



**MASTER SUBSCRIPTION AGREEMENT (MSA)
(Online)**

This Master Subscription Agreement ("Agreement") is entered into by and between Customer and Aryaka Networks, Inc. ("Aryaka"), having its place of business at 1800 Gateway Drive, Suite 200, San Mateo, California 94404, which are hereinafter referred to collectively as the "Parties" and individually as the "Party".

From time to time, Aryaka may modify the terms of this Agreement by posting a new version of the Agreement on the Aryaka website without notice to Customer. Customer's continued use of the Services after the publication of the amended Agreement shall be deemed as acceptance of the amended Agreement.

In consideration of the mutual covenants herein contained, the Parties agree that the following terms shall govern any Aryaka Services provided or to be provided to Customer as set forth in an ordering document ("Order Form").

1. Customer and Aryaka agree as follows: DEFINITIONS.

For purposes of this Agreement in addition to other defined terms set forth in the Order Form and herein, the following terms shall have the meanings described below:

- (a) "24x7x365" means twenty-four (24) hours per day, seven (7) days per week.
- (b) "Activate" ("Activated and Activation" as grammatically appropriate) means when Aryaka has completed the connectivity of the Services and the Services are ready for use by the Customer regardless of whether Customer is actually utilizing the Services.
- (c) "Affiliate" of an entity means any other entity, which directly or indirectly controls, is controlled by, or is under common control with such entity. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- (d) "Agreement" means this Agreement, including all exhibits and attachments hereto.
- (e) "ANAP" means the Aryaka Network Access Point (ANAP), a device that provides bandwidth optimization, SD-WAN capabilities, and application acceleration over a WAN link that is connected to an Aryaka Network point of presence (AN POP or Aryaka POP).
- (f) "Aryaka Equipment" means any hardware and equipment provided by Aryaka to Customer, which enables Customer to access the Aryaka Network, including but not limited to the ANAP-1000, ANAP-1500, ANAP-2000, ANAP-2500, ANAP-3000, including ANAPs with "High Availability" (HA), and an Aryaka Router, if provided by Aryaka as part of the access mechanism to the Aryaka Network.
- (g) "Aryaka Network" means Aryaka's geographically distributed network of proprietary servers and software.
- (h) "Bursting" allows Customer to use bandwidth greater than the provisioned bandwidth capacity.
- (i) "Confidential Information" has the meaning set forth in [Section 7.1](#) below.
- (j) "Customer Data" means all electronic data or information submitted by Customer to the Aryaka Network.
- (k) "Damages" means any expenses, damages, judgments, and costs of any nature (including without limitation fees and reasonable attorneys' fees), whether or not any Claim actually and formally is commenced.
- (l) "Deployment Window" means a predefined window for provisioning timeframe, as mutually agreed to by Aryaka and Customer, and set forth on the Order Form.
- (m) "Disclosing Party" has the meaning set forth in [Section 7.1](#) below.

- (n) “Force Majeure” means circumstances beyond a Party’s reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving the effected Party’s employees) or delay in third party services.
- (o) “Initial Term” means the initial length of term for Services as specified in the Order Form.
- (p) “Last Mile Circuit” means the physical link (wired or wireless) that is used to connect Customer’s premise to the closest Aryaka POP. The physical link may be a direct Layer-2 connection or an Internet Circuit. The type of the Last Mile Circuit will be specified in the Order Form.
- (q) “Link Monitoring” means the monitoring by Aryaka of Customer’s Last Mile Circuit link to be conducted on a 24x7x365 basis, including reports and support as specified in the Services Description and Terms found at www.aryaka.com/services-terms/. Link Monitoring shall be included with the Last Mile Circuit if and as specified in the Order Form together with a letter of authorization from Customer.
- (r) “Malicious Code” means viruses, worms, time bombs, Trojan Horses and other harmful or malicious code, files, scripts, agents or programs that are intended to cause harm or disruption.
- (s) “Marks” means all registered and common law trademarks, trademark registrations, service marks, trade names, copyrights, licenses, designs, logos, marketing and promotion materials and all intellectual property rights relating thereto, and any similar rights owned, used by or licensed to a party, and any applications currently pending therefor.
- (t) “MRC” means monthly recurring cost as set forth in an Order Form.
- (u) “NOC” means network operating center.
- (v) “Optimized Capacity” means subscribed bandwidth for all the sites per region.
- (w) “Order Form” means the ordering document for purchases hereunder, including addenda thereto, that are entered into between the Parties from time to time. Each Order Form issued under this Agreement shall become effective as set forth in the Order Form. This Agreement shall be deemed incorporated into the Order Form by reference. In the event of conflict between the terms of this Agreement and the terms of an Order Form, the terms of the Order Form shall control.
- (x) “OTC” means one-time cost as set forth in an Order Form.
- (y) “Oversubscription” means a Customer has a temporary need to go beyond its subscription units as set forth in the Order Form. Units may be bandwidth, sites, Last Mile Management, and/or High Availability ANAPs.
- (z) “POP” means point of presence.
- (aa) “Receiving Party” has the meaning set forth in Section 7.1 below.
- (bb) “RFS Date” means the date in which a last mile link has been Activated.
- (cc) “SD-WAN” means software-defined wide area network.
- (dd) “Services” means all services provided by Aryaka and any and all Aryaka downloaded materials (including but not limited to Java Applets, soft-ANAP, and browser/User Interface components), user guides, code, user interface passwords, accessories and other documents, that are purchased by Customer or its Affiliates under a fully executed Order Form, including associated offline components as may be further described in an Order Form or in the Services Description and Terms found at www.aryaka.com/services-terms/. Third party products provided or made available in connection with Services may be subject to third party or other additional terms, as referenced in the Order Form or Service Descriptions and Terms.
- (ee) “Services Term” (may be referred to as “Subscription Term”) means the term for the purchased Services, as set forth in the Order Form.



- (ff) “Third Party Content” means third party software, technology, services, data, and other content or material that Customer or its Affiliates may have access to or use through, in conjunction with, or as part of the Services.
- (gg) “Unit Price” means the per unit price for bandwidth, site licensing, HA ANAPs, and Links, as set forth in an Order Form.
- (hh) “Users” means individuals who are authorized by Customer to use the Services, or who have been supplied user identifications and passwords by Customer (or by Aryaka at Customer’s request). Users may include but are not limited to Customer’s or its Affiliates’ employees, consultants, contractors and agents; or third parties with whom Customer transacts business or that use its corporate Wide Area Network.

2. SERVICES, RENEWALS, END OF LIFE.

2.1 Services. Aryaka shall make the Services available to Customer pursuant to this Agreement and the relevant Order Form during the Services Term set forth in each Order Form. Aryaka will provide such Services in accordance with the Service Level Agreement (“SLA”) found at <https://www.aryaka.com/aryaka-service-level-agreement>. Aryaka reserves the right to update these from time to time without notice. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Aryaka regarding future functionality or features.

2.2 End of Life. It is understood that Aryaka may, in its discretion, at certain times elect to discontinue production, distribution and support of elements or versions of the Aryaka Services, and thereby designate such elements or versions as end of life (“EOL”). In the event that Aryaka elects to announce EOL for any such elements or versions, Aryaka will provide ninety (90) days prior written notice, which may be by direct notice or posting on Aryaka’s website. During the ninety-day notice period Customer may continue exercising all of its rights set forth in this Agreement with respect to such EOL Services. Aryaka (either directly or through a third party contractor selected by Aryaka) will continue providing support for the last commercially available version of such EOL Services in accordance with Aryaka’s applicable support terms for a period of one (1) year from the announced EOL date or upon termination of the related Order Form (whichever is earlier), provided that Customers continue to pay applicable license and support fees, if any, during the wind down period for the support described above.

3. USE OF SERVICES.

3.1 Customer’s Responsibilities.

(a) Customer shall (i) be responsible for compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of Customer’s Data and of the means by which Customer acquired its Customer Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and Aryaka Equipment, and notify Aryaka promptly of any such unauthorized access or use, and (iv) be responsible for keeping Aryaka apprised of any change in billing and contact information.

(b) Customer shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) sell, resell, rent or lease the Services or provide Services through a service bureau or the like, (iii) use the Services to store, transmit, use or access as follows: infringing, libelous, or otherwise unlawful or tortious material, material in violation of third-party privacy rights, Malicious Code, (iv) create derivate works based on the Services, copy, frame or mirror any part or content of the Services, other than copying or framing on Customer’s own intranets or otherwise for Customer’s own internal business purposes or for purposes consistent with this



Agreement, reverse engineer the Services, or access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services, (v) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, (vi) attempt to gain unauthorized access to the Services or their related systems or networks (vii) publish or distribute information about Aryaka's benchmarks, prices, or other data collected outside Customer's organization without express prior written permission from Aryaka, (viii) connect or otherwise use the Aryaka Network without also using the Services and the Aryaka Equipment.

4. **PUBLICITY AND TRADEMARKS.** Subject to Customer's logo and trademark usage guide, Customer hereby permits Aryaka to identify Customer as a customer of Aryaka by displaying Customer's logo. Subject to prior approval of both Parties, within six (6) months of the date of this Agreement, Customer agrees to participate in a joint press release with Aryaka announcing Customer's use of Aryaka's Services, subject to each Party's logo and trademark usage guide.

5. **FEES AND PAYMENT FOR SERVICES.**

5.1 Fees. In consideration of all Services provided in accordance with the terms hereof and the applicable Order Form, Customer shall pay all fees invoiced as specified in all Order Forms. Except as otherwise specified herein or in an Order Form, (a) fees are quoted and payable in United States dollars (b) fees are based on Services purchased under the Order Form, **(c) payment obligations are noncancelable and fees paid are non-refundable in advance, as further provided for in the applicable Order Form.**

5.2 Overdue Charges. If any charges are not received from Customer by the due date, then at Aryaka's discretion, such charges may accrue late interest at the rate of one and one-half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

5.3 Suspension of Services and Acceleration. If any undisputed amount owing by Customer under this or any other agreement for Aryaka's Services is more than thirty (30) days overdue, Aryaka may, without limiting Aryaka's other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and/or suspend Aryaka's Services to Customer until such amounts are paid in full. Aryaka may require immediate return of Aryaka Equipment upon such suspension of Services. If Aryaka Equipment is not returned to Aryaka within sixty (60) days from suspension and/or termination of the Services, Customer will be charged \$1,000 per equipment item provided to Customer.

5.4 Taxes. Unless otherwise stated in an Order Form, Aryaka's Services do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If Aryaka has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer.

6 **PROPRIETARY RIGHTS.**



- 6.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, Aryaka reserves all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
- 6.2 Ownership of Customer Data. As between Customer and Aryaka, Customer exclusively owns all rights, title and interest in and to all of Customer Data.
- 6.3 Ownership of Aryaka Equipment. As between Customer and Aryaka, Aryaka exclusively owns all rights, title and interest in and to all Aryaka Equipment that Aryaka provides to Customer for the purpose of providing Services pursuant to the terms of this Agreement. For clarity, Aryaka retains the right to the return by Customer of all such Aryaka Equipment pursuant to the terms set forth in Section 11.3.

7 CONFIDENTIALITY AND DATA PROTECTION.

- 7.1 Definition of Confidential Information. As used herein, “Confidential Information” means all confidential information disclosed by a Party (“Disclosing Party”) to the other Party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer’s Confidential Information shall include but not be limited to Customer’s Data or similar data of its Affiliates’; Aryaka’s Confidential Information shall include but is not limited to the Services; and Confidential Information of each Party shall include but not be limited to the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. However, Confidential Information (other than Customer’s Data) shall not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.
- 7.2 Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, (a) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (b) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have entered into or are otherwise bound by confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.
- 7.3 Protection of Customer’s Data. Without limiting the above or anything else in this Agreement, Aryaka shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer’s Data in or on the Aryaka Network, all subject to and as set forth in the Data Protection Agreement (“DPA”) between the parties, which may be found at www.aryaka.com/data-protection-addendum/, which is incorporated herein by this reference and made a part of this Agreement.



Although the Data Protection Agreement is incorporated herein by this reference, the parties agree to provide the information as required by the applicable data privacy laws as set forth in the Data Protection Agreement. Aryaka shall keep in place with respect to the Aryaka Network and the NOC network security as commercially reasonable and reasonably necessary to monitor and protect against unauthorized access to Customer Data while on or within the Aryaka Network.

7.4 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law, regulation or treaty to do so, provided the Receiving Party gives the Disclosing Party prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

8 WARRANTIES AND DISCLAIMERS.

8.1 Aryaka's Warranties. Aryaka's performance warranties for the Services are as specifically set forth in the SLA. Customer's sole remedy for any breach of such warranties are the applicable service level credits contained in the SLA.

8.2 Customer's Warranties. Customer warrants that its use of the Services will comply with all applicable laws, including, but not limited to, any regulations relating to communications services promulgated by the Federal Communications Commission, state authorities, or foreign jurisdictions.

8.3 Mutual Warranties. Each Party represents and warrants that (a) it has the legal power and authority to enter into this Agreement, and (b) it will not transmit to the other Party any Malicious Code.

8.4 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN (INCLUDING THIS AGREEMENT AND ANY EXHIBITS HERETO AND THE ORDER FORM), NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. ANY THIRD PARTY CONTENT PROVIDED OR MADE AVAILABLE BY OR THROUGH ARYAKA OR ITS AFFILIATES IS PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. CUSTOMER ACKNOWLEDGES AND AGREES THAT ARYAKA IS NOT RESPONSIBLE FOR THIRD PARTY CONTENT. ARYAKA DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT.

9 MUTUAL INDEMNIFICATION.

9.1 Indemnification by Aryaka. Aryaka shall indemnify, defend and hold Customer harmless against any claim, demand, suit, or proceeding ("Claim") made or brought against Customer by a third party that the use of the Services as authorized under this Agreement infringes or misappropriates the intellectual property rights in the United States of a third party, and shall pay or reimburse Customer for any Damages, losses or expenses, including reasonable attorney's fees ("Losses") finally awarded against Customer in connection with any such Claim; provided, that Customer (a) promptly give Aryaka written notice of the Claim; (b) give Aryaka sole control of the defense and settlement of the Claim (provided that Aryaka may not settle any Claim without Customer's



prior written consent unless the settlement unconditionally releases Customer of all liability); and (c) provide to Aryaka all reasonable assistance, at Aryaka's expense, and provided further that the Claim or Loss was not (i) covered by Customer's indemnification in Section 9.2 below, (ii) attributable to a combination of Services with other products, data or material not provided by Aryaka, (iii) attributable to Services that were altered or used outside of the scope of use identified in the Services Description and Terms, (iv) attributable to use of a version of the Services which has been superseded, if the Claim could have been avoided by using an unaltered current version of the Services made available to Customer, or (v) attributable to Third Party Content.

9.2 Indemnification by Customer. Customer shall indemnify, defend and hold Aryaka harmless against any Claim or Loss made or brought against or incurred by Aryaka or its Affiliates relating to any allegation or threatened allegation that: (i) Customer breached any provision of this Agreement, (ii) Customer's negligence or willful misconduct, or (iii) Customer's Data, or Customer's use of the Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party, or violates applicable laws, Aryaka in connection with any such Claim; provided, that Aryaka (a) promptly give Customer written notice of the Claim; (b) give Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim without Aryaka's prior written consent (unless the settlement unconditionally releases Aryaka of all liability)); and (c) provide to Customer all reasonable assistance, at Customer's expense.

9.3 Exclusive Remedy. This Section 9 (Mutual Indemnification) states the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any type of Claim described in this Section 9. This Section 9 shall survive termination or expiration of this Agreement.

10 LIMITATION OF LIABILITY.

10.1 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER OR, WITH RESPECT TO EACH SINGLE INCIDENT, THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR SERVICES) OR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 (MUTUAL INDEMNIFICATION), OR BREACH BY CUSTOMER OF SECTION 6 (PROPRIETARY RIGHTS) OR SECTION 7 (CONFIDENTIALITY AND DATA PROTECTION).

10.2 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR SERVICES) OR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 (MUTUAL INDEMNIFICATION) OR BREACH BY CUSTOMER OF SECTION 6 (PROPRIETARY RIGHTS) OR SECTION 7 (CONFIDENTIALITY AND DATA PROTECTION).

11 TERM AND TERMINATION.

11.1 Term of Agreement. This Agreement commences on the Effective Date and continues until the Parties agree to terminate, upon thirty (30) days written notice to the other Party, so long as all Order Forms granted in accordance with this Agreement have previously been terminated.

11.2 Termination for Cause. Either Party may terminate this Agreement for cause: (a) upon thirty (30) days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (b) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, except if any such petition is involuntary and is dismissed within sixty (60) days.

11.3 Last Mile Circuit. If Customer terminates the Last Mile Circuit before the end of the initial term, as set forth in the Order Form, or any Renewal Period, in addition to all early termination fees to be remitted to Aryaka, Customer will pay to Aryaka one hundred percent (100%) of the costs and expenses Aryaka incurs with the third-party service providers for early termination of the Last Mile Circuit.

11.4 Return of Aryaka Equipment. Customer agrees to return all Aryaka Equipment within sixty (60) business days after the termination of this Agreement pursuant to pre-paid shipping instructions to be provided by Aryaka. In the event that Customer does not return all items of such Aryaka Equipment, Customer will be charged \$1,000 per item of Aryaka equipment if not returned to Aryaka within sixty (60) days from the termination of the Services.

11.5 Surviving Provisions. Section 5 (Fees and Payment for Services), 6 (Proprietary Rights), 7 (Confidentiality), 8 (Warranties and Disclaimers), 9 (Mutual Indemnification), 10 (Limitation of Liability), 13 (Notices, Governing Law and Jurisdiction, Jury Trial) and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

12 ANTI-BRIBERY LAWS. Each Party (including its officers, directors, employees, agents and any person under its control) shall comply with, and shall require its contractors, subcontractors and any contingent workers to comply with, any and all applicable anti-corruption laws and regulations, including, but not limited to, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010. It is the intent of the parties hereto that no payments, offers or transfers of value shall be made or received which have the purpose or effect of public or commercial bribery, acceptance or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining or retaining business or directing business to any person or entity. In addition, each Party warrants to the other that none of its officers, directors, employees, agents, or representatives is an official or employee of the government of a territory or of any department or instrumentality of such government, nor is any of them an officer of a political party or candidate for political office who will share, directly or indirectly, any part of the sums due hereunder. Both parties represent and warrant that each will conduct its business operations hereunder in accordance with all applicable U.S. and foreign laws, and regulations, and will not attempt to directly or indirectly improperly influence the sale by payments or other actions contrary to law or regulation.

13 NOTICES, GOVERNING LAW AND JURISDICTION, JURY TRIAL.

13.1 Notices. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (a) personal delivery or (b) written verification of receipt by established overnight courier, or (c) upon delivery if sent by US certified mail prepaid return receipt. Notices to Aryaka shall be addressed to: Aryaka Networks, Inc., Attn: Legal, 1800 Gateway Drive, San Mateo, California 94404 USA. Notices to Customer shall be addressed to: _____, and in the case of billing-related notices, addressed to: _____.

13.2 Governing Law and Jurisdiction. This Agreement shall be governed under California law without regard to conflicts of law principles, and the parties agree to submit to the exclusive jurisdiction and venue of the applicable state courts in San Mateo County, California, or federal courts of the Northern District of California. ***The Parties expressly disclaim application of the UN Convention on the International Sale of Goods.*** Aryaka shall be entitled to prompt reimbursement by Customer of all costs and expenses Aryaka incurs, including its reasonable attorneys' fees, in the event of any investigation, action, or threat thereof, relating to a breach or alleged breach by Customer of this Agreement.

13.3 Waiver of Jury Trial. Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

14 GENERAL PROVISIONS.

14.1 Export Compliance. Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (a) each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (b) Customer shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.

14.2 Force Majeure. Except for payment obligations under this Agreement, neither Party will be liable to the other for failure or delay in performing its obligations under this Agreement to the extent such failure or delay is due to Force Majeure.

14.3 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

14.4 No Third-Party Beneficiaries. There are no third-party beneficiaries of this Agreement.

14.5 Waiver and Cumulative Remedies. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

14.6 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the



original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

- 14.7 Assignment. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld). Notwithstanding the foregoing, either Party may assign this Agreement in its entirety (including all Order Forms), without consent of the other Party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other Party. A Party's remedy for any purported assignment by the other Party in breach of this paragraph shall be, at the non-assigning Party's election, either to void this Agreement or termination of this Agreement immediately upon written notice to the assigning Party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
- 14.8 Entire Agreement. This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire, final, complete and exclusive agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by both Parties hereto; provided that Aryaka may unilaterally update the Services Descriptions and Terms and SLA, and availability of Third Party Content from time to time. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer's purchase order or other order acknowledgment, documentation or the like shall be incorporated into or form any part of this Agreement, and all such terms or conditions are hereby rejected by Aryaka and shall be null and void.