

**PRIVATE & CONFIDENTIAL**

Dated [ ] June 2013

BETWEEN

**OPENNET PTE. LTD.**

AND

**NUCLEUS CONNECT PTE. LTD.**

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**CO-LOCATION AGREEMENT FOR NEW CO-LOCATION ROOM**

**3-PHASE AC POWER SUPPLY**

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**THIS CUSTOMISED AGREEMENT** is made on [ ] June 2013

**BETWEEN:**

- (1) **OPENNET PTE. LTD.** (Company Registration Number: **200819712H**), a company incorporated in Singapore with its registered address at 152 Beach Road #31-05/08, Gateway East, Singapore 189721 ("**ON**")

**AND**

- (2) **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; ("**NC**" or "**Requesting Licensee**")

ON and the Requesting Licensee shall hereinafter be collectively referred to as the "**Parties**", and individually as "**Party**".

**WHEREAS:**

- A. ON 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 ON's FBO Licence, ON 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 ON and ON has provided to the Requesting Licensee, amongst others, Co-Location Service as described in Schedule 12C of the Approved ICO.
- D. The Requesting Licensee has asked ON for the provision of a 3-phase AC power supply for their DC rectifier in the New Co-Location Room.
- E. Parties hereby agree to enter into this Agreement, which is separate and independent of the Approved ICO, to regulate Parties' respective obligations and responsibilities, in particular, the responsibility and obligation of the Requesting Licensee in relation to the Co-Location Service provided under Schedule 12C.

**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 or foreign 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.

## 1.2 Interpretation

In this Agreement:-

- 1.2.1 unless otherwise defined in this Agreement, all terms and references defined in the OpenNet Approved ICO ("**Approved ICO**") (as set out on the IDA webpage <http://www.ida.gov.sg/Policies%20and%20Regulation/20090224174101.aspx#13Nov09> 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. 3-PHASE AC POWER SUPPLY**

- 2.1 The Parties hereby agree that notwithstanding the terms and conditions in Schedule 12C of the Approved ICO with respect to the power supply in the Co-Location Space, ON shall provide to and the Requesting Licensee shall pay for the power supply and the related upgrade in accordance with the specifications and terms & conditions as set out in Appendix 1 of this Agreement.
- 2.2 The Requesting Licensee shall issue to ON a request for the supply of such power and the necessary upgrade. Upon receipt of the Requesting Licensee's said request and prior to commencement of any works, ON shall provide the Requesting Licensee with a written quotation of the works to be done. ON shall only commence the works indicated upon the Requesting Licensee's acceptance of ON's said quotation. The power supplied will be channelled into the Requesting Licensee's DC Rectifier and thereafter into its equipment in the Co-Location Space. On a monthly basis, the Requesting Licensee shall pay for the said power supplied as metered and based on the electricity tariff from SP Services for low tension plus a 15% markup to the said SP Services' tariff.
- 2.3 The Requesting Licensee shall be responsible for the proper installation of its DC Rectifier for the use of its equipment in the Co-Location Space.

## **3. UNDERTAKINGS BY REQUESTING LICENSEE**

- 3.1 Requesting Licensee irrevocably covenants and undertakes to ON that it shall:-
- 3.1.1 comply with all the terms and conditions of the Approved ICO, in particular clause 1.5 of Annex 12D-1 of Schedule 12C of the Approved ICO; and
- 3.1.2 allow ON, in the event that ON reasonably considers that any Co-Location Equipment installed within the Co-Location Space or the installation, operation or maintenance of such Co-Location Equipment to pose an actual or imminent risk of personal injury to any person or damage to any property (including ON's or a third party's equipment, plant, facilities or networks) to immediately take any action that ON, in its reasonable discretion, considers necessary to alleviate such actual or potential risk, which shall be at Requesting Licensee's reasonable cost. ON shall notify Requesting Licensee of such steps/actions taken as soon as reasonably practicable.
- 3.2 Each and every undertaking under Clause 3.1 is a separate and independent primary obligation and shall be severally enforceable.
- 3.3 The Requesting Licensee may acquire additional power supply in the Co-location Space but subject to power supply availability.
- 3.4 The maximum amount of combined power which OpenNet can provide to the Co-Location Space will be based on a first come first serve basis.
- 3.5 The Requesting Licensee must ensure that the floor loading of its Co-Location Equipment including any power equipment does not exceed 5kN per sqm or otherwise as specified by OpenNet in writing.

- 3.6 The total maximum power consumption declared by the Requesting Licensee in relation to its Co-Location Equipment including any power equipment must not exceed the maximum heat load as specified in Schedule 12C of the Approved ICO.
- 3.7 If it is discovered that the Requesting Licensee is in breach of clause 3.6 above, the Requesting Licensee is to take immediate actions to rectify the non-compliance within twenty-four (24) hours of OpenNet's written notification. In the event that the Requesting Licensee fails to take remedial actions after the stipulated timeframe, OpenNet shall exercise its rights to take such immediate actions as may be necessary and recover all costs incurred from the Requesting Licensee.
- 3.8 Requesting Licensee must indemnify OpenNet and also pay for any losses suffered by OpenNet arising from any breaches of this Agreement.
- 3.9 If IDA fines OpenNet for exceeding the ambient temperature limit of a Co-Location Room, and the ambient temperature of the Co-Location Room was exceeded due partly or wholly to the Requesting Licensee being in breach of clause 3.6 above, OpenNet shall claim from the Requesting Licensee the whole of such fines or a proportion thereof as the case may be.
- 3.10 Requesting Licensee shall submit to ON the requisite application under Schedule 12C of the Approved ICO for the installation of its DC Rectifier and in the event of any inconsistency between this Agreement and Schedule 12C of the Approved ICO, the terms & conditions prescribed in Schedule 12C the Approved ICO shall take precedence save that any SAP or SLG prescribed in Schedule 12C of the Approved ICO shall not be applicable..

#### **4. OPENNET'S OBLIGATIONS**

- 4.1 Save as expressly amended and supplemented by this Agreement, ON shall provide Requesting Licensee with the Co-Location Space upon and subject to the terms and conditions of Schedule 12C of the Approved ICO.

#### **5. MISCELLANEOUS**

- 5.1 Save as expressly amended and supplemented by this Agreement with regard to the Co-Location Service and the Co-Location Space, 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.

##### 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 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.

##### 5.4 Invalidity

Any provision of this Agreement that is invalid or unenforceable will only 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.

5.5 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.

5.6 Governing Law and Submission to Jurisdiction

5.6.1 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.

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**APPENDIX 1**

	<b>Requesting Licensee's requirements</b>	<b>Scope of Work</b>	<b>Charges</b>	<b>Additional Terms and Conditions</b>
1.	Power supply <ul style="list-style-type: none"> <li>• 2 x 63 Amps AC 3-phase</li> </ul>	<ul style="list-style-type: none"> <li>• ON to provision 2 x 63A TPN and CeeForm socket outlet with power meter as part of the site preparation work.</li> </ul>	<ul style="list-style-type: none"> <li>• One lump sum on cost-oriented basis to be quoted by ON.</li> <li>• Monthly Recurring charges for 3-phase power consumption will be metered and based on the electricity tariff from SP services for low tension + 15% markup.</li> </ul>	<ul style="list-style-type: none"> <li>• Schedule 12C of the Approved ICO</li> </ul>

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

**OPENNET PTE LTD**

Signed by \_\_\_\_\_  
(Name of Signatory)  
for and on behalf of  
**OPENNET PTE. LTD.**  
in the presence of:

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)  
)  
)  
(signature) \_\_\_\_\_  
Title:

(signature of witness) \_\_\_\_\_  
Name of Witness:  
Title:

**NUCLEUS CONNECT**

Signed by \_\_\_\_\_  
(Name of Signatory)  
for and on behalf of  
**NUCLEUS CONNECT PTE. LTD.**  
in the presence of:

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(signature) \_\_\_\_\_  
Title:

(signature of witness) \_\_\_\_\_  
Name of Witness:  
Title: