

Dated

BETWEEN

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

AND

[REDACTED]

CUSTOMISED AGREEMENT

PROVISION OF FIBRE MIGRATION SERVICES

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 Infocommunications Media Development Authority of Singapore ("**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 RL has signed an agreement on terms of the Approved ICO with NLT ("**RL's ICO Agreement**").
- D. The Parties hereby agree to enter into this Customised Agreement ("**Agreement**"), which is separate from and independent of the RL's ICO Agreement, to regulate Parties respective obligations and responsibilities with regard to the migration of the relevant infrastructure of the RL's.

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;

"**Co-Lo Room**" means NLT's Co-Location Room at the Designated Premises.

"**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;

"**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;

“**Designated Premise**” means the premises identified in **ANNEX 2** to this Agreement;

“**Effective Date**” bears the meaning described in **Clause 7.1** below.

“**End-User**” means an End-User who have entered directly into a contractual agreement with the RL or its Related Corporations;

“**FDF**” means the RL’s Fibre Distribution Frame located within NLT’s Co-Location Room and at which NLT is to carry out that part of the Migration Services as set out in **Paragraph 1.1.1.1** of **ANNEX 1** to this Agreement;

“**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 Day**” means the date or dates on which Parties have agreed that the activities set out in **Paragraph 1.1.2** of **ANNEX 1** to this Agreement are to be carried out, which date or dates shall be no later than the expiry of this Agreement;

“**Migration Services**” means the services set out in **Paragraph 1.3** of **ANNEX 1** to this Agreement and further specified in **ANNEX 2** to this Agreement;

“**NetCo Room**” means NLT’s Network Company Room at the Designated Premises;

“**New Fibre Installation Day**” means the date or dates on which Parties have agreed that the activities as set out in **Paragraph 1.1.1** of **ANNEX 1** to this Agreement are to be carried out;

“**Request**” means a request submitted by the RL to NLT, as set out in **Paragraph 1.2** of **ANNEX 1** to this Agreement for the Migration Services;

“**OLT**” means Optical Line Terminal;

“**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 Approved ICO with NLT; and

“**Term**” means the term of this Agreement as set out in **Clause 7** below.

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-broadbandnetwork/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 the terms and conditions specified herein, NLT shall provide the Migration Services to the RL for its fibre connections.

3. RL'S OBLIGATIONS

- 3.1 In consideration of NLT's agreement to provide the services described in **Clause 2.1** above, the RL shall comply with the terms and conditions specified in the annexures 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 on 30 September 2023, or upon completion of the Migration Services, whichever is earlier.
- 7.3 Unless otherwise specified in **ANNEX 1** 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).

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, wilful 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 200% of the Fees 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; and

(b) 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 2, 12, 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.

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.

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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. NLT OBLIGATIONS

1.1 After receiving Request, NLT shall:

1.1.1 on New Fibre Installation Day and during such hours as Parties have agreed:

1.1.1.1 install new fibre cable(s) to run from the NLT's fibre rack in the NetCo Room to the FDF in the Co-Location Room as identified by the RL in accordance with **Paragraph 1.3.1.2** below; and

1.1.1.2 terminate and connect the fibre strands in the said new fibre cable(s) to the fibre connection ports at the FDF as identified by the RL in accordance with **Paragraph 1.3.1.3** below;

1.1.2 on Migration Day and during such hours as Parties have agreed:

1.1.2.1 disconnect the existing fibre strands at the fibre connection ports at NLT's fibre rack in the NetCo Room as identified by the RL in accordance with **Paragraph 1.3.1.5** below; and

1.1.2.2 terminate and connect the fibre strands in the new fibre cable(s) to the fibre connection ports within NLT's fibre rack in the NetCo Room as identified by the RL in accordance with **Paragraph 1.3.1.5** below.

1.1.3 After completion of the works set out in **Paragraph 1.1.2** above, NLT shall, at such time to be agreed with the RL:

1.1.3.1 disconnect the existing fibre strands at the fibre connections ports at the RL's OLT in the Co-Location Room as identified by the RL in accordance with Paragraph 1.3.1.4 below;

1.1.3.2 recover the old fibre cable(s) previously used to connect the said fibre connections ports at the RL's OLT in the Co-Location Room to the said fibre connection ports at NLT's fibre rack in the NetCo Room.

(collectively "**Migration Services**")

1.2 Subject to Paragraph 1.3 below, the RL shall submit its Request to NLT no more than eight (8) weeks and no less than four (4) weeks prior to the commencement of the Migration Services and in any case not before agreeing with NLT on the dates for New Fibre Installation Day and Migration Day in accordance with **Paragraph 1.3.2.1** below. Prior to submitting the Request, the RL shall comply with requirements set out in **Paragraph 1.3** below.

1.3 Prior to the submission of the RL's Request for Migration Services,

1.3.1 the RL shall submit the following information together with all relevant documents:

1.3.1.1 the RL's proposed date(s) and time(s) for New Fibre Installation Day and Migration Day;

1.3.1.2 the RL's FDF at which NLT is to connect the fibre strands in accordance with **Paragraph 1.1.1.1** above;

- 1.3.1.3 the fibre connection ports at the RL's FDF at which NLT is to connect the fibre strands in accordance with **Paragraph 1.1.1.2** above;
 - 1.3.1.4 identify the fibre connection ports at the OLT to be disconnected in accordance with **Paragraph 1.1.3.1** above;
 - 1.3.1.5 identify the fibre connection ports at NLT's fibre rack in the NetCo Room at which NLT is to (i) disconnect the existing fibre strands in accordance with **Paragraph 1.1.2.1** above and (ii) terminate and connect the fibre strands in the new fibre cable(s) in accordance with **Paragraph 1.1.2.2** above.
- 1.3.2 NLT shall, within ten (10) working days of receiving the RL's information and documents, inform the RL if the said information and documents are sufficient for NLT to carry out the Migration Services.
- 1.3.2.1 In the event that the said information and documents are sufficient for NLT to carry out the Migration Services, NLT shall at the same time inform the RL if the RL's proposed New Fibre Installation Day and Migration Day are suitable, and if unsuitable, Parties will negotiate in good faith for mutually agreeable dates.
 - 1.3.2.2 In the event that the said information and documents are insufficient for NLT to carry out the Migration Services, the RL shall be entitled to resubmit its said information and documents, together with such further information and documents as NLT may have requested and NLT shall review the RL's re-submission in accordance with this **Paragraph 1.3.2**.
- 1.4 In the event the Migration Services remains uncompleted due to reasons not attributable to NLT, the RL shall be liable for the additional charges in **ANNEX 3** hereto and Parties shall agree in writing the subsequent deadline for completion of the Migration Services.
- 1.5 The RL agrees that NLT shall be liable only for the provision of Migration Services and NLT shall not be liable to the RL for any connectivity issues faced by its End-Users upon the completion of the Migration Services.

2. FEES & CHARGES

- 2.1 The fees set out in **ANNEX 3** hereto shall apply for the Migration Services provided by NLT pursuant to this Agreement.
- 2.2 The fees set out herein and **ANNEX 3** hereto 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 Service 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 in **ANNEX 3** hereto, 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 in **ANNEX 3** hereto. 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.

3. ADDITIONAL TERMS AND CONDITIONS

- 3.1 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).
- 3.2 Except where the loss or damage arises out of gross negligence, fraud or wilful misconduct on the part of NLT, its servants or agents, the RL shall indemnify and hold harmless NLT from any and all direct liabilities, losses, damages, costs and expenses, fines and penalties (including loss of profits, business or anticipated savings, or any other consequential loss), fees on a full indemnity basis and disbursements and costs of investigation, litigation, settlement, judgment and interest, regardless of whether they arise in contract, tort (including negligence) or under any statute or otherwise, that NLT may sustain or incur (including those sustained or incurred as a result of a claim by a third party against NLT) directly relating to, arising out of or resulting from the RL's gross negligence or wilful misconduct in connection with this Agreement (including those sustained or incurred as a result of a claim by a third party against NLT).
- 3.3 Schedule 16 of the Approved ICO shall apply to this Agreement.
- 3.4 Regardless of termination or expiration of the Agreement the rights and obligations of the Parties under the provisions of the Agreement which by their context, intent and meaning would reasonably be expected to survive the termination or expiration of the Agreement or any part thereof, will so survive including but not limited to **Clauses 4** (Confidentiality), **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 **paragraph 3.2** of this **Annex 1**

ANNEX 2

MIGRATION SERVICES

<u>S/N</u>	<u>Designated Premises</u>	<u>No. of Ports to be Migrated</u>	<u>No. / Size of New Fibre Cable to be used</u>
1.	Jurong West Exchange Co-Location Room 1/ NetCo Room	110	1 x 192F

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ANNEX 3

FEES & CHARGES

Based on the specifications set out in **Paragraph 1** of **ANNEX 1** and in **ANNEX 2**,

Fees payable under **Paragraph 2** of **ANNEX 1** = \$12,623.10 (excluding GST)

Additional Charges

The additional charges under **Paragraph 1.4** of **ANNEX 1** are as follows:

- (a) Additional Night required for the migration work - \$1,214.50 per night (excluding GST)**
- (b) Other charges will be on Cost-Oriented Basis.**

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