

Dated [ ] August 2017

BETWEEN

**NETLINK MANAGEMENT PTE. LTD.**

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

AND

**SINGAPORE TELECOMMUNICATIONS LIMITED**

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**CUSTOMISED AGREEMENT**

**FIBRE CROSS CONNECT INSTALLATION SERVICE**

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This **CUSTOMISED AGREEMENT** is made on [ ] August 2017 between:

(A) **NETLINK MANAGEMENT PTE. LTD.** (in its capacity as trustee-manager of NetLink Trust) (Company Registration Number: 201704784C), a company incorporated in Singapore with its registered address at 750E Chai Chee Road, #07-03 Viva Business Park Singapore 469005 (“**NLT**”)

AND

(B) **SINGAPORE TELECOMMUNICATIONS LIMITED** (Company Registration Number: **199201624D**), a company incorporated in Singapore with its registered address at 31 Exeter Road, #01-00 Singapore 239732 (the “**Requesting Licensee**” or “**RL**”).

NLT and the RL shall hereinafter be collectively referred to as the “Parties”, and individually as “Party”.

#### **WHEREAS:**

- A. NLT has been granted a licence to provide facilities-based operations (“FBO Licence”) by the Info-communications Media Development Authority of Singapore (“IMDA”) under Section 5 of the Telecommunications Act (Cap. 323) (“Act”) and is a designated public telecommunication licensee under Section 6 of the Act. NLT operates subject to the authority of and regulation by IMDA.
- B. Under the terms of NLT’s FBO Licence, NLT is required to offer certain Mandated Services to Requesting Licensees pursuant to the terms of the Approved ICO.
- C. The RL has signed an agreement on terms of the Approved ICO with CityNet Infrastructure Management Pte. Ltd. (in its capacity as trustee-manager of NetLink Trust), the then trustee-manager of NetLink Trust, which has since been succeeded by NetLink Management Pte. Ltd. (“RL’s ICO Agreement”).
- D. The Parties hereby agree to enter into this Customised Agreement, which is separate from and independent of the RL’s ICO Agreement, to regulate Parties’ respective obligations and responsibilities with regard to the provision of Fibre Cross Connect Installation Service (as defined below).

**IN CONSIDERATION OF THE PARTIES’ MUTUAL AGREEMENTS, UNDERTAKINGS AND COVENANTS HEREIN, IT IS HEREBY AGREED AS FOLLOWS:**

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement, unless the context otherwise requires, capitalised terms shall have the following meanings:-

“**Approved ICO**” has the meaning ascribed to it in Clause 1.2.1 below;

“**Business Day**” means any day other than Saturdays, Sundays or the gazetted public holidays in Singapore;

“**Code**” means the NetCo Interconnection Code 2017 issued by the Authority pursuant to section

26(1) of the Act, which came into operation on 7 April 2017, or its successor code of practice, and as may be amended from time to time;

"**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;

"**Related Corporation**" means a corporation that is deemed to be related to the RL by virtue of section 6 of the Companies Act (Cap. 50);

"**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-trust-interconnection-offer-2015> 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 Customised 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 Customised Agreement form part of this Customised 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 Customised 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 Customised 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 install or relocate an optical fibre ("Fibre Cross Connect Cable") either from –

- 2.1.1 the lead-in manhole of a Central Office to the Requesting Licensee's Fibre Distribution Frame located in a Co-Location Space within the same Central Office; or
- 2.1.2 a location within a Central Office where the Requesting Licensee's equipment is installed to the Requesting Licensee's Fibre Distribution Frame located in a Co-Location Space within the same Central Office.

(hereinafter referred to as the "Fibre Cross Connect Installation Service" or "FCCIS"). For the avoidance of doubt, NLT shall not terminate or connect the Fibre Cross Connect Cable onto the RL's equipment, and the Fibre Cross Connect Installation Service does not include the maintenance of the Fibre Cross Connect Cable.

- 2.2 Subject to Clause 2.1 above, NLT shall provide the FCCIS only within the Central Office(s) listed in Annex 3.
- 2.3 NLT shall be responsible for procuring the requisite approvals, consents or certifications from relevant authorities or parties as may be necessary for the provision of the Fibre Cross Connect Installation Service, PROVIDED ALWAYS THAT NLT shall not be responsible for procuring any approvals, consents or certifications related to or arising out of the RL's licence to use or the RL's lease from a third party with respect to any space within the relevant Central Office.

## 3. RL'S OBLIGATIONS

- 3.1 In consideration of NLT's agreement to provide the services described in Clause 2 above, and provided that the RL must have co-located its active equipment in NLT's Co-Location Space for the purpose of aggregating the data traffic sent to or received by the Requesting Licensee, its Related Corporation, and their End-Users, the End-Users of the Requesting Licensee's third party wholesale customers, and the End-Users of its Related Corporation's third party wholesale customers, 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 Customised Agreement shall be submitted to the Authority for approval and shall come into effect only upon such approval by the Authority.
- 7.2 This Customised Agreement shall expire twenty-four (24) months after the date the Authority approves or is deemed to have approved this Agreement.
- 7.3 The Parties may agree in writing to renew this Customised 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 Customised Agreement, Parties shall negotiate in good faith such terms and conditions to renew this Customised Agreement and to conclude such negotiation prior to the expiry of the Customised Agreement, failing which either Party may request the Authority to resolve the dispute pursuant to the Code.
- 7.4 Unless otherwise specified in the Schedule hereto, either Party may terminate this Customised 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 Customised Agreement by giving to the other Party thirty (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 Customised 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 Customised Agreement (including liability for negligence or breach of statutory duty), shall be limited to a sum equivalent to two hundred percent (200%) of the value of the Site Preparation Charge (as defined in the Schedule).

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 12 and/or 12C of the Approved ICO shall be incorporated herein and shall form part of this Agreement, with the necessary modifications for application to this Customised Agreement instead of an ICO Agreement. For the avoidance of doubt, this Customised 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 Customised Agreement and the Approved ICO, the terms of this Customised 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 Customised Agreement and/or the obligations hereunder shall not be assigned or sub-licensed by the RL.

### **9.4 Amendment**

This Customised 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 Customised Agreement and agree that they shall amend this Customised 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 Customised 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 Customised 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 Customised 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 Customised 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-Manager

NETLINK MANAGEMENT PTE. LTD. has assumed all obligations under this Customised Agreement in its capacity as trustee-manager of NetLink Trust and not in its personal capacity and any liability of NetLink Management Pte. Ltd. (as trustee-manager of NetLink Trust) under this Customised 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.

## SCHEDULE

### 1. PROCEDURE FOR REQUEST FOR FCCIS

The Requesting Licensee shall comply with the procedure set out below when requesting for the FCCIS: –

- (a) The Requesting Licensee shall submit the request for a Fibre Cross Connect Installation Service to NLT manually using the form attached marked **Annex 1** (hereinafter referred to as “Request”). Where the proposed installation (or re-location, if applicable) of the Fibre Cross Connect Cable involves passing the Fibre Cross Connect Cable through common areas or corridors, the Requesting Licensee shall also alert NLT accordingly so that a site survey may be conducted to assess the actual site conditions. The Requesting Licensee hereby acknowledges and agrees to install additional cable trays in the event that NLT determines that it is not practical or possible to pass the Fibre Cross Connect Cable through the existing cable trays.
- (b) Notwithstanding anything in this Customised Agreement, the Requesting Licensee shall at its own cost supply the Fibre Cross Connect Cable for the provision of the FCCIS by NLT.
- (c) NLT shall not be obliged to process more than three (3) Requests from the Requesting Licensee per week.
- (d) Each Request submitted by the Requesting Licensee must specify clearly which of the two options described in Clause 2.1 of the Customised Agreement is required, and the exact location to which the Fibre Cross Connect Cable is to be installed, and all relevant supporting documents must accompany each Request.
- (e) Upon receipt of a Request, NLT will notify the Requesting Licensee in writing within five (5) Business Days whether the Request is accepted or rejected. Where NLT rejects the Request, NLT shall also furnish the reasons for such rejection accordingly. Where NLT accepts the Request, NLT shall inform the Requesting Licensee of the total cost of the Project Study (“FCCIS Project Study Fee”) which will be calculated on a Cost-Oriented Basis.
- (f) In the event that the Requesting Licensee provides written acceptance of the FCCIS Project Study Fee, NLT will then complete the Project Study within twenty (20) Business Days of said acceptance. The Project Study shall include a joint site survey to determine the scope of work to be undertaken by NLT for the provision of FCCIS (hereinafter referred to as “FCCIS Site Preparation Work”).
- (g) NLT will provide the Requesting Licensee with a Project Study report after completion of the Project Study. The Project Study report shall contain information which include but is not limited to the extent of the FCCIS Site Preparation Work, the estimated Charge for the FCCIS Site Preparation Work, which shall be determined on a Cost-Oriented Basis (the “Site Preparation Charge”), and reasonable payment terms for the Site Preparation Charge.
- (h) In the event of any delay in the delivery of the Project Study report, and where such delay is solely a direct result of an act or omission by NLT, NLT shall compensate the Requesting Licensee in accordance with the formulas set out in Annex 2. Where the delay is a result of breach by Singapore Telecommunications Limited (“Singtel”) of a Reference Interconnection Offer approved by IMDA (“RIO”), and NLT receives any rebates under the applicable RIO, NLT shall pass on the full amount of rebates received to the Requesting Licensee.
- (i) The Requesting Licensee shall provide written confirmation of its rejection or acceptance of NLT’s Project Study report and estimated Site Preparation Charge no later than three (3) Business Days from the date of receipt of the Project Study report. In the event that NLT does not receive the confirmation within this timeline, the Requesting Licensee shall be deemed to have rejected the NLT’s Project Study report. For the avoidance of doubt, the Requesting Licensee shall be liable to pay the full FCCIS Project Study Fee in accordance with Schedule 16 of the RL’s ICO Agreement regardless of whether the Project Study report is accepted or rejected.



- (j) NLT shall complete the FCCIS Site Preparation Work within thirty (30) Business Days of receipt of the Requesting Licensee's acceptance of NLT's Project Study report, and NLT shall provide written notification of the same. Within one (1) Business Day after receiving NLT's notification, the Requesting Licensee shall attend at the site for handover.
- (k) In the event of any delay in the completion of the FCCIS Site Preparation Work, and where such delay is solely a direct result of an act or omission by NLT, NLT shall compensate the Requesting Licensee in accordance with the formulas set out in Annex 2. Where the delay is a result of Singtel's breach of an RIO, and NLT receives any rebates under the applicable RIO, NLT shall pass on the full amount of rebates received to the Requesting Licensee.
- (l) In the event that it becomes reasonably clear to NLT that the actual cost incurred in supplying the FCCIS will exceed NLT's estimated Site Preparation Charge, NLT shall as soon as possible provide the Requesting Licensee with a revised written estimate of the Site Preparation Charge for the Requesting Licensee's approval. In the event that the Requesting Licensee does not provide its approval within three (3) Business Days from the date of receipt of the revised estimate, NLT shall be entitled to suspend the FCCIS Site Preparation Work until the Requesting Licensee agrees to the revised price estimate. In such a situation, NLT shall be entitled to render its invoice for all cost already incurred to-date, and the Requesting Licensee shall make payment of the same pending resolution of the revised price estimate.

## **2. ADDITIONAL TERMS AND CONDITIONS**

- (a) The Requesting Licensee acknowledges and agrees that it is a condition of this Customised Agreement that the Fibre Cross Connect Cable shall be used solely for transporting aggregated data traffic to and/or from the Requesting Licensee, its Related Corporation, and their End-Users, the End-Users of the Requesting Licensee's third party wholesale customers, and the End-Users of its Related Corporation's third party wholesale customers. For the avoidance of doubt, the Requesting Licensee shall not use the Fibre Cross Connect Cable for the purpose of transporting aggregated data traffic to and/or from other Requesting Licensees located in a Co-Location Space within the same Central Office.
- (b) Save for such approvals for which NLT is responsible as described in Clause 2.2 of the Customised Agreement, the Requesting Licensee shall at its own expense obtain and maintain all requisite licences, approvals, consents and/or certifications from the relevant authorities and/or such third parties as may be necessary in order for NLT to provide the Fibre Cross Connect Installation Service. The Requesting Licensee acknowledges and agrees that NLT shall not be liable for any losses or damages incurred by the Requesting Licensee due to a delay or failure in obtaining or maintaining the aforementioned licences, approvals, consents or certifications, so long as such delays or failure is not caused by the negligent acts or omission by NLT.
- (c) The Requesting Licensee shall indemnify NLT and keep it indemnified against all liabilities, claims, demands, damages, costs and/or expenses arising out of, in relation to or as a consequence of NLT's failure to comply with or breach of the terms and conditions under an RIO, such failure or breach being caused by or resulting from the Requesting Licensee's Fibre Cross Connect Cable and/or the provision of the FCCIS. Notwithstanding anything in this Agreement, this clause shall survive the termination or expiration of this Customised Agreement for as long as the RL's Fibre Cross Connect Cable installed pursuant to this Customised Agreement is not removed.
- (d) In the event of any addition, removal or any other change to the Requesting Licensee's or its Related Corporation's third party wholesale customers referred to in paragraph 2(a) above (including but not limited to the entry by such customer into an agreement with NLT on terms of the Approved ICO), the Requesting Licensee shall promptly notify NLT of the change via email.

## **3. PRICE AND PAYMENT**

Upon receipt of the notice of completion described in paragraph 1(j), the Requesting Licensee shall be liable for the payment of all applicable Charges under this Agreement, including but not

limited to the FCCIS Project Study Fee and the Site Preparation Charge (if still unpaid), in accordance with Schedule 16 of the RL's Approved ICO.

#### **4. TERMINATION**

- (a) In the event of a breach of paragraphs 2(a) and/or 2(d) of this Schedule and without any prejudice to NLT's right to claim damages:
- i. NLT shall be entitled to terminate this Customised Agreement with immediate effect by way of written notice to the Requesting Licensee,
  - ii. NLT shall be entitled to remove the Fibre Cross Connect Cable which is the cause of the breach from all cable trays belonging to NLT in the relevant Central Office, and
  - iii. the Requesting Licensee shall be liable to indemnify NLT against all loss, damage and expenses of any kind suffered by NLT, whether directly or indirectly, as a result of the breach.
- (b) Subject to paragraph 4(a) of this Schedule and Clause 12.1 of the main body of Part 2 of the Approved ICO, a breach of any of the clauses in this Customised Agreement shall be a material breach for which NLT is entitled to terminate this Customised Agreement in accordance with the terms of this Customised Agreement if the breach, which is capable of being remedied, is not remedied within thirty (30) calendar days of written notice by NLT.

## ANNEX 1

## REQUEST FORM FOR FIBRE CROSS CONNECT INSTALLATION SERVICE

Requesting Licensee	Date of Application:	Application Reference Number:
	Name of Central Office:	
	Type of Installation / Relocation Required (Please tick one):	
	<input type="checkbox"/> From the lead-in manhole of a Central Office to the Requesting Licensee's Fibre Distribution Frame located in a Co-Location Space within the same Central Office <input type="checkbox"/> From a location within a Central Office where the Requesting Licensee's equipment is installed to the Requesting Licensee's Fibre Distribution Frame located in a Co-Location Space within the same Central Office	
	Location of Requesting Licensee's FDF rack within the Co-Location Space :	
	Special requirement (if any):	

For and on Behalf of Requesting Licensee

Requesting Licensee	Sign:	Company Name:
	Name:	Company Stamp:
	Designation:	
	Contact Number:	
	Fax Number:	
	Email address:	

NLT's Response:

Date:

NLT	<input type="checkbox"/> Application accepted
	Site Survey Date :
	<input type="checkbox"/> Application rejected

	Reason for rejection:	
	On Behalf of NLT  Name:  Signature:	Queue Status:

**ANNEX 2****SERVICE LEVEL GUARANTEES****1. REBATES FOR PROJECT STUDY TIMEFRAMES**

<b>Missed timeframe for completion of Project Study (Clause 3.4.4) by:</b>	<b>Rebate</b>
<b>1-30 Calendar Days</b>	<b>(Number of days of delay x 10% of Project Study Fee) / 30</b>
<b>More than 30 Calendar Days</b>	<b>10% of Project Study Fee</b>

**2. REBATES FOR SITE PREPARATION WORK**

<b>Missed timeframe for completion of Site Preparation Work (Clause 3.4.11) by:</b>	<b>Rebate</b>
<b>1-30 Calendar Days</b>	<b>(Number of days of delay x 10% of Site Preparation Charge) / 30</b>
<b>More than 30 Calendar Days</b>	<b>10% of Site Preparation Charge</b>

**ANNEX 3**

	<b>Central Office (CO)</b>	<b>Address</b>
1.		

