

Dated

BETWEEN

**NETLINK MANAGEMENT PTE. LTD.**

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

AND

**[REDACTED]**

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

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**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 ("**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 have signed the Approved ICO with NLT 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) The Parties are desirous of entering into this Customised Agreement to regulate Parties' respective obligations and responsibilities with regard to 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 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;

"**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 RL'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”).

**“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 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 annexures are references to the clauses, schedules, recitals and annexures of this Agreement;
- 1.2.6 the words "herein", "hereinafter", "hereof" and "hereunder" and words of similar import shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement;
- 1.2.7 an expression importing a natural person shall include an individual, corporation, company, partnership, firm, trustee, trust, executor, administrator or other legal personal representative, unincorporated association, joint venture, syndicate or other business enterprise (notwithstanding that "person" may be sometimes used herein in conjunction with some of such words), and their respective successors, legal personal representatives and assigns (as the case may be), and pronouns shall have a similarly extended meaning. References to a company shall be construed so as to include any company, corporation or other body corporate wherever and however incorporated or established;
- 1.2.8 dates and times refer to Singapore time;

- 1.2.9 the schedules and/or annexures to this Agreement form part of this Agreement and have the same force and effect as if expressly set out in the body of this Agreement;
- 1.2.10 the headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement; and
- 1.2.11 any act or obligation to be done or performed under this Agreement which is required or falls to be done or performed on a stipulated day, shall be done or performed on the next succeeding Business Day, if the day upon which that act or obligation is required or falls to be done or performed falls on a day which is not a Business Day.

**2. DATA CENTRE DEPLOYMENT CHARGE**

- 2.1 The RL 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 RL 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 RL 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 RL and the Other RL as below:
  - (a) One-Time Charge (“OTC”)
 

NLT will divide the OTC paid by the RL equally by the total number of Other RL whom have this signed this CA. The Other 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 Requesting Licensees whom have signed any corresponding CA and the remaining MRC shall be divided between the existing RL and Other RLs. The existing RL shall be refunded on a pro rata basis. 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
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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 disclosed 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 RL 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. CONFIDENTIALITY**

- 4.1 Each Party shall protect from disclosure any confidential or proprietary information provided by the other in the course of negotiating or implementing this Agreement, use such information only for the provision of the specific Mandated Services requested by the RL and adopt appropriate procedures to ensure that the information of the other Party is not used for the development or marketing of other telecommunication services or equipment by either Party or third parties.

#### **5. PROTECTION OF NETWORKS**

- 5.1 NLT and the RL shall take reasonable measures to ensure that they will not cause physical or technical harm to each other’s network.

#### **6. BILLING INFORMATION**

- 6.1 NLT and the RL shall provide each other with information within their possession that is necessary to allow them to provide accurate and timely billing to each other and to any other relevant third parties.

#### **7. TERM AND TERMINATION**

- 7.1 This Agreement shall be submitted to the Authority for approval and shall come into effect only upon such approval by the Authority. The date on which the Authority’s approval is granted or is deemed to have been granted shall hereinafter be referred to as the “**Effective Date**”.
- 7.2 This Agreement shall expire five (5) years after the Effective Date of this Agreement (“**Initial 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 Annexures 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, where a Party is in breach of its obligations under this Agreement, the Party not in breach of this Agreement may terminate this Agreement upon giving the Party in breach no less than 30 days' written notice or such shorter notice as may be directed or requested by the Authority.
- 7.4 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.

## **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 Monthly Recurring Charge (for such services rendered by NLT) paid or payable by the RL during the twelve (12) months prior to the event giving rise to the liability.
- 8.4 Save as permitted by law, neither Party excludes or restricts its liability for death or personal injury. Nothing in this Clause 8 excludes or restricts:
- a. either Party's liability for fraud, wilful default and/or gross negligence;
  - b. the RL's liability to make payment to NLT under this Agreement.

## **9. MISCELLANEOUS**

- 9.1 Incorporation of Terms of Approved ICO

Save as expressly amended and/or supplemented by this Agreement, or if the context requires otherwise, the terms of the Approved ICO (as may be amended from time to time, and including but not limited to Schedules 15, 16 and 18 of the Approved ICO) 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. In the event of any inconsistencies between the

provisions of this Agreement and the Approved ICO, the terms of this Agreement shall prevail to the extent of such inconsistencies.

#### 9.2 Release, Waiver or Compromise

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

#### 9.3 Prohibition against Assignment and Sub-Licensing

This Agreement and/or the obligations hereunder shall not be assigned or sub-licensed by the RL.

#### 9.4 Amendment

This Agreement may be amended only by an instrument in writing signed by both Parties, which shall be conditional upon and subject to the approval of the Authority. The Parties hereby acknowledge that the Authority may direct changes to be made to this Agreement and agree that they shall amend this Agreement to incorporate such changes (including any additional or modified Duties Related to the Provision of Mandated Services as defined in the Code) as and when required by the Authority.

#### 9.5 Invalidity and Unenforceability

Any provision of this Agreement that is invalid or unenforceable under any Law in Singapore will be read down or severed to the extent of that invalidity or unenforceability. The remaining provisions of this Agreement which are self-sustaining and capable of separate enforcement without regard to the read down or severed provision shall remain valid and enforceable in accordance with their terms.

#### 9.6 Counterparts

This Agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument.

#### 9.7 Governing Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in all respects in accordance with the Laws of Singapore and the Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Singapore.

#### 9.8 Liability of the Trustee

NETLINK MANAGEMENT PTE. LTD. has assumed all obligations under this Agreement in its capacity as trustee of NetLink Trust and not in its personal capacity and any liability of NetLink Management Pte. Ltd. (in its capacity as trustee of NetLink Trust) under this Agreement is limited to the assets of NetLink Trust over which NetLink Management Pte. Ltd. has recourse and shall not extend to any personal or other assets of NetLink Management Pte. Ltd. or its shareholders, directors, officers or employees, save where NetLink Management Pte Ltd is fraudulent, in wilful default or in breach of the trust or where the NetLink Management Pte Ltd fails to exercise such due care and skill as is reasonable in the circumstances in its capacity as trustee of NetLink Trust.



