

DATA TRANSFER (PROTECTION) AGREEMENT

THIS AGREEMENT is made:

BETWEEN

- (1) The undersigned Customer ("**Lead Customer Company**"), and the other companies listed in Schedule 1 whose registered office addresses are listed opposite their names in Schedule 1 (together with the Lead Customer Company, "**Customer Companies**"); and
- (2) **ARYAKA NETWORKS, INC** ("**Lead Vendor Company**"), and the other companies listed in Schedule 2 whose registered office addresses are listed opposite their names in Schedule 2 (together with the Lead Vendor Company, "**Vendor Companies**"), each being a "**Party**" to this Agreement, and collectively the "**Parties**".

BACKGROUND

- (A) The Customer Companies and the Vendor Companies are subject to arrangements that result in the transfer of personal data from the Customer Companies to the Vendor Companies.
- (B) In order for the Customer Companies to ensure their continued compliance with their obligations under the laws applicable in their places of establishment, the Parties have agreed to enter into this Agreement and the Model Clauses (both as defined below).
- (C) The Lead Customer Company accepts the terms and conditions of this Agreement on its behalf and as agent for the other Customer Companies. The Lead Customer Company shall procure that the other Customer Companies shall act as if they had each signed a copy of the Agreement and agreed to be bound by its terms and conditions.
- (D) The Lead Vendor Company accepts the terms and conditions of this Agreement on its behalf and as agent for the other Vendor Companies. The Lead Vendor Company shall procure that the other Vendor Companies shall act as if they had each signed a copy of the Agreement and agreed to be bound by its terms and conditions.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this Agreement:

"**Agreement**" means this data transfer agreement including the Schedules, but not the Executed Clauses;

"**Annex**" means the Annex to European Union Commission Decision 2010/87/EU containing the Model Clauses.

"**Arrangements**" shall have the meaning as set out in clause 2.3 of this Agreement;

"**Data Protection Law**" shall have the meaning as set out in clause 2.2 of this Agreement;

"**Effective Date**" means the date of execution of this Agreement by the last of the Lead Companies to do so;

"**Executed Clauses**" means the Model Clauses as executed by the Parties pursuant to clause 2.1 of this Agreement;

"**Existing Contracts**" means those contracts and any associated amendments and work orders, and any other arrangements entered into between any or all of the Customer Companies and any or all of the Vendor Companies (whether in writing or otherwise), pursuant to which personal data is transferred from one or more of the Customer Companies to one or more of the Vendor Companies and which are in force as at the Effective Date;

"**Group**" in relation to a company (wherever incorporated), means that company, and any of its affiliates. Unless the context otherwise requires, the application of the definition of Group to a company at any time will apply to the company as it is at that time;

"**Lead Companies**" means the Lead Customer Company and the Lead Vendor Company;

"**Model Clauses**" means the standard contractual clauses for the transfer of personal data from the European Union to processors established in third countries (controller-to-processor transfers), as set out in the Annex; and

"**Schedules**" means the schedules to this Agreement.

1.2 **Data subject, personal data** and **processing** shall bear the meanings given to those terms respectively in the Model Clauses. Additionally, if [England and Wales] law is applicable, "data subject" shall mean natural or legal persons whose data is processed.

1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.

- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 Notwithstanding any other provision in this Agreement, in the case of conflict or ambiguity between any of the provisions set out in:
- (a) this Agreement and the Executed Clauses, the provisions of the Executed Clauses shall prevail;
 - (b) the Existing Contracts and the Executed Clauses, the provisions of the Executed Clauses shall prevail; and
 - (c) the Existing Contracts and this Agreement, the provisions of this Agreement shall prevail.
- 2. COMPLETION AND EXECUTION OF THE MODEL CLAUSES**
- 2.1 In consideration of the obligations and rights as set out in this Agreement, the Parties shall execute the Model Clauses in the agreed form as set out in Schedule 3 on the Effective Date.
- 2.2 The Parties shall at all times comply with all applicable data protection laws, statutes, regulations and codes from time to time in force (the "**Data Protection Law**"), and shall promptly execute and deliver such documents, perform such acts or do such things as may be required to continue to do so.
- 2.3 The Parties note that they are entering into the Model Clauses in respect of all personal data transferred and to be transferred by the Customer Companies to the Vendor Companies under the Existing Contracts or under any future arrangements (unless otherwise expressly stated in any such future arrangement) (together, the "**Arrangements**"). Without limitation to their obligations under the Executed Clauses, the Parties shall promptly execute and deliver such documents, perform such acts or do such things as may be required to give full force and effect to the Executed Clauses in respect of their application to personal data transfers and processing performed pursuant to the Arrangements.
- 3. VARIATION**
- 3.1 Except as set out in clauses 3.2 to 3.7 of this Agreement (inclusive), no variation of this Agreement shall be effective unless it is in writing and executed by the Parties acting through their respective Lead Company. For the avoidance of doubt, there shall be no variation of the Executed Clauses other than as permitted under the Executed Clauses.
- 3.2 The Parties shall use their reasonable endeavours to ensure that the details as set out in the Executed Clauses are accurate and kept up to date. Where it is determined that the details as set out in the Executed Clauses are not accurate or up to date, the Parties will, insofar as permissible, update the Executed Clauses accordingly or complete and execute new Model Clauses as replacement Executed Clauses.
- 3.3 The Lead Customer Company shall be responsible for maintaining a complete and accurate list of the Customer Companies and Vendor Companies, and for updating Schedule 1 and Schedule 2 to this Agreement from time to time as may be necessary to reflect any changes to such list. Such list shall be available to the Lead Vendor Company upon request. The Lead Vendor Company shall provide all reasonable assistance to the Lead Customer Company in order to maintain such complete and accurate list.
- 3.4 A Party shall cease to be a party to this Agreement where:
- (a) the Lead Customer Company (acting in its own name and on behalf of the other Customer Companies) and the Lead Vendor Company (acting in its own name and on behalf of the other Vendor Companies) agree in writing to such cessation; or
 - (b) the Executed Clauses are no longer applicable to such Party because either:
 - (i) the relevant Vendor Company (which is ceasing to be a party to this Agreement) has permanently ceased to provide personal data-processing services to any and all of the Customer Companies; or
 - (ii) all Vendor Companies have permanently ceased to provide personal data-processing services to the relevant Customer Company (which is ceasing to be a party to this Agreement);
 and the relevant Vendor Companies and any subprocessors have complied with all of their obligations under Clause 12 of the Executed Clauses; or
 - (c) such Party is excluded from this Agreement as a consequence of clause 7.2.
- 3.5 Each Lead Company shall use its reasonable endeavours to notify the other Lead Company in the event that a Party ceases to be a party to this Agreement in accordance with clause 3.4.

3.6 A Party ceasing to be a party to this Agreement shall not affect any rights, remedies, obligations or liabilities of any of the Parties that existed at or before the date of such cessation.

3.7 The Lead Companies shall use all reasonable endeavours to procure that any members of their respective Groups that rely in any way on the Arrangements to govern the transfer or processing of any personal data by them that are not already parties to this Agreement enter into written agreements in respect of such transfer or processing of personal data which impose the same obligations as are imposed under this Agreement. Such written agreement may include notifying the other Lead Company of such member of the respective Group and at such point such member shall be deemed to be a Party to this Agreement.

4. FURTHER OBLIGATIONS

4.1 With regards to the transfer of personal data pursuant to the Arrangements, the Parties shall to the extent required by [England and Wales] Data Protection Law inform data subjects clearly and comprehensively that their personal data may be transferred to the United States of America and that, if this occurs, it is possible that US governmental authorities may access such personal data.

4.2 To the extent required by Data Protection Law, the Parties shall provide the data subjects with such support (including information) as the data subjects may reasonably require from the Parties to protect their rights in respect of such of their personal data as is processed pursuant to the Arrangements, including (without limitation) in any legal, regulatory or administrative proceedings. To the extent any documents are required to be provided to the data subjects pursuant to this provision, the Parties shall be entitled to redact all information that is not required to protect the data subjects' rights.

5. SEVERAL LIABILITY AND INDEMNITY

5.1 The liability of each Customer Company pursuant to this Agreement and the Executed Clauses shall be several and the other Customer Companies shall not be liable for any liability of such Customer Company incurred under this Agreement or the Executed Clauses.

5.2 In any event, no Vendor Company shall be able to claim more than once for the same loss or damage when such a claim has already been made by such Vendor Company against one of the other Customer Companies.

5.3 The liability of each Vendor Company pursuant to this Agreement and the Executed Clauses shall be several and the other Vendor Companies shall not be liable for any liability of such Vendor Company incurred under this Agreement or the Executed Clauses.

5.4 In any event, no Customer Company shall be able to claim more than once for the same loss or damage when such a claim has already been made by such Customer Company against one of the other Vendor Companies.

6. EFFECTIVE DATE, TERM AND TERMINATION

6.1 This Agreement shall enter into effect on the Effective Date and shall continue until terminated pursuant to clause 6.2 of this Agreement.

6.2 This Agreement shall terminate on:

(a) the last of the Customer Companies ceasing to be a party to this Agreement pursuant to clause 3.4 of this Agreement; or

(b) the written agreement of the Lead Customer Company (acting in its own name and on behalf of the other Customer Companies) and the Lead Vendor Company (acting in its own name and on behalf of the other Vendor Companies),

or such later time that the Vendor Companies and any sub-processor of the Vendor Companies have complied with all their obligations under Clause 12 of the Executed Clauses.

6.3 The obligations under clause 4.2 of this Agreement shall survive the termination of this Agreement or any Data Exporter ceasing to be a party to this Agreement pursuant to clause 3.4 of this Agreement.

7. GENERAL PROVISIONS

7.1 No partnership nor agency

Nothing in this Agreement shall be deemed:

(a) to constitute a Customer Company the agent of any Vendor Company, nor authorise a Customer Company to make or enter into any commitments for or on behalf of any Vendor Company; or

(b) to constitute a Vendor Company the agent of any Customer Company, nor authorise a Vendor Company to make or enter into any commitments for or on behalf of any Customer Company; or

- (c) to create a partnership, joint venture or other relationship.

7.2 Severability

- (a) If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- (b) If any Party gives notice to the Lead Companies of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Lead Companies shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- (c) Where any Party shall be found not to be bound by the terms of this Agreement due to an invalid execution of this Agreement by them or on their behalf, the other Parties shall continue to be bound by the terms of this Agreement and shall use their reasonable endeavours to procure that the Party not so bound shall where possible re-execute this Agreement validly.

7.3 Authority to act

Each of the Lead Customer Company and the Lead Vendor Company warrant that it has authority to act on behalf of the Customer Companies and the Vendor Companies (including such Customer Companies and Vendor Companies that may be added as a Party to this Agreement pursuant to clause 3.7 of this Agreement), respectively.

7.4 Counterparts

This Agreement may be executed in any number of counterparts, and by each Lead Company on separate counterparts acting in its own name and on behalf of such other relevant Parties. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

7.5 Governing law

This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of [England and Wales].

[REMAINDER OF PAGE BLANK- SIGNATURE PAGES FOLLOW]

SIGNATURES OF PARTIES

Signed on behalf of Customer acting in its own name and on behalf of the other **Customer Companies** listed in Schedule 1 to this Agreement and its further updates

	Authorized Signature
Name (written out in full)	_____
Title	_____
Principal Address of Customer	_____

Signed on behalf of Aryaka Networks, Inc. acting in its own name and on behalf of the other **Aryaka Companies** listed in Schedule 2 to this Agreement and its further updates

	Authorized Signature
Name (written out in full)	_____
Title	_____
Principal Address of Aryaka	1800 Gateway Drive, Suite 200
	San Mateo, California, USA 94404

SCHEDULE 1

List of Customer Companies

The Lead Customer Company is acting on behalf of itself and the other Customer Companies listed in this Schedule.

CUSTOMER	[Country]
_____	[Country]
_____	[Country]
_____	[Country]
_____	[Country]

SCHEDULE 2

List of Vendor Companies

The Lead Vendor Company is acting on behalf of itself and the other Vendor Companies listed in this Schedule.

CUSTOMER NAME or NAME OF CUSTOMER COMPANY	COUNTRY
Aryaka Networks, Inc.	USA
Aryaka Networks India Private Limited	India
Aryaka Networks Singapore Pte. Ltd	Singapore
Aryaka Networks UK Limited	UK

SCHEDULE 3

Commission Decision C(2010)593 Standard Contractual Clauses (processors)

The Standard Contractual Clauses in the Annex located at

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0087&from=en>

including Appendix 1 and Appendix 2 in the Annex shall apply as if fully set forth herein. The parties shall complete and print the information requested in the Annex and execute the Annex accordingly.

APPENDIX 3 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Name of Data Exporting Organisation	Place of establishment of Data Exporting Organisation
CUSTOMER _____	[Country]
_____	[Country]
_____	[Country]
_____	[Country]
_____	[Country]

For Customer on behalf of the Customer Data Exporters whose details are listed in Appendix 3 (as updated from time to time):

Name & Title: _____

Authorised Signature _____

For Aryaka Networks, Inc. on behalf of the Vendor Data Importers whose details are listed in Appendix 4 (as updated from time to time):

Name & Title: _____

Authorised Signature _____

APPENDIX 4 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Name of Data Importing Organisation	Address of Data Importing Organisation	Place of establishment of Data Importing Organisation
Aryaka Networks, Inc.	1800 Gateway Drive, Suite 200, San Mateo, CA, USA 94404	Delaware, USA
Aryaka Networks India Private Limited	Esteem Asrani, 3K, Koramangala Industrial Layout, Sarjapur Main Road Koramangala, Bengaluru, Karnataka 560034	Bangalore, India
Aryaka Networks Singapore Pte. Ltd	38 Beach Road, Level 30-11 South Beach Tower Singapore 189767	Singapore
Aryaka Networks UK Limited	6-9 The Square Stockley Park, Heathrow Hayes, UK UB11 1FW	England

For Customer on behalf of the Customer Data Exporters whose details are listed in Appendix 3 (as updated from time to time):

Name & Title: _____

Authorised Signature _____

For Aryaka Networks, Inc. on behalf of the Vendor Data Importers whose details are listed in Appendix 4 (as updated from time to time):

Name: _____

Authorised Signature _____