 determining (1) whether a valid agreement to arbitrate exists and, if it does, (2)
19 whether the agreement encompasses the dispute at issue.” *Asfaw v. Lowe’s HIW,*
20 *Inc.*, 2014 WL 1928612, at *3 (C.D. Cal. May 13, 2014) (Kronstadt, J.) (quoting
21 *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000))
22 (internal quotation marks omitted) (granting a motion to compel arbitration). If
23

24 ¹ The Distributor Agreement also specifies that “[t]he Distributor Agreement
25 shall be governed exclusively by the laws of the State of Idaho.” Distributor
26 Agreement at ¶ 12, Pearson Decl., Exh. A, Docket No. 17-1. This clause follows
27 an express acknowledgement that “[t]he Distributor Agreement between the
28 Distributor and Kyäni has been entered into in Idaho Falls, Idaho, United States of
America, as this is the location where the Distributor submitted the application to
enroll as a Kyäni Independent Distributor, and where the application was reviewed
and approved by Kyäni.” *Id.*

1 these two steps are satisfied, “the Act requires the court to enforce the arbitration
2 agreement in accordance with its terms.” *Id.* (quoting *Chiron*, 207 F.3d at 1130).

3 A. The Parties Have a Valid Agreement to Arbitrate.

4 As explained above, Plaintiffs entered into their Distributor Agreements with
5 Kyäni at the time they applied and enrolled as Kyäni independent distributors. The
6 Complaint confirms this by affirmatively alleging that Plaintiffs “have joined Kyäni
7 and have become distributors.” Complaint, ¶ 1, Dkt. No. 24. Moreover, as
8 Defendants have explained in prior briefing, Plaintiffs have repeatedly and
9 affirmatively *relied* upon the Distributor Agreement, by selectively quoting
10 snippets of it and claiming it authorizes their litigation in this Court. *See, e.g.*,
11 Motion to Dismiss Complaint (Docket No. 17) at 4. Accordingly, there can be no
12 doubt about the *existence* of an arbitration agreement between the parties. As to the
13 *validity* of that agreement, Plaintiffs have already raised a host of failing arguments
14 invoking the doctrine of unconscionability. In considering any such argument that
15 Plaintiffs might again raise in opposition to this Motion, three critical points should
16 guide the Court’s analysis.

17 *First*, “[a]n arbitration agreement governed by the Federal Arbitration Act is
18 presumed to be valid and enforceable.” *Hoffman v. Citibank (S.D.), N.A.*, 546 F.3d
19 1078, 1082 (9th Cir. 2008) (citing *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S.
20 220, 226-27 (1987)). Accordingly, to avoid enforcement of the arbitration
21 agreement, the burden is on Plaintiffs to affirmatively show that the agreement is
22 somehow invalid.

23 *Second*, Plaintiffs cannot avoid the arbitration clause merely by claiming they
24 were deceived into agreeing to the Distributor Agreement *as a whole*, or by
25 challenging various provisions other than the arbitration clause (the tactics they
26 have attempted to date). As the Supreme Court has specifically explained:

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28

1 There are two types of validity challenges under § 2 [of
 2 the FAA]: One type challenges specifically the validity of
 3 the agreement to arbitrate, and the other challenges the
 4 contract as a whole, either on a ground that directly
 5 affects the entire agreement . . . , or on the ground that the
 6 illegality of one of the contract's provisions renders the
 7 whole contract invalid. . . . [W]e have held that *only the*
 8 *first type of challenge is relevant to a court's*
 9 *determination whether the arbitration agreement at issue*
 10 *is enforceable.*

11 *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 70 (2010) (citing *Prima Paint*
 12 *Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-04 (1967)) (emphasis
 13 added). Thus, even where—for example—“alleged fraud that induced the whole
 14 contract equally induced the agreement to arbitrate which was part of that contract,
 15 [the Supreme Court has] nonetheless require[d] the basis of challenge to be directed
 16 specifically to the agreement to arbitrate before the court will intervene.” *Id.* at 71.
 17 A “party’s challenge to another provision of the contract, or to the contract as a
 18 whole, does not prevent a court from enforcing a specific agreement to arbitrate.”
 19 *Id.* at 70. This is because, “[a]s a matter of substantive federal arbitration law, an
 20 arbitration provision is severable from the remainder of the contract.” *Id.* at 70-71.

21 *Third*, to the extent the Court looks to state law principles to inform its
 22 analysis of the Distributor Agreement’s arbitration provision (it need not; under the
 23 FAA, the Court can and should summarily enforce the provision), it should look to
 24 Idaho law. In analyzing the validity of an arbitration agreement, courts apply
 25 “general state-law principles of contract interpretation, while giving due regard to
 26 the federal policy in favor of arbitration.” *Asfaw*, 2014 WL 1928612, at *3
 27 (quoting *Wagner v. Stratton Oakmont, Inc.*, 83 F.3d 1046, 1049 (9th Cir. 1996)).
 28 Here, the parties have expressly agreed that the Distributor Agreement “shall be

1 governed by and construed in accordance with the laws of the state of Idaho.”

2 *See*, Distributor Agreement at ¶ 12, Pearson Decl., Exh. A, Docket No. 17-1.²

3 Of course, a “federal court sitting in diversity must look to the forum state’s
4 choice of law rules to determine the controlling substantive law.” *Zinser v. Accufix*
5 *Research Inst., Inc.*, 253 F.3d 1180, 1187 (9th Cir. 2001). But California has
6 specifically held that “[t]he law of the state chosen by the parties to govern their
7 contractual rights and duties *will be applied*” unless either

8 (a) the chosen state has no substantial relationship to the
9 parties or the transaction[,] . . . or . . . (b) application of
10 the law of the chosen state would be contrary to a
11 fundamental policy of a state which has a materially
12 greater interest than the chosen state in the determination
of the particular issue and which . . . would be the state of
the applicable law in the absence of an effective choice of
law by the parties.

13 *Nedlloyd Lines B.V. v. Superior Court*, 3 Cal.4th 459, 465 (1992) (adopting and
14 quoting Restatement Second of Conflict of Laws § 187) (emphasis added). Here,
15 there is no question that Idaho has a “substantial relationship to the parties,” since
16 the Ninth Circuit has held that such a relationship necessarily exists where, as here,
17 “one of the parties is domiciled or incorporated in the chosen state.” *ABF Capital*
18 *Corp. v. Osley*, 414 F.3d 1061, 1065 (9th Cir. 2005).

19 Moreover, Plaintiffs cannot show that (1) application of Idaho law would “be
20 contrary to a fundamental policy” of California, (2) California “has a materially
21 greater interest than” Idaho in the determination of whether to compel arbitration in
22 Idaho pursuant to an Idaho contract, or (3) that California law would govern this

23 _____
24 ² Defendants maintain that this Idaho choice-of-law provision should be
25 given broad effect with respect to this case. The Court took a somewhat narrower
26 view of the choice-of-law provision in its May 1, 2018 Order, when it declined to
27 dismiss certain causes of action brought pursuant to California statutes.
28 *See*, Dkt. No. 75 at 12. But there can be no question that issues of interpretation,
scope and application, and enforceability of the arbitration clause relate to the
Distributor Agreement, and therefore are governed by the choice of law clause
contained therein. Any argument to the contrary by Plaintiffs cannot be squared
with the plain language of the contract.

1 issue “in the absence of an effective choice of law by the parties.” *Nedlloyd*,
 2 3 Cal.4th at 465. Plaintiffs would have to establish all three factors, but can
 3 establish none of them. California has no “fundamental policy” requiring—as a
 4 general matter—that the validity of any contract involving a California resident be
 5 analyzed pursuant to California law. *See, e.g., Carrillo v. Sterling Jewelers, Inc.*,
 6 2004 WL 238799, at *4 (Cal. Ct. App. 2004) (“[W]e conclude that whether a court
 7 voids a contract containing an unconscionable provision is a matter that involves
 8 the individual parties to the agreement, not society as a whole. At most, any public
 9 interest would be merely collateral. As such, that public interest cannot be
 10 considered fundamental . . . and we apply the Ohio law as the [parties’] contract
 11 requires.”); *Han v. Samsung Telecommunications Am., LLC*, 2013 WL 7158044, at
 12 *7 (C.D. Cal.) (Wu, J.) (finding that no fundamental policy of California required
 13 application of “California’s general unconscionability analysis,” and holding that
 14 the parties’ contractual choice of “Texas law applies to the analysis of whether the
 15 arbitration provision in the[ir] [contract] is unconscionable”).

16 Plaintiffs likewise cannot show that California has a materially greater
 17 interest than does Idaho in the validity of the parties’ arbitration provision, or that
 18 California law would apply in the absence of a choice-of-law provision. The
 19 arbitration clause at issue here calls for arbitration in Idaho Falls to resolve any
 20 claims against an Idaho-based company asserted by distributors of that company
 21 who contracted with it in Idaho. The substance of Plaintiffs’ underlying claims
 22 further reinforces the fact that California’s public interest here cannot be
 23 “materially greater” than Idaho’s. Because Plaintiffs’ claims challenge Kyäni’s
 24 business model on behalf of a putative worldwide class of all Kyäni distributors,
 25 their allegations necessarily focus on Kyäni’s actions instead of their own. In other
 26 words, the Complaint’s claims all focus not on how or where Plaintiffs were
 27 allegedly deceived as individuals (issues that, to be sure, would bar class
 28 certification, but are not relevant at present), but rather on the false allegation that

1 Kyäni was operating an illegal pyramid scheme *from Idaho*. Consequently, to the
 2 extent any state law principles inform this Court’s analysis, those principles must
 3 be drawn from Idaho law rather than California law.

4 Under Idaho law, an arbitration agreement can be invalidated as
 5 unconscionable only if it is “both procedurally and substantively unconscionable.”
 6 *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 246 P.3d 961, 974 (Idaho 2010)
 7 (affirming the trial court’s finding that the parties’ arbitration agreement “is not
 8 unconscionable”). “Indicators of procedural unconscionability generally include a
 9 lack of voluntariness and a lack of knowledge,” which can be shown by “the use of
 10 high-pressure tactics, coercion, oppression or threats,” or by the “inability to
 11 contract with another party due to time, market pressures, or other factors.” *Id.*
 12 “The focus of substantive unconscionability is solely on the terms of the contractual
 13 provision at issue,” and a “provision is substantively unconscionable if it is a
 14 bargain no reasonable person would make or that no fair and honest person would
 15 accept.” *Id.* These principles confirm that the arbitration provision Plaintiffs
 16 agreed to in this case is neither procedurally nor substantively unconscionable.
 17 Plaintiffs cannot show, for example, that they were coerced or threatened, or that
 18 they were unable to contract with another party. Nor can they reasonably contend
 19 that agreeing to resolve disputes with Kyäni through arbitration is something “no
 20 fair and honest person would accept.” *Id.* The parties’ arbitration agreement is
 21 valid, and there is no legal basis for Plaintiffs to suggest otherwise.

22 B. The Parties’ Arbitration Agreement Encompasses All of Plaintiffs’
 23 Claims.

24 As set forth above, Plaintiffs have agreed to arbitrate “all disputes and claims
 25 relating to Kyäni.” Distributor Agreement at ¶ 12, Pearson Decl., Exh. A, Dkt. No.
 26 17-1. The “scope of [this] arbitration clause is governed by federal law.” *Tracer*
 27 *Research Corp. v. Nat’l Env’tl. Servs. Co.*, 42 F.3d 1292, 1294 (9th Cir. 1994). The
 28 Ninth Circuit has construed arbitration clauses significantly narrower than this one

1 to have “broad and far reaching” effect. *Chiron Corp. v. Ortho Diagnostic Sys.,*
 2 *Inc.*, 207 F.3d 1126, 1131 (9th Cir. 2000) (affirming the enforcement of an
 3 arbitration clause that covered “[a]ny dispute, controversy, or claim arising out of
 4 or relating to the validity, construction, enforceability or performance” of the
 5 agreement it covered). There can simply be no question that all of Plaintiffs’ claims
 6 “relat[e] to Kyäni.” Distributor Agreement at ¶ 12, Pearson Decl., Exh. A, Dkt. No.
 7 17-1. They also “relat[e] to . . . the rights and obligations of an independent
 8 Distributor and Kyäni . . . [and] the performance of either an independent
 9 Distributor or Kyäni.” *Id.* And all of Plaintiffs’ claims center on the false
 10 allegation that Kyäni’s compensation plan amounts to an illegal pyramid scheme,
 11 so those claims also necessarily “relat[e] to . . . Kyäni’s Global Compensation
 12 Plan.” *Id.*

13 Although defendants MICHAEL BRESHEARS and KIRK HANSEN are not
 14 personally parties to the Distributor Agreement, Plaintiffs’ claims against these
 15 individuals are similarly subject to arbitration. These individual Defendants have
 16 been named only because of their roles as officers of Kyäni. And, as the Ninth
 17 Circuit has noted, a “nonsignatory to [an] arbitration agreement may compel [a]
 18 signatory to arbitrate if the dispute is ‘intertwined with the contract providing for
 19 arbitration’ and there is a sufficiently close ‘relationship among the parties.’” *Id.* at
 20 n.3 (quoting, *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042, 1046 (9th Cir.

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2009)).³ Here, the dispute with these corporate officers is one and the same as the dispute with Kyäni that is subject to the arbitration clause.

Critically, if the Court finds that the parties' arbitration clause is "susceptible of" *any* "interpretation that covers Plaintiffs claims," then the Court must compel arbitration. As the Supreme Court and Ninth Circuit have both emphasized, the FAA "leaves no place for the exercise of discretion by a district court." *Chiron*, 207 F.3d at 1131 (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218 (1985)). Here, there is no doubt about the maximally broad scope of the parties' arbitration clause, and the clause is not reasonably susceptible to an interpretation that would not cover Plaintiffs' claims. But even if it was susceptible to a narrower interpretation, the competing interpretations would still have to "be resolved in

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³ The Supreme Court has likewise recognized that a litigant who is not a party to an arbitration agreement may invoke arbitration under the FAA if the relevant state law allows the litigant to enforce the agreement. *See, Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 632 (2009). Here, the Idaho Supreme Court has recognized that an "agent may invoke benefits of a principal's arbitration agreement to arbitrate claims with the agreement's counter party even where the agent is not a signatory. In such circumstances, the agent, by seeking to enforce the arbitration clause, is consenting to arbitration, and the party whom the agent seeks to compel into arbitration was a signatory to the arbitration agreement." *Clearwater REI, LLC v. Boling*, 318 P.3d 944, 950 (Idaho 2013) (citations and internal quotation marks omitted).

1 favor of coverage.” *AT&T Techs., Inc. v. Commc’ns Workers of Am.*, 475 U.S. at
 2 650.⁴

3 C. The Plaintiffs Should Be Ordered to Arbitrate Their Claims on an
 4 Individual Basis.

5 This Court should compel Plaintiffs to arbitrate their claims on an individual
 6 basis, rather than as part of a purported class. As explained above, the Distributor
 7 Agreement expressly provides that “[i]f a Distributor files a claim or counterclaim
 8 against Kyäni, a Distributor shall do so on an individual basis and not with any
 9 other Distributor or as part of a class action.” *See*, Distributor Agreement at ¶ 12,
 10 Pearson Decl., Exh. A, Dkt. No. 17-1. This type of waiver is entirely consistent
 11 with the FAA and is not prohibited by any state law. Indeed, the Supreme Court
 12 has specifically held that any state rule that tries to “prohibit class action waivers
 13 [is] preempted by the FAA.” *Asfaw v. Lowe’s HIW, Inc.*, 2014 WL 1928612, at *9
 14 (C.D. Cal. May 13, 2014) (Kronstadt, J.) (citing *AT&T Mobility LLC v.*
 15 *Concepcion*, 563 U.S. 333 (2011)); *see, also, DIRECTV, Inc. v. Imburgia*, 136 S.Ct.
 16 463 (2015). In *Concepcion*, the Supreme Court specifically held that “[r]equiring

17 _____
 18 ⁴ The Distributor Agreement’s forum selection clause designates Idaho state
 19 court as the exclusive judicial forum for “claims or related litigation to interpret or
 20 enforce the terms of the Distributor Agreement.” *See*, Distributor Agreement at
 21 ¶ 12, Pearson Decl., Exh. A, Dkt. No. 17-1. As Defendants have explained in prior
 22 briefing, the Distributor Agreement’s forum selection clause is complementary with
 23 the contract’s dispute resolution provisions. *See*, Motion to Stay (Docket No. 39) at
 24 11 n.6; Reply In Support of Motion to Dismiss (Docket No. 58) at 6. In its May 1,
 25 2018 Order, the Court asked Defendants to address “whether questions concerning
 26 the enforceability of the arbitration clause, and its application to some or all of the
 27 claims in the Complaint, are to be addressed by this Court in light of the forum
 28 selection clause.” *See*, Docket No. 75 at 9 n.5. Plainly, the arbitrability of
 Plaintiffs’ claims needs to be decided *somewhere*, and Defendants have argued that
 the plain language of the Distributor Agreement delegates that issue to the arbitrator
 in the first instance, and the Idaho state court in the second. By denying
 Defendants’ Motion to Stay and Motion to Dismiss for Forum Non Conveniens and
 ordering the parties to brief the applicability and enforceability of the arbitration
 clause here, the Court appears to have already determined that it may address these
 issues. To the extent the Court believes it has not reached such a determination, a
 plain language reading of the Distributor Agreement would result in the Idaho state
 court analyzing and interpreting the arbitration provisions, given the Court’s prior
 holding that such issues are not clearly and unmistakably delegated to the arbitrator.

1 the availability of classwide arbitration interferes with fundamental attributes of
 2 arbitration and thus creates a scheme inconsistent with the FAA.” 563 U.S. at 344.
 3 The Court explained that the “principal purpose of the FAA is to ensur[e] that
 4 private arbitration agreements are enforced according to their terms,” adding that
 5 “parties may agree to limit . . . *with whom* a party will arbitrate its disputes.” *Id.* at
 6 344 (quoting *Volt Info. Sciences, Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*,
 7 489 U.S. 468, 478 (1989)) (alteration in original) (internal quotation marks
 8 omitted).

9 In summary, parties are free to enter into arbitration agreements with class
 10 waiver provisions like the one in the Distributor Agreement. There is nothing
 11 ambiguous about the class waiver Plaintiffs agreed to here, nor is there any legal
 12 basis for not enforcing it. Thus, Plaintiffs should be compelled to arbitrate their
 13 claims “on an individual basis and not with any other Distributor or as part of a
 14 class action.” Distributor Agreement at ¶ 12, Pearson Decl., Exh. A, Docket No.
 15 17-1.

16 D. This Court Should Exercise Its Discretion to Dismiss This Case;
 17 Alternatively, this Court Should Stay the Case Pending Arbitration
 18 Pursuant to 9 U.S.C. § 3.

19 Section 3 of the FAA provides that “upon being satisfied that the issue
 20 involved in [a] suit . . . is referable to arbitration . . . , [a court] shall on application
 21 of one of the parties stay the trial of the action until such arbitration has been had.”
 22 9 U.S.C. § 3. This statutory provision “does not limit the court’s authority to grant
 23 a dismissal” of a case “when all claims are barred by an arbitration clause.”
 24 *Sparling v. Hoffman Constr. Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988)) (holding
 25 that the “district court acted within its discretion when it dismissed” the case, since
 26 “the arbitration clause [at issue] was broad enough to” require the plaintiffs “to
 27 submit all claims to arbitration”). Indeed, “[t]he weight of authority clearly
 28 supports dismissal of the case when *all* of the issues raised in the district court must

1 be submitted to arbitration.” *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161,
 2 1164 (5th Cir. 1992) (collecting cases). Because all of Plaintiffs’ claims must be
 3 submitted to arbitration, Defendants urge this Court to exercise its discretion to
 4 dismiss the case after compelling arbitration. If the Court elects not to dismiss the
 5 case in its entirety, 9 U.S.C. § 3 requires the Court (“upon being satisfied that”
 6 arbitration is required) to stay the case “until such arbitration has been had in
 7 accordance with the terms of the” Distributor Agreement.

8 IV. CONCLUSION

9 For all the foregoing reasons, Defendants respectfully request that the Court
 10 enter an order (1) compelling Plaintiffs to pursue their claims in separate, individual
 11 arbitrations before the AAA in Idaho Falls, Idaho, pursuant to and in accordance
 12 with the terms of the Distributor Agreement; and (2) dismissing this case or, in the
 13 alternative, staying this case pending the outcome of arbitration..

14 DATED: May 14, 2018

15 MANNING CURTIS BRADSHAW
 16 & BEDNAR PLLC

17 BUCHALTER
 18 A Professional Corporation

19 By /s/
 20 Lawrence B. Steinberg
 21 Attorneys for defendants
 22 KYÄNI, INC., MICHAEL BRESHEARS
 23 and KIRK HANSEN
 24
 25
 26
 27
 28

DECLARATION OF KRISTEN PEARSON

I, Kristen Pearson, do say and declare as follows:

1. I am a resident of the State of Idaho, am over the age of twenty-one, and am competent in every respect to make this declaration. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could and would testify competently thereto.

2. I am the Global Compliance Director of KYÄNI, INC. ("Kyäni"), a defendant in the above-captioned case.

3. Kyäni is an Idaho-based network marketing company that distributes health and wellness products through a network of independent contractor distributors (the "Distributors").

4. YAN GUO ("Ms. Guo"), the plaintiff in the above-captioned case, became a Kyäni Distributor on or about January 29, 2016.

5. To become a Distributor, Ms. Guo was required to submit an online application through Kyäni's website. The online application is the primary method Kyäni uses to receive applications from potential distributors ("Applicants").

6. The website application portal (the "Portal") requires an Applicant to provide various personal information and to expressly consent to various agreements that Kyäni requires of its Applicants before they may become Distributors. Without providing this information and expressly consenting to Kyäni's various agreements, an Applicant cannot become a Distributor.

7. After accessing the Portal, an Applicant must provide the number of an existing Kyäni Distributor to "sponsor" the Applicant. Without a valid sponsor number, the Applicant can progress no further in the application process.

8. After entering the sponsor number, the Applicant progresses through a series of screens that allow her to choose a package of products to purchase as her "starter pack." She also chooses any add-on products and selects if she would like

1 to set up an “autoship” (which control how often products may be automatically
2 shipped to a Distributor).

3 9. After having completed this information, Applicants progress to a
4 screen that requires them to check three separate boxes indicating their consent to:
5 (a) the Electronic Consent Agreement (“Electronic Consent”); (b) Kyäni’s Policies
6 & Procedures (“Policies & Procedures”); and (c) Kyäni’s Independent Distributor
7 Agreement Terms & Conditions (“Terms & Conditions”), respectively. These
8 agreements are incorporated by reference to one another to become one integrated
9 agreement (sometimes hereinafter referred to collectively as the “Kyäni Distributor
10 Agreement” or the “Agreements”). True and correct copies of the Terms &
11 Conditions, Policies & Procedures, and Electronic Consent, as those Agreements
12 existed on January 29, 2016 (the date of Ms. Guo’s enrollment) are attached hereto,
13 respectively, as **Exhibit A**, **Exhibit B**, and **Exhibit C**.

14 10. Attached hereto as **Exhibit D** is a true and correct copy of the
15 screenshot, which Applicants see during their enrollment process with respect to the
16 Electronic Consent, the Policies & Procedures, and the Terms & Conditions on the
17 Portal.

18 11. As is shown on the screenshot (Exhibit D), Applicants are required to
19 separately accept each of these three Agreements before they may become
20 Distributors.

21 12. For all three Agreements shown on Exhibit D, the Applicant can scroll
22 through and review each of these Agreements, which are presented in their
23 complete form on the computer screen.

24 13. To move past this screen, an Applicant must confirm that she “agree[s]
25 to the Terms & Conditions as presented here.” She “cannot continue without
26 agreeing to the Terms & Conditions.” See Exhibit D at 2. This same language
27 applies to and is stated in connection with the Policies & Procedures and the
28 Electronic Consent.

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1 14. In addition to being able to scroll through and review each of these
2 Agreements, the Applicant is also able to download a PDF version of the
3 Agreements by clicking on the link below each Agreement's scroll bar, thus
4 providing multiple methods for an Applicant to review the Agreements.

5 15. To move forward with the application, Applicants must click all three
6 boxes (one for each Agreement) labeled "Check to Agree." Without clicking on all
7 three boxes, an Applicant cannot move forward with the Application and cannot
8 become a Distributor. If the Applicant attempts to move forward without checking
9 the boxes, the Portal will not move to the next screen.

10 16. Plaintiff Yan Guo became a Distributor on January 29, 2016 by
11 following the steps outlined above, including by consenting to each of the
12 Agreements.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed this 11th day of January, 2018, at Bonneville County, Idaho.

15
16 
17 Kristen Pearson

EXHIBIT A



KYÄNI INDEPENDENT DISTRIBUTOR AGREEMENT TERMS & CONDITIONS

1. I understand that as a Kyäni, Inc. (hereinafter " Kyäni ") Distributor:

- a. I have the right to purchase products from Kyäni at the price for which I am eligible.
- b. I have the right to sponsor qualified persons in Kyäni.
- c. I will assist, train, and motivate the Distributors in my downline marketing organization.
- d. I will comply with all federal, state, county and municipal laws, ordinances, rules, and regulations, and shall make all reports and remit all withholdings or other deductions as may be required by any federal, state, county or municipal law, ordinance, rule or regulation.
- e. I will perform my obligations as a Distributor with honesty and integrity.
- f. I will only use the sales contracts and order forms which are provided by Kyäni for the sales of its products, and I will follow all policies and procedures established by Kyäni for the completion and processing of such contracts and orders.
- g. Not take any action or conduct myself in any manner that damages the business reputation of Kyäni, its founders, directors, or officers.
- h. I agree that I will provide a unique identifying number for tax or business purposes as issued by the country where I am applying for Kyäni membership.

2. I agree to present the Kyäni Global Compensation Plan and Kyäni products as set forth in official Kyäni literature. I will make no claims regarding potential income, earnings, and products beyond what is stated in official Kyäni literature. I may not use, produce, create, publish, distribute, or obtain from any source other than Kyäni, any literature, recordings (audio, video, or otherwise), sales or enrollment aids relating to Kyäni products or the Kyäni Global Compensation Plan. I understand that I may not use or display any Kyäni trademarks, trade names, service marks, logos, designs or symbols to market and advertise Kyäni's products or the Kyäni opportunity other than as outlined in the Kyäni Policies and Procedures without first obtaining written authorization from Kyäni.

3. I agree that as a Kyäni Distributor I am an independent contractor, and not an employee, agent, partner, legal representative, or franchisee of Kyäni. I am not authorized to and will not incur any debt, expense, obligation, or open any financial account on behalf of, for, or in the name of Kyäni. I understand that I shall control the manner and means by which I operate my Kyäni distributorship, subject to my compliance with these Terms and Conditions, the Kyäni Policies and Procedures and the Kyäni Global

Compensation Plan (all of which are collectively referred to as the "Agreement"). I agree that I will be solely responsible for paying all expenses incurred by myself, including but not limited to travel, food, lodging, administrative support, office, long distance telephone and other expenses. I UNDERSTAND THAT I AM NOT, AND SHALL NOT BE TREATED AS, AN EMPLOYEE OF Kyäni FOR FEDERAL OR STATE TAX PURPOSES. Kyäni is not responsible for withholding, and shall not withhold or deduct from my bonuses and commissions, if any, FICA, or taxes of any kind, unless such withholding becomes legally required. I agree to be bound by all sales tax collection agreements between Kyäni, Inc. and all appropriate taxing jurisdictions, and all related rules and procedures.

4. I have carefully read and agree to comply with the Kyäni Policies and Procedures and the Kyäni Global Compensation Plan, both of which are incorporated into and made a part of these Terms and Conditions. I understand that I must be in good standing, and not in violation of any of the terms of this Agreement, in order to be eligible to receive any bonuses or commissions from Kyäni. I understand that these Terms and Conditions, the Kyäni Policies and Procedures, or the Kyäni Global Compensation Plan may be amended from time to time, and I agree that any such amendment will apply to me. Notification of amendments shall be published in official Kyäni materials and sent to all Distributors. The continuation of my Kyäni distributorship or my acceptance of bonuses or commissions shall constitute my acceptance of any and all amendments.

5. The term of this Agreement shall begin on date of enrollment and shall continue until terminated by either party. I shall not be eligible to receive commissions, bonuses, or other income resulting from the activities of my former downline sales organization. Kyäni expressly reserves the right to terminate all Distributor Agreements upon thirty (30) days written notice in the event that it elects to:

(1) cease business operations;

(2) dissolve as a corporate entity; or

(3) terminate distribution of its products via direct selling. In the event of cancellation, failing to make a purchase within each year as determined by the initial enrollment month, I agree to waive all rights I have, including but not limited to property rights, to my former downline organization and to any bonuses, commissions or other remuneration derived through the sales and other activities of my former downline organization.

6. I may not assign any rights or delegate my duties under this Agreement without the prior written consent of Kyäni. Any attempt to transfer or assign this Agreement without the express written consent of Kyäni renders this Agreement voidable at the option of Kyäni and may result in termination of my distributorship.

7. I understand that if I fail to comply with the terms of this Agreement, the Policies and Procedures, or the Global Compensation Plan, Kyäni may, at its discretion, terminate my distributorship or impose upon me other disciplinary action, including but not limited to, forfeiture of bonuses and commissions, and/or loss of all or part of my downline marketing organization. If I am in breach, default or violation of this Agreement at termination, I shall not be entitled to receive any further bonuses or commissions, whether or not the sales for such bonuses or commissions have been completed. If this Agreement is terminated for any reason, I will forever lose my rights as a Distributor, including rights to my downline marketing organization, and rights to compensation pursuant to the Kyäni Global Compensation Plan. If I fail to pay for products when payment is due, I authorize Kyäni to withhold the appropriate amounts from my bonus or commission checks, to charge my credit cards, or debit my financial accounts, if any, which I have

authorized Kyäni to charge. I understand that the failure to promptly pay for products constitutes a breach of this Agreement.

8. To the extent permitted by law, Kyäni, its directors, officers, shareholders, employees, assigns, successors, and agents (collectively referred as "affiliates"), shall not be liable for, and I release Kyäni and its affiliates from, any and all claims for any loss of profits, indirect, direct, special or consequential damages or any other loss incurred or suffered by me as a result of: (a) my breach of this Agreement or the Kyäni Policies and Procedures; (b) the improper promotion or operation of my distributorship and any activities related to it (e.g., the presentation of Kyäni products or Global Compensation Plan, the operation of a motor vehicle, the lease of meeting or training facilities, etc.); (c) any incorrect or wrong data or information provided by me; or (d) the failure to provide any information or data necessary for Kyäni to operate its business, including without limitation, my enrollment and acceptance into the Global Compensation Plan or the payment of Commissions or Bonuses. I agree that the entire liability of Kyäni and its affiliates for any claim whatsoever related to the relationship of Kyäni and myself, including, but not limited to, any cause of action sounding in contract, tort or equity shall not exceed, and shall be limited to, the amount of products I have purchased from Kyäni under this Agreement or any other agreement that are in resalable condition. I further agree to indemnify, hold harmless, and defend at my expense Kyäni and its affiliates against any and all claims, demands, costs, losses, damages, liabilities, judgments, attorney fees and all other expenses arising or alleged to arise in connection with my distributorship.

9. This Agreement and the documents incorporated by reference constitutes the entire contract between Kyäni and myself. Any promises, representations, offers, or other communications not expressly set forth in this Agreement are of no force or effect. To the extent of any conflict or inconsistency between this Agreement and any other agreement (other than the Policies and Procedures), this Distributor Application and Agreement shall supersede and prevail over any term of any other agreement as to the matters addressed herein. To the extent of any conflict or inconsistency between this Agreement and the Policies and Procedures (in their current form or as subsequently modified), the Policies and Procedures shall in all instances supersede and prevail over any term of this Agreement as to the matters addressed herein.

10. Any waiver by Kyäni of any breach of this Agreement must be in writing and signed by an authorized officer of Kyäni. Waiver by Kyäni of any breach of this Agreement by me shall not operate or be construed as a waiver of any subsequent breach.

11. In the event that a provision of this Agreement is held to be invalid or unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable and the balance of the Agreement will remain in full force and effect.

12. The Distributor Agreement between the Distributor and Kyäni has been entered into in Idaho Falls, Idaho, United States of America, as this is the location where the Distributor submitted the application to enroll as a Kyäni Independent Distributor, and where the application was reviewed and approved by Kyäni. The Distributor Agreement shall be governed exclusively by the laws of the State of Idaho, and the Distributor agrees to submit exclusively to the jurisdiction of the courts of the State of Idaho, and specifically the District Court of the Seventh Judicial District with venue in Bonneville County, for resolution of any claims or related litigation to interpret or enforce the terms of the Distributor Agreement.

This Agreement will be governed by and construed in accordance with the laws of the State of Idaho, unless the laws of the state in which I reside expressly require the application of its laws. Except as set forth in the Kyäni Policies and Procedures, or unless the laws of the state in which I reside expressly prohibit the consensual jurisdiction and venue provisions of this Agreement, in which case its laws shall

govern, all disputes and claims relating to Kyäni , the Distributor Agreement, the Kyäni Global Compensation Plan or its products, the rights and obligations of an independent Distributor and Kyäni , or any other claims or causes of action relating to the performance of either an independent Distributor or Kyäni under the Agreement or the Kyäni Policies and Procedures shall be settled totally and finally by binding arbitration in Idaho Falls, Idaho or such other location as Kyäni prescribes, in accordance with the Federal Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association. The parties shall be allowed all discovery rights pursuant to the Federal Rules of Civil Procedure. If a Distributor files a claim or counterclaim against Kyäni, a Distributor shall do so on an individual basis and not with any other Distributor or as part of a class action. If a Distributor wishes to bring an action against Kyäni for any act or omission relating to or arising from this Agreement, such action must be brought within one year from the date of the alleged conduct giving rise to the cause of action. Failure to bring such action within one year shall bar all claims against Kyäni for such act or omission. Distributor waives all claims that any other statutes of limitations applies. The decision of the arbitrator shall be final and binding on the parties and may, if need be, be reduced to a judgment in any court of competent jurisdiction. The prevailing party shall be entitled to receive from the losing party costs and expenses of arbitration, including legal and filing fees. This agreement to arbitrate shall survive any termination or expiration of the Agreement.

13. The parties consent to jurisdiction and venue before any federal or state court in Bonneville County, State of Idaho for purposes of enforcing an award by an arbitrator or any other matter not subject to arbitration. If the law of the state in which the applicant resides prohibits consensual jurisdiction and venue provisions for purposes of arbitration and litigation, that state's law shall govern issues Kyäni.

EXHIBIT B



POLICIES & PROCEDURES

1. INTRODUCTION

The Kyäni Policies and Procedures govern your rights as a Kyäni Independent Distributor. You should familiarize yourself with the contents of these Policies and Procedures, and any questions you may have regarding the Policies and Procedures should be directed to the Kyäni Customer Service staff.

- a. **Policies and Compensation Plan Incorporated into Distributor Agreement:** These Policies and Procedures, in their present form and as amended from time to time by Kyäni, Inc., or any Kyäni, Inc. Affiliate, (hereafter collectively "Kyäni" or the "Company"), are referred to in the Kyäni Distributor Agreement. Where these Policies and Procedures are incorporated into the Kyäni Distributor Agreement by specific reference, these Policies and Procedures constitute an official part of that agreement.

Where these Policies and Procedures are not specifically incorporated into that agreement, they nevertheless reflect the official position of Kyäni with respect to the terms thereof, and any violation of these Policies and Procedures may constitute a breach of an Independent Kyäni Distributor's obligations under that agreement, subjecting the Distributor to the termination provisions of the agreement. Hereafter, when the term "Agreement" is used, it collectively refers to the mutual obligations between Kyäni and the Independent Kyäni Distributors as evidenced in the Application and Agreement, these Policies and Procedures, the Kyäni Global Compensation Plan, and (when applicable) the Kyäni Business Entity Application.

It is the responsibility of each Distributor to understand and adhere to the most current version of these Policies and Procedures. When sponsoring a new Distributor, the sponsoring Distributor should help the new Distributor applicant to understand this ongoing obligation.

- b. **Purpose of Policies:** Kyäni produces innovative products and markets those products through Independent Distributors. Kyäni invests heavily in providing marketing materials, developing brand value for the Company and developing Distributor compensation systems. Still, the success of the Company and the success of Distributors is ultimately dependent upon the integrity of the individual men and women who market the products. Because Kyäni Distributors are independent business enterprises, Distributors have broad latitude in how they choose to operate, and to determine the times and methods of their work. Notwithstanding this independence, Kyäni reserves a contractual right to protect its intellectual property, to prevent unsupportable product claims, and to preserve the integrity of its business model. These Policies and Procedures are designed to accomplish this. Because you may be unfamiliar with many of these standards of practice, it is very important that you read and abide by the Agreement. If you

have any questions regarding any policy or rule, do not hesitate to seek an answer from anyone in your upline or Kyäni.

- c. **Changes to Distributor Agreement:** Kyäni may amend the Distributor Agreement in its sole and absolute discretion. By signing the Distributor Agreement, a Distributor agrees to abide by all amendments or modifications that Kyäni elects to make. Amendments shall become effective upon publication of notice of those amendments in published Kyäni materials or the Back Office. The Company will make available to all Distributors a complete copy of the amended provisions by one or more of the following methods: (1) posting on the Company's official website; (2) electronic mail (e-mail); (3) inclusion in Company periodicals; (4) inclusion in product orders or bonus checks; or (5) special mailings. The continuation of a Distributor's Kyäni business or a Distributor's acceptance of bonuses or commissions constitutes acceptance of any and all amendments.
- d. **Delays:** Kyäni shall not be responsible for delays or failures in performance of its obligations when performance is made commercially impractical due to circumstances beyond its control. This includes, but is not limited to, strikes, labor difficulties, riot, war, fire, death, forces of nature, supply shortages, or government decrees, judgments or orders.
- e. **Policies and Provisions Severable:** If any provision of the Agreement, in its current form or as may be hereafter amended, is found by any court of competent jurisdiction to be invalid or unenforceable for any reason, only the invalid portion(s) of the offending provision shall be severed and the remaining terms and conditions shall remain in full force and effect and shall be unaffected thereby.
- f. **Waiver:** Kyäni never gives up its right to insist on, and enforce, compliance with the Agreement and the applicable laws governing the conduct of a Distributor. No delay or failure by Kyäni to exercise any right or power under the Agreement or to insist upon strict compliance by a Distributor with any obligation or provision of the Agreement, shall constitute a waiver of Kyäni's right to demand exact compliance with the Agreement. Waiver by Kyäni can be affected only in writing by an authorized officer of the Company. Kyäni's waiver of any particular breach by a Distributor, or Kyäni's waiver of any particular provision of the Distributor Agreement or these Policies and Procedures shall not affect or impair Kyäni's rights with respect to any subsequent breach, nor shall it affect in any way the rights or obligations of any other Distributor. Any delay or omission by Kyäni in exercising any right arising from a breach by a Distributor shall not be deemed to be a continuing waiver, nor shall it affect or impair Kyäni's rights as to that or any subsequent breach thereof.

The existence of any claim or cause of action of a Distributor against Kyäni shall not constitute a defense to Kyäni's enforcement of any terms or provisions of the Agreement or these Policies and Procedures.

2. BECOMING A DISTRIBUTOR

- a. Requirements to Become a Distributor:** To become a Kyäni Distributor, each applicant must:
- i. Be of legal age at the date of application submission and meet all other requirements by law to enter into a contract;
 - ii. Provide true and accurate information regarding identity and location of residence as the Company may require from time to time.
 - iii. Submit a properly completed (electronic or physical) Distributor Application and Agreement to Kyäni or provide complete information; and;
 - iv. Pay the applicable enrollment fee to purchase the Starter Pack selected by the Distributor.
 - v. Provide a unique identifying number for tax or business purposes as issued by the country where Distributor is applying for Kyäni membership.

The Company reserves the right to reject any applications for a new Distributor or applications for renewal, and may do so in its sole and absolute discretion.

- b. New Distributor Registration:** New Distributors must be sponsored online at Kyäni's official websites or at the Sponsor's replicated Kyäni website.
- c. Distributor Benefits:** Once the Distributor Application and Agreement has been accepted by Kyäni, the Distributor is eligible to participate in the Kyäni Global Compensation Plan. As permitted by local law and Company policy for your location, these benefits include the right to:
- i. Purchase Kyäni products at the Distributor price;
 - ii. Be paid the applicable commissions and bonuses as set forth in the Kyäni Global Compensation Plan;
 - iii. Participate in any promotions, incentive programs or other contests as announced by Kyäni from time to time;
 - iv. Enroll or sponsor other individuals as Customers or Distributors into the Kyäni business;
 - v. Receive periodic Kyäni literature and other Kyäni communications;
 - vi. Participate in Kyäni-sponsored support, service, training, motivational and recognition functions, upon payment of appropriate charges, if applicable.
- d. Term of Agreement:** The Distributor Agreement term shall begin on the date of acceptance by Kyäni, and continue thereafter until cancelled as provided for herein or in the Distributor Agreement.

3. OPERATING YOUR KYÄNI BUSINESS

- a. Adherence to the Kyäni Global Compensation Plan:** Distributors shall not offer the Kyäni opportunity through, or in combination with, any other system, program, or method of marketing other than that specifically set forth in official Kyäni literature, or in any way vary from the exclusive use of Kyäni's official forms. Distributors shall not require or encourage participation in Kyäni in any manner that varies from the program as set forth in official Kyäni literature. Similarly, Distributors shall not require or encourage others to make any purchase from, or payment to, any

individual or other entity to participate in the Kyäni Global Compensation Plan other than those purchases or payments identified as recommended or required in official Kyäni literature.

- b. Advertising In General:** All Distributors shall safeguard and promote the good reputation of Kyäni and its products. The marketing and promotion of Kyäni, the Kyäni opportunity, the Global Compensation Plan, and Kyäni products shall be consistent with the public interest, and must avoid all discourteous, deceptive, misleading, unethical or immoral conduct or practices.
- c. Identification of Rank:** All Distributor marketing materials, whether in print or electronic media, must clearly and correctly state the Distributor rank according to the currently published ranks awarded by Kyäni. Use of any deceptive or unauthorized rank or title is a violation of the Distributor Agreement and these Policies and Procedures. For example, Diamond is a currently acceptable rank designation. Diamond RVP, or Diamond Manager are not as they improperly include additional designations that are not recognized or awarded by Kyäni.
- d. Business Reputation:** To promote both the products, and the tremendous opportunity Kyäni offers, Distributors must use the sales aids and support materials produced by Kyäni. In the alternative, Distributor may develop their own sales aids and support materials if the Distributor obtains written approval and authorization from Kyäni in order to comply with the vast and complex legal requirements of national and local laws. Violation of this policy (including unauthorized Internet advertising) not only constitutes a material breach of the Agreement, but it endangers the Kyäni opportunity for all Distributors.
- e. Distributor Meetings:** Distributors shall not conduct any meeting, or use any Kyäni facility provided for Distributor meetings, to promote products or services from any non-Kyäni company, or to promote any religious, social or fraternal organization or group. All presentations at any Distributor meetings shall be in conformance with local laws and regulations, and the content shall be consistent with officially published Kyäni marketing materials for the country in which the Distributor meeting takes place.
- f. Sponsorship of Family Members:** All family members must be sponsored in the same downline and directly sponsored and placed to each other (direct in both the sponsor and placement tree). No family member may be crossline, nor may the family member be placed so that a non-family member is between two family members. For purposes of these Policies and Procedures, a Family Member shall be defined as the Distributor's father, mother, brother, sister, grandfather, grandmother, aunts, uncles, first cousins, children and grandchildren (both siblings and half-siblings). Also included in this definition are dependents, domestic partners, civil unions, or those deemed by Kyäni to be in a cohabitating relationship or who depend upon each other for mutual financial support. This shall also apply to any business entity of which a Family Member holds a controlling interest.
- g. Spamming and Unsolicited Mass Communications:** Except as provided in this section, Distributors may not use or transmit unsolicited faxes, mass e-mail distribution, unsolicited e-mail, or "spamming" relative to the operation of their Kyäni businesses. The terms "unsolicited faxes" and "unsolicited e-mail" mean the transmission via telephone facsimile or electronic mail, respectively, of any material or information advertising or promoting Kyäni, its products, its compensation plan or any other aspect of the company which is transmitted to any person, except that these terms do not include a fax or e-mail: (a) to any person with that person's prior express invitation or permission; or (b) to any person with whom the Distributor has an

established business or personal relationship. The term "established business or personal relationship" means a prior or existing relationship formed by a voluntary two-way communication between a Distributor and a person, on the basis of: (a) an inquiry, application, purchase or transaction by the person regarding products offered by such Distributor; or (b) a personal or familial relationship, which relationship has not been previously terminated by either party.

- h. Telemarketing:** Except as more specifically restricted by local law, Distributors must not engage in telemarketing relative to the operation of their Kyäni businesses. The term "telemarketing" means the placing of one or more telephone calls to an individual or entity to induce the purchase of a Kyäni product or to recruit them for the Kyäni opportunity. "Cold calls" made to prospective Customers or Distributors that promote either Kyäni's products or the Kyäni opportunity constitute telemarketing and are prohibited.

Notwithstanding the foregoing, a Distributor may place telephone call(s) to a prospective Customer or Distributor (a "prospect") under the following limited situations:

1. If the Distributor has an established business relationship with the prospect. An "established business relationship" is a relationship between a Distributor and a prospect based on:
2. The prospect's purchase, rental, or lease of goods or services from the Distributor within the eighteen (18) months immediately preceding the date of a telephone call to induce the prospect's purchase of a product or services: or
3. A financial transaction between the prospect and the Distributor within the eighteen (18) months immediately preceding the date of such a call.
4. The prospect's personal inquiry or application regarding a product or service offered by the Distributor within the three (3) months immediately preceding the date of such a call.
5. If the Distributor receives written and signed permission from the prospect authorizing the Distributor to call. The authorization must specify the telephone number(s) which the Distributor is authorized to call.
6. Distributors may call family members, personal friends, and acquaintances. An "acquaintance" is someone with whom a Distributor has at least a recent first-hand relationship (i.e., the Distributor recently personally met him or her). Bear in mind, however, that if a Distributor makes a habit of "card collecting" from everyone he or she meets and subsequently calling them, local law may consider this a prohibited form of telemarketing. Thus, if Distributors engage in calling "acquaintances", the Distributor must make such calls on an occasional basis only and not as a routine practice.

In addition, Distributors shall not use automatic telephone dialing systems relative to the operation of their Kyäni businesses. The term "automatic telephone dialing system" means equipment that has the capacity to: (a) store or produce telephone numbers to be called, using a random or sequential number generator; and (b) to dial such numbers.

- i. Distributor Websites:** Except as provided in this section and section (h) below, if a Distributor desires to utilize an Internet web page or website to promote his or her Kyäni business, no Distributor may independently design a website that uses the names, logos, or product

descriptions of Kyäni or otherwise promotes (directly or indirectly) Kyäni products or the Kyäni opportunity. All images on the Distributor website shall be from the official downloads section for such Distributor's country of residence, and the site shall clearly identify the Distributor name, contact information and contain the term "Kyäni Independent Distributor".

National and local laws regarding the Internet, including promotional web are complex. Violations of the law by Distributors may subject Kyäni to possible regulatory enforcement actions that could jeopardize the company and all Distributors' businesses.

Accordingly, Kyäni strongly encourages all Distributors to utilize the company's self-replicating web site. These web sites are developed and maintained by Kyäni to ensure that they comply with all applicable areas of law.

Kyäni may allow a Distributor to develop his or her own web site as long as certain conditions are met. These include:

- i. A Distributor must submit a Request for Authorization of an Independent Web Site in writing prior to the creation of his or her web site. Requests for Authorization should be sent to the Compliance Department. Authorization for an independent web site is in the sole and absolute discretion of Kyäni.
- ii. In addition, the Distributor shall pay the cost of any legal review that is necessary for the Distributor's independent web site.

In the event that Kyäni concludes that the proposed independent web site is not acceptable, it will inform the Distributor that the site must be modified, and that approval will be withheld until such modifications are made. No Distributor may make his or her independent web site available to the public until he or she receives written approval from Kyäni.

No changes or modifications may be made to the authorized web site, subject to the following:

In the event that a Distributor desires to alter a previously authorized web site, he or she must submit a Request for Modification of an Independent Web Site and a change fee of \$100. The Request for Modification must specifically indicate each and every change or addition a Distributor desires to make. Changes may not be published to the web site until the Distributor receives approval, in writing, from Kyäni.

- j. **Distributor Websites and Online Sales:** Distributors may only conduct online sales through a Distributor website with the approval of the Kyäni Corporate Office. Any Distributor granted such permission shall strictly comply with the following restrictions:

1. Products may not be sold for less than the currently published Distributor wholesale price;
2. Distributors may not link to an online site such as eBay, Amazon or a similar online retailer;
3. Distributors may not offer products for sale in any Country where Kyäni is not officially open, and the identification of a Country as officially open shall be at the sole and absolute discretion of Kyäni;

4. Distributors must use approved company images and assets as identified in the Back Office downloads section;
 5. Distributors may not sell any other products either separately or combined with any Kyäni products, unless otherwise approved in advance in writing by Kyäni.
 6. The URL must contain the phrase “kyanidist” or “kyaniteam” together with some other unique identifier for the Distributor. No product names, countries, markets or territories may be included in the URL without the prior written permission of Kyäni. By way of example, the URL www.wellnesskyanidist.com or www.healthykyaniteam.com would be acceptable. The URL www.kyanigermany.com would not.
 7. Kyäni reserves the right at accept, deny, approve, or revoke any proposed Distributor website in its sole and absolute discretion.
- k. Domain Names and E-Mail Addresses:** Distributors may not use or attempt to register any of Kyäni's trade names, trademarks, service names, service marks, product names, the Company's name, or any derivative thereof, for any Internet domain name. Nor may Distributors incorporate or attempt to incorporate any of Kyäni's trade names, trademarks, service names, service marks, product names, the Company's name, or any derivative thereof, into any electronic mail address.
1. Any e-mail address that uses the Kyäni name, must include “Kyänidist” or “Kyäniteam” and some other identifier. For example, johndoe.Kyänidist@gmail.com or johndoe.kyäniteam@gmail.com would be acceptable.
 2. If “Kyänidist” or “Kyäniteam” is included in the e-mail address the signature line of the e-mail address must also contain the name of the Distributor and the words “Kyäni Independent Distributor” or “Kyäni Independent Distributor Team”.
- l. Social Media Accounts:** If Kyäni is to be used in Social Media, any usernames that have Kyäni in them must contain “Kyänidist” or “Kyäniteam” in them. No other variations will be accepted. Usernames may not have Kyäni by itself, or any Kyäni specific product or trade names such as “Sunrise”, “Sunset”, “PayGate Accumulator”, etc. All images posted to a social media account that relate to Kyäni products must be officially approved Kyäni images and assets obtained from the Back Office.
- m. Business Cards:** All business cards must contain the Kyäni Independent Distributor logo. The Distributor shall not have any reference or any content on the card that would reasonably lead a person receiving such card that the Distributor is an employee of Kyäni. If the Distributor chooses to publish his or her rank on the business card, any such rank designation must be accurate.
- n. Trademarks and Copyrights:** Kyäni will not allow the use of its trade names, trademarks, designs, or symbols by any person, including a Kyäni Distributor, without its prior, written permission. Distributors may not produce for sale or distribution any recorded company events and speeches without written permission from Kyäni; nor may Distributors reproduce for sale or for personal use any recording of company-produced audio or video tape presentations.
- o. Media and Media Inquiries:** Distributors must not attempt to respond to media inquiries regarding Kyäni or its products or with regard to Kyäni in respect of their independent Kyäni business. All inquiries by any type of media that involves Kyäni in any respect must be

immediately referred to Kyäni's Public Relations Department. This policy is designed to assure that accurate and consistent information is provided to the public as well as a proper public image.

- p. **Bonus Buying:** "Bonus buying" includes: {a) the sponsoring of individuals or entities without the knowledge of and/or execution of an Independent Distributor Application and Agreement by such individuals or entities; {b) the fraudulent sponsoring or enrollment of an individual or entity as a Distributor or Customer; {c) the sponsoring or attempted sponsoring of non-existent individuals or entities as Distributors or Customers {"phantoms"}; or {d) the use of a credit card by or on behalf of a Distributor or Customer when the Distributor or Customer is not the account holder of such credit card. Bonus buying constitutes a material breach of these Policies and Procedures, and is strictly and absolutely prohibited.
- q. **Business Entities:** A corporation, partnership or trust {collectively referred to in this section as a "Business Entity") may apply to be a Kyäni Distributor by submitting its Certificate of Incorporation, Partnership Agreement or trust documents {these documents are collectively referred to as the "Entity Documents") to Kyäni, along with a properly completed Business Entity Registration form. If a Distributor is sponsored online, the Entity Documents and Business Entity Registration form must be submitted to Kyäni within 30 days of online sponsoring. A Kyäni business may change its status under the same sponsor from an individual to a partnership, corporation or trust, or from one type of entity to another. The Business Entity Registration form must be signed by all of the shareholders, partners or trustees. Members of the entity are jointly and severally liable for any indebtedness or other obligation to Kyäni.
- r. **Changes to the Kyäni Business:** Each Distributor must immediately notify Kyäni of all changes to the information contained on his or her Distributor Application and Agreement by submitting a written request, a properly executed Distributor Application and Agreement with the correct information, and appropriate supporting documentation.
- s. **Change of Genealogy:** To protect the integrity of all marketing organizations and safeguard the hard work of all Distributors, Kyäni strongly discourages changes in genealogy. Maintaining the integrity of trees or structures is critical for the success of every Distributor and marketing organization. Accordingly, the transfer of a Kyäni business from one upline to another is rarely permitted.

Requests for change of genealogy must be submitted in writing to the Distributor Services Department, and must include the reason for the transfer. Transfers will only be considered in the following two (2) circumstances:

- i. In cases involving fraudulent inducement or unethical sponsoring, a Distributor may request that he or she be transferred to another organization with his or her entire marketing organization intact. All requests for transfer alleging fraudulent sponsoring practices shall be evaluated on a case by case basis.
- ii. The Distributor seeking to transfer submits a properly completed and fully executed Change of Genealogy Form which includes the written approval of all of the affected upline Distributors. If an upline Distributor fails to respond to the request for approval within the thirty days, the failure to respond shall be deemed a consent to the proposed transfer. Changes of Genealogy are only permitted within the first 30 days after

enrollment. Changes after this date are not permitted. Downline Distributors will be moved with the transferring Distributor unless otherwise requested. Transferring Distributors must allow thirty (30) days after the receipt of the Change of Genealogy Forms by Kyäni for processing and verifying change requests. There is a special provision within the first 10 days where a Change of Genealogy Form is not required. During this time a sponsor may send from their email address on file to changes@kyanicorp.com. After 10 days a form is required.

t. Unauthorized Claims and Actions

1. *Indemnification:* A Distributor is fully responsible for all of his or her verbal and written statements made regarding Kyäni products and the Global Compensation Plan which are not expressly contained in official Kyäni materials. Distributors agree to indemnify Kyäni and Kyäni's directors, officers, employees, and agents, and hold them harmless from any and all liability including judgments, civil penalties, refunds, attorney fees, court costs, or lost business incurred by Kyäni as a result of the Distributor's unauthorized representations or actions. This provision shall survive the termination of the Distributor Agreement.
2. *Product Claims:* No claims (which include personal testimonials) as to therapeutic, curative or beneficial properties of any products offered by Kyäni may be made except those contained in official Kyäni literature as applicable to the destination country of sale. In particular, no Distributor may make any claim that Kyäni products are useful in the cure, treatment, diagnosis, mitigation or prevention of any diseases. Such statements can be perceived as medical or drug claims. Not only do such claims violate Kyäni policies, but they are potentially dangerous and may violate various national and local laws.
3. *Income Claims:* In their enthusiasm to sponsor prospective Distributors, some Distributors are occasionally tempted to make income claims or earnings representations to demonstrate the inherent power of network marketing. This is counter-productive because new Distributors may become disappointed very quickly if their results are not as extensive or as rapid as the results others have achieved. At Kyäni, we firmly believe that the Kyäni income potential is great enough to be highly attractive, without reporting the earnings of others. Moreover, national and local laws often regulate or even prohibit certain types of income claims and testimonials made by persons engaged in network marketing. While Distributors may believe it beneficial to provide copies of checks, or to disclose the earnings of themselves or others, such approaches have legal consequences that can negatively impact Kyäni as well as the Distributor making the claim unless appropriate disclosures required by law are also made contemporaneously with the income claim or earnings representation. Because Kyäni Distributors do not have the data necessary to comply with the legal requirements for making income claims, a Distributor, when presenting or discussing the Kyäni opportunity or Global Compensation Plan to a prospective Distributor, may not make income projections, income claims, or disclose his or her Kyäni income (including the showing of checks, copies of checks, bank statements, or tax records). Hypothetical income examples that are used to explain the operation of the Global Compensation Plan, and which are based solely on mathematical projections, may be made to prospective Distributors, so long as the Distributor who uses such hypothetical examples (1) makes clear to the prospective

Distributor(s) that such earnings are hypothetical; and (2) provides each prospective Distributor with a current copy of Kyäni's official income disclosure statement.

4. *Commercial Outlets:* Kyäni strongly encourages the selling of its products through person to person contact. In order to preserve Kyäni brand value and to help provide a standard of fairness for its Distributor base, Distributors may not without prior written permission from the Company display or sell Kyäni products or literature in any retail or service establishment, except as set forth herein. Kyäni will permit Distributors to solicit and make sales in retail or service establishments so long as the establishment is: (1) an independent locally-owned retail establishment, and not part of a national, regional, or statewide chain; or (2) an office of a health care practitioner. Kyäni will permit Distributors to solicit and make commercial sales upon prior written approval from the Company. For the purposes of these Policies and Procedures, the term "commercial sale" means the sale of: (a) Kyäni products that equal or exceed one thousand U.S. dollars (\$1,000) or more in a single order; and (b) To a third party who intends to resell the products to an end consumer.
5. *Trade Shows, Expositions and Other Sales Forums:* Distributors may display and/or sell Kyäni products at trade shows and professional expositions. Before submitting a deposit to the event promoter, Distributors must contact the Distributor Services Department in writing for conditional approval, as Kyäni's policy is to authorize only one Kyäni business per event. Final approval will be granted to the first Distributor who submits an official advertisement of the event, a copy of the contract signed by both the Distributor and the event official, and a receipt indicating that a deposit for the booth has been paid. Approval is given only for the event specified. Any requests to participate in future events must again be submitted to the Distributor Services Department. In order to preserve its valuable brand, Kyäni further reserves the right to refuse authorization to participate at any function which it does not deem a suitable forum for the promotion of its products or the Kyäni opportunity. Approval will not be given for swap meets, garage sales, flea markets or farmer's markets as these events are not conducive to the professional image Kyäni wishes to portray.
6. *No Predatory Pricing:* All sales of Kyäni products by Distributor must be at the published Distributor wholesale price as shown on the Kyäni website on the date of sale.

u. Conflicts of Interest

1. *Non-solicitation:* Kyäni Distributors may participate in other direct selling or network marketing or multilevel marketing ventures (collectively "network marketing"), related to non-Kyäni products if they desire to do so. However, if a Distributor elects to participate in another network marketing opportunity, in order to avoid conflicts of interest and loyalties, Distributors are prohibited from Unauthorized Recruiting, which includes the following:

During the term of this agreement, any actual or attempted recruitment or sponsoring of Kyäni Customers or Distributors for other network marketing business ventures, either directly or through a third party. This includes, but is not limited to, presenting or assisting in the presentation of other network marketing business ventures to any Kyäni Customer or Distributor, or implicitly or explicitly encouraging any Kyäni Customer or Distributor to join other business ventures. Because there is an extreme likelihood that conflicts will

arise if a Distributor operates two network marketing programs, it is the Distributor's responsibility to first determine whether a prospect is a Kyäni Customer or Distributor before recruiting or sponsoring the prospect for another network business venture.

For a period of six months following the cancellation of a Distributor's Agreement, the former Distributor may not recruit any Kyäni Distributor or Customer for another network marketing program.

Producing or offering any literature, tapes or promotional material of any nature for another network marketing business which is used by the Distributor or any third person to recruit Kyäni Customers or Distributors for that business venture;

Selling, offering to sell, or promoting any competing non-Kyäni products to Kyäni Customers or Distributors. Any product in the same generic category as a Kyäni product is deemed to be competing; e.g.; any dietary supplement is in the same generic category as Kyäni's dietary supplements, and is therefore a competing product, regardless of differences in cost, quality, ingredients or nutrient content.

Offering Kyäni products, or promoting the Kyäni Global Compensation Plan, in conjunction with any non-Kyäni products, business plan, opportunity, or incentive; or

Offering any non-Kyäni products, business plan, opportunity, or incentive at any Kyäni meeting, seminar, launch, convention, or other Kyäni function, or immediately following such event.

2. *Downline Activity Reports:* Downline Activity Reports are available for Distributor access and viewing at Kyäni's official website. Access to online Downline Activity Reports is password protected. All Downline Activity Reports and the information contained therein are confidential and constitute proprietary information and business trade secrets belonging to Kyäni. Downline Activity Reports are provided to Distributors in strictest confidence and are made available to Distributors for the sole purpose of assisting Distributors in working with their respective Downline Organizations in the development of their Kyäni business. Distributors should use their Downline Activity Reports to assist, motivate, and train their downline Distributors. The Distributor and Kyäni agree that, but for this agreement of confidentiality and nondisclosure, Kyäni would not provide Downline Activity Reports to the Distributor. A Distributor shall not, on his or her own behalf, or on behalf of any other person, partnership, association, corporation or other entity:
 - i. Directly or indirectly disclose any information contained in any Downline Activity Report to any third party;
 - ii. Directly or indirectly disclose his or her password or other user access code to his or her Downline Activity Report;
 - iii. Use the information to compete with Kyäni or for any purpose other than promoting his or her Kyäni business;
 - iv. Recruit or solicit any Distributor or Customer of Kyäni listed on any report, or in any manner attempt to influence or induce any Distributor or Preferred Customer of Kyäni, to alter their business relationship with Kyäni; or

- v. Use or disclose to any person, partnership, association, corporation, or other entity any information contained in any Downline Activity Report.

Upon the Company's request, any current or former Distributor will return the original and all copies of Downline Activity Reports to the Company.

- v. **Targeting Other Direct Sellers:** Kyäni does not condone Distributors specifically or consciously targeting the sales force of another direct sales company to sell Kyäni products or to become Distributors for Kyäni, nor does Kyäni condone Distributors solicitation or enticement of members of the sales force of another direct sales company to violate the terms of their contract with such other company. Should Distributors engage in such activity, they bear the risk of being sued by the other direct sales company. If any lawsuit, arbitration or mediation is brought against a Distributor alleging that he or she engaged in inappropriate recruiting activity of its sales force or Customers, Kyäni will not pay any of the Distributor's defense costs or legal fees, nor will Kyäni indemnify the Distributor for any judgment, award, or settlement.
- w. **Cross-Recruiting:** Actual or attempted cross-recruiting is strictly prohibited. Cross- recruiting is defined as solicitation, enrollment or sponsoring of an individual or entity that already has a current Customer or Distributor Agreement on file with Kyäni within a different line of sponsorship, or who has had such an agreement within the preceding twelve calendar months. The use of a spouse's or relative's name, trade names, DBAs, assumed names, corporations, partnerships, trusts, federal ID numbers, or fictitious ID numbers to circumvent this policy is prohibited. Distributors shall not demean, discredit or defame other Kyäni Distributors in an attempt to entice another Distributor to become part of the first Distributor's marketing organization.

If cross-recruiting is discovered, it must be brought to the Company's attention immediately. Kyäni may take disciplinary action against the Distributor that changed organizations and/or those Distributors who encouraged or participated in the cross-recruiting. Kyäni may also move all or part of the offending Distributors downline to his or her original Downline Organization if the Company deems it equitable and feasible to do so. However, Kyäni is under no obligation to move the cross-recruited Distributor's Downline Organization, and the ultimate disposition of the organization remains within the sole discretion of Kyäni. Distributors waive all claims and causes of action against Kyäni arising from or relating to the disposition of the cross-sponsored Distributor's Downline Organization.
- x. **Errors or Questions:** If a Distributor has questions about or believes any errors have been made regarding commissions, bonuses, Downline Activity Reports, or charges, the Distributor must notify Kyäni in writing within 60 days of the date of the purported error or incident in question. Kyäni will not be responsible for any errors, omissions or problems not reported to it within 60 days.
- y. **Excess Inventory Purchases Prohibited:** Distributors are not required to carry inventory of products or sales aids. Distributors who do so may find making retail sales and building a marketing organization somewhat easier because of the decreased response time in fulfilling Customer orders or in meeting a new Distributor's needs. Each Distributor must make his or her own decision with regard to these matters. To ensure that Distributors are not encumbered with excess inventory that they are unable to sell, such inventory may be returned to Kyäni upon the Distributor's cancellation pursuant to the terms described herein.

Kyäni strictly prohibits the purchase of products in unreasonable amounts primarily for the purpose of qualifying for commissions, bonuses or advancement in the Kyäni Global Compensation Plan. Distributors may not purchase more inventory than they can reasonably resell or consume in a month nor may they encourage others to do so. Distributors are prohibited from purchasing more than one thousand U.S. dollars (\$1,000) in products per month unless they certify to Kyäni that they have pending retail orders in excess of that amount or provide Kyäni with other written reason why such a purchase is necessary.

- z. Governmental Approval or Endorsement:** Neither local nor national governmental regulatory agencies nor governmental officials approve or endorse any direct selling or network marketing companies or programs. Therefore, Distributors shall not represent or imply that Kyäni or its Global Compensation Plan have been "approved," "endorsed" or otherwise sanctioned by any government agency or official.
- aa. Identification:** All Distributors are required to provide any requested identification, tax or national identification number on or in conjunction with the Distributor Application and Agreement. Upon joining, the Company will provide a unique Distributor Identification Number to the Distributor by which he or she will be identified. This number will be used to place orders, and track commissions and bonuses.
- bb. Income Taxes:** Every year, Kyäni will provide such tax and information forms or declarations as it is legally required to submit to the relevant governmental bodies or agencies. Each Distributor is responsible for paying all taxes on any income generated as an Independent Distributor.
- cc. Independent Contractor Status:** Distributors are independent contractors. The agreement between Kyäni and its Distributors does not create an employer/employee relationship, agency, partnership, or joint venture between the Company and the Distributor, nor does the relationship involve the purchase of a franchise or the purchase of a business opportunity. The Distributor has no authority (expressed or implied), to bind the company to any obligation. Each Distributor shall establish his or her own goals, hours, and methods of sale, and other means of operating the Distributor's independent business, except as may be limited by the Distributor's contractual obligations and applicable laws.

The name of Kyäni and other names as may be adopted by Kyäni are proprietary trade names, trademarks and service marks of Kyäni. As such, these marks are of great value to Kyäni and are supplied to Distributors for their use only in an expressly authorized manner. Use of Kyäni name on any item not produced by the company is prohibited except as follows:

Distributor's Name Independent Kyäni Distributor

All Distributors may list themselves as an "Independent Kyäni Distributor" in the white or yellow pages of the telephone directory under their own name. No Distributor may place telephone directory display ads using Kyäni's name or logo. Distributors may not answer the telephone by saying "Kyäni", "Kyäni Incorporated", or in any other manner that would lead the caller to believe that he or she has reached corporate offices of Kyäni.

- dd. Insurance Business Pursuits Coverage:** Kyäni does not provide insurance coverage for your independent business operation. Distributors may wish to arrange insurance coverage for their business as they deem appropriate.

- ee. Product Liability Coverage:** Kyäni maintains insurance to protect the Company and Distributors against product liability claims through a "Vendors Endorsement" which extends coverage to Independent Distributors so long as they are marketing Kyäni products in accordance with Company Policies and applicable laws and regulations. Kyäni's product liability policy does not extend coverage to claims or actions that arise as a result of a Distributor's misconduct in marketing the products or to other risk factors involved in the Distributor's independent business activities.
- ff. International Marketing:** Distributors are authorized to sell Kyäni products, and enroll Customers or sponsor Distributors only in the countries in which Kyäni is authorized to conduct business, as announced in official company literature. In countries where Kyäni has authorized sales and distributor activities, Distributors shall conform to the specific Kyäni rules for that individual country. Such rules may vary from country-to-country and Distributors are obligated to know the appropriate rules for the country and venues in which they intend to conduct business. Country-specific information may be presented from time to time under a country addendum to these Policies and Procedures.
- gg. Adherence to Laws and Ordinances:** Many communities have laws regulating certain home-based businesses. In most cases these ordinances are not applicable to Distributors because of the nature of their businesses. However, Distributors must obey those laws that do apply to them. If a government official or agency notifies a Distributor that an ordinance applies to him or her, the Distributor should respond politely and cooperatively; when appropriate, the Distributor is encouraged to send a copy of the ordinance to the Compliance Department of Kyäni.
- hh. Minors:** No person who is recognized as a minor in his/her state or country of residence may be a Kyäni Distributor. Distributors shall not sponsor or recruit minors into the Kyäni program.
- ii. Actions of Household Members or Affiliated Individuals:** If any member of a Distributor's immediate household engages in any activity which, if performed by the Distributor, would violate any provision of the Agreement, such activity will be deemed a violation by the Distributor and Kyäni may take disciplinary action against the Distributor. Similarly, if any individual associated in any way with a corporation, partnership, trust or other entity (collectively "affiliated individual") violates the Agreement, such action(s) will be deemed a violation by the entity, and Kyäni may take disciplinary action against the entity.
- jj. Re-packaging and Re-labeling Prohibited:** Distributors may not re-package, re-label, refill or alter the labels on any Kyäni products, information, materials or programs in any way. Kyäni products must be sold in their original containers only: re-labeling or repackaging could subject Distributors to criminal or civil liability, especially if harm results to property or to another person.
- kk. Requests for Records:** Any request from a Distributor for copies of invoices, applications, downline activity reports, or other records will require a fee of U.S. \$1.00 per page per copy to cover the expense of mailing and time required to research files and make copies of the records.
- II. Sale, Transfer or Assignment of Kyäni Business:** Although a Kyäni business is a privately owned, independently operated business, the sale, transfer or assignment of a Kyäni business is subject to certain limitations. If a Distributor wishes to sell/transfer his or her Kyäni business, the following criteria must be met:

1. Protection of the existing line of sponsorship must always be maintained so that the Kyäni business continues to be operated in that line of sponsorship.
2. There will be an Administrative Fee of \$250 for all transactions.
3. Before the sale, transfer or assignment can be finalized and approved by Kyäni, any debt obligations the selling Distributor has with Kyäni must be satisfied.
4. The selling Distributor must be in good standing and not in violation of any of the terms of the Agreement in order to be eligible to sell, transfer or assign a Kyäni business.

Kyäni has the sole discretion to accept or reject all sales transactions.

5. Upon complete execution of the purchase and sale agreement, and the new Distributor Agreement, the parties must submit copies of the same to Kyäni's Distributor Services Department for review and approval. Kyäni reserves the right to request additional documentation that may be necessary to analyze the transaction between the buyer and seller. Kyäni's Distributor Services Department will, in its discretion, approve or deny the sale, transfer or assignment within 30 days after the receipt of all necessary documents from the parties.

If the parties fail to obtain Kyäni's approval for the transaction, the transfer may be voidable at Kyäni's option. If Kyäni approves the transfer the purchaser of the existing Kyäni business will assume the obligations and position of the selling Distributor. A Distributor who sells his or her Kyäni business shall not be eligible to re-apply as a Kyäni Distributor for a period of at least twelve full calendar months after the sale.

No changes in line of sponsorship can result from the sale or transfer of a Kyäni business.

mm. Separation of a Kyäni Business: Kyäni Distributors sometimes operate their Kyäni businesses as husband-wife partnerships, regular partnerships, corporations, or trusts. At such time as a marriage may end in divorce or a corporation, partnership or trust (the latter three entities are collectively referred to herein as "entities") may dissolve, arrangements must be made to assure that any separation or division of the business is accomplished so as not to adversely affect the interests and income of other businesses up or down the line of sponsorship. If the separating parties fail to provide for the best interests of other Distributors and the Company, Kyäni will unilaterally terminate the Distributor Agreement.

During the pendency of a divorce or entity dissolution, the parties must adopt one of the following methods of operation:

1. One of the parties may, with consent of the other(s), operate the Kyäni business pursuant to an assignment in writing whereby the relinquishing spouse, shareholders, partners or trustees authorize Kyäni to deal directly and solely with the other spouse or non-relinquishing shareholder, partner or trustee.
2. The parties may continue to operate the Kyäni business jointly, whereupon all compensation paid by Kyäni will be paid in the joint names of the Distributors or in the name of the entity to be divided as the parties may independently agree between themselves.
3. If the parties cannot mutually agree on how the business shall be allocated during the pendency of a divorce or dissolution, the Company shall treat the business according to the status quo as existed prior to the filing of the divorce or dissolution.

Under no circumstances will the Downline Organization of divorcing spouses or a dissolving business entity be divided. Similarly, under no circumstances will Kyäni split commission and bonus checks between divorcing spouses or members of dissolving entities. Kyäni will recognize only one Downline Organization and will issue only one commission check per Kyäni business per commission cycle. Commission checks shall always be issued to the same individual or entity. In the event that parties to a divorce or dissolution proceeding are unable to resolve a dispute over the disposition of commissions and ownership of the business, the Distributor Agreement shall be involuntarily cancelled.

If a former spouse or a former entity affiliate has completely relinquished all rights in their original Kyäni business, they are thereafter free to sponsor under any sponsor of their choosing, so long as he or she meets the waiting period requirements set forth herein. In such case, however, the former spouse or partner shall have no rights to any Distributors in their former organization or to any former retail Customer. They must develop the new business in the same manner as would any other new Distributor.

- nn. Sponsoring:** All active Distributors in good standing have the right to sponsor and enroll others into Kyäni. Each prospective Customer or Distributor has the ultimate right to choose his or her own Sponsor. If two Distributors claim to be the Sponsor of the same new Distributor or Customer, the Company shall regard the first application received by the Company as controlling. In addition, Kyäni reserves the right to deny enrollment in countries or territories where the company is not officially open.
- oo. Stacking:** The term "stacking" includes: (a) the failure to transmit to Kyäni, or the holding of an Independent Distributor Application and Agreement longer than 72 hours after its execution; (b) the placement or manipulation of Independent Distributor Applications and Agreements for the purpose of maximizing compensation pursuant to Kyäni's Global Compensation Plan; or (c) providing financial assistance to new Distributors for the purpose of maximizing compensation pursuant to Kyäni's Global Compensation Plan. Stacking constitutes a material breach of these Policies and Procedures, and is strictly and absolutely prohibited.
- pp. Succession:** Upon the death of an individual Distributor, his or her business may be passed to his or her heirs. Appropriate legal documentation under local law must be submitted to the Company to ensure the transfer is proper. Accordingly, a Distributor should consult an attorney to assist him or her in the preparation of a will or other testamentary instrument as required under local law. Whenever a Kyäni business is transferred by a will or other testamentary process as required under local law, the beneficiary acquires the right to collect all bonuses and commissions of the deceased Distributor's marketing organization provided the following qualifications are met. The successor(s) must:

1. Execute a new Distributor Agreement;
2. Comply with terms and provisions of the Agreement; and
3. Meet all of the qualifications for the deceased Distributor's status.

Bonus and commission checks of a Kyäni business transferred pursuant to this section will be paid in a single check jointly to the devisees. The devisees must provide Kyäni with an "address

of record" to which all bonus and commission checks will be sent. If the business is bequeathed to joint devisees, they must form a business entity to continue a distributorship.

- qq. Transfer Upon Incapacitation of a Distributor:** To effect a transfer of a Kyäni business because of incapacity, the successor must provide the following to Kyäni: (1) a notarized copy of an appointment as guardian or trustee; (2) a notarized copy of the court Order or other documentation as required under local law that establishes the right by the successor to administer the Kyäni business; and (3) a completed Distributor Agreement executed by the trustee.

4. RESPONSIBILITIES OF DISTRIBUTORS

- a. Change of Address or Telephone:** To ensure timely delivery of products, support materials, and commission checks, it is critically important that Kyäni's files are current. Distributors are required to keep all address and telephone number information current. This may be done in the Distributor's Back Office or in the alternative by sending such corrections as are necessary to Customer Service. To guarantee proper delivery of orders, all changes should be received not less than two weeks prior to the effective date of the address or telephone number change.
- b. Ongoing Training:** In order to be successful with the Kyäni opportunity, any Distributor who sponsors another Distributor into Kyäni should perform a bona fide assistance and training function to ensure that his or her downline is properly operating his or her Kyäni business. Distributors should have ongoing contact and communication with the Distributors in their Downline Organizations. Examples of such contact and communication may include but are not limited to: newsletters, written correspondence, personal meetings, telephone contact, voicemail, electronic mail, and the accompaniment of downline Distributors to Kyäni meetings, training sessions, and other functions. Upline Distributors should also seek to motivate and train new Distributors in Kyäni product knowledge, effective sales techniques, the Kyäni Global Compensation Plan, compliance with Company Policies and Procedures, and compliance with local law. Distributors must monitor the Distributors in their Downline Organizations to ensure that downline Distributors do not make improper product or business claims, or engage in any illegal or inappropriate conduct. Upon request, every Distributor should be able to provide documented evidence to Kyäni of his or her ongoing fulfillment of the responsibilities of a Sponsor.
- c. Ongoing Sales Responsibilities:** Regardless of their level of sponsoring activity, successful Distributors feel an ongoing obligation to continue to personally promote sales through the generation of new Customers and through servicing their existing Customers.
- d. Non-disparagement:** Kyäni wants to provide its independent Distributors with the best products, compensation plan, and service in the industry. Accordingly, constructive criticisms and comments are welcome and should be submitted in writing to the Distributor Services Department. Remember, to best serve you, we must hear from you! While Kyäni welcomes constructive input, negative comments and remarks made in the field by Distributors about the Company, its products, or compensation plan serve no purpose other than to sour the enthusiasm of other Kyäni Distributors. Similarly, "trash talking" the competition creates a negative environment that damages the industry in a way that ultimately can harm Kyäni as well. For this reason, and to set the proper example for their downline, Distributors should not disparage the Company and its products or the competition and its products. Kyäni reserves the

right to take action against Distributors whose personal behavior in this regard proves disruptive and harmful to Kyäni.

- e. **Providing Documentation to Applicants:** Distributors should help provide the most current version of the Policies and Procedures (always available at the Kyäni website) and the Compensation Plan to individuals whom they are sponsoring to become Distributors before the applicant signs a Distributor Agreement.
- f. **Reporting Policy Violation:** Distributors observing a Policy violation by another Distributor are encouraged to submit a written report of the violation directly to the attention of the Kyäni Compliance Department. Details of the incidents such as dates, number of occurrences, persons involved, and any supporting documentation should be included in the report.

5. **SALES**

- a. **Product Sales:** The Kyäni Global Compensation Plan is based upon the sale of Kyäni products to end consumers. Distributors must fulfill personal and Downline Organization retail sales requirements (as well as meet other responsibilities set forth in the Agreement) to be eligible for bonuses, commissions, and advancement to higher levels of achievement.
- b. **Price and Territory Restrictions:** Distributors may not sell Kyäni products for less than the published Distributor wholesale price. Distributors may only sell Kyäni products in countries that are officially recognized by Kyäni as open for Kyäni business.
- c. **Sales Receipts:** Kyäni encourages all Distributors to provide their retail Customers with two copies of an official Kyäni sales receipt at the time of the sale. These receipts set forth the Customer Satisfaction Guarantee for Kyäni products and a statement of consumer protection if these are afforded by local law. Records documenting the purchases of Distributors' Direct and Preferred Customers will be maintained by Kyäni, and Distributors should maintain all retail sales receipts for a period of two years and furnish them to Kyäni at the company's request. Further, Distributors should remember to retain records related to Distributor transactions in order to comply with the requirements for their independent businesses under local law (for example to establish document regarding income and expenses in support of a Distributor's tax obligations).

If a sale qualifies as a "door-to-door" sale, Distributors should ensure that any receipt complies with the requirements of local law. For example, in some jurisdictions the following information must be contained on each sales receipt (with two copies provided to the buyer):

1. The date of the transaction;
2. The date by which the buyer may give notice of cancellation; and
3. Name and address of the selling Distributor.

6. **BONUSES AND COMMISSIONS**

- a. **Bonus and Commission Qualifications:** A Distributor must be active and in compliance with the Agreement to qualify for bonuses and commissions. So long as a Distributor complies with the terms of the Agreement, Kyäni shall pay commissions to such Distributor in accordance with the Global Compensation plan. The minimum amount for which Kyäni will issue a bank check or

draft in U.S. currency is ten U.S. dollars (\$10). If a Distributor's bonuses and commissions do not equal or exceed ten U.S. dollars (\$10), the Company will accrue the commissions and bonuses until they total ten U.S. dollars (\$10). A payment will be issued once ten U.S. dollars (\$10) has accrued. Payment policies for bonuses and commissions in currencies other than the U.S. dollar will be established from time to time by the Company. Bonuses and commissions will be calculated, and checks will be issued, on or before the fifteenth day of each month.

- b. Adjustment to Bonuses and Commissions:** Distributors receive bonuses and commissions based on the actual sales of products to end consumers. When a product is returned to Kyäni for a refund or is repurchased by the Company, the bonuses and commissions attributable to the returned or repurchased product(s) will be deducted in the month in which the refund is given, and continuing every pay period thereafter until the commission is recovered, from the Distributors who received bonuses or commissions on the sales of the refunded products. In the event that any such Distributor terminates his or her Distributor Agreement, and the amounts of the bonuses or commissions attributable to the returned products have not yet been fully recovered by the company, the remainder of the outstanding balance may be set off against any amounts owed to the terminated Distributor.
- c. Unclaimed Commissions and Credits:** Distributors must deposit or cash commission and bonus checks within six months from their date of issuance. A check that remains uncashed after six months will be void. After a check has been voided, Kyäni will attempt to notify a Distributor who has an uncashed check by sending a written notice to his or her last known address identifying the amount of the check and advising that the Distributor can request that the check be reissued. There shall be a U.S. \$15.00 charge for reissuing a check, and a U.S. \$10.00 fee for each notice that is sent to the Distributor. These charges shall be deducted from the balance owed to the Distributor.

Customers or Distributors who have a credit on account should use their credit within six months from the date on which the credit was issued. If credits have not been used within six months, Kyäni shall attempt to notify the Distributor or Customer on a monthly basis, by sending written notice to the last known address, advising the Distributor or Customer of the credit. There shall be a U.S. \$10.00 charge for each attempted notification. This charge shall be deducted from the Distributor's or Customer's credit on account.
- d. Downline Activity Reports:** All information provided by Kyäni in online or telephonic downline activity reports, including but not limited to personal and group sales volume (or any part thereof), downline sponsoring activity, and other information is believed to be accurate and reliable. Nevertheless, due to various factors including the inherent possibility of human and mechanical error; the accuracy, completeness, and timeliness of orders; denial of credit card and electronic check payments; returned products; credit card and electronic check charge-backs; the information is not guaranteed by Kyäni or any persons creating or transmitting the information.
- e. Warranties:** ALL VOLUME INFORMATION (as described in Kyäni's Global Compensation Plan) IS PROVIDED "AS IS" WITHOUT WARRANTIES, EXPRESS OR IMPLIED, OR REPRESENTATIONS OF ANY KIND WHATSOEVER. IN PARTICULAR BUT WITHOUT LIMITATION THERE SHALL BE NO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NON-INFRINGEMENT.

TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, KYÄNI AND/OR OTHER PERSONS CREATING OR TRANSMITTING THE INFORMATION WILL IN NO EVENT BE LIABLE TO ANY DISTRIBUTOR OR ANYONE ELSE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES THAT ARISE OUT OF THE USE OF OR ACCESS TO INFORMATION (INCLUDING BUT NOT LIMITED TO LOST PROFITS, BONUSES, OR COMMISSIONS, LOSS OF OPPORTUNITY, AND DAMAGES THAT MAY RESULT FROM INACCURACY, INCOMPLETENESS, INCONVENIENCE, DELAY, OR LOSS OF THE USE OF THE INFORMATION), EVEN IF KYÄNI OR OTHER PERSONS CREATING OR TRANSMITTING THE INFORMATION SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, KYÄNI OR OTHER PERSONS CREATING OR TRANSMITTING THE INFORMATION SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO YOU OR ANYONE ELSE UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHER THEORY WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO.

Access to and use of Kyäni's online and telephonic information services is at your own risk. All Information is provided to you "as is". If you are dissatisfied with the information, your sole and exclusive remedy is to discontinue use of and access to Kyäni's online and telephone information services.

7. PRODUCT GUARANTEES, RETURNS AND INVENTORY REPURCHASE

a. Product Satisfaction Guarantee for Customers

United States Residents: Kyäni offers a one hundred percent (100%) thirty (30) day money-back satisfaction guarantee (less shipping charges) on all products purchased by Customers who reside in the United States. Customers must return all used and unused products to Kyäni. Once received Kyäni's Distribution Center will process all returns and refunds within thirty days after receipt of the product.

b. Return of Inventory by Distributors

Kyäni will repurchase from the Distributor any portion of the Distributor's currently marketable inventory that Distributor purchased from Kyäni in the preceding twelve months. The repurchase price shall be 90 percent of the purchase price paid by the Distributor, less all applicable shipping and handling costs to return the product to Kyäni.

For purposes of the Agreement, inventory shall include all company produced products, promotional materials, starter packs, or other sales aids purchased by Distributor from Kyäni.

The repurchase provisions of this section shall not apply to any inventory that is not currently marketable inventory. Currently marketable inventory shall not include inventory that is beyond its expiration date, that has the tamper proof safety seal damaged or removed, that has been opened or partially consumed, that has been discontinued by the company, or that is seasonal in nature or a special promotional product.

8. DISPUTE RESOLUTION AND DISCIPLINARY PROCEEDINGS

a. Disciplinary Sanctions: Breach of the Agreement, including these Policies and Procedures (as applicable), or any illegal, fraudulent, deceptive or unethical business conduct by a Distributor may result, at Kyäni's discretion, in one or more of the following corrective measures, which shall, when necessary, be considered as liquidated damages for a breach of the Agreement, but shall not waive Kyäni's other rights under the Agreement:

1. Issuance of a written warning or admonition;
2. Requiring the Distributor to take immediate corrective measures;
3. Imposition of a fine, which may be withheld from bonus and commission checks;
4. Loss or suspension of rights to one or more bonus and commission checks;
5. Kyäni may withhold from a Distributor all or part of the Distributor's bonuses and commissions during the period that Kyäni is investigating any conduct that may violate the Agreement. If Kyäni chooses to terminate the Agreement because of a breach of the Agreement by the Distributor or a violation of applicable laws or regulations, the Distributor will not be entitled to receive any commissions or payments that were withheld during the investigation period prior to actual termination;
6. Suspension of the Distributor's right to purchase products and/or receive payments;
7. Termination of the Agreement;
8. Any other measure expressly allowed within any provision of the Agreement or which Kyäni deems practicable to implement and appropriate to equitably resolve injuries caused partially or exclusively by the Distributor's conduct or omission;
9. The measures above do not exhaust Kyäni's rights and do not mean that Kyäni cannot also initiate legal proceedings for monetary and/or equitable relief or take other measures permitted by the Agreement or applicable laws.

b. Grievances and Complaints: When a Distributor has a grievance or complaint with another Distributor regarding any practice or conduct in relationship to their respective Kyäni businesses, they are encouraged to seek to resolve the issue through private discussions with the other party. Where this is impractical or unsuccessful, the complaining Distributor is encouraged to discuss the problem with his or her Sponsor who may review the matter and try to resolve it, perhaps through the "good offices" of the other party's upline sponsor. Unresolved disputes may be reported in writing to the Customer Service Department at the Company, which may seek assistance from a Dispute Resolution Board for final review and determination as appropriate.

c. Dispute Resolution Board: The Dispute Resolution Board (or "DRB") is composed of one or more qualified individuals selected by Kyäni senior management. The composition of the Dispute Resolution Board may change at any time. The purpose of the DRB is to:

1. Review appeals of any actions taken by the Company for an alleged breach of a Distributor's obligations; and

2. Review matters between Kyäni Distributors. If the response or settlement suggested by Customer Service has been rejected or the matter otherwise remains unresolved, the Dispute Resolution Board may review evidence, deliberate, and respond to remaining issues.

A Distributor may submit a written request for a telephonic or in-person review within seven business days from the date of: (1) the written notice by Kyäni of action; or (2) the written decision of Distributor Services regarding disputes between Distributors under section 9.2. All communication with Kyäni and the Distributor seeking resolution of a dispute must be in writing. It is within the DRB's discretion whether a claim is accepted for review. If the DRB agrees to review the matter, it shall schedule a review within thirty (30) days of the receipt of the Distributor's written request. All evidence (e.g., documents, exhibits, etc.) that a Distributor desires to have considered by the DRB must be submitted to Kyäni no later than seven business days before the date of the review. The Distributor shall bear all of the expenses related to his or her attendance and the attendance of any witnesses he or she desires to be present at the review. The decision of the DRB will be final and subject to no further Company review. During the pendency of a claim before the DRB, Company will actively oppose any effort by a Distributor to seek arbitration, mediation, or litigation or any other remedy against the other party or parties to the dispute or against Kyäni.

- d. **Governing Law and Jurisdiction:** The Distributor Agreement between the Distributor and Kyäni has been entered into in Idaho Falls, Idaho, United States of America, as this is the location where the Distributor submitted the application to enroll as a Kyäni Independent Distributor, and where the application was reviewed and approved by Kyäni. The Distributor Agreement shall be governed exclusively by the laws of the State of Idaho, and the Distributor agrees to submit exclusively to the jurisdiction of the courts of the State of Idaho, and specifically the District Court of the Seventh Judicial District with venue in Bonneville County, for resolution of any claims or related litigation to interpret or enforce the terms of the Distributor Agreement.

9. ORDERING

- a. **Direct & Preferred Customers:** Distributors are encouraged to promote Kyäni's Direct Customer Program to retail Customers. The Direct Customer Program allows retail Customers to purchase their products directly from Kyäni. Customers simply call Kyäni to place their orders or place their orders online, which they can charge to their credit card. Kyäni will send the ordered products directly to the Customer. To ensure that Distributors receive the appropriate commission, Customers may not place an order without a Distributor's ID Number. Even more efficient than the Direct Customer Program is Kyäni's Preferred Customer Program. Under the Preferred Customer Program, an individual may sign up to have a pre-selected package of Kyäni products delivered to his or her home automatically each month. Not only does this take all of the hassles out of buying, it also allows the Customer to take advantage of the discounted Preferred Customer Prices.
- b. **Purchasing Kyäni Products:** Each Distributor should purchase his or her products directly from Kyäni in order to be credited with the Personal Sales Volume associated with that purchase.
- c. **General Order Policies:** On mail orders with invalid or incorrect payment, Kyäni may attempt to contact the Distributor by phone, and/or mail to try to obtain correct payment. Kyäni may also attempt to process the order up to five more times. Unsuccessful orders will not be processed. No

C.O.D. orders will be accepted. Kyäni maintains no minimum order requirements. Orders for products and sales aids may be combined.

- d. **Shipping and Back Order Policy:** Kyäni will normally ship products within five (5) days from the date an order is received. Kyäni will promptly ship ordered items that are currently in stock. Ordered items that are out-of-stock will be placed on backorder and sent when Kyäni receives additional inventory. Distributors will be charged and given Personal Sales Volume on back-ordered items unless notified on the invoice that the product has been discontinued. Kyäni will notify Distributors and Customers if items are backordered and are not expected to ship within 30 days from the date of the order. An estimated shipping date will also be provided. Backordered items may be cancelled upon a Customer's or Distributor's request. Customers and Distributors may request a refund, credit on account, or replacement merchandise for cancelled back orders. If a refund is requested, the Distributor's Personal Sales Volume will be decreased by the amount of the refund in the month in which the refund is issued.
- e. **Confirmation of Order:** A Distributor and/or recipient of an order must confirm that the product received matches the product listed on the shipping invoice, and is free of damage. Failure to notify Kyäni of any shipping discrepancy or damage within thirty days of receiving the shipment will waive the Distributor's right to request a correction.

10. **PAYMENT AND SHIPPING**

- a. **Deposit:** Kyäni advises strongly against Distributors accepting money for a sale to a personal retail Customer except at the time of product delivery (e.g. don't accept monies in anticipation of future deliveries).
- b. **Insufficient Funds:** It is the responsibility of each Distributor to ensure that there are sufficient funds or credit available in his or her account to cover a monthly Autoship order. Kyäni will not contact Distributors in regard to orders cancelled due to insufficient funds or credit. This may result in a Distributor's failure to meet his or her Personal Sales Volume requirements for the month.

Kyäni will not make adjustments after the end of the calendar month to Autoship orders. Example: a Distributor has an Autoship order set for the 25th of the month and for whatever reason the Distributor's credit card is declined. The Distributor is responsible for contacting Kyäni and providing a credit card that will clear before the end of the month in order to have the Autoship order count for that month.

- c. **Returned Checks:** All checks returned by a Distributor's bank for insufficient funds (NSF checks) will be re-submitted for payment. A \$25.00 returned check fee will be charged to the account of the Distributor. After receiving a returned check from a Customer or a Distributor, all future orders must be paid by Credit Card, money order or cashier's check. Any outstanding balance owed to Kyäni by a Distributor for NSF checks and returned check fees will be withheld from subsequent bonus and commission checks.
- d. **Returned Bonus and Commissions Checks:** Distributors are responsible for ensuring Kyäni has the correct name and address for their commission checks. There is a \$10 processing fee for checks returned to Kyäni for any reason including an incorrect name and/or address. This fee will

be covered by making an adjustment to that distributor's Bonus and Commissions and/or by charging the credit card(s) on file with Kyäni.

- e. **Returned Packages:** Distributors with packages that are returned to Kyäni for an incorrect address, unsuccessful delivery attempts, return to sender, or any other reason will be charged for shipping to and from Kyäni and a \$20 processing fee. This charge will be covered by making an adjustment to that distributor's bonus and commission and/or by charging the credit card(s) on file with Kyäni.
- f. **Restrictions on Third Party Use of Credit Cards and Checking Account Access:** In order to preserve the independence of Kyäni Distributors and to preserve the integrity of the Company's compensation plan, Kyäni discourages any arrangement between the independent Distributors creating indebtedness between them, and Distributors are expressly prohibited from using a Distributor's credit card or permitting debits to a Distributor's checking account to enroll or sponsor other Distributors, or to make purchases from the Company on behalf of another Distributor.
- g. **Sales, Use and Value Added Taxes:** In designing the Kyäni opportunity, one of our guiding philosophies has been to free Distributors from as many administrative, operational, and logistical tasks as possible. In doing so, Distributors are free to concentrate on those activities that directly affect their incomes, namely product sales and enrollment activities. To these ends, Kyäni seeks to relieve Distributors from the burdens of collecting and remitting sales, use, goods and services, and value added taxes ("Consumption Taxes"), filing Consumption Tax reports, and keeping records relative to Consumption Taxes. Nevertheless, Distributors remain obligated to comply with all applicable laws and regulations for the jurisdictions in which the Distributors conduct business. Consumption Taxes are by law generally required to be paid by the final user of a taxable item, so whenever possible, Kyäni will seek to collect and remit applicable Consumption Taxes on behalf of or in conjunction with the Distributor. Distributors should contact the Kyäni Customer Service Department if they have any questions about Kyäni's activities in this regard.

11. INACTIVITY AND CANCELLATION

- a. **Effect of Cancellation:** So long as a Distributor remains active and complies with the terms of the Agreement and these Policies and Procedures, Kyäni shall pay commissions to the Distributor in accordance with the Global Compensation Plan. A Distributor's bonuses and commissions constitute the entire consideration for the Distributor's efforts in generating sales and all activities related to generating sales (including building a downline organization). Following a Distributor's cancellation for inactivity as described herein, or voluntary or involuntary cancellation of his or her Agreement, including for breach of the Agreement or violation of the Policies and Procedures (all of these methods are collectively referred to as being "cancelled" or a "cancellation"), the former Distributor shall have no right, title, claim or interest to the marketing organization in which he or she operated, to any past, present or future Kyäni trade secrets or other proprietary information or intellectual property, or to any commission or bonus from the sales generated by the organization after the Distributor's cancellation. A Distributor whose Agreement is cancelled will lose all rights as a Distributor. This includes the right to sell Kyäni products, and the right to receive future commissions, bonuses, or other income resulting from the sales and other activities of the Distributor's former downline sales organization. To remove all doubt, in the event of cancellation, the Distributor agrees to waive all rights he or she may

have, including but not limited to property rights, trade secret rights, intellectual property rights, or otherwise, to their former downline organization, marketing data, financial data, or contact information related to that downline organization, or to any bonuses, commissions, or other remuneration that might otherwise have arisen from the sales or other activities of that downline organization, had the Distributor not been cancelled.

The former Distributor shall not hold himself or herself out as a Kyäni Distributor. A cancelled Distributor shall receive commissions and bonuses only for the last full pay period he or she was active prior to cancellation (less any amounts withheld during an investigation preceding an involuntary cancellation).

- b. Involuntary Cancellation:** A Distributor's violation of any of the terms of the Agreement, including any amendments that may be made by Kyäni in its sole discretion, may result in any of the sanctions listed in Section 8(a), including the involuntary cancellation of his or her Distributor Agreement. Cancellation shall be effective on the date on which written notice is mailed, return receipt requested, to the Distributor's last known address, or when the Distributor receives actual notice of cancellation, whichever occurs first.

In addition, Kyäni may cancel a Distributor's account if there are no product purchases for a period of twelve months.

- c. Voluntary Cancellation:** A participant in this network marketing plan has a right to cancel at any time, regardless of reason. Cancellation is requested by satisfying the requirements of and executing a Distributor Cancellation Form and returning this form to Kyäni by postal mail, scanned document through email, or FAX. Upon receipt of the Distributor Cancellation Form, Kyäni will process the cancellation.
- d. Non-renewal:** A Distributor may also voluntarily cancel his or her Distributor Agreement by failing to make an order within one calendar year from the anniversary date of enrollment.
- e. Inactive or Cancelled Distributors Re-Enrollment Policy:** A Kyäni Distributor who voluntarily terminate as a Distributor may re-enroll as a new Distributor twelve months following the date of termination. If any such Distributor re-enrolls with Kyäni, the Distributor shall be enrolled as a new distributor, but any downline that was formerly under the Distributor prior to termination shall not be affected by such re-enrollment.

A Kyäni Distributor who has been inactive for a period of twelve months may be cancelled at Kyäni's discretion. The Distributor's downline shall be unaffected by the change and shall not be moved with the Distributor. For purposes of this Policy an inactive Distributor shall be deemed to be any Distributor who has failed to make any purchase for twelve consecutive months.

This Policy shall not apply to any Kyäni Distributor whose Distributor Agreement was terminated by the company for cause. Any such Distributor must have approval from the Kyäni Chief Executive Officer prior to being re-enrolled with the company.

12. RIGHT TO AMEND

Kyäni reserves the right to modify the Kyäni Global Compensation Plan, Distributor Agreement, and these Policies and Procedures at any time and for any reason in its sole and absolute discretion.

EXHIBIT C



ELECTRONIC CONSENT

E-SIGN, the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001, et seq.), requires that you consent to entering into an electronic agreement with Kyäni Sun, Inc. ("Kyäni ") before an online version of the Kyäni Independent Distributor Agreement is entered into. Please read the following information carefully.

Should you enter into an online Independent Distributor Agreement ("the Agreement"), you will not be required to submit a paper application. The entire agreement between you and Kyäni will be evidenced by an electronic record. To enter into the Agreement, you must additionally electronically acknowledge that you agree to the terms of the Kyäni Policies and Procedures and the Kyäni Global Compensation Plan.

To access these documents and enter into the Agreement, you will need the following hardware and software: A Personal Computer ("PC") with modem or other Internet access device, operational Internet browser software (e.g., Netscape Communicator or Internet Explorer), and Adobe Acrobat Reader. Should there ever be a change in the equipment or software necessary to access the terms of the Agreement, Kyäni will advise you of the same and will provide you with a list of the equipment and software that is necessary. Upon such event, you may withdraw your consent.

Your consent will apply to all transactions between you and Kyäni.

You may withdraw your consent to the use of electronic records at any time. However, should you do so, the Agreement will be automatically terminated. To withdraw your consent (and thereby terminate the Agreement), or update any personal information, you may do so online at <http://www.kyani.net> or by sending written notice to Kyäni, Inc., 1070 Riverwalk Drive, Suite #350, Idaho Falls, Idaho 83402 (208)-259-9872, or customerservice@kyanincorp.com.

During the enrollment process, you will have the ability to read, download, print, and retain the Policies and Procedures and Compensation Plan for future reference. Additionally, you may request printed copies of those documents by contacting Kyäni at 1070 Riverwalk Drive, Suite #350, Idaho Falls, Idaho 83402 or customerservice@kyanincorp.com. Your request must include your name, your Distributor identification number, your mailing address, and your E-mail address. Upon receipt of such a request, Kyäni will mail you the then current version of each document. There is a charge of \$10 for this service.

By entering into the Agreement, you agree that Kyäni may amend the same (including the Policies and Procedures and the Global Compensation Plan) at its sole discretion at any time. You may obtain a copy of the version of these documents that were in effect at any time after you entered into the Agreement. Prior versions are archived by Kyäni. Should you wish to obtain a copy of any version of the Policies and Procedures and/or Global Compensation Plan since the date of your enrollment, send a written request to Kyäni, 1070 Riverwalk Drive, Suite #350, Idaho Falls, Idaho 83402 or to customerservice@kyanincorp.com. Your request must include your name, your Distributor identification number, your mailing address, and your E-mail address. Upon receipt of such a request, Kyäni will mail or email to you a copy of the version of the Agreement that you requested. Be certain to specify the date of the version that you wish to receive. There is a charge of \$10 for this service. The most current version of the Policies and Procedures and the Global Compensation Plan are always available at Kyäni 's official web site for viewing, printing and downloading.

Please indicate your consent to the above terms by clicking on the "Continue >>" button below. By providing your consent, you also confirm that you are able to access all the terms of the Agreement electronically.

EXHIBIT D

2/2/2017

Agreements

Below are the legal agreements for your enrollment country. You will need to accept all of them to continue.

Electronic Consent

Electronic Consent

E-SIGN, the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.), requires that you consent to entering into an electronic agreement with Kyäni, Inc. ("Kyäni") before an online version of the Kyäni Independent Distributor Agreement is entered into. Please read the following information carefully.

Should you enter into an online Independent Distributor Agreement ("the Agreement"), you will not be required to submit a paper application. The entire agreement between you and Kyäni will be evidenced by an electronic record. To enter into the Agreement, you must additionally electronically acknowledge that you agree to the terms of the Kyäni Policies and Procedures and the Kyäni Global Compensation Plan.

To access these documents and enter into the Agreement, you will need the following hardware and software: A Personal Computer ("PC") with modem or other Internet access device, operational Internet browser software (e.g., Netscape Communicator or Internet Explorer), and Adobe Acrobat Reader. Should there ever be a change in the equipment or software necessary to

Confirm that you consent to the above terms.

☐ Check to Agree

Download copy of Electronic Consent (https://assets.kyani.net/forms/us/en-us/electronic_consent.pdf)

Policies & Procedures of distributorship

Kyäni POLICIES & PROCEDURES

1. INTRODUCTION

The Kyäni Policies and Procedures govern your rights as a Kyäni Independent Distributor. You should familiarize yourself with the contents of these Policies and Procedures, and any questions you may have regarding the Policies and Procedures should be directed to the Kyäni Customer Service staff.

a. Policies and Compensation Plan Incorporated into Distributor Agreement: These Policies and Procedures, in their present form and as amended from time to time by Kyäni, Inc., or any Kyäni, Inc. Affiliate, (hereafter collectively "Kyäni" or the "Company"), are referred to in the Kyäni Distributor Agreement. Where these Policies and Procedures are incorporated into the Kyäni Distributor Agreement by specific reference, these Policies and Procedures constitute an official part of that agreement.

Where these Policies and Procedures are not specifically incorporated into that agreement, they

Confirm that you agree to the Policies & Procedures as presented here. You cannot continue without agreeing to the Policies & Procedures.

☐ Check to Agree

Download copy of Policies & Procedures (https://assets.kyani.net/forms/us/en-us/policies_procedures.pdf)

2/2/2017

Terms & Conditions of distributorship

Kyäni INDEPENDENT DISTRIBUTOR AGREEMENT TERMS & CONDITIONS

1. I understand that as a Kyäni, Inc. (hereinafter "Kyäni") Distributor:
 - a. I have the right to purchase products from Kyäni at the price for which I am eligible.
 - b. I have the right to sponsor qualified persons in Kyäni.
 - c. I will assist, train, and motivate the Distributors in my downline marketing organization.
 - d. I will comply with all federal, state, county and municipal laws, ordinances, rules, and regulations, and shall make all reports and remit all withholdings or other deductions as may be required by any federal, state, county or municipal law, ordinance, rule or regulation.
 - e. I will perform my obligations as a Distributor with honesty and integrity.
 - f. I will only use the sales contracts and order forms which are provided by Kyäni for the sales of its products, and I will follow all policies and procedures established by Kyäni for the completion and processing of such contracts and orders.

Confirm that you agree to the Terms & Conditions as presented here. You cannot continue without agreeing to the Terms & Conditions.

☐ Check to Agree

Download copy of Terms & Conditions (https://assets.kyani.net/forms/us/en-us/terms_conditions.pdf)

Continue →

SUPPLEMENTAL
DECLARATION OF KRISTEN PEARSON

I, Kristen Pearson, do say and declare as follows:

1. I am a resident of the State of Idaho, am over the age of twenty-one, and am competent in every respect to make this declaration. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could and would testify competently thereto.

2. I am the Global Compliance Director of KYÄNI, INC. ("Kyäni"), a defendant in the above-captioned case.

3. Kyäni is an Idaho-based network marketing company that distributes health and wellness products through a network of independent contractor distributors (the "Distributors").

4. In my capacity as Global Compliance Director, I have access to documents and information concerning Distributors, including access to their enrollment and application information. I have reviewed the information available to me, and have been unable to locate enrollment and application information for an individual with the specific name "JU JIN GUO," one of the plaintiffs in the above-captioned case.

5. As discussed further below, I did locate documents and information reflecting that an individual identified as "Ju Jin" submitted enrollment and application information to Kyäni online and became a Distributor on December 30, 2015.

6. To become a Distributor, a potential Distributor is required to submit an online application through Kyäni's website. The online application is the primary method Kyäni uses to receive applications from potential distributors ("Applicants").

7. The website application portal (the "Portal") requires an Applicant to provide various personal information as well as to expressly consent to various

1 agreements that Kyäni requires of its Applicants before they may become
2 Distributors. Without providing this information and expressly consenting to
3 Kyäni's various agreements, an Applicant cannot become a Distributor. The
4 documents and information available to an Applicant through the Portal are
5 available in multiple languages, including Chinese.

6 8. After accessing the Portal, an Applicant must provide the number of an
7 existing Kyäni Distributor to "sponsor" the Applicant. Without a valid sponsor
8 number, the Applicant can progress no further in the application process.

9 9. After entering the sponsor number, the Applicant progresses through a
10 series of screens that allow her to choose a package of products to purchase as her
11 "starter pack." She also chooses any add-on products and selects her "autoship"
12 settings (which control how often products may be automatically shipped to a
13 Distributor).

14 10. After having completed this information, Applicants progress to a
15 screen that requires them to check three separate boxes indicating their consent to:
16 (a) the Electronic Consent Agreement ("Electronic Consent"); (b) Kyäni's Policies
17 & Procedures ("Policies & Procedures"); and (c) Kyäni's Independent Distributor
18 Agreement Terms & Conditions ("Terms & Conditions"), respectively. All three of
19 these agreements incorporate the other agreements, so that they become one
20 integrated agreement that I shall hereinafter refer to as the "Kyäni Distributor
21 Agreement" or the "Agreements." True and correct copies of the Terms &
22 Conditions, Policies & Procedures, and Electronic Consent, as they existed on
23 December 30, 2015 are attached hereto, respectively, as **Exhibit A**, **Exhibit B**, and
24 **Exhibit C**.

25 11. The document attached hereto as **Exhibit D** is a true and correct copy
26 of a screenshot of the screen Applicants see online with respect to the Electronic
27 Consent, the Policies & Procedures, and the Terms & Conditions on the Portal.
28

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DECLARATION OF KRISTEN PEARSON

1 12. As is shown in Exhibit D, Applicants are required to accept these three
2 Agreements separately before they may become Distributors.

3 13. For all three Agreements shown on Exhibit D, the Applicant can scroll
4 through and review each of these Agreements, which are presented in their
5 complete form on the computer screen.

6 14. To move past this screen, an Applicant must confirm that she “agree[s]
7 to the Terms & Conditions as presented here.” She “cannot continue without
8 agreeing to the Terms & Conditions.” See Exhibit D at 2. This same language
9 applies to and is stated in connection with the Policies & Procedures and the
10 Electronic Consent.

11 15. In addition to being able to scroll through and review each of these
12 Agreements, the Applicant is also able to download a PDF version of the
13 Agreements by clicking on the link below each Agreement’s scroll bar, thus
14 providing multiple methods for the Applicant to review the Agreements.

15 16. To move forward with the application, Applicants must click all three
16 boxes (one for each Agreement) labeled “Check to Agree.” Without clicking on all
17 three boxes, an Applicant cannot move forward with the Application and cannot
18 become a Distributor. If the Applicant attempts to move forward without checking
19 the boxes, the Portal will not move to the next screen.

20 17. On December 30, 2015, Kyäni received completed enrollment
21 information, including personal and credit card information, and an application for
22 an individual named “Ju Jin.” With the submission of her completed application,
23 Ju Jin became a Kyäni Distributor the same day.

24 18. I understand that Ju Jin Guo, a plaintiff in the above-captioned case,
25 alleges that she is a distributor of Kyäni. To become a distributor, Ju Jin Guo
26 would have had to follow the steps outlined above (or authorized someone else to
27
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DECLARATION OF KRISTEN PEARSON

1 complete those steps on her behalf), thereby acknowledging her consent to each of
2 the Agreements.

3 19. Moreover, based on the similarity of names between Ju Jin and Ju Jin
4 Guo, and the fact that date of enrollment for Ju Jin (as maintained in Kyäni's
5 records) is the same date of enrollment identified for Ju Jin Guo by her counsel, my
6 best belief is that the person listed as one of the named Plaintiffs in the above-
7 captioned case is the same person who enrolled as a Kyäni distributor on December
8 30, 2015, under the name of "Ju Jin."
9

10
11 I declare under penalty of perjury that the foregoing is true and correct.

12 Executed this 9 th day of February 2018, at Bonneville County, Idaho.
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15 Kristen Pearson
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DECLARATION OF KRISTEN PEARSON

EXHIBIT A

KYÄNI INDEPENDENT DISTRIBUTOR AGREEMENT TERMS & CONDITIONS-10.14-EN-USA



KYÄNI INDEPENDENT DISTRIBUTOR AGREEMENT TERMS & CONDITIONS

1. I understand that as a Kyäni, Inc. (hereinafter "Kyäni ") Distributor:
 - a. I have the right to purchase products from Kyäni at the price for which I am eligible.
 - b. I have the right to sponsor qualified persons in Kyäni.
 - c. I will assist, train, and motivate the Distributors in my downline marketing organization.
 - d. I will comply with all federal, state, county and municipal laws, ordinances, rules, and regulations, and shall make all reports and remit all withholdings or other deductions as may be required by any federal, state, county or municipal law, ordinance, rule or regulation.
 - e. I will perform my obligations as a Distributor with honesty and integrity.
 - f. I will only use the sales contracts and order forms which are provided by Kyäni for the sales of its products, and I will follow all policies and procedures established by Kyäni for the completion and processing of such contracts and orders.
 - g. Not take any action or conduct myself in any manner that damages the business reputation of Kyäni, its founders, directors, or officers.
 - h. I agree that I will provide a unique identifying number for tax or business purposes as issued by the country where I am applying for Kyäni membership.
2. I agree to present the Kyäni Global Compensation Plan and Kyäni products as set forth in official Kyäni literature. I will make no claims regarding potential income, earnings, and products beyond what is stated in official Kyäni literature. I may not use, produce, create, publish, distribute, or obtain from any source other than Kyäni, any literature, recordings (audio, video, or otherwise), sales or enrollment aids relating to Kyäni products or the Kyäni Global Compensation Plan. I understand that I may not use or display any Kyäni trademarks, trade names, service marks, logos, designs or symbols to market and advertise Kyäni's products or the Kyäni opportunity other than as outlined in the Kyäni Policies and Procedures without first obtaining written authorization from Kyäni.
3. I agree that as a Kyäni Distributor I am an independent contractor, and not an employee, agent, partner, legal representative, or franchisee of Kyäni. I am not authorized to and will not incur any debt, expense, obligation, or open any financial account on behalf of, for, or in the name of Kyäni. I understand that I shall control the manner and means by which I operate my Kyäni distributorship, subject to my compliance with these Terms and Conditions, the Kyäni Policies and Procedures and the Kyäni Global

KYÄNI INDEPENDENT DISTRIBUTOR AGREEMENT TERMS & CONDITIONS-10.14-EN-USA

Compensation Plan (all of which are collectively referred to as the "Agreement"). I agree that I will be solely responsible for paying all expenses incurred by myself, including but not limited to travel, food, lodging, administrative support, office, long distance telephone and other expenses. I UNDERSTAND THAT I AM NOT, AND SHALL NOT BE TREATED AS, AN EMPLOYEE OF Kyäni FOR FEDERAL OR STATE TAX PURPOSES. Kyäni is not responsible for withholding, and shall not withhold or deduct from my bonuses and commissions, if any, FICA, or taxes of any kind, unless such withholding becomes legally required. I agree to be bound by all sales tax collection agreements between Kyäni, Inc. and all appropriate taxing jurisdictions, and all related rules and procedures.

4. I have carefully read and agree to comply with the Kyäni Policies and Procedures and the Kyäni Global Compensation Plan, both of which are incorporated into and made a part of these Terms and Conditions. I understand that I must be in good standing, and not in violation of any of the terms of this Agreement, in order to be eligible to receive any bonuses or commissions from Kyäni. I understand that these Terms and Conditions, the Kyäni Policies and Procedures, or the Kyäni Global Compensation Plan may be amended from time to time, and I agree that any such amendment will apply to me. Notification of amendments shall be published in official Kyäni materials and sent to all Distributors. The continuation of my Kyäni distributorship or my acceptance of bonuses or commissions shall constitute my acceptance of any and all amendments.

5. The term of this Agreement shall begin on date of enrollment and shall continue until terminated by either party. I shall not be eligible to receive commissions, bonuses, or other income resulting from the activities of my former downline sales organization. Kyäni expressly reserves the right to terminate all Distributor Agreements upon thirty (30) days written notice in the event that it elects to:

(1) cease business operations;

(2) dissolve as a corporate entity; or

(3) terminate distribution of its products via direct selling. In the event of cancellation, failing to make a purchase within each year as determined by the initial enrollment month, I agree to waive all rights I have, including but not limited to property rights, to my former downline organization and to any bonuses, commissions or other remuneration derived through the sales and other activities of my former downline organization.

6. I may not assign any rights or delegate my duties under this Agreement without the prior written consent of Kyäni. Any attempt to transfer or assign this Agreement without the express written consent of Kyäni renders this Agreement voidable at the option of Kyäni and may result in termination of my distributorship.

7. I understand that if I fail to comply with the terms of this Agreement, the Policies and Procedures, or the Global Compensation Plan, Kyäni may, at its discretion, terminate my distributorship or impose upon me other disciplinary action, including but not limited to, forfeiture of bonuses and commissions, and/or loss of all or part of my downline marketing organization. If I am in breach, default or violation of this Agreement at termination, I shall not be entitled to receive any further bonuses or commissions, whether or not the sales for such bonuses or commissions have been completed. If this Agreement is terminated for any reason, I will forever lose my rights as a Distributor, including rights to my downline marketing organization, and rights to compensation pursuant to the Kyäni Global Compensation Plan. If I fail to pay for products when payment is due, I authorize Kyäni to withhold the appropriate amounts from my bonus or commission checks, to charge my credit cards, or debit my financial accounts, if any, which I have

KYÄNI INDEPENDENT DISTRIBUTOR AGREEMENT TERMS & CONDITIONS-10.14-EN-USA

authorized Kyäni to charge. I understand that the failure to promptly pay for products constitutes a breach of this Agreement.

8. To the extent permitted by law, Kyäni, its directors, officers, shareholders, employees, assigns, successors, and agents (collectively referred as "affiliates"), shall not be liable for, and I release Kyäni and its affiliates from, any and all claims for any loss of profits, indirect, direct, special or consequential damages or any other loss incurred or suffered by me as a result of: (a) my breach of this Agreement or the Kyäni Policies and Procedures; (b) the improper promotion or operation of my distributorship and any activities related to it (e.g., the presentation of Kyäni products or Global Compensation Plan, the operation of a motor vehicle, the lease of meeting or training facilities, etc.); (c) any incorrect or wrong data or information provided by me; or (d) the failure to provide any information or data necessary for Kyäni to operate its business, including without limitation, my enrollment and acceptance into the Global Compensation Plan or the payment of Commissions or Bonuses. I agree that the entire liability of Kyäni and its affiliates for any claim whatsoever related to the relationship of Kyäni and myself, including, but not limited to, any cause of action sounding in contract, tort or equity shall not exceed, and shall be limited to, the amount of products I have purchased from Kyäni under this Agreement or any other agreement that are in resalable condition. I further agree to indemnify, hold harmless, and defend at my expense Kyäni and its affiliates against any and all claims, demands, costs, losses, damages, liabilities, judgments, attorney fees and all other expenses arising or alleged to arise in connection with my distributorship.

9. This Agreement and the documents incorporated by reference constitutes the entire contract between Kyäni and myself. Any promises, representations, offers, or other communications not expressly set forth in this Agreement are of no force or effect. To the extent of any conflict or inconsistency between this Agreement and any other agreement (other than the Policies and Procedures), this Distributor Application and Agreement shall supersede and prevail over any term of any other agreement as to the matters addressed herein. To the extent of any conflict or inconsistency between this Agreement and the Policies and Procedures (in their current form or as subsequently modified), the Policies and Procedures shall in all instances supersede and prevail over any term of this Agreement as to the matters addressed herein.

10. Any waiver by Kyäni of any breach of this Agreement must be in writing and signed by an authorized officer of Kyäni. Waiver by Kyäni of any breach of this Agreement by me shall not operate or be construed as a waiver of any subsequent breach.

11. In the event that a provision of this Agreement is held to be invalid or unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable and the balance of the Agreement will remain in full force and effect.

12. The Distributor Agreement between the Distributor and Kyäni has been entered into in Idaho Falls, Idaho, United States of America, as this is the location where the Distributor submitted the application to enroll as a Kyäni Independent Distributor, and where the application was reviewed and approved by Kyäni. The Distributor Agreement shall be governed exclusively by the laws of the State of Idaho, and the Distributor agrees to submit exclusively to the jurisdiction of the courts of the State of Idaho, and specifically the District Court of the Seventh Judicial District with venue in Bonneville County, for resolution of any claims or related litigation to interpret or enforce the terms of the Distributor Agreement.

This Agreement will be governed by and construed in accordance with the laws of the State of Idaho, unless the laws of the state in which I reside expressly require the application of its laws. Except as set forth in the Kyäni Policies and Procedures, or unless the laws of the state in which I reside expressly prohibit the consensual jurisdiction and venue provisions of this Agreement, in which case its laws shall

KYÄNI INDEPENDENT DISTRIBUTOR AGREEMENT TERMS & CONDITIONS-10.14-EN-USA

govern, all disputes and claims relating to Kyäni, the Distributor Agreement, the Kyäni Global Compensation Plan or its products, the rights and obligations of an independent Distributor and Kyäni, or any other claims or causes of action relating to the performance of either an independent Distributor or Kyäni under the Agreement or the Kyäni Policies and Procedures shall be settled totally and finally by binding arbitration in Idaho Falls, Idaho or such other location as Kyäni prescribes, in accordance with the Federal Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association. The parties shall be allowed all discovery rights pursuant to the Federal Rules of Civil Procedure. If a Distributor files a claim or counterclaim against Kyäni, a Distributor shall do so on an individual basis and not with any other Distributor or as part of a class action. If a Distributor wishes to bring an action against Kyäni for any act or omission relating to or arising from this Agreement, such action must be brought within one year from the date of the alleged conduct giving rise to the cause of action. Failure to bring such action within one year shall bar all claims against Kyäni for such act or omission. Distributor waives all claims that any other statutes of limitations applies. The decision of the arbitrator shall be final and binding on the parties and may, if need be, be reduced to a judgment in any court of competent jurisdiction. The prevailing party shall be entitled to receive from the losing party costs and expenses of arbitration, including legal and filing fees. This agreement to arbitrate shall survive any termination or expiration of the Agreement.

13. The parties consent to jurisdiction and venue before any federal or state court in Bonneville County, State of Idaho for purposes of enforcing an award by an arbitrator or any other matter not subject to arbitration. If the law of the state in which the applicant resides prohibits consensual jurisdiction and venue provisions for purposes of arbitration and litigation, that state's law shall govern issues Kyäni.

EXHIBIT B

Policies&Procedures-09.15-EN-USA



POLICIES & PROCEDURES

1. INTRODUCTION

The Kyäni Policies and Procedures govern your rights as a Kyäni Independent Distributor. You should familiarize yourself with the contents of these Policies and Procedures, and any questions you may have regarding the Policies and Procedures should be directed to the Kyäni Customer Service staff.

- a. Policies and Compensation Plan Incorporated into Distributor Agreement:** These Policies and Procedures, in their present form and as amended from time to time by Kyäni, Inc., or any Kyäni, Inc. Affiliate, (hereafter collectively "Kyäni" or the "Company"), are referred to in the Kyäni Distributor Agreement. Where these Policies and Procedures are incorporated into the Kyäni Distributor Agreement by specific reference, these Policies and Procedures constitute an official part of that agreement.

Where these Policies and Procedures are not specifically incorporated into that agreement, they nevertheless reflect the official position of Kyäni with respect to the terms thereof, and any violation of these Policies and Procedures may constitute a breach of an Independent Kyäni Distributor's obligations under that agreement, subjecting the Distributor to the termination provisions of the agreement. Hereafter, when the term "Agreement" is used, it collectively refers to the mutual obligations between Kyäni and the Independent Kyäni Distributors as evidenced in the Application and Agreement, these Policies and Procedures, the Kyäni Global Compensation Plan, and (when applicable) the Kyäni Business Entity Application.

It is the responsibility of each Distributor to understand and adhere to the most current version of these Policies and Procedures. When sponsoring a new Distributor, the sponsoring Distributor should help the new Distributor applicant to understand this ongoing obligation.

- b. Purpose of Policies:** Kyäni produces innovative products and markets those products through Independent Distributors. Kyäni invests heavily in providing marketing materials, developing brand value for the Company and developing Distributor compensation systems. Still, the success of the Company and the success of Distributors is ultimately dependent upon the integrity of the individual men and women who market the products. Because Kyäni Distributors are independent business enterprises, Distributors have broad latitude in how they choose to operate, and to determine the times and methods of their work. Notwithstanding this independence, Kyäni reserves a contractual right to protect its intellectual property, to prevent unsupportable product claims, and to preserve the integrity of its business model. These Policies and Procedures are designed to accomplish this. Because you may be unfamiliar with many of these standards of practice, it is very important that you read and abide by the Agreement. If you

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have any questions regarding any policy or rule, do not hesitate to seek an answer from anyone in your upline or Kyäni.

- c. **Changes to Distributor Agreement:** Kyäni may amend the Distributor Agreement in its sole and absolute discretion. By signing the Distributor Agreement, a Distributor agrees to abide by all amendments or modifications that Kyäni elects to make. Amendments shall become effective upon publication of notice of those amendments in published Kyäni materials or the Back Office. The Company will make available to all Distributors a complete copy of the amended provisions by one or more of the following methods: (1) posting on the Company's official website; (2) electronic mail (e-mail); (3) inclusion in Company periodicals; (4) inclusion in product orders or bonus checks; or (5) special mailings. The continuation of a Distributor's Kyäni business or a Distributor's acceptance of bonuses or commissions constitutes acceptance of any and all amendments.
- d. **Delays:** Kyäni shall not be responsible for delays or failures in performance of its obligations when performance is made commercially impractical due to circumstances beyond its control. This includes, but is not limited to, strikes, labor difficulties, riot, war, fire, death, forces of nature, supply shortages, or government decrees, judgments or orders.
- e. **Policies and Provisions Severable:** If any provision of the Agreement, in its current form or as may be hereafter amended, is found by any court of competent jurisdiction to be invalid or unenforceable for any reason, only the invalid portion(s) of the offending provision shall be severed and the remaining terms and conditions shall remain in full force and effect and shall be unaffected thereby.
- f. **Waiver:** Kyäni never gives up its right to insist on, and enforce, compliance with the Agreement and the applicable laws governing the conduct of a Distributor. No delay or failure by Kyäni to exercise any right or power under the Agreement or to insist upon strict compliance by a Distributor with any obligation or provision of the Agreement, shall constitute a waiver of Kyäni's right to demand exact compliance with the Agreement. Waiver by Kyäni can be affected only in writing by an authorized officer of the Company. Kyäni's waiver of any particular breach by a Distributor, or Kyäni's waiver of any particular provision of the Distributor Agreement or these Policies and Procedures shall not affect or impair Kyäni's rights with respect to any subsequent breach, nor shall it affect in any way the rights or obligations of any other Distributor. Any delay or omission by Kyäni in exercising any right arising from a breach by a Distributor shall not be deemed to be a continuing waiver, nor shall it affect or impair Kyäni's rights as to that or any subsequent breach thereof.

The existence of any claim or cause of action of a Distributor against Kyäni shall not constitute a defense to Kyäni's enforcement of any terms or provisions of the Agreement or these Policies and Procedures.

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2. BECOMING A DISTRIBUTOR

- a. Requirements to Become a Distributor:** To become a Kyäni Distributor, each applicant must:
- i. Be of legal age at the date of application submission and meet all other requirements by law to enter into a contract;
 - ii. Provide true and accurate information regarding identity and location of residence as the Company may require from time to time.
 - iii. Submit a properly completed (electronic or physical) Distributor Application and Agreement to Kyäni or provide complete information; and;
 - iv. Pay the applicable enrollment fee to purchase the Starter Pack selected by the Distributor.
 - v. Provide a unique identifying number for tax or business purposes as issued by the country where Distributor is applying for Kyäni membership.

The Company reserves the right to reject any applications for a new Distributor or applications for renewal, and may do so in its sole and absolute discretion.

- b. New Distributor Registration:** New Distributors must be sponsored online at Kyäni's official websites or at the Sponsor's replicated Kyäni website.
- c. Distributor Benefits:** Once the Distributor Application and Agreement has been accepted by Kyäni, the Distributor is eligible to participate in the Kyäni Global Compensation Plan. As permitted by local law and Company policy for your location, these benefits include the right to:
- i. Purchase Kyäni products at the Distributor price;
 - ii. Be paid the applicable commissions and bonuses as set forth in the Kyäni Global Compensation Plan;
 - iii. Participate in any promotions, incentive programs or other contests as announced by Kyäni from time to time;
 - iv. Enroll or sponsor other individuals as Customers or Distributors into the Kyäni business;
 - v. Receive periodic Kyäni literature and other Kyäni communications;
 - vi. Participate in Kyäni-sponsored support, service, training, motivational and recognition functions, upon payment of appropriate charges, if applicable.
- d. Term of Agreement:** The Distributor Agreement term shall begin on the date of acceptance by Kyäni, and continue thereafter until cancelled as provided for herein or in the Distributor Agreement.

3. OPERATING YOUR KYÄNI BUSINESS

- a. Adherence to the Kyäni Global Compensation Plan:** Distributors shall not offer the Kyäni opportunity through, or in combination with, any other system, program, or method of marketing other than that specifically set forth in official Kyäni literature, or in any way vary from the exclusive use of Kyäni's official forms. Distributors shall not require or encourage participation in Kyäni in any manner that varies from the program as set forth in official Kyäni literature. Similarly, Distributors shall not require or encourage others to make any purchase from, or payment to, any

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individual or other entity to participate in the Kyäni Global Compensation Plan other than those purchases or payments identified as recommended or required in official Kyäni literature.

- b. Advertising In General:** All Distributors shall safeguard and promote the good reputation of Kyäni and its products. The marketing and promotion of Kyäni, the Kyäni opportunity, the Global Compensation Plan, and Kyäni products shall be consistent with the public interest, and must avoid all discourteous, deceptive, misleading, unethical or immoral conduct or practices.
- c. Identification of Rank:** All Distributor marketing materials, whether in print or electronic media, must clearly and correctly state the Distributor rank according to the currently published ranks awarded by Kyäni. Use of any deceptive or unauthorized rank or title is a violation of the Distributor Agreement and these Policies and Procedures. For example, Diamond is a currently acceptable rank designation. Diamond RVP, or Diamond Manager are not as they improperly include additional designations that are not recognized or awarded by Kyäni.
- d. Business Reputation:** To promote both the products, and the tremendous opportunity Kyäni offers, Distributors must use the sales aids and support materials produced by Kyäni. In the alternative, Distributor may develop their own sales aids and support materials if the Distributor obtains written approval and authorization from Kyäni in order to comply with the vast and complex legal requirements of national and local laws. Violation of this policy (including unauthorized Internet advertising) not only constitutes a material breach of the Agreement, but it endangers the Kyäni opportunity for all Distributors.
- e. Distributor Meetings:** Distributors shall not conduct any meeting, or use any Kyäni facility provided for Distributor meetings, to promote products or services from any non-Kyäni company, or to promote any religious, social or fraternal organization or group. All presentations at any Distributor meetings shall be in conformance with local laws and regulations, and the content shall be consistent with officially published Kyäni marketing materials for the country in which the Distributor meeting takes place.
- f. Sponsorship of Family Members:** All family members must be sponsored in the same downline and directly sponsored and placed to each other (direct in both the sponsor and placement tree). No family member may be crossline, nor may the family member be placed so that a non-family member is between two family members. For purposes of these Policies and Procedures, a Family Member shall be defined as the Distributor's father, mother, brother, sister, grandfather, grandmother, aunts, uncles, first cousins, children and grandchildren (both siblings and half-siblings). Also included in this definition are dependents, domestic partners, civil unions, or those deemed by Kyäni to be in a cohabitating relationship or who depend upon each other for mutual financial support. This shall also apply to any business entity of which a Family Member holds a controlling interest.
- g. Spamming and Unsolicited Mass Communications:** Except as provided in this section, Distributors may not use or transmit unsolicited faxes, mass e-mail distribution, unsolicited e-mail, or "spamming" relative to the operation of their Kyäni businesses. The terms "unsolicited faxes" and "unsolicited e-mail" mean the transmission via telephone facsimile or electronic mail, respectively, of any material or information advertising or promoting Kyäni, its products, its compensation plan or any other aspect of the company which is transmitted to any person, except that these terms do not include a fax or e-mail: (a) to any person with that person's prior express invitation or permission; or (b) to any person with whom the Distributor has an

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established business or personal relationship. The term "established business or personal relationship" means a prior or existing relationship formed by a voluntary two-way communication between a Distributor and a person, on the basis of: (a) an inquiry, application, purchase or transaction by the person regarding products offered by such Distributor; or (b) a personal or familial relationship, which relationship has not been previously terminated by either party.

- h. Telemarketing:** Except as more specifically restricted by local law, Distributors must not engage in telemarketing relative to the operation of their Kyäni businesses. The term "telemarketing" means the placing of one or more telephone calls to an individual or entity to induce the purchase of a Kyäni product or to recruit them for the Kyäni opportunity. "Cold calls" made to prospective Customers or Distributors that promote either Kyäni's products or the Kyäni opportunity constitute telemarketing and are prohibited.

Notwithstanding the foregoing, a Distributor may place telephone call(s) to a prospective Customer or Distributor (a "prospect") under the following limited situations:

1. If the Distributor has an established business relationship with the prospect. An "established business relationship" is a relationship between a Distributor and a prospect based on:
2. The prospect's purchase, rental, or lease of goods or services from the Distributor within the eighteen (18) months immediately preceding the date of a telephone call to induce the prospect's purchase of a product or services: or
3. A financial transaction between the prospect and the Distributor within the eighteen (18) months immediately preceding the date of such a call.
4. The prospect's personal inquiry or application regarding a product or service offered by the Distributor within the three (3) months immediately preceding the date of such a call.
5. If the Distributor receives written and signed permission from the prospect authorizing the Distributor to call. The authorization must specify the telephone number(s) which the Distributor is authorized to call.
6. Distributors may call family members, personal friends, and acquaintances. An "acquaintance" is someone with whom a Distributor has at least a recent first-hand relationship (i.e., the Distributor recently personally met him or her). Bear in mind, however, that if a Distributor makes a habit of "card collecting" from everyone he or she meets and subsequently calling them, local law may consider this a prohibited form of telemarketing. Thus, if Distributors engage in calling "acquaintances", the Distributor must make such calls on an occasional basis only and not as a routine practice.

In addition, Distributors shall not use automatic telephone dialing systems relative to the operation of their Kyäni businesses. The term "automatic telephone dialing system" means equipment that has the capacity to: (a) store or produce telephone numbers to be called, using a random or sequential number generator; and (b) to dial such numbers.

- i. Distributor Websites:** Except as provided in this section and section (h) below, if a Distributor desires to utilize an Internet web page or website to promote his or her Kyäni business, no Distributor may independently design a website that uses the names, logos, or product

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descriptions of Kyäni or otherwise promotes (directly or indirectly) Kyäni products or the Kyäni opportunity. All images on the Distributor website shall be from the official downloads section for such Distributor's country of residence, and the site shall clearly identify the Distributor name, contact information and contain the term "Kyäni Independent Distributor".

National and local laws regarding the Internet, including promotional web are complex. Violations of the law by Distributors may subject Kyäni to possible regulatory enforcement actions that could jeopardize the company and all Distributors' businesses.

Accordingly, Kyäni strongly encourages all Distributors to utilize the company's self-replicating web site. These web sites are developed and maintained by Kyäni to ensure that they comply with all applicable areas of law.

Kyäni may allow a Distributor to develop his or her own web site as long as certain conditions are met. These include:

- i. A Distributor must submit a Request for Authorization of an Independent Web Site in writing prior to the creation of his or her web site. Requests for Authorization should be sent to the Compliance Department. Authorization for an independent web site is in the sole and absolute discretion of Kyäni.
- ii. In addition, the Distributor shall pay the cost of any legal review that is necessary for the Distributor's independent web site.

In the event that Kyäni concludes that the proposed independent web site is not acceptable, it will inform the Distributor that the site must be modified, and that approval will be withheld until such modifications are made. No Distributor may make his or her independent web site available to the public until he or she receives written approval from Kyäni.

No changes or modifications may be made to the authorized web site, subject to the following:

In the event that a Distributor desires to alter a previously authorized web site, he or she must submit a Request for Modification of an Independent Web Site and a change fee of \$100. The Request for Modification must specifically indicate each and every change or addition a Distributor desires to make. Changes may not be published to the web site until the Distributor receives approval, in writing, from Kyäni.

- j. **Distributor Websites and Online Sales:** Distributors may only conduct online sales through a Distributor website with the approval of the Kyäni Corporate Office. Any Distributor granted such permission shall strictly comply with the following restrictions:
 1. Products may not be sold for less than the currently published Distributor wholesale price;
 2. Distributors may not link to an online site such as eBay, Amazon or a similar online retailer;
 3. Distributors may not offer products for sale in any Country where Kyäni is not officially open, and the identification of a Country as officially open shall be at the sole and absolute discretion of Kyäni;

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4. Distributors must use approved company images and assets as identified in the Back Office downloads section;
 5. Distributors may not sell any other products either separately or combined with any Kyäni products, unless otherwise approved in advance in writing by Kyäni.
 6. The URL must contain the phrase "kyanidist" or "kyaniteam" together with some other unique identifier for the Distributor. No product names, countries, markets or territories may be included in the URL without the prior written permission of Kyäni. By way of example, the URL www.wellnesskyanidist.com or www.healthkyaniteam.com would be acceptable. The URL www.kyanigermany.com would not.
 7. Kyäni reserves the right at accept, deny, approve, or revoke any proposed Distributor website in its sole and absolute discretion.
- k. **Domain Names and E-Mail Addresses:** Distributors may not use or attempt to register any of Kyäni's trade names, trademarks, service names, service marks, product names, the Company's name, or any derivative thereof, for any Internet domain name. Nor may Distributors incorporate or attempt to incorporate any of Kyäni's trade names, trademarks, service names, service marks, product names, the Company's name, or any derivative thereof, into any electronic mail address.
1. Any e-mail address that uses the Kyäni name, must include "Kyänidist" or "Kyäniteam" and some other identifier. For example, johndoe.kyänidist@gmail.com or johndoe.kyäniteam@gmail.com would be acceptable.
 2. If "Kyänidist" or "Kyäniteam" is included in the e-mail address the signature line of the e-mail address must also contain the name of the Distributor and the words "Kyäni Independent Distributor" or "Kyäni Independent Distributor Team".
- l. **Social Media Accounts:** If Kyäni is to be used in Social Media, any usernames that have Kyäni in them must contain "Kyänidist" or "Kyäniteam" in them. No other variations will be accepted. Usernames may not have Kyäni by itself, or any Kyäni specific product or trade names such as "Sunrise", "Sunset", "PayGate Accumulator", etc. All images posted to a social media account that relate to Kyäni products must be officially approved Kyäni images and assets obtained from the Back Office.
- m. **Business Cards:** All business cards must contain the Kyäni Independent Distributor logo. The Distributor shall not have any reference or any content on the card that would reasonably lead a person receiving such card that the Distributor is an employee of Kyäni. If the Distributor chooses to publish his or her rank on the business card, any such rank designation must be accurate.
- n. **Trademarks and Copyrights:** Kyäni will not allow the use of its trade names, trademarks, designs, or symbols by any person, including a Kyäni Distributor, without its prior, written permission. Distributors may not produce for sale or distribution any recorded company events and speeches without written permission from Kyäni; nor may Distributors reproduce for sale or for personal use any recording of company-produced audio or video tape presentations.
- o. **Media and Media Inquiries:** Distributors must not attempt to respond to media inquiries regarding Kyäni or its products or with regard to Kyäni in respect of their independent Kyäni business. All inquiries by any type of media that involves Kyäni in any respect must be

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immediately referred to Kyäni's Public Relations Department. This policy is designed to assure that accurate and consistent information is provided to the public as well as a proper public image.

- p. **Bonus Buying:** "Bonus buying" includes: (a) the sponsoring of individuals or entities without the knowledge of and/or execution of an Independent Distributor Application and Agreement by such individuals or entities; (b) the fraudulent sponsoring or enrollment of an individual or entity as a Distributor or Customer; (c) the sponsoring or attempted sponsoring of non-existent individuals or entities as Distributors or Customers ("phantoms"); or (d) the use of a credit card by or on behalf of a Distributor or Customer when the Distributor or Customer is not the account holder of such credit card. Bonus buying constitutes a material breach of these Policies and Procedures, and is strictly and absolutely prohibited.
- q. **Business Entities:** A corporation, partnership or trust (collectively referred to in this section as a "Business Entity") may apply to be a Kyäni Distributor by submitting its Certificate of Incorporation, Partnership Agreement or trust documents (these documents are collectively referred to as the "Entity Documents") to Kyäni, along with a properly completed Business Entity Registration form. If a Distributor is sponsored online, the Entity Documents and Business Entity Registration form must be submitted to Kyäni within 30 days of online sponsoring. A Kyäni business may change its status under the same sponsor from an individual to a partnership, corporation or trust, or from one type of entity to another. The Business Entity Registration form must be signed by all of the shareholders, partners or trustees. Members of the entity are jointly and severally liable for any indebtedness or other obligation to Kyäni.
- r. **Changes to the Kyäni Business:** Each Distributor must immediately notify Kyäni of all changes to the information contained on his or her Distributor Application and Agreement by submitting a written request, a properly executed Distributor Application and Agreement with the correct information, and appropriate supporting documentation.
- s. **Change of Genealogy:** To protect the integrity of all marketing organizations and safeguard the hard work of all Distributors, Kyäni strongly discourages changes in genealogy. Maintaining the integrity of trees or structures is critical for the success of every Distributor and marketing organization. Accordingly, the transfer of a Kyäni business from one upline to another is rarely permitted.

Requests for change of genealogy must be submitted in writing to the Distributor Services Department, and must include the reason for the transfer. Transfers will only be considered in the following two (2) circumstances:

- i. In cases involving fraudulent inducement or unethical sponsoring, a Distributor may request that he or she be transferred to another organization with his or her entire marketing organization intact. All requests for transfer alleging fraudulent sponsoring practices shall be evaluated on a case by case basis.
- ii. The Distributor seeking to transfer submits a properly completed and fully executed Change of Genealogy Form which includes the written approval of all of the affected upline Distributors. If an upline Distributor fails to respond to the request for approval within the thirty days, the failure to respond shall be deemed a consent to the proposed transfer. Changes of Genealogy are only permitted within the first 30 days after

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enrollment. Changes after this date are not permitted. Downline Distributors will be moved with the transferring Distributor unless otherwise requested. Transferring Distributors must allow thirty (30) days after the receipt of the Change of Genealogy Forms by Kyäni for processing and verifying change requests. There is a special provision within the first 10 days where a Change of Genealogy Form is not required. During this time a sponsor may send from their email address on file to changes@kyanincorp.com. After 10 days a form is required.

t. Unauthorized Claims and Actions

1. *Indemnification:* A Distributor is fully responsible for all of his or her verbal and written statements made regarding Kyäni products and the Global Compensation Plan which are not expressly contained in official Kyäni materials. Distributors agree to indemnify Kyäni and Kyäni's directors, officers, employees, and agents, and hold them harmless from any and all liability including judgments, civil penalties, refunds, attorney fees, court costs, or lost business incurred by Kyäni as a result of the Distributor's unauthorized representations or actions. This provision shall survive the termination of the Distributor Agreement.
2. *Product Claims:* No claims (which include personal testimonials) as to therapeutic, curative or beneficial properties of any products offered by Kyäni may be made except those contained in official Kyäni literature as applicable to the destination country of sale. In particular, no Distributor may make any claim that Kyäni products are useful in the cure, treatment, diagnosis, mitigation or prevention of any diseases. Such statements can be perceived as medical or drug claims. Not only do such claims violate Kyäni policies, but they are potentially dangerous and may violate various national and local laws.
3. *Income Claims:* In their enthusiasm to sponsor prospective Distributors, some Distributors are occasionally tempted to make income claims or earnings representations to demonstrate the inherent power of network marketing. This is counter-productive because new Distributors may become disappointed very quickly if their results are not as extensive or as rapid as the results others have achieved. At Kyäni, we firmly believe that the Kyäni income potential is great enough to be highly attractive, without reporting the earnings of others. Moreover, national and local laws often regulate or even prohibit certain types of income claims and testimonials made by persons engaged in network marketing. While Distributors may believe it beneficial to provide copies of checks, or to disclose the earnings of themselves or others, such approaches have legal consequences that can negatively impact Kyäni as well as the Distributor making the claim unless appropriate disclosures required by law are also made contemporaneously with the income claim or earnings representation. Because Kyäni Distributors do not have the data necessary to comply with the legal requirements for making income claims, a Distributor, when presenting or discussing the Kyäni opportunity or Global Compensation Plan to a prospective Distributor, may not make income projections, income claims, or disclose his or her Kyäni income (including the showing of checks, copies of checks, bank statements, or tax records). Hypothetical income examples that are used to explain the operation of the Global Compensation Plan, and which are based solely on mathematical projections, may be made to prospective Distributors, so long as the Distributor who uses such hypothetical examples (1) makes clear to the prospective

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Distributor(s) that such earnings are hypothetical; and (2) provides each prospective Distributor with a current copy of Kyäni's official income disclosure statement.

4. *Commercial Outlets:* Kyäni strongly encourages the selling of its products through person to person contact. In order to preserve Kyäni brand value and to help provide a standard of fairness for its Distributor base, Distributors may not without prior written permission from the Company display or sell Kyäni products or literature in any retail or service establishment, except as set forth herein. Kyäni will permit Distributors to solicit and make sales in retail or service establishments so long as the establishment is: (1) an independent locally-owned retail establishment, and not part of a national, regional, or statewide chain; or (2) an office of a health care practitioner. Kyäni will permit Distributors to solicit and make commercial sales upon prior written approval from the Company. For the purposes of these Policies and Procedures, the term "commercial sale" means the sale of: (a) Kyäni products that equal or exceed one thousand U.S. dollars (\$1,000) or more in a single order; and (b) To a third party who intends to resell the products to an end consumer.
5. *Trade Shows, Expositions and Other Sales Forums:* Distributors may display and/or sell Kyäni products at trade shows and professional expositions. Before submitting a deposit to the event promoter, Distributors must contact the Distributor Services Department in writing for conditional approval, as Kyäni's policy is to authorize only one Kyäni business per event. Final approval will be granted to the first Distributor who submits an official advertisement of the event, a copy of the contract signed by both the Distributor and the event official, and a receipt indicating that a deposit for the booth has been paid. Approval is given only for the event specified. Any requests to participate in future events must again be submitted to the Distributor Services Department. In order to preserve its valuable brand, Kyäni further reserves the right to refuse authorization to participate at any function which it does not deem a suitable forum for the promotion of its products or the Kyäni opportunity. Approval will not be given for swap meets, garage sales, flea markets or farmer's markets as these events are not conducive to the professional image Kyäni wishes to portray.
6. *No Predatory Pricing:* All sales of Kyäni products by Distributor must be at the published Distributor wholesale price as shown on the Kyäni website on the date of sale.

u. Conflicts of Interest

1. *Non-solicitation:* Kyäni Distributors may participate in other direct selling or network marketing or multilevel marketing ventures (collectively "network marketing"), related to non-Kyäni products if they desire to do so. However, if a Distributor elects to participate in another network marketing opportunity, in order to avoid conflicts of interest and loyalties, Distributors are prohibited from Unauthorized Recruiting, which includes the following:

During the term of this agreement, any actual or attempted recruitment or sponsoring of Kyäni Customers or Distributors for other network marketing business ventures, either directly or through a third party. This includes, but is not limited to, presenting or assisting in the presentation of other network marketing business ventures to any Kyäni Customer or Distributor, or implicitly or explicitly encouraging any Kyäni Customer or Distributor to join other business ventures. Because there is an extreme likelihood that conflicts will

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arise if a Distributor operates two network marketing programs, it is the Distributor's responsibility to first determine whether a prospect is a Kyäni Customer or Distributor before recruiting or sponsoring the prospect for another network business venture.

For a period of six months following the cancellation of a Distributor's Agreement, the former Distributor may not recruit any Kyäni Distributor or Customer for another network marketing program.

Producing or offering any literature, tapes or promotional material of any nature for another network marketing business which is used by the Distributor or any third person to recruit Kyäni Customers or Distributors for that business venture;

Selling, offering to sell, or promoting any competing non-Kyäni products to Kyäni Customers or Distributors. Any product in the same generic category as a Kyäni product is deemed to be competing; e.g.; any dietary supplement is in the same generic category as Kyäni's dietary supplements, and is therefore a competing product, regardless of differences in cost, quality, ingredients or nutrient content.

Offering Kyäni products, or promoting the Kyäni Global Compensation Plan, in conjunction with any non-Kyäni products, business plan, opportunity, or incentive; or

Offering any non-Kyäni products, business plan, opportunity, or incentive at any Kyäni meeting, seminar, launch, convention, or other Kyäni function, or immediately following such event.

2. *Downline Activity Reports:* Downline Activity Reports are available for Distributor access and viewing at Kyäni's official website. Access to online Downline Activity Reports is password protected. All Downline Activity Reports and the information contained therein are confidential and constitute proprietary information and business trade secrets belonging to Kyäni. Downline Activity Reports are provided to Distributors in strictest confidence and are made available to Distributors for the sole purpose of assisting Distributors in working with their respective Downline Organizations in the development of their Kyäni business. Distributors should use their Downline Activity Reports to assist, motivate, and train their downline Distributors. The Distributor and Kyäni agree that, but for this agreement of confidentiality and nondisclosure, Kyäni would not provide Downline Activity Reports to the Distributor. A Distributor shall not, on his or her own behalf, or on behalf of any other person, partnership, association, corporation or other entity:
 - i. Directly or indirectly disclose any information contained in any Downline Activity Report to any third party;
 - ii. Directly or indirectly disclose his or her password or other user access code to his or her Downline Activity Report;
 - iii. Use the information to compete with Kyäni or for any purpose other than promoting his or her Kyäni business;
 - iv. Recruit or solicit any Distributor or Customer of Kyäni listed on any report, or in any manner attempt to influence or induce any Distributor or Preferred Customer of Kyäni, to alter their business relationship with Kyäni; or

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- v. Use or disclose to any person, partnership, association, corporation, or other entity any information contained in any Downline Activity Report.

Upon the Company's request, any current or former Distributor will return the original and all copies of Downline Activity Reports to the Company.

- v. **Targeting Other Direct Sellers:** Kyäni does not condone Distributors specifically or consciously targeting the sales force of another direct sales company to sell Kyäni products or to become Distributors for Kyäni, nor does Kyäni condone Distributors solicitation or enticement of members of the sales force of another direct sales company to violate the terms of their contract with such other company. Should Distributors engage in such activity, they bear the risk of being sued by the other direct sales company. If any lawsuit, arbitration or mediation is brought against a Distributor alleging that he or she engaged in inappropriate recruiting activity of its sales force or Customers, Kyäni will not pay any of the Distributor's defense costs or legal fees, nor will Kyäni indemnify the Distributor for any judgment, award, or settlement.

- w. **Cross-Recruiting:** Actual or attempted cross-recruiting is strictly prohibited. Cross-recruiting is defined as solicitation, enrollment or sponsoring of an individual or entity that already has a current Customer or Distributor Agreement on file with Kyäni within a different line of sponsorship, or who has had such an agreement within the preceding twelve calendar months. The use of a spouse's or relative's name, trade names, DBAs, assumed names, corporations, partnerships, trusts, federal ID numbers, or fictitious ID numbers to circumvent this policy is prohibited. Distributors shall not demean, discredit or defame other Kyäni Distributors in an attempt to entice another Distributor to become part of the first Distributor's marketing organization.

If cross-recruiting is discovered, it must be brought to the Company's attention immediately. Kyäni may take disciplinary action against the Distributor that changed organizations and/or those Distributors who encouraged or participated in the cross-recruiting. Kyäni may also move all or part of the offending Distributors downline to his or her original Downline Organization if the Company deems it equitable and feasible to do so. However, Kyäni is under no obligation to move the cross-recruited Distributor's Downline Organization, and the ultimate disposition of the organization remains within the sole discretion of Kyäni. Distributors waive all claims and causes of action against Kyäni arising from or relating to the disposition of the cross-sponsored Distributor's Downline Organization.

- x. **Errors or Questions:** If a Distributor has questions about or believes any errors have been made regarding commissions, bonuses, Downline Activity Reports, or charges, the Distributor must notify Kyäni in writing within 60 days of the date of the purported error or incident in question. Kyäni will not be responsible for any errors, omissions or problems not reported to it within 60 days.
- y. **Excess Inventory Purchases Prohibited:** Distributors are not required to carry inventory of products or sales aids. Distributors who do so may find making retail sales and building a marketing organization somewhat easier because of the decreased response time in fulfilling Customer orders or in meeting a new Distributor's needs. Each Distributor must make his or her own decision with regard to these matters. To ensure that Distributors are not encumbered with excess inventory that they are unable to sell, such inventory may be returned to Kyäni upon the Distributor's cancellation pursuant to the terms described herein.

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Kyäni strictly prohibits the purchase of products in unreasonable amounts primarily for the purpose of qualifying for commissions, bonuses or advancement in the Kyäni Global Compensation Plan. Distributors may not purchase more inventory than they can reasonably resell or consume in a month nor may they encourage others to do so. Distributors are prohibited from purchasing more than one thousand U.S. dollars (\$1,000) in products per month unless they certify to Kyäni that they have pending retail orders in excess of that amount or provide Kyäni with other written reason why such a purchase is necessary.

- z. Governmental Approval or Endorsement:** Neither local nor national governmental regulatory agencies nor governmental officials approve or endorse any direct selling or network marketing companies or programs. Therefore, Distributors shall not represent or imply that Kyäni or its Global Compensation Plan have been "approved," "endorsed" or otherwise sanctioned by any government agency or official.
- aa. Identification:** All Distributors are required to provide any requested identification, tax or national identification number on or in conjunction with the Distributor Application and Agreement. Upon joining, the Company will provide a unique Distributor Identification Number to the Distributor by which he or she will be identified. This number will be used to place orders, and track commissions and bonuses.
- bb. Income Taxes:** Every year, Kyäni will provide such tax and information forms or declarations as it is legally required to submit to the relevant governmental bodies or agencies. Each Distributor is responsible for paying all taxes on any income generated as an Independent Distributor.
- cc. Independent Contractor Status:** Distributors are independent contractors. The agreement between Kyäni and its Distributors does not create an employer/employee relationship, agency, partnership, or joint venture between the Company and the Distributor, nor does the relationship involve the purchase of a franchise or the purchase of a business opportunity. The Distributor has no authority (expressed or implied), to bind the company to any obligation. Each Distributor shall establish his or her own goals, hours, and methods of sale, and other means of operating the Distributor's independent business, except as may be limited by the Distributor's contractual obligations and applicable laws.

The name of Kyäni and other names as may be adopted by Kyäni are proprietary trade names, trademarks and service marks of Kyäni. As such, these marks are of great value to Kyäni and are supplied to Distributors for their use only in an expressly authorized manner. Use of Kyäni name on any item not produced by the company is prohibited except as follows:

Distributor's Name Independent Kyäni Distributor

All Distributors may list themselves as an "Independent Kyäni Distributor" in the white or yellow pages of the telephone directory under their own name. No Distributor may place telephone directory display ads using Kyäni's name or logo. Distributors may not answer the telephone by saying "Kyäni", "Kyäni Incorporated", or in any other manner that would lead the caller to believe that he or she has reached corporate offices of Kyäni.

- dd. Insurance Business Pursuits Coverage:** Kyäni does not provide insurance coverage for your independent business operation. Distributors may wish to arrange insurance coverage for their business as they deem appropriate.

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- ee. **Product Liability Coverage:** Kyäni maintains insurance to protect the Company and Distributors against product liability claims through a "Vendors Endorsement" which extends coverage to Independent Distributors so long as they are marketing Kyäni products in accordance with Company Policies and applicable laws and regulations. Kyäni's product liability policy does not extend coverage to claims or actions that arise as a result of a Distributor's misconduct in marketing the products or to other risk factors involved in the Distributor's independent business activities.
- ff. **International Marketing:** Distributors are authorized to sell Kyäni products, and enroll Customers or sponsor Distributors only in the countries in which Kyäni is authorized to conduct business, as announced in official company literature. In countries where Kyäni has authorized sales and distributor activities, Distributors shall conform to the specific Kyäni rules for that individual country. Such rules may vary from country-to-country and Distributors are obligated to know the appropriate rules for the country and venues in which they intend to conduct business. Country-specific information may be presented from time to time under a country addendum to these Policies and Procedures.
- gg. **Adherence to Laws and Ordinances:** Many communities have laws regulating certain home-based businesses. In most cases these ordinances are not applicable to Distributors because of the nature of their businesses. However, Distributors must obey those laws that do apply to them. If a government official or agency notifies a Distributor that an ordinance applies to him or her, the Distributor should respond politely and cooperatively; when appropriate, the Distributor is encouraged to send a copy of the ordinance to the Compliance Department of Kyäni.
- hh. **Minors:** No person who is recognized as a minor in his/her state or country of residence may be a Kyäni Distributor. Distributors shall not sponsor or recruit minors into the Kyäni program.
- ii. **Actions of Household Members or Affiliated Individuals:** If any member of a Distributor's immediate household engages in any activity which, if performed by the Distributor, would violate any provision of the Agreement, such activity will be deemed a violation by the Distributor and Kyäni may take disciplinary action against the Distributor. Similarly, if any individual associated in any way with a corporation, partnership, trust or other entity (collectively "affiliated individual") violates the Agreement, such action(s) will be deemed a violation by the entity, and Kyäni may take disciplinary action against the entity.
- jj. **Re-packaging and Re-labeling Prohibited:** Distributors may not re-package, re-label, refill or alter the labels on any Kyäni products, information, materials or programs in any way. Kyäni products must be sold in their original containers only: re-labeling or repackaging could subject Distributors to criminal or civil liability, especially if harm results to property or to another person.
- kk. **Requests for Records:** Any request from a Distributor for copies of invoices, applications, downline activity reports, or other records will require a fee of U.S. \$1.00 per page per copy to cover the expense of mailing and time required to research files and make copies of the records.
- ll. **Sale, Transfer or Assignment of Kyäni Business:** Although a Kyäni business is a privately owned, independently operated business, the sale, transfer or assignment of a Kyäni business is subject to certain limitations. If a Distributor wishes to sell/transfer his or her Kyäni business, the following criteria must be met:

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1. Protection of the existing line of sponsorship must always be maintained so that the Kyäni business continues to be operated in that line of sponsorship.
2. There will be an Administrative Fee of \$250 for all transactions.
3. Before the sale, transfer or assignment can be finalized and approved by Kyäni, any debt obligations the selling Distributor has with Kyäni must be satisfied.
4. The selling Distributor must be in good standing and not in violation of any of the terms of the Agreement in order to be eligible to sell, transfer or assign a Kyäni business.

Kyäni has the sole discretion to accept or reject all sales transactions.

5. Upon complete execution of the purchase and sale agreement, and the new Distributor Agreement, the parties must submit copies of the same to Kyäni's Distributor Services Department for review and approval. Kyäni reserves the right to request additional documentation that may be necessary to analyze the transaction between the buyer and seller. Kyäni's Distributor Services Department will, in its discretion, approve or deny the sale, transfer or assignment within 30 days after the receipt of all necessary documents from the parties.

If the parties fail to obtain Kyäni's approval for the transaction, the transfer may be voidable at Kyäni's option. If Kyäni approves the transfer the purchaser of the existing Kyäni business will assume the obligations and position of the selling Distributor. A Distributor who sells his or her Kyäni business shall not be eligible to re-apply as a Kyäni Distributor for a period of at least twelve full calendar months after the sale.

No changes in line of sponsorship can result from the sale or transfer of a Kyäni business.

mm. Separation of a Kyäni Business: Kyäni Distributors sometimes operate their Kyäni businesses as husband-wife partnerships, regular partnerships, corporations, or trusts. At such time as a marriage may end in divorce or a corporation, partnership or trust (the latter three entities are collectively referred to herein as "entities") may dissolve, arrangements must be made to assure that any separation or division of the business is accomplished so as not to adversely affect the interests and income of other businesses up or down the line of sponsorship. If the separating parties fail to provide for the best interests of other Distributors and the Company, Kyäni will unilaterally terminate the Distributor Agreement.

During the pendency of a divorce or entity dissolution, the parties must adopt one of the following methods of operation:

1. One of the parties may, with consent of the other(s), operate the Kyäni business pursuant to an assignment in writing whereby the relinquishing spouse, shareholders, partners or trustees authorize Kyäni to deal directly and solely with the other spouse or non-relinquishing shareholder, partner or trustee.
2. The parties may continue to operate the Kyäni business jointly, whereupon all compensation paid by Kyäni will be paid in the joint names of the Distributors or in the name of the entity to be divided as the parties may independently agree between themselves.
3. If the parties cannot mutually agree on how the business shall be allocated during the pendency of a divorce or dissolution, the Company shall treat the business according to the status quo as existed prior to the filing of the divorce or dissolution.

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Under no circumstances will the Downline Organization of divorcing spouses or a dissolving business entity be divided. Similarly, under no circumstances will Kyäni split commission and bonus checks between divorcing spouses or members of dissolving entities. Kyäni will recognize only one Downline Organization and will issue only one commission check per Kyäni business per commission cycle. Commission checks shall always be issued to the same individual or entity. In the event that parties to a divorce or dissolution proceeding are unable to resolve a dispute over the disposition of commissions and ownership of the business, the Distributor Agreement shall be involuntarily cancelled.

If a former spouse or a former entity affiliate has completely relinquished all rights in their original Kyäni business, they are thereafter free to sponsor under any sponsor of their choosing, so long as he or she meets the waiting period requirements set forth herein. In such case, however, the former spouse or partner shall have no rights to any Distributors in their former organization or to any former retail Customer. They must develop the new business in the same manner as would any other new Distributor.

- nn. Sponsoring:** All active Distributors in good standing have the right to sponsor and enroll others into Kyäni. Each prospective Customer or Distributor has the ultimate right to choose his or her own Sponsor. If two Distributors claim to be the Sponsor of the same new Distributor or Customer, the Company shall regard the first application received by the Company as controlling. In addition, Kyäni reserves the right to deny enrollment in countries or territories where the company is not officially open.
- oo. Stacking:** The term "stacking" includes: (a) the failure to transmit to Kyäni, or the holding of an Independent Distributor Application and Agreement longer than 72 hours after its execution; (b) the placement or manipulation of Independent Distributor Applications and Agreements for the purpose of maximizing compensation pursuant to Kyäni's Global Compensation Plan; or (c) providing financial assistance to new Distributors for the purpose of maximizing compensation pursuant to Kyäni's Global Compensation Plan. Stacking constitutes a material breach of these Policies and Procedures, and is strictly and absolutely prohibited.
- pp. Succession:** Upon the death of an individual Distributor, his or her business may be passed to his or her heirs. Appropriate legal documentation under local law must be submitted to the Company to ensure the transfer is proper. Accordingly, a Distributor should consult an attorney to assist him or her in the preparation of a will or other testamentary instrument as required under local law. Whenever a Kyäni business is transferred by a will or other testamentary process as required under local law, the beneficiary acquires the right to collect all bonuses and commissions of the deceased Distributor's marketing organization provided the following qualifications are met. The successor(s) must:

 - 1. Execute a new Distributor Agreement;
 - 2. Comply with terms and provisions of the Agreement; and
 - 3. Meet all of the qualifications for the deceased Distributor's status.

Bonus and commission checks of a Kyäni business transferred pursuant to this section will be paid in a single check jointly to the devisees. The devisees must provide Kyäni with an "address

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of record" to which all bonus and commission checks will be sent. If the business is bequeathed to joint devisees, they must form a business entity to continue a distributorship.

- qq. **Transfer Upon Incapacitation of a Distributor:** To effect a transfer of a Kyäni business because of incapacity, the successor must provide the following to Kyäni: (1) a notarized copy of an appointment as guardian or trustee; (2) a notarized copy of the court Order or other documentation as required under local law that establishes the right by the successor to administer the Kyäni business; and (3) a completed Distributor Agreement executed by the trustee.

4. RESPONSIBILITIES OF DISTRIBUTORS

- a. **Change of Address or Telephone:** To ensure timely delivery of products, support materials, and commission checks, it is critically important that Kyäni's files are current. Distributors are required to keep all address and telephone number information current. This may be done in the Distributor's Back Office or in the alternative by sending such corrections as are necessary to Customer Service. To guarantee proper delivery of orders, all changes should be received not less than two weeks prior to the effective date of the address or telephone number change.
- b. **Ongoing Training:** In order to be successful with the Kyäni opportunity, any Distributor who sponsors another Distributor into Kyäni should perform a bona fide assistance and training function to ensure that his or her downline is properly operating his or her Kyäni business. Distributors should have ongoing contact and communication with the Distributors in their Downline Organizations. Examples of such contact and communication may include but are not limited to: newsletters, written correspondence, personal meetings, telephone contact, voicemail, electronic mail, and the accompaniment of downline Distributors to Kyäni meetings, training sessions, and other functions. Upline Distributors should also seek to motivate and train new Distributors in Kyäni product knowledge, effective sales techniques, the Kyäni Global Compensation Plan, compliance with Company Policies and Procedures, and compliance with local law. Distributors must monitor the Distributors in their Downline Organizations to ensure that downline Distributors do not make improper product or business claims, or engage in any illegal or inappropriate conduct. Upon request, every Distributor should be able to provide documented evidence to Kyäni of his or her ongoing fulfillment of the responsibilities of a Sponsor.
- c. **Ongoing Sales Responsibilities:** Regardless of their level of sponsoring activity, successful Distributors feel an ongoing obligation to continue to personally promote sales through the generation of new Customers and through servicing their existing Customers.
- d. **Non-disparagement:** Kyäni wants to provide its independent Distributors with the best products, compensation plan, and service in the industry. Accordingly, constructive criticisms and comments are welcome and should be submitted in writing to the Distributor Services Department. Remember, to best serve you, we must hear from you! While Kyäni welcomes constructive input, negative comments and remarks made in the field by Distributors about the Company, its products, or compensation plan serve no purpose other than to sour the enthusiasm of other Kyäni Distributors. Similarly, "trash talking" the competition creates a negative environment that damages the industry in a way that ultimately can harm Kyäni as well. For this reason, and to set the proper example for their downline, Distributors should not disparage the Company and its products or the competition and its products. Kyäni reserves the

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right to take action against Distributors whose personal behavior in this regard proves disruptive and harmful to Kyäni.

- e. **Providing Documentation to Applicants:** Distributors should help provide the most current version of the Policies and Procedures (always available at the Kyäni website) and the Compensation Plan to individuals whom they are sponsoring to become Distributors before the applicant signs a Distributor Agreement.
- f. **Reporting Policy Violation:** Distributors observing a Policy violation by another Distributor are encouraged to submit a written report of the violation directly to the attention of the Kyäni Compliance Department. Details of the incidents such as dates, number of occurrences, persons involved, and any supporting documentation should be included in the report.

5. SALES

- a. **Product Sales:** The Kyäni Global Compensation Plan is based upon the sale of Kyäni products to end consumers. Distributors must fulfill personal and Downline Organization retail sales requirements (as well as meet other responsibilities set forth in the Agreement) to be eligible for bonuses, commissions, and advancement to higher levels of achievement.
- b. **Price and Territory Restrictions:** Distributors may not sell Kyäni products for less than the published Distributor wholesale price. Distributors may only sell Kyäni products in countries that are officially recognized by Kyäni as open for Kyäni business.
- c. **Sales Receipts:** Kyäni encourages all Distributors to provide their retail Customers with two copies of an official Kyäni sales receipt at the time of the sale. These receipts set forth the Customer Satisfaction Guarantee for Kyäni products and a statement of consumer protection if these are afforded by local law. Records documenting the purchases of Distributors' Direct and Preferred Customers will be maintained by Kyäni, and Distributors should maintain all retail sales receipts for a period of two years and furnish them to Kyäni at the company's request. Further, Distributors should remember to retain records related to Distributor transactions in order to comply with the requirements for their independent businesses under local law (for example to establish document regarding income and expenses in support of a Distributor's tax obligations).

If a sale qualifies as a "door-to-door" sale, Distributors should ensure that any receipt complies with the requirements of local law. For example, in some jurisdictions the following information must be contained on each sales receipt (with two copies provided to the buyer):

1. The date of the transaction;
2. The date by which the buyer may give notice of cancellation; and
3. Name and address of the selling Distributor.

6. BONUSES AND COMMISSIONS

- a. **Bonus and Commission Qualifications:** A Distributor must be active and in compliance with the Agreement to qualify for bonuses and commissions. So long as a Distributor complies with the terms of the Agreement, Kyäni shall pay commissions to such Distributor in accordance with the Global Compensation plan. The minimum amount for which Kyäni will issue a bank check or

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draft in U.S. currency is ten U.S. dollars (\$10). If a Distributor's bonuses and commissions do not equal or exceed ten U.S. dollars (\$10), the Company will accrue the commissions and bonuses until they total ten U.S. dollars (\$10). A payment will be issued once ten U.S. dollars (\$10) has accrued. Payment policies for bonuses and commissions in currencies other than the U.S. dollar will be established from time to time by the Company. Bonuses and commissions will be calculated, and checks will be issued, on or before the fifteenth day of each month.

- b. Adjustment to Bonuses and Commissions:** Distributors receive bonuses and commissions based on the actual sales of products to end consumers. When a product is returned to Kyäni for a refund or is repurchased by the Company, the bonuses and commissions attributable to the returned or repurchased product(s) will be deducted in the month in which the refund is given, and continuing every pay period thereafter until the commission is recovered, from the Distributors who received bonuses or commissions on the sales of the refunded products. In the event that any such Distributor terminates his or her Distributor Agreement, and the amounts of the bonuses or commissions attributable to the returned products have not yet been fully recovered by the company, the remainder of the outstanding balance may be set off against any amounts owed to the terminated Distributor.
- c. Unclaimed Commissions and Credits:** Distributors must deposit or cash commission and bonus checks within six months from their date of issuance. A check that remains uncashed after six months will be void. After a check has been voided, Kyäni will attempt to notify a Distributor who has an uncashed check by sending a written notice to his or her last known address identifying the amount of the check and advising that the Distributor can request that the check be reissued. There shall be a U.S. \$15.00 charge for reissuing a check, and a U.S. \$10.00 fee for each notice that is sent to the Distributor. These charges shall be deducted from the balance owed to the Distributor.

Customers or Distributors who have a credit on account should use their credit within six months from the date on which the credit was issued. If credits have not been used within six months, Kyäni shall attempt to notify the Distributor or Customer on a monthly basis, by sending written notice to the last known address, advising the Distributor or Customer of the credit. There shall be a U.S. \$10.00 charge for each attempted notification. This charge shall be deducted from the Distributor's or Customer's credit on account.

- d. Downline Activity Reports:** All information provided by Kyäni in online or telephonic downline activity reports, including but not limited to personal and group sales volume (or any part thereof), downline sponsoring activity, and other information is believed to be accurate and reliable. Nevertheless, due to various factors including the inherent possibility of human and mechanical error; the accuracy, completeness, and timeliness of orders; denial of credit card and electronic check payments; returned products; credit card and electronic check charge-backs; the information is not guaranteed by Kyäni or any persons creating or transmitting the information.
- e. Warranties:** ALL VOLUME INFORMATION (as described in Kyäni's Global Compensation Plan) IS PROVIDED "AS IS" WITHOUT WARRANTIES, EXPRESS OR IMPLIED, OR REPRESENTATIONS OF ANY KIND WHATSOEVER. IN PARTICULAR BUT WITHOUT LIMITATION THERE SHALL BE NO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NON-INFRINGEMENT.

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TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, KYÄNI AND/OR OTHER PERSONS CREATING OR TRANSMITTING THE INFORMATION WILL IN NO EVENT BE LIABLE TO ANY DISTRIBUTOR OR ANYONE ELSE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES THAT ARISE OUT OF THE USE OF OR ACCESS TO INFORMATION (INCLUDING BUT NOT LIMITED TO LOST PROFITS, BONUSES, OR COMMISSIONS, LOSS OF OPPORTUNITY, AND DAMAGES THAT MAY RESULT FROM INACCURACY, INCOMPLETENESS, INCONVENIENCE, DELAY, OR LOSS OF THE USE OF THE INFORMATION), EVEN IF KYÄNI OR OTHER PERSONS CREATING OR TRANSMITTING THE INFORMATION SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, KYÄNI OR OTHER PERSONS CREATING OR TRANSMITTING THE INFORMATION SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO YOU OR ANYONE ELSE UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHER THEORY WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO.

Access to and use of Kyäni's online and telephonic information services is at your own risk. All Information is provided to you "as is". If you are dissatisfied with the information, your sole and exclusive remedy is to discontinue use of and access to Kyäni's online and telephone information services.

7. PRODUCT GUARANTEES, RETURNS AND INVENTORY REPURCHASE

a. Product Satisfaction Guarantee for Customers

United States Residents: Kyäni offers a one hundred percent (100%) thirty (30) day money-back satisfaction guarantee (less shipping charges) on all products purchased by Customers who reside in the United States. Customers must return all used and unused products to Kyäni. Once received Kyäni's Distribution Center will process all returns and refunds within thirty days after receipt of the product.

b. Return of Inventory by Distributors

Kyäni will repurchase from the Distributor any portion of the Distributor's currently marketable inventory that Distributor purchased from Kyäni in the preceding twelve months. The repurchase price shall be 90 percent of the purchase price paid by the Distributor, less all applicable shipping and handling costs to return the product to Kyäni.

For purposes of the Agreement, inventory shall include all company produced products, promotional materials, starter packs, or other sales aids purchased by Distributor from Kyäni.

The repurchase provisions of this section shall not apply to any inventory that is not currently marketable inventory. Currently marketable inventory shall not include inventory that is beyond its expiration date, that has the tamper proof safety seal damaged or removed, that has been opened or partially consumed, that has been discontinued by the company, or that is seasonal in nature or a special promotional product.

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8. DISPUTE RESOLUTION AND DISCIPLINARY PROCEEDINGS

a. Disciplinary Sanctions: Breach of the Agreement, including these Policies and Procedures (as applicable), or any illegal, fraudulent, deceptive or unethical business conduct by a Distributor may result, at Kyäni's discretion, in one or more of the following corrective measures, which shall, when necessary, be considered as liquidated damages for a breach of the Agreement, but shall not waive Kyäni's other rights under the Agreement:

1. Issuance of a written warning or admonition;
2. Requiring the Distributor to take immediate corrective measures;
3. Imposition of a fine, which may be withheld from bonus and commission checks;
4. Loss or suspension of rights to one or more bonus and commission checks;
5. Kyäni may withhold from a Distributor all or part of the Distributor's bonuses and commissions during the period that Kyäni is investigating any conduct that may violate the Agreement. If Kyäni chooses to terminate the Agreement because of a breach of the Agreement by the Distributor or a violation of applicable laws or regulations, the Distributor will not be entitled to receive any commissions or payments that were withheld during the investigation period prior to actual termination;
6. Suspension of the Distributor's right to purchase products and/or receive payments;
7. Termination of the Agreement;
8. Any other measure expressly allowed within any provision of the Agreement or which Kyäni deems practicable to implement and appropriate to equitably resolve injuries caused partially or exclusively by the Distributor's conduct or omission;
9. The measures above do not exhaust Kyäni's rights and do not mean that Kyäni cannot also initiate legal proceedings for monetary and/or equitable relief or take other measures permitted by the Agreement or applicable laws.

b. Grievances and Complaints: When a Distributor has a grievance or complaint with another Distributor regarding any practice or conduct in relationship to their respective Kyäni businesses, they are encouraged to seek to resolve the issue through private discussions with the other party. Where this is impractical or unsuccessful, the complaining Distributor is encouraged to discuss the problem with his or her Sponsor who may review the matter and try to resolve it, perhaps through the "good offices" of the other party's upline sponsor. Unresolved disputes may be reported in writing to the Customer Service Department at the Company, which may seek assistance from a Dispute Resolution Board for final review and determination as appropriate.

c. Dispute Resolution Board: The Dispute Resolution Board (or "DRB") is composed of one or more qualified individuals selected by Kyäni senior management. The composition of the Dispute Resolution Board may change at any time. The purpose of the DRB is to:

1. Review appeals of any actions taken by the Company for an alleged breach of a Distributor's obligations; and

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2. Review matters between Kyäni Distributors. If the response or settlement suggested by Customer Service has been rejected or the matter otherwise remains unresolved, the Dispute Resolution Board may review evidence, deliberate, and respond to remaining issues.

A Distributor may submit a written request for a telephonic or in-person review within seven business days from the date of: (1) the written notice by Kyäni of action; or (2) the written decision of Distributor Services regarding disputes between Distributors under section 9.2. All communication with Kyäni and the Distributor seeking resolution of a dispute must be in writing. It is within the DRB's discretion whether a claim is accepted for review. If the DRB agrees to review the matter, it shall schedule a review within thirty (30) days of the receipt of the Distributor's written request. All evidence (e.g., documents, exhibits, etc.) that a Distributor desires to have considered by the DRB must be submitted to Kyäni no later than seven business days before the date of the review. The Distributor shall bear all of the expenses related to his or her attendance and the attendance of any witnesses he or she desires to be present at the review. The decision of the DRB will be final and subject to no further Company review. During the pendency of a claim before the DRB, Company will actively oppose any effort by a Distributor to seek arbitration, mediation, or litigation or any other remedy against the other party or parties to the dispute or against Kyäni.

- d. **Governing Law and Jurisdiction:** The Distributor Agreement between the Distributor and Kyäni has been entered into in Idaho Falls, Idaho, United States of America, as this is the location where the Distributor submitted the application to enroll as a Kyäni Independent Distributor, and where the application was reviewed and approved by Kyäni. The Distributor Agreement shall be governed exclusively by the laws of the State of Idaho, and the Distributor agrees to submit exclusively to the jurisdiction of the courts of the State of Idaho, and specifically the District Court of the Seventh Judicial District with venue in Bonneville County, for resolution of any claims or related litigation to interpret or enforce the terms of the Distributor Agreement.

9. ORDERING

- a. **Direct & Preferred Customers:** Distributors are encouraged to promote Kyäni's Direct Customer Program to retail Customers. The Direct Customer Program allows retail Customers to purchase their products directly from Kyäni. Customers simply call Kyäni to place their orders or place their orders online, which they can charge to their credit card. Kyäni will send the ordered products directly to the Customer. To ensure that Distributors receive the appropriate commission, Customers may not place an order without a Distributor's ID Number. Even more efficient than the Direct Customer Program is Kyäni's Preferred Customer Program. Under the Preferred Customer Program, an individual may sign up to have a pre-selected package of Kyäni products delivered to his or her home automatically each month. Not only does this take all of the hassles out of buying, it also allows the Customer to take advantage of the discounted Preferred Customer Prices.
- b. **Purchasing Kyäni Products:** Each Distributor should purchase his or her products directly from Kyäni in order to be credited with the Personal Sales Volume associated with that purchase.
- c. **General Order Policies:** On mail orders with invalid or incorrect payment, Kyäni may attempt to contact the Distributor by phone, and/or mail to try to obtain correct payment. Kyäni may also attempt to process the order up to five more times. Unsuccessful orders will not be processed. No

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C.O.D. orders will be accepted. Kyäni maintains no minimum order requirements. Orders for products and sales aids may be combined.

- d. **Shipping and Back Order Policy:** Kyäni will normally ship products within five (5) days from the date an order is received. Kyäni will promptly ship ordered items that are currently in stock. Ordered items that are out-of-stock will be placed on backorder and sent when Kyäni receives additional inventory. Distributors will be charged and given Personal Sales Volume on back-ordered items unless notified on the invoice that the product has been discontinued. Kyäni will notify Distributors and Customers if items are backordered and are not expected to ship within 30 days from the date of the order. An estimated shipping date will also be provided. Backordered items may be cancelled upon a Customer's or Distributor's request. Customers and Distributors may request a refund, credit on account, or replacement merchandise for cancelled back orders. If a refund is requested, the Distributor's Personal Sales Volume will be decreased by the amount of the refund in the month in which the refund is issued.
- e. **Confirmation of Order:** A Distributor and/or recipient of an order must confirm that the product received matches the product listed on the shipping invoice, and is free of damage. Failure to notify Kyäni of any shipping discrepancy or damage within thirty days of receiving the shipment will waive the Distributor's right to request a correction.

10. PAYMENT AND SHIPPING

- a. **Deposit:** Kyäni advises strongly against Distributors accepting money for a sale to a personal retail Customer except at the time of product delivery (e.g. don't accept monies in anticipation of future deliveries).
- b. **Insufficient Funds:** It is the responsibility of each Distributor to ensure that there are sufficient funds or credit available in his or her account to cover a monthly Autoship order. Kyäni will not contact Distributors in regard to orders cancelled due to insufficient funds or credit. This may result in a Distributor's failure to meet his or her Personal Sales Volume requirements for the month.

Kyäni will not make adjustments after the end of the calendar month to Autoship orders. Example: a Distributor has an Autoship order set for the 25th of the month and for whatever reason the Distributor's credit card is declined. The Distributor is responsible for contacting Kyäni and providing a credit card that will clear before the end of the month in order to have the Autoship order count for that month.

- c. **Returned Checks:** All checks returned by a Distributor's bank for insufficient funds (NSF checks) will be re-submitted for payment. A \$25.00 returned check fee will be charged to the account of the Distributor. After receiving a returned check from a Customer or a Distributor, all future orders must be paid by Credit Card, money order or cashier's check. Any outstanding balance owed to Kyäni by a Distributor for NSF checks and returned check fees will be withheld from subsequent bonus and commission checks.
- d. **Returned Bonus and Commissions Checks:** Distributors are responsible for ensuring Kyäni has the correct name and address for their commission checks. There is a \$10 processing fee for checks returned to Kyäni for any reason including an incorrect name and/or address. This fee will

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be covered by making an adjustment to that distributor's Bonus and Commissions and/or by charging the credit card(s) on file with Kyäni.

- e. **Returned Packages:** Distributors with packages that are returned to Kyäni for an incorrect address, unsuccessful delivery attempts, return to sender, or any other reason will be charged for shipping to and from Kyäni and a \$20 processing fee. This charge will be covered by making an adjustment to that distributor's bonus and commission and/or by charging the credit card(s) on file with Kyäni.
- f. **Restrictions on Third Party Use of Credit Cards and Checking Account Access:** In order to preserve the independence of Kyäni Distributors and to preserve the integrity of the Company's compensation plan, Kyäni discourages any arrangement between the independent Distributors creating indebtedness between them, and Distributors are expressly prohibited from using a Distributor's credit card or permitting debits to a Distributor's checking account to enroll or sponsor other Distributors, or to make purchases from the Company on behalf of another Distributor.
- g. **Sales, Use and Value Added Taxes:** In designing the Kyäni opportunity, one of our guiding philosophies has been to free Distributors from as many administrative, operational, and logistical tasks as possible. In doing so, Distributors are free to concentrate on those activities that directly affect their incomes, namely product sales and enrollment activities. To these ends, Kyäni seeks to relieve Distributors from the burdens of collecting and remitting sales, use, goods and services, and value added taxes ("Consumption Taxes"), filing Consumption Tax reports, and keeping records relative to Consumption Taxes. Nevertheless, Distributors remain obligated to comply with all applicable laws and regulations for the jurisdictions in which the Distributors conduct business. Consumption Taxes are by law generally required to be paid by the final user of a taxable item, so whenever possible, Kyäni will seek to collect and remit applicable Consumption Taxes on behalf of or in conjunction with the Distributor. Distributors should contact the Kyäni Customer Service Department if they have any questions about Kyäni's activities in this regard.

11. INACTIVITY AND CANCELLATION

- a. **Effect of Cancellation:** So long as a Distributor remains active and complies with the terms of the Agreement and these Policies and Procedures, Kyäni shall pay commissions to the Distributor in accordance with the Global Compensation Plan. A Distributor's bonuses and commissions constitute the entire consideration for the Distributor's efforts in generating sales and all activities related to generating sales (including building a downline organization). Following a Distributor's cancellation for inactivity as described herein, or voluntary or involuntary cancellation of his or her Agreement, including for breach of the Agreement or violation of the Policies and Procedures (all of these methods are collectively referred to as being "cancelled" or a "cancellation"), the former Distributor shall have no right, title, claim or interest to the marketing organization in which he or she operated, to any past, present or future Kyäni trade secrets or other proprietary information or intellectual property, or to any commission or bonus from the sales generated by the organization after the Distributor's cancellation. A Distributor whose Agreement is cancelled will lose all rights as a Distributor. This includes the right to sell Kyäni products, and the right to receive future commissions, bonuses, or other income resulting from the sales and other activities of the Distributor's former downline sales organization. To remove all doubt, in the event of cancellation, the Distributor agrees to waive all rights he or she may

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have, including but not limited to property rights, trade secret rights, intellectual property rights, or otherwise, to their former downline organization, marketing data, financial data, or contact information related to that downline organization, or to any bonuses, commissions, or other remuneration that might otherwise have arisen from the sales or other activities of that downline organization, had the Distributor not been cancelled.

The former Distributor shall not hold himself or herself out as a Kyäni Distributor. A cancelled Distributor shall receive commissions and bonuses only for the last full pay period he or she was active prior to cancellation (less any amounts withheld during an investigation preceding an involuntary cancellation).

- b. Involuntary Cancellation:** A Distributor's violation of any of the terms of the Agreement, including any amendments that may be made by Kyäni in its sole discretion, may result in any of the sanctions listed in Section 8(a), including the involuntary cancellation of his or her Distributor Agreement. Cancellation shall be effective on the date on which written notice is mailed, return receipt requested, to the Distributor's last known address, or when the Distributor receives actual notice of cancellation, whichever occurs first.

In addition, Kyäni may cancel a Distributor's account if there are no product purchases for a period of twelve months.

- c. Voluntary Cancellation:** A participant in this network marketing plan has a right to cancel at any time, regardless of reason. Cancellation is requested by satisfying the requirements of and executing a Distributor Cancellation Form and returning this form to Kyäni by postal mail, scanned document through email, or FAX. Upon receipt of the Distributor Cancellation Form, Kyäni will process the cancellation.
- d. Non-renewal:** A Distributor may also voluntarily cancel his or her Distributor Agreement by failing to make an order within one calendar year from the anniversary date of enrollment.
- e. Inactive or Cancelled Distributors Re-Enrollment Policy:** A Kyäni Distributor who voluntarily terminate as a Distributor may re-enroll as a new Distributor twelve months following the date of termination. If any such Distributor re-enrolls with Kyäni, the Distributor shall be enrolled as a new distributor, but any downline that was formerly under the Distributor prior to termination shall not be affected by such re-enrollment.

A Kyäni Distributor who has been inactive for a period of twelve months may be cancelled at Kyäni's discretion. The Distributor's downline shall be unaffected by the change and shall not be moved with the Distributor. For purposes of this Policy an inactive Distributor shall be deemed to be any Distributor who has failed to make any purchase for twelve consecutive months.

This Policy shall not apply to any Kyäni Distributor whose Distributor Agreement was terminated by the company for cause. Any such Distributor must have approval from the Kyäni Chief Executive Officer prior to being re-enrolled with the company.

12. RIGHT TO AMEND

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Kyäni reserves the right to modify the Kyäni Global Compensation Plan, Distributor Agreement, and these Policies and Procedures at any time and for any reason in its sole and absolute discretion.

EXHIBIT C

Electronic Consent-07.15-EN-USA



ELECTRONIC CONSENT

E-SIGN, the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001, et seq.), requires that you consent to entering into an electronic agreement with Kyäni Sun, Inc. ("Kyäni ") before an online version of the Kyäni Independent Distributor Agreement is entered into. Please read the following information carefully.

Should you enter into an online Independent Distributor Agreement ("the Agreement"), you will not be required to submit a paper application. The entire agreement between you and Kyäni will be evidenced by an electronic record. To enter into the Agreement, you must additionally electronically acknowledge that you agree to the terms of the Kyäni Policies and Procedures and the Kyäni Global Compensation Plan.

To access these documents and enter into the Agreement, you will need the following hardware and software: A Personal Computer ("PC") with modem or other Internet access device, operational Internet browser software (e.g., Netscape Communicator or Internet Explorer), and Adobe Acrobat Reader. Should there ever be a change in the equipment or software necessary to access the terms of the Agreement, Kyäni will advise you of the same and will provide you with a list of the equipment and software that is necessary. Upon such event, you may withdraw your consent.

Your consent will apply to all transactions between you and Kyäni.

You may withdraw your consent to the use of electronic records at any time. However, should you do so, the Agreement will be automatically terminated. To withdraw your consent (and thereby terminate the Agreement), or update any personal information, you may do so online at <http://www.kyani.net> or by sending written notice to Kyäni, Inc., 1070 Riverwalk Drive, Suite #350, Idaho Falls, Idaho 83402 (208)-259-9872, or customerservice@kyanincorp.com.

During the enrollment process, you will have the ability to read, download, print, and retain the Policies and Procedures and Compensation Plan for future reference. Additionally, you may request printed copies of those documents by contacting Kyäni at 1070 Riverwalk Drive, Suite #350, Idaho Falls, Idaho 83402 or customerservice@kyanincorp.com. Your request must include your name, your Distributor identification number, your mailing address, and your E-mail address. Upon receipt of such a request, Kyäni will mail you the then current version of each document. There is a charge of \$10 for this service.

By entering into the Agreement, you agree that Kyäni may amend the same (including the Policies and Procedures and the Global Compensation Plan) at its sole discretion at any time. You may obtain a copy of the version of these documents that were in effect at any time after you entered into the Agreement. Prior versions are archived by Kyäni. Should you wish to obtain a copy of any version of the Policies and Procedures and/or Global Compensation Plan since the date of your enrollment, send a written request to Kyäni, 1070 Riverwalk Drive, Suite #350, Idaho Falls, Idaho 83402 or to customerservice@kyanincorp.com. Your request must include your name, your Distributor identification number, your mailing address, and your E-mail address. Upon receipt of such a request, Kyäni will mail or email to you a copy of the version of the Agreement that you requested. Be certain to specify the date of the version that you wish to receive. There is a charge of \$10 for this service. The most current version of the Policies and Procedures and the Global Compensation Plan are always available at Kyäni's official web site for viewing, printing and downloading.

Electronic Consent-07.15-EN-USA

Please indicate your consent to the above terms by clicking on the "Continue >>" button below. By providing your consent, you also confirm that you are able to access all the terms of the Agreement electronically.

EXHIBIT D

2/2/2017

Kyäni, Inc. Agreements

Agreements

Below are the legal agreements for your enrollment country. You will need to accept all of them to continue.

Electronic Consent

Electronic Consent

E-SIGN, the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.), requires that you consent to entering into an electronic agreement with Kyäni, Inc. ("Kyäni") before an online version of the Kyäni Independent Distributor Agreement is entered into. Please read the following information carefully.

Should you enter into an online Independent Distributor Agreement ("the Agreement"), you will not be required to submit a paper application. The entire agreement between you and Kyäni will be evidenced by an electronic record. To enter into the Agreement, you must additionally electronically acknowledge that you agree to the terms of the Kyäni Policies and Procedures and the Kyäni Global Compensation Plan.

To access these documents and enter into the Agreement, you will need the following hardware and software: A Personal Computer ("PC") with modem or other Internet access device, operational Internet browser software (e.g., Netscape Communicator or Internet Explorer), and Adobe Acrobat Reader. Should there ever be a change in the equipment or software necessary to

Confirm that you consent to the above terms.

☐ Check to Agree

Download copy of Electronic Consent (https://assets.kyani.net/forms/us/en-us/electronic_consent.pdf)

Policies & Procedures of distributorship

Kyäni POLICIES & PROCEDURES

1. INTRODUCTION

The Kyäni Policies and Procedures govern your rights as a Kyäni Independent Distributor. You should familiarize yourself with the contents of these Policies and Procedures, and any questions you may have regarding the Policies and Procedures should be directed to the Kyäni Customer Service staff.

a. Policies and Compensation Plan Incorporated into Distributor Agreement: These Policies and Procedures, in their present form and as amended from time to time by Kyäni, Inc., or any Kyäni, Inc. Affiliate, (hereafter collectively "Kyäni" or the "Company"), are referred to in the Kyäni Distributor Agreement. Where these Policies and Procedures are incorporated into the Kyäni Distributor Agreement by specific reference, these Policies and Procedures constitute an official part of that agreement.

Where these Policies and Procedures are not specifically incorporated into that agreement, they

Confirm that you agree to the Policies & Procedures as presented here. You cannot continue without agreeing to the Policies & Procedures.

☐ Check to Agree

Download copy of Policies & Procedures (https://assets.kyani.net/forms/us/en-us/policies_procedures.pdf)

2/2/2017

Kyäni, Inc. Agreements

Terms & Conditions of distributorship

Kyäni INDEPENDENT DISTRIBUTOR AGREEMENT TERMS & CONDITIONS

1. I understand that as a Kyäni, Inc. (hereinafter "Kyäni") Distributor:
- a. I have the right to purchase products from Kyäni at the price for which I am eligible.
 - b. I have the right to sponsor qualified persons in Kyäni.
 - c. I will assist, train, and motivate the Distributors in my downline marketing organization.
 - d. I will comply with all federal, state, county and municipal laws, ordinances, rules, and regulations, and shall make all reports and remit all withholdings or other deductions as may be required by any federal, state, county or municipal law, ordinance, rule or regulation.
 - e. I will perform my obligations as a Distributor with honesty and integrity.
 - f. I will only use the sales contracts and order forms which are provided by Kyäni for the sales of its products, and I will follow all policies and procedures established by Kyäni for the completion and processing of such contracts and orders.

Confirm that you agree to the Terms & Conditions as presented here. You cannot continue without agreeing to the Terms & Conditions.

☐ Check to Agree

Download copy of Terms & Conditions (https://assets.kyani.net/forms/us/en-us/terms_conditions.pdf)

Continue →

Lawrence B. Steinberg (State Bar No. 101966)
LSteinberg@buchalter.com
 BUCHALTER, A Professional Corporation
 1000 Wilshire Boulevard, Suite 1500
 Los Angeles, CA 90017-2457
 Telephone: (213) 891-0700
 Facsimile: (213) 896-0400

Brent V. Manning (admitted *pro hac vice*)
bmannings@mc2b.com
 Jess M. Krannich (admitted *pro hac vice*)
jkrannich@mc2b.com
 C. Seth Ensign (admitted *pro hac vice*)
sensign@mc2b.com

MANNING CURTIS BRADSHAW
 & BEDNAR PLLC
 136 East South Temple, Suite 1300
 Salt Lake City, UT 84111
 Telephone: (801) 363-5678
 Facsimile: (801) 364-5678

Attorneys for defendants KYÄNI, INC.,
 MICHAEL BRESHEARS and KIRK HANSEN

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

YAN GUO, an individual;
 JU JIN GUO, an individual; and all
 those similarly situated,

Plaintiff,

vs.

KYÄNI, INC., an Idaho corporation;
 MICHAEL BRESHEARS, an
 individual; KIRK HANSEN, an
 individual; and DOES 1-100,

Defendants.

Case No. CV 2:17-08257-JAK-GJS
 [PROPOSED] ORDER GRANTING
 MOTION TO COMPEL
 ARBITRATION AND TO DISMISS OR
 STAY

Date: July 2, 2018
 Time: 8:30 a.m.
 Courtroom: 10B

On July 2, 2018, the motion of defendants KYÄNI, INC. (“Kyäni”),
 MICHAEL BRESHEARS and KIRK HANSEN (collectively, “Defendants”) for an
 order compelling individual arbitration of the claims of plaintiffs YAN GUO and

1 JU JIN GUO and dismissing this action with prejudice, or staying proceedings
2 pending the completion of the arbitration, came on for hearing, the Hon. John A.
3 Kronstadt, United States District Court Judge, presiding. Blake Lindemann
4 appeared on behalf of plaintiffs. Jess M. Krannich and Lawrence B. Steinberg
5 appeared on behalf of Defendants.

6 Having considered the papers and arguments submitted in support of and in
7 opposition to the motion, and

8 GOOD CAUSE HAVING BEEN SHOWN,

9 IT IS HEREBY ORDERED, as follows:

10 (1) Defendants' Motion to Compel Arbitration And Dismiss the
11 Complaint Or Stay Proceedings is GRANTED. Plaintiffs YAN GUO and
12 JU JIN GUO each entered into a contractual agreement with Kyäni that requires
13 each of them to arbitrate their disputes with Kyäni, and the allegations of the First
14 Amended Complaint fall within the purview of that agreement. Enforcement of the
15 parties' arbitration agreement is mandated by the Federal Arbitration Act, 9 U.S.C.
16 § 1 *et seq.* Plaintiffs are hereby ORDERED to arbitrate their claims against all
17 Defendants in separate, individual arbitrations before the American Arbitration
18 Association in Idaho Falls, Idaho; and

19 (2) This action is [dismissed/stayed] pending the outcome of those
20 arbitration proceedings.

21
22 DATED: July ___, 2018

23
24 _____
25 Hon. John A. Kronstadt
26 United States District Court Judge
27
28

1 Submitted by:

2 MANNING CURTIS BRADSHAW & BEDNAR PLLC

3 BUCHALTER, A Professional Corporation

4 By _____/s/_____
5 Lawrence B. Steinberg
6 Attorneys for defendants KYANI, INC.,
MICHAEL BRESHEARS and KIRK HANSEN