

PRIVATE & CONFIDENTIAL

Dated ____ October 2016

BETWEEN

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

AND

COLT TECHNOLOGY SERVICES PTE. LTD.

CUSTOMISED AGREEMENT

**EXTENSION OF APPROVED ICO SCHEDULE 2 NON-RESIDENTIAL END-USER
CONNECTION TO THE TELEHOUSE SINGAPORE DATA CENTRE LOCATED AT
LEVEL 5 BLOCK 750D CHAI CHEE ROAD VIVA BUSINESS PARK SINGAPORE
469004**

This CUSTOMISED AGREEMENT is made on _____ October 2016 between:

(A) **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 Viva Business Park Singapore 469005 (“**NLT**”)

AND

(B) **COLT TECHNOLOGY SERVICES PTE. LTD.** (Company Registration Number: **201003217K**), a company incorporated in Singapore with its registered address at 8 Temasek Boulevard #17-01 Suntec Tower 3, Singapore 038988 (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 Development Authority of Singapore (“IDA”) under Section 5 of the Telecommunications Act (Cap. 323) (“Act”) and is designated a public telecommunication licensee under Section 6 of the Act. NLT operates subject to the authority of and regulation by IDA.
- 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. 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 Approved ICO Schedule 2 Non-Residential End-User Connection to the Telehouse Singapore Data Centre by NLT upon request 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 2009 issued by the Authority pursuant to section 26(1) of the Act, which came into operation on 25 February 2009, or its successor code of practice, and as may be amended from time to time;

“**Cross-Connect**” means the service provided by a Data Centre where it connects the Data Centre’s Designated Room to the End-User’s co-location space in the Data Centre;

“**Data Centre**” is a facility used to house computer systems and associated equipment, components and accessories such as telecommunications and storage systems;

“**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, or “**MMR**”);

“**End-User**” refers to someone who subscribes for services from the retail service provider;

“**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;

“**Service Provider**” means a retail service provider, providing a service to its End-User in the Data Centre.

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 IDA webpage <https://www.ida.gov.sg/Policies-and-Regulations/Industry-and-Licensees/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 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. **NLT'S OBLIGATIONS**

- 2.1 NLT shall provide the connection to the Telehouse Singapore Data Centre requested by the RL subject to the terms and conditions 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 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 Agreement shall be submitted to the Authority for approval and shall come into effect only upon such approval by the Authority.
- 7.2 This Agreement shall expire 2 years after the date the Authority approves or is deemed to have approved this Agreement.
- 7.3 The Parties may review the terms of this Agreement prior to the date of expiry of this Agreement and may renew this Agreement on such terms as Parties may agree, subject to the Authority's prior approval.
- 7.4 Unless otherwise specified in the Schedule 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 NLT to the RL 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, 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 Agreement (including liability for negligence or breach of statutory duty), shall be limited to the total recurring charges paid or payable by the RL under this Agreement 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.

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 Schedule 2 Non-Residential End User Connection of the ICO Agreement 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.

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-Manager

CITYNET INFRASTRUCTURE MANAGEMENT PTE. LTD. ("CityNet") has assumed all obligations under this Agreement in its capacity as trustee-manager of NetLink Trust and not in its personal capacity and any liability of CityNet (as trustee-manager of NetLink Trust) under this Agreement is limited to the assets of NetLink Trust over which CityNet has recourse and shall not extend to any personal or other assets of CityNet or its shareholders, directors, officers or employees.

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

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

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:)

(signature)

Designation:

(signature of witness)

Name of Witness:

Designation:

COLT TECHNOLOGY SERVICES PTE. LTD

Signed by _____)
(Name of Signatory))

for and on behalf of)
COLT TECHNOLOGY SERVICES PTE. LTD)

in the presence of:)

(signature)

Designation:

(signature of witness)

Name of Witness:

Designation:

SCHEDULE

A. BACKGROUND

1. The Requesting Licensee has requested extension of Non-Residential End-User Connection under Schedule 2 of the Approved ICO to the Telehouse Singapore Data Centre, through NLT's deployment of optical fibre(s) to NLT's patch panel in the MMR at Telehouse Singapore Data Centre.
2. Upon receipt of the Requesting Licensee's request for a connection to be set up at Telehouse Singapore Data Centre and the requisite approval by Telehouse Singapore Data Centre or such other related Telehouse Singapore entity (collectively "Telehouse Singapore"), NLT shall install its patch panel within such area as may be designated by Telehouse Singapore other than in the building's public MDF room. Such a patch panel shall be owned by NLT and may only be accessed by NLT. NLT reserves all rights to refuse, at its sole and absolute discretion, to install NLT's patch panel in the event that the area designated is unsuitable for the installation or is likely to cause damage to NLT's patch panel and/or equipment.
3. NLT will deploy optical fibre(s) to NLT's patch panel in the MMR at Telehouse Singapore Data Centre. For avoidance of doubt, NLT's network ends at NLT's patch panel in the MMR. Any relevant Service Level Guarantee under the Approved ICO shall apply only to the provision of services up to and including the public MDF Room at Telehouse Singapore Data Centre. NLT shall not be required to comply with any service activation period specified in the Approved ICO for services provided under this Agreement.
4. The Requesting Licensee shall ensure that no one will have access to NLT's patch panel other than NLT's authorised personnel.
5. The requested connection shall be used by the Requesting Licensee solely for purposes of establishing a Non-Residential End-User Connection from NLT's central office to the Requesting Licensee's equipment in the Data Centre's Designated Room, and thereafter to an identified End-User serviced by the Requesting Licensee in its role as a Service Provider.

B. PROCEDURE FOR REQUEST FOR SERVICES

1. Requesting Licensee shall submit an order in the format prescribed in Schedule 2 of the Approved ICO and notify NLT via email enclosing the particulars of the order that was submitted.
2. Upon receipt of the Requesting Licensee's e-mail, NLT shall provide the Non-Residential End-User Connection requested in the order in accordance with the process set out in Schedule 2 of the Approved ICO including, where necessary, the conduct of a joint site survey with the Requesting Licensee and Telehouse Singapore to review the suitability of the Data Centre's Designated Room.
3. Upon completion of order, NLT shall notify Requesting Licensee of the assigned port number of the patch panel in the Data Centre's Designated Room.
4. The Requesting Licensee shall procure from Telehouse Singapore a Cross-Connect cable to :-
 - (a) provide the connection from the Requesting Licensee's equipment directly to NLT's patch panel in the Data Centre's Designated Room; and/or
 - (b) provide the connection from the Requesting Licensee's equipment directly to its identified End-User.

For the avoidance of doubt, NLT shall not be responsible for the cost, installation or maintenance of the Cross-Connect cable described in this paragraph 4.

5. The Requesting Licensee shall inform NLT when the Cross-Connect is ready for use. The Requesting Licensee acknowledges that NLT is not able to provide the service described in this Agreement when the Cross-Connect is not ready for use. NLT shall not be liable for any losses whatsoever sustained by the Requesting Licensee arising from failure or delay in setting up the Cross-Connect or failure or delay on Requesting Licensee's part in informing NLT that the Cross-Connect is ready for use.
6. The Requesting Licensee shall be responsible for procuring, applying for and obtaining the requisite approvals, consents or certifications from relevant authorities or parties as may be necessary in order for the Parties to perform the Agreement.

C. PRICE AND PAYMENT

- 1 The Requesting Licensee shall pay:
 - a. The Patching Charge in accordance with Schedule 15 of the Approved ICO if Patching Service at NLT's equipment in the Building MDF Room/Central Office/Data Centre's Designated Room is required;
 - b. All Standard Installation Charge and Installation of Network Charges in accordance with Schedule 15 of the Approved ICO;
 - c. Such reasonable charges as NLT has or will incur in order to install, provide, provision or procure such resources as may be necessary for NLT to provide the service described herein. NLT is entitled to amend, vary or change such charges 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 becomes effective;
 - d. All charges payable by NLT to Telehouse Singapore for purposes of providing the service described herein, without any right of set-off or deduction against any claims the Requesting Licensee may have against NLT.