ngena Service Terms for End Customers
(Direct Contract Model)

These ngena Service Terms for End Customers (Direct Contract Model) (the **"Agreement"**) apply between

ngena USA LLC, a limited liability company under United States laws, with its business address at 1601 29th St. Suite 1292 #1189 Boulder, CO 80301 (**"ngena"**)

and a company which has signed the ngena Customer Form with the reference to this Agreement, upon ngena's written approval of such ngena Customer Form (**"Customer"**).

(ngena and Customer hereinafter referred to each as a **"Party"** and together as **"Parties"**).

Background

ngena provides and operates a global service network for rendering secure connectivity services and related services. ngena's services are composed from services provided by ngena itself and services sourced by ngena from other providers.

Customer intends to purchase ngena's services.

This Agreement sets forth the rights and obligations of the Parties in relation to services to be provided by ngena to Customer.

1. Definitions

1.1   In this Agreement the following terms have the following meaning:

1.1.1   "**Affiliate**" means, with respect to each Party, any other company, partnership or other legal entity directly or indirectly controlling, directly or indirectly controlled by, or under direct or indirect common control with, such Party, or if such other entity is a partnership, any general partner of such Party or a person or entity controlling any such general partner. For purposes of this definition, "control" (including "controlled by" and "under common control with") means the power, directly or indirectly, to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise.

1.1.2   "**CPE**" means customer premise equipment, including equipment needed for the purpose of establishing internet access and other connectivity, equipment needed for the purpose of enabling the security functionalities as well as their accessories.

1.1.3   "**Customer**" means the entity identified in the preamble.

1.1.4   "**Customer Network**" means the network of Customer based on services provided by ngena.

1.1.5   "**Customer Site**" means each specific location of Customer, at which the ngena Service should be provided and the CPE installed in accordance with the Individual Contract.

1.1.6   "**Individual Contract**" means a binding agreement between the Parties on the delivery of an individually defined ngena Service for (i) each specific Customer Site (in case of location-based services), (ii) overarching service for a Customer Network, or (iii) other individually defined service.

1.1.7   "**ngena Services**" means the connectivity, platform and value-added services ordered by Customer from ngena.

1.1.8   "**Portal**" means the online portal operated by ngena and/or its Affiliates and made accessible to Customer which supports commercial and contractual communication related to the ngena Services and other features as provided and updated by ngena from time to time.

1.1.9   "**Provider**" means a business partner of ngena providing the underlying telecommunication and other related services to ngena, on which the ngena Services to Customer are partially based.

1.1.10   "**Representative**" means the company authorized by Customer in writing to perform relationship management with ngena on behalf of Customer and process any change requests, trouble tickets and other similar communication of Customer related to the Services.

1.1.11   "**Service CPE**" means customer premise equipment needed for the purpose of enabling the SD-WAN functionalities.

1.1.12   "**Service Order**" means the summary of all relevant details relating to a specific ngena Service such as the duration, location, price, renewal conditions and service level commitments, as applicable, which is usually provided by ngena in the Portal.

1.2   Any reference to "Section" or "Annex" means the reference to the respective section or annex of this Agreement.

2. Subject Matter

2.1 Customer is entitled to request and order from ngena, and, if ngena accepts such order, ngena is obliged to offer and provide to Customer, the ngena Services.

2.2 ngena shall provide the ngena Services ordered by Customer in accordance with this Agreement and the applicable Service Order, with the skill and care that is customary in the industry.

2.3 Customer shall:

2.3.1 cooperate with ngena in all matters relating to the ngena Services and appoint a project manager as the main contact person for all questions in relation to the Agreement;

2.3.2 provide in a timely manner such access to Customer's data, systems or other facilities as necessary for the provision of the ngena Services;

2.3.3 provide in a timely manner such information as necessary for the provision of the ngena Services.

3. Communication and Helpdesks

3.1 The Parties shall use the Portal for operational communication and contracting under this Agreement including such functions as solution design, ordering, delivery processes, billing, reporting, ticketing and repair. The Parties may resort to the helpdesks or other means only if communication via the Portal is not fit to satisfactorily resolve the matter.

3.2 Customer acknowledges and agrees ngena does not offer 1st level support for the ngena Services and it is the responsibility of Customer to arrange 1st level support without the involvement of ngena. ngena shall provide the second level helpdesk support to Customer.

3.3 In case Customer appoints a Representative, all operational communication in relation to the ngena Services will be performed via a Representative. Customer may contact ngena directly only if it was not possible to satisfactory resolve the matter with Representative.

3.4 The Parties agree to communicate in the English language and each Party shall ensure that all personnel engaged in the communication of the Parties is in sufficient command of the English language.

4. Ordering Process

4.1 Budgetary Quote. Customer may start the ordering process by selecting relevant ngena Services in the Portal or by other means agreed by the Parties. At this stage, ngena will provide preliminary non-binding prices for the selected ngena Services as a reference.

4.2 Binding Quote. Upon request of Customer, ngena shall provide the binding quote for the selected ngena Services, meaning that the price indicated in the binding quote will not change during the indicated validity period of the binding quote.

4.3 Binding Order. During the validity period of the binding quote, Customer may submit a binding order for the selected ngena Services via the Portal or by other means agreed by the Parties.

4.4 Order Acceptance. Upon the receipt of Customer's order, ngena will process the order involving the respective provider of the underlying services. ngena intends to act in good faith and accept and fulfill Customer's orders to the extent feasible, and propose alternatives in cases where fulfillment of Customer's orders as issued are not feasible; provided, that, ngena reserves the right, in its sole discretion, to reject an order. ngena will communicate acceptance or rejection of orders to Customer via the Portal or by other means.

4.5 Individual Contract. Upon acceptance of Customer's order by ngena, one Individual Contract comes into place between ngena and Customer for (i) each ngena Service for a specific location (in case of location-based services), and/or (ii) each overarching or individually defined ngena Service.

For each Individual Contract:
- the parameters of the specific ngena Service are contained in the respective Service Order; and
- the rights and obligations of the Parties are governed by this Agreement and its annexes.

4.6 Service Level Credits. Service level credits apply only if and to the extent the specific ngena Service is secured by service level credits in accordance with the respective Service Order.

4.7 If ngena is unable to provide an individual ngena Service after the acceptance of Customer's order, ngena shall use commercially reasonable efforts to offer and provide an alternative solution which comes reasonably close to such an ngena Service. However, Customer is not obliged to accept such an alternative solution.

5. Prices and Taxes

5.1 The Parties agree to use the currency indicated in on the first page for all quotes, transactions and invoices under this Agreement.

5.2   ngena will quote all prices net of any and all "**Duties**" (meaning value added tax, any comparable sales or service tax or similar tax, and any and all taxes, levies, duties, customs, surcharges etc. based on the supply of the services hereunder levied by any authority, including specific local charges, such as the Brazilian surcharge for foreign services delivered to Brazilian customers or the federal universal service fund surcharge on telecommunication services applied in the US). Customer shall pay to ngena the indicated prices plus applicable Duties, if any.

5.3   For the avoidance of doubt, the net prices quoted by ngena already comprise Duties applicable to transactions between ngena and other providers in relation to services sourced by ngena from those providers.

5.4   In case ngena has not invoiced any Duty, but any authority subsequently requires payment of any such Duty, Customer is liable towards ngena or the respective authority for such additional Duty

5.5   In case any withholding Duties apply to any payment for the ngena Services under this Agreement, Customer shall increase the respective payment by adding to the invoiced amount such an amount as required to ensure that after deduction of such withholding Duties, ngena receives, and is entitled to retain, the complete invoiced amount. In case Customer has not withheld any such Duty, but any authority subsequently requires payment of any such withholding Duty, Customer is liable towards ngena or the respective authority for such additional withholding Duty.

5.6   The Parties shall use commercially reasonable efforts to ensure that any Duties are minimized to the extent possible under applicable laws and each Party shall deliver to another Party all documents and information reasonably requested by another Party and required to apply for Duty exemption or limitation.

5.7   Claims under this Section 5 become time-barred upon the later of (i) expiry of the applicable statute of limitation, (ii) expiry of six months after the final and binding assessment of the Duty after which neither Party nor any authority has a right to demand or effect a modification of the assessment or demand or make a new assessment of the Duty, and (iii) expiry of six months after payment of the respective amount to the respective authority.

6.   Billing and Payment

6.1   ngena shall issue one invoice for all ngena Services delivered to Customer in each calendar month after the end of that calendar month via email and/or by other means agreed by the Parties.

6.2   In the calculation of monthly recurring charges for uncompleted calendar months, one day of service shall be calculated as 1/30 of the agreed monthly recurring charge.

6.3   Customer shall make the payment within thirty (30) days after the date of the invoice (the "**Customer Due Date**"). The payment shall be considered made on the day when the charges arrive on ngena's account.

6.4   If the invoiced amount is not credited to ngena's account latest on the Customer Due Date, Customer is automatically in default without any reminder being necessary. ngena may charge interest on any undisputed amount from the day after the Customer Due Date until the date such undisputed amount is credited, based on the annual interest rate that is the lesser of (i) 12 percent above the European Central Bank´s interest rate for the main refinancing operations (MRO) and (ii) the maximum amount permitted under applicable laws.

6.5   Each Party shall bear its own bank charges. Customer shall also bear any additional bank charges (e.g. intermediary bank charges) but not the charges of ngena's bank.

6.6   If Customer has objections against an invoice, Customer shall raise such before the Customer Due Date. An invoice is deemed finally accepted and any objections are excluded if and to the extent Customer has not objected before the Customer Due Date. Customer shall make payments for undisputed portions of an invoice latest on the Customer Due Date with no right to retain undisputed amounts.

7.   IP Rights and Trademarks

7.1   Each Party remains the owner of any "**IP Rights**" owned or created by that Party (meaning industrial and/or intellectual property rights including but not limited to copyrights, rights of use in accordance with applicable copyright legislation, economic exploitation rights in accordance with applicable copyright legislation, patents, utility models, trademarks, registered designs, brands, and/or rights to know-how). Except as explicitly mentioned in this Agreement, this Agreement does not affect the ownership of such IP Rights and no rights are granted to the other Party with respect thereto.

7.2   ngena Trademarks. ngena holds certain trademarks as communicated to Customer and updated by ngena from time to time in the Portal ("**ngena Trademarks**"). ngena grants Customer, for the duration of this Agreement, a royalty-free, non-exclusive and worldwide right to use the ngena Trademarks for the purposes of promotion of and referring to the ngena Services, but not for any other purpose. Customer may use the ngena Trademarks only in the form shown in the style guide provided by ngena via the Portal in its respective latest form, or as approved by ngena by other means.

7.3   Customer Trademarks. Customer holds certain trademarks as communicated to ngena and updated by Customer from time to time ("**Customer Trademarks**"). Customer grants to ngena, for the duration of this Agreement, a royalty-free, non-exclusive and worldwide right to use the Customer Trademarks after explicit prior approval (email sufficient):

7.3.1   on ngena's website (ngena.net) when referring to ngena's business partners, together with the logos of other ngena's business partners;

7.3.2   in other marketing materials, strictly for the purpose of referring to Customer as ngena's business partner, including in the context of promoting of ngena Services.

ngena shall follow Customer's instructions regarding the form of Customer Trademark use, if any (for example, the style guide provided by Customer to ngena).

Customer will not object to the use of marketing materials created by ngena in accordance with Section 7.3 by ngena's business partners, which have signed a written agreement with ngena, for the purpose of referring to Customer as ngena's business partner, including in the context of promoting of ngena Services.

7.4   Neither Party makes any representations or warranties of any kind respecting its trademarks, including the validity in any country, and each Party expressly disclaims all warranties that might otherwise be implied by applicable law.

8.   Confidentiality

8.1   Each Party (the "**Disclosing Party**") may, in its absolute discretion, provide "**Confidential Information**" to the other Party (the "**Receiving Party**"), meaning any information relating to the Disclosing Party, its Affiliates, partners and customers, and its current or future products and services including, but not limited to, all legal, corporate, commercial, technical and development matters, as well as contract terms, launch dates, databases and strategies. Confidential Information includes information which is not specifically labelled or identified as "confidential" by the Disclosing Party and it may be provided in any form (including, but not limited to, written, oral, visual and electronic form); Confidential Information includes information disclosed by the Disclosing Party's Affiliate acting under the same brand name.

8.2   With respect to any Confidential Information the Receiving Party shall:

8.2.1   use the Confidential Information only for the purpose of and in accordance with this Agreement;

8.2.2   not distribute, disclose or otherwise disseminate the Confidential Information;

8.2.3   take all possible measures to prevent distribution, disclosure or dissemination of the Confidential Information; and

8.2.4   ensure secure storage of the Confidential Information at all times.

8.3   The Receiving Party may disclose the Confidential Information on a strict need-to-know basis to its employees, agents, advisors, Affiliates and subcontractors involved in the provision or receipt of the services provided that such employees, agents, advisors, Affiliates and subcontractors have accepted obligations of confidentiality similar to those contained in this Agreement. The Receiving Party remains liable for any unauthorized disclosure of Confidential Information by such employees, agents, advisors, Affiliates and subcontractors as if it were a disclosure by the Receiving Party itself.

8.4   The obligation of confidentiality shall not apply to:

8.4.1   Confidential Information, in relation of which the Disclosing Party has provided prior written consent for such information to be disclosed to others;

8.4.2   Confidential Information which is or becomes generally available to public other than as a result of breach of this Agreement, as evidenced by generally available materials;

8.4.3   Confidential Information which was already in possession of the Receiving Party prior to disclosure under this Agreement, as evidenced by its prior written records;

8.4.4   Confidential Information which is or has been disclosed to the Receiving Party by a third party, not employed by or otherwise affiliated with the Disclosing Party and having a lawful right to make the disclosure;

8.4.5   Confidential Information which is independently developed by Receiving Party's personnel having no access to the Confidential Information disclosed under this Agreement and provided that no Confidential Information disclosed under this Agreement has been used directly or indirectly for such development; and

8.4.6   Confidential Information which is requested to be disclosed by a court or governmental agency having competent jurisdiction in respect of the required disclosure, provided that notice of such disclosure is given to the Disclosing Party as soon as reasonably doable and, if possible, before a disclosure takes place.

8.5   If a Party becomes aware, or has reason to believe, that there has been an unauthorized disclosure or use of the Confidential Information, such Party shall immediately notify the other Party. In this case the Party that discovered the unauthorized use of the Confidential Information shall take any and all actions necessary to protect the Confidential Information including such actions as may reasonably be requested by the other Party.

8.6   Upon termination of this Agreement or sooner upon the Disclosing Party´s written request, which may be made at any time and without stating any reason, the Receiving Party shall (a) cease all use of the Confidential Information; (b) delete all Confidential Information stored in a non-tangible form (for example, in electronic format) from the respective medium; and (c) destroy or, upon request of the Disclosing Party, return to the Disclosing Party all tangible items which contain or manifest the Confidential Information, unless requested otherwise by law. The Parties acknowledge, however, that Confidential Information provided in electronic format may be automatically copied by the Receiving Party as part of its back-up procedures and if such copies cannot be destroyed or returned to the Disclosing Party; in this case the Receiving Party shall ensure that such copies are not accessed or used for any purpose.

The Receiving Party shall provide a written confirmation that all Confidential Information has been deleted, destroyed and/or returned upon request of the Disclosing Party.

8.7   The Confidential Information shall remain the property of the Party it originally belongs to. Neither this Agreement nor the disclosure of the Confidential Information constitutes or implies any intention by any of the Parties to grant a licence over or confer any rights in the Confidential Information to the other Party.

8.8   The obligations of confidentiality arising from this Section 8 shall continue for a period of five years after the Agreement has ended.

9.   Acceptable Use Policy

9.1   Customer shall ensure that the ngena Services and Portal are not used:

9.1.1   for jeopardizing the security and stability of the network; in particular gaining unauthorised access to any equipment, servers or networks, penetrating data networks or transmitting any viruses, trojans or other malware;

9.1.2   for the storage, publication, distribution or transmission of any material which is defamatory, offensive or abusive, of an obscene or menacing character, spamming or otherwise unlawful;

9.1.3   in a manner which constitutes a violation or infringement of the rights of any third party (including, but not limited to, intellectual property rights, privacy or confidentiality rights);

9.1.4   in any other manner which constitutes a violation of applicable laws.

9.2   Customer shall ensure that any software provided by ngena as part of the ngena Services is not:

9.2.1   sold, transferred, sublicensed or assigned to any other person or entity except as agreed with ngena in the Individual Contract and is used only on a device, whether physical or virtual, which is provided by ngena under the Individual Contract;

9.2.2   modified, adapted, reverse engineered, decompiled, decrypted, disassembled, nor otherwise becomes subject to attempt to derive the source code; and that product identification, intellectual property notices or other marks are not removed, modified or concealed.

9.3   Customer shall comply with the End User License Agreement ("EULA") of providers of the underlying technology, in particular, in case of ordering of the ngena Services based on Cisco/Meraki technology, the EULA of Cisco Systems, Inc. available at http://www.cisco.com/go/eula, in case of ordering of the ngena Services based on Fortinet technology, the EULA of Fortinet available at http://www.fortinet.com/doc/legal/EULA.pdf and in case of other technology providers, their respective EULAs as indicated by ngena prior to ordering.

10.   User Accounts

10.1   To enable Customer to place orders and communicate with ngena via the Portal, ngena may allow access to the Portal to persons nominated by Customer as its **"Authorized Users"** via their personal "**User Accounts**". Customer shall maintain the accuracy of information on the Authorized Users and inform ngena about any changes and replacements of Authorized Users. Customer shall ensure that each User Account is used solely by the respective Authorized User and that login details are not shared with any other person or entity and that the login information for the User Accounts is kept secure at all times. In the event Customer or the Authorized User becomes aware of or reasonably suspect any breach of security, such as an unauthorised access to the User Account by a third party, or any loss, theft or disclosure of the login information, Customer shall immediately notify ngena. Customer shall be responsible for all actions made by Customer's Authorized Users and/or using Customer's User Accounts. ngena shall not be responsible for any activities in the Portal of Customer's Authorized Users and/or using Customer's User Accounts.

11.   Local Country Agreement and Authorization

11.1 <u>Local Country Agreement</u>. The Parties may enter into a separate written local country agreement if required under any mandatory local laws of a specific country. If a local country agreement concluded between the Parties is not sufficient to comply with the local legal requirements, each Party shall use reasonable efforts to procure that its Affiliates and/or subcontractors, as applicable, enter into an additional agreement to enable the receipt and provision of services in the respective country.

11.2 <u>Authorization</u>. In case the provision of the ngena Services in any specific instance requires certain actions, which Customer would like to delegate to ngena to take on its behalf, then Customer shall produce a separate written authorization for the respective action for the purpose of presentation to third parties on ngena's request.

12. Independent Service Provision and Subcontractors

12.1 Each Party is operating, and will continue to operate, for its own account. The relationship under this Agreement is no agency, joint venture, partnership or franchise.

12.2 ngena may involve subcontractors for the provision of the ngena Services but ngena shall be responsible for the performance of the ngena Services under this Agreement.

13. Data Protection and Security

13.1 Each Party shall ensure that its telecommunication and IT systems are adequately protected against unauthorized access and viruses, malware, trojans, worms, backdoors etc., in particular by suitable access controls and firewalls. Each Party shall refrain from any actions which may impair, weaken or evade functions (especially security functions) of the other Party`s telecommunication and IT systems. ngena has no liability or responsibility for quality of service in case of defects of ngena Services caused by unauthorized access, viruses etc. in systems and networks of Customer.

13.2 Each Party shall observe its obligations under all applicable data protection laws, including the applicable European security and data protection laws, and the Data Processing Agreement.

14. Changes and Updates

14.1 <u>Changes to Parameters of the ngena Service</u>. ngena is entitled to modify the parameters of the ngena Services (such as performance parameters, lead times, service levels and prices) from time to time as follows:

14.1.1 ngena may modify the parameters of the ngena Services "**with effect for the future**" (meaning without impact on the then-current term of Individual Contracts, but with effect for any extension of such Individual Contracts) at any time. The changes will be effective for newly ordered Services and for the extension of the existing Individual Contracts.

14.1.2 during the respective then-current term of an Individual Contract, ngena is entitled to modify the parameters of the ngena Service if the provision of the ngena Service with unchanged parameters would result in ngena's non-compliance with applicable laws or any ruling of competent state authorities, to the extent required to ensure ngena's compliance, by providing a written notice to Customer prior to the expected effective date of the changes;

14.1.3 further, during the respective then-current term of a Service, ngena is entitled to modify the underlying delivery parameters of the ngena Service to the extent that such modification does not have an impact on Customer's use of the ngena Service and, in particular, does not require Customer to undertake any substantial adjustments or similar actions because of the modification.

14.2 <u>Urgent Changes</u>. ngena may carry out urgent changes of a ngena Service if and to the extent an urgent change is mandatory (i) for the continued provision of services in line with a customary level of IT and communication security or (ii) due to the change of the applicable regulatory requirements, provided that ngena shall limit impacts on the service to the inevitable minimum and shall use commercially reasonable efforts to restore full conformity with the agreed parameters as quickly as reasonably possible.

14.3 <u>Updates of the Service Terms</u>. ngena may make reasonable amendments to the service terms for specific ngena Services (currently Annex 1) in order to reflect technical, commercial or legal developments (for example, to cover new features or new types of ngena Services) with effect for future (as defined above) in accordance with the following process:

14.3.1 ngena shall inform Customer about the amendments in writing at least 30 days before such amendments come into force;

14.3.2 the amendments shall be binding on Customer if Customer starts or continues using the respective ngena Services (e.g. places new orders or allows the extension of the then-current Individual Contracts for such ngena Services);

14.3.3 the amendments shall not be binding on Customer if Customer does not use the respective ngena Services and raises reasonable objections (providing reasons why the amendments may have a negative effect on Customer and/or enterprise customers) within 14 days after receiving the notice. In that case the Parties shall negotiate in good faith to agree on applicable service terms.

For the avoidance of doubt, any changes to the main body of this Agreement shall be made by mutual agreement of the Parties in writing.

14.4   End of Life. In case a Provider of any component of the ngena Service (e.g. a manufacturer of the CPE) declares the end of life status for a component, ngena may replace such a component to enable the continuation of the ordered ngena Service with an appropriate updated component. In case the end of life status is declared after the Individual Contract for the ngena Service with the use of such a component has been concluded, Partner shall bear the costs of the replacement; otherwise ngena shall bear such costs.

15.   Liability and Indemnity

15.1   Each Party's liability remains unlimited for (i) death and personal injury, (ii) damage caused by intentional or grossly negligent behaviour, and (iii) liability which cannot be excluded and/or limited under applicable laws.

15.2   In respect of liabilities not covered by Section 15.1, the following limitations apply:

15.2.1 If under an Individual Contract service level credits are agreed, such service level credits are Customer's sole and exclusive remedy for defective performance under the relevant Individual Contract. Any exceeding claims for damages are excluded. The aggregate liability of ngena for the defective performance under one Individual Contract for one calendar month is capped at 100% of the agreed recurring monthly charge for the respective Individual Contract.

15.2.2 In addition, the aggregate liability of each Party for all losses and damages is limited to:

−   for damage in connection with one Individual Contract, to 50% of the fees paid by Customer to ngena under such Individual Contract in the preceding twelve months;
−   for damage not related to an Individual Contract nor Customer Network, to 50% of all fees paid by Customer to ngena in the preceding twelve months;

whereas the twelve months period referenced in this Section shall be determined based on the latest event which caused the damage.

15.2.3 Neither Party is liable for special, incidental, consequential or indirect damage, including but not limited to loss of profits or of customers, loss of revenue, loss of contract, loss of goodwill, loss or interruption of company operation, loss of business opportunities, loss of data, damage to reputation, even if the other Party has been advised of the possibility of such damage.

15.2.4 Except for claims for non-payment or claims arising from Section 5, or unless set forth otherwise in this Agreement, claims for damages become time-barred six months after the commencement of the period of limitation, whereas the period of limitation shall commence at the end of the year in which (i) the claim arose and (ii) the obligee obtains knowledge of the circumstances giving rise to the claim, or would have obtained such knowledge without having shown gross negligence.

15.3   Each Party shall notify the other Party of any damage, loss and/or defect without undue delay.

15.4   The provisions of this Section 15 do not affect the duty of Customer to make payments for the ngena Services, for which Customer remains fully liable.

15.5   Indemnity. Each Party shall indemnify the other Party from any claims by third parties arising from or in connection with the indemnifying Party's conduct in connection with the performance or receipt of the ngena Services, which is in breach of this Agreement or applicable laws, however excluding claims for defective performance. The indemnification obligation under this Section 15.5 only applies provided that the indemnified Party (i) promptly notifies the indemnifying Party in writing of the claim, (ii) upon request grants the indemnifying Party the sole control of the defence and/or settlement of the claim, and (iii) fully and timely cooperates and provides all requested authority, information and assistance to the indemnifying Party, at the indemnifying Party`s expense.

15.6   If the contractually intended use of any component of a ngena Service is, or in ngena's opinion is likely to be, enjoined as an infringement or misappropriation of any IP Rights of a third party, Customer's sole and exclusive remedy, and ngena's entire liability shall be, in ngena's discretion, either: (a) to procure for Customer the right to continue to use that component under the terms of the Agreement; (b) replace or modify that component so that it is non-infringing; or, if neither of the foregoing options is commercially reasonable, (c) terminate the affected Individual Contract.

15.7   Unless explicitly mentioned otherwise in this Agreement, the obligation of a Party to pay monetary damages, subject to limitations in this Section 15, shall be the sole and exclusive remedy of the other Party for any claim arising out of or in connection with this Agreement. The Parties acknowledge and agree that the foregoing provisions on liability and indemnity reflect an informed, voluntary allocation between them of the risk associated with this Agreement.

16.   Duration and Termination

16.1   This Agreement shall take effect upon signature by both Parties and continue in effect for an unlimited term, unless terminated according to Sections 16.2 -16.12 below.

16.2   Ordinary Termination of the Agreement. Either Party may terminate this Agreement by providing a six (6) months prior notice to the other Party.

16.3   The ordinary termination of the Agreement shall not affect the then-valid Individual Contracts. Such Individual Contracts shall remain valid for their then-current term (and revolving terms, unless duly terminated), and in relation to such Individual Contracts this Agreement remains in effect.

16.4   Duration and Ordinary Termination of Individual Contracts. Each Individual Contract has an initial fixed term as indicated in the Service Order. The Service Order may also contain the conditions of extension of the respective Individual Contract, including the applicable notice period etc. In case such conditions are missing in the Service Order, the Individual Contract will extend for revolving terms of one month unless terminated by either Party with a notice period of one month before expiry of the then-current term.

16.5   Early Termination of Individual Contracts. Customer may terminate an Individual Contract prior to the expiry of the then-current term, with at least two months prior notice, subject to payment by Customer of the "Early Termination Charges", which shall be equal to all charges agreed for that Individual Contract until the end of its then-current term unless a different amount of Early Termination Charges is indicated in the respective Service Order.

16.6   Termination of the Agreement for Cause. Either Party may terminate the Agreement with immediate effect for cause, which includes the following:

16.6.1 any breach of Sections 8, 13 and 17 or any other material provision of the Agreement by the other Party;

16.6.2 any other breach of the Agreement by the other Party adversely and substantially effecting the relationship of the Parties as a whole, which is not remedied within 30 days from receipt of a written notice regarding breach from the non-defaulting Party, except that no notice is required if the defaulting Party has seriously and finally refused to remedy the breach or the breach cannot be remedied.

16.7   Upon termination of this Agreement for cause:

16.7.1 all Individual Contracts specified in the termination notice shall end concurrently with this Agreement; in case of termination for cause by ngena, Customer shall pay all charges agreed for those Individual Contracts until the end of its then-current term upon receipt of a respective invoice from ngena; and

16.7.2 all other Individual Contracts shall remain valid for their then-current term (and revolving terms, unless duly terminated), and in relation to such Individual Contracts this Agreement remains in effect.

16.8   Termination of an Individual Contracts for Cause. Either Party may terminate an Individual Contract with immediate effect for cause, which includes the following: any breach of material provision of the Agreement related to a particular Individual Contract by the other Party, which is not remedied within 30 days from receipt of a written notice from the non-defaulting Party, except that no notice is required if the defaulting Party has seriously and finally refused to remedy the breach or the breach cannot be remedied. For the avoidance of doubt, it also covers material outages of the service (as opposed to frequent smaller outage/breaches of SLA).

16.9   ngena may terminate the Agreement with immediate effect for cause:

16.9.1 if Customer has been in default of payment of any undisputed amount for more than 30 days and failed to make the outstanding payment within 30 days from receipt of ngena's written notice; or

16.9.2 if Customer's use of the ngena Services is in violation of the Acceptable Use Policy (Section 9) with an adverse effect on ngena.

16.10   Either Party may exercise its right to terminate for cause only within a period of three months after gaining knowledge of the relevant circumstances. If the overall impact of a series of events is the cause for termination, such period begins upon gaining knowledge of the last of such events. However, this Section 16.10 does not apply to termination for non-payment.

16.11   Termination for Chronic Outage.

16.11.1 Customer may terminate an Individual Contract with immediate effect for cause in case of the "**Chronic Outage**" of a ngena Service, meaning that ngena repeatedly provides defective performance under the Individual Contract, in particular repeatedly fails to meet service levels under the Individual Contract and fails to improve following the following process:

In case of extensive and frequent defective performance, Customer may provide a written notice to ngena specifying the nature of a failure and requiring ngena to rectify it. In case ngena has not rectified the failure within the calendar month following the receipt of this notice, then Customer may provide the second written notice to ngena. In case ngena has not rectified the failure within the calendar month following the receipt of the second notice, then Customer may terminate the respective Individual Contract.

16.11.2 Customer may terminate this Agreement with immediate effect for cause in case Customer has a termination right in relation to 25% of Individual Contracts simultaneously.

16.12   Notice on Termination. The notice on the ordinary termination or early termination of an Individual Contract shall be provided via the Portal; in case this feature is not available in the Portal, the notice shall be given in written form. The notice on the termination for cause of an Individual Contract or of this Agreement requires written form and it cannot be conditional nor combined with other notices.

16.13   Suspension. If a Party has the right to terminate this Agreement and/or an Individual Contract for cause, such Party may instead elect to suspend, without liability, the fulfilment of its obligations under this Agreement and/or an Individual Contract, including in relation to grant of access to the Portal, upon written notice for as long as the cause persists. In case the cause for the suspension of a ngena Service has been removed and such ngena Service is resumed, ngena is entitled to charge reasonable reconnection fees.

16.14   Survival. Sections 5, 7.1, 7.4, 8, 9, 15, 17 and 22 shall remain valid and enforceable beyond the termination or expiration of this Agreement.

17.   Export Regulations and Sanctions

17.1   Each Party shall observe applicable laws on export regulations and sanctions regarding the use of the ngena Services, in particular, the US and EU export regulations and sanctions.

17.2   Each Party shall indemnify and hold the other Party harmless against any and all claims, pecuniary penalties and administrative fines (including court fees and reasonable attorney fees and other expenses) arising from or in connection with non-compliance of the Party with this Section 17 and the limitations of Section 15.2 do not apply in respect of this indemnification obligation.

18.   Force Majeure

18.1   Neither Party shall be liable in case of a "**Force Majeure Event**" meaning any event beyond a Party's control, which is unforeseeable, material and not negligently caused by any of the Parties and which occurs after the conclusion of this Agreement and/or the respective Individual Contract including, without limitations, natural disasters, governmental acts, decisions of authorities, blockades, war and other military conflicts, mobilization, riots, terror attacks, strikes, lockouts or other labour disputes, seizures, epidemics, pandemics, embargos or other similar events.

18.2   To the extent a Party is hindered to perform its obligations under this Agreement due to a Force Majeure Event, the delay or non-performance shall not be deemed an infringement of this Agreement, and all relevant time periods shall be appropriately extended taking into account the duration of the Force Majeure event.

18.3   Each Party shall undertake all necessary and reasonable actions within its control in order to limit the extent of the damage and consequences of any Force Majeure Event. The Party affected by a Force Majeure Event shall immediately inform the other Party of its beginning, reasonably foreseeable duration and the end.

19.   Contractual Notices

19.1   A "written" document under this Agreement shall bear the original signature(s) of duly authorized representative(s) of a Party, which may be handwritten signatures or electronic signatures (meaning personally applied verification of a document in digital form which is connected to the document and unchangeable after the application). A written document may be sent to the other Party by post, or as a scanned copy or electronic file via email, and it shall become effective on the day of actual delivery to the address indicated below by post or email, as applicable.

19.2   Unless agreed otherwise for specific types of notices, the Parties' contact details for written contractual notices are:

19.2.1 if to ngena: postal address indicated on the first page, to the attention of the Managing Director, email: legal@ngena.net

19.2.2 if to Customer: postal address and email address indicated on the ngena Customer Form, to the attention of the Managing Director.

19.3   Each Party shall notify the other Party of any changes in its contact details without undue delay. Until such notification, the previously communicated contact details shall continue to be valid for the purposes of this Agreement. Any notice shall be deemed to have been received at the time at which it would have been received under ordinary circumstances without the change of the contact details.

20.   Dispute Resolution

20.1   In case of disputes between Customer and ngena on any matter, including interpretation of this Agreement, service quality or invoices, the Parties shall use reasonable endeavours to amicably resolve the matter at operational level as the first step. If the discussion at operational level has not solved the issue, the Parties shall hold an escalation meeting between members of senior management at the second step.

20.2   Each Party is entitled to seek legal recourse only after this procedure has been completed unsuccessfully, including after an announcement by either Party's senior management that the resolution process at the second step has failed. The right of the Parties to seek injunctive relief remains unaffected.

21.   Interpretation

21.1   In case of discrepancies among individual contractual documents of this Agreement, the documents shall have the following priority: (1) any individual contractual document, which explicitly refers to this Agreement and which the Parties define in writing as a prevailing document; (2) the main body of this Agreement, (3) Service Orders, (4) annexes.

21.2   Headings and subheadings of sections and paragraphs of this Agreement are for convenience purposes only and they shall have no effect on the interpretation of the Agreement.

21.3   Any enumerations or examples which illustrate a term (e.g. if a sentence is opened by "in particular", "such as" or "including") do not limit the scope of such a term.

21.4   The words "shall", "will", "ensure", "procure" and any service descriptions do not constitute a guarantee, nor a guaranteed quality, i.e. they do not include an obligation to assume liability irrespective of any fault or culpable conduct.

22.   Miscellaneous

22.1   Entire Agreement. The Agreement constitutes the entire agreement between ngena and Customer, and replaces all preceding agreements between the Parties on the subject matter of this Agreement. All annexes referred to in this Agreement as well as other annexes agreed by the Parties in writing form integral parts of this Agreement. ngena hereby objects to any general terms and conditions of Customer and such terms and conditions shall not become binding unless ngena has explicitly accepted such terms and conditions in writing with a reference to this Agreement.

22.2   Amendments. Amendments and addenda to the Agreement shall be made by both Parties in writing to be valid; this also applies to this written form requirement.

22.3   Severability. Should any provision of the Agreement be invalid, wholly or in part, this shall not affect the validity of the other provisions of the Agreement. Invalid provisions shall be replaced by provisions which accord most closely with the intended purpose of the provisions to be replaced.

22.4   Representations. Each Party represents that (i) it is validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) it has the corporate power and authority to execute, deliver and perform this Agreement, (iii) it has taken all necessary corporate actions to authorize the execution, delivery and performance of the Agreement, and (iv) the execution, delivery and performance of the Agreement does not conflict with its certificate of incorporation, bylaws, material agreements, laws, rules, orders, judgements or decrees.

22.5   No Waiver. The failure by either party to enforce any provision of the Agreement shall not constitute a waiver of future enforcement of that or any other provision.

22.6   Set-Off. Neither Party is entitled to set-off any claims in connection with this Agreement unless such claims are based on a final and binding judgment or have been acknowledged by the other Party.

22.7   Assignment. The assignment of rights and duties under this Agreement requires the written consent of the other Party, except that ngena may assign this Agreement in whole or in part (i.e. in relation to certain Individual Contracts) to ngena's Affiliates by providing a written notice to Customer.

22.8   CSR. Each Party shall comply and procure that its subcontractors and any person under its control comply with all applicable national and international rules relating to ethical and responsible standards of behaviour, including human rights, environmental protection, sustainable development, fair competition and anti-corruption.

22.9   Venue. Any claim, dispute or difference of whatever nature arising under, out of or in connection with the Agreement (including a claim, dispute or difference regarding its existence, termination or validity or any non-contractual obligations arising out of or in connection with Agreement) shall be referred to and finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce In force as from 1 January 2021. The seat of the arbitration shall be in the County of New York, in the State of New York. The language of the proceedings shall be English.

For the purpose of entering any arbitration award, the Parties submit themselves to the exclusive jurisdiction of the state and federal courts of the County of New York, in the State of New York, and waive any objection to the laying of venue in such courts.

Notwithstanding the foregoing, nothing contained in this Section 22.9 will limit or delay the right of either Party to seek injunctive relief from a court of competent jurisdiction, and the Parties shall not be obligated to seek informal resolution in accordance with Section 20 if the time required to do so would prejudice the ability of a Party to obtain a remedy through injunctive relief.

22.10 Governing Law. The Agreement shall be subject to the laws of the State of New York without regard to conflict of law principles, but to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

22.11 No Third Party Rights. This Agreement, including its annexes and Individual Contracts, do not create any rights or benefits enforceable by any third party (meaning any person who is not a Party to this Agreement; for the avoidance of doubt, Parties' Affiliates are third parties under this Agreement).

22.12 <u>Annexes</u>. The following annexes form an integral part of this Agreement:

- Annex 1: ngena Service Schedule
- Annex 2: Data Processing Agreement
- Annex 3: Standard Contractual Clauses

Annex 1: ngena Service Schedule

PART A: General Provisions

1.   General

1.1   Specific details, parameters, SLA and other conditions of the ngena Services will be provided to Customer via the Portal and/or by other means agreed by the Parties (e.g. in a service description of a respective ngena Service).

1.2   Certain details related to the ordered ngena Service, including technical parameters and non-technical information such as local contact details, ("**Technical Order Enrichment Details**") must be provided by Customer after the placement of the Service Order. Customer acknowledges and agrees that it is not possible for ngena to complete the delivery without the Technical Order Enrichment Details and Customer shall provide these without delay after receiving the information request from ngena.

2.   Delivery and Acceptance

2.1   ngena will use reasonable endeavours to deliver the ngena Service on the date indicated by Customer as the preferred delivery date. In case Customer does not indicate any preferred delivery date, the preferred delivery date shall be considered "as soon as possible". ngena will inform Customer about the estimated delivery date via the Portal.

Neither the preferred delivery date indicated by Customer nor the estimated delivery date provided by ngena shall be binding on ngena and such dates will serve as a reference only, unless ngena explicitly confirms that it regards a specific date as binding and such date is secured by service credits.

2.2   The billing for a ngena Service starts on the "Ready for Service Date". The "**Ready for Service Date**" means the date, on which ngena informs Customer that the ngena Service is delivered and ready for acceptance, subject to further provisions of the Agreement.

2.3   If Customer does not provide the complete Technical Order Enrichment Details within 20 days from receiving ngena's reminder that certain requested details are still missing, the Ready for Service Date shall be the preferred delivery date.

2.4   In case the ngena Service includes the installation of the Service CPE by ngena, the Ready for Service Date shall be the date, on which ngena (i) installed and tested the ngena Service and (ii) announced the Ready for Service status to Customer.

However, if actions of Customer are required for the installation (e.g. the confirmation of the time window for the installation, the provision of the access line which is not part of ngena Services, proper preparation of the installation location, etc.) and such actions have not been taken by Customer, then the Ready for Service Date shall be the 14th calendar day from (i) the preferred delivery date, or (ii) ngena's notice to Customer that on the ngena side everything is ready for the installation, whatever is later.

2.5   The ngena Service shall be deemed accepted by Customer on the Ready for Service Date unless Customer notifies ngena that the respective ngena Service is in material incompliance with applicable performance specifications within 5 calendar days from the Ready for Service Date. Following such notice, ngena will use reasonable efforts to remedy the incompliance and notify Customer about the updated Ready for Service Date.

2.6   The Ready for Service Date may be determined separately for each type of the ngena Service (e.g. SD-WAN, LAN, WLAN) per Customer Site.

3.   Customer Site Information, Access and Permissions

3.1   For each Customer Site, Customer shall provide via the Portal and/or by other means agreed by the Parties:

3.1.1 Information allowing the precise identification of the Customer Site including the full legal name of the respective Affiliate, address and, if applicable, the specific building entry, floor, room number, etc.

3.1.2 Contact details (name, email, phone number) of a person who is responsible for CPE-related issues at the Customer Site ("**Customer Site Coordinator**").

3.2   Customer shall ensure that ngena's representative (e.g. technician) receives physical access to the Customer Site to the full extent required to perform the ngena Services. ngena will inform the Customer Site Coordinator about the planned time for the performance of the on-site ngena Services, which shall be within the usual working hours in the region of the respective Customer Site, unless the Parties mutually agreed otherwise.

3.3   Customer shall obtain any required permissions, paid any applicable fees, submitted any required notifications (e.g. to the building management) in relation to the provision of the ngena Services at the Customer Site.

4.   Customer Site Conditions

4.1   Customer shall ensure that the Customer Site conforms to the following conditions:

4.1.1   The Customer Site has a room for the installation of the CPE(s), which is protected against unauthorized access ("**Installation Room**").

4.1.2   Inhouse cabling is available up to each planned CPE location, including the cabling between the CPEs. For physical connectivity, a certified cable shall be used.

4.1.3   Sufficient properly grounded AC power outlets conforming to local standards are available in the Installation Room within 1.5 m of each CPE.

4.1.4   The Installation Room complies with the following environmental conditions: ETSI EN 300 019-1-3: Class 3.1 for temperature controlled rooms, temperature range: 5 °C to 40 °C, humidity: 5 % rF to 85 % rF, no condensation.

4.1.5   The Installation Room is regularly cleaned; the location for the CPE(s) is not exposed to unusual dust, nor to direct sun and has sufficient space for heat ventilation.

4.2   ngena shall inform Customer about any specific requirements for the installation of the CPE(s) (e.g. rack dimensions, rack grounding in accordance with a manufacturer's installation guide) and Customer shall ensure that the Customer Site complies with these requirements.

4.3   Customer shall ensure that Customer's respective enterprise customer uses the CPE(s) and any equipment provided by ngena solely for the purpose of receiving ngena Services at the respective Customer Site, handles the CPE(s) with due care and takes appropriate measures against the manipulation, theft, loss, damage or destruction of the CPE(s). The CPEs remain the property of ngena or respective Providers, as applicable, at all times.

5.   Documentation

5.1   Some ngena Services may only be available if additional mandatory documentation is signed by Customer (for example, the request for a migration of a DSL service from another provider or the export control statement). If any such additional documentation is required, ngena will provide a notice to Customer and Customer shall sign respective documents.

5.2   ngena may refuse to perform an Individual Contract without any liability until Customer has provided such mandatory documentation signed by its authorized representative.

6.   Additional Works and Services

6.1   In order to minimize the impact of unforeseen circumstances at the Customer Site (such as insufficient inhouse cabling, etc.) and to enable the completion of the ordered ngena Services (e.g. installation or the replacement of the CPE) during a single visit, Customer agrees that ngena's technician may perform additional works at the Customer Site which are necessary for the completion of such ngena Services (such as supply the required inhouse cabling or cross connection equipment, etc.) even if such works were not specified in the initial order.

6.2   ngena will invoice such additional works at market customary prices and Customer shall bear the costs of such additional works up to the amount of 500 USD per Customer Site.

6.3   In case the completion of the ordered ngena Services failed because of the Customer Site's incompliance with the requirements of Sections 4.1 and 4.2 of this Annex, ngena may conduct an on-site survey to verify the readiness of the Customer Site prior to the next visit and Customer shall pay the costs of such a survey.

6.4   Customer shall ensure that no tickets are raised with ngena in relation to issues which are not in the scope of ngena Services ("Out-of-Scope Tickets"). If Customer's Authorized User raises an Out-of-Scope Ticket, ngena may provide support on it and will charge the time spent on it. For the avoidance of doubt, ngena is not obligated to work on any Out-of-Scope Ticket.

7.   Responsibilities

7.1   Customer shall take any appropriate measures to achieve compliance with Sections 3 - 5 of this Annex.

7.2   Neither ngena nor any of the Providers of the underlying services for the respective Individual Contract shall be responsible if the provision of the ngena Services is delayed, postponed, deteriorated, interrupted or fails due to incompliance with the requirements of Sections 3 - 5 of this Annex.

7.3   Customer shall bear any additional costs (e.g. the costs for an additional visit, costs of service during the delay period, etc.) resulting from the incompliance with the requirements of Sections 3 - 5 of this Annex.

8.   Return of CPE

8.1   Upon the termination of the underlying Individual Contract for any reason, Customer shall ensure that each CPE is returned (e.g. sent via registered mail) to the return address indicated by ngena within 14 calendar days from the termination of the respective Individual Contract. Customer bears the costs of return of the CPE(s).

8.2   In case of violation of the obligation under Section 8.1 of this Annex, Customer shall pay a penalty of 50 USD for each month of delay; such penalty shall be due in full at the beginning of each one-month period. In case the CPE is not returned within 3 months from the termination of the respective Individual Contract, ngena may charge Customer a penalty equal in total to the list price of the respective CPE at the moment of termination of that Individual Contract. ngena may also request Customer to reimburse any further costs resulting from Customer's incompliance with Section 8.1 (e.g. the costs for the pick-up of the CPE from the Customer Site by ngena or a third-party provider, the charges paid by ngena to the CPE provider for the late return of the CPE, etc.) to the extent that such costs exceed the penalty already paid by Customer under this Section 8.2.

8.3   Customer bears the risk of loss, theft, damage or destruction of the CPE until the CPE is received at the return address indicated by ngena.

8.4   ngena may also provide additional options for the return of the CPE (e.g. pick-up at the Customer Site). The conditions of such additional options, if available, will be communicated to Customer by ngena.

8.5   For the avoidance of doubt, this Section 8 does not apply to Customer Provided CPE (as defined in Section 15 of this Annex).

9.   Defects and Incidents

9.1   To ensure a proper performance of the ngena Services, Customer shall inform ngena without undue delay about any defects and incidents. ngena shall rectify the defect and/or incident within the agreed service levels, or absent agreed service levels within a reasonable period of time and notify Customer about it. Customer shall closely work together with ngena to the extent necessary to identify the cause of the incident and to resolve the incident.

10.   Service Notices

10.1   Customer shall send service-related notices to ngena:

- in relation to fulfillment via email to fulfilment@ngena.net,
- in relation to assurance via email to secondlevel@ngena.net.

10.2   ngena may update the applicable addresses for notices by providing a respective email notification to Customer.

11.   Miscellaneous

11.1   This Annex forms an integral part of the Agreement. In the event of discrepancies between the provisions of this Annex and provisions of the Agreement, the explicit provisions of this Annex prevail.

11.2   In relation to any terms not explicitly mentioned in this Annex the terms of the Agreement apply.

PART B: Special Provisions

12.   Special Terms for Customer Provided Access (IPL-based)

12.1   ngena may offer certain ngena Services without the underlying access services, relying on the "**Customer Provided Access**", meaning that at the Customer Site, at which the ngena Services should be provided, the underlying IPL access service is provided by a third-party telecommunications provider and not by ngena, and access service is not part of the ngena Services.

12.2   ngena shall inform Customer about any specific requirements for the Customer Provided Access, such as physical interface, access capacity and IPv6 IP address assignment, and Customer shall ensure that the Customer Provided Access at the Customer Site complies with these requirements.

12.3   For the acceptance of ngena Services with Customer Provided Access the following applies:

12.3.1 The Ready for Service Date for such ngena Service shall be the 14th calendar day from (i) the agreed delivery date for the Service CPE, or (ii) the actual delivery of the Service CPE at the Customer Site, whatever is later.

12.3.2 In case the ngena Service includes the installation of the Service CPE by ngena, the Ready for Service Date shall be the date, on which ngena (i) installed and tested the ngena Service and (ii) announced the Ready for Service status to Customer; except that if Customer Provided Access compliant with ngena's requirements is not available at the Customer Site on the day of planned installation, the Ready for Service Date shall be determined in accordance with Section 12.3.1 above.

12.3.3 Unavailability, incompatibility, delay in installation or other impairment of such Customer Provided Access shall not delay the acceptance of the ngena Service, regardless of whether the Customer Provided Access is functioning or whether the ngena Service is being actually used.

12.4   Customer shall ensure that ngena is informed about any planned maintenance activities and/or change of third-party components and services which may have an impact on ngena Services, including the timeframe and details on the expected impact.

12.5   ngena shall not be responsible if the provision of ngena Services is delayed, postponed, interrupted or fails due to incompliance with the requirements of Sections 12.2 - 12.4 of this Annex and/or due to reasons caused by enterprise customer or by third-party components and services. Customer shall bear any additional costs resulting from the incompliance with the requirements of Sections12.2 - 12.4 of this Annex.

13.   Special Terms for Customer Provided Network

13.1   ngena may offer certain ngena Services without the underlying access services, relying on the "**Customer Provided Network**", meaning that the Customer Site, at which the ngena Services should be provided, is connected via the EPL access service to a network of a third-party telecommunications provider ("**Network Provider**"), and access service is not part of the ngena Services.

13.2   In each case of the Customer Provided Network, ngena will verify whether the Customer Site may be technically reached based on the existing Layer 2 NNI between ngena's systems and systems of the Network Provider.

13.3   In case the connectivity between ngena's systems and systems of the Network Provider is missing, ngena may, in its full discretion, investigate the necessary and adequate technical prerequisites for establishing such connectivity via Layer 2 NNI and to which extent it is commercially and technically feasible.

13.4   In case the Parties conclude that the establishment of the connectivity between ngena's systems and systems of the Network Provider is generally feasible, the Parties shall discuss further details in good faith, taking into account the feedback of the Network Provider. Customer acknowledges that the full operational support of the Network Provider is essential for the provision of ngena Services based on the Customer Provided Network and Customer is responsible to ensure that the Network Provider provides such support to ngena.

13.5   The Parties agree on the following distribution of costs: ngena will bear the costs of the technical preparation of ngena's systems for the connectivity with the systems of the Network Provider, and Customer will bear the costs of Layer 2 NNI of the Network Provider.

14.   Special Terms for Secure Internet Access

14.1   The Secure Internet Access service is offered by ngena based on the PA ("Provider Aggregable") public IP addresses provided by ngena as a general rule; however, ngena may also offer it based on the PI ("Provider Independent") public IP addresses provided by the Customer as received from Customer's enterprise customer.

For the use of the PI public IP addresses the following applies:

14.1.1 Customer shall provide the minimum amount of a /24 public IPv4 range or a /32 public IPv6 range (as specified by ngena prior to the order);

14.1.2 Customer shall ensure that the authorized representative of the enterprise customer signs the confirmation that the enterprise customer is authorized to use and advertise such PI public IP addresses in the public internet, and Customer shall provide a scan of such signed confirmation to ngena via the Portal and/or by other means agreed by the Parties.

14.2   Customer shall ensure that the enterprise customer reserves a certain range of enterprise customer's private IP addresses for the service chain networking by ngena and shall provide such private IP addresses to ngena upon request.

14.3   ngena Services do not include the update of the DNS server with the IP addresses used for the Secure Internet Access service. After the implementation of the Secure Internet Access by ngena, it is a responsibility of the enterprise customer to update the applicable DNS server with the public IP addresses used for ngena Services.

15.   Special Terms for Customer Provided CPE

15.1   ngena may offer certain ngena Services without the provision of the Service CPE for the Customer Site, relying on the "**Customer Provided CPE**", meaning that Customer, and not ngena, is responsible for buying, owning, staging, delivering, installing, maintaining and replacing the Service CPE at the Customer Site, and the provision of the Service CPE is not part of the ngena Services.

15.2   ngena shall inform Customer about the supported type of the Service CPE and any specific requirements for the Service CPE during the ordering process, and Customer shall ensure that the Customer Provided CPE at the Customer Site complies with these requirements.

15.3   Ordering, Input of Data and Staging

Customer acknowledges that the preparation of the Customer Provided CPE for being able to support the ngena Services requires specific steps and the Service CPE may not work on the Customer Network without such steps being taken. Therefore, Customer shall follow exactly all the steps described below:

15.3.1 Customer shall place an order for the respective Service CPE with via a distribution channel authorized by the Service CPE manufacturer. The delivery of the CPE shall be ordered to a Customer's location appropriate for performing the staging.

15.3.2 Customer shall ensure ngena's identifier (as provided by ngena) is inputted in the CPE management systems of the CPE manufacturer in relation to the respective Service CPE.

15.3.3 Customer shall provide to ngena by email the serial number of the Service CPE and the fixed WAN IP address of the respective Customer Site and ngena shall input these data into ngena's systems.

Upon arrival of the Service CPE at a Customer's staging location:

15.3.4 Customer shall unpack the CPE, plug the default WAN port to DHCP capable local internet access and notify ngena fulfilment via the Communication Tool that the CPE is connected to the internet.

("**Communication Tool**" means an online tool agreed by the Parties which enables traceable real-time communication between ngena's and Customer's personnel involved in the performance of the CPE Services.)

(Here the CPE reaches ngena's systems and receives service-specific final device configuration, including fixed WAN IP addresses.)

15.3.5 After ngena's confirmation via the Communication Tool that the staging of the Service CPE has been successfully completed, Customer shall prepare the CPE for shipment to the Customer Site.

15.3.6 Prior to shipment, Customer shall take a picture of the packed CPE and send the picture together with the CPE serial number to ngena by email.

15.4   Installation

Upon arrival of the CPE at the Customer site, Customer shall perform the installation of the Customer Provided CPE in accordance with the following steps:

15.4.1 Customer informs ngena via email about the scheduled time for installation.

15.4.2 Customer's field technician arrives at the Customer Site at the scheduled time and performs the following tasks:

− mounts the CPE into the installation location,
− patches cables to the CPE for network connectivity,
− powers up the CPE,
− calls ngena-fulfilment and informs about installation,
− waits at the Customer Site for ngena's confirmation call (ca. 15 min).

15.4.3 In case the installation cannot be completed, the Parties will take reasonable measures on joint trouble shooting.

15.4.4 In case of replacement installation, Customer shall perform steps similar to the above in coordination with ngena.

15.5   ngena may offer the installation Services in relation to the Customer Provided CPE. In case ngena offers and Customer orders the installation Services, Customer shall inform ngena once the CPE has been delivered to the Customer Site and ngena will perform the installation.

15.6   For the acceptance of ngena Services with the Customer Provided CPE the following applies:

15.6.1 The Ready for Service Date for such ngena Service shall be the 14th calendar day from ngena's notification to Customer that all preparatory steps have been completed by ngena and the Service CPE may be installed at the Customer Site.

15.6.2 In case the ngena Service includes the installation of the Service CPE by ngena, the Ready for Service Date shall be the date, on which ngena (i) installed and tested the ngena Service and (ii) announced the Ready for Service status to Customer; except that if the Service CPE is not available at the Customer Site on the day of planned installation, the Ready for Service Date shall be determined in accordance with Section 15.6.1 above.

15.6.3 Unavailability, incompatibility, delay in installation or other impairment of such Customer Provided CPE shall not delay the acceptance of the ngena Service, regardless of whether the Customer Provided CPE is functioning or whether the ngena Service is being actually used.

15.7   Customer shall ensure that ngena is informed about any planned maintenance activities for the Service CPE, including the timeframe and details on the expected impact.

15.8   ngena shall not be responsible if the provision of ngena Services is delayed, postponed, interrupted or fails due to incompliance with the requirements of Sections 15.2 - 15.4 and 15.7 of this Annex and/or due to reasons caused by enterprise customer or by third-

party components and services. Customer shall bear any additional costs resulting from the incompliance with the requirements of Sections 15.2 - 15.4 and 15.7 of this Annex.

15.9   The Parties acknowledge and agree that the process of ordering, staging and installation may need to be adjusted from time to time. ngena will inform Customer about the adjustments on the operational level with a reasonable advanced notice and the Parties will work together optimizing the process as needed.

16.   Special Terms for Site Survey Services for LAN and WLAN

16.1   ngena will perform (i) a remote site survey (per phone) or (ii) an on-site site survey for Customer Sites in accordance with the Service Order.

16.2   Customer shall provide a floor plan for each Customer Site and any other relevant information requested by ngena for the site survey.

16.3   Customer shall ensure that a ladder reaching to the ceiling is available at each Customer Site for on-site works.

16.4   Based on the site survey, ngena will provide the "Site Survey Report" containing recommendations per Customer Site on:

- Appropriate hardware models (LAN, WLAN) and quantities;
- Description where to place each device to enable the optimal performance of the ngena Services;
- Infrastructure requirements per device (e.g. power, LAN connections "from-to" rooms/locations for connecting Access Points and switching units, rack space, etc.).

16.5   The Site Survey Services are billable upon the provision of the respective Site Survey Report.

16.6   In case the remote site survey is not sufficient to produce the Site Survey Report, ngena will inform Customer and provide an explanation with reasons. Customer may order an on-site survey for that Customer Site separately but the charges for the initially ordered remote site survey shall be paid in full.

16.7   For the avoidance of doubt, the Site Survey Services do not include the evaluation:

- whether any constructions works are needed to place the devices at the proposed location;
- whether there are any local site infrastructure obstacles for the placement of the device at the proposed location (e.g. it is prohibited to move the required cable from the existing location to a planned location);
- whether any permissions are needed (e.g. from the building owner) for the installation or preparation of the Customer Site for the installation.

16.8   If Customer chooses a different set-up deviating from the recommendations of the Site Survey Report, Customer shall inform ngena prior to the installation. ngena shall not be responsible for the quality of the LAN and WLAN Services if the recommendations of the Site Survey Report have not been followed when ordering the respective LAN and WLAN Services.

17.   Special Terms for LAN and WLAN Services

17.1   ngena's responsibility for the LAN Services ends at the port level of the ordered LAN CPE.

17.2   The ngena LAN and WLAN Services do not include:

- the installation in elevators, stairwells, auditoriums and other non-standard locations (e.g. high ceiling);
- post-implementation network performance validation (unless ordered separately).

18.   Special Terms for Professional Services

18.1   Professional Services may include activities on solution and network design such as analysis of as-is network situation, capturing of customer requirements and creation of HLD or LLD for a target Customer Network; advanced support for the Portal processes such as support on creation of quotes (budgetary and binding), configuration of change orders, capturing of customer configuration data (enrichment) and data validation; service management such as special reporting and service reviews; as well as other activities. The type of ordered Professional Services shall be indicated in the Service Order.

18.2   The volume of the Professional Services shall be defined by mandays indicated in the Service Order. The Parties acknowledge and agree that the indicated mandays do not constitute an estimate of the volume of the Professional Services required for the completion of planned activities. ngena will notify Customer in case it becomes likely that the completion of planned activities requires more mandays and Customer may place a new Service Order for additional mandays. ngena shall not be liable for non-completion of planned activities if Customer does not place a new Service Order.

18.3   The Professional Services may include "on-site days" if indicated so in the Service Order. For on-site days, in addition to the manday rate of a respective ngena expert, Customer shall pay travel expenses consisting of (i) travel time charged at 50% of a manday rate and (ii) other actual documented travel expenses.

18.4   The Professional Services are billable monthly, from the end of the month, in which the respective activities were performed, up to the amount of mandays indicated in the respective Service Order. ngena will provide monthly time sheets on the respective activities.

18.5   Customer's Cooperation Obligations. Customer acknowledges that it may not be possible for ngena to perform the Professional Services without input of Customer (e.g. details of the current network topology, provision of Customer Site details, etc.). In case Customer has not provided the requested input within a deadline set by ngena, the ngena experts planned to be involved in the provision of the Professional Services for Customer may become involved in work on other matters; Customer shall wait till the expert becomes available, which ngena will arrange as soon as possible but without any liability for the delay.

19.   Special Terms for Wi-Fi as a Service

19.1   ngena Wi-Fi as a Service includes the subscription to the ngena Wi-Fi Platform (meaning the wireless access network orchestration platform operated by ngena and/or its Affiliates accessible via a web browser and supporting mobile apps).

19.2   <u>Prerequisites</u>

19.2.1 Only "Enabled Devices" may connect to the ngena Wi-Fi Platform. "**Enabled Device**" means the physical wireless access device (access point) with the integrated ngena SDN Agent capable to connect to the ngena Wi-Fi Platform. The list of Enabled Devices is available in the then-current service description and may be provided by ngena on request.

19.2.2 Customer is responsible for arranging the procurement, import compliance, delivery, installation, replacement installation and internet connection of Enabled Devices. ngena Wi-Fi as a Service does not include the procurement, import compliance, installation, internet connection, maintenance, troubleshooting of Enabled Devices, nor service management.

19.2.3 When procuring the Enabled Device, the exact identification (SKU) has to be observed as the same model with a different SKU may not be an Enabled Device.

19.3   **Customer acknowledges and agrees that Enabled Devices are designed to be used only with the active subscription for the ngena Wi-Fi as a Service and they cannot be used in any other way**.

19.4   One subscription unit must be ordered for each Enabled Device which Customer intends to connect to the ngena Wi-Fi Platform. Each subscription unit constitutes an Individual Contract.

19.5   After the expiry of the initial term, the Individual Contract will extend for revolving terms of one month unless terminated by either Party with a notice period of one month before expiry of the then-current term. For such extensions, the monthly price published in the ngena regular price list for Wi-Fi as a Service 30 days prior to the beginning of each extended term shall apply.

19.6   The payment is due at the conclusion of an Individual Contract. ngena will issue an invoice upon the conclusion of an Individual Contract, and thereafter at the beginning of each extended term.

Annex 2: DPA

Data Processing Agreement

This Data Processing Agreement (the "**DPA**") is made between:

Customer as the "**Controller**"

and

ngena as the **"Processor"**.

1. Subject Matter and Legal Basis

1.1   This DPA governs the collection and processing of personal data (the "**Data**") by the Processor for and on behalf of the Controller in connection with the provision of Services by Processor to Controller in accordance with the ngena Service Terms and Conditions for End Customers (referred to as the "**Main Agreement**"). The purpose of data processing is to enable the Processor to provide to the Controller the ngena SD-WAN as a Service in accordance with the Main Agreement.

1.2   This DPA is based on the provisions of the applicable laws of the European Union (in particular, the EU General Data Protection Regulation) and its Member States (referred to jointly as "**Legal Provisions**"). The terms defined in the Legal Provisions and used in this DPA have the same meaning as in the Legal Provisions.

2. Provision of Data

2.1   <u>Categories of data subjects</u>. Data processing may include Data of the following data subjects: employees, commercial representatives and contact persons of the Controller and Controller's Affiliates, visitors of Controller's and Controller's Affiliates' premises.

2.2   <u>Types of personal data</u>. Data processing may include the following Data: first name, last name, employer, job title, department, working address, phone, email address, customer data (e.g subscriber ID), service usage data (e.g., the telecommunications service used, the number or the ID of the lines involved, the data volumes transmitted), location and geodata, optional information provided by data subjects, log data containing individual identifiers or other elements that may be used to trace data back to individuals (e.g. user names, IP address), video recordings.

2.3   <u>Nature of processing</u>. The Processor may receive the Data or get access to the Data in the following ways: Controller transfers the data to the Processor via a secure connection, Controller inputs the Data via Processor's online tool, Controller communicates the Data when contacting Processor's customer support, Processor receives and stores the data in the course of the provision of services.

2.4   <u>Responsibility</u>. In relation to the Processor, the Controller is solely responsible for assessing whether the Data can be processed lawfully and for safeguarding the rights of data subjects. The Controller warrants that all legal requirements in relation to lawfulness of processing of Data are met (e.g. consent of data subjects) so that the Processor can provide the agreed services in a way that does not violate the Legal Provisions.

2.5   <u>Updates</u>. In case the Processor offers new services or updates existing services with functionalities of data processing, which are not covered by this DPA, the Processor shall send a notice to the Controller with details about such new data processing prior to the provision of the respective services. The details on the data processing described in the notification will become part of this DPA if the Controller does not object within 7 days from the receipt of the notice.

3. Rights and Obligations of the Parties

3.1   <u>Purpose of processing</u>. The Processor shall process the Controller's Data strictly for the purpose specified in this DPA.

3.2   <u>Instructions</u>. The Controller has the right to issue instructions (in writing or by email) on the type, scope, and methods of data processing. In case Controller's instructions represent a deviation from the services agreed under the Main Agreement, they will be treated as an application for a service modification. Processor will inform Controller about the resulting impact on services, charges and timeline and the Parties shall discuss in good faith a separate agreement about suitable remuneration. In case the compliance with Controller's instructions means an unreasonable burden for the Processor and no adequate solution has been reached, the Processor shall be entitled to end the data processing.

3.3   <u>Legality of processing</u>. The Processor shall process the Data in accordance with the Legal Provisions, the provisions of this DPA and the instructions of the Controller. If, due to a Legal Provision, the Processor is prevented from processing the Data in accordance with this DPA and the instructions of the Controller, the Processor shall inform the Controller accordingly before carrying out the processing (unless such notice is legally prohibited).

3.4   <u>Data protection officer</u>. The Processor provides assurance that it has engaged a competent and reliable data protection officer who is granted time to perform his or her duties, and guarantees that the data protection officer performs the duties in accordance with the Legal Provisions and, in particular, takes steps to ensure compliance with the legal and agreed regulations regarding data protection.

3.5   Territory. The data processing may take place within the European Union as well as outside of the European Union. In case of data processing outside of the European Union, Processor shall ensure that an appropriate level of data protection is ensured in accordance with the requirements of the Legal Provisions, e.g. on the basis of an additional written agreement with a subprocessor such as the Standard Contractual Clauses approved by the European Commission.

3.6   Compliance. The Processor shall monitor its compliance with the Legal Provisions and this DPA. Among other things, the Processor shall carry out regular checks to review the effectiveness of the implemented technical and organizational measures. The Controller has the right to request from the Processor the appropriate proof of compliance with Processor's obligations and the Processor shall provide such proof upon request (e.g. attestations and reports).

3.7   Audits. The Controller may check the Processor's compliance with the Legal Provisions and this DPA at any time, including by requesting information and, in case the provided information is not sufficient, by on-site checks at the Processor's premises. The Controller may perform the checks itself or have them performed by an independent qualified third party with an obligation of confidentiality. The Controller shall announce the checks at the Processor's premises reasonably in advance, perform the checks during normal business hours and take due care not to disturb Processor's business operations.

In case of an audit by the Controller, the Processor shall provide the requested information and cooperate accordingly. The Processor shall also support the Controller in audits conducted by the supervisory authority to the extent that such audits concern the processing of Data under this DPA, and shall implement the requirements of the supervisory authority in coordination with the Controller.

3.8   Rights of data subjects. On the instructions of the Controller, the Processor is obliged to support the Controller in fulfilling the obligations toward data subjects who are exercising their rights in accordance with the Legal Provisions (e.g. right to information or correction of data).

If a data subject addresses the Processor directly, the Processor shall not disclose any information but refer the data subject to the Controller and inform the Controller accordingly.

3.9   Further support. The Processor shall support the Controller in ensuring compliance with the obligations related to the data processing by the Processor. In particular, the Processor shall:

3.9.1   provide the Controller all information on data processing by the Processor that the Controller requests in order to comply with its reporting and/or documentation duties in accordance with the Legal Provisions (in particular, the records of processing activities and the privacy impact assessment);

3.9.2   support the Controller in preparing and providing information following a request of a governmental agency or a data subject in accordance with the Legal Provisions;

3.9.3   inform the Controller of any incidents of serious disruption to operations, any suspicion of data protection violations and other irregularities in relation to the processing of the Data without undue delay. The Processor shall document the relevant events in sufficient detail to enable the Controller to report about them to the supervisory authority. On request, the Processor shall support the Controller in notifying data subjects and the supervisory authority.

3.10   Communication with the supervisory authority. The Processor shall immediately notify the Controller of any communication received from the supervisory authority (e.g. inquiries or imposition of measures) in connection with the processing of Data under this DPA. Subject to mandatory statutory requirements, the Processor shall only provide information to third parties, including the supervisory authority, with prior consent of the Controller (in writing or by email).

3.11   Deletion or return of data. After the end of the provision of services relating to data processing, or at any time on request of the Controller, the Processor shall delete all the Data or destroy data carriers containing the Data (including test and waste material and any backup copies) in accordance with the current recognized technical standards in such a way that the recovery of the Data is not possible or only possible with disproportionate effort.

Instead of deletion or destruction, with prior approval of the Controller (in writing or by email), the Processor may hand over to the Controller any documents and data carriers containing the Data.

If, due to a Legal Provision, the Processor is prevented from deleting or returning the Data, the Processor shall inform the Controller accordingly.

4.   Technical and organizational security measures

4.1   The Processor shall ensure that the Controller's Data is handled exclusively in compliance with the technical and organizational measures required in accordance with the Legal Provisions and this DPA.

The measures currently required are specified in Exhibit "Technical and Organizational Measures".

4.2   On request of the Controller, the Processor shall provide a comprehensive, up-to-date data protection and security concept for the data processing under this DPA.

5. Confidentiality of Data

5.1   The Processor guarantees that only persons who are bound by contractual or statutory obligations of confidentiality are involved in processing the Data. The Processor guarantees that the Data is not collected, processed, or used without authorization, or for purposes other than allowed under this DPA, and that that the Data is not disclosed to third parties, including after the termination of this DPA. The Processor shall ensure that persons involved by the Processor in data processing under this DPA have been familiarized with the relevant requirements of this DPA.

5.2   In case it is possible for the Processor to access electronic communications data, the Processor guarantees that the obligations of confidentiality of persons involved by the Processor in data processing covers the content and the specific circumstances of the electronic communication.

5.3   The Processor guarantees that the obligations of confidentiality of persons involved by the Processor in data processing continues even after the termination of their employment or other contractual relationship with the Processor.

6. Subprocessors

6.1   Authority. The Processor is authorized to involve subprocessors for the purpose of supporting the provision of services by processor under the Main Agreement.

6.2   Subprocessors. As of the date of conclusion of this DPA, ngena involves the following subprocessors: Cisco International Limited (United Kingdom), Cisco Systems, Inc. (US), ServiceNow, Inc. (US), Amazon Web Services EMEA SARL (Luxembourg) as well as Processor's Affiliates.

6.3   Change of Subprocessors. In case of any intended changes to the identity of subprocessors, the Processor shall inform the Controller and give an opportunity to object; any objection shall only be valid if provided in writing within 14 days of the receipt of notification, containing the reasons for the objection. In case the Controller objected to the involvement of a subprocessor and it is not feasible for the Processor to perform a service without the support of the refused subprocessor, the Processor shall be entitled to terminate the Main Agreement, in whole or in part, with a notice period of 30 days.

6.4   Back-to-back agreement. The Processor shall ensure that all subprocessors are obligated toward the Processor in the same manner as the Processor is obligated toward the Controller under this DPA. The Processor shall check the compliance of subprocessors with their obligations, in particular the compliance with the agreed technical and organizational measures, prior to the start of data processing and at regular intervals thereafter.

6.5   Sub-Subprocessors. The Processor may permit the subprocessors to involve further sub-subprocessors. The Processor shall ensure that its subprocessors impose the same obligations on their sub-subprocessors as are imposed on subprocessors by the Processor.

6.6   Overview. The Processor shall maintain an overview of all Subprocessors and Sub-Subprocessors involved in data processing under this DPA and provide it to the Controller on request.

7. Term and Termination

7.1   This DPA shall be valid for the duration of the actual provision of services involving the processing of the Data by the Processor, and in any case for the duration of the Main Agreement. The termination of any other agreements which the Parties have also concluded regarding the provision of the services shall not affect the validity of this DPA.

7.2   Irrespective of the termination of this DPA or the Main Agreement, the obligations of the Processor related to the Data remain in force as long as the Processor actually processes or is in the position to process the Data (e.g. has access to Data, transmits the Data, or stores the Data in its systems or on data carriers).

8. Final Provisions

8.1   Changes. Any changes to this DPA or its exhibits shall be in writing. This also applies to the waiver of this written form requirement.

8.2   Severability. Should any provision of this DPA be invalid, wholly or in part, this shall not affect the validity of the other provisions of the DPA. Invalid provisions shall be replaced by provisions which accord most closely with the intended purpose of the provisions to be replaced.

8.3   Priority of this DPA. In the event of any inconsistencies between the provisions of this DPA and provisions of any other agreements, in particular the Main Agreement, the provisions of this DPA shall prevail.

Exhibit to the DPA

TECHNICAL AND ORGANIZATIONAL MEASURES

Processor commits to maintain no less than the technical and organisational measures described below. Processor will align with industry practices for information security (currently ISO 27001) and other security requirements required under applicable laws.

1. Admittance Control

1.1   Identification of authorized persons in relation to premises

1.2   Issuance of admittance authorization IDs

1.3   Operation of electronic admittance control

1.4   Involvement of security service in admittance control

1.5   Implementation of a policy on admittance control (e.g. handover of keys, etc.)

1.6   Physical and environmental protection measures including outside working hours (e.g. alarms, electronic doors, ID readers, biometrics, site surveillance, intruder detectors, securing shafts)

2. Systems Access Control

2.1   Identification of authorized persons in relation to systems

2.2   Implementation of a policy on authentication and authorization in relation to systems

2.3   Existence of regulations for involved third parties

2.4   Use of boot passwords for devices

2.5   Encryption of access keys for access to devices

2.6   Use of role-based access control

3. Data Access Control

3.1   Identification of authorized persons in relation to data and assets

3.2   Implementation of a policy on authentication and authorization in relation to data

3.3   Existence of functional or time limits on access and use of data and assets (including devices and systems)

3.4   Implementation of least privilege access to data inventories and systems

3.5   Existence of locking options on the workstations

3.6   Existence of multifactor authentication

3.7   Implementation of regulations on data access and user authorization

3.8   Logging access to data, regular analysis of logs

4. Disclosure Control

4.1   Classification of documents in terms of confidentiality, integrity and availability and respective handling

4.2   Documentation on retrieval and transmission authorization (e.g. non-disclosure agreements)

4.3   Documentation of data transmission as well as transmission routes (configuration)

4.4   Logging of every transmission, or a representative selection

4.5   Ensuring encryption of data during storage and transmission including at intermediaries

4.6   Access to data only by authorized persons according to data access policy

4.7   Storage of physical data media in secure areas

4.8   Regular inventory checks

4.9   Existence of security cabinets

4.10   Controlled destruction of data media with pre-treatment (e.g. shredding, scrapping of devices)

5.   Input Control

5.1   Documentation of specified organizational responsibilities for data input

5.2   Logging of data input

6.   Job Control

6.1   Careful selection of contractors and documentation of the process

6.2   Documentation of the division of responsibilities with involved contractors

6.3   Formal contract with involved contractors

6.4   Monitoring of work results

7.   Availability Control

7.1   Performance of regular data backups in accordance with a formal policy

7.2   Regular checks of the state of data backup systems

7.3   Regular checks of emergency generators and surge protection devices

7.4   Monitoring of the operating parameters of data centers

7.5   Existence of a business continuity and disaster recovery plans including their regular review and testing

8.   Control of Actual Use

8.1   Implementation of segregation and documentation of duties for data, systems and processes (e.g. who is responsible for what in case of a system failure)

8.2   Implementation and maintenance of data privacy & security compliance for any information technology asset having access to ngena data

8.3   Regular testing of data privacy & security compliance and taking respective measures on test results

8.4   Implementation of monitoring (e.g. for anomalies) and control systems (e.g. internal audit)

8.5   Implementation of incident/breach notification processes and channels

8.6   Existence of employee data privacy and security awareness trainings

Annex 4: Standard Contractual Clauses

<div align="center">

STANDARD CONTRACTUAL CLAUSES

SECTION I

Clause 1
Purpose and scope

</div>

(a)   The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) for the transfer of personal data to a third country.

(b)   The Parties:

  (i)   the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter "entity/ies") transferring the personal data, as listed in Annex I.A (hereinafter each "data exporter"), and

  (ii)   the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each "data importer")

  have agreed to these standard contractual clauses (hereinafter: "Clauses").

(c)   These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.

(d)   The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

<div align="center">

Clause 2
Effect and invariability of the Clauses

</div>

(a)   These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.

(b)   These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

<div align="center">

Clause 3
Third-party beneficiaries

</div>

(a)   Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:

  (i)   Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;

  (ii)   Clause 8.1(b) and Clause 8.3(b);

  (iii)   (intentionally left blank)

  (iv)   (intentionally left blank)

  (v)   Clause 13;

  (vi)   Clause 15.1(c), (d) and (e);

  (vii)   Clause 16(e);

  (viii) Clause 18.

(b)   Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

<div align="center">

Clause 4
Interpretation

</div>

(a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.

(b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.

(c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

Clause 5
Hierarchy

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

Clause 6
Description of the transfer(s)

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

Clause 7
Docking clause

(a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.

(b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.

(c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

SECTION II – OBLIGATIONS OF THE PARTIES

Clause 8
Data protection safeguards

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

8.1 Instructions

(a) The data exporter shall process the personal data only on documented instructions from the data importer acting as its controller.

(b) The data exporter shall immediately inform the data importer if it is unable to follow those instructions, including if such instructions infringe Regulation (EU) 2016/679 or other Union or Member State data protection law.

(c) The data importer shall refrain from any action that would prevent the data exporter from fulfilling its obligations under Regulation (EU) 2016/679, including in the context of sub-processing or as regards cooperation with competent supervisory authorities.

(d) After the end of the provision of the processing services, the data exporter shall, at the choice of the data importer, delete all personal data processed on behalf of the data importer and certify to the data importer that it has done so, or return to the data importer all personal data processed on its behalf and delete existing copies.

8.2 Security of processing

(a) The Parties shall implement appropriate technical and organisational measures to ensure the security of the data, including during transmission, and protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter "personal data breach"). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature of the personal data, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects, and in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.

(b) The data exporter shall assist the data importer in ensuring appropriate security of the data in accordance with paragraph (a). In case of a personal data breach concerning the personal data processed by the data exporter under these Clauses, the data exporter shall notify the data importer without undue delay after becoming aware of it and assist the data importer in addressing the breach.

(c)   The data exporter shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

8.3 Documentation and compliance

(a)   The Parties shall be able to demonstrate compliance with these Clauses.

(b)   The data exporter shall make available to the data importer all information necessary to demonstrate compliance with its obligations under these Clauses and allow for and contribute to audits.

Clause 9
(Intentionally left blank)

Clause 10
Data subject rights

The Parties shall assist each other in responding to enquiries and requests made by data subjects under the local law applicable to the data importer or, for data processing by the data exporter in the EU, under Regulation (EU) 2016/679.

Clause 11
Redress

(a)   The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

Clause 12
Liability

(a)   Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.

(b)   Each Party shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages that the Party causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter under Regulation (EU) 2016/679.

(c)   Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.

(d)   The Parties agree that if one Party is held liable under paragraph (c), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.

(e)   The data importer may not invoke the conduct of a processor or sub-processor to avoid its own liability.

Clause 13
(Intentionally left blank)

SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES

Clause 14
(Intentionally left blank)

Clause 15
(Intentionally left blank)

SECTION IV – FINAL PROVISIONS

Clause 16
Non-compliance with the Clauses and termination

(a)   The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.

(b)   In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).

(c)   The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:

(i)   the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;

(ii)   the data importer is in substantial or persistent breach of these Clauses; or

(iii)   the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

(d)   Personal data collected by the data exporter in the EU that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall immediately be deleted in its entirety, including any copy thereof. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.

(e)   Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

Clause 17
Governing law

These Clauses shall be governed by the law of a country allowing for third-party beneficiary rights. The Parties agree that this shall be the law of Germany.

Clause 18
Choice of forum and jurisdiction

Any dispute arising from these Clauses shall be resolved by the courts of Germany.

APPENDIX

EXPLANATORY NOTE:

It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used.

ANNEX I

A. LIST OF PARTIES

Data exporter(s): [Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union]

Name: ngena USA LLC

Address: 1601 29th St. Suite 1292 #1189, Boulder, CO 80301

Contact person's name, position and contact details: Mr. Jan Host, Data Protection Officer, gdpr@ngena.net

Activities relevant to the data transferred under these Clauses: provision of the ngena Services to the data importer in accordance with the ngena Service Terms for End Customers.

Signature and date: [see ngena Customer Form]

Role (controller/processor): processor

Data importer(s): [Identity and contact details of the data importer(s), including any contact person with responsibility for data protection]

Name: as indicated for "Customer" on the ngena Customer Form

Address: as indicated on the ngena Customer Form

Contact person's name, position and contact details: to add

Activities relevant to the data transferred under these Clauses: receipt of the ngena Services provided by the data exporter in accordance with the ngena Service Terms for End Customers.

Signature and date: [see ngena Customer Form]

Role (controller/processor): controller