

Dated [ Nov] 2012



**CO-LOCATION AGREEMENT  
for 3-Phase 63A AC Power Supply**

BETWEEN

**OPENNET PTE. LTD.**

AND

**M1 LIMITED.**

**THIS CO-LOCATION AGREEMENT** is made on [                      ] 2012

BETWEEN:

- (1) **OPENNET PTE. LTD.** (Company Registration Number: **200819712H**), a company incorporated in Singapore with its registered address at 152 Beach Road #31-05/08, Gateway East, Singapore 189721 ("**ON**")

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) ON 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 ON's FBO Licence, ON must offer certain mandated services (including co-location services) to certain Requesting Licensees pursuant to the Approved ICO (as defined below).
- (C) The Requesting Licensee have signed the Approved ICO with ON and ON has provided to the Requesting Licensee, amongst others, Co-Location Service as described in Schedule 12 of the Approved ICO. Schedule 12 Clause 1.5.2 of the Approved ICO requires that all Requesting Licensees takes up the power as provided by ON.
- (D) The Requesting Licensee now requires dual source three phase power for their Co-Location Equipment as more particularly described in this Agreement and ON is agreeable to provide the same upon the terms and conditions as set out herein.

**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;

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

"**Start Date**" shall refer to the date of this Agreement abovementioned.

## 1.2 Interpretation

In this Agreement:-

- 1.2.1 unless otherwise defined in this Agreement, all terms and references defined in the OpenNet 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. POWER SUPPLY

- 2.1 The Parties hereby agree that notwithstanding the terms and conditions in Schedule 12 of the Approved ICO with respect to the power supply in the Co-Location Space, ON shall provide to

and the Requesting Licensee shall pay for the power supply in accordance with the specifications in Schedule 1 of this Agreement.

### **3. UNDERTAKINGS BY REQUESTING LICENSEE**

3.1 Requesting Licensee irrevocably covenants and undertakes to ON that it shall:-

3.1.1 comply with all the terms and conditions of the Approved ICO, in particular clause 1.5.2 of Annex 12D of Schedule 12 of the Approved ICO;

3.1.2 allow ON, in the event that ON reasonably considers that any Co-Location Equipment installed within the Co-Location Space or the installation, operation or maintenance of such Co-Location Equipment to pose an actual or imminent risk of personal injury to any person or damage to any property (including ON's or a third party's equipment, plant, facilities or networks) to immediately take any action that ON, in its reasonable discretion, considers necessary to alleviate such actual or potential risk, which shall be at Requesting Licensee's reasonable cost. ON shall notify M1 of such steps/actions taken as soon as reasonably practicable.

3.2 Each and every undertaking under Clause 3.1 is a separate and independent primary obligation and shall be severally enforceable.

### **4. OPENNET'S OBLIGATIONS**

4.1 Save as expressly amended and supplemented by this Agreement, ON shall provide Requesting Licensee with the Co-Location Space upon and subject to the terms and conditions of Schedule 12 of the Approved ICO.

4.2 For the avoidance of doubt, the Parties acknowledge and agree that subject to Requesting Licensee continuing to pay all relevant charges listed in Clause 12 of Schedule 15 of the Approved ICO, Requesting Licensee shall not be obliged to remove its Co-Location Equipment from the Co-Location Space notwithstanding it has ceased testing the Co-Location Equipment or ceased carrying live traffic via the Co-Location Equipment, or pending Requesting Licensee opting into the Relevant Schedule for Supplementary Cooling Solution or the Parties' execution of the New Customised Agreement.

### **5. MISCELLANEOUS**

5.1 Save as expressly amended and supplemented by this Agreement with regard to the Co-Location Service and the Co-Location Space, 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 Co-Location Service and the Co-Location Space, the terms of this Agreement shall prevail to the extent of such inconsistency.

5.2 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.

5.3 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.

#### 5.4 Invalidity

Any provision of this Agreement that is invalid or unenforceable will only 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 are and continue to be valid and enforceable in accordance with their terms.

#### 5.5 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.

#### 5.6 Governing Law and Submission to Jurisdiction

5.6.1 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.

**SCHEDULE 1**

	<b>REQUESTING LICENSEE's requirements</b>	<b>Customised Agreement</b>	<b>Charges</b>	<b>Terms and Conditions</b>
1	Power supply <ul style="list-style-type: none"> <li>• 2 x 63Amps AC 3-phase</li> </ul>	<ul style="list-style-type: none"> <li>• ON to provision 2 x 63A TPN and CeeForm socket outlet as part of the site preparation work.</li> </ul>	<ul style="list-style-type: none"> <li>• Supply and installation of 2 x 63A TPN AC power supply on cost-oriented charge under the site preparation works.</li> <li>• The charges for 3-phase power consumption will be metered and based on the electricity tariff from SP services for low tension non residential + 15% markup.</li> <li>• Readings will taken on a monthly basis</li> </ul>	<ul style="list-style-type: none"> <li>• Terms and conditions to follow Approved ICO</li> </ul>

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

ON

Signed by \_\_\_\_\_  
(Name of Signatory)

for and on behalf of  
**OPENNET PTE. LTD.**  
in the presence of:

)  
)  
)  
)  
)

\_\_\_\_\_  
(signature)  
Title:

\_\_\_\_\_  
(signature of witness)  
Name of Witness:  
Title:

REQUESTING LICENSEE

Signed by \_\_\_\_\_  
(Name of Signatory)

for and on behalf of  
**M1 LTD.** )  
in the presence of:

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\_\_\_\_\_  
(signature)  
Title:

\_\_\_\_\_  
(signature of witness)  
Name of Witness:  
Title: