

Dated []

BETWEEN

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

AND

[REDACTED]

CUSTOMISED AGREEMENT

MIGRATION SERVICES FOR ACTIVE SCHEDULE 2 CONNECTIONS

This **CUSTOMISED 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 ESR BizPark @ Chai Chee, Singapore 469005 ("**NLT**")

AND

(B) [REDACTED] (Company Registration Number: [REDACTED]), a company incorporated in Singapore with its registered address at [REDACTED], Singapore [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 Incumbent OpCo (as defined below) has provided the RSP (as defined below) with the Relevant NRES Connections (as defined below) under an existing contract (the "**Incumbent Contract**"), and all of these Relevant NRES Connections are active as of the date of this Agreement. The RSP has decided to enter into a separate contract with the RL for the provision of Non-Residential End-User Connections in accordance with Schedule 2 of the Approved ICO.
- E. The RL has requested for NLT's assistance with the migration of the Relevant NRES Connections from the Incumbent OpCo to the RL by utilizing the same fibre infrastructure that was used for the provisioning of the Relevant NRES Connections by the Incumbent OpCo, where possible, and by replacing the Relevant NRES Connections with new Non-Residential End-User Connections provisioned under the RL's ICO Agreement (the "**Migration Project**"). The RL has also requested for a preferential migration charge to be applied in respect of the new Non-Residential End-User Connections instead of the one-time Installation of Network Charge that is chargeable under Schedules 2 and 15 of the RL's ICO Agreement.
- F. 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 Migration Services to be supplied by NLT in support of the Migration Project.

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 2020 issued by the Authority pursuant to section 26(1) of the Act, which came into operation on 22 April 2020, or its successor code of practice, and as may be amended from time to time;

“**Incumbent OpCo**” means ██████.;

“**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;

“**Migration Charge**” means the charge indicated in **Annex 2** of this Agreement in respect of the Migration Services;

“**Migration Request**” means the RL’s request for the Migration Services in accordance with the terms and conditions set out in **Annex 1** of this Agreement;

“**Migration Services**” means the works and services necessary to effect the migration of the Relevant NRES Connections from the Incumbent OpCo to the RL by utilizing the same fibre infrastructure that was used for the provisioning of the Relevant NRES Connections, where possible, which shall include but are not limited to:

- (a) Checking the veracity of the details of the Relevant NRES Connections submitted in the Migration Request;
- (b) Performing all necessary patching works for the execution of the Migration Project;
- (c) Processing termination orders submitted by the Incumbent OpCo in respect of the Relevant NRES Connections;
- (d) Processing new orders submitted by RL for the Replacement Connections; and
- (e) Making all necessary arrangements to effect the migration of the Relevant NRES Connection under the Migration Project

“**Relevant NRES Connection**” means a Non-Residential End-User Connection that is provisioned by the Incumbent OpCo to the RSP under the Incumbent Contract, and that is identified in the Migration Request submitted by the RL;

“**Replacement Connection**” means a Non-Residential End-User Connections that is provisioned under Schedule 2 of the RL’s ICO Agreement, that terminates at the same address as the address at which a Relevant NRES Connection terminates, and that is intended to replace the said Relevant NRES Connection under the Migration Project;

“**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;

“**RSP**” means ██████.;

“**Schedule 2 Request**” means the RL’s request for a Replacement Connection pursuant to

Schedule 2 of the RL's ICO Agreement;

"SME MRC Tariff Agreement" means the Tariff Agreement for the Waiver of Monthly Recurring Charge of Non-Residential End-User Connections for Small and Medium Enterprise End-Users between the RL and NLT, if any; and

"Schedule 2 Rebate CA" means the Customised Agreement for the Non-Residential End-User Connection Rebate Programme between the RL and NLT, if any, and any other Customised Agreement that incorporates the main elements thereof.

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-and-licensing-listing/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 annexes are references to the clauses, schedules, recitals and annexes 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 annexes 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:

2.1.1 provide the Migration Services; and

2.1.2 impose the Migration Charge in respect of each of the Replacement Connections instead of the one-time Installation of Network Charge under Schedules 2 and 15 of the RL's ICO 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 Annexes 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. The date on which the Authority's approval is granted or is deemed to have been granted shall hereinafter be referred to as the "**Effective Date**".

- 7.2 This Agreement shall expire twelve (12) months after the Effective Date of this Agreement or upon completion of Migration Project, whichever is earlier.
- 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 Annex 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 amount of the Migration Charges paid or payable by the RL in respect of all of the Relevant NRES Connections under this Agreement.
- 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, 17 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. This Agreement may be executed by way of a certificate-based digital signature and the Parties hereby agree that such digital signature shall be treated as an original signature for all purposes hereof.

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 OF NETLINK TRUST)

Signed by _____)
 (Name of Signatory))
for and on behalf of NETLINK MANAGEMENT)
PTE. LTD. (IN ITS CAPACITY AS TRUSTEE 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 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:

ANNEX 1**1. PROVISION OF MIGRATION SERVICES**

- 1.1. The RL may submit multiple Migration Requests for the Migration Services during the Term.
 - 1.1.1. The first Migration Request shall be for the migration of no fewer than thirty (30) Relevant NRES Connections, and shall be submitted within one (1) calendar month from the Effective Date.
 - 1.1.2. Each subsequent Migration Request shall be for the migration of no more than thirty (30) Relevant NRES Connections.
 - 1.1.3. Each Migration Request shall be submitted [via email] and shall comply with **paragraph 1.2** below.
- 1.2. Prior to the submission of the first Migration Request, the RL shall submit the following documentation:
 - 1.2.1. A list of the Relevant NRES Connections for which the Migration Services are to be provided, containing the name of each End-User and the addresses at which each Relevant NRES Connection terminates;
 - 1.2.2. Written instructions from the RSP that the Relevant NRES Connections are to be migrated from the Incumbent OpCo to the RL; and
 - 1.2.3. Written undertaking from the Incumbent OpCo that it will refrain from submitting termination orders in respect of the Relevant NRES Connections without NLT's prior approval.
- 1.3. NLT shall process each Migration Request and shall notify the RL of NLT's acceptance or rejection of the relevant Migration Request within twenty-one (21) Business Days of receiving the Migration Request.
- 1.4. In the event that the details of any Relevant NRES Connection that is submitted in a Migration Request is incorrect, indecipherable or otherwise incapable of verification, NLT shall have the sole discretion to refuse to provide the Migration Services in respect of the said Relevant NRES Connection(s) at any time during the term of this Agreement, provided that NLT shall notify the RL of NLT's exercise of its discretion under this paragraph as soon as reasonably practicable.
- 1.5. The RL shall submit new orders for the Replacement Connections in accordance with the ordering procedures set out in Schedule 2 of the Approved ICO no later than fourteen (14) Business Days from the date on which NLT's acceptance of the relevant Migration Request is issued pursuant to **paragraph 1.3** above.
- 1.6. Provided that the RL submits the first Migration Request by the deadline specified under **paragraph 1.1** above, NLT shall complete the supply of the Migration Services by the end of the ninth (9th) calendar month from the Effective Date or any other deadline as the Parties may subsequently agree in writing. The total number of Relevant NRES Connections to be migrated under this Agreement shall not be fewer than three hundred (300).
- 1.7. The Parties hereby agree that the Replacement Connections provisioned in accordance with the terms of this Agreement are not intended to and shall not be construed as 'Qualifying Connections' under the Schedule 2 Rebate CA and the SME MRC Tariff Agreement.

2. RL'S OBLIGATIONS

Warrants and undertakings

2.1. RL hereby warrants and undertakes that:

2.1.1. All of the Relevant NRES Connections are active as of the date of this Agreement;

2.1.2. The RL has obtained documentary evidence showing that the RSP has notified the Incumbent OpCo of the RSP's intention to terminate the Outgoing Contract and the Relevant NRES Connections;

The RL and the RSP have entered into a new contract for the provision of the Replacement Connections as of the date of this Agreement;

2.1.3. The RL will procure for the RSP to obtain a written undertaking from the Incumbent OpCo to refrain from terminating any of the Relevant NRES Connections without NLT's prior consent;

2.1.4. The RL shall obtain all necessary approvals, permits and consents (including approvals from the relevant End-User and RSP) at its own cost to facilitate the Migration Project. For avoidance of doubt, NLT shall not be liable for any loss suffered by the End-User arising from the Migration Project; and

2.1.5 The Parties hereby agree that SAP Rebate set out in Schedule 2 of the Approved ICO shall not apply to the Replacement Connections provisioned under this Agreement.

2.2. In the event that any Relevant NRES Connection is terminated in breach of the undertaking mentioned in **paragraph 2.1.3** above, NLT shall have no obligation to provide the Migration Services or offer the Migration Charge in respect of the Relevant NRES Connection that was terminated. For the avoidance of doubt, NLT shall thereafter be entitled to charge the RL the applicable one-time Installation of Network Charge under Schedules 2 and 15 of the RL's ICO Agreement.

Ordering procedures

2.3. The RL shall submit the Schedule 2 Requests in accordance with the procedure set out in Schedule 2 of the RL's ICO Agreement, save that each Schedule 2 Request must indicate the Application Reference using prefix "<[REDACTED]XXXXXXX>" ("**Migration ARI**").

2.4. In the event that the RL fails to indicate the Migration ARI in any Schedule 2 Request in accordance with **paragraph 2.3**, the RL hereby agrees that NLT shall not be liable for any delay in the provision of Migration Services in relation to the corresponding Relevant NRES Connection, and that the RL shall thereafter be liable for the one-time Installation of Network Charge that applies under Schedules 2 and 15 of the RL's ICO Agreement instead of the Migration Charge in respect of the relevant Replacement Connection. For the avoidance of doubt, NLT shall not be liable for breach of the Agreement or for any losses incurred by the RL in the event that any error or miscalculation is made due to the RL's omission or failure to accurately or correctly indicate the Migration ARI.

3. FEES & CHARGES

3.1. The fees set out herein and in **Annex 2** shall apply for the Migration Services provided by NLT pursuant to this Agreement. All other charges for the Replacement Connections under the RL's ICO Agreement shall continue to apply after the Migration Services have been provisioned.

3.2. In the event that any charges related to the Migration Services or the Replacement Connections are not stipulated herein or in **Annex 2** of the Agreement, the relevant charges set out in Schedules 2

and 15 of the Approved ICO, shall apply.

3.3. The fees set out herein and in **Annex 2** shall be valid until the occurrence of the earlier of the following events:

(a) the expiration of the Term; and

(b) until such time the Authority reviews the prices of the Mandated Services offered by NLT pursuant to the terms of the Approved ICO. In the event there is any change to such prices that affects the fees set out herein and in **Annex 2**, NLT shall notify the RL in writing, upon which NLT shall have no obligation to provide any further Migration Services at the fees set out herein and in **Annex 2**. The RL acknowledges that there may be a need to enter into a new agreement on revised tariffs and terms and conditions approved by the Authority at the relevant time, in which case this Agreement shall be terminated by mutual agreement without liability on the part of either Party, save for any payments which have accrued at the time of termination.

4. REPORTS AND RECORD-KEEPING

4.1. The RL shall maintain accurate records of all matters relating to the Migration Services provided under this Agreement for a period of up to one (1) calendar year after the expiry or early termination of this Agreement, or such other period as agreed in writing between the Parties.

4.2. The RL 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 ascertain the status and details of the Relevant NRES Connections for a period of up to one (1) calendar year after the expiry or early termination of this Agreement.

5. MISCELLANEOUS

5.1. 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).

5.2. Unless expressly stated otherwise, nothing in this Agreement shall affect the rights and obligations of both Parties under the RL's ICO Agreement in respect of the Replacement Connections that will replace the Relevant NRES Connections as part of the Migration Project.

5.3. Regardless of termination or expiration of this Agreement, the rights and obligations of the Parties hereunder which by their context, intent and meaning would reasonably be expected to survive the termination or expiration of this Agreement or any part thereof, will so survive including but not limited to Clauses 4 (Confidentiality), Clause 8 (Limitation of Liability), 9.2 (Release, Waiver or Compromise), 9.5 (Invalidity and Unenforceability), 9.7 (Governing Law and Submission to Jurisdiction) and 9.8 (Liability of the Trustee) of the Agreement, and **paragraphs 2.1, 2.2, 3.1, 3.2, 3.3, 4.1, 5.1 and 5.2** of this **Annex 1**.

ANNEX 2**Charges**

Description	Amount (S\$)
Migration Charge	\$300 per Relevant NRES Connection