

PRIVATE & CONFIDENTIAL

Dated []

BETWEEN

**NETLINK MANAGEMENT PTE. LTD.
(IN ITS CAPACITY AS TRUSTEE OF NETLINK TRUST)**

AND

[REDACTED]



CUSTOMISED AGREEMENT

NON-RESIDENTIAL END-USER CONNECTION REBATE PROGRAMME



This CUSTOMISED AGREEMENT (“Agreement”) is made on [] between:

(A) **NETLINK MANAGEMENT PTE. LTD.** (in its capacity as trustee of NetLink Trust) (Company Registration Number: 201704784C), a company incorporated in Singapore with its registered address at 750E Chai Chee Road, #07-03 Viva Business Park Singapore 469005 (“**NLT**”)

AND

(B) [REDACTED] (Company Registration Number: [REDACTED], a company incorporated in Singapore with its registered address at [REDACTED] (the “**RL**”).

NLT and the RL shall hereinafter be collectively referred to as the “**Parties**”, and individually as “**Party**”.

WHEREAS:

- A. NLT has been granted a licence to provide facilities-based operations (“**FBO Licence**”) by the Info-communications Media Development Authority of Singapore (“**IMDA**”) under Section 5 of the Telecommunications Act (Cap. 323) (“**Act**”) and is a designated public telecommunication licensee under Section 6 of the Act. NLT operates subject to the authority of and regulation by IMDA.
- B. Under the terms of NLT’s FBO Licence, NLT is required to offer certain Mandated Services to Requesting Licensees pursuant to the terms of the Approved ICO.
- C. The RL has signed an agreement on terms of the Approved ICO with NLT (“**RL’s ICO Agreement**”).
- D. The Parties hereby agree to enter into this Agreement, which is separate from and independent of the RL’s ICO Agreement, to regulate Parties’ respective obligations and responsibilities with regard to the rebates to be granted by NLT in respect of new Non-Residential End-User Connections ordered by the RL during the Qualifying Period, and the RL’s Existing Connections (as defined below).

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 Saturdays, Sundays or the gazetted public holidays in Singapore;

“**Code**” means the NetCo Interconnection Code 2017 issued by the Authority pursuant to section 26(1) of the Act, which came into operation on 7 April 2017, or its successor code of practice, and as may be amended from time to time;

“Enterprise Customers” means any End-User to whom the RL supplies an Enterprise Service;

“Enterprise Service” means the provision of one (1) fibre-based broadband enterprise connection by the RL to a End-User at a Non-Residential Premise;

“Law” means any domestic constitutional provision, statute or other law (including common law), act, rule, regulation, subsidiary legislation, ordinance, treaty, code, permit, certificate, licence, 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;

“Minimum Commitment Period” means the minimum period stated under **paragraph 1.1 of Annex 1** for which each Existing Connection and New Connection must remain active in order to receive the Rebate;

“Existing Connection” means the RL’s existing active Non-Residential End-User Connection, which was provisioned prior to the date of this Agreement either to Enterprise Customers or as part of a multi-site project, and which has been declared by the RL in writing as an Existing Connection;

“New Connection” means a new Non-Residential End-User Connection ordered by the RL in accordance with Schedule 2 of the Approved ICO during the Qualifying Period;

“Qualifying Connection” means an Existing Connection, or a New Connection that meets the criteria set out in **paragraph 1.1 of Annex 1**;

“Qualifying Date” means the last date of the Qualifying Period;

“Qualifying Period” means the period of twenty-four (24) months from the date on which the Authority approves or is deemed to have approved this Agreement;

“Rebate” means the amount to be paid by NLT in respect of each Qualifying Connection in accordance with the terms of this Agreement;

“Requesting Licensees” means Qualifying Persons who had executed an ICO Agreement on terms of 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 ICO Agreement from OpenNet to NLT, or who had entered into an ICO Agreement with NLT;

“SAP Rebate” means the amount which NLT is liable to compensate the RL under the Approved ICO when NLT fails to meet the applicable service activation period for a Non-Residential End-User Connection;

Termination Point” or **“TP”** means any network point, within a Non-Residential Premise;

“Term” means the term of this Agreement as defined in **Clause 7** of this Agreement; and

1.2 Interpretation

In this Agreement:-

- 1.2.1 unless otherwise defined herein, all terms and references defined in NLT’s Interconnection Offer as approved by the Authority (“**Approved ICO**”) (as set out on the IMDA webpage <https://www.imda.gov.sg/regulations-licensing-and-consultations/frameworks-and-policies/nationwide-broadband-network/netlink-trusts-interconnection-offer-2017> 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 unless otherwise defined herein, the definition of terms 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 references to the clauses, schedules, recitals and annexures of this Agreement;
- 1.2.6 the words "herein", "hereinafter", "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 of this Agreement;
- 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 refer to Singapore time;
- 1.2.9 the schedules and/or annexures to this Agreement 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 act or obligation to be done or performed under this Agreement which is required or falls to be done or performed on a stipulated day, shall be done or performed on the next succeeding Business Day, if the day upon which that act or obligation is required or falls to be done or performed falls on a day which is not a Business Day.

2. **NLT'S OBLIGATIONS**

- 2.1 Upon request made by the RL and subject to the terms and conditions specified herein, NLT shall pay RL the Rebate in respect of every Qualifying Connection.

3. **RL'S OBLIGATIONS**

3.1 In consideration of NLT's agreement to grant the Rebate described in **Clause 2.1** above, the RL shall comply with the terms and conditions specified in **Annex 1** hereto and as may be amended from time to time by the Parties' mutual agreement, subject to the Authority's approval.

4. CONFIDENTIALITY

4.1 Each Party shall protect from disclosure any confidential or proprietary information provided by the other in the course of negotiating or implementing this Agreement, use such information only for the provision of the specific Mandated Services requested by the RL and adopt appropriate procedures to ensure that the information of the other Party is not used for the development or marketing of other telecommunication services or equipment by either Party or third parties.

5. PROTECTION OF NETWORKS

5.1 NLT and the RL shall take reasonable measures to ensure that they will not cause physical or technical harm to each other's network.

6. BILLING INFORMATION

6.1 NLT and the RL shall provide each other with information within their possession that is necessary to allow them to provide accurate and timely billing to each other and to any other relevant third parties.

7. TERM AND TERMINATION

7.1 This Agreement shall be submitted to the Authority for approval and shall come into effect only upon such approval by the Authority.

7.2 This Agreement shall expire forty-eight (48) months after the date on which the Authority approves or is deemed to have approved this Agreement (the "**Effective Date**").

7.3 The Parties may review the terms of this Agreement prior to the date of expiry of this Agreement and may renew this Agreement on such terms as Parties may agree, subject to the Authority's prior approval.

7.4 Unless otherwise specified in Annex 1 hereto, either Party may terminate this Agreement pursuant to the provisions of Clause 12.1 of the main body of Part 2 of the Approved ICO (which are incorporated pursuant to **Clause 9.1** below). In addition, either Party may terminate this Agreement by giving to the other Party, sixty (60) days' written notice or such shorter notice as may be directed or requested by the Authority.

8. LIMITATION OF LIABILITY

8.1 This **Clause 8** 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 NLT to the RL under or in relation to this Agreement and in relation to any act, omission or event relating to or arising out of this Agreement.

8.2 Subject to **Clause 8.4**, NLT shall not be liable to the RL, whether in contract, in tort, under statute or otherwise, for the following:

- a. any direct or indirect loss of profits, revenue, business, anticipated savings, wasted expenditure or goodwill; or
 - b. any consequential or indirect liability, loss or damage,
- sustained by the RL and arising from or in connection with this Agreement.

8.3 Subject to **Clause 8.4**, NLT's aggregate liability to the RL for breach of any of NLT's obligations or otherwise arising under this Agreement (including liability for negligence or breach of statutory duty), shall be limited to the total charges paid or payable by the RL under this Agreement during the twelve (12) months prior to the event giving rise to the liability.

8.4 Save as permitted by law, neither Party excludes or restricts its liability for death or personal injury.

9. MISCELLANEOUS

9.1 Incorporation of Terms of Approved ICO

Save as expressly amended and/or supplemented by this Agreement, or if the context requires otherwise, the terms of the Approved ICO (as may be amended from time to time, and including but not limited to Schedules 2, 15, 16 and 18) shall be incorporated herein and shall form part of this Agreement, with the necessary modifications for application to this Agreement instead of an ICO Agreement. For the avoidance of doubt, this Agreement shall be deemed to be a "Customised Agreement" referred to in Clause 1.4 of the main body of Part 2 of the Approved ICO and as defined under Clause 1.2.1 of the Code. In the event of any inconsistencies between the provisions of this Agreement and the Approved ICO, the terms of this Agreement shall prevail to the extent of such inconsistencies.

9.2 Release, Waiver or Compromise

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

9.3 Prohibition against Assignment and Sub-Licensing

This Agreement and/or the obligations hereunder shall not be assigned or sub-licensed by the RL.

9.4 Amendment

This Agreement may be amended only by an instrument in writing signed by both Parties, which shall be conditional upon and subject to the approval of the Authority. The Parties hereby acknowledge that the Authority may direct changes to be made to this Agreement and agree that they shall amend this Agreement to incorporate such changes (including any additional or modified Duties Related to the Provision of Mandated Services as defined in the Code) as and when required by the Authority.

9.5 Invalidity and Unenforceability

Any provision of this Agreement that is invalid or unenforceable under any Law in Singapore will be 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 shall remain valid and enforceable in

accordance with their terms.

9.6 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.

9.7 Governing Law and Submission to Jurisdiction

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.

9.8 Liability of the Trustee

NETLINK MANAGEMENT PTE. LTD. has assumed all obligations under this Agreement in its capacity as trustee of NetLink Trust and not in its personal capacity and any liability of NetLink Management Pte. Ltd. (in its capacity as trustee of NetLink Trust) under this Agreement is limited to the assets of NetLink Trust over which NetLink Management Pte. Ltd. has recourse and shall not extend to any personal or other assets of NetLink Management Pte. Ltd. or its shareholders, directors, officers or employees, save where NetLink Management Pte Ltd is fraudulent, in wilful default or in breach of the trust or where the NetLink Management Pte Ltd fails to exercise such due care and skill as is reasonable in the circumstances in its capacity as trustee of NetLink Trust.

ANNEX 1

1. REBATE PROGRAMME

1.1. Subject to **paragraphs 1.3 – 1.5** of this Annex 1, NLT undertakes to grant RL the Rebate in respect of:

1.1.1. each Existing Connection, and

1.1.2. each New Connection which meets the following criteria:

(a) The TP for the New Connection was installed by NLT in the End-User's Non-Residential Premise; and

(b) The Request for each Connection must have indicated the Application Reference ID "Sch2Rebate" or any other code that the Parties may agree in writing ("**Rebate ARI**"),

PROVIDED ALWAYS THAT the abovementioned Existing Connections and New Connections shall remain active or in-service for a period of not less than twenty-four months from the Effective Date or from the RFS date, respectively ("**Minimum Commitment Period**").

Each Existing Connection or New Connection that fulfils the requirements set out in this paragraph shall hereafter be referred to as a "**Qualifying Connection**".

1.2. The RL hereby warrants that Qualifying Connections that are New Connections are genuine new orders submitted by End-Users under Schedule 2 of the Approved ICO, and that these orders have not been submitted to replace the RL's existing Non-Residential End-User Connections that have been terminated or will be terminated for the purpose of receiving the Rebates. In the event that NLT acquires information that leads NLT to reasonably believe that the foregoing warranty has been breached, NLT shall be entitled to terminate this Agreement with immediate effect by giving the RL written notice of the termination without being liable to the RL for damages or otherwise.

1.3. Any New Connection for which NLT provides the service up to the FTTB Node of the Non-Residential Premise, or for which the TP was installed in the building riser at the RL's request, shall not receive any Rebate under this Agreement. For the avoidance of doubt, only Qualifying Connections which are New Connections and are provisioned pursuant to orders with 'TP Installed in End User's Non-Residential Premise' will qualify for the Rebate.

1.4. NLT has no obligation to grant the Rebate in respect of any Non-Residential End-User Connection that is ordered by the RL after the expiry of the Qualifying Period, or any New Connection that is provisioned more than two (2) calendar months after the Qualifying Date due to any delay arising out of unforeseen circumstances beyond the control of NLT.

Determination of Rebate

1.5. The total number of Existing Connections shall not comprise more than twenty per cent (20%) of the Qualifying Connections on the Qualifying Date. In the event that the total number of Existing Connections exceeds this 20% threshold on the Qualifying Date, NLT shall not be liable to pay the Rebate in respect of the excess Existing Connections, and the excess Existing Connections shall not be counted when determining the Rebate under **paragraph 1.6** or when calculating the total amount of Rebates payable under **paragraph 1.7**.

- 1.6. Subject to **paragraph 1.5** above, the value of the Rebate that applies for each Qualifying Connection shall depend on the total number of Qualifying Connections that are active on the Qualifying Date, and shall be determined in accordance with the following table (the “**Rebate Structure**”):

No. of active Qualifying Connections as of Qualifying Date ¹	Value of Rebate per Qualifying Connection
100 – 999	\$200
1000 – 2999	\$300
3000 – 4999	\$400
≥ 5000	\$500

Rebate Payment Procedures

- 1.7. Commencing from the expiry of the Qualifying Period, NLT shall generate a monthly list of Qualifying Connections that have fulfilled the Minimum Commitment Period, and compute the total amount of Rebates payable for each calendar month based on this list. NLT shall provide the RL with a copy of the aforementioned list of Qualifying Connections, and a statement indicating the total amount of Rebates payable for each calendar month within four (4) weeks of end of the relevant calendar month.
- 1.8. The RL shall provide written confirmation of the accuracy of the list of Qualifying Connections and the statement of the total amount of Rebates payable by NLT no later than five (5) Business Days of receiving the same. In the event that the RL fails to provide the said written confirmation within this timeline, the RL shall be deemed to have confirmed the accuracy of the said list and statement, and the RL shall no longer be entitled to seek a review or revision of the said list and statement thereafter.
- 1.9. The full amount of the total Rebates payable by NLT for each calendar month shall be credited to the RL’s account within two (2) months from the date of the written confirmation referred to in **paragraph 1.8**, and shall be reflected in the next invoice issued by NLT.
- 1.10. For the avoidance of doubt, the Rebate in respect of each Qualifying Connection shall only be paid out once during the term of this Agreement, and NLT’ shall have no obligation to pay the Rebate in the event that an Existing Connection or New Connection remains active for any period that exceeds the Minimum Commitment Period.

2. CONFIRMATION OF EXISTING CONNECTIONS

- 2.1. The RL shall provide NLT with a detailed list of the RL’s existing active Non-Residential End-User Connections which were provisioned either to Enterprise Customers or as part of multi-site projects, and for which the RL wishes to receive the Rebate as Existing Connections, on the date of execution of this agreement. The list shall contain the following information in respect of each Non-Residential End-User Connection:

2.1.1. ORI;

2.1.2. Address of the site;

¹ “Qualifying Date” means the last date of the Qualifying Period, and “Qualifying Period” means the period of twenty-four (24) months from the date on which the Authority approves or is deemed to have approved this Agreement.

2.1.3.Name of End-User; and

2.1.4.Name of Project (if any).

- 2.2. The abovementioned list must be accompanied by a written declaration by the RL that all the existing active Non-Residential End-User Connections described therein were provisioned either to Enterprise Customers or as part of multi-site projects.
- 2.3. In the event that NLT acquires information that leads NLT to reasonably believe that the declaration referred to under **paragraph 2.2** in respect of any Non-Residential End-User Connections is untrue, NLT shall be entitled to recover any Rebate that has already been paid out, if any, and the relevant Non-Residential End-User Connections shall no longer be considered as an Existing Connection with immediate effect and without further reference to the RL.

3. PROCEDURE FOR REQUEST FOR NEW CONNECTIONS

- 3.1. The RL shall submit Requests for new Non-Residential End-User Connections during the Qualifying Period in accordance with the procedure set out in Schedule 2 of the Approved ICO, save that each Request must indicate the Rebate ARI.
- 3.2. The Parties agree that NLT shall not be liable for any failure to meet the service activation period set out in Schedule 2 of the Approved ICO in respect of Qualifying Connections which are New Connections. For avoidance of doubt, the RL shall not be entitled to any claims pertaining to SAP Rebate in relation to any New Connections provided by NLT pursuant to this Agreement.

4. CHARGES AND REBATES

- 4.1. Subject to the terms expressly set out in this Agreement, the Charges that apply in relation to Non-Residential End-User Connections provisioned during the term of this Agreement (including but not limited to the Monthly Recurring Charge) shall follow those set out in Schedule 15 of the Approved ICO.
- 4.2. NLT shall be entitled to review and revise the Rebate Structure at its discretion in the event that IMDA reviews the prices of the Mandated Services offered by NLT pursuant to the terms of the Approved ICO. NLT shall notify the RL of the revised Rebate Structure in writing, and the revised Rebate Structure shall take effect two (2) months from the date of such notification, subject to any direction by IMDA.
- 4.3. In addition, NLT will review the Rebate Structure periodically and may revise the Rebate Structure at its discretion following such review, which shall not take place more than once during each subsequent two-year period during the term of this Agreement, commencing from the Effective Date. In the event there is a Rebate Structure revision, NLT shall notify the RL of the revised Rebate Structure in writing and the revised Rebate Structure shall take effect two (2) months from the date of such notification.

5. REPORTS AND RECORD-KEEPING

- 5.1. The RL shall maintain accurate records of all matters relating to the Qualifying Connections, and shall provide NLT with all reasonable assistance (including but not limited to, obtaining the necessary approvals, permits and consents to access any areas within the relevant building) to reconcile the number of Qualifying Connections through site visits and/or such other methods as

determined by NLT at its sole discretion from time to time.

6. MISCELLANEOUS

- 6.1. The terms and conditions of this Agreement are additional to the Approved ICO. Unless expressly stated otherwise, nothing in this Agreement shall affect the rights and obligations of both Parties under the Approved ICO in respect of the Non-Residential End-User Connections provisioned to the RL during the Qualifying Period.
- 6.2. The rights and remedies of NLT provided in this Agreement are cumulative and not exclusive of any other rights or remedies (whether provided by law or otherwise).