

**CONFIDENTIAL**

Dated \_\_\_\_\_ 2014

## **CUSTOMISED AGREEMENT**

Between

**CITYNET INFRASTRUCTURE MANAGEMENT PTE. LTD.  
(AS TRUSTEE-MANAGER OF NETLINK TRUST)**

and

**M1 LIMITED**

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**EXTENSION OF A SCHEDULE 2 INTO GLOBAL SWITCH  
(2 TAI SENG AVENUE SINGAPORE 534408)**

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**THIS CUSTOMISED AGREEMENT** is made on [            ] 2014.

Between

- (1) **CityNet Infrastructure Management Pte. Ltd.** (as Trustee-Manager of NetLink Trust) (Registration Number: 201117019K), a company incorporated under the laws of Singapore with its registered office at 750E Chai Chee Road, #07-03, Technopark @ Chai Chee, Singapore 469005, acting in its capacity as trustee-manager of the NetLink Trust (hereafter referred to as "**NLT**")

and

- (2) **M1 LIMITED** (Company Registration Number: **199206031W**), a company incorporated in Singapore with its registered address at 10 International Business Park Singapore 609928 ("Requesting Licensee")

(collectively, the "**Parties**", and each, a "**Party**")

## **WHEREAS:**

- (A) NLT is a public telecommunication licensee under Section 6 of the Telecommunications Act (Cap. 323) and operates subject to the authority and regulation by the Info-Communications Development Authority of Singapore ("IDA").
- (B) Under the terms of NLT's FBO Licence, NLT must offer certain mandated services to Requesting Licensees pursuant to the terms of the Approved ICO (as defined below in Clause 1.2.1).
- (C) The Requesting Licensee have signed the Approved ICO with NLT dated 9 Jun 2010 and have asked for special arrangements regarding connections and provision of services to Data Centres using NLT's Schedule 2 – Non-Residential Connection Service for provision of specific services to their end-customers ("Data Centre Connection for GSDC").
- (D) Parties hereby agree to enter into this Customised Agreement ("CA"), which is separate and independent of the Approved ICO, to regulate Parties' respective obligations and responsibilities with regards the provisioning of Data Centre Connection for GSDC.

## **IN CONSIDERATION OF THE PARTIES' MUTUAL AGREEMENTS, UNDERTAKINGS AND COVENANTS HEREIN, IT IS HEREBY AGREED AS FOLLOWS:**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Agreement, unless the context otherwise requires, capitalised terms shall have the following meanings:-

"**Approved ICO**" has the meaning ascribed to it in Clause 1.2.1 below;

**"Business Day"** means any day other than a Saturday, Sunday or gazetted public holiday on which clearing banks are open for normal banking business in Singapore;

**"Code"** means the NetCo Interconnection Code 2009 or successor code of practice and as may be amended from time to time;

**"Cross-Connect"** means the service provided by the Data Centre where it connects the Data Centre's Designated Room to the End-User's co-location space in the Data Centre;

**"Data Centre's Designated Room"** means the location in the Data Centre, designated by the Data Centre provider, where-by telecom providers hand over the service to the Data Centre provider (eg. Meet-Me-Room);

**"Data Centre"** is a facility used to house computer systems and associated equipment, components and accessories such as telecommunications and storage systems and for the purpose of this Agreement, refers to Global Switch Data Centre located at 2 Tai Seng Avenue Singapore 534408 ("GSDC").

**"End-User"** refers to someone who subscribes for services from the Retail Service Provider ("RSP").

**"Requesting Licensee"** means Qualifying Persons who had executed the Approved ICO with OpenNet Pte. Ltd. ("OpenNet") prior to 1 October 2014 and had executed a Novation Agreement dated 1 October 2014 to novate the Approved ICO from OpenNet to NLT

**"Service Provider"** means a RSP providing a service to its End-User in the Data Centre.

## 1.2 Interpretation

In this Agreement:-

- 1.2.1 unless otherwise defined in this Agreement, all terms and references defined in the NLT Approved ICO ("**Approved ICO**") (as set out on the IDA webpage <http://www.ida.gov.sg/Policies%20and%20Regulation/20090224174101.aspx#13Nov09> or any successor webpage and as may be amended from time to time), shall have the same meaning and construction when used in this Agreement;
- 1.2.2 the definition of terms herein shall apply equally to the singular and plural forms of the terms defined, and any pronoun shall include the corresponding masculine, feminine and neuter forms;
- 1.2.3 unless the context otherwise requires, any definition or reference to any instrument, statute or statutory provision shall be construed as referring to such instrument, statute or statutory provision as from time to time amended, supplemented, extended, consolidated or replaced and subject to any restrictions on such amendments, supplements, extensions, consolidations or replacements and any orders, regulations, instruments or other subordinate legislation made thereunder;
- 1.2.4 the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";

- 1.2.5 unless otherwise provided herein or the context otherwise requires, all references to clauses, schedules, recitals and annexures are to the clauses schedules, recitals of and annexures to this Agreement;
- 1.2.6 the words "herein", "hereof" and hereunder" and words of similar import shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;
- 1.2.7 an expression importing a natural person shall include an individual, corporation, company, partnership, firm, trustee, trust, executor, administrator or other legal personal representative, unincorporated association, joint venture, syndicate or other business enterprise (notwithstanding that "person" may be sometimes used herein in conjunction with some of such words), and their respective successors, legal personal representatives and assigns, as the case may be, and pronouns shall have a similarly extended meaning. References to a company shall be construed so as to include any company, corporation or other body corporate wherever and however incorporated or established;
- 1.2.8 dates and times are to Singapore time;
- 1.2.9 the Schedules form part of this Agreement and have the same force and effect as if expressly set out in the body of this Agreement;
- 1.2.10 the headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement; and
- 1.2.11 any thing or obligation to be done under this Agreement which is required or falls to be done on a stipulated day, shall be done on the next succeeding Business Day, if the day upon which that thing or obligation is required or falls to be done falls on a day which is not a Business Day.

## **2. Data Centre Connection for Global Switch Data Centre ("GSDC")**

- 2.1 The Requesting Licensee hereby acknowledged it had requested NLT to provide a service more particularly described in a Customised Agreement for Deployment in MMR at Global Switch Data Centre located at 2 Tai Seng Avenue Singapore 534408 and are aware that in turn, NLT is required to enter into a contractual agreement with Global Switch Pte Ltd in relation thereto ("Global Switch Agreement")
- 2.2 One Schedule 2 Data Centre Connection for GSDC shall be used only to connect to an identified End-User of the Requesting Licensee, as a Service Provider.
- 2.3 Parties hereby acknowledge and agree that a Schedule 2 Data Centre Connection for GSDC is not intended to provide for the following situations :
  - (i) a direct connection from the Requesting Licensee's, as End-User, equipment to NLT's equipment;
  - (ii) Requesting Licensee's use as a RSP serving Requesting Licensee's, as RSP, End-Users;
  - (iii) Requesting Licensee's use as a Requesting Licensee serving other Retail Service Providers, ie. where other Retail Service Providers' equipment are connected into the Data Centre Connection for Requesting Licensee.

## **3. Requesting Licensee's Obligations**

3.1 Due to requirements imposed by Global Switch and in view of the Requesting Licensee's needs, the Requesting Licensee shall comply with the procedures set out below :-

3.1.1 submit an order in the format prescribed in Schedule 2 – Non-Residential Connection Service and notifying NLT via email enclosing the particulars of the order that was submitted.

3.1.2 The Schedule 2 connection shall be used solely to establish a Non-Residential Connection under Schedule 2 from NLT's Central Office to the Requesting Licensee's equipment in the Data Centre's Designated Room and thereafter to an identified End User of the Requesting Licensee, as a Service Provider.

3.1.3 Upon receipt of the Requesting Licensee's email abovementioned, NLT shall provision the order in accordance with the process set out in Schedule 2 including, where necessary, the conduct of a joint site survey with the Requesting Licensee and Global Switch to review the suitability of the Data Centre's Designated Room and, where applicable, to provide a quotation for the Requesting Licensee's acceptance;

3.1.4 The Requesting Licensee shall procure from Global Switch a Cross-Connect to :-

(a) provide the connection from the Requesting Licensee's equipment directly to NLT's equipment in the Data Centre's Designated Room; and/or

(b) provide the connection from the Requesting Licensee's equipment directly to its identified End-User.

For the avoidance of doubt, NLT shall not be responsible for the installation or maintenance of the Cross Connect cable described in this clause 3.1.4.

The Requesting Licensee shall inform NLT when the Cross-Connect is ready for use before NLT is able to provide the service described in this Agreement.

3.1.5 The Requesting Licensee shall be responsible to procure, apply for and obtain the requisite approvals, consents or certifications from relevant authorities or parties as may be necessary in order for the Requesting Licensee to accomplish its request.

3.2 The Requesting Licensee shall pay –

3.2.1 the Patching Charge in accordance with Schedule 15 of the Approved ICO if Patching Service at NLT's equipment in the Building MDF Room/Central Office/Data Centre's Designated Room is required.

3.2.2 all Standard Installation Charge and Installation of Network charges in accordance with Schedule 15 of the Approved ICO.

3.2.3 such reasonable charges as NLT have or would incur to install, provide, provision or procure such resources as may be necessary such that NLT may provision the service described herein.

## **4. NLT'S OBLIGATIONS**

4.1 The Data Centre Connection for GSDC shall be provisioned subject to the terms and conditions of this Agreement. However, the computation of any Service Level Guarantees under the relevant NLT's ICO shall be limited to service provisioning up to and including the public MDF Room of GSDC. In any event, NLT is exempted from compliance with the service activation period specified in Approved ICO for any service provisioning under this Agreement.

- 4.2 Upon receipt of the Requesting Licensee's request for a Data Centre Connection for GSDC and the requisite approval by the Data Centre, NLT shall install its Fibre Distribution Frame within such area as may be designated by the Data Centre other than in the building's public MDF room. Such a FDF ("**NLT's External FDF**") shall be owned by NLT and solely be accessed by NLT. NLT reserves all rights to refuse to install the NLT's External FDF in the event that the area designated is unsuitable for the installation or is likely to cause damage to NLT's External FDF and/or equipment.
- 4.3 NLT shall also be responsible for the deployment of the optical fibre(s) from NLT's CO to NLT's External FDF. For avoidance of doubt, NLT's Network ends at NLT's External FDF in the Data Centre.
- 4.4 Notwithstanding the terms of this Agreement and the execution thereto by the Requesting Licensee and NLT, NLT shall be entitled to not provision the services as described in this Agreement where NLT had, in its absolute discretion, required the Requesting Licensee to enter into an additional Customised Agreement ie. Customised Agreement for Deployment in MMR at Global Switch Data Centre located at 2 Tai Seng Avenue Singapore 534408 and the Requesting Licensee had failed and/or refused to execute such an additional Customised Agreement.

## 5. LIMITATION OF LIABILITY

- 5.1 This Clause 5 shall regulate the liability (whether arising in contract, in tort, under statute or in any other way and whether due to negligence, willful or deliberate breach, breach of statutory duty or any other cause) of a Party to the other Party under or in relation to this Agreement and in relation to any act, omission or event relating to or arising out of this Agreement.
- 5.2 In performing its obligations under this Agreement, NLT shall exercise the reasonable skill and care of a competent telecommunications operator.
- 5.3 Subject to Clause 5.5, neither Party shall be liable to the other Party (whether in contract, in tort, under statute or otherwise for any cause other than for wilful or deliberate breach, acts or omissions) for:
- (a) any loss (whether direct or indirect) of profits, revenue, business, anticipated savings, wasted expenditure or goodwill; or
  - (b) any other consequential or indirect liability, loss or damage,
- suffered by the other Party arising from or in connection with this Agreement.
- 5.4 Subject to Clause 5.5, if a Party ("**Breach Party**") is in breach of any of its obligations under this Agreement to the other Party or otherwise arising under this Agreement (including liability for negligence or breach of statutory duty), the Breach Party's liability to the other Party shall be limited to the total charges paid or payable by Requesting Licensee under this Agreement during the twelve (12) months prior to the event giving rise to the liability. Where liability arises from a claim of intellectual property infringement, the limitation of liability shall be 3 times the total charges paid or payable by Requesting Licensee under this Agreement during the twelve (12) months prior to the notice of infringement.

- 5.5 Neither Party excludes or restricts its liability for death, personal injury, gross negligence or wilful default.

## 6. TERMINATION

- 6.1 This Agreement shall expire on such date (approximately 5 years from the date of this Agreement) as NLT shall indicate in writing within 10 Business Day after the date the Authority approves this Agreement.
- 6.2 Either Party may terminate this Agreement pursuant to the provisions of clause 12 of the Main Body of the Approved ICO. Additionally, where a Party is in breach of its obligations under this Agreement, the innocent Party may terminate this Agreement upon giving the Party in breach a 30 calendar days' written notice.
- 6.3 In any event, NLT has the right to terminate this Agreement at any time upon giving the Requesting Licensee no less than 3 months' notice in writing. However, in the event the Global Switch Agreement is terminated, then this Agreement shall correspondingly be terminated and NLT shall not be liable for any compensation or damages to the Requesting Licensee arising from such termination. In such a case, NLT shall be entitled to cease all service provisioning, including existing active connections, under the terms of this Agreement upon prior written notice.

## 7. MISCELLANEOUS

- 7.1 Save as expressly amended and supplemented by this Agreement, the terms of the Approved ICO shall be incorporated herein and shall form part of this Agreement. For the avoidance of doubt, this Agreement shall be deemed to be a "Customised Agreement" pursuant to Clause 1.4 of Part 2 of the Main Body of the Approved ICO. In the event of any inconsistencies between the provisions of this Agreement and the Approved ICO with regard to the, the terms of this Agreement shall prevail to the extent of such inconsistency.

- 7.2 Release, Waiver or Compromise

Any liability to either Party hereunder may in whole or in part be released, compounded or compromised, or time or indulgence may be given, by such Party in its absolute discretion without in any way prejudicing or affecting its rights against the other Party. Any release or waiver or compromise shall be in writing and shall not be deemed to be a release, waiver or compromise of similar conditions in the future.

- 7.3 Amendment

This Agreement may be amended only by an instrument in writing signed by all of the Parties. The Parties hereby acknowledge and agree that they shall, if required by the Authority, amend this Agreement to incorporate any additional or modified Duties Related to the Provision of Mandated Services (as defined in the Code) as required by the Authority during the term of this Agreement.

- 7.4 Invalidity

Any provision of this Agreement that is invalid or unenforceable in any Law in any jurisdiction will as to that jurisdiction only read down or severed to the extent of that invalidity or unenforceability. The remaining provisions of this Agreement which are

self-sustaining and capable of separate enforcement without regard to the read down or severed provision in that jurisdiction or that provision in any other jurisdiction are and continue to be valid and enforceable in accordance with their terms.

## 7.5 Counterparts

This Agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument.

## 7.6 Governing Law and Submission to Jurisdiction

7.6.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of Singapore and the Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Singapore. Nothing in this Clause shall limit the right of any Party hereto to bring any proceedings with respect to this Agreement against another Party in any court elsewhere nor shall the bringing of any proceedings in any jurisdiction preclude any Party from bringing any such proceedings in any other jurisdiction, whether concurrently or not.

7.6.2 The Parties acknowledge the competence of any such courts and agrees that a final judgment in any such proceedings brought in such courts shall be conclusive and binding upon it and if brought in the courts of Singapore, may be enforced in any other courts.



**IN WITNESS WHEREOF** this Agreement has been entered into on the date stated at the beginning.

NLT

Signed by Chye Hoon Pin )  
(Name of Signatory) )  
for and on behalf of )  
**CITYNET INFRASTRUCTURE MANAGEMENT** )  
**PTE. LTD. (as Trustee-Manager of NetLink Trust)** )  
in the presence of: )

(signature)  
Title: COO

(signature of witness)  
Name of Witness: Widjaja Suki  
Title: Director

M1

Signed by \_\_\_\_\_ )  
(Name of Signatory) )  
for and on behalf of )  
**M1 LIMITED** )  
in the presence of: )

(signature)  
Title:

(signature of witness)  
Name of Witness:  
Title: