

**CONFIDENTIAL**

Dated \_\_\_\_\_ August 2015

**CUSTOMISED AGREEMENT**

Between

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

and

**SUPERINTERNET ACCESS PTE. LTD.  
("SI")**

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**DATA CENTRE SURCHARGE  
DATA CENTRE CONNECTION FOR SERVICE PROVIDERS**

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**THIS CUSTOMISED AGREEMENT** is made on [ ] August 2015

Between

(1) **CITYNET INFRASTRUCTURE MANAGEMENT PTE. LTD.** (as Trustee-Manager of NetLink Trust) (Company Registration Number: **201117019K**), a company incorporated in Singapore with its registered address at 750E Chai Chee Road, #07-03 Technopark@Chai Chee, Singapore 469005 ("**NLT**")

and

(2) **SUPERINTERNET ACCESS PTE. LTD.** (Company Registration Number: **200002519N**), a company incorporated in Singapore with its registered address at 80 Raffles Place #32-01 Singapore 048624; ("**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 16 July 2014 and have asked for special arrangements regarding connections and provision of GPON and OE services to Data Centres using NLT's Schedule 2 – Non-Residential Connection for provision of specific services to their end-customers who are service providers ("**Data Centre Connection for Service Providers**").
- (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 Connections for Service Providers.

#### **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. Private MDF room or 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. For the purpose of this Agreement, the list of Data Centres are as listed in Annex 1 of this Agreement.

“**End-User**” refers to someone who subscribes for services from the Retail Service Provider.

“**Law**” means any domestic or foreign constitutional provision, statute or other law (including common law), act, rule, regulation, subsidiary legislation, ordinance, treaty, code, permit, certificate, license, or interpretation of any Governmental Agency and any decision, decree, resolution, injunction, judgment, order, ruling, interpretation, or assessment issued by any Governmental Agency, including any of the foregoing applicable to health, safety and environmental matters; and

“**Meet-Me-Rack**” means the rack in the Data Centre’s Designated Room where End-User’s Cross-Connect will be terminated into.

“**Service Provider**” means a RSP who collocates in the Data Centre, as listed in Annex 1, providing a service to its End-User.

“**Access Link**” refers to a point-to-point connection connecting an End-User to a Service Provider, co-located in the Data Centres listed in Annex 1, that is providing a service to the End-User. Each Access Link will only connect a single End-User to a Service Provider.

“**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

## 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-and-Regulations/Industry-and-Licensees/Nationwide-Broadband-Network/OpenNets-Interconnection-Offer-2012> 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 Connections for Service Providers**

- 2.1 The Parties hereby agree that NLT shall provide to the Requesting Licensee a fibre connection, pursuant to the terms and conditions herein, from NLT's designated Central Office to the Data Centre in which the Requesting Licensee's end-customer's equipment is located, such Requesting Licensee's end-customer being a telecommunication licensee providing services to a specific Requesting Licensee's

End-User on the terms and conditions set out herein ("Service Providers"). Such connection shall hereinafter be referred to as "Data Centre Connection for Service Providers".

- 2.2 One Data Centre Connection for Service Providers shall be used to connect one identified End-User for the Service Provider to provide its services, such Service Providers whose equipment are situated in the Data Centres listed in **Annex 1** hereto.
- 2.3 For avoidance of doubt, NLT will not install any Termination Point in the Service Providers' equipment rack under any circumstances.
- 2.4 Parties hereby acknowledge and agree that this Agreement and the Data Centre Connection for Service Provider were not intended to provide for the following situations :
  - (i) a direct connection from the Requesting Licensee's, as End-User, equipment to NLT's FDF;
  - (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 Service Provider.

Instead, Schedule 5 and/or 6 connections of the Approved ICO will be required.

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

- 3.1 Due to requirements imposed by Data Centre operators and in view of the Requesting Licensee's needs, the Requesting Licensee shall comply with the procedures set out below :-
  - 3.1.1 submit two orders in the format prescribed in Schedule 2 – Non-Residential Connection and notifying NLT via email enclosing the particulars of the Schedule 2 orders that was submitted together with a completed **Annex 2** of this Agreement. The two (2) Schedule 2 connections are used to establish a point-to-point Access Link for an End User requiring a connection from the End-User to the Service Provider, ie. 1 normal Schedule 2 order to connect the End-User to a Central Office, the other being a Schedule 2 Order (under the terms of this Agreement) to connect the Service Provider to NLT's infrastructure for the specific purpose of the Service Provider providing its services to the identified End User. The Data Centre Connection for Service Providers refers to the Schedule 2 (1:16) Connection #2 in the diagrams below.
  - 3.1.2 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 the conduct of a joint site survey with the Requesting Licensee, where necessary, and Data Centre operator to review the suitability of the Data Centre's Designated Room;
  - 3.1.3 The Requesting Licensee shall procure a Cross-Connect, provided by the Data Centre provider, to connect the Service Provider's equipment directly to NLT's External FDF. For the avoidance of doubt, NLT shall not be responsible for the installation or maintenance of any fibre to the Service Provider's equipment rack in the Data Centre.
  - 3.1.4 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 Where the Requesting Licensee requests for a Data Centre Connection for Service Providers for the purpose of providing GPON services to connect the End-User to the Service Provider, NLT shall, subject to Requesting Licensee's payment of the applicable Data Centre Surcharge, provide one (1) fibre strand from NLT's CO to NLT's splitter for each group of sixteen (16) Data Centre Connections (or portion thereof). NLT will provide the fibres in the NLT's External FDF. See Diagram 1.

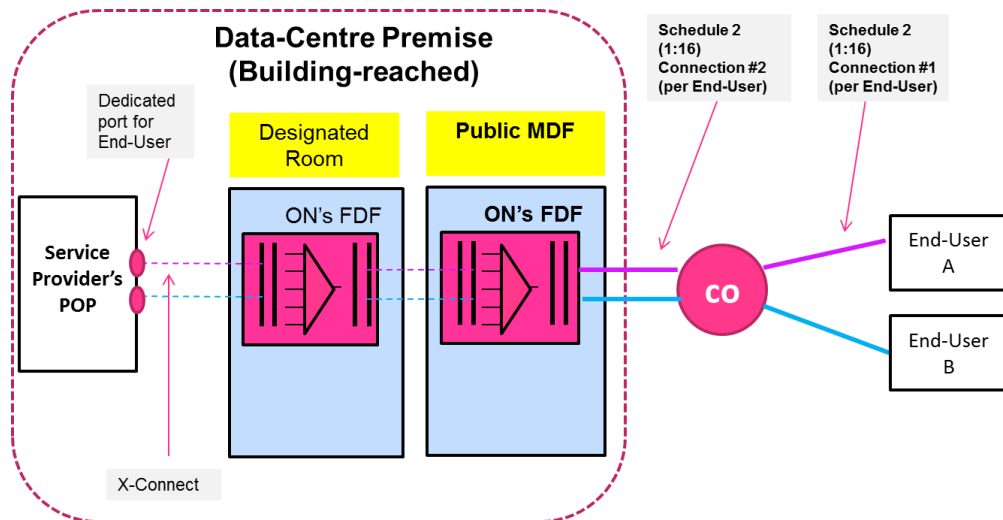
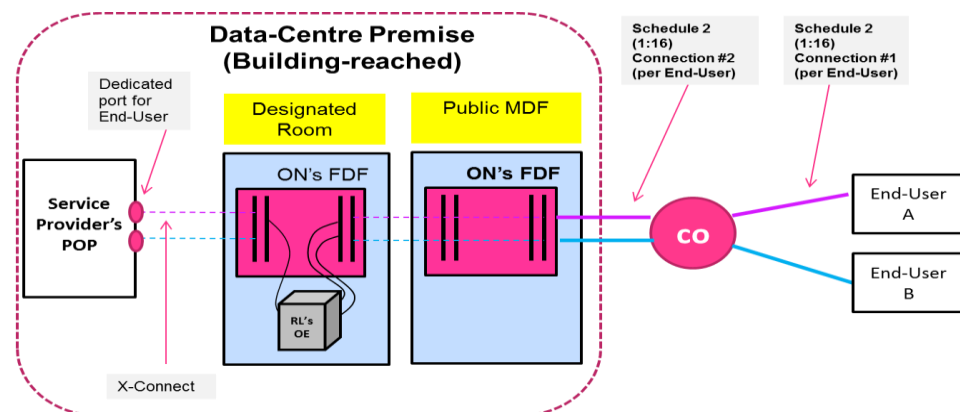


Diagram 1 : Data Centre Connection for Service Providers using GPON

3.3 Where the Requesting Licensee requests for Data Centre Connection for Service Providers for the purpose of providing OE services to connect an End-User to a Service Provider, NLT shall, subject to the Requesting Licensee's payment of the applicable Data Centre Surcharge, provide two (2) fibre strands from NLT's designated CO to NLT's External FDF in the applicable Data Centre's Designated Room for each group of thirty-two (32) Data Centre Connections (or any portion thereof). The Requesting Licensee will provide the necessary fibres to connect its OE Equipment into NLT's External FDF.



Note: Connectivity between RL's OE and ON's FDF in the Designated Room is RL's responsibility

Diagram 2 : Data Centre Connection for Service Provider using OE

3.4 The Requesting Licensee shall pay –

- 3.4.1 the Patching Charge in accordance with Schedule 15 of the Approved ICO if Patching Service at NLT's FDF in the Building MDF Room/Central Office is required.
- 3.4.2 all charges for such Data Centre Connection for Service Provider as set out in Annex 1 of this Agreement.

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

- 4.1 The Data Centre Connection for Service Providers shall be provisioned subject to the terms and conditions of this Agreement.
- 4.2 Upon receipt of the Requesting Licensee's request for a Data Centre Connection for Service Provider 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.

#### **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 (excluding obligations arising under this Agreement to pay monies in the ordinary course of business), 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 willful default.

## **6. TERMINATION**

- 6.1 This Agreement shall expire 2 years after the date the Authority approves this Agreement. The Parties shall review the terms of this Agreement three (3) months prior to the date of expiry of this Agreement and renew on such terms as Parties may agree, subject always to the Authority's prior approval.

The Parties agree that upon IDA approving a service similar to the Data Centre Connections for Service Providers under ICO, this Agreement shall be terminated and superseded by the Approved ICO.

- 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 RL may terminate each Data Centre Connection for Service Provider by submitting another completed form to NLT (according to ICO Schedule 2) terms.

## **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.

## 7.7 Liability of the Trustee-Manager

The Trustee-Manager has assumed all obligations under this Agreement in its capacity as trustee-manager of the NetLink Trust Entities and not in its personal capacity and any obligation or liability of the Trustee-Manager under this Agreement is limited to the assets of the NetLink Trust Entities over which the Trustee-Manager has recourse and shall not extend to any personal or other assets of the Trustee-Manager or its shareholders, directors, officers or employees. For the purpose of this clause, "NetLink Trust Entities" refers to the following entities collectively:

NetLink Trust Management Services Company Pte Ltd  
NetLink Trust Operations Company Pte Ltd  
OpenNet Pte Ltd.

**ANNEX 1**

	<b>Data Centre</b>	<b>Data Centre Surcharge (Before GST)</b>	<b>Contract Term (minimum)</b>	<b>Remarks</b>
1.	THE EQUINIX SG1 20 Ayer Rajah Crescent #05-05/08 Singapore 139964	S\$50 per connection per month	1 Year	
2.	THE EQUINIX SG2 15 Pioneer Walk, Pioneer Hub #01-02 Singapore 627753	S\$50 per connection per month	1 Year	
3.	THE FORT 6 Changi South Lane Singapore 486400	S\$50 per connection per month	1 Year	

## ANNEX 2

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

NLT

Signed by Ng Yong Hwee )  
(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: Chief Executive Office

(signature of witness)

Name of Witness: Widjaja Suki

Title: Director (Products, Business Development and Process)

SI

Signed by Benjamin Tan Tien Ping )  
(Name of Signatory) )  
for and on behalf of )  
**SUPERINTERNET ACCESS PTE. LTD.** )  
in the presence of: )

(signature)

Title: Managing Director

(signature of witness)

Name of Witness: Rebecca Chang

Title: Financial Controller