

Dated June 2017

BETWEEN

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

AND

**MYREPUBLIC LIMITED**

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**CUSTOMISED AGREEMENT**

**CO-LOCATION AGREEMENT  
(TUAS CENTRAL OFFICE)**

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This **CUSTOMISED AGREEMENT** is made on **June 2017** between:

(A) **NetLink Management Pte. Ltd.** (as Trustee-Manager 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) **MYREPUBLIC LIMITED** (Company Registration Number: 201117683C), a company incorporated in Singapore with its registered address at 33 Ubi Avenue 3, #04-13 Vertex Tower B, Singapore 408868 (the "**Requesting Licensee**" or "**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 Customised Agreement, which is separate from and independent of the RL's ICO Agreement, to regulate Parties' respective obligations and responsibilities with regard to the provision of access to Co-Location Space within Tuas Telephone Exchange ("Tuas CO") by NLT to the RL for the purpose of installing and testing the RL's Co-Location Equipment and carrying live traffic via the Co-Location Equipment, where the Co-Location Equipment will exceed the heat load limits specified in clause 1.5.3 of Annex 12D of Schedule 12 of the Approved ICO ("ICO Heat Load Limits").

**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 2009 issued by the Authority pursuant to section 26(1) of the Act, which came into operation on 25 February 2009, or its successor code of practice, and as may be amended from time to time;

"**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;

“**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.

## 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 IDA webpage <https://www.imda.gov.sg/regulations-licensing-and-consultations/frameworks-and-policies/nationwide-broadband-network/netlink-trust-interconnection-offer-2015> 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 in accordance with the terms and conditions specified herein, NLT shall provide RL with Co-Location Space within Tuas CO upon and subject to the terms and conditions of Schedule 12 of the Approved ICO.
- 2.2 For the avoidance of doubt, the Parties acknowledge and agree that subject to RL continuing to pay all relevant charges listed in Clause 12 of Schedule 15 of the Approved ICO, RL 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. The obligation of NLT under this Clause 2.2 shall not survive the expiry of this Agreement.

## 3. **RL'S OBLIGATIONS**

- 3.1 In consideration of NLT's agreement to provide the services described in Clause 2 above, the RL shall comply with the terms and conditions specified in the Schedule 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 twenty-four (24) months after the date the Authority approves or is deemed to have approved this Agreement.
- 7.3 The Parties may review the terms of this Agreement three (3) months 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 the Schedule 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 30 days' written notice or such shorter notice as may be directed or requested by the Authority.
- 7.5 The Parties agree that upon the installation and operation of the supplementary cooling system for Tuas CO pursuant to Schedule 12B of the Approved ICO, this Agreement shall be terminated and superseded by Schedule 12B of the Approved ICO in its entirety, with effect from the date on which the supplementary cooling system for Tuas CO becomes operational.

## **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 or the maximum sum of Nineteen Thousand Singapore Dollars (S\$19,000), whichever is lower.
- 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 12 and/or 12C of the Approved ICO 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-Manager

NETLINK MANAGEMENT PTE. LTD. has assumed all obligations under this Agreement in its capacity as trustee-manager of NetLink Trust and not in its personal capacity and any liability of NetLink Management Pte. Ltd. (in its capacity as trustee-manager 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.

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

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

Signed by \_\_\_\_\_ )

(Name of Signatory) )

for and on behalf of **NETLINK** )

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

in the presence of: )

(signature) \_\_\_\_\_

Designation:

(signature of witness) \_\_\_\_\_

Name of Witness:

Designation:

**MYREPUBLIC LIMITED**

Signed by \_\_\_\_\_ )

(Name of Signatory) )

for and on behalf of **MYREPUBLIC LIMITED** )

in the presence of: )

(signature) \_\_\_\_\_

Designation:

(signature of witness) \_\_\_\_\_

Name of Witness:

Designation:



## SCHEDULE

### 1. GRANTING OF ACCESS TO CO-LOCATION SPACE

1.1 (a) Each Party acknowledges that the Co-Location Space in Tuas CO is subject to the ICO Heat Load Limits. However, the RL wishes to proceed with the installation and testing of its Co-Location Equipment even though the heat generated by its Co-Location Equipment will exceed the Heat Load Limit and a suitable supplementary cooling system has not been installed.

(b) RL acknowledges and agrees that the Co-Location Equipment in Tuas CO should not generate heat greater than 900 watts per square metre of its Co-Location footprint, and that each rack installed by RL should not exceed a heat load limit of 1.5 kilowatts per rack. NLT will not be liable for any loss suffered by RL or any third party as a result of RL's installation and testing of its Co-Location Equipment and its carriage of live traffic via the Co-Location Equipment as aforesaid, except where such loss is caused by NLT's gross negligence, willful default or breach of this Agreement.

1.2 (a) RL further acknowledges and agrees that if the heat generated by its Co-Location Equipment in Tuas CO exceeds the heat load limits stated in Paragraph 1.1(b) above, RL shall pay an additional monthly recurring charge ("AMRC") based on the following calculation:

$$\text{AMRC} = ((\text{Total heat of MR's Co-Location Equipment} / 900 \text{ watts}) - 1) \times \text{S\$}590.19$$

Calculation of the AMRC is based on the heat load of the installed Co-Location Equipment in Tuas CO, which may increase whenever new Co-Location Equipment is installed. Upon the installation of the supplementary cooling system, the AMRC shall cease to apply.

(b) Notwithstanding Paragraph 1.2(a) but subject to Paragraph 1.2(c), NLT reserves the right to refuse to allow RL to install any additional Co-Location Equipment in Tuas CO which will result in the total heat load of RL's Co-Location Equipment exceeding 17.8 kilowatts in Tuas CO.

(c) For the avoidance of doubt, when the total heat load of RL's Co-Location Equipment in Tuas CO exceeds 17.8 kilowatts, RL may (subject to space availability in Tuas CO) acquire additional Co-Location Space in Tuas CO in order to meet such additional heat load. RL shall pay for the additional heat load based on the AMRC formula referred to in Paragraph 1.2(a) above. If such additional Co-Location Space is not available in Tuas CO, the Parties will enter into good faith discussions to discuss the possibility of implementing measures to allow RL to install additional Co-Location Equipment which will result in the total heat load of such Co-Location Equipment exceeding 17.8 kilowatts in Tuas CO.

### 2. MEASUREMENT OF TEMPERATURE

#### 2.1 Methodology

(a) Measurements shall be done at a distance of 1.5 m above the floor level every 3 to 6 m along the centre line of the cold aisles and at any location at the air intake of operating equipment. Temperature measurements should be taken at several locations of the air intake of any equipment with potential cooling problems.

(b) RL shall provide the air temperature measurement instrument (i.e. sling thermometer) used for the measurement.

#### 2.2 Frequency

- (a) RL shall perform the periodic temperature measurement, and report to NLT with the results of its measurements. The first measurement shall be taken after the initial installation of Co-Location Equipment in Tuas CO. Thereafter, measurements shall be made at least once per month, throughout the duration of this Agreement.
- (b) Any installation of new Co-Location Equipment (including cards) or modification of the existing Co-Location Equipment in Tuas CO, which may change or increase the heat load, will also trigger a measurement by RL.
- (c) NLT may join RL on site in performing the measurement. Once the temperature exceeds the agreed value stated in Paragraph 5.1.5(b) below, NLT shall take the appropriate corrective action and inform NLT immediately.

### 3. MEASUREMENT OF HEAT LOAD (TO VERIFY HEAT LOAD < AGREED THRESHOLD)

- 3.1 The measurement of the total heat load will be assessed by taking 90% of the product of the measured total input current and the total input voltage (i.e. 90% x total input current x total input voltage).
- 3.2 RL shall perform the measurement of the total input current supply to MR's Co-Location Equipment in Tuas CO, with a clamp meter, in the following instances:
  - (a) After RL's initial Co-Location Equipment in Tuas CO has been installed, tested and operationally stabilized; and
  - (b) Whenever RL adds more Co-Location Equipment in the Co-Location Space in Tuas CO.

### 4. UNDERTAKINGS BY RL

#### 4.1 RL irrevocably covenants and undertakes to NLT that it shall:-

- 4.1.1 only have access to the Co-Location Space in Tuas CO during the term of this Agreement, during which period RL shall only be allowed to install and test its Co-Location Equipment and to carry live traffic via the Co-Location Equipment. The terms and conditions in Schedule 12 of the Approved ICO and the relevant charges listed in Clause 12 of Schedule 15 of the Approved ICO shall apply to RL's usage of the Co-Location Space in Tuas CO;
- 4.1.2 comply with clause 1.1.3 of Annex 12D of Schedule 12 of the Approved ICO;
- 4.1.3 before it begins testing its Co-Location Equipment in Tuas CO, install 1+1 industrial grade 24" fans for interim cooling to high heat load racks (i.e. >1.5kW heat load per rack) ("**Interim Cooling Solution**"). The fans are to run on 12-hrs rotation via timer relay during which period RL shall be allowed to install and test its Co-Location Equipment in Tuas CO and to carry live traffic via the Co-Location Equipment. The placement of fans is subject to reasonable aisle and specific site constraints notified to RL as soon as possible but at least two (2) weeks before the date of the planned installation, and standby off-site back-up blower fans will be made ready as redundancy;
- 4.1.4 monitor its Co-Location Equipment temperature in Tuas CO and mitigate risks of hosting its Co-Location Equipment above the heat load limit of 900 watts per square metre of Licensed Space (including but not limited to auto-shutdown or auto re-set in the event of overheating and remote standby personnel) during the period when the Interim Cooling Solution is in operation. For the purposes of this Agreement, "**auto re-set**" means the automatic shutdown of the affected Co-Location Equipment in the event of overheating, followed by the

subsequent automatic reactivation of the Co-Location Equipment when the overheating has abated or ceased;

- 4.1.5 adopt the specific American Society of Heating, Refrigerating and Air-Conditioning Engineers “ASHRAE” recommendations contained in the document entitled “Thermal Guidelines for Data Processing Environments” and “Environmental Guidelines for Datacom Equipment” for high temperature safety checking and capping, based on ON maintaining a general room temperature of 24 deg C average over the Co-Location Space in Tuas CO, including, but not limited to:
- (a) keeping Envelope Air Temperature lower than 25 deg C whenever possible;
  - (b) ensuring that the Revised (2008) (Tolerated) Envelope Air Temperature does not exceed 27 deg C; and
  - (c) when air temperature at cold aisle intake of Co-Location Equipment reaches 28 deg C and above, or the HI-TEMP alarm is triggered by call, for appropriate remedial and response action shall be taken to bring down temperature back to within cap of 27 deg C. This should be done during rack load startup, and temperature checks taken after the load has stabilised. Any further change or increased in heat load substantially will call for a re-temperature check accordingly to within cap of 27 deg C;
- 4.1.6 in the event of the heat load and/or temperature at the cold aisle (relating to RL’s Co-Location Equipment) in Tuas CO exceeds 900 watts per square metre of Licensed Space and/or the temperature limit stated in Clause 5.1.5(b) above respectively, subject to NLT granting access to the Co-Location Space if requested, take immediate measures to resolve the problem (which may involve adding more fan(s) for cooling the cold aisle or any other practical options depending on site conditions). Where RL’s Co-Location Equipment in Tuas CO is causing overheating and the problem cannot be resolved, RL shall (subject to NLT granting access to the Co-Location Space if requested) remove the source of heat load immediately. If RL fails to take such immediate measures to resolve the problem, NLT may take any action that NLT, in its sole discretion, considers necessary to alleviate or resolve the problem, which shall be at RL’s reasonable cost. NLT shall as far as reasonably practicable give RL prior written notice of such action before carrying out the same;
- 4.1.7 if it activates or causes the activation of the gas suppression system (FM200 or similar) within the Co-Location Space in Tuas CO or the building in which the Co-Location Space in Tuas CO is located, bear all costs and expenses of restoring the gas suppression system (FM200 or similar) and any damage caused by the activation of the gas suppression system (FM200 or similar). Without limitation but subject to the limitation of liability provisions in the Approved ICO, RL will be responsible for any damage to any part of, or anything within, the Co-Location Space in Tuas CO or the building in which the Co-Location Space in Tuas CO is located that is caused or contributed to by RL; except where such damage is caused by NLT’s gross negligence, wilful default or breach of this Agreement. If RL fails to take immediate action to make good such damage, NLT may, in its sole discretion, take action to make good such damage at RL’s reasonable cost and expense and suspend RL’s physical access to the Co-Location Space in Tuas CO upon giving written notice thereof to RL. NLT shall as far as reasonably practicable give RL prior written notice of such action before carrying out the same. Provided That RL’s liability under this Clause 5.1.7 shall be subject to the gas suppression system (FM200 or similar) functioning adequately and properly at all material times; and
- 4.1.8 allow NLT, in the event that NLT reasonably considers that any Co-Location Equipment installed within the Co-Location Space in Tuas CO 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 NLT’s or a third party’s equipment, plant, facilities or networks) to immediately take any action that NLT, in its reasonable

discretion, considers necessary to alleviate such actual or potential risk, which shall be at RL's reasonable cost.

5. Each and every undertaking under Paragraph 4.1 above is a separate and independent primary obligation and shall be severally enforceable.