

CONFIDENTIAL

Dated ___ July 2015

CUSTOMISED AGREEMENT

Between

**CITYNET INFRASTRUCTURE MANAGEMENT PTE. LTD.
(AS TRUSTEE-MANAGER OF NETLINK TRUST)**

and

SUPERINTERNET ACCESS PTE. LTD.

**DEPLOYMENT IN MMR AT GLOBAL SWITCH DATA CENTRE
LOCATED AT 2 TAI SENG AVENUE SINGAPORE 534408**

THIS CUSTOMISED AGREEMENT is made on [] July 2015.

Between

- (1) **CITYNET INFRASTRUCTURE MANAGEMENT PTE. LTD.** (as Trustee-Manager of NetLink Trust) (Company Registration Number: **201117019K**), a company incorporated in Singapore with its registered address at 750E Chai Chee Road, #07-03 Technopark@Chai Chee, Singapore 469005 ("**NLT**");

and

- (2) **SUPERINTERNET ACCESS PTE. LTD.** (Company Registration Number: **200002519N**), a company incorporated in Singapore with its registered address at 80 Raffles Place #32-01 Singapore 048624; ("**Requesting Licensee**").

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

WHEREAS:

- (A) NLT 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 NLT's FBO Licence, NLT 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 NLT dated 16 July 2014 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 for GSDC").
- (D) Parties hereby agree to enter into this Customised Agreement ("CA"), which is separate and independent of the Approved ICO, to regulate Parties' respective obligations and responsibilities with regards the setting up of the relevant infrastructure for the purposes of NLT to provision the Data Centre Connection for GSDC.

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 2009 or 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. Meet-Me-Room);

"Data Centre" is a facility used to house computer systems and associated equipment, components and accessories such as telecommunications and storage systems and for the purpose of this Agreement, refers to Global Switch Data Centre located at 2 Tai Seng Avenue Singapore 534408 ("GSDC").

"End-User" refers to someone who subscribes for services from the Retail Service Provider ("RSP").

"Requesting Licensee" means Qualifying Persons who had executed 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 Approved ICO from OpenNet to NLT

"Service Provider" refers to a RSP providing a telecommunication service to its End-User in the GSDC.

1.2 Interpretation

In this Agreement:-

- 1.2.1 unless otherwise defined in this Agreement, all terms and references defined in the NLT Approved ICO ("**Approved ICO**") (as set out on the IDA webpage <http://www.ida.gov.sg/Policies-and-Regulations/Industry-and-Licensees/Nationwide-Broadband-Network/OpenNets-Interconnection-Offer-2012> 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 any thing 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. Data Centre Deployment Charge

- 2.1 The Requesting Licensee hereby acknowledged it had requested NLT to provide a service more particularly described in a Customised Agreement for Extension of Schedule 2 of ICO at GSDC ("Data Centre Connection at GSDC") and are aware that in turn, NLT is required to enter into a contractual agreement with Global Switch Pte Ltd in relation thereto ("Global Switch Agreement").
- 2.2 In consideration of NLT agreeing or having entered into the Global Switch Agreement and this Agreement, the Requesting Licensee hereby agrees to :-
 - 2.2.1 pay such charges as NLT have paid or are required to pay to Global Switch to install, provide, provision or procure such resources as may be necessary such that NLT may provision the service described in Customised Agreement for Data Centre Connection at GSDC; and
 - 2.2.2 to pay the charges described in clause 2.2.1 above (including such project management and administration costs which NLT may apply thereto) for such period and on such terms and conditions as NLT is bound to comply.
 - 2.2.3 pay such charges as NLT have or would incur to install, provide, provision or procure such resources as may be necessary such that NLT may provision the service described in Customised Agreement for Data Centre Connection for GSDC;

PROVIDED ALWAYS that NLT shall furnish a quotation for the proposed setup and NLT shall only commence work upon acceptance by the Requesting Licensee of both this Agreement and the quotation for the proposed setup.

2.3 Where another Requesting Licensee (the “Other RL”) signed a CA with NLT that is identical this CA, then the amount payable under this clause 2 will be adjusted vis-à-vis the Requesting Licensee and the Other RL as below :

- (a) One-Time Charge (“OTC”)

NLT will divide the OTC paid by the Requesting Licensee equally by the total number of RL whom have this signed this CA. The New RL will pay for the revised OTC and NLT will refund the existing Requesting Licensees.
- (b) Monthly Recurring Charge (“MRC”)

NLT will divide the MRC equally by the total number of RL whom have this signed this CA. All Requesting Licensees will pay for the revised MRC effective from the next Billing Cycle.

Figure 1 : Scenarios

Number of RLs	OTC Payable	OTC Rebate	Recurring Charge Payable
1	\$X	Not applicable	\$Y
2	$\$X \div 2$ (to be paid by RL2)	$\$X \div 2$, to be given to RL1	$\$Y \div 2$, effective the next bill cycle
3	$\$X \div 3$ (to be paid by RL3)	$\$X \div 6$, to be given to RL1 and RL2	$\$Y \div 3$, effective the next bill cycle
4	$\$X \div 4$ (to be paid by RL4)	$\$X \div 12$, to be given to RL1, RL2, RL3	$\$Y \div 4$, effective the next bill cycle

Taking the case of RL1 having paid the following effective 1 October 2014 :-

OTC : \$3,000

MRC : \$600

And GS billing cycle is every quarter (Jan, Apr, Jul, Oct)

Scenario 1 (2 RLs) - RL2 signed identical CA on 1 November 2014.

Per Figure 1 above

- NLT would refund to RL1 the sum of \$1,500 ($\$3,000 \div 2$) for the OTC
- NLT would collect OTC of \$1,500 from RL2.
- Commencing **1 Jan 2015**, RL1 and RL2 would each pay a sum of \$300 as the MRC.
- Note : RL1 would have already paid \$1,800 as MRC for the quarter of Oct/Nov/Dec 2014 and no refund would be made for the MRC portion.

Scenario 2 (3 RLs) - RL3 signed identical CA on 1 December 2014.

Per Figure 1 above

- NLT would refund to RL1 and RL2 each the sum of \$500 ($\$3,000 \div 6$) for the OTC
- NLT would collect OTC of \$1,000 from RL3.
- Commencing **1 Jan 2015**, RL1, RL2 and RL3 would each pay a sum of \$200 as the MRC.
- Note : RL1 would have already paid \$1,800 as MRC for the quarter of Oct/Nov/Dec 2014 and no refund would be made for the MRC portion.

Scenario 3 (4 RLs) - RL4 signed identical CA on 1 January 2015

Per Figure 1 above

- NLT would refund to RL1, RL2 and RL3 each the sum of \$250 ($\$3,000 \div 12$) for the OTC
- NLT would collect OTC of \$750 from RL4.
- Commencing 1 Jan 2015, RL1, RL2, RL3 and RL4 would each pay a sum of \$150 as the MRC.
- Note : RL1 would have already paid \$1,800 as MRC for the quarter of Oct/Nov/Dec 2014 and no refund would be made for the MRC portion.

Should the Scenarios all happen in sequence as described above, then each of RL1, RL2, RL3 and RL4 would be invoiced a sum of \$450 by NLT in January 2015 for the quarter of Jan/Feb/Mar 2015.

- 2.4 The amount payable under this clause 2 shall be hereinafter referred to as the “Data Centre Deployment Charge” and NLT shall, as the case may be and where applicable, be permitted to disclose to RL2, RL3 and/or RL4 the actual Data Centre Deployment Charge paid or payable by RL1, RL2 and/or RL3 under the various Scenarios described in clause 2.3 above notwithstanding that such disclosure shall constitute disclosure of Confidential Information and/or commercially sensitive information of RL1, RL2 and/or RL3. The Requesting Licensee hereby acknowledge and consent to NLT disclosing the actual Data Centre Deployment Charge paid or payable by itself in the circumstances as described in this clause 2.4 notwithstanding that such disclosure constitute a disclosure by NLT of its Confidential Information and/or commercially sensitive information.

3. Requesting Licensee’s Obligations

- 3.1 The Requesting Licensee hereby agree as follows :

- 3.1.1 it will agree, accept and comply with such change, variation, amendment or modification of this Agreement and/or the quotation referred to in clause 2 above where such change, variation, amendment or modification arises out of or due to the Global Switch Agreement.
- 3.1.2 to make payment of the Data Centre Deployment Charge without any right of set-off or deduction against any claims the Requesting Licensee may have against NLT.
- 3.1.3 NLT is entitled to amend, vary or change the Data Centre Deployment Charge or any part thereof upon notification to the Requesting Licensee. There shall be no obligation on NLT to give the Requesting Licensee any minimum period of notice before such amendment, variation or change to be effective.
- 3.1.4 NLT is entitled to apply a project management and administration fee to such sums NLT is required to pay to Global Switch provided such project management and administration fee shall be as specified in Clause 2 above.
- 3.1.5 in the event this Agreement is terminated for any reason or the Requesting Licensee is no longer a telecommunication licensee then the Requesting Licensee shall pay the Data Centre Deployment Charge for the balance of the period referred to in clause 6 below (“Outstanding Deployment Charge”) and NLT is entitled to recover such Outstanding Deployment Charge as a debt due and owing by the Requesting Licensee with interest and without demand.
- 3.1.6 it shall accept the quotation referred to in clause 2.2 above within 3 Business Days failing which, NLT shall be entitled to deem the Requesting Licensee as having rejected the said quotation.

4. THIS CLAUSE IS INTENTIONALLY LEFT BLANK

5. LIMITATION OF LIABILITY

- 5.1 This Clause 5 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.
- 5.2 In performing its obligations under this Agreement, NLT shall exercise the reasonable skill and care of a competent telecommunications operator.
- 5.3 Subject to Clause 5.5, 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 arising from or in connection with this Agreement.
- 5.4 Subject to Clause 5.5, if NLT is in breach of any of its obligations under this Agreement to Requesting Licensee under this Agreement (including liability for negligence or breach of statutory duty), NLT's liability to Requesting Licensee shall be limited to the total charges paid or payable by Requesting Licensee under this Agreement during the twelve (12) months prior to the event giving rise to the liability. Where Requesting Licensee is in breach of any of its obligations under this Agreement to NLT, the Requesting Licensee's liability shall not be less than such Outstanding Deployment Charge described in clause 3.1.5 above. 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 Requesting Licensee under this Agreement during the twelve (12) months prior to the notice of infringement.
- 5.5 Neither Party excludes or restricts its liability for death, personal injury, gross negligence or wilful default.

6. TERMINATION

- 6.1 This Agreement shall expire on such date (approximately 5 years from the date of this Agreement) as NLT shall indicate in writing within 10 Business Day after the date the Authority approves this Agreement.
- 6.2 Either Party may terminate this Agreement pursuant to the provisions of clause 12 of the Main Body of the Approved ICO. Additionally, where a Party is in breach of its obligations under this Agreement, the innocent Party may terminate this Agreement upon giving the Party in breach a 30 calendar days' written notice.
- 6.3 Additionally, in the event the Global Switch Agreement is terminated, then this Agreement shall correspondingly be terminated and NLT shall not be liable for any compensation or damages to the Requesting Licensee arising from such termination.

However, the Requesting Licensee shall remain liable to make payment of the Outstanding Deployment Charge to NLT.

7. MISCELLANEOUS

7.1 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.

7.2 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.

7.3 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.

7.4 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.

7.5 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.

7.6 Governing Law and Submission to Jurisdiction

7.6.1 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.

7.6.2 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.

7.7 Liability of the Trustee-Manager

The Trustee-Manager has assumed all obligations under this Agreement in its capacity as trustee-manager of the NetLink Trust Entities and not in its personal capacity and any obligation or liability of the Trustee-Manager under this Agreement is limited to the assets of the NetLink Trust Entities over which the Trustee-Manager has recourse and shall not extend to any personal or other assets of the Trustee-Manager or its shareholders, directors, officers or employees. For the purpose of this clause, "NetLink Trust Entities" refers to the following entities collectively:

- NetLink Trust Management Services Company Pte Ltd
- NetLink Trust Operations Company Pte Ltd
- OpenNet Pte Ltd.

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

NLT

Signed by _____)
 (Name of Signatory))
for and on behalf of **CITYNET INFRASTRUCTURE**)
MANAGEMENT PTE. LTD. (AS TRUSTEE-MANAGER)
OF NETLINK TRUST))
in the presence of:)

Title: Chief Executive Officer

Name of Witness:
Title:

REQUESTING LICENSEE

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

(signature)
Title:

(signature of witness)
Name of Witness:
Title: