

PRIVATE & CONFIDENTIAL

Dated [] November 2015

BETWEEN

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

AND

NUCLEUS CONNECT PTE LTD

CUSTOMISED AGREEMENT

-

**PROVISION OF SCHEDULE 2 NON-RESIDENTIAL END USER CONNECTION FOR NON-BUILDING
ADDRESS POINT (NBAP)**

This CUSTOMISED AGREEMENT is made the [] November 2015 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 Technopark@Chai Chee, Singapore 469005 (“**NLT**”)

AND

(B) **NUCLEUS CONNECT PTE. LTD** (Company Registration Number: **200906560W**), a company incorporated in Singapore with its registered address at 3 Tai Seng Drive #04-01, Singapore 535216 (“**Requesting Licensee**”).

NLT and the Requesting Licensee shall hereinafter be collectively referred to as the “**Parties**”, and individually as “**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 has signed the Approved ICO with NLT and NLT has provided to the Requesting Licensee the said Mandated Services pursuant to the Approved ICO.
- D. Due to cable diversion works, the Requesting Licensee is unable to enter into a Schedule 3 (NBAP Connection) for its Non-Building Address Points at the Locations. The Requesting Licensee has therefore requested for a special arrangement to use Schedule 2 (Non-Residential End User Connection) for the NBAPs, and the Parties hereby agree to enter into this Customised Agreement (“**Agreement**”), which is separate and independent of the Approved ICO, to regulate the Parties’ respective obligations and responsibilities in relation to provision of the required connections.

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;

“**Law**” means any domestic 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;

“**Minimum Contract Term**” has the meaning ascribed to it in Clause 2.1 below;

“**Relevant Connections**” has the meaning ascribed to it in Clause 2.1 below; and

“**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 or Qualifying Persons who had executed the Approved ICO with NLT on or after 1 October 2014 and in the case of this Agreement shall mean Nucleus Connect Pte Ltd.

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 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 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 work or obligation is required to be done falls on a day which is not a Business Day.

2. TERMS AND CONDITIONS GOVERNING THE PROVISION OF SCHEDULE 3 (NBAP CONNECTION)

2.1 The Requesting Licensee hereby acknowledges that it had requested NLT to provide Schedule 2 (Non-Residential End-User Connection) for the NBAPs at the Locations (defined below) subject to the terms and conditions specified in this Agreement. NLT agrees to provide these connections (the “**Relevant Connections**”) at NLT’s Non-Residential Fibre Distribution Panel(s) (FDP) and the Relevant Connections are only offered as an interim solution due to cable diversion works at the following locations (the “**Locations**”):

- (i) 80 Tanah Merah Coast Road Singapore 498736, Changi Lodge 2
- (ii) 110 Tanah Merah Coast Road Singapore 498800, SAF Yacht Club

For the avoidance of doubt, there is a minimum contract term of twelve (12) months for each Relevant Connection, commencing from the RFS for such Relevant Connection (the “**Minimum Contract Term**”). Subject to the waiver in Clause 3.1(ii) below, if this Agreement is terminated prematurely during the Minimum Contract Term, NLT shall be entitled to charge a pre-mature termination charge of 100% of the remaining contractual value.

2.2 The Requesting Licensee shall pay to NLT the charges below for the Relevant Connections:

S/N	Description of charges	Price (SGD) exclude GST
1	Monthly Recurring Charge	\$185/month
2	Standard Installation Charge	\$150/connection
3	Installation of Network Charge	\$363/connection
4	Cancellation Charge	\$513/connection

2.3 NLT will invoice the Requesting Licensee for the Relevant Connections, in accordance with the terms and conditions of the Approved ICO (including Schedule 16 of the Approved ICO).

3. TERMINATION

3.1 This Agreement shall commence on the date of this Agreement from the date of approval of this Agreement by the Authority and continue until the Requesting Licensee enters into Schedule 3 of the Approved ICO for a Non-Building Access Point (NBAP) connections for the Relevant Connections. If and when the Requesting Licensee enters into Schedule 3 of the Approved ICO for a Non-Building Access Point (NBAP) connections for the Relevant Connections:

- (i) (subject to Clause 3.1(ii) below) this Agreement shall terminate and be superseded in its

entirety by Schedule 3 of the Approved ICO in respect of the Relevant Connections; and

- (ii) NLT shall waive the pre-mature termination charge for the Schedule 2 (Non-Residential End-User Connection) for the Relevant Connections if the Requesting Licensee enters into Schedule 3 of the Approved ICO for the Relevant Connections prior to the expiry of the Minimum Contract Term. In addition, in such situations, the period commencing from the RFS of the Relevant Connection and ending on the date on which the Requesting Licensee enters into Schedule 3 of the Approved ICO shall count towards satisfying the 12-months' minimum contract term under Schedule 3 of the Approved ICO for the connections at the Locations.

3.2 Either Party may terminate this Agreement pursuant to the provisions of clause 12.1 of the Main Body of the Approved ICO.

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, NLT 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 arising from or in connection with this Agreement.

4.4 Subject to Clause 4.5, if NLT is in breach of any of its obligations under this Agreement to Requesting Licensee under this Agreement or otherwise arising 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 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.

4.5 Neither Party excludes or restricts its liability for death or personal injury.

4.6 Subject to Clauses 4.3 to 4.5, the Requesting Licensee shall indemnify NetLink Trust for any and all losses, damages, costs, expenses or liability it will incur as a result of any breach of its obligations under this Agreement by the Requesting Licensee.

4B. DISPUTES

4B.1 All disputes arising under or pursuant to this Agreement will be resolved in accordance with the Dispute Resolution Procedures set out in Schedule 17 of the Approved ICO with the exception of Billing Disputes which will be dealt with in accordance with Schedule 16.

5. MISCELLANEOUS

5.1 Save as expressly amended and supplemented by this Agreement, the terms of the Approved ICO (including but not limited to Schedule 2 (Non-Residential End User Connection) and Schedule 15 (Charges)) 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, the terms of this Agreement shall prevail to the extent of such inconsistencies.

5.2 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.

5.3 Prohibition against Assignment and Sub-Licensing

This Agreement and/or the obligations thereunder shall not be assigned or sub-licensed by the Requesting Licensee without the prior express written approval of NLT.

5.4 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.

5.5 Invalidity

Any provision of this Agreement that is invalid or unenforceable in 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 are and continue to be valid and enforceable in accordance with their terms.

5.6 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.

5.7 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.

5.8 Liability of the Trustee-Manager

NLT has assumed all obligations under this Agreement in its capacity as trustee manager of the NetLink Trust and not in its personal capacity and any obligation or liability of the trustee manager under this Agreement is limited to the assets of NetLink Trust 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.

