

PRIVATE & CONFIDENTIAL

Dated [] 2012



CUSTOMISED AGREEMENT

BETWEEN

OPENNET PTE. LTD.

AND

VIEWQWEST PTE LTD

THIS CUSTOMISED AGREEMENT is made on [] 2012

BETWEEN:

- (1) **OPENNET PTE. LTD.** (Company Registration Number: **200819712H**), a company incorporated in Singapore with its registered address at 152 Beach Road #31-05/08, Gateway East, Singapore 189721 ("**ON**")

AND

- (2) **VIEWQWEST PTE. LTD.** (Company Registration Number: **199507067H**), a company incorporated in Singapore with its registered address at 58 Duxton Road , Singapore 089522 ("**VQ**")

(collectively, the "**Parties**", and each, a "**Party**")

WHEREAS:

- (A) ON is a public telecommunication licensee under Section 6 of the Telecommunications Act (Cap. 323) and operates subject to the authority and regulation by the Info-Communications Development Authority of Singapore ("**IDA**").
- (B) Under the terms of ON's FBO Licence, ON must offer certain mandated services to Requesting Licensees pursuant to the terms of the Approved ICO (as defined below in Clause 1.2.1).
- (C) The Requesting Licensee have signed the Approved ICO with ON and ON intends to provide the Requesting Licensee a promotion under specific terms and conditions as described in this Agreement ("**Promotion**").
- (D) Parties hereby agree to enter into this Customised Agreement, which is separate and independent of the Approved ICO, to regulate Parties' respective obligations and responsibilities with regards the Promotion.

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;

"**Code**" means the NetCo Interconnection Code 2009 or successor code of practice and as may be amended from time to time;

"**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;

1.2 Interpretation

In this Agreement:-

- 1.2.1 unless otherwise defined in this Agreement, all terms and references defined in the ON Approved ICO ("**Approved ICO**") (as set out on the IDA webpage <http://www.ida.gov.sg/Policies%20and%20Regulation/20090224174101.aspx#13Nov09> 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 the definition of terms herein 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 to the clauses schedules, recitals of and annexures to this Agreement;
- 1.2.6 the words "herein", "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 hereof;
- 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 are to Singapore time;
- 1.2.9 the Schedules 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 anything or obligation to be done under this Agreement which is required or falls to be done on a stipulated day, shall be done on the next succeeding Business Day, if the day upon which that thing or obligation is required or falls to be done falls on a day which is not a Business Day.

2. PROMOTION

- 2.1 ON shall provide the Requesting Licensee such promotion on Mandated Services under Approved ICO from time to time on such terms and conditions as ON deems fit.
- 2.2 Parties agree that the terms and conditions of such Promotion shall be as set out in this Agreement or as may be agreed, varied or modified in writing from time to time henceforth, subject always to the Authority's prior approval. ON shall notify the Requesting Licensee upon receipt of the Authority's approval.

3. OPENNET'S OBLIGATIONS

- 3.1 Save as expressly amended and supplemented by this Agreement, ON shall provide the Requesting Licensee with such Promotion on the terms and conditions more specifically described in the Annex(es) attached hereto.

4. LIMITATION OF LIABILITY

- 4.1 This Clause 4 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.
- 4.2 In performing its obligations under this Agreement, ON shall exercise the reasonable skill and care of a competent telecommunications operator.
- 4.3 Subject to Clause 4.5, neither Party shall be liable to the other Party (whether in contract, in tort, under statute or otherwise for any cause other than for wilful or deliberate breach, acts or omissions) for:
- (a) any loss (whether direct or indirect) of profits, revenue, business, anticipated savings, wasted expenditure or goodwill; or
 - (b) any other consequential or indirect liability, loss or damage,
- suffered by the other Party and arising from or in connection with this Agreement.
- 4.4 Subject to Clause 4.5, if a Party ("**Breach Party**") is in breach of any of its obligations under this Agreement to the other Party or otherwise arising under this Agreement (including liability for negligence or breach of statutory duty), the Breach Party's liability to the other Party shall be limited to the total charges paid or payable by the Requesting Licensee under this Agreement and/or the Approved ICO during the twelve (12) months prior to the event giving rise to the liability. Where liability arises from a claim of intellectual property infringement, the limitation of liability shall be 3 times the total charges paid or payable by the Requesting Licensee under this Agreement and/or the Approved ICO during the twelve (12) months prior to the notice of infringement.
- 4.5 Neither Party excludes or restricts its liability for death, personal injury, gross negligence or wilful default.

5. TERMINATION

- 5.1 Either party may terminate this Agreement if the other party is in breach of this Agreement.

6. MISCELLANEOUS

6.1 Save as expressly amended and supplemented by this Agreement, the terms of the Approved ICO shall be incorporated herein and shall form part of this Agreement. For the avoidance of doubt, this Agreement shall be deemed to be a “Customised Agreement” pursuant to Clause 1.4 of Part 2 of the Main Body of the Approved ICO. In the event of any inconsistencies between the provisions of this Agreement and the Approved ICO with regard to the, the terms of this Agreement shall prevail to the extent of such inconsistency.

6.2 Release, Waiver or Compromise

Any liability to either Party hereunder may in whole or in part be released, compounded or compromised, or time or indulgence may be given, by such Party in its absolute discretion without in any way prejudicing or affecting its rights against the other Party. Any release or waiver or compromise shall be in writing and shall not be deemed to be a release, waiver or compromise of similar conditions in the future.

6.3 Amendment

This Agreement may be amended only by an instrument in writing signed by all of the Parties. The Parties hereby acknowledge and agree that they shall, if required by the Authority, amend this Agreement to incorporate any additional or modified Duties Related to the Provision of Mandated Services (as defined in the Code) as required by the Authority during the term of this Agreement.

6.4 Invalidity

Any provision of this Agreement that is invalid or unenforceable in any Law in any jurisdiction will as to that jurisdiction only 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 in that jurisdiction or that provision in any other jurisdiction are and continue to be valid and enforceable in accordance with their terms.

6.5 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.

6.6 Governing Law and Submission to Jurisdiction

6.6.1 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. Nothing in this Clause shall limit the right of any Party hereto to bring any proceedings with respect to this Agreement against another Party in any court elsewhere nor shall the bringing of any proceedings in any jurisdiction preclude any Party from bringing any such proceedings in any other jurisdiction, whether concurrently or not.

6.6.2 The Parties acknowledge the competence of any such courts and agrees that a final judgment in any such proceedings brought in such courts shall be conclusive and binding upon it and if brought in the courts of Singapore, may be enforced in any other courts.

ANNEX 1 - Schedule 2 Promotion – Waiver of Standard Installation Charge

1. General

Under Schedule 2 of the Approved ICO, ON will provide the Requesting Licensee a fibre connection from ON's designated Central Office (or "CO") to the 1st 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 ON's network ends, for the purpose of providing GPON or OE services. The applicable tariff is subject to Section 2 of Schedule 15.

To encourage the take-up of Schedule 2 services, ON shall provide to Requesting Licensee a Schedule 2 Promotion as described in this Annex 1.

2. Applicable Service

This promotion is applicable to Schedule 2 service involving : -

- (i) Non-Residential End-User connection of 1:16 split ratio

3. Promotion Period

Upon ON's receipt of the Agreement duly signed by the Requesting Licensee, ON will notify the Requesting Licensee the effective start date of this promotion. This promotion shall end on 31 March 2013. Subject to the Authority's prior approval, ON may extend the period of this promotion on the same terms and conditions as set out herein.

4. Schedule 2 Promotion Tariff

The following Schedule 2 Promotion Tariff shall apply:

- (i) Waiver of the Standard Installation Charge of \$150 per connection under Section 2 of Schedule 15.

5. Cancellation Charge

ON will charge for cancellation of any request submitted by the Requesting Licensee before the Request-For-Service (RFS) date. The cancellation charge shall be at the same rate as the respective installation charge for the requested service as stated in Schedule 15, Clause 2.3.2.

ANNEX 2 - Schedule 2 Promotion – Reduction in Monthly Recurring Charge

1. General

Under Schedule 2 of the Approved ICO, ON will provide the Requesting Licensee a fibre connection from ON's designated Central Office (or "CO") to the 1st 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 ON's network ends, for the purpose of providing GPON or OE services. The applicable tariff is subject to Section 2 of Schedule 15.

To encourage the take-up of Schedule 2 services, ON shall provide to Requesting Licensee a Schedule 2 Promotion as described in this Annex 2.

2. Applicable Service

This promotion is applicable to Schedule 2 service involving : -

- (i) Non-Residential End-User connection of 1:16 split ratio

3. Promotion Period

Upon ON's receipt of the Agreement duly signed by the Requesting Licensee, ON will notify the Requesting Licensee the effective start date of this promotion. This promotion shall end on 31 March 2013. Subject to the Authority's prior approval, ON may extend the period of this promotion on the same terms and conditions as set out herein.

4. Schedule 2 Promotion Tariff

The following Schedule 2 Promotion Tariff shall apply:

- (i) Reduction of the Monthly Recurring Charge (MRC) Per End-User Connection from \$50/month to \$25/month under Section 2 of Schedule 15. Upon expiry of the two-year contract term, the prevailing Monthly Recurring Charge under Approved ICO as prescribed under Section 2 of Schedule 15 shall apply.

5. Conditions/Pre-requisites to be satisfied

The Requesting Licensee must fulfil the following pre-conditions/pre-requisites before the Requesting Licensee is entitled to the Schedule 2 Promotion described in this Annex 2.

- (i) Requesting Licensee provides or uses in-building cabling from ON's FTTB Node to the End-User's premise and installs the Termination Point (TP).
In such cases, ON will only provide Requesting Licensee with a patch cord (up to 10 metres) at the FTTB Node for interconnection and correspondingly, ON's obligations ends at the patch cord at the FTTB Node.
- (ii) Requesting Licensee signs a two-year contract term.
For any orders that are terminated before expiry of the two-year term, an early termination penalty (equivalent to the Schedule 2 Promotion Tariff for the balance of the two-year contract term) will be imposed on and payable by the Requesting Licensee.
- (iii) Requesting Licensee is required to submit a promotion code together with every applicable order. Requesting Licensee shall modify its OSS/BSS platform API, at its own cost, to support the implementation of this promotion code feature required by ON in ON's OSS/BSS Platform API. Prior to the implementation of this OSS/BSS Platform API modification, ON will advise on the applicable interim arrangement, which will include the manual insertion of the promotion code with every applicable order by Requesting Licensee. ON shall cease to support the interim arrangement three (3) months from the notification of the OSS/BSS Platform API specifications by ON to the Requesting Licensee. Details of the interim arrangement will be shared with the participating Requesting Licensees in due course.
- (iv) For avoidance of doubt, this promotion shall only be applicable where Requesting Licensee does not use existing in-building cabling and/or Termination Points installed by ON.

- (v) ON will charge for cancellation of any request submitted by the Requesting Licensee before the Request-For-Service (RFS) date. The cancellation charge shall be at the same rate as the respective installation charge for the requested service as stated in Schedule 15, Clause 2.3.2.

IN WITNESS WHEREOF this Agreement has been entered into on the date stated at the beginning.

ON

Signed by _____
(Name of Signatory)
for and on behalf of
OPENNET PTE. LTD.
in the presence of:

)
)
)
)
)
(signature) _____
Title:

(signature of witness) _____
Name of Witness:
Title:

Requesting Licensee

Signed by _____
(Name of Signatory)
for and on behalf of
VIEWQWEST PTE LTD
in the presence of:

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(signature) _____
Title:

(signature of witness) _____
Name of Witness:
Title: