

## EXPLANATORY MEMORANDUM

1. This Explanatory Memorandum:
  - (a) explains the key issues related to IDA's direction dated 3 July 2012 ("**Further Direction**"), issued by IDA to OpenNet Pte Ltd ("**OpenNet**"), directing it to incorporate specific drafting language into its Interconnection Offer ("**ICO**"); and
  - (b) summarises IDA's decision ("**Decision on Reconsideration**") in respect of OpenNet's request to IDA dated 12 March 2012 ("**Reconsideration Request**") to reconsider certain aspects of IDA's direction dated 27 February 2012 ("**Direction**"), wherein IDA had directed OpenNet to propose certain modifications to its ICO.
2. Unless the context requires otherwise, all capitalised terms used in this Explanatory Memorandum shall have the same meanings as in the ICO.

### **PART I: INTRODUCTION & BACKGROUND**

3. IDA commenced the review of OpenNet's ICO in 2011. As part of the review, OpenNet submitted various proposed changes to its ICO ("**Draft Revised ICO**") for IDA's approval and review. On 8 November 2011, IDA commenced a public consultation to gather public feedback on the Draft Revised ICO, which closed on 30 December 2011 ("**First Public Consultation**").

#### **IDA's Direction**

4. After having carefully considered OpenNet's submissions as well as the feedback received, by way of direction dated 27 February 2012, IDA directed OpenNet to modify certain provisions of its ICO ("**Required Modifications**"), and to submit a revised proposed ICO ("**Revised Proposed ICO**") incorporating the Required Modifications for IDA's approval.

#### **OpenNet's Reconsideration Request**

5. On 12 March 2012, OpenNet submitted its Reconsideration Request to IDA, requesting IDA to reconsider certain aspects of the Direction.

#### **Submission of Revised Proposed ICO**

6. Notwithstanding OpenNet's Reconsideration Request, OpenNet was required to submit its Revised Proposed ICO incorporating all the Required Modifications for IDA's review and approval.

7. On 28 March 2012 and 11 April 2012, OpenNet submitted, in two parts, its Revised Proposed ICO incorporating the Required Modifications.

### **Public Consultation on OpenNet's Revised Proposed ICO**

8. In connection with OpenNet's submission of its Revised Proposed ICO, IDA received requests from the industry to comment on OpenNet's proposed modifications to the Draft Revised ICO. IDA considered the industry's requests and was of the view that there was merit in getting the industry to provide feedback on the potential technical, operational and commercial challenges of OpenNet's Revised Proposed ICO. Consequently, on 18 April 2012, IDA commenced a public consultation on OpenNet's Revised Proposed ICO ("**Second Public Consultation**").
9. By the close of the Second Public Consultation on 7 May 2012, IDA received comments from four respondents, namely: M1 Limited, Nucleus Connect Pte Ltd, Singapore Telecommunications Ltd, and StarHub Ltd.

### **IDA's Decision on Reconsideration**

10. IDA has carefully considered OpenNet's representations before coming to a decision on OpenNet's Reconsideration Request ("**Decision on Reconsideration**").
11. Arising from IDA's Decision on Reconsideration, certain parts of the Required Modifications as set out in the Direction have been varied. The variations to the Required Modifications are summarised in this Explanatory Memorandum.
12. Given that the Next Generation Nationwide Broadband Network ("**Next Gen NBN**") is currently at the crucial stage of being rolled out to all areas of Singapore, IDA considers that there is a need for the present review of OpenNet's ICO to be completed in a timely fashion, so as to prevent operational issues involving the Next Gen NBN Network Company ("**NetCo**") layer from having any sustained and adverse impact on the Next Gen NBN industry ecosystem.
13. Therefore, in order to ensure timely completion of the present review, IDA has, in its Further Direction, directed OpenNet to incorporate specific language to give effect to the variations to the Required Modifications arising from the Decision on Reconsideration.

## **PART II: OPENNET'S RECONSIDERATION REQUEST AND IDA'S DECISION ON RECONSIDERATION**

14. On 12 March 2012, OpenNet submitted its Reconsideration Request to IDA in respect of the following items:

- (a) Bypassing Requesting Licensees (also known as Operating Companies)/Retail Service Providers;
  - (b) Maximum Quota;
  - (c) Service Provisioning Delays;
  - (d) Self-Provision of Non-Building Address Point First Termination Points by Requesting Licensees; and
  - (e) Force Majeure.
15. On 3 July 2012, IDA issued its Decision on Reconsideration to OpenNet in respect of the above items. Pursuant to IDA's Decision on Reconsideration, IDA varied its Direction with respect to two of the above items, as summarised below.

**Maximum Quota (Differentiation of Quota)**

16. In the Direction, IDA had required OpenNet to propose a new quota sufficient to meet the increasing demand for Next Gen NBN services. In this regard, IDA had determined that it would be inefficient to split the quota to have a separate pool of capacity to cater to different types of orders. Accordingly, IDA had stipulated that OpenNet's newly proposed quota should not have any restrictions (i.e., it should not be differentiated by the type of premise or type of provisioning work to be carried out), and it should be common to all Basic Mandated Services and Layer 1 Redundancy Services (i.e., there should not be separate quotas for Residential and Non-Residential orders).
17. In OpenNet's Reconsideration Request, OpenNet made various submissions to the effect that there was a need to have separate quotas due to differences in scope of work for different orders. Following careful consideration of OpenNet's submissions, IDA was of the view that it would not be unreasonable to expect OpenNet, as a commercial service provider, to have measures in place to manage its capacity to fulfil different types of orders. IDA further noted that the industry had expressed preference during the First Public Consultation for a separate quota to be applied to Non-Residential orders, so that Non-Residential orders would not be delayed when the quota was fully utilised by Residential orders.
18. Having duly considered all the relevant factors, in particular the need to ensure timely provisioning of Non-Residential orders, IDA determined that, on balance, it would be reasonable to allow OpenNet to have a quota for Non-Residential orders, separate from the quota for all other orders.

19. Accordingly, IDA has varied its Direction, by replacing paragraph 14(c) of the accompanying Explanatory Memorandum to the Direction with the following:

*"IDA has carefully considered the issue of splitting the quota and is agreeable for OpenNet to have two quotas – one quota for Non-Residential orders and an overall quota for all other orders; and".*

### **Force Majeure**

20. In the Required Modifications to clause 13.1 of the Main Body of the ICO ("**Clause 13.1**"), IDA had considered that OpenNet must be responsible for the acts of its suppliers and/or contractors and cannot rely on the wording of Clause 13.1 to evade such responsibility. Accordingly, IDA had directed OpenNet to propose modifications to give effect to such requirement. As an example of drafting language that OpenNet might adopt to fulfil this requirement, IDA had suggested that IDA be granted the right to determine whether such suppliers and/or contractors are parties for whom the affected party is responsible.
21. In OpenNet's Reconsideration Request, OpenNet had requested IDA to reconsider whether IDA would require the right to determine whether "*such suppliers and/or contractors are parties for whom the affected Party is responsible*". IDA notes that OpenNet did not object to the principle stated in the Direction and the rationale behind the Direction, which is to prevent a Party to the ICO from attempting to excuse itself from non-performance of its obligations under the ICO arising from failure or delay by that Party's suppliers and/or contractors.
22. In this regard, IDA's overriding policy position is that where a Party engages suppliers and/or contractors, the Party must assume liability for the failure or delay by its suppliers and/or contractors. This is because no licensee may "contract out" of its regulatory obligations owed to IDA by entering into private contractual arrangements with third parties. Furthermore, it is always open to the Party to impose on its suppliers and/or contractors contractual terms which would guard against such events and provide for adequate remedies if such events nevertheless occurred.
23. Having given due regard to OpenNet's submissions, IDA is of the view that it need not exercise the right to determine whether "*such suppliers and/or contractors are parties for whom the affected Party is responsible*". Instead, it would be more efficient, in the case of any dispute, for such question to be determined as part of the applicable process for dispute resolution under the ICO.

24. In the premises, IDA has varied its Direction, by replacing the Required Modification to Clause 13.1 with the following:

*“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 such suppliers and/or contractors are parties for whom the affected Party is not responsible.’”.*

#### **Other Items**

25. Save for the above variations, the Direction remains unchanged.

### **PART III: SUMMARY OF COMMENTS RECEIVED DURING THE SECOND PUBLIC CONSULTATION AND IDA’S DIRECTED AMENDMENTS**

26. The following paragraphs highlight the key issues arising from the Second Public Consultation. The other issues are addressed in the respective Appendices to the Further Direction.

#### **Section 1 – Quota Level and Quota Adjustment Mechanism**

27. As stated above (at paragraph 16), IDA’s Direction had required OpenNet to propose a new quota sufficient to meet the increasing demand for Next Gen NBN services. In addition, IDA’s Direction had further required OpenNet to propose a mechanism to allow for adjustments to its newly proposed quota on an ongoing basis, as well as to ensure that the proposed mechanism would account for and accommodate increased demand to cater to seasonal fluctuations (e.g., IT fairs).

#### *OpenNet’s Proposal*

28. In OpenNet’s Revised Proposed ICO (in particular, Schedules 1 and 2 thereof), OpenNet had proposed two versions of changes to its quota.
- (a) **Version 1** did not differentiate by the type of premise or the type of provisioning work to be carried out (i.e., a single Maximum Quota).

- (b) **Version 2** contained several quotas, which were differentiated by (i) the type of Mandated Service (e.g., Residential End-User Connections and Non-Residential End-User Connections), and (ii) by the type of situation for the same Residential End-User Connection Service (e.g., High-rise Residential Premises and Landed Residential Premises).
29. In respect of the adjustment mechanism, OpenNet had proposed (for both Versions 1 and 2):
- (a) if OpenNet finds that more than 95% (or less than 80%) of the quota had been used consistently over a period of twelve (12) weeks preceding the review month (namely, January, April, July and September), OpenNet would increase (or decrease) its daily quota for the quarter in which the review month occurs;
  - (b) Requesting Licensees would be required to provide OpenNet with rolling forecasts, to ensure better capacity planning; and
  - (c) for seasonal increase in demand during quarterly major fairs, the Maximum Quota would be supplemented by Seasonal Slots (i.e., temporary increase of installation slots in excess of the Maximum Quota). Such Seasonal Slots would be subject to terms and conditions stated by OpenNet in its Seasonal Slots Notification to be provided to Requesting Licensees separately from the ICO.

#### *Industry Submission*

30. Respondents commented that the quota level proposed by OpenNet was not adequate. One respondent suggested that the quota level should be increased to at least 5,000 orders per week. The same respondent also cited a newspaper article which suggested that weekly demand figures could reach up to 5,600 orders per week.
31. There were also comments that the level of usage proposed by OpenNet for triggering the quota review mechanism, i.e., 95%, was too high. Comments were also received that the interval of twelve (12) weeks between reviews was too long, and some respondents suggested having shorter intervals. There were further comments that OpenNet had not provided sufficient commitment and details on the number of orders (i.e., the quantum) to be added to its quota in situations where the review thresholds were met.
32. In addition, there were comments that Requesting Licensees should not be required to provide OpenNet with rolling forecasts, as the aggregation of Requesting Licensees' individual forecasts would likely result in an unrealistic forecast of overall demand. Instead, it was commented that it would be more realistic for OpenNet to base its

capacity planning on the overall demand from all Requesting Licensees for the past quarter.

33. There were also comments to the effect that OpenNet should clarify the terms and conditions for Seasonal Slots. Comments were also received that the Seasonal Slots provided by OpenNet should be subject to the same terms and conditions as those in the ICO.

#### *IDA's Assessment*

34. With regard to the appropriate quota levels, IDA considers that as far as possible, there should be efficient allocation of resources to meet the demand for OpenNet's services. Therefore, while IDA considers that it is imperative for OpenNet to have in place sufficient service provisioning quota to meet the demand for Next Gen NBN services, IDA also considers that a quota level which is unduly high would lead to inefficient allocation and/or utilisation of valuable resources. In this regard, IDA notes that the figure of 5,600 weekly orders as cited above represents the upper limit of fluctuations in demand and is not representative of the general demand for OpenNet's services. Clearly, it is neither realistic nor practical to require OpenNet to set its regular quota level based on a peak or extreme figure.
35. Recent demand<sup>1</sup> has shown that: (a) there is an upward trend in the take-up of Next Gen NBN services; (b) the quarter-on-quarter growth is close to 10% on average; and (c) the industry demand for Next Gen NBN services<sup>2</sup> in the past 4 months was about 530 orders per Business Day.
36. Having considered the recent industry demand, comments from the respondents and OpenNet's proposal, and in view of the fact that the review mechanism will allow the quota level to be dynamically adjusted according to demand over time and that the quota would be further supplemented by a separate mechanism to cater to seasonal increases in demand due to major fairs, IDA considers that, on balance, it would be reasonable to set the following quota levels for a start: (a) 580 per Business Day<sup>3</sup> for the overall quota; and (b) 40 per Business Day<sup>4</sup> for orders for Non-Residential End-User Connections.
37. With regard to OpenNet's proposed thresholds of 95% and 80% for triggering the adjustment mechanism as well as the review interval of

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<sup>1</sup> "Normalised" to reduce the effect of seasonal increase in demand during quarterly major fairs

<sup>2</sup> Excluding the Non-Residential End-User Connections

<sup>3</sup> This is approximately 110% of the average demand of the past quarter (530 orders per Business Day) and should meet the industry demand until the quota is next reviewed (in the next quarter).

<sup>4</sup> Based on the past industry demand, the proposed quantum by OpenNet for Non-Residential End-User Connections under its version 2 should meet the demand.

twelve (12) weeks, IDA notes that, apart from the objections received from some industry respondents to these thresholds and the interval, there was a lack of compelling data or other reasons to explain why they are not workable. In the premises, IDA considers that it would not be unreasonable to accept the thresholds of 95% and 80% as well as the review interval of twelve (12) weeks as proposed by OpenNet. IDA may review these thresholds and the interval in future where appropriate.

38. As for the quantum to be added to OpenNet's quotas when the review thresholds are met, IDA agrees that there is a need to provide the industry with some measure of certainty on this issue. In particular, IDA is of the view that it would be reasonable to expect that the newly adjusted quota would be sufficient to meet public demand for OpenNet's services. Taking into account the historical demand for OpenNet's services and other relevant factors, IDA considers that it would be appropriate to require OpenNet to ensure that, following each adjustment of the quota, the new quota should not be less than 110% of the average demand over the preceding twelve (12) weeks to cater for demand growth. IDA may review this adjustment parameter if it is appropriate in the circumstances to do so.
39. With regard to OpenNet's proposal to require Requesting Licensees to provide rolling forecasts, IDA agrees that there may be practical difficulties for Requesting Licensee to do so. Considering that OpenNet has also not provided any details to explain how such forecasts would be adopted in assisting OpenNet to adjust the quotas and plan its capacity, IDA considers that it would be reasonable to remove the requirement for Requesting Licensees to provide rolling forecasts to OpenNet. IDA believes that the dynamic quota adjustment mechanisms in the ICO, based on historical demand, will provide sufficient information about the market demand trend to assist OpenNet in its capacity planning.
40. On the seasonal fluctuations in demand (e.g., IT fairs) and the provision of Seasonal Slots by OpenNet, IDA considers that it would be reasonable to expect the charges for Seasonal Slots to be the same as those for normal orders under the ICO (i.e., OpenNet should not levy a higher charge for Seasonal Slots than for normal orders). The above is consistent with the principle that was previously expressed in the Explanatory Memorandum to the Direction.
41. Furthermore, given the ad-hoc nature of such seasonal fluctuations in demand, IDA considers that it would be more efficient to allow OpenNet the flexibility to manage its operations, including the number of Seasonal Slots and the duration for which such Seasonal Slots would be in place. That said, IDA expects OpenNet to put in place adequate arrangements to handle seasonal fluctuations. In this regard, unless there are exceptional fluctuations in demand, IDA would generally



expect OpenNet to provide sufficient Seasonal Slots to enable it to fulfil seasonal demands within a reasonable period of time, which shall be in-line with any Quality of Service standards that IDA may issue from time-to-time, as the current long provisioning lead time is unacceptable. In addition, in order to provide a measure of certainty to Requesting Licensees, IDA considers that OpenNet should be required to provide the Seasonal Slots Notification, containing relevant and adequate details of the Seasonal Slots, to Requesting Licensees at least two (2) weeks prior to actual implementation of the Seasonal Slots to allow the Requesting Licensees to make the necessary preparations and adjustments to their own operations.

42. As there is a need to ensure that the terms of the ICO remain relevant going forward, IDA will continue to monitor market developments with a view to ensuring that OpenNet maintains sufficient service provisioning capacity to meet demand for its services. Therefore, IDA may further review any part of OpenNet's quota, including but not limited to the level of OpenNet's quota and the adjustment mechanism, in the future where appropriate.

## **Section 2 – Self-Provisioning of Non-Building Address Point Termination Point**

43. In the Direction, IDA had required OpenNet to provide an option to allow Requesting Licensees to self provide the Non-Building Address Point (“NBAP”) Termination Points (“TPs”) by accessing the NBAP Connections at the FTTB Node and/or MDF Room.

### *OpenNet's Proposal*

44. In Annex 3E to Schedule 3 to OpenNet's Revised Proposed ICO, OpenNet had proposed to include the following qualifications:
  - (a) at clause 2.8.2: *“there shall only be one NBAP Termination Point per fibre per NBAP Order”*; and
  - (b) at clause 2.8.3: *“each NBAP Termination Point shall be for the use of one End-User at any time”*.

### *Industry Submission*

45. Comments were received that OpenNet should not discourage self-installation by imposing onerous conditions. In particular, there were comments that OpenNet is seeking to make it difficult for Requesting Licensees to carry out self-installation of TPs by restricting the use of one (1) OpenNet fibre to one (1) End-User Connection. It was further submitted that OpenNet's responsibility is to provide its service to the handover point, and OpenNet should not be allowed to interfere with the way a Requesting Licensee chooses to deploy its network. It was

also submitted that it is unreasonable to restrict each NBAP TP to only one End-User.

#### *IDA's Clarification*

46. Having considered this issue carefully, IDA would like to clarify that each NBAP Connection provisioned under Schedule 3 to OpenNet's ICO should be to one location and for the use of one End-User.
47. Arising from IDA's review of OpenNet's Revised Proposed ICO, IDA understands that OpenNet has proposed certain terms and conditions in Schedule 3 to the Revised Proposed ICO due to its concern that Requesting Licensees may unilaterally extend NBAP Connections to multiple locations and/or to have a single NBAP End-User Connection serve multiple End-Users.
48. While IDA agrees that OpenNet should include safeguards to ensure that Requesting Licensees comply with the terms of usage of NBAP Connections, IDA considers that some of the terms and conditions proposed by OpenNet in Schedule 3 to the Revised Proposed ICO may be too onerous. In order to balance the interests of OpenNet and Requesting Licensees, IDA will therefore allow OpenNet to impose certain processes to facilitate its checks for potential abuse. However, IDA will revise the processes to facilitate checks, as well as the terms and conditions proposed by OpenNet, to ensure that these processes and terms are not unduly onerous.
49. In this regard, IDA further refers to the specific directed amendments and IDA's reasons for directing such amendments as set out in IDA's annotations to Appendix 4 of the Further Direction (i.e., Directed Amendments to Schedule 3 to the ICO).

### **Section 3 – Calculation of Remedy For Failing Service Activation Period**

#### *Industry Submission*

50. Clause 6.9 of Schedule 1 and clause 6.12 of Schedule 2 to OpenNet's ICO state that "*in the event OpenNet fails to meet the applicable service activation period for a Request, OpenNet shall compensate the Requesting Licensee an amount equal to the number of days of delay multiplied by the weekly recurring charge...*" [Emphasis added.]
51. One respondent commented that there was a disagreement between OpenNet and the respondent as to the interpretation of the phrase "number of days" as cited above. Specifically, the respondent submitted that the word "days" should refer to calendar days, whereas OpenNet was of the view that the word "days" should refer to "Business Days" as defined in the ICO.

## IDA's Assessment

52. IDA has considered this issue carefully, and would like to clarify that under the Code of Practice for Next Generation National Broadband Network NetCo Interconnection ("**NetCo Code**"), it is a minimum requirement for the ICO to provide for Service Level Guarantees ("**SLGs**"). Paragraph 13.3(e) of Appendix 1 to the NetCo Code states:

*"The remedies for any breach of a service level guarantee must as a minimum include payment of a rebate by the Licensee to the Qualifying Person which must be no less favourable than an amount equal to the number of days of delay multiplied by the weekly recurring charge paid by the Qualifying Person for the affected service. Any cap on liability must be no less than 30 x the weekly recurring charge paid by the Qualifying Person for the affected service."* [Emphasis added.]

53. It is clear that the word "day" as used in the above-cited paragraph of the NetCo Code was intended to refer to calendar days. In particular, section 1.2.1 of the NetCo Code specifically defines the term "Working Day" to mean "9.00 a.m. to 5.00 p.m. on any day other than a Saturday, Sunday or gazetted public holiday in Singapore." Therefore, by specifically using the word "day" instead of "Working Day" or any other defined term in paragraph 13.3(e) of Appendix 1 to the NetCo Code, IDA clearly intended that such word be accorded its most natural and plain meaning (i.e., calendar day).
54. IDA therefore considers that it would be more reasonable and meaningful for the words "number of days" in OpenNet's ICO to be read as a reference to the number of calendar days, rather than the number of Business Days, especially in the context of remedy payment. IDA further notes that the relevant clauses (e.g., clause 6.9 to Schedule 1) in OpenNet's ICO on compensation for failing Service Activation Period have also made reference to "number of days" rather than number of Business Days.
55. In light of the above, IDA clarifies that the calculation of remedy for failing Service Activation Period in OpenNet ICO should be calculated based on the number of calendar days of delay, and not the number of Business Days of delay.

## Section 4 – Spring Boarding

### Industry Submission

56. Comments were received which noted that OpenNet had elected not to roll out its network to every MDF room, but had chosen to make use of adjacent MDF rooms for service delivery (i.e., the method of "**Spring**

**Boarding**"). One respondent submitted that OpenNet should be liable for access issues caused by Spring Boarding, since it was fully aware of the risks when making the decision to Spring Board its network.

#### *IDA's Assessment*

57. For the benefit of the industry, IDA would like to clarify its position on this issue. IDA notes that OpenNet has chosen Spring Boarding as a method of service provisioning. IDA expects OpenNet, as a competent telecommunication operator, to put in place all necessary arrangements (including securing the necessary permissions from building owners/management) to use and access the MDF rooms which OpenNet has chosen for Spring Boarding. As such, IDA does not consider access issues relating to Spring Boarding as a valid excuse for OpenNet to be exempted from providing SLGs where OpenNet encounters any delays in provisioning services due to such access issues.
58. Accordingly, IDA considers that OpenNet's SLGs should continue to apply in cases where OpenNet encounters difficulty in accessing MDF rooms for Spring Boarding (i.e., OpenNet should be responsible for any failures to secure such access). IDA will only consider allowing OpenNet to exclude such cases from its SLGs where OpenNet has validly referred the matter to IDA for determination in accordance with the provisions of the Telecommunications Act (Cap. 323) and IDA has agreed to intervene.

#### **Section 5 – Bypassing Requesting Licensees / Retail Service Providers for TP-related Services**

59. In the Direction, IDA had considered that in some instances, it would promote greater efficiency and convenience if end-users were able to deal directly with OpenNet, and be billed directly by OpenNet, for TP-related services. IDA therefore required OpenNet to also offer equivalent retail service offerings to end-users for TP-related services (i.e., installation, removal, relocation and repair of TP), subject to OpenNet obtaining the necessary approval from IDA for such services.

#### *Industry Submission*

60. One respondent noted that this requirement does not appear to have been included by OpenNet in its Revised Proposed ICO. The same respondent submitted that the ICO should include a detailed process in which OpenNet will deal directly with the end-user for TP-related services, where so requested.

### *IDA's Clarification*

61. For the avoidance of doubt, IDA would like to clarify that IDA's requirement on this issue is for OpenNet to offer approved TP-related services directly to end-users as an additional option from the current process whereby end-users would approach the respective Retail Service Providers to request for TP-related services. In this regard, IDA does not intend to do away with the latter process. As the ICO is not intended to be accepted by end-users directly, IDA does not consider that it is necessary to require OpenNet to provide for such additional option in the ICO. Instead, IDA will separately require OpenNet to offer the relevant TP-related services directly to end-users via separate end-user tariffs.

## **Section 6 – Service Activation Periods for Non-Residential End-User Connections**

### *Background*

62. In the Direction, IDA had required OpenNet to propose an additional option for Requesting Licensees to pick up OpenNet's connection at an intermediate point between the serving FTTB Node/MDF Room and the Non-Residential Premise.
63. In Schedule 2 to OpenNet's Revised Proposed ICO, OpenNet had proposed to insert a new clause 20 to set out certain terms and conditions providing for Requesting Licensees to elect to initiate the Non-Residential End-User Connection for the connection in the vertical telecommunication riser on the same floor where the Non-Residential Premise is located.
64. In light of the foregoing, IDA notes that there are now three (3) possible handover points from which Requesting Licensees may pick up service from OpenNet for Non-Residential End-User Connections (i.e., under Schedule 2 of the ICO), namely:
  - (a) in the Non-Residential Premise itself;
  - (b) in the vertical telecommunication riser on the same floor where the Non-Residential Premise is located; and
  - (c) at the FTTB Node of the Non-Residential Premise.

### *IDA's Assessment*

65. Under the terms of the Revised Proposed ICO, the Service Activation Period ("**SAP**") for a Non-Residential End-User Connection is a uniform period of ten (10) Business Days. The current SAP therefore does not take into account where the handover point is situated and the

corresponding amount of provisioning work needed to be performed by OpenNet.

66. As OpenNet's passive network forms the foundation layer of the Next Gen NBN, it is vital to the successful operation of the Next Gen NBN that OpenNet fulfils the demand for its services within a reasonable timeframe.
67. In this regard, IDA notes that, at the time that IDA had previously directed OpenNet to submit the Draft Revised ICO for IDA's review, one of the required changes was for OpenNet to propose a shorter SAP for orders of Non-Residential End-User Connections where the Requesting Licensees do not require OpenNet to install in-building cabling/fibre. IDA had explained that, by taking ten (10) Business Days to provision the connection regardless of whether OpenNet is required to install the in-building cabling/fibre (together with a TP) to the Non-Residential Premise, the service provisioning time would be unnecessarily lengthened, as the effort needed to provide a Non-Residential End-User Connection without the in building cabling /fibre (together with the TP) to the Non-Residential Premise is clearly less.
68. IDA notes that the Revised Proposed OpenNet's ICO so far have not fully given effect to the above requirement.
69. IDA further notes that, in cases where the handover point is at the FTTB Node of the building in which the Non-Residential Premise is located, the provisioning work required to be performed by OpenNet is comparable to the case of a Residential End-User Connection, as OpenNet would essentially only need to perform patching works. Considering that OpenNet currently only requires an SAP of three (3) Business Days to provision a Residential End-User Connection, IDA is of the view that there is little basis for OpenNet to continue the requirement of ten (10) Business Days for the provision of a Non-Residential End-User Connection where the handover point is at the FTTB Node of the building.
70. Having given regard to all the relevant circumstances, IDA considers that, for cases where the handover point for a Non-Residential End-User Connection is at the FTTB Node of the Non-Residential Premise, it would be more reasonable for OpenNet to adopt an SAP of five (5) Business Days.
71. With regard to the new option for Requesting Licensees to pick up service from the vertical telecommunication riser on the same floor where the Non-Residential Premise is located, IDA is similarly of the view that OpenNet would be required to perform less provisioning work as compared to cases where the handover point is in the Non-Residential Premise itself. In the circumstances, IDA considers that for cases where the handover point is in the vertical telecommunication

riser on the same floor where the Non-Residential Premise is located, it would be more reasonable for OpenNet to adopt an SAP of seven (7) Business Days.

72. In summary, IDA requires OpenNet to differentiate its SAP for Non-Residential End-User Connections according to the amount of provisioning work involved as follows:
- (a) five (5) Business Days (where the handover point to the Requesting Licensee is at the FTTB Node, and such handover point must be located in the same building as the Non-Residential Premise);
  - (b) seven (7) Business Days (where the handover point to the Requesting Licensee is in the vertical telecommunication riser which must be on the same floor where the Non-Residential Premise is located); or
  - (c) ten (10) Business Days (where the handover point to the Requesting Licensee is in the Non-Residential Premise).
73. In addition, IDA considers that the above differentiation of SAP for the various handover points for Non-Residential End-User Connections should not result in the imposition of additional charges by OpenNet, except those expressly provide for under Schedule 15 of the ICO.

#### **Section 7 – Review of OpenNet’s Proposed Charges For New Services**

74. Separately, IDA has completed its assessment of the proposed charges by OpenNet for the new ICO services. In determining the charges, IDA has audited and reviewed the relevant documentation provided by OpenNet to ensure that the charges are reasonable and reflect appropriate efficiencies. In this regard, IDA has amended OpenNet’s proposed charges where necessary.