

Dated

2021

BETWEEN

**NETLINK MANAGEMENT PTE. LTD.**

**(IN ITS CAPACITY AS TRUSTEE OF NETLINK TRUST)**

AND

**[REDACTED]**

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**CUSTOMISED AGREEMENT**

**EXTENSION OF OE NBAP CONNECTIONS TO BUKOM ISLAND**

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This CUSTOMISED AGREEMENT is made on **2021** 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 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 RL wishes to provision OE NBAP Connections to the Authorised End-User (as defined below) in Bukom island by means of extending OE NBAP Connections, which would end in the Authorised End-User's MDF Room located on Jurong island at 61 Seraya Avenue Singapore 627879 (the "**Designated MDF Room**"). Currently, the Approved ICO does not allow extension of the NBAP Connection beyond the physical boundary of the development of the Authorised End-User on Jurong island to Location A (as defined below) in Bukom island.
- E. 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 extension of the OE NBAP Connection under Schedule 3 of the Approved ICO ("**Schedule 3**") to Bukom island.

**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:-

"**Authorised End-User**" means Shell Eastern Petroleum Pte Ltd and any company that is deemed related to it pursuant to the Companies Act (Cap. 50);

"**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;

**"Cost-Oriented Basis"** means a thirty (30) percent mark-up on NLT's staff-related costs and a ten (10) percent mark-up on all other costs;

**"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;

**"Location A"** means the physical location of the ONT belonging to the Authorised End-User on Bukom island as provided by the RL under paragraph 2.2 of Schedule hereto;

**"Optical Ethernet"** or **"OE"** means an Ethernet network built upon the passive optical network provided by NetLink Trust;

**"OE NBAP Connection"** means a NBAP Connection that is used for the purpose of providing OE services;

**"ONT"** means Optical Network Terminal; and

**"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 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 in accordance with Schedule 3, and subject to the terms and conditions specified herein, NLT shall provide OE NBAP Connections to the Designated MDF Room, and shall permit the RL to extend the said OE NBAP Connections to Location A on Bukom island.

## **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 twelve (12) calendar months after the date the Authority approves or is deemed to have approved this Agreement. The date on which the Authority approves or is deemed to have approved this Agreement shall hereafter be referred to as 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 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:
- 8.2.1 any direct or indirect loss of profits, revenue, business, anticipated savings, wasted expenditure or goodwill; or
- 8.2.2 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 aggregate Monthly Recurring Charge paid by the RL for the OE NBAP Connections provided 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 3, 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 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:



**SCHEDULE****1. PROVISION OF OE NBAP CONNECTION TO JURONG ISLAND AND EXTENSION TO BUKOM ISLAND**

- 1.1. Save for the terms and conditions set out in this Agreement, the provision of the OE NBAP Connection to the Designated MDF Room shall be subject to the applicable terms and conditions of the RL's ICO Agreement. In the event of any inconsistency between the terms and conditions under this Agreement and those under the RL's ICO Agreement, the terms and conditions under this Agreement shall prevail.
- 1.2. The OE NBAP Connection activated by the RL shall be subject to a contract term of twelve (12) months, commencing from the completion date as advised by NLT (the "**Minimum Connection Term**"). For the avoidance of doubt, the Minimum Connection Term shall not be renewed or extended in the absence of the Parties' written agreement for the same.
- 1.3. The termination of the OE NBAP Connection before the expiry of the Minimum Connection Term shall be subject to an Early Termination Charge that is equivalent to the total aggregate Monthly Recurring Charge which would have been payable during the remainder of the Minimum Connection Term for the terminated OE NBAP Connection.
- 1.4. The RL shall not be permitted to self-provide any NBAP TP under this Agreement.
- 1.5. The RL shall use the OE NBAP Connection only for the purpose of the RL providing OE services in accordance with the terms and conditions of Schedule 3 and this Agreement.
- 1.6. NLT shall be deemed to have completed the OE NBAP Connection pursuant to Clause 6.7 of Schedule 3 on the day on which NLT hands over the uplinks and downlinks to the RL at RL's OE equipment in the Designated MDF Room. The RL shall procure the use of the submarine cable belonging to the Authorised End-User in order to extend the OE NBAP Connections to its ONT at Location A on Bukom island. For the avoidance of doubt, the RL shall not connect its own cable to the OE NBAP Connection.
- 1.7. The RL shall procure that the Authorised End-User does not relocate the physical location of the ONT from Location A without NLT's prior written permission.
- 1.8. In view of paragraph 1.6 above, the Parties acknowledge and agree that NLT will not have any control over the quality of the optical signal carried over the submarine cable belonging to the Authorised End-User from the point at which the uplinks and downlinks are connected to RL's OE equipment in the Designated MDF Room to Location A on Bukom island. The Parties further agree that, notwithstanding anything in Schedule 3 of the RL's ICO Agreement, NLT's Network in respect of the OE NBAP Connection provided under this Agreement shall be deemed to end at the point at which the uplinks and downlinks are connected to RL's OE equipment in the Designated MDF Room, and Schedule 3 shall be interpreted *mutatis mutandis* to reflect the same.
- 1.9. Further to Clause 2.6 of Schedule 3, the Service Level Guarantees shall not apply where there is a fault that lies between the point at which the uplinks and downlinks are connected to RL's OE equipment in the Designated MDF Room and Location A on Bukom island, nor where any optical power loss or interruption in the fibre service is found to have originated from a fault that lies between the NBAP TP installed in the Designated MDF Room and Location A on Bukom island.
- 1.10. In the event that a fault is reported to and is investigated by NLT pursuant to clause 11.3 of Schedule 3, Clause 11.5 of Schedule 3 shall apply subject to the proviso that the fault shall be deemed to lie outside NLT's Network as long as NLT's investigation does not reveal any fault in NLT's Network up

to the point at which the uplinks and downlinks are connected to RL's OE equipment in the Authorised End-User's MDF Room on Jurong island.

- 1.11. The RL acknowledges and agrees that it is a condition of this Agreement that the OE NBAP Connection shall be used solely for transporting data traffic belonging to the Authorised End-User. For the avoidance of doubt, the RL shall not use the OE NBAP Connection for the purpose of transporting aggregated data traffic to and/or from any RL and/or other End-Users. NLT shall be entitled to immediately terminate this Agreement by giving written notice to the RL in the event of a breach of this provision.

## **2. PROCEDURE FOR REQUEST FOR SERVICES**

- 2.1. The RL shall comply with the ordering and provisioning procedure set out in clause 4 of Schedule 3 when requesting for the OE NBAP Connection under this Agreement.
- 2.2. The RL shall submit the relevant cable routing information (including GPS coordinates of the ONT location on Bukom island) for the OE NBAP Connection from the Designated MDF Room to the location of the ONT on Bukom island no later than thirty (30) calendar days from the date on which NLT hands over the uplinks and downlinks to the RL at the Designated MDF Room. For the avoidance of doubt, NLT shall be entitled to immediately terminate this Agreement by giving written notice to the RL in the event of a breach of this provision.

## **3. FEES & CHARGES**

- 3.1. The fees set out in Schedule 15 of the RL's ICO Agreement shall apply during the term of this Agreement.

## **4. REPORTS AND RECORD-KEEPING**

- 4.1. The RL shall maintain accurate records of all matters relating to the OE NBAP Connection provided under this Agreement, and shall, upon request by NLT:
  - 4.1.1. submit supporting evidence showing that the OE NBAP Connection is used only for the Authorised End-User; and
  - 4.1.2. provide NLT with all reasonable assistance (including but not limited to, obtaining the necessary approvals, permits and consents to access any areas within Jurong island and Bukom island) to allow NLT to reconcile the final location of the OE NBAP Connection through joint site visits and/or such other methods as determined by NLT at its sole discretion from time to time.

## **5. MISCELLANEOUS**

- 5.1. For the avoidance of doubt, the terms and conditions of this Agreement are additional to the RL's ICO Agreement. 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 OE NBAP Connection provided to the RL under this Agreement.
- 5.2. Upon expiry or termination of this Agreement, the OE NBAP Connection shall be terminated and the RL shall arrange for the Removal of the uplinks and downlinks that are connected to RL's OE equipment or any part of the Network as currently installed, and shall bear the charges relating to any reinstatement work to be performed by NLT in relation to the Removal at the RL's request. Such

reinstatement charges will be recovered by NLT from the RL on a Cost-Oriented Basis.

5.3. All ducts and manholes through which NLT's fibre cables are laid for the purposes of fulfilling the RL's request for the OE NBAP Connection, shall belong to NLT. Where necessary, the Parties shall effect the assignment or transfer of the relevant ducts and/or manholes by entering into separate agreements which shall include the following terms:

5.3.1. The relevant ducts and/or manholes shall be assigned or transferred, without consideration, to NLT free and clear of any and all encumbrances;

5.3.2. The RL warrants that the relevant ducts and/or manholes are in good working condition, and are free from defect, deformity, damage, breakage and/or blockage;

5.3.3. The RL shall do and cause to do all such acts, deeds and things for the purpose of assigning or transferring the relevant ducts and/or manholes in the name and in favour of NLT; and

5.3.4. The RL shall bear all costs related to the assignment or transfer of the relevant ducts and/or manholes to NLT.