

Dated

BETWEEN

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

AND



CUSTOMISED AGREEMENT
ON PROVISION OF ADDITIONAL RACK SPACE FOR
XGPON / XGS-PON DEPLOYMENT

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 Info-communications 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. Schedule 12C of the Approved ICO provides how an RL may specify, inter alia, the number of rack spaces required at a Co-Location Space (as defined in the ICO Agreement), and Schedule 15 of the Approved ICO sets out charges in connection with the same.
- E. The Parties hereby agree to enter into this Customised Agreement (the "**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 additional Co-Location rack space at Ang Mo Kio Central Office New Co-Location Room 3 ("**AM3**") for the purpose of XGPON / XGS-PON deployment by the RL.

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 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;

“**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;

“**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; and

“**Term**” means the term of this Agreement, as described under **Clause 7.2** 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-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 annexes are references to the clauses, schedules, recitals and annexes 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 annexes 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 RL with additional Co-Location rack space(s) at AM3 ("**Additional Rack Space**") during the Term of this Agreement.

3. RL'S OBLIGATIONS

- 3.1 In consideration of NLT's agreement to provide the services described in Clause 2 above, the RL shall comply with the terms and conditions specified in the Annexes 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 commence on the date the Authority approves or is deemed to have approved this Agreement (the "**Effective Date**").

7.2 This Agreement shall expire twenty-four (24) calendar months after the Effective Date of this Agreement (the “**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 Annex 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 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 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 recurring charges paid or payable by the RL in relation to the Co-Location Space (as set out at Clause 12C.2.2 of Schedule 15 of the Approved ICO) during the twelve (12) months prior to the event giving rise to the liability, save that where liability arises from the RL’s breach of paragraph 3.1(b) of Annex 1 of this Agreement, the limitation of liability shall not apply.

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 Additional Rack Space(s) strictly in accordance with **paragraph 3 of Annex 1**; 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 12C, 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. This Agreement may be executed by way of a certificate-based digital signature and the Parties hereby agree that such digital signature shall be treated as an original signature for all purposes hereof.

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.

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. PROCEDURE FOR REQUEST FOR ADDITIONAL RACK SPACE

- 1.1. The RL shall request for an Additional Rack Space by completing the form set out in Annex 2 (the “**Request Form**”) and submitting it to the relevant NLT Business Development Manager via email. For the avoidance of doubt:
 - a. Each Request Form shall contain a request for only one (1) Additional Rack Space; and
 - b. The RL is only entitled to submit another Request Form when the RL has complied with its obligations in relation to the removal of its equipment from an existing rack space under paragraph 3.1(b).
- 1.2. Within five (5) Business Days of the receipt of the Request Form, NLT will notify the RL whether the request has been accepted or rejected by NLT. Where the request has been rejected, NLT will inform the RL of the reason for its rejection, as follows:
 - a. The Request Form is not in the prescribed format;
 - b. The Request Form does not contain the required information;
 - c. The information provided in the Request Form is incorrect or inaccurate; and/or
 - d. The Request Form contains a request which is not for a Permitted Purpose (as defined in this Agreement).
- 1.3. NLT shall in its sole discretion determine whether the intended usage or purpose of the Additional Rack Space and/or as may be indicated in the Request Form is for the Permitted Purpose (as defined below) and reject the RL’s request in the event NLT determines that the intended usage or purpose of the Additional Rack Space is not for the Permitted Purpose.

2. PROVISION OF ADDITIONAL RACK SPACE

- 2.1. The RL shall use the Additional Rack Space(s) provided under this Agreement solely for the purpose of housing the RL's XGPON / XGS-PON equipment at AM3 to support the rollout of 10Gbps services (“**Permitted Purpose**”) in accordance with the terms and conditions of this Agreement and of the Approved ICO.
- 2.2. The following provisions of Schedule 12C of the Approved ICO shall not apply to the provision of the Additional Rack Space(s) under this Agreement:
 - a. Clause 3.3(A)(f);
 - b. Clause 3.3(B)(f); and
 - c. Clause 1.5.3 ii of Annex 12D-1.
- 2.3. For the avoidance of doubt, the Co-Location Equipment installed by the RL within each Additional Rack Space shall not exceed the maximum projected heat load of 5kW.
- 2.4. In addition, the RL shall be permitted to house the following types of racks in each Additional Rack Space:
 - a. 600mm (Width) by less than or equal to 1000mm (Depth) by less than or equal to 2200mm (Height), i.e. industry standard 19-inch racks; and/or
 - b. 800 mm (Width) by less than or equal to 1000mm (Depth) by less than or equal to 2200mm (Height) racks, i.e. industry-standard 24-inch racks incorporating space for cabling and airflow.

3. RL'S OBLIGATIONS

3.1. The RL hereby gives the following undertakings:

- a. The RL shall use the Additional Rack Space provided by NLT under this Agreement solely for the Permitted Purpose and not for or in conjunction with any other purposes;
- b. The RL shall:
 - i. submit a termination request for one (1) existing rack space at AM3, and
 - ii. discontinue the use of its Co-Location Equipment and remove its Co-Location Equipment at its own cost from the said existing rack space,

no later than three (3) months from the handover date of the Additional Rack Space, provided always that the RL shall adhere to the timeline for (i) submission of the Request Form for the Additional Rack Space, and for (ii) submission of the termination request for the existing rack space and for (iii) removal or disposal of RL's Co-Location Equipment from the existing rack space, set out under Annex 3;
- c. The RL shall ensure that the number of End-Users served by the RL via AM3 after the provision of Additional Rack Space(s) pursuant to this Agreement remains substantially similar to the number of End-Users served by the RL via AM3 at the date of this Agreement; and
- d. The RL shall make payment for the Additional Rack Space(s) in accordance with all fees and charges set out under paragraph 4.

3.2. Should the RL fail to comply with its obligations at **paragraph 3.1(b)** above, the RL shall be liable to pay NLT a late handover fee for an existing rack space ("**Late Handover Fee**") every month (which shall be pro-rated accordingly). The Late Handover Fee shall be calculated at a rate of three (3) times the monthly recurring charge for each existing rack space as set out at **Clause 12C.2.2 of Schedule 15** of the Approved ICO.

3.3. In the event that the RL is in breach of its undertakings under **paragraphs 3.1 or 3.2** above, or NLT discovers that there has been unauthorized use of the Additional Rack Space(s), it shall be deemed a material breach of this Agreement and:

- a. NLT shall be entitled to do any necessary acts to restrain the RL's use of an Additional Rack Space forming the subject of such breach by the RL (including but without limitation to the removal and/or disposal of any of the RL's Co-Location Equipment housed in the Additional Rack Space at the RL's cost, risk and expense);
- b. NLT shall be entitled to remove and/or dispose of the RL's Co-Location Equipment housed in the existing rack space at the RL's cost, risk and expense, after seeking prior approval from the Authority, upon giving not less than one (1) week's written notice to the RL, after the expiry of the said three (3)-month period from the handover date of the Additional Rack Space, should the RL fail to comply with its obligations at **paragraph 3.1(b)** by that time. For the avoidance of doubt, the RL will be liable to pay the Late Handover Fee until the date that the RL's Co-Location Equipment has been completely removed from the existing rack space; and
- c. The RL shall fully indemnify NLT against the cost of carrying out such necessary audit and/or inspection in connection with such breach which NLT shall in its sole discretion deem necessary, without prejudice to NLT's other rights and remedies.

4. FEES & CHARGES

- 4.1. All fees and charges which are set out at **section 12C of Schedule 15 of the Approved ICO** shall be applicable in respect of each Additional Rack Space(s) provided under this Agreement and shall be valid until the occurrence of the earlier of the following events:
- a. the expiration or early termination of the Term; or
 - b. until such time the Authority reviews the prices of the Mandated Services 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 **section 12C of Schedule 15 of the Approved ICO** and herein, NLT shall notify the RL in writing, upon which NLT shall have no obligation to provide any further Additional Rack Spaces at the fees set out herein this Agreement. 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.

5. REPORTS AND RECORD-KEEPING

- 5.1. The RL shall maintain accurate records of all matters relating to the Additional Rack Space(s) (including but not limited to customer records) provided under this Agreement, and shall upon request by NLT, submit supporting evidence showing the RL's compliance with the Agreement and that the Additional Rack Space(s) are used only for the Permitted Purpose.

6. ADDITIONAL TERMS AND CONDITIONS

- 6.1. 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).
- 6.2. 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 Clause 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 **paragraphs 3.3, 4.1, 5.1 and 6.1 of this Annex 1**.

ANNEX 2**Request Form for Additional Rack Space at AM3 for Purpose of XGPON / XGS-PON Deployment**

Date of request:

Application Reference Number:

Section A: Purpose of Request**1. Details of Purpose:**

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2. Please provide Existing Rack Space details at below:

Existing Rack ID: _____ Estimated Termination Date: _____

Technical Specification of the equipment at the Existing Rack Space:

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3. Technical Specification of the new equipment:

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4. Proposed new equipment installation timeline:

Start Date: _____ End Date: _____ Duration: _____

Section D: Requesting Licensee's Details (for billing purpose)

Company Name ("RL"): _____

Billing address: _____

Name of Requestor: _____

Designation: _____ Department: _____

Email: _____ Contact: _____

Section E: Acknowledgment & Acceptance by Requestor

I am authorised by the above-named RL to submit this Request Form.

I acknowledge and confirm that:

- The RL shall submit a termination request for one (1) existing rack space at AM3, and
- The RL shall at its own cost remove the Co-Location Equipment from the said existing rack space, no later than three (3) months from the handover date of the Additional Rack Space.

Should the RL fail to adhere to the above, a Late Handover Fee shall be imposed on the RL.

Name/Designation/Signature

Company Stamp/Date

For Official Use by NetLink Trust

Application accepted

Date of acceptance: _____

Application rejected:

Date of rejection: _____

Rejection Reasons:

- Information is incomplete, inaccurate, or not submitted in prescribed form.
- No available Rack Space for allocation.
- The existing Rack Space to be released is not from AM3.
- Migration work is still on-going for an existing request, therefore subsequent requests will be rejected.
- Equipment does not comply to the specification for NLT's Co-Location Rack Space's specifications.

Billing Account No.: _____

Name of NLT's Officer: _____

Designation: _____

ANNEX 3

Timeline for (i) Submission of Request Form for the Additional Rack Space and (ii) Submission of Termination Request for Existing Rack Space and (iii) Removal or Disposal of RL's Co-Location Equipment from the Existing Rack Space

