

Dated [] 2020

BETWEEN

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

AND

[REDACTED]

CUSTOMISED AGREEMENT

**EXTENSION OF SCHEDULE 2 NON-RESIDENTIAL END-USER CONNECTION TO THE TELSTRA
DATA CENTRE LOCATED AT 110 PAYA LEBAR ROAD SINGAPORE 409009**

This **CUSTOMISED AGREEMENT** is made on [] 2020 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 "**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 CityNet Infrastructure Management Pte. Ltd. (in its capacity as trustee-manager of NetLink Trust), the then trustee-manager of NetLink Trust, which has since been succeeded by NetLink Management Pte. Ltd., on 15 November 2013 ("**RL's ICO Agreement**") and has since asked for certain special arrangements regarding the provision of NLT's Schedule 2 Non-Residential End-User Connection to Data Centres in order for it to provide specific services to its end-customers.
- 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 Schedule 2 Non-Residential End-User Connection to the Telstra Data Centre.

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;

“**Cross-Connect**” means the service provided by a 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;

“**End-User**” refers to someone who subscribes for services from the retail service provider;

“**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;

“**TDC**” means the Telstra Data Centre located at 110 Paya Lebar Road Singapore 409009; and

“**Telstra**” means Telstra Pte. Ltd. or any of its related companies.

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 in accordance with the terms and conditions specified herein, NLT shall extend the provision of Non-Residential End-User Connection(s) under Schedule 2 of the RL's ICO Agreement to TDC. Each Non-Residential End-User Connection provided at TDC shall hereinafter be referred to as "**Data Centre Connection at TDC**".

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 one (1) year 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 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.

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.

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:

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:


Signed by _____)
(Name of Signatory))

for and on behalf of _____)
_____)

in the presence of:)

(signature)
Designation:

(signature of witness)

Name of Witness:
Designation:

SCHEDULE

1. DATA CENTRE CONNECTION FOR TELSTRA DATA CENTRE

- 1.1. Each Data Centre Connection at TDC shall be used only to connect to an identified End-User of the Requesting Licensee, where the Requesting Licensee is a Retail Service Provider.
- 1.2. Parties hereby acknowledge and agree that a Data Centre Connection at TDC is not intended to provide for the following situations:
 - 1.2.1. a direct connection from the Requesting Licensee's, as End-User, equipment to NLT's equipment;
 - 1.2.2. Requesting Licensee's use as a Retail Service Provider serving Requesting Licensee's, as Retail Service Provider, End-Users;
 - 1.2.3. Requesting Licensee's use as a Requesting Licensee serving other Retail Service Provider, i.e. where equipment belonging to other Retail Service Providers are connected into the Requesting Licensee's Data Centre Connection at TDC.
- 1.3. The Requesting Licensee acknowledges that NLT may be required to enter into a separate agreement with Telstra in relation to the installation of its equipment at the TDC ("**Telstra Agreement**") which may include payment of charges to Telstra to install, provide, provision or procure such resources as may be necessary ("**Data Centre Deployment Charge**") for the installation. In the event that NLT is required to pay any Data Centre Deployment Charge or any other charges relating thereto, the Requesting Licensee agrees to bear all such charges for such periods and on such terms and conditions as those to which NLT is bound.

2. REQUESTING LICENSEE'S OBLIGATIONS

- 2.1. The Requesting Licensee shall comply with the procedures set out below when requesting for a Data Centre Connection at TDC:-
 - 2.1.1. submit an order for a Non-Residential End-User Connection in the format prescribed in Schedule 2 of the Approved ICO and notify NLT of the request for the Data Centre Connection at TDC via email enclosing the particulars of the order that was submitted;
 - 2.1.2. the Non-Residential End-User Connection shall be used solely to establish a Connection 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 Retail Service Provider;
 - 2.1.3. upon receipt of the Requesting Licensee's e-mail, NLT shall provide the Data Centre Connection at TDC requested in the order in accordance with the process set out in Schedule 2 of the Approved ICO including, where necessary, the conduct of a joint site survey with the Requesting Licensee and Telstra to review the suitability of the Data Centre's Designated Room and, where applicable, provide a quotation for the Requesting Licensee's acceptance; and
 - 2.1.4. the Requesting Licensee shall procure from Telstra at its own expense 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 cost, installation or maintenance of the Cross Connect cable described in this paragraph 2.1.4.

The Requesting Licensee shall inform NLT when the Cross-Connect is ready for use before NLT is able to provide the Data Centre Connection at TDC.

- 2.1.5. The Requesting Licensee shall be responsible for procuring, applying for and obtaining the requisite approvals, consents or certifications from relevant authorities or parties as may be necessary in order for NLT to provide the Data Centre Connection at TDC.

2.2. The Requesting Licensee shall pay:

2.2.1. 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;

2.2.2. all applicable Standard Installation Charges and Installation of Network Charges in accordance with Schedule 15 of the Approved ICO; and

2.2.3. such reasonable charges as NLT has or will incur in order to install, provide, provision or procure such resources as may be necessary for NLT to provide the Data Centre Connection at TDC.

2.3. The Requesting Licensee hereby agrees as follows:

2.3.1. that it will agree, accept and comply with any change, variation, amendment or modification of this Agreement and/or the quotation referred to in paragraph 2.1.3 above where such change, variation, amendment or modification arises out of or due to the Telstra Agreement;

2.3.2. to pay the Data Centre Deployment Charge without any right of set-off or deduction against any claims the Requesting Licensee may have against NLT;

2.3.3. that NLT is entitled to amend, vary or change the Data Centre Deployment Charge or any part thereof upon notification to the Requesting Licensee. There shall be no obligation on NLT to give the Requesting Licensee any minimum period of notice before such amendment, variation or change becomes effective;

2.3.4. NLT is entitled to charge the Requesting Licensee a project management and administration fee in addition to such sums that NLT is required to pay to Telstra; and

2.3.5. in the event this Agreement is terminated for any reason or the Requesting Licensee ceases to be a telecommunication licensee then the Requesting Licensee shall remain liable to pay the Data Centre Deployment Charge for the balance of the period under the Telstra Agreement ("**Outstanding Deployment Charge**") and NLT is entitled to recover such Outstanding Deployment Charge as a debt due and owing by the Requesting Licensee together with interest.

3. NLT'S OBLIGATIONS

- 3.1. The computation of any Service Level Guarantees for the provision of the Data Centre Connection at TDC under the relevant Approved ICO shall be limited to the provision of services up to and including the public MDF Room of TDC. In any event, the Requesting Licensee acknowledges and agrees that NLT is exempted from compliance with the service activation period specified in the

Approved ICO for any services provided under this Agreement.

- 3.2. Upon receipt of the Requesting Licensee's request for a Data Centre Connection at TDC and the requisite approval by Telstra, NLT shall install its Fibre Distribution Frame within such area as may be designated by Telstra other than in the TDC's public MDF room. Such a Fibre Distribution Frame ("NLT's External FDF") shall be owned by NLT and may only 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.
- 3.3. 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 TDC.