

Dated

BETWEEN

**NETLINK MANAGEMENT PTE. LTD.**

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

AND

**XXXXXXXXXXXX**

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**CUSTOMISED AGREEMENT**  
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**DATA CENTRE SURCHARGE**

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**THIS CUSTOMISED AGREEMENT** is made on

2022 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 “**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 (“**IMDA**”) under Section 5 of the Telecommunications Act 1999 (“**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 Requesting Licensee have signed the Approved ICO with NLT and have asked for special arrangements regarding connections and provision of services to Data Centres using NLT’s Schedule 2 – Non-Residential Connection Services for provision of specific services to their end-customers (“Data Centre Connection”).
- (D) The Parties are desirous of entering into this Customised Agreement to regulate Parties’ respective obligations and responsibilities with regard to the setting up of the relevant infrastructure for the purposes of NLT to provision the Data Centre Connection.

**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 a Saturday, Sunday or gazetted public holiday on which clearing banks are open for normal banking business 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;

**“Cross-Connect”** means the service provided by the Data Centre where it connects the Data Centre’s Designated Room to the End-User’s or Requesting Licensee’s equipment 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. Private MDF room or Meet Me Room).

**“End-User”** refers to someone who subscribes services from the Retail Service Provider.

**“Law”** means any domestic or foreign constitutional provision, statute or other law (including common law), act, rule, regulation, subsidiary legislation, ordinance, treaty, code, permit, certificate, license, or interpretation of any Governmental Agency 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;

**“Retail Service Provider”** refers to a RSP providing a telecommunication service to its End-User in the Data Centre.

## 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 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. DATA CENTRE SURCHARGE**

- 2.1 Under Schedule 2 of the Approved ICO, NLT will provide the Requesting Licensee a fibre connection from NLT's designated Central Office (or "CO") to the 1<sup>st</sup> Termination Point of Non-Residential Premise (subject to clause 6.3 and 6.4 in Schedule 2 of the Approved ICO) or otherwise to the FTTB Node of the Non-Residential Premise where the NLT's network ends, for the purpose of providing GPON or OE services.
- 2.2 Due to requirements imposed by Data Centre operators, NLT will deploy fibre to NLT's Fibre Distribution Frame (FDF) in the Data Centre's designated room (other than the building's public MDF room of the building) determined by the Data Centre operators. This is where NLT's network ends in the Data Centre.
- 2.3 Where Requesting Licensee requests for Data Centre access for the purpose of providing services to its End-users, NLT shall, subject to Requesting Licensee's payment of the Data Centre Surcharge, provide a fibre connection from NLT's designated Central Office (or "CO") to NLT's FDF in the applicable Data Centre's designated room to facilitate Requesting Licensee's connection into NLT's network. For avoidance of doubt, a fibre connection shall only be connected to a single End-User.  
  
If it chooses so, Requesting Licensee reserves the right to use the Non-Residential building's own in-building ducting, cabling or install in-building cabling from NLT's FDF in the building's public MDF room to its End-Users.
- 2.4 The Parties hereby agree that notwithstanding the terms and conditions in Schedule 2 of the Approved ICO with respect to the Non-residential End-User Connections, this Agreement shall apply only to End-Users co-locating in the lists of Data Centres in Annex 1 and NLT will not install any Termination Point in the End-Users' equipment rack.
- 2.5 The charge component for such Data Centre access shall include a fixed monthly recurring charge ("Data Centre Surcharge") per connection for each Data Centre in Annex 1 of this Agreement. The list may be updated by NLT from time to time.
- 2.6 The Data Centre Surcharge shall be levied on top of any other charges in Section 2 of Schedule 15 of the Approved ICO. Installation of Network Charge shall not apply unless Requesting Licensee requested for the 1<sup>st</sup> TP.
- 2.7 A Cross-Connect, provided by the Data Centre provider, shall connect the End-Users directly to NLT. For the avoidance of doubt, NLT shall not pull any fibre to the End User's equipment rack in the Data Centre.

## **3. NLT'S OBLIGATIONS**

- 3.1 Save as expressly amended and supplemented by this Agreement, NLT shall provide Requesting Licensee with the Non-Residential End-User Connections upon and subject to the terms and conditions of Schedule 2 of the Approved ICO.

#### **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 one (1) year after the Effective Date of this Agreement ("**Initial Term**"). Parties may agree in writing to renew this Agreement on such terms and conditions as agreed between the Parties subject at all times to the prior approval of the Authority. Upon request for renewal by the RL, which should be made at least three (3) months prior to the expiry of the Agreement, Parties shall negotiate in good faith such terms and conditions to renew this Agreement and to conclude such negotiation prior to the expiry of the Agreement, subject to the Authority's prior approval.
- 7.3 Unless otherwise specified in the Annexures 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 180 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 a Party to the other Party 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, neither party shall be liable to the other Party, 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 and arising from or in connection with this Agreement.

8.3 Subject to Clause 8.4, each Party's aggregate liability in any given year (commencing on the Effective Date of this Agreement and each anniversary thereof) to the other Party for breach of any of their obligations or otherwise arising under this Agreement (including liability for negligence or breach of statutory duty), shall be limited to the aggregate monthly Data Centre Surcharge (as set out in Annex 1 of this Agreement) paid or payable by the RL 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. Nothing in this Clause 8 excludes or restricts:

a. either Party's liability for fraud, wilful default and/or gross negligence;

b. the RL's liability for not using the fibre connections from NLT's designated Central Office (or "CO") to the 1<sup>st</sup> Termination Point of Non-Residential Premise or otherwise to the FTTB Node of the Non-Residential Premise where the NLT's network ends, for the purpose of providing GPON or OE services, strictly in accordance with Clause 2 of this Agreement; and

c. the RL's liability to make payment to NLT under this Agreement.

## **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 15, 16 and 18 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. 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.

**ANNEX 1**

	<b>Data Centre</b>	<b>Data Centre Surcharge (Before GST)</b>
1.	THE EQUINIX SG1 20 Ayer Rajah Crescent #05-05/08 Singapore 139964	S\$50 per connection per month
2.	THE EQUINIX SG2 15 Pioneer Walk, Pioneer Hub #01-02 Singapore 627753	S\$50 per connection per month
3.	THE FORT 6 Changi South Lane Singapore 486400	S\$50 per connection per month



