

## **APPENDIX 1**

### **REQUIRED MODIFICATIONS TO THE MAIN BODY**



**OPENNET PTE. LTD.**

**INTERCONNECTION  
OFFER**

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## **MAIN BODY OF ICO AGREEMENT: MODIFICATION REQUIRED**

***IDA Directed Modifications: To ensure clarity and consistency among the provisions of the Main Body and the Schedules, IDA directs OpenNet to ensure consistency in its usage of capitalised terms. For example, OpenNet should ensure that capitalised terms have been defined, and that commonly used capitalised terms which have been defined should be included in Schedule 18. Without limitation to the foregoing, OpenNet should ensure consistent usage of the words “Clause” or “clause”, and not use the words “Clause” or “clause” interchangeably.***

***In addition, OpenNet’s obligation to provide services under this ICO is governed by the NetCo Code. In this respect, IDA considers that it would be useful for the ICO to contain a provision that OpenNet will be guided by the spirit and intent of the NetCo Code in fulfilling its obligations under the ICO. Accordingly, IDA directs OpenNet to propose, for IDA’s approval, modifications to the Main Body of this ICO to include a clause that would give effect to the above requirement. [ON 28 March 12 : As amended in paragraph C below. While OpenNet is committed to comply with such regulations and directions as may be applicable, it is difficult to specify what the “spirit” is. To avoid confusing the issue by expanding the operating terms to a realm of unknown, OpenNet propose not to include the term “spirit” in the ICO.]***

## **THIS INTERCONNECTION OFFER IS**

**MADE BY:** OpenNet Pte. Ltd. (OpenNet), a company incorporated under the laws of Singapore with its registered office at 152 Beach Road #31-05/08, Gateway East, Singapore 189721.

**ON:** \_\_\_\_\_

**PURSUANT TO:** Subsection 5, Part B of the NetCo Conditions of Contract.

## **WHEREAS:**

- A. The Info-communications Development Authority of Singapore (**the Authority**) published a Singapore’s Next Generation National Broadband Network (**NGNBN**)

Project Network Company (**NetCo**) Request for Proposal (the **NetCo RFP**). The NetCo RFP closed on 5th May 2008 and OpenNet has been selected on 26 September 2008 to design, build and operate the passive infrastructure for the NGNBN.

- B. Under the NetCo FBO Licence, the NetCo must offer certain Mandated Services to Qualifying Persons on the terms of an Interconnection Offer (**ICO**). This ICO was submitted by OpenNet on 20 January 2009 and approved by the Authority on 30 October 2009. The latest revision of ICO is approved by the Authority on xxxx
- C. OpenNet will offer to provide the Services to all Requesting Licensees on terms and conditions that are non-discriminatory and in compliance with all regulations, directions and code as the Authority may issue from time to time.
- D. This ICO is in two parts – the first outlines the procedures necessary to accept the ICO and enter into an ICO Agreement with OpenNet; the second includes the terms and conditions on which OpenNet will enter into such an agreement with Network Company Qualifying Persons (**NetCo QP**). The detailed terms and conditions for each Service provided under the ICO are contained in the relevant schedules.

## **PART 1 – ACCEPTANCE PROCEDURES**

### **1. NOTIFICATION OF ACCEPTANCE OF ICO**

**1.1** If a NetCo QP seeks to acquire from OpenNet, on the prices, terms and conditions contained in this ICO, the Mandated Services contained in this ICO Agreement, that NetCo QP must submit to OpenNet either:

- (a) a written expression of interest to enter into an ICO Agreement with OpenNet together with its local contact details, in which case clause 1.5 shall apply; or
- (b) a conforming acceptance of the ICO (**Notification of Acceptance of ICO**) to OpenNet in the form provided at Attachment A – Notification of Acceptance of ICO.

**1.2** A NetCo QP must belong to one of the following classes of licensees:

- (a) a Facilities-Based Operator (**FBO**). A FBO is eligible to acquire both Basic Mandated Services and Ancillary Mandated Services;
- (b) a Services-Based Operator (**SBO**). A SBO is only eligible to acquire Ancillary Mandated Services; or
- (c) a Broadcasting Licensee. A Broadcasting Licensee is only eligible to acquire Ancillary Mandated Services.

**1.3** OpenNet shall make available on the OpenNet website information relating to its Network roll-out and coverage, as well as relevant information describing the processes and natures of the Basic and Ancillary Mandated Services. Upon the NetCo QP's request, and if OpenNet envisages that it may disclose commercially-sensitive information relating to its Network roll-out and coverage, as well as relevant information describing the processes and natures of the Basic and Ancillary Mandated Service, to the NetCo QP prior to its submission of a Notice of Acceptance, OpenNet may require the NetCo QP to execute a non-disclosure agreement (the form of which IDA will approve).

**1.4** If a NetCo QP desiring to acquire Mandated Services pursuant to OpenNet's ICO submits to OpenNet an expression of interest by facsimile or email pursuant to clause 1.1(a), OpenNet and the NetCo QP shall commence discussions within five (5) Business Days of receipt of the NetCo QP's expression of interest with the objective

of assisting the NetCo QP in submitting a conforming Notification of Acceptance of ICO to OpenNet and in understanding the processes for acquiring Mandated Services under the ICO.

- 1.5** A NetCo QP which submits a Notification of Acceptance of ICO shall be known as the **Requesting Licensee**. The Requesting Licensee, by submitting the Notification of Acceptance of ICO, will become bound by the provisions of this Part 1 of this ICO, including the representations and warranties contained in clause 3 of this ICO.

**CLAUSE 1.6 – MODIFICATION REQUIRED**

- 1.6** The Requesting Licensee shall submit the expression of interest or the Notification of Acceptance of ICO in writing to OpenNet:

If by facsimile:

OpenNet Pte. Ltd.  
152 Beach Road #31-05/08, Gateway East,  
Singapore 189721

Fax: 6294 1218  
Attn: Director (Regulatory & Interconnect)

If by Email:

Email: ico@opennet.com.sg

If by Online

www.opennet.com.sg

All submissions will not be approved until and unless OpenNet has received the complete set of original documents including the following supporting documents within fourteen (14) five (5) Business Days from date of submission via any of the method abovementioned.

- (a) Requesting Licensee's Notification of Acceptance of ICO (Attachment A of ICO Main Body);



- (b) evidence of the type of telecommunication system license or broadcasting license held by the Requesting Licensee;
- (c) a banker's guarantee or security deposit (at the Requesting Licensee's option) of either S\$10,000 or S\$30,000 depending on the Requesting Licensee's estimated initial Monthly Recurring Charge; and
- (d) a broad form public liability insurance policy with an insurance company licensed in Singapore, to the value of:
  - (i) S\$10 million, if the Requesting Licensee is a FBO; or
  - (ii) S\$1 million, if the Requesting Licensee is a SBO or broadcasting Licensee

***IDA Directed Modifications: An industry respondent commented that the obligation on the Requesting Licensee to submit a banker's guarantee or security deposit and an insurance policy within 5 Business Days from the date of submission is too tight a timeline, as it would usually take a longer time to arrange for such documents.***

***After careful consideration, IDA is of the view that it would be reasonable for OpenNet to provide a longer timeframe without any material adverse impact. Accordingly, IDA directs OpenNet to propose, for IDA's approval, modifications to clause 1.6 to allow for 14 Business Days for the submission of the supporting documents. [ON 28 Mar 12 : Amended as per IDA's Direction.]***

**1.7** For enquiries in relation to the status of OpenNet's assessment of the Notification of Acceptance of ICO, the Requesting Licensee may contact OpenNet at:

Telephone: 6595 9188  
Email: ico@opennet.com.sg

**1.8** The Requesting Licensee's Notification of Acceptance of ICO must contain:

- (a) the Basic Mandated Services and/or the Ancillary Mandated Services it wishes to be supplied with;

- (b) evidence of the type of telecommunication system licence or broadcasting licence held by the Requesting Licensee;
- (c) a designated contact person, an email address, a Singapore telephone and facsimile number and address in Singapore;
- (d) a banker's guarantee or security deposit (at the Requesting Licensee's option) of either S\$10,000 or S\$30,000 depending on the Requesting Licensee's estimated initial Monthly Recurring Charge; and
- (e) a broad form public liability insurance policy with an insurance company licensed in Singapore, to the value of:
  - (i) S\$10 million, if the Requesting Licensee is a FBO; or
  - (ii) S\$1 million, if the Requesting Licensee is a SBO or a Broadcasting Licensee.

**1.9** Subject to the NetCo QP submitting a Notice of Acceptance that OpenNet finds conforming pursuant to clause 2, OpenNet and the NetCo QP shall enter into an ICO Agreement within five (5) Business Days from the receipt of the Notification of Acceptance of ICO or such extension of time as may be agreed by the Parties.

**1.10** For the purposes of this ICO, an agreement entered into on the same terms and conditions as those in Part 2 of this ICO shall be referred to as an **ICO Agreement**.

**1.11** Both the Requesting Licensee and OpenNet may jointly request the Authority to provide assistance in resolving disputes regarding the acceptance of an ICO.

## **2. ASSESSMENT OF NOTIFICATION OF ACCEPTANCE OF ICO**

**2.1** OpenNet may find a Notification of Acceptance of ICO to be non-conforming if:

- (a) the Requesting Licensee is neither an FBO, an SBO nor a Broadcasting Licensee licensed to provide telecommunication services or broadcasting services to the public;
- (b) the services requested are not Mandated Services as defined by OpenNet's then current ICO;

- (c) the services requested are outside the scope of the Mandated Services that are required to be supplied to the Requesting Licensee under OpenNet's then current ICO;
- (d) the Requesting Licensee has not provided a notification in accordance with the Notification of Acceptance of ICO requirements under this **PART 1 – ACCEPTANCE PROCEDURES**;
- (e) OpenNet is already supplying the Mandated Services, which are the subject of the Notification of Acceptance of ICO, to the Requesting Licensee pursuant to an existing agreement and the Requesting Licensee has not notified OpenNet of its intention to terminate the provision of the Mandated Services under that existing agreement; or
- (f) OpenNet is or has been granted an exemption by the Authority from the supply of the requested Mandated Services to the Requesting Licensee or generally.

**2.2** OpenNet may apply to the Authority for an exemption or suspension from providing Mandated Services to the Requesting Licensee at any time.

**2.3** Subject to OpenNet obtaining the Authority's prior written approval, the operation of this ICO in respect of the Requesting Licensee's Notification of Acceptance of ICO will be suspended for such time as the exemption or suspension request process in clause 2.2 takes to operate.

**2.4** If OpenNet finds a Notification of Acceptance of ICO to be non-conforming under this clause 2 it will:

- (a) notify the Requesting Licensee in writing within five (5) Business Days of receipt of the Notification of Acceptance of ICO;
- (b) provide reasons for rejection to the Requesting Licensee together with the notice in paragraph (a); and
- (c) not be required to enter into an ICO Agreement with the Requesting Licensee.

### **3. REPRESENTATIONS AND WARRANTIES**

**3.1** By submitting a Notification of Acceptance of ICO, the Requesting Licensee represents and warrants that:

- (a) it has the requisite power to enter into and observe its obligations under the ICO Agreement;
- (b) it has in full force and effect the authorisations necessary to enter into the ICO Agreement, observe obligations under it and allow it to be enforced;
- (c) its obligations under the ICO Agreement are valid and binding and are enforceable against it in accordance with its terms;
- (d) the information provided by it to OpenNet in its Notification of Acceptance of ICO is complete, true and correct, and not misleading; and
- (e) except where clause 3.3 applies, it is not a trustee of any trust or settlement.

**3.2** OpenNet represents and warrants that:

- (a) it has the requisite power to enter into and observe its obligations under the ICO Agreement;
- (b) it has in full force and effect the authorisations necessary to enter into the ICO Agreement, observe obligations under it and allow it to be enforced; and
- (c) its obligations under the ICO Agreement are valid and binding and are enforceable against it in accordance with its terms.

**3.3** Where the Requesting Licensee is a trustee of a trust or settlement, it will be a condition precedent to the ICO Agreement coming into force and effect that the Requesting Licensee, the directors of the Requesting Licensee and the beneficiaries of the relevant trust have entered into a deed of covenant and indemnity in a form satisfactory to OpenNet to assure OpenNet that the Requesting Licensee has the power and authority to enter into and perform its obligations under the ICO Agreement and has an appropriate right of indemnity out of trust assets in respect of its liabilities under the ICO Agreement.

**3.4** Each Party agrees to indemnify the other Party on demand for any liability, loss, damage, cost or expense (including legal fees on a full indemnity basis) incurred or suffered by the other Party which arises out of or in connection with any breach of any of the representations given in this clause 3.

#### **4. ADDITIONAL MANDATED SERVICES**

**4.1 Additional Mandated Services** are Mandated Services as defined in the ICO Agreement, but which are not currently being supplied to the Requesting Licensee. If the Requesting Licensee wishes to acquire an Additional Mandated Service from OpenNet, the acceptance must be in the form provided as Attachment B – Acceptance of Additional Mandated Service.

**4.2** On receipt of an Acceptance of Additional Mandated Service, the warranties in clause 3 will be deemed to apply in relation to an Acceptance of Additional Mandated Service.

**4.3** OpenNet shall process the Acceptance of Additional Mandated Service pursuant to clause 2. Where OpenNet finds the Acceptance of Additional Mandated Service conforming, OpenNet and the Requesting Licensee shall execute the necessary modifications to the ICO Agreement (either jointly at a meeting or in counterparts at the option of the Requesting Licensee) to include the Additional Mandated Services.

#### **5. EFFECT OF VARIATION OF OPENNET'S ICO**

**5.1** OpenNet may amend or withdraw its ICO from time to time with the prior written approval of the Authority.

**5.2** Any amendments made by OpenNet to this ICO will automatically form part of this ICO Agreement.

#### **6. ACCEPTANCE OF ICO PENDING ADOPTION OF CUSTOMISED AGREEMENT**

**6.1** A Requesting Licensee that has notified OpenNet that it wishes to negotiate a Customised Agreement may obtain Mandated Services on the prices, terms and conditions specified in this ICO on an interim basis pending the adoption of the Customised Agreement, either as a result of voluntary agreement or the dispute resolution procedure specified in the NetCo Interconnection Code (**Code**).

#### **CLAUSE 6.2 – MODIFICATION REQUIRED**

**6.2** Any Customised Agreement approved by the Authority, however so arising, shall be published by the Authority ~~IDA~~ (save that the Authority may withhold from publication any portion of the Customised Agreement if it determines, at its own

motion or at the request of either party, that it contains proprietary information or commercial sensitive information).

***IDA Directed Modifications: IDA notes that the term “IDA” has been used in line 2 of clause 6.2. The term “Authority” has already been defined in Schedule 18 of the ICO to mean the Infocomms Development Authority of Singapore or its successor organisations.***

***To be consistent with the other provisions of the ICO, IDA requires OpenNet to propose, for IDA’s approval, modifications to clause 6.2 to align the above. For example, OpenNet may replace the term “IDA” in line 2 of clause 6.2 with the term “the Authority”. JON 28 Mar 12 : Amended as per IDA’s Direction.***

## PART 2 – INTERCONNECTION OFFER AGREEMENT

### THIS OPENNET INTERCONNECTION OFFER AGREEMENT (ICO AGREEMENT)

MADE ON: \_\_\_\_\_

**BETWEEN:** OpenNet Pte. Ltd. (OpenNet), a company incorporated under the laws of Singapore with its registered office at 152 Beach Road #31-05/08, Gateway East, Singapore 189721.

**AND:** \_\_\_\_\_ a company incorporated under the laws of Singapore with its registered office at \_\_\_\_\_

#### RECITALS:

A. The Info-communications Development Authority of Singapore (**the Authority**) has published a Singapore's Next Generation National Broadband Network (NGNBN) Project Network Company (NetCo) Request for Proposal (the **NetCo RFP**). The NetCo RFP closed on 5th May 2008 and OpenNet has been selected on 26 September 2008 to design, build and operate the passive infrastructure for the NGNBN.

#### **RECITAL B – MODIFICATION REQUIRED**

B. Under the NetCo FBO Licence, the NetCo must offer certain Mandated Services to Qualifying Persons on the terms of an Interconnection Offer (**ICO**). This ICO was submitted by OpenNet on 20 January 2009 and approved by the Authority on 30 October 2009, with subsequent revisions on 16 December 2009, 15 April 2010, 27 April 2010, 17 May 2010, 25 August 2010, 18 October 2011, 11 November 2010, 30 November 2010, 31 March 2011, 5 August 2011, 12 August 2011, 20 September 2011, 27 October 2011, 30 November 2011 and 25 February 2012. The latest revised version is approved by the Authority on .....

***IDA Directed Modifications: For clarity, IDA requires OpenNet to propose modifications to Recital B to set out the dates on which IDA previously approved changes to OpenNet's ICO. [ON 28 Mar 12 : Amended as per IDA's Direction.]***

C. OpenNet agrees to supply and the Requesting Licensee agrees to acquire the Mandated Services in respect of which the Requesting Licensee has submitted to

OpenNet a conforming Notification of Acceptance of ICO and on the terms and conditions set out in this ICO Agreement.

- D. The Parties acknowledge that a Third Party may not rely on this ICO Agreement to obtain similar benefits from either Party.



**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS, INTERPRETATION AND STRUCTURE**

**1.1** In this ICO Agreement, except where otherwise specified, words and expressions have the meanings set out in Schedule 18 – Dictionary, and this ICO Agreement is to be construed in accordance with that Schedule.

**1.2** The following documents (where applicable) shall be deemed to be read and construed as part of this ICO Agreement:

The main body of this ICO Agreement;

Schedule 1 Residential End-User Connection;

Schedule 2 Non-Residential End-User Connection;

Schedule 3 NBAP Connection;

Schedule 4 CO to CO Connection;

Schedule 5 CO to Building MDF Room Connection;

Schedule 6 Building MDF Room to FTTB Node Connection;

Schedule 7 FTTB Node to DP Connection;

Schedule 8 Building MDF Room to Residential Premise Connection;

Schedule 9 Building MDF Room to Non-Residential Premise Connection;

Schedule 10 CO to NBAP DP Connection;

Schedule 11 NBAP DP to NBAP TP Connection;

Schedule 12 Co-location Service;

Schedule 12A RL to RL Interconnection Service;

Schedule 13 Patching Service;

Schedule 14 OSS/BSS Connection & Professional Service;

Schedule 15 Charges;

Schedule 16 Billing;

Schedule 17 Dispute Resolution;

Schedule 18 Dictionary.

**1.3** In the event of an inconsistency between the main body of this ICO Agreement, the Schedules, Annexes and Attachments, the order of precedence (unless expressly stated to the contrary) shall be as follows:

(a) the main body of this ICO Agreement;

(b) Schedule 15 (**Charges**);

- (c) the other Schedules;
- (d) the Annexes;
- (e) the Attachments.

**1.4** If the Parties mutually agree to vary this ICO Agreement then, subject to the approval of the Authority to such variation, it is no longer an ICO Agreement, but a Customised Agreement under the Code.

**1.5** Part 1 (Acceptance Procedures) forms part of this ICO Agreement.

## **2. SCOPE OF AGREEMENT**

**2.1** Subject to clause 2.2, the following Mandated Services are covered by this ICO Agreement and terms and conditions of supply as set out in the relevant Schedules:

- (a) Residential End-User Connection, in accordance with Schedule 1;
- (b) Non-Residential End-User Connection, in accordance with Schedule 2;
- (c) NBAP Connection, in accordance with Schedule 3;
- (d) CO to CO Connection, in accordance with Schedule 4;
- (e) CO to Building MDF Room Connection, in accordance with Schedule 5;
- (f) Building MDF Room to FTTB Node Connection, in accordance with Schedule 6;
- (g) FTTB Node to DP Connection, in accordance with Schedule 7;
- (h) Building MDF Room to Residential Premise Connection, in accordance with Schedule 8;
- (i) Building MDF Room to Non-Residential Premise Connection, in accordance with Schedule 9;
- (j) CO to NBAP DP Connection, in accordance with Schedule 10;

- (k) NBAP DP to NBAP TP Connection, in accordance with Schedule 11;
- (l) Co-Location Service, in accordance with Schedule 12;
- (m) RL to RL Interconnection Service, in accordance with Schedule 12A;
- (n) Patching Service, in accordance with Schedule 13; and
- (o) OSS/BSS Connection & Professional Service, in accordance with Schedule 14.

**2.2** This ICO Agreement does not apply to the supply of Mandated Services where the Requesting Licensee is not:

- (i) a Facilities-Based Operator (**FBO**). A FBO is eligible to acquire Basic Mandated Services and Ancillary Mandated Services;
- (ii) a Services-Based Operator (**SBO**). A SBO is only eligible to acquire Ancillary Mandated Services; or
- (iii) a Broadcasting Licensee. A Broadcasting Licensee is only eligible to acquire Ancillary Mandated Services.

### **3. SUPPLY OF MANDATED SERVICE**

**3.1** OpenNet agrees to supply to the Requesting Licensee on the prices, terms and conditions set out in this ICO Agreement those Mandated Services listed in clause 2.1 to the extent:

- (a) requested by the Requesting Licensee in a Notification of Acceptance of ICO under Part 1 of this ICO; and
- (b) notified by OpenNet to the Requesting Licensee that its Notification of Acceptance of ICO is conforming under Part 1 of this ICO.

### **4. COMMENCEMENT, DURATION AND REVIEW**

**4.1** This ICO Agreement shall be submitted to the Authority by OpenNet within three (3) Business Days after being executed by both Parties.

**4.2** This ICO Agreement shall commence on the Effective Date and, without prejudice to clause 13, shall continue in force until the earlier of:

- (a) the expiry or termination of the OpenNet Licence where OpenNet is not simultaneously granted another licence of that type;
- (b) the expiry or termination of the Requesting Licensee's Licence where the Requesting Licensee is not simultaneously granted another licence of that type;
- (c) the termination of this ICO Agreement by a Party in accordance with clause 12 or any other right at law; or
- (d) the expiry of a period of 25 years from [Effective Date].

**4.3** Subject to clause 32, the Authority may review and direct the amendment of the OpenNet ICO in accordance with the Code or NetCo FBO Licence.

**4.4** Subject to clause 32, at any time, OpenNet may review and propose amendments to the OpenNet ICO, and seek the Authority's prior written approval to such amendments to the OpenNet ICO and this ICO Agreement as it considers necessary or desirable. For the avoidance of doubt, no amendment or proposed amendment to this ICO or the ICO Agreement may be effective prior to IDA's written approval.

## **5. CHARGES**

**5.1** The Requesting Licensee shall pay to OpenNet the Charges for Services supplied by OpenNet to the Requesting Licensee, as specified from time to time in Schedule 15.

**5.2** All charges specified in Schedule 15 are for work done by OpenNet on Business Days, unless stated otherwise.

**5.3** If there is a difference between a Charge for a Service specified in Schedule 15 and a Charge determined by the Authority, the Charge determined by the Authority shall prevail.

**5.4** The Charges for a Service will vary as a result of an approval, order, direction, determination or requirement of the Authority.

**5.5** Following an order, direction, determination or consent by the Authority in relation to a Charge (or the means of calculating that Charge) or a variation of that Charge for a Service, OpenNet shall make any necessary amendments to Schedule 15 so that it accords with such order, direction, determination or consent.

## **6. PAYMENT**

**6.1** All Charges in this ICO Agreement are exclusive of Goods and Service Tax (**GST**) unless the contrary is expressly stated. GST shall be added, where applicable, to all or any part of the Charges under this ICO Agreement.

**6.2** The Parties shall bear and pay all taxes as required by Singapore law that result from the implementation of this ICO Agreement or the acquisition of Services under this ICO Agreement. If the Requesting Licensee is required under Singapore law or the law of any jurisdiction outside Singapore to deduct or withhold any sum as taxes imposed on or in respect of any amount due or payable to OpenNet, the Requesting Licensee shall make such deduction or withholding as required and the amount payable to OpenNet shall be increased by any such amount necessary to ensure that OpenNet receives a net amount equal to the amount which OpenNet would have received in the absence of any such deduction or withholding.

**6.3** Invoices are due and payable in Singapore Dollars.

**6.4** All payments must be:

- (a) paid by cheque, banker's draft, cashier's order or electronic transfer directly to the nominated account(s) of the Party to receive the payment;
- (b) subject to Schedule 16, paid without counterclaim and free and clear of any withholding or deduction; and
- (c) accompanied by such information as is reasonably required by the Party receiving the payment to properly allocate payments received.

**6.5** The Parties shall comply with Schedule 16 in relation to all aspects of the billing, settlement and dispute of payments under this ICO Agreement.

## **7. ONGOING INFORMATION REQUIREMENTS**

- 7.1** The obligations of each Party to provide information to the other Party are as set out in this clause 7, or as otherwise agreed in writing between the Parties, and are subject to the requirements of confidentiality imposed by clause 19 of this ICO Agreement.
- 7.2** Each Party shall provide the other Party on a timely basis with all agreed information reasonably required to determine Charges to be billed by one Party to the other Party.
- 7.3** The Requesting Licensee must inform OpenNet within seven (7) Calendar Days if it ceases to be an FBO, SBO or Broadcasting Licensee, or is no longer entitled to obtain Mandated Services or a class of Mandated Services.
- 7.4** For the avoidance of doubt, nothing in this ICO Agreement requires either Party to provide any information that is proprietary, confidential or commercially sensitive.
- 7.5** A Party shall, subject to clause 14, indemnify the other Party and keep it indemnified against all liabilities, claims, demands, damages, costs and expenses arising as a consequence of any failure by that Party to comply with any reasonable condition relating to the use of any information notified to that Party by the other Party at the time of disclosure.
- 7.6** Nothing in this ICO Agreement shall oblige either Party to do anything which would cause it to be in breach of any statutory, regulatory or contractual obligation of confidentiality or any code of practice on the confidentiality of information issued by the Authority or pursuant to their respective Licences.
- 7.7** Initially, information relating to the Mandated Services will be available on OpenNet's website, for access by the Requesting Licensee through secured means. The secured access to OpenNet's website will require the payment of a Per User Account Charge (specified in clause 14 of Schedule 15 (Charges)) for each user account created. The information relating to the Mandated Services shall be made available on the OpenNet Platform in due course. For the avoidance of doubt, such Per User Account Charge shall not be re-imposed when the information relating to the Mandated Services is made available on the OpenNet's Platform.

## **8. NETWORK PROTECTION AND SAFETY**

### ***CLAUSE 8.1 – MODIFICATION REQUIRED***

8.1 Each Party is responsible for the safe operation of its ~~side-of-the-own~~ nNetwork, and shall, so far as is reasonably practicable, take all necessary steps to ensure that its ~~side of-the-own~~ nNetwork, its nNetwork facilities, its nNetwork operations and implementation of this ICO Agreement:

(a) do not endanger the safety or health of any person, including the employees and contractors of the other Party; and

(b) do not cause physical or technical harm to the other Party's nNetwork, including but not limited to causing damage, interfering with or causing deterioration in the operation of the other Party's nNetwork.

***IDA Directed Modifications: IDA refers to its Directed Modifications in the definition of "Network" in Schedule 18. IDA directs OpenNet to propose, for IDA's approval, modifications as may be necessary to ensure that this clause is consistent with IDA Directed Modifications to the definition of "Network" in Schedule 18. JON 28 Mar 12 : Amended as per IDA's Direction.***

8.2 Neither Party shall use or permit the use of any Mandated Service, or install, connect, link or use (or permit the installation, connection, linking or use of) any telecommunications equipment in contravention of any law. If either Party considers that the other Party is acting, or is likely to, act in contravention of this clause, then the first-mentioned Party may seek the Authority's approval to take necessary corrective action, unless an imminent threat to life or property arises (or is likely to arise) in which case the first-mentioned Party may take immediate necessary corrective action. On receipt of the Authority's approval (except as otherwise provided in this clause), the first-mentioned Party may take the necessary corrective action.

## **CLAUSE 9 – MODIFICATION REQUIRED**

### **9. APPROVED ATTACHMENTS AND CUSTOMER EQUIPMENT**

Neither Party shall connect or knowingly permit the connection of anything to the Network that is not approved by the Authority for attachment to the Network or inconsistent with the provision of any of the services described in the Schedules.

***IDA Directed Modifications: IDA refers to its Directed Modifications in the definition of "Network" in Schedule 18. IDA directs OpenNet to***

*propose, for IDA's approval, modifications as may be necessary to ensure that this clause is consistent with IDA Directed Modifications to the definition of "Network" in Schedule 18. [ON 28 Mar 12 : IDA's direction in Schedule 18 is noted. The last phrase is to reflect that not all connections of equipments etc. are approved or requires the approval of the Authority where such connections are consistent with the provision of services under the Schedules.]*

## 10. QUALITY OF MANDATED SERVICE

- 10.1 OpenNet shall take measures to ensure that the Mandated Services that OpenNet provides to the Requesting Licensee shall be equivalent to the quality that OpenNet provides to any other Requesting Licensee.
- 10.2 OpenNet shall provide the Mandated Services to the Requesting Licensee in accordance with any applicable Service Level Guarantees set out in the relevant Schedule.
- 10.3 Without prejudice to any Service Level Guarantees that apply to the provision of Mandated Services under this ICO Agreement, neither Party warrants that its ~~n~~Network or ~~n~~Network Facilities are or will be free from faults. Each Party will comply with the fault identification and reporting guidelines set out in this ICO Agreement.

## 11. SUSPENSION

- 11.1 Subject to clause 11.2, either Party (**Suspending Party**) may suspend this ICO Agreement or any Schedule of this ICO Agreement by providing notice to the other Party if:
- (a) the other Party's ~~n~~Network adversely affects the normal operation of the Suspending Party's ~~n~~Network, or is a threat to any person's safety;
  - (b) the other Party's ~~n~~Network or the supply of a Service to the other Party under this ICO Agreement may pose an imminent threat to life or the property of the Suspending Party;
  - (c) the other Party's ~~n~~Network causes or is likely to cause physical or technical harm to any telecommunications network, system or services (whether of the



Suspending Party or any other person) including but not limited to causing damage, interfering with or causing deterioration in the operation of the Suspending Party's ~~n~~Network;

- (d) the other Party has committed a material breach (other than failure to pay any sum, whether in respect of any one or more Service, for which the other Party has been Invoiced) of this ICO Agreement, the Suspending Party has given sixty (60) Calendar Days notice of such breach and the other Party has failed to rectify such breach within that time;
- (e) the other Party has committed a material breach of this ICO Agreement by its failure to pay any sum, whether in respect of any one or more Services, for which the other Party has been Invoiced, the Suspending Party has given fourteen (14) Calendar Days notice of such breach (which period may operate concurrently with the period in clause 2.6 of Schedule 16) and the other Party has failed to rectify such breach within that time. For the avoidance of doubt, this subclause shall not apply pending the resolution of any Billing Dispute in accordance with Schedule 16;
- (f) in the Suspending Party's reasonable opinion, the other Party attempted to use, is likely to use, or has used any Mandated Service supplied under this ICO Agreement (whether with or without the authorisation and/or permission of the Suspending Party) in contravention of law and the Suspending Party has the necessary confirmation from the relevant Governmental Agencies that the other Party is in contravention of law;
- (g) compliance with legal or regulatory obligations requires immediate action;
- (h) continued operation of this ICO Agreement would be unlawful or would pose an imminent threat to life or property;
- (i) any material information provided or representation made by either Party to the other Party is untrue, false, misleading or inaccurate and has an adverse material impact on the other Party in relation to its provision of Services under this ICO Agreement; or

**CLAUSE 11.1(J) – MODIFICATION REQUIRED**

- (j) the other Party is unable to pay its debts, ~~becomes insolvent within the~~ meaning of section 254(2) of the Companies Act or has ceased or threatens to

cease business, or a petition for winding up or bankruptcy has been filed, a resolution for voluntary winding up has been passed, a receiver and manager or judicial manager has been appointed over the whole or substantial part of its assets or property, or the other Party ceases to carry on business, or any action is taken by any creditor of the other Party to recover, realise or enforce any security over any assets of the other Party or to enforce any judgment against the other Party.

***IDA Directed Modifications: As presently drafted, the phrase “unable to pay its debts” could refer to (a) the non-Suspending Party becoming insolvent under the Companies Act, or (b) non-payment by the non-Suspending Party of outstanding amounts which are due and payable under the ICO.***

***In the interests of clarity, IDA considers that there is merit for OpenNet to clarify that clause 11.1(j) refers to an insolvency situation.***

***Accordingly, IDA directs OpenNet to propose, for IDA’s approval, modifications to clause 11.1(j) to effect the above. For example, to effect the above, OpenNet may insert the words “within the meaning of that expression in section 254(2) of the Companies Act” immediately after the words “unable to pay its debts” in line 1 of clause 11.1(j), in order to clarify that clause 11.1(j) refers to an insolvency situation. ION 28 Mar 12 : Amended as per IDA’s Direction. Section 254(2) specifically addresses “unable to pay its debts” and not “insolvent”. Hence, ON propose to remove reference to “insolvent”.***

**11.2** A Suspending Party will only suspend this ICO Agreement or any Schedule or any licence granted under a Schedule (where the relevant Schedule provides that this clause applies to that licence) to the extent necessary to address the relevant event. Prior to suspending this ICO Agreement or any Schedule or any licence granted under a Schedule (where the relevant Schedule provides that this clause applies to that licence) the Suspending Party will notify the Authority and request the Authority’s written approval of such suspension, and shall concurrently notify the other Party that the Suspending Party is requesting for IDA’s written approval of such suspension. The other Party may, within three (3) Business Days or such other timeframe as stipulated by IDA, of its receipt of such notice, make written submissions to IDA regarding the proposed suspension. Suspension rights shall not be exercised without the Authority’s approval unless imminent threats to life or property or compliance with other legal or regulatory obligations require immediate action, in which case the

Suspending Party may immediately suspend the operation of this ICO Agreement or Schedule or licence.

- 11.3** If the Authority issues an order granting in whole or in part the request under clause 11.2, the Suspending Party may immediately suspend (for such period of time as the Authority approves, or indefinitely if the Authority does not specify a period of time) this ICO Agreement, or Schedule, or licence, or those parts of this ICO Agreement or Schedule or licence covered by the Authority's order by giving written notice to the other Party.
- 11.4** Where any Service has been suspended (whether or not at the request of the Requesting Licensee), the Requesting Licensee shall continue to pay those Charges in respect of that Service for the period during which the Service has been suspended and, in the event the Service is reconnected, all reconnection Charges set out under Schedule 15. Notwithstanding anything in this clause to the contrary, the Requesting Licensee is (a) not liable to pay Monthly Recurring Charges during a period of suspension, unless such suspension is the result of the Requesting Licensee's fault; and (b) not liable to pay the reconnection Charges in the event the suspended Service is reconnected, where such suspension is the result of OpenNet's fault.

#### **CLAUSE 11.5 – MODIFICATION REQUIRED**

- 11.5** If this ICO Agreement or a Schedule is suspended under this clause 11 for more than sixty (60) Calendar Days, the Suspending Party may ~~or in the case of clause 11.1(a) or 11.1(c)~~, subject to clause 12.3, terminate this ICO Agreement or Schedule (as the case may be) with immediate effect by giving the other Party written notice. Additionally, where clauses 11.1(a) or 11.1(c) applies, either Party may, subject to clause 12.3, terminate this ICO Agreement or Schedule (as the case may be) with immediate effect by giving the other Party written notice.

***IDA Directed Modifications: IDA considers that for the scenarios in clauses 11.1(a) and 11.1(c), either party should be able to terminate the ICO Agreement or Schedule as the case may be. Accordingly, IDA directs OpenNet to propose, for IDA's approval, modifications to clause 11.5 to effect the above. For example, to effect the above, OpenNet may insert the words "(or in the case of clause 11.1(a) or 11.1(c) only, either Party may)" immediately after the words "the Suspending Party may" in line 2 of clause 11.5. [ON 28 Mar 12 : Amended as per IDA's Direction.]***

## 12. TERMINATION

12.1 Subject to clause 12.3, either Party (**Terminating Party**) may terminate the entire ICO Agreement, or any Schedule of this ICO Agreement by providing notice to the other Party if:

- (a) subject to clause 7.3, the Requesting Licensee ceases to be an FBO, SBO or Broadcasting Licensee;
- (b) the Requesting Licensee changes from being an FBO to an SBO or Broadcasting Licensee and is no longer entitled to a particular Mandated Service under a Schedule, in which case termination shall be limited to those parts of the ICO Agreement that relate to the Mandated Service to which the Requesting Licensee is no longer entitled;
- (c) the other Party has committed a material breach (other than failure to pay any sum, whether in respect of any one or more Service, for which the other Party has been Invoiced) of this ICO Agreement, the Terminating Party has given sixty (60) Calendar Days notice of such breach and the other Party has failed to rectify such breach within that time;
- (d) the other Party has committed a material breach of this ICO Agreement by its failure to pay any sum, whether in respect of any one or more Service, for which the other Party has been Invoiced, the Terminating Party has given fourteen (14) Calendar Days notice of such breach (which period may operate concurrently with the period in clause 2.6 of Schedule 16) and the other Party has failed to rectify such breach within that time. For the avoidance of doubt, this subclause shall not apply pending the resolution of any Billing Dispute in accordance with Schedule 16;

### **CLAUSE 12.1(e) – MODIFICATION REQUIRED**

- (e) the other Party is unable to pay its debts, ~~becomes insolvent within the meaning of section 254(2) of the Companies Act~~, or has ceased or threatens to cease business, or a petition for winding up or bankruptcy has been filed, a resolution for voluntary winding up has been passed, a receiver and manager or judicial manager has been appointed over the whole or substantial part of its assets or property, or the other Party ceases to carry on business, or any action is taken by any creditor of the other Party to recover, realise or enforce

any security over any assets of the other Party or to enforce any judgment against the other Party;

***IDA Directed Modifications: IDA refers OpenNet to its directed modifications at clause 11.1(j) of Part 2 of the Main Body of the ICO. Accordingly directs OpenNet to propose, for IDA's approval, similar modifications to this clause 12.1(e). [ON 28 Mar 12 : Amended as per IDA's Direction. Section 254(2) specifically addresses "unable to pay its debts" and not "insolvent". Hence, ON propose to remove reference to "insolvent".]***

- (f) continued operation of this ICO Agreement would be unlawful or would pose an imminent threat to life or property;
- (g) in the Terminating Party's reasonable opinion, the other Party attempted to use, is likely to use, or has used any Service (whether with or without the authorisation and/or permission of the Terminating Party) in contravention of any law and the Terminating Party has the necessary confirmation from the relevant Governmental Agencies that the other Party is in contravention of law; or
- (h) any material information provided or representation made by either Party to the other Party is untrue, misleading or inaccurate and has an adverse material impact on the other Party in relation to its provision of Services under this ICO Agreement.

## **CLAUSE 12.2 – MODIFICATION REQUIRED**

12.2 Subject to clause 12.3, the Requesting Licensee may terminate the ICO Agreement upon giving not less than three (3) months' written notice to OpenNet.

***IDA Directed Modifications: IDA considers that the Requesting Licensee should not be prevented from giving more than three months notice if it is minded do so. Accordingly, IDA directs OpenNet to propose, for IDA's approval, modifications to clause 12.2 to give effect to the above requirement. For example, to satisfy this requirement, OpenNet may insert the words "giving not less than" immediately after the words "Agreement upon" in line 2 of clause 12.2. [ON 28 Mar 12 : Amended as per IDA's Direction.]***

**12.3** Prior to terminating this ICO Agreement or any Schedule or any licence granted under a Schedule (where the relevant Schedule provides that this clause applies to that licence), in full or to the extent necessary, the Terminating Party will notify the Authority that it proposes to terminate this ICO Agreement or one or more Schedules or licence, and request the Authority's written approval of such termination, and shall concurrently notify the other Party that the Terminating Party is requesting for IDA's written approval of such suspension. The other Party may, within three (3) Business Days or such other timeframe as stipulated by IDA, of its receipt of such notice, make written submissions to IDA regarding the proposed Termination. Termination rights shall not be exercised without the Authority's approval, unless imminent threats to life or property or compliance with other legal or regulatory obligations require immediate action, in which case the Terminating Party may immediately terminate the operation of this ICO Agreement or one or more Schedules or licence.

**12.4** If the Authority issues an order granting in whole or in part the request under clause 12.3, the Terminating Party may immediately terminate this ICO Agreement, the Schedule(s) or licence or those parts of this ICO Agreement or Schedules or licence covered by the Authority's order by giving written notice to the other Party provided such notice complies with the conditions of any order of the Authority in relation to the termination of this ICO Agreement.

**12.5** In the event that this ICO Agreement or Schedules under this ICO Agreement is terminated:

(a) all sums due, or accrued or payable to each Party under this ICO Agreement or with respect to that Schedule (respectively) up to the date of termination and all sums due or payable to each Party shall upon termination become immediately due and payable to that Party, including:

(i) termination Charges due under the applicable Schedules, where the termination was due to the fault of the Requesting Licensee; and

***CLAUSE 12.5(a)(ii) – MODIFICATION REQUIRED***

(ii) any costs, other than those provided under Schedule 15, as may be incurred by the Terminating Party in terminating this ICO Agreement or Schedules. The Requesting Licensee shall at its own expense disconnect and remove its equipment from OpenNet's premises

within fourteen (14) Calendar Days of the termination. If the Requesting Licensee fails to do so, OpenNet may disconnect, remove and dispose of the Requesting Licensee's equipment and reinstate its premises at the Requesting Licensee's reasonable costs and expense. Notwithstanding the above, where the termination occurs as result of OpenNet's fault, the Requesting Licensee shall not be liable for the removal of Patching Services and reinstatement of the OpenNet's premises.

***IDA Directed Modifications: The industry commented that the first sentence (i.e., "costs incurred by the Terminating Party in terminating this ICO Agreement or Schedules.") ought to be removed as termination charges related to the ICO were already addressed under clause 12.5(a)(i). The industry also commented that costs incurred to disconnect, remove and dispose of the Requesting Licensee's equipment as well as the cost to reinstate OpenNet's premises should be reasonable.***

***IDA has reviewed the above and agreed with the industry. Accordingly, IDA directs OpenNet to propose, for IDA's approval, modifications to clause 12.5(a)(ii) to:***

- (a) remove the first sentence (i.e., "costs incurred by the Terminating Party in terminating this ICO Agreement or Schedules.") unless OpenNet can provide justification on why it should remain; and***
- (b) make clear that costs incurred to disconnect, remove and dispose of the Requesting Licensee's equipment as well as the cost to reinstate OpenNet's premises should be reasonable.***

***[ON 28 Mar 12 : ON would like to clarify that clause 12.5(a) (i) and 12.5(a) (ii) are different charges. The termination charges under 12.5(a)(i) refer to the termination charges in the respective ICO schedules whereas 12.5(a)(ii) refer to the cost incurred by the Terminating Party in terminating the ICO agreement. And such costs under 12.5(a)(ii) are likely to be cost-orientated charges e.g. removal of equipment, it is not possible to provide the same under Sch 15. ]***

- (b) each Party shall immediately return to the other Party at its own expense all equipment, facilities, plant and other property of the other Party used under this ICO Agreement or in relation to that terminated Schedule in good working condition, fair wear and tear only excepted; and
- (c) each Party shall, without undue delay, remove all of that Party's equipment, facilities, plant and other property located on the other Party's premises used under this ICO Agreement or in relation to that terminated Schedule.

### **CLAUSE 12.6 – MODIFICATION REQUIRED**

12.6 A Party shall be entitled to charge the other Party the reasonable cost incurred in repossessing or acquiring a replacement of any equipment, facilities, plant and other property which the other Party has failed to return under clause 12.5 within 30 Calendar Days of the date of termination and/or of acquiring a replacement of any equipment which is returned in a damaged or defective condition.

***IDA Directed Modifications: IDA considers that the cost incurred should be subject to the requirement of reasonableness. Accordingly, IDA directs OpenNet to propose, for IDA's approval, modifications to clause 12.6 to give effect to the above requirement. For example, to satisfy this requirement, OpenNet may insert the word "reasonable" before the word "cost" in line 1 of clause 12.6. JON 28 Mar 12 : Amended as per IDA's Direction.***

12.7 A Party may remove the other Party's equipment, facilities, plant and other property located on its premises if not removed by the other Party within 30 Calendar Days after the date of termination.

12.8 If the OpenNet ICO is or is to be revoked by the Authority, this ICO Agreement will automatically and immediately terminate on and from the date of revocation notified by the Authority.

12.9 If the Authority removes a Mandated Service supplied under this ICO Agreement from being required to be supplied under the OpenNet ICO or exempts OpenNet from supplying a Mandated Service, OpenNet may immediately terminate the supply of such Mandated Service and those aspects of this ICO Agreement which relate to such Mandated Service, by giving written notice to the Requesting Licensee with effect on or after the effective date of such removal or exemption as notified by the Authority.



- 12.10** On termination of this ICO Agreement or Schedule, all Services, leases, licences and other rights conferred on OpenNet or the Requesting Licensee under this ICO Agreement or Schedule (as the case may be) shall immediately terminate.
- 12.11** On termination of this ICO Agreement, each Party must, at its own expense, deliver to the other Party, or after notice from that other Party, destroy or erase all documents or other forms of storage which comprise or contain the other Party's Confidential Information or from which the other Party's Confidential Information can be reproduced.
- 12.12** Termination or expiry of this ICO Agreement, Schedule, Mandated Service or licence shall not be deemed a waiver of a breach of any term or condition of this ICO Agreement, Schedule, Mandated Service or licence and shall be without prejudice to a Party's rights, liabilities or obligations that have accrued prior to such termination or expiry.
- 12.13** Notwithstanding the termination or expiry of this ICO Agreement, clauses 6, 14, 15, 18.7, 18.8, 19 and 23 inclusive shall continue in full force and effect without limitation in time, and clause 17 shall continue in full force and effect for a period of 12 months after the termination or expiry of this ICO Agreement.
- 12.14** A Party's right to suspend or terminate performance of this ICO Agreement or Schedule pursuant to clauses 11 or 12 respectively is without prejudice to any other rights or remedies available to that Party.
- 12.15** Parties will notify the Authority of any mutually agreed termination within 7 Calendar Days of such termination of the ICO Agreement.

### **13. FORCE MAJEURE**

#### ***CLAUSE 13.1 – MODIFICATION REQUIRED***

- 13.1** Neither Party shall be liable for any breach of this ICO Agreement (other than a breach by non-payment) caused by an act of God, insurrection or civil disorder, war or military operations, national emergency, acts or omissions of government, fire, flood, lightning, explosion, pandemic outbreak, subsidence, industrial dispute of any kind (whether or not involving that Party's employees), acts or omissions of persons or bodies for whom that Party affected thereby is not responsible provided always that (a) the Party affected by force majeure shall use commercial endeavours to mitigate the effects of force majeure; and (b) the event of force majeure shall not have

been attributable to any default of the affected Party (**force majeure**). For the avoidance of doubt, any failure or delay by the affected Party's suppliers and/or contractors shall not constitute Force Majeure under this clause 13.1, unless the Authority determines that such suppliers and/or contractors are parties for whom the affected Party is responsible.

***IDA Directed Modifications: An industry respondent commented that OpenNet must be responsible for the acts of its suppliers and cannot evade such responsibility by relying on clause 13.1. IDA agrees and accordingly directs OpenNet to propose, for IDA's approval, modifications to clause 13.1 to incorporate the requirement as set out above. For example, to satisfy this requirement, the following sentence could be inserted at the end of clause 13.1: "For the avoidance of doubt, any failure or delay by the affected Party's suppliers and/or contractors shall not constitute Force Majeure under this clause 13.1, unless the Authority determines that such suppliers and/or contractors are parties for whom the affected Party is responsible." . JON 28 Mar 12 : Amended as per IDA's Direction.***

- 13.2** The Party affected by force majeure shall promptly notify the other Party of the estimated extent and duration of any inability to perform its obligations under this ICO Agreement (**force majeure notification**).
- 13.3** Upon the cessation of the delay or failure resulting from force majeure, the Party affected by force majeure shall promptly notify the other Party of such cessation.
- 13.4** If, as a result of force majeure, the performance by either Party of its obligations under this ICO Agreement is only partially affected, such Party shall, subject to the provisions of clause 13.6, nevertheless remain liable for the performance of those obligations not affected by force majeure.
- 13.5** To the extent that the Party affected by force majeure shall not provide all or part of the Mandated Services to be provided by it under this ICO Agreement, the other Party shall be released to such extent from its obligations to make payment in respect of those Mandated Services.
- 13.6** In the case of either Party making a force majeure notification then:

- (a) if the force majeure lasts for a continuous period of sixty (60) Calendar Days or less from the date of the force majeure notification (whether or not notice of cessation has been given pursuant to clause 13.3 of this ICO Agreement), any obligation outstanding shall be fulfilled by the Party affected by the force majeure as soon as reasonably possible after the force majeure has ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party; and

#### **CLAUSE 13.6(b) – MODIFICATION REQUIRED**

- (b) if the force majeure lasts for more than a continuous period of sixty (60) Calendar Days from the date of the force majeure notification, notice of cessation has not been given pursuant to clause 13.3 hereof and such force majeure continues to prevent the affected Party from performing its obligations in whole or in material part, the other Party shall be entitled (but not be obliged) to terminate this ICO Agreement by giving not less than thirty (30) Calendar Days' written notice to the other Party after expiry of the said sixty (60) Calendar Days period. In the event that notice of cessation of the force majeure pursuant to clause 13.3 hereof is received by the other Party prior to the expiry of the thirty (30) Calendar Days' notice this ICO Agreement may not be terminated under this clause 13.6(b).

***IDA Directed Modifications: For clarity, IDA considers it useful to insert the reference to “13.6(b)” immediately after the phrase “under this clause” at the last line of clause 13.6(b). [ON 28 Mar 12 : Amended as per IDA’s Direction.]***

- 13.7** If this ICO Agreement is not terminated in accordance with the provisions of clause 13.6 of this ICO Agreement then any obligations outstanding shall be fulfilled by the Party affected by the force majeure as soon as reasonably practicable after the force majeure has ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party.

#### **14. LIMITATION OF LIABILITY**

- 14.1** Unless otherwise provided under this ICO Agreement and subject to clause 14.10, this clause 14 shall regulate the liability (whether arising in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach, breach of statutory duty or any other cause) of a Party to the other Party under or in

relation to this ICO Agreement and in relation to any act, omission or event relating to or arising out of this ICO Agreement.

**14.2** In performing its obligations under this ICO Agreement, OpenNet shall exercise the reasonable skill and care of a competent telecommunications operator and to comply with its obligations under clause 10.

**14.3** Subject to clause 14.5, 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 and arising from or in connection with this ICO Agreement.

**14.4** Subject to clause 14.5, if a Party (**Breach Party**) is in breach of any of its obligations under this ICO Agreement to the other Party (excluding obligations arising under this ICO Agreement to pay monies in the ordinary course of business), or otherwise arising under this ICO Agreement (including liability for negligence or breach of statutory duty), the Breach Party's liability to the other Party shall be limited to the total charges paid or payable by the Requesting Licensee during the twelve (12) months prior to the event giving rise to the liability or S\$1,000,000 for any one event or series of connected events and S\$3,000,000 for all events (connected or unconnected) occurring in a calendar year, whichever is higher. Where liability arises from a claim of intellectual property infringement, the limitation on liability shall be 3 times the total charges paid or payable by the Requesting Licensee during the 12 months prior to the notice of infringement or S\$1,000,000 for any one event or series of connected events and S\$3,000,000 for all events (connected or unconnected) occurring in a calendar year, whichever is higher.

**14.5** Neither Party excludes or restricts its liability for death, personal injury, gross negligence or wilful default.

**14.6** Each Party (**Indemnifying Party**) must indemnify and keep indemnified the other Party (**Indemnified Party**), its employees and agents against any Loss (including Consequential Loss) which the Indemnified Party suffers or incurs as a result of or in

connection with any claim by a Third Party relating to the Indemnified Party's supply of a Service to the Indemnifying Party or the use of a Service by the Indemnifying Party, or any delay or failure of the Indemnified Party to provide a Service other than to the extent that it is the result of a negligent, wilful or reckless breach of this ICO Agreement by the Indemnified Party.

**14.7** Subject to clause 14.6, neither Party will be liable to the other Party to the extent that liability is incurred in connection with an action, claim or demand brought or made against the other Party in relation to an act or omission relating to or arising out of this ICO Agreement by a Third Party to whom the other Party provides a telecommunication service under a contract, where that liability could legally have been excluded or where that liability could legally have been reduced in that contract by the other Party.

**14.8** Each provision of this clause 14 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

**14.9** To the extent that a Schedule contains a remedy in relation to the performance by a Party (**Liable Party**) of an obligation under that Schedule, that remedy shall be the sole and exclusive liability of the Liable Party, its Related Corporations, directors, employees, agents and contractors to the other Party in connection with the performance of that obligation and is the sole remedy of the other Party against the Liable Party, its Related Corporations, directors, employees, agents and contractors in connection with the performance of that obligation.

## **15. INTELLECTUAL PROPERTY RIGHTS**

**15.1** Except as otherwise expressly provided in this ICO Agreement, all trademarks, inventions, patents, copyrights, designs, design rights, trading names (whether or not registered) and all other intellectual property rights (**intellectual property**) shall remain in the ownership of the person creating or owning the same and nothing in this ICO Agreement shall confer or be deemed to confer on either Party any rights or licences in the intellectual property of the other Party or of any Third Party.

**15.2** Without prejudice to clause 15.1, neither Party shall be entitled to use any trademarks or service marks (whether registered or not) of the other Party in any document or other medium, without the prior written consent of the other Party.

15.3 The Parties will negotiate arrangements (including in respect of title) concerning intellectual property jointly developed in the course of performing this ICO Agreement or otherwise in connection with this ICO Agreement.

15.4 Each Party (referred to in this clause as the **Indemnifying Party**) agrees, subject to clause 14, to indemnify, and keep indemnified the other Party against all liability or loss arising directly or indirectly from, and all reasonable costs, charges and expenses incurred in connection with any claim, action, suit or demand alleging infringement by the other Party of the rights of a Third Party arising from use by the other Party of intellectual property disclosed or licensed by the Indemnifying Party under this ICO Agreement. This indemnification shall represent the only remedy and form of compensation available to the other Party in relation to intellectual property licensed or disclosed by the Indemnifying Party under this ICO Agreement.

#### **CLAUSE 15.5 – MODIFICATION REQUIRED**

15.5 Each Party shall be responsible and liable for obtaining and maintaining in that Party's name and at that Party's expense all licences, permits, consents, waivers, authorisations and intellectual property or other rights required for the provision of any Service to that Party or the installation or the use of any equipment in conjunction therewith for the entire duration during which the Services are provided or made available to the Requesting Licensee by OpenNet~~that Party~~. Each Party shall provide reasonable co-operation to the other Party, at the other Party's cost, in relation to all licences, permits, consents, waivers, authorisations and intellectual property or other rights required to be obtained by the other Party under this clause.

***IDA Directed Modifications: An industry respondent highlighted that "Service" and "Services" are defined terms in Schedule 18 of the ICO. "Service" means a service provided by OpenNet as described in the ICO Agreement and "Services" means any, all or combination of them as the context requires. The industry respondent suggested that the obligations in clause 15.5 ought to apply to OpenNet only and ought to be amended accordingly.***

***However, IDA considers that clause 15.5 should require both OpenNet and Requesting Licensees to be responsible for the licences, permits, etc. that are necessary for the provisioning and use of OpenNet's Service(s), and should not impose such requirement on OpenNet alone. IDA further notes that Service(s) cannot be provided to OpenNet as***

***OpenNet is the provider of such Service(s), and the words “to that Party” in lines 4 and 6 of clause 15.5 are inconsistent with this.***

***Accordingly, in the interests of clarity, IDA directs OpenNet to propose, for IDA’s approval, modifications to clause 15.5 to clarify that the Service(s) referred to in this clause are provided by OpenNet to Requesting Licensees, and not vice-versa. [ON 28 Mar 12 : Amended as per IDA’s Direction.]***

## **16. FORECASTS AND CAPACITY**

**16.1** Where required under the Schedule, the Requesting Licensee shall supply to OpenNet reasonable Forecasts in accordance with this ICO Agreement.

**16.2** The Requesting Licensee must provide all Forecasts in good faith and use all reasonable endeavours to ensure that Forecasts are accurate.

**16.3** Where OpenNet receives a Forecast and considers in good faith that any element of that Forecast is unreasonable, or that the work which it would be required to carry out based on that Forecast is not reasonably achievable within the relevant time, OpenNet and the Requesting Licensee shall promptly negotiate in good faith, a Forecast which is reasonable and which will enable the required work to be carried out within the relevant time periods and allow for the application of Service Level Guarantees to the relevant Services. To assist in the negotiations:

- (a) OpenNet shall provide information in relation to the work which it would be required to carry out to meet the Forecast which it considers to be unreasonable and the time frame of that work;
- (b) the Requesting Licensee shall provide information upon which its assessment of the reasonableness (or otherwise) of the Forecast is based; and
- (c) each Party shall endeavour to put forward proposals to produce a satisfactory outcome for both Parties.

**16.4** If after the expiry of thirty (30) Calendar Days the Parties are unable to agree on a revised Forecast under clause 16.3, unless both Parties agree to an extension of the thirty (30) Calendar Days period, the matter will be referred for resolution in accordance with the Dispute Resolution Procedures.

**16.5** Pending the outcome of the negotiations in respect of a Forecast, OpenNet is not obliged to provide for requirements in respect of any part of the Forecast that it considers unreasonable or that is under negotiation but OpenNet will provide for requirements which it considers in good faith to be reasonable, pending resolution of the negotiations and dispute resolution (if any).

## **17. INSURANCE**

**17.1** Without limiting either Party's obligations under this ICO Agreement unless otherwise agreed by OpenNet, the Requesting Licensee will have in force and maintain for the duration of this ICO Agreement and for a period of 12 months after the expiry or termination of the ICO Agreement, a broad form public liability insurance policy with an insurance company licensed in Singapore, to the value of:

(a) S\$10 million, if the Requesting Licensee is a FBO; or

(b) S\$1 million, if the Requesting Licensee is a SBO or a Broadcasting Licensee.

**17.2** On OpenNet's request, the Requesting Licensee will immediately produce evidence that it has complied with and continues to comply with its obligations under this clause.

## **18. CREDIT MANAGEMENT AND SECURITY REQUIREMENTS**

**18.1** The Requesting Licensee must provide to OpenNet, at its sole cost and expense, and maintain for the term of this ICO Agreement, the security requirements detailed in Attachment A – Notification of Acceptance of ICO and under this clause.

**18.2** OpenNet may from time to time request information from the Requesting Licensee to review and determine the Security Requirement of the Requesting Licensee. The Requesting Licensee must provide such information to OpenNet within fourteen (14) Calendar Days of receipt of a request from OpenNet for such information.

**18.3** The initial amount of the Security Requirement shall depend on the Requesting Licensee's estimated initial Monthly Recurring Charge:

(a) For Requesting Licensees with a Monthly Recurring Charge of S\$5,000 or less, the Security Requirement shall be S\$10,000; and



- (b) For Requesting Licensees with a Monthly Recurring Charge of more than S\$5,000, the Security Requirement shall be S\$30,000.

**18.4** The amount of the Security Requirement shall be revised six (6) months after the Effective Date, and every six months thereafter, and if necessary, the Requesting Licensee shall provide an amended Security Requirement of either S\$10,000 or S\$30,000, depending on the Requesting Licensee's Monthly Recurring Charge at the point of revision, in accordance with clauses 18.3(a) and (b) above. Notwithstanding the above, OpenNet may at any time, by written notice to the Requesting Licensee, revise the amount of the Security Requirement, provided that the revised amount shall be either S\$10,000 or S\$30,000 depending on the Requesting Licensee's Monthly Recurring Charge at the time of revision.

**18.5** The Requesting Licensee must provide the banker's guarantee or security deposit (or amended banker's guarantee or security deposit) to OpenNet within thirty (30) Calendar Days of receipt of notice under clause 18.4. OpenNet may, at its absolute discretion, treat a failure by the Requesting Licensee to provide a banker's guarantee or security deposit in accordance with this clause as a material breach of this ICO Agreement.

**18.6** The Requesting Licensee shall not require OpenNet to use a banker's guarantee or security deposit it has provided to OpenNet towards payment of the Charges. For the avoidance of doubt, the provision of a banker's guarantee or security deposit does not relieve the Requesting Licensee from its obligations to pay the Charges to OpenNet as they become due and payable, nor does it constitute a waiver of OpenNet's right to suspend, disconnect, or terminate the Services in accordance with the terms of this ICO Agreement.

**18.7** OpenNet may on reasonable notice in writing to the Requesting Licensee call on the banker's guarantee or use the security deposit (or part of it) to settle any amount due or payable to OpenNet by the Requesting Licensee under this ICO Agreement.

***CLAUSE 18.8 – MODIFICATION REQUIRED***

**18.8** Notwithstanding the above and on an annual basis, OpenNet shall conduct an Annual Review of the Security Requirement provided by the Requesting Licensee and where applicable, OpenNet may require a variation of the Security Requirement provided by the Requesting Licensee.

- (a) In conducting the Annual Review, OpenNet shall have regard, but not limited, to the following criteria
- (i) Requesting Licensee's payment track record ie. whether the Requesting had paid OpenNet after the due date on three (3) or more occasions in the past year
  - (ii) No valid reasons given for late payment
  - ~~(iii) Requesting Licensee's financial strength and profitability to determine the Requesting Licensee's ability to remain a going concern~~
  - ~~(iv) Any other matters including public news or market intelligence relating to or concerning the Requesting Licensee's operations in a negative manner~~
- (b) Upon conclusion of the Annual Review, OpenNet may
- (i) require the Requesting Licensee to provide the Security Requirement in the form of a bankers' guarantee ~~or instead of~~ a security deposit ~~or vice versa~~; and/or
  - (ii) increase the amount of the Security Requirement to the higher of S\$30,000 or not more than two point five (2.5) ~~three (3)~~ times of the Requesting Licensee's highest invoice in the past year.
- (c) OpenNet will notify the Requesting Licensee of the changes to the Security Requirement with reasons after the Annual Review in writing either by email, fax or ordinary mail, whichever is more convenient. Within twenty-one (21) Calendar Days from the date of the notification from OpenNet, the Requesting Licensee shall provide the Security Requirement according to the terms of such notification.

***IDA Directed Modifications: IDA received a number of comments on this clause 18.8 as proposed:***

- (a) An industry respondent commented that OpenNet's requirement for a banker's guarantee and/or a security deposit is unnecessary in consideration of market practice,***

*and suggested that IDA consider exempting Facilities Based Operators from this requirement. The industry respondent added that OpenNet's proposed clause 18.8 is not justified.*

- (b) A second industry respondent commented that the proposed criteria for the Annual Review of the Security Requirement in clause 18.8(a) is too subjective or unreasonable, and suggested that the criteria should be based on objective evidence and assessment. The example cited by the respondent was that "public news or market intelligence" is subjective, speculative and unreliable to be used as a basis for conducting the Annual Review of the Security Requirements.*
- (c) Another industry respondent commented with regard to the proposed clause 18.8(c) that OpenNet must provide valid reasons for the changes to the Security Requirement in its written notification to the Requesting Licensee.*

*IDA has considered the comments carefully.*

*In respect of (a), there does not appear to be reasonable basis to exempt RLs from the Credit Management and Security requirement solely on the consideration on whether they are Facilities Based Operators. In respect of (b), IDA considers that the criteria for review should be objective and give certainty to the industry. IDA further agrees that the criteria for review as proposed are too subjective. Accordingly, IDA directs OpenNet to propose, for IDA's approval, modifications to clause 18.8 to incorporate the following requirements:*

- (i) OpenNet should only be allowed to increase its security requirements in situations where the Requesting Licensees cannot pay promptly and without good reasons (i.e. OpenNet's proposed clauses 18(a)(i) and 18(a)(ii) only).*
- (ii) Where the Requesting Licensees meet the conditions in (i) above, OpenNet may increase its Security Requirement. Unless OpenNet can justify otherwise, IDA is of the view that the increase should be not more than 2.5 times (i.e., a*

*figure which is adopted under a separate regulated offering) the Requesting Licensee's highest invoice in the past year.*

- (iii) *The Requesting Licensee shall have the option of providing the Security Requirement in the form of a banker's guarantee or security deposit.*

*In respect of (c), IDA agrees that it is fair and reasonable for OpenNet to provide valid reasons for changes to the Security Requirement, and directs OpenNet to propose, for IDA's approval, modifications to reflect this requirement. [ON 28 Mar 12 : Amended as per IDA's Direction.]*

#### **CLAUSE 18.9 - MODIFICATION REQUIRED**

18.9 Where this ICO Agreement is terminated pursuant to clauses 4.2 or 12, OpenNet shall return the Security Requirement to the Requesting Licensee within seven ~~(7) fourteen (14)~~ Calendar Days of:

- (a) the termination of this ICO Agreement; or
- (b) payment by the Requesting Licensee of all outstanding amounts under this ICO Agreement. For avoidance of doubt, payment is deemed not to have been made in full until all cheques are cleared and/or monies paid into OpenNet's specified account unconditionally together with all dishonoured fees, late payment interest and bank charges;

whichever is later.

***IDA Directed Modifications: An industry respondent submitted that there is no justification for OpenNet's change and that a seven day timeframe is common practice. After careful consideration, IDA determines that the existing seven day timeframe is more reasonable and should be maintained. Accordingly, IDA directs OpenNet to revert to the wording of the original clause 18.9.***

**[ON 28 Mar 12 : Amended as per IDA's Direction. For better clarity, ON had included "For avoidance of doubt, payment is deemed not to have**

*been made in full until all cheques are cleared and/or monies paid into OpenNet's specified account unconditionally together with all dishonoured fees, late payment interest and bank charges" under clause 18.9 which is consistent with clause 2.7 of Sch 16 which is also similarly amended.]*

## 19. CONFIDENTIALITY

**19.1** Notwithstanding any provision in this ICO Agreement, the Parties shall not reveal, make known or divulge to any Third Party in any manner howsoever the contents of those aspects of this ICO Agreement (in full or in part) which the Authority has withheld from publication.

**19.2** Except as otherwise provided in this ICO Agreement, a Party that receives Confidential Information (the **Receiving Party**) shall keep confidential all Confidential Information of the other Party (the **Disclosing Party**) which:

- (a) is disclosed, communicated or delivered to the Receiving Party pursuant to this ICO Agreement; or
- (b) comes to the Receiving Party's knowledge or into the Receiving Party's possession in connection with this ICO Agreement,

whether such Confidential Information is received before during or after the date of this ICO Agreement.

**19.3** The Receiving Party shall not use or copy the Confidential Information of the Disclosing Party except in connection with and for the purposes of this ICO Agreement or for such other purposes related to the provision of Services under this ICO Agreement. For the avoidance of doubt, where any such Confidential Information disclosed relates to Customer information, such as addresses or contact numbers (the "Customer Contact Information"), the Receiving Party expressly agrees not to use such Customer Contact Information for the purposes of developing and marketing of any goods and services.

**19.4** In the event of the Receiving Party visiting any of the facilities of the Disclosing Party, the Receiving Party undertakes that any further Confidential Information which may come to its knowledge as a result of any such visit and any Confidential Information relating to plant and equipment which may be seen at such facilities, the methods of operation thereof and the various applications thereof shall be kept strictly

confidential and that any such Confidential Information will not be divulged to any Third Party and will not be made use of in any way (whether for its benefit or that of any Third Party) except in connection with and for the purposes of this ICO Agreement or for such other purposes related to the provision of Services under this ICO Agreement.

**19.5** Except as otherwise provided in this ICO Agreement, the Receiving Party shall not disclose or communicate, cause to be disclosed or communicated or otherwise make available Confidential Information to any Third Party other than:

- (a) the Receiving Party's directors, officers, employees, agents, contractors or representatives to whom disclosure is necessary in connection with and for the purposes of this ICO Agreement or for such other purposes related to the provision of Services under this ICO Agreement;
- (b) the Receiving Party's professional adviser only to the extent necessary for that adviser to provide advice or protect the rights of the Receiving Party under this ICO Agreement; and
- (c) the Receiving Party's appointed financial adviser or appointed banker only to the extent necessary for the financial adviser or appointed banker to provide financial advice and/or financial services to the Receiving Party

(each an "Authorised Person", and collectively, the "Authorised Persons").

**19.6** The Receiving Party hereby agrees to advise the Authorised Person(s) that they are obligated to protect the Disclosing Party's Confidential Information in a manner consistent with this ICO Agreement. The Receiving Party may disclose some or all of the Confidential Information to the Authorised Person(s) provided that prior to such disclosure, the Receiving Party must inform the Authorised Person(s) that he is obligated to protect the Disclosing Party's Confidential Information in a manner consistent with this ICO Agreement and shall take reasonable steps to ensure that the Authorised Person(s) safeguards the Confidential Information. In any event, the Receiving Party shall remain liable for any disclosure by the Authorised Person(s) to any other person.

**19.7** A Receiving Party may disclose Confidential Information to a Related Corporation to the extent necessary under this ICO Agreement, subject to the Related Corporation undertaking to comply with obligations equivalent to those contained in this clause

19. In any event, the Receiving Party shall remain liable for any disclosure of the Disclosing Party's Confidential Information by such Related Corporation to any other person.

**19.8** Save as provided under this ICO Agreement, no news releases, public announcements or any other form of publicity concerning this ICO Agreement or the terms of this ICO Agreement shall be conducted or released by the Receiving Party without the prior written consent of the Disclosing Party.

**19.9** The Receiving Party's obligations hereunder shall not apply to Confidential Information if the same:

- (a) is in or enters the public domain, other than by breach by the Receiving Party or any of its Authorised Persons of this ICO Agreement;
- (b) is known to the Receiving Party on a non-confidential basis prior to disclosure under this ICO Agreement, at the time of first receipt, or thereafter becomes known to the Receiving Party or any of its Authorised Persons without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or
- (c) is or has been developed independently by the Receiving Party without reference or reliance on the Disclosing Party's Confidential Information.

**19.10** Except as otherwise provided in this ICO Agreement, a Receiving Party may not disclose the Confidential Information of the Disclosing Party except in the following circumstances:

- (a) the disclosure is authorised in writing by the Disclosing Party to the extent of that authority;
- (b) the disclosure is made pursuant to a directive issued by the Authority or any judicial, statutory or Governmental Agency;
- (c) the disclosure is made to the Authority:
  - (i) for the purpose of registration of this ICO Agreement or any amendment, modification or alteration of this ICO Agreement;

- (ii) under or pursuant to the IDA Act or the Act or under or pursuant to the Disclosing Party's or the Receiving Party's Licence;
  - (iii) for the purpose of a review by the Authority or a determination by the Authority; or
  - (iv) as otherwise specified in this ICO Agreement;
- (d) the disclosure is made to Emergency Service Organisations;
- (e) the disclosure is made to any arbitrator or expert appointed to resolve disputes under this ICO Agreement; or
- (f) the disclosure is made pursuant to any applicable laws, rules, regulations or directions of a statutory or regulatory authority or stock exchange or order of a relevant court of law.

**19.11** The Receiving Party shall inform the Disclosing Party of any disclosures to Third Parties under clause 19.10 prior to any such disclosure, so as to provide, where circumstances reasonably permit, the Disclosing Party with the opportunity to take appropriate actions to mitigate or prevent the disclosure.

**19.12** A Receiving Party shall exercise no lesser security or degree of care than that Party applies to its own Confidential Information of an equivalent nature, but in any event not less than the degree of care which a reasonable person with knowledge of the confidential nature of the information would exercise.

**19.13** Confidential Information provided by one Party to the other Party is provided for the benefit of that Party only and shall be used solely for the purposes for which it is disclosed.

**19.14** Each Party hereby irrevocably covenants to keep the other Party fully and effectively indemnified against all actions, claims, costs, damages, deficiencies, demands, expenses, liabilities and losses (including all legal costs incurred on a full indemnity basis) that may be suffered, incurred or sustained by the other Party in consequence of or in connection with any breach of this clause 19 by the first-mentioned Party.

**19.15** Each Party acknowledges that a breach of this clause 19 by one Party may cause the other Party irreparable damage for which monetary damages would not be an



adequate remedy. Accordingly, in addition to other remedies that may be available, a Party may seek injunctive relief against such a breach or threatened breach.

**19.16** All written Confidential Information or any part thereof (including, without limitation, information incorporated in computer software or held in electronic storage media) together with any analyses, compilations, studies, reports or other documents or materials prepared by the Receiving Party or on its behalf which reflect or are prepared from any of the Confidential Information provided by the Disclosing Party shall be returned to the Disclosing Party or destroyed by the Receiving Party, when requested by the Disclosing Party at any time, or when the Receiving Party's need for such information has ended or when this ICO Agreement expires or is terminated, whichever is earlier. In the event of destruction, the Receiving Party shall certify in writing to the Disclosing Party within thirty (30) Calendar Days, that such destruction has been accomplished. The Receiving Party shall make no further use of such Confidential Information nor retain such Confidential Information in any form whatsoever.

**19.17** The Parties acknowledge that the provisions of this clause 19 shall continue in full force and effect regardless of variations, assignments or termination of other provisions of this ICO Agreement. The obligation to maintain confidentiality of the Confidential Information provided hereof and the undertakings and obligations in this clause 19 shall continue for two (2) years upon the expiry or termination of this ICO Agreement.

**19.18** This ICO Agreement contains the entire understanding between the Parties with respect to the safeguarding of the Confidential Information and supersedes all prior communications and understandings with respect thereto.

## **20. CUSTOMER RELATIONSHIP**

**20.1** The Parties shall implement all matters agreed to in respect of customer relationship and billing procedures as set out in Schedule 16 on such terms and conditions as shall be consistent with the Authority's applicable principles and guidelines.

**20.2** For the avoidance of doubt, the Requesting Licensee acknowledges that it will be solely responsible for billing its own Customers for the services it provides to them.

**20.3** Where a Requesting Licensee receives Services under this ICO Agreement, the Requesting Licensee acknowledges and agrees that notwithstanding any failure by any of its Customers to pay in respect of a Service, the Requesting Licensee is liable

to OpenNet in respect of the relevant Charges for Services supplied under this ICO Agreement.

**21. REQUESTING LICENSEE'S REPRESENTATIONS AND COMMUNICATIONS**

**21.1** The Requesting Licensee may advise its Customers that Services are provided by OpenNet to the Requesting Licensee. The Requesting Licensee must inform its Customers that it is, at all times, solely responsible for the provision of services to its own Customers, and that OpenNet only provides the passive infrastructure and does not participate in the provision of the Requesting Licensee's services.

**21.2** Where the Requesting Licensee communicates with its Customers, such communications must not falsely attribute to OpenNet:

- (a) blame for a fault or circumstance;
- (b) the need for network maintenance or upgrade; or
- (c) the interruption or suspension of a service,

provided that this requirement does not permit the Requesting Licensee to engage in unethical, misleading or deceptive conduct.

**21.3** Neither Party nor its representatives and agents may represent expressly, impliedly, or by omission or implication that:

- (a) it is approved by, an agent of, or affiliated with the other Party;
- (b) in the case of the Requesting Licensee, that it is OpenNet, for example, by claiming it is "from OpenNet" or, in the case of OpenNet, that it is the Requesting Licensee;
- (c) it has a special relationship with the other Party or special pricing from the other Party; or
- (d) the services provided by it to its Customers are the other Party's services.

## **22. ASSIGNMENT**

- 22.1** This ICO Agreement shall be binding upon and enure to the benefit of each of the Parties and its successors and permitted assigns.
- 22.2** Subject to clause 22.3, either Party may assign or transfer any or all of its rights under this ICO Agreement, subject to the prior written consent of the other Party, such consent not to be unreasonably withheld, provided that such assignee has an FBO or SBO Licence granted to it under the Act or is a Broadcasting Licensee, and provided further that the assigning Party will continue to remain fully responsible for the performance of all obligations owed to the other Party under the ICO Agreement.
- 22.3** The assigning Party shall give notice to the other Party of any assignment to be made seeking the other Party's consent as soon as practicable. The other Party may require the assigning Party to provide reasonable assurance that the assigning Party will remain fully responsible for the performance of all obligations owed to the other Party under the ICO Agreement.
- 22.4** Neither Party may delegate its obligations under this ICO Agreement (**novation**) without obtaining the prior written consent of the other Party.

## **23. WAIVERS**

- 23.1** No failure on the part of either Party to exercise, and no delay on its part in exercising, any right or remedy under this ICO Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof under this ICO Agreement or the exercise of any other right or remedy. Subject to clause 14 and any other clauses of this ICO Agreement specifying an exclusive remedy, the rights and remedies provided in this ICO Agreement are cumulative and not exclusive of any other rights or remedies (whether provided by law or otherwise).
- 23.2** Any consent or waiver by a Party under any provision of this ICO Agreement must be in writing signed by the Party or Parties to be so bound. Any such waiver or consent may be given subject to any conditions thought fit by that Party and shall be effective only in the instance and for the purpose for which it is given.

## **24. SERVING OF NOTICES AND COMMUNICATIONS**

**24.1** All notices, demands or other communications required or permitted to be given or made under or in connection with this ICO Agreement shall be in writing and shall be sufficiently given or made if:

- (a) delivered by hand, at the time of delivery;
- (b) sent by pre-paid registered post, on the third Business Day after posting; or
- (c) sent by legible facsimile transmission, on receipt by the sender of an acknowledgement or transmission report generated by the device or machine from which the facsimile was sent.

If to OpenNet:

OpenNet Pte. Ltd.  
152 Beach Road #31-05/08, Gateway East  
Singapore 189721

Fax: 6294 1218  
Attn: Director (Regulatory & Interconnect)

If to the Requesting Licensee:

**24.2** Unless otherwise specified, all notices, demands or other communications required or permitted to be given or made under or in connection with this ICO Agreement made in accordance with clause 24.1 received by a Party on a day not being a Business Day, will be deemed to be received the next Business Day.

**24.3** Either Party may from time to time notify the other Party of a change of address or facsimile number.

**24.4** Each Party must designate a primary and secondary contact person at an operational level for the purposes of general administration and implementation of this ICO Agreement.

OpenNet Primary Contact:

Name: Business Development Manager

Telephone: 6603 5140

Fax: 6294 1218

Email: sales@opennet.com.sg

OpenNet Secondary Contact:

Name: Director (Business Development & Communications)

Telephone: 6595 9076

Fax: 6294 1218

Email: sales@opennet.com.sg

Requesting Licensee's Primary Contact:

Requesting Licensee's Secondary Contact:

**24.5** Either Party may from time to time notify the other Party of changes to the details of their respective primary and secondary contacts.

## **25. ENTIRE AGREEMENT**

**25.1** This ICO Agreement represents the entire understanding between the Parties concerning the provision of the Services.

**25.2** This ICO Agreement together with its Schedules supersedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written, in relation to the subject matter of this ICO Agreement.

## **26. GOOD FAITH AND NON-EXCLUSIVITY**

**26.1** Each Party agrees that it will act in good faith in relation to the other Party with respect to all matters relating to or contemplated by this ICO Agreement.

**26.2** Subject to clause 2.1 of Part 1 of this ICO Agreement, the Parties acknowledge that nothing in this ICO Agreement shall prevent, limit or restrict in any way whatsoever either Party from supplying any Service to any person by means of such Party's nNetwork.

**26.3** Subject to clause 2.1 of Part 1 of this ICO Agreement, neither Party shall be prohibited in any way whatsoever from entering into an agreement with another person for similar Services.

## **27. PARTIAL INVALIDITY**

**27.1** If any provision of this ICO Agreement shall be held to be illegal, invalid or unenforceable in any respect under any applicable law, then the remainder of this ICO Agreement, or the application of such provision to other situations or circumstances shall not be affected, and the Parties agree to amend this ICO Agreement to reflect the original intention of the Parties and/or the directions of the Authority (where applicable) to the extent permissible by such applicable law.

## **28. COSTS AND EXPENSES**

**28.1** The Parties agree to bear their own legal and other costs incurred in relation to the preparation, negotiation and execution of this ICO Agreement and all documents contemplated by it, except where this ICO Agreement or those other documents expressly provide to the contrary.

## **29. INDEPENDENT CONTRACTORS AND AGENCY**

**29.1** Each Party is and shall remain at all times an independent contractor fully responsible for its own acts or defaults (including those of its employees or agents). Neither Party is authorised and neither of the Parties nor their employees, agents or representatives shall at any time attempt to act or act on behalf of the other Party to bind the other Party in any manner whatsoever to any obligations. Neither Party nor its employees, agents or representatives shall engage in any acts which may lead any person to believe that such Party is an employee, agent or representative of the other Party. Nothing in this ICO Agreement shall be deemed to constitute a partnership between the Parties.

**29.2** If either Party appoints an agent for the purposes of this ICO Agreement, and notifies the other Party, then the other Party shall deal with the appointed agent for such

purposes until the first Party notifies the other Party that the appointment has been terminated.

**30. GOVERNING LAW**

**30.1** The interpretation, validity and performance of this ICO Agreement shall be governed in all respects by the laws of the Republic of Singapore, including the Code.

**31. DISPUTE RESOLUTION**

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

**31.2** The Parties will comply with the Dispute Resolution Procedures in relation to any disputes which arise under this ICO Agreement.

**32. AMENDMENTS**

**32.1** This ICO Agreement will be automatically amended in accordance with any amendments to the OpenNet ICO approved or required by the Authority from time to time and the Parties will accept and abide by such amendments.

**SIGNED** as an agreement.

**SIGNED** by \_\_\_\_\_ as authorised  
signatory for \_\_\_\_\_ in the presence  
of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of

\_\_\_\_\_  
Name of witness

**SIGNED** by \_\_\_\_\_ as authorised  
signatory for \_\_\_\_\_ in the presence  
of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of

\_\_\_\_\_  
Name of witness



## ATTACHMENT A

### NOTIFICATION OF ACCEPTANCE OF ICO – OPENNET INTERCONNECTION OFFER

If a NetCo QP seeks to interconnect with OpenNet on the prices, terms and conditions contained in OpenNet's Interconnection Offer (**ICO**), that FBO, SBO or Broadcasting Licensee must submit this written Notification of Acceptance of ICO to OpenNet in the form as provided in this Attachment A to the ICO.

A NetCo QP who submits this Notification of Acceptance of ICO to OpenNet shall be known as the **Requesting Licensee**. The Requesting Licensee, by submitting the Notification of Acceptance of ICO, will become bound by the provisions of Part 1 of this ICO Agreement, including the representations and warranties contained in clause 3.

If OpenNet finds this Notification of Acceptance of ICO to be non-conforming according to the criteria in Part 1 of OpenNet's ICO, it will follow the procedures stipulated therein.

Is acceptance of ICO on an interim basis pending adoption of a Customised Agreement?:

YES /  NO (delete where inapplicable)

The Requesting Licensee is:

*Name of company:*

*Company registration number:*

*Having its registered office at:*

The Requesting Licensee holds the following telecommunication system licence or broadcasting licence:

*(Please tick the appropriate box)*

- FBO ..... [ ]
- SBO ..... [ ]
- Broadcasting Licensee ..... [ ]

The Requesting Licensee's designated contact person in Singapore is:

Name: \_\_\_\_\_

Email Address: \_\_\_\_\_

Singapore Telephone Number: \_\_\_\_\_

Singapore Facsimile Number: \_\_\_\_\_

The Requesting Licensee requests the following Mandated Services:

*(Please tick the appropriate boxes)*

- Schedule 1 – Residential End-User Connection [ ]
- Schedule 2 – Non-Residential End-User Connection [ ]
- Schedule 3 – NBAP Connection [ ]
- Schedule 4 – CO to CO Connection [ ]
- Schedule 5 – CO to Building MDF Room Connection [ ]
- Schedule 6 – Building MDF Room to FTTB Node Connection [ ]
- Schedule 7 – FTTB Node to DP Connection [ ]

Schedule 8 – Building MDF Room to Residential Premise Connection	[ ]
Schedule 9 – Building MDF Room to Non-Residential Premise Connection	[ ]
Schedule 10 – CO to NBAP DP Connection	[ ]
Schedule 11 – NBAP DP to NBAP TP Connection	[ ]
Schedule 12 – Co-location Service	[ ]
Schedule 12A – RL to RL Interconnection Service	[ ]
Schedule 13 – Patching Service	[ ]
<u>Schedule 14 – OSS/BSS Connection &amp; Professional Service</u>	<u>[ ]</u>

The following sections are common to all ICO Agreements:

Main Body .....	[ ✓ ]
Schedule 15 – Charges .....	[ ✓ ]
Schedule 16 – Billing .....	[ ✓ ]
Schedule 17 – Dispute Resolution .....	[ ✓ ]
Schedule 18 – Dictionary .....	[ ✓ ]

The Requesting Licensee must provide to OpenNet along with its Notification of Acceptance of ICO, at its sole cost and expense, the following:

- Evidence of the insurance required under clause 17 of the ICO Agreement;
- A banker's guarantee or security deposit (at the Requesting Licensee's option) of either S\$10,000 or S\$30,000 depending on the Requesting Licensee's estimated initial Monthly Recurring Charge; and
- Evidence of the type of telecommunications licence or broadcasting licence held by the Requesting Licensee.

OpenNet may at its own discretion, amend the Requesting Licensee's credit, security and insurance requirements in accordance with the ICO Agreement.

## ATTACHMENT B

### ACCEPTANCE OF ADDITIONAL MANDATED SERVICE

**Additional Mandated Services** are Services as defined in this ICO Agreement, but which are not currently being supplied to the Requesting Licensee.

If a NetCo QP has already entered into an ICO Agreement with OpenNet on the prices, terms and conditions contained in OpenNet's ICO, and that NetCo QP desires any Additional Mandated Service covered by the ICO, it must submit this written Acceptance of Additional Mandated Service to OpenNet in the form as provided in this Attachment B to the ICO.

A NetCo QP who submits this Acceptance of Additional Mandated Service to OpenNet shall be known as the **Requesting Licensee**. The Requesting Licensee, by submitting the Acceptance of Additional Mandated Service, will become bound by the provisions of Part 1 of this ICO Agreement, including the representations and warranties contained in clause 3.

If OpenNet finds this Acceptance of Additional Mandated Service to be non-conforming according to the criteria in Part 1 of OpenNet's ICO, it will follow the procedures stipulated therein.

The Requesting Licensee is:

*Name of company:*

*Company registration number:*

*Having its registered office at:*

The Requesting Licensee holds the following telecommunication system licence or broadcasting licence:

*(Please tick the appropriate box)*

- FBO ..... [ ]
- SBO ..... [ ]
- Broadcasting Licensee ..... [ ]

The Requesting Licensee's designated contact person in Singapore is:

Name: \_\_\_\_\_

Email Address: \_\_\_\_\_

Singapore Telephone Number: \_\_\_\_\_

Singapore Facsimile Number: \_\_\_\_\_

The Requesting Licensee requests the following additional Mandated Services:

*(Please tick the appropriate boxes)*

- Schedule 1 – Residential End-User Connection [ ]
- Schedule 2 – Non-Residential End-User Connection [ ]
- Schedule 3 – NBAP Connection [ ]
- Schedule 4 – CO to CO Connection [ ]
- Schedule 5 – CO to Building MDF Room Connection [ ]
- Schedule 6 – Building MDF Room to FTTB Node Connection [ ]
- Schedule 7 – FTTB Node to DP Connection [ ]
- Schedule 8 – Building MDF Room to Residential Premise Connection [ ]
- Schedule 9 – Building MDF Room to Non-Residential Premise Connection [ ]

Schedule 10 – CO to NBAP DP Connection	[ ]
Schedule 11 – NBAP DP to NBAP TP Connection	[ ]
Schedule 12 – Co-location Service	[ ]
Schedule 12A – RL to RL Interconnection Service	[ ]
Schedule 13 – Patching Service	[ ]
<u>Schedule 14 – OSS/BSS Connection &amp; Professional Service</u>	<u>[ ]</u>

The Requesting Licensee must provide to OpenNet along with its Acceptance of Additional Mandated Service, at its sole cost and expense, the following:

- Evidence of the insurance required under clause 17 of the ICO Agreement; and
- Evidence of the type of telecommunications licence or broadcasting licence held by the Requesting Licensee.

OpenNet may at its own discretion, amend the Requesting Licensee's credit, security and insurance requirements in accordance with the ICO Agreement.

## ATTACHMENT C – MODIFICATION REQUIRED

**IDA Directed Modifications: For drafting consistency in Attachment C, words such as “this Guarantee”, and “this guarantee” should be amended to “The Guarantee” or “the Guarantee”. Accordingly, IDA directs OpenNet to propose, for IDA’s approval, modifications to Attachment C to ensure drafting consistency. JON 28 Mar 12 : Amended as per IDA’s Direction.**

### ATTACHMENT C

#### FORM OF BANKER’S GUARANTEE

OpenNet Pte. Ltd  
Finance Department  
No. 152 Beach Road, Gateway East #31-05/08 Singapore 189721

Dear Sirs,

Banker’s Guarantee No. XXXX for S\$X000-00.

1. In consideration of OpenNet Pte. Ltd. (hereinafter called “**OpenNet**”) having agreed to provide [*Company name and Address*] (hereinafter called “**the Customer**”) with certain agreed mandated services (hereinafter called “**Mandated Services**”) pursuant to an interconnection agreement between OpenNet and the Customer ((hereinafter called “**ICO Agreement**”), we [*banker’s name*] of [*banker’s business address*] (hereinafter called “**the Guarantor**”) hereby unconditionally and irrevocably undertake to pay to OpenNet on demand all sums of monies which shall at any time be due and owing by the Customer to OpenNet in relation to the ICO Agreement, up to a limit of Singapore Dollars X Thousand Only (hereinafter called “**the Guarantee**”). It is further agreed that the Guarantor shall not concern itself with whether any sums claimed are properly payable to OpenNet by the Customer or with whether any event or transaction giving rise to any claims actually occurred within the validity period of ~~the~~**is** Guarantee.
2. ~~The~~**is** Guarantee shall be valid from X<sup>th</sup> day of X 2009 to the X<sup>th</sup> day of X 2010 and shall be automatically renewed on an annual basis until:
  - (a) the Guarantor is advised by OpenNet that the Guarantee is no longer required; or



- (a) the Guarantor gives three (3) months notice to OpenNet by registered mail prior to the expiry date of the current guarantee or any renewed guarantee of its intention not to renew, whereupon the current guarantee or renewed guarantee shall automatically expire on the expiry date of the current guarantee or renewed guarantee.
3. Any claim under ~~the~~is Guarantee must be made in writing within three (3) calendar months from the expiry date.
4. ~~The~~is Guarantee shall be governed by the laws of the Republic of Singapore.
5. A notification by the Chief Executive Officer [or Managing Director] or an authorized officer of OpenNet to the Guarantor that a sum of monies is due and owing by the Customer to OpenNet shall be deemed to be conclusive in respect thereof.
6. The Guarantor further agrees that it shall not be discharged or released from this guarantee by any arrangement made between the Customer and OpenNet with or without the Guarantor's assent or by any alteration in the obligations undertaken by the Customer or by any forbearance whether as to payment or otherwise.
7. ~~The~~is Guarantee is not transferable in any form whatsoever.

Dated this Xth day of X 2009.

Signed by:

(Bank officer)

or and behalf of

(Name of banker)