SUBMISSION BY STARHUB PTE LTD TO IDA IN RELATION TO REVIEW OF SINGTEL'S REFERENCE INTERCONNECTION OFFER

1 Executive Summary

1.1 StarHub Pte Ltd ("**StarHub**") welcomes the opportunity to provide views and comments on SingTel's Reference Interconnect Offer ("**RIO**") to facilitate IDA's review of the RIO.

1.2 StarHub supports the views expressed by IDA in the Consultation Paper of 18 June 2003 on the RIO ("**Consultation Paper**").

1.3 StarHub submits that the RIO mechanism set out within the Competition Code has operated relatively successfully to date. As recognised by IDA in the Consultation Paper, the RIO is clearly necessary to achieve the objectives of the Code of Practice for Competition in the Provision of Telecommunications Services ("**Competition Code**") and the Telecommunications Act. The Competition Code and the RIO recognise that SingTel is the dominant operator and lacks the economic and commercial incentives necessary to enter voluntarily into interconnection agreements in a timely manner. Consequently, IDA cannot rely solely on market forces to ensure that SingTel enters into interconnection agreements in a timely manner.

1.4 As IDA will be aware, the RIO mechanism set out in the Competition Code is consistent with international best practice in telecommunications regulation. A RIO is one of the most important *ex ante* policy instruments available to regulators to promote market entry and effective competition. A RIO is intended to enable the asymmetric regulation of vertically-integrated dominant incumbents, such as SingTel, to countervail their considerable market power and override their economic incentives to continually deny and delay access (or to provide access only on unreasonable terms). The existence of an effective RIO enables Singapore to comply with its WTO obligations under the GATS and Singapore's obligations under the Telecommunications Chapters of the recent Singapore-Australia and Singapore-US Free Trade Agreements.

1.5 As IDA has commented in the Consultation Paper, the RIO is therefore intended to promote effective, efficient and timely network interconnection and the supply of critical wholesale services. The RIO ensures that SingTel will continue to supply interconnection-related services and wholesale services on reasonable terms and conditions, and with reasonable pricing, to Licensees. By doing so, these Licensees will be in a position to effectively compete with SingTel in downstream retail markets, promoting economic efficiency, stimulating investment and benefiting Singapore consumers. In turn, this will increase Singapore's attractiveness as a regional business centre and will increase Singapore's international competitiveness.

1.6 By governing the terms of interconnection and wholesale supply, the terms and conditions of the RIO are determinative of, and have a direct causal impact upon, the intensity and effectiveness of downstream retail competition. The terms and conditions of the RIO are therefore vital to the effectiveness of Singapore's telecommunications regulatory regime.

1.7 In this regard, StarHub refers to a comment from the World Bank's *Telecommunications Regulation Handbook* (The World Bank, Washington DC, November 2000), module 1, paragraph 1.4.1, which is particularly appropriate to the critical role of the RIO as an instrument of asymmetric regulation. The *Handbook* is one of the most comprehensive recent documents articulating international best practice in telecommunications regulation:

> *"There is a tendency among new regulators to try to be "even-handed" and to treat incumbent operators and new entrants the same. This approach can actually*

increase regulatory intervention over the longer term. It can impose unnecessary burdens on new entrants, and prevent implementation of "asymmetrical" regulatory initiatives that will open the PSTN to competition.

This lesson has taken some time to learn. Initially, for example, many regulators have declined to intervene decisively in interconnection disputes, suggesting that competitive entrants and incumbent operators should "freely negotiate" the terms of interconnection with the PSTN. It took years for some regulators to realise that most incumbent PSTN operators had few incentives to negotiate favourable interconnection agreements with their would-be competitors. Rather than minimising regulation, this hands-off approach can lead to repeated regulatory intervention on interconnection issues over a protracted period of time".

1.8 With this background in mind, StarHub submits that it is critically important to the continued evolution of competition in Singapore's telecommunications markets that IDA takes every opportunity to refine and fine-tune the RIO. Similarly, IDA should intervene decisively in any interconnection and wholesale service disputes to protect and promote the interests of market entrants, such as StarHub, against SingTel as dominant incumbent. The RIO should be viewed as a document which evolves, under IDA's close oversight, to address and resolve particular concerns with SingTel's conduct in relation to network interconnection and the supply of wholesale services.

1.9 In this regard, StarHub has identified in this submission a range of issues with the current formulation of the RIO. The current RIO needs careful refinement and fine tuning by IDA in light of industry experience over the past 3 years. IDA should also adopt more limited reviews of the RIO on an annual basis, or on the request of Licensees, to address particular issues arising from time to time and ensure the terms and conditions of the RIO keep pace with industry issues and concerns.

1.10 The key issues with the current RIO that StarHub identifies in this submission are as follows, including paragraph cross-referencing:

(a) **Inclusion of Local Leased Circuits:** StarHub submits that Local Leased Circuits should be included in the RIO with associated co-location and access to SingTel's managed facilities. StarHub has made detailed submissions to IDA on these issues in the context of IDA's current review of the Local Leased Circuit issues.

[Refer paragraph 4.35 of this submission].

(b) **Greater transparency of charges:** StarHub submits that the RIO charges and their derivation should be made publicly available (or at least made available to Requesting Licensees). It is important that Requesting Licensees ("**RLs**") be provided with an opportunity to make informed submissions to IDA on the appropriate level of the charges.

[Refer paragraph 22.1 of this submission].

(c) **Automatic renewal of term of RIO and individual licences:** The term of each individual RIO Agreement should automatically roll-over for a further term of 3 years to ensure continuity of service and avoid service disruption and triggering SingTel's rights upon termination. Each licence under the RIO Agreement should be given a term consistent with the term of the RIO and should also be renewed automatically when the RIO Agreement is renewed for the same reasons.

[Refer paragraphs 3.10, 3.15, 4.5, 4.19, 8.13, 13.39, 17.8, of this submission].

(d) **Qualification of SingTel's discretion regarding termination and suspension:** Notwithstanding previous instructions by IDA to qualify SingTel's discretion regarding termination and suspension, SingTel still retains considerable discretion, particularly in relation to termination of licences provided under certain Schedules. All such rights

of termination and suspension should be subject to prior IDA approval, consistent with Section 4.4 of the Competition Code. Any SingTel's subjective discretion should be removed. Certain rights of termination and suspension are not necessary and should be deleted. Certain rights of termination and suspension should be subject to a "cure notice" to provide a warning of termination and a chance to rectify any breach. SingTel should be held liable if it wrongfully terminates or suspends.

[Refer paragraphs 4.18, 4.19, 4.34, 8.13 to 8.18, 11.7, 13.39 to 13.43, 17.8 to 17.10 of this submission].

(e) **Variation of RIO Agreement should be subject to RL approval:** IDA should continue with its triennial review of the RIO, but should also undertake more limited annual reviews to address particularly pressing industry issues. IDA should also review particular issues with the RIO on request from RLs. However, an amendment to the RIO should not automatically vary every RIO Agreement, particularly if the amendments are detrimental to RLs. Such a situation creates very considerable uncertainty for RLs. Rather, every amendment to the RIO should constitute an offer by SingTel to every RL to vary the terms of their existing RIO Agreement. Each RL should have the ability to accept or reject that offer. However, a rejection should automatically convert their pre-existing RIO Agreement into an Individualised Agreement.

[Refer paragraphs 3.5 to 3.7, 3.13 to 3.14, 4.5 to 4.7, 4.19 to 4.20, 4.33, and 4.36 of this submission].

(f) **The reciprocal application of the RIO should be refined:** A number of Schedules to the RIO are intended to have reciprocal application, such that RLs are suppliers. However, the drafting of these Schedules are customised for SingTel and not necessarily appropriate for RLs. Accordingly, the reciprocal application of the RIO should be relaxed to cater for some non-standard terms of supply. Furthermore, given the intended reciprocal application of the RIO, the drafting of the RIO should be made reciprocal rather than always assuming that SingTel is the only supplier. IDA previously directed SingTel to address this issue, but there are a number of the provisions of the RIO which still need to be given reciprocal application.

[Refer paragraphs 3.11, 3.12, 4.2, 4.10, 4.14, 4.23, 4.25, 4.26, 4.30, and 4.31 of this submission].

(g) **The service levels in the RIO should be improved:** IDA should take the opportunity to improve the service levels in the RIO and improve their operation and application. An improvement in service levels will flow through to Singapore consumers in the form of improved responsiveness of service providers and improved quality of service. By tightening the obligations on SingTel, IDA has the ability to improve the level of service that will ultimately be provided to Singapore consumers, thereby achieving IDA's objectives. Non-discrimination obligations should expressly applying to service levels and the timing of service provisioning. All timing obligations on SingTel should be subject to a rebate penalty structure. Obligations on SingTel should be tightened and SingTel's discretion restricted.

[Refer paragraphs 4.15, 4.16, 4.22, 4.34, 5.3, 5.4, 8.2, 8.6 to 8.12, 9.3 to 9.4, 10.3, 11.3 to 11.5, 12.3 to 12.6, 12.8, 13.3, 13.5 to 13.14, 13.18 to 13.24, 13.26 to 13.34, 13.45 to 13.49, 13.56, 14.5 to 14.6, 15.4 to 15.9, 17.4 to 17.7, 17.11, 19.2 and 21.1 to 21.10 of this submission]

(h) **The timeframes in the RIO should be improved:** Consistent with an improvement in service levels, the time frames set out in the RIO should be improved. SingTel should be subject to shorter time frames within which to respond. In circumstances where time frames do not exist, they should be expressly specified. SingTel's discretion to extend time frames should be reduced. By delaying the provision of service to RLs, SingTel can impede competition in downstream markets.

[Refer paragraphs 3.9, 4.4, 4.9, 4.34, 5.3, 7.1, 8.2, 8.9, 8.10, 9.4, 11.3, 11.5, 12.3 to 12.5, 12.8, 13.3, 13.5 to 13.6, 13.8, 13.13 to 13.22, 13.45 to 13.50, 14.5, 15.8, 17.4, 17.7, and 17.11 of this submission]

(i) **SingTel's discretion should be reduced, particularly in relation to issues of availability of infrastructure and rejection of applications:** Consistent with an improvement in service levels, SingTel's discretion should be reduced. This is consistent with previous IDA's comments on this issue. SingTel still retains broad discretions in relation to such matters as rejecting applications and identifying infrastructure availability. SingTel can potentially exercise such discretions to its competitive advantage, particularly in circumstances where SingTel and the RL are competing to supply services to the same customer and time is of the essence.

[Refer paragraphs 3.2, 3.3, 3.8, 4.8, 4.11 to 4.13, 4.27 to 43.29, 4.34, 8.3 to 8.7, 8.20, 9.2, 13.4, 13.15 to 13.17, 13.27 to 13.28, 13.42, 13.51, and 17.2 to 17.3 of this submission]

(j) **All processing and provisioning restrictions should be eliminated:** IDA has previously expressed concern at the existence of processing caps in the RIO. A number of processing and provisioning restrictions still remain. Such caps and restrictions have the effect of imposing an artificial bottleneck on the supply of services by SingTel. Such caps have a significant adverse effect on competition, particularly in relation to number portability, as they impede SingTel's customers from migrating to RLs. Such caps should be eliminated.

[Refer paragraphs 8.8, 13.7, 13.9 to 13.12, 13.26, 15.5, 15.9, 21.2, and 21.10 of this submission]

(k) **The restriction on backhaul transmission should be removed:** The current RIO has the effect of preventing the RL from supplying competitive backhaul transmission in circumstances where the RL does not hold an IRU in a particular cable. This restriction is anti-competitive as it blocks RLs from providing services in competition with those of SingTel. The restriction should be removed.

[Refer paragraphs 12.2, 12.9, 19.3, and 20.2 to 20.3 of this submission]

However, StarHub submits that all of the points raised by StarHub in this submission should be addressed by IDA. It is the aggregation of the full range of issues with the current formulation of the RIO that still provides scope for SingTel to act in a manner detrimental to downstream competition.

2 General

2.1 StarHub's comments on particular provisions of the RIO are set out below. StarHub has commented on the main body and each of the Schedules of the RIO in consecutive order for IDA's convenience. As requested by IDA, StarHub has proposed reasons and justifications to support its comments. StarHub's comments are based on StarHub's direct experience with the RIO over the past 3 years.

2.2 StarHub would be happy to provide further information to support its submissions should IDA wish to consider particular issues in further detail. If IDA proposes to consult with SingTel on particular formulations of drafting, StarHub requests that IDA provides all RLs with an opportunity to comment on any such drafting.

2.3 Similarly, StarHub requests that an opportunity be provided to RLs to comment on any revisions to the RIO prior to their incorporation into the RIO. Additionally, as the Competition Code review will be undertaken later this year, StarHub requests that RLs be provided with an

opportunity to comment on any amendments necessary to be made to the RIO in light of any amendments made to the Competition Code.

2.4 Given that only "pdf" versions of the RIO are publicly available, StarHub has been unable to assist IDA by marking-up suggested drafting into the RIO in the context of this submission. However, if a Microsoft word version of the RIO were to be made publicly available by IDA, StarHub would be happy to propose drafting to assist IDA as necessary.

2.5 StarHub has provided personal and company particulars, and contact details in the covering letter, to this submission.

2.6 **The submissions set out in Attachment A are confidential and should not be published.**

3 Part 1 - Acceptance Procedures for RIO

3.1 **Clause 1.3(e) (Amount of security):** The acceptance procedures contemplate that the maximum Security Requirement is 2.5 times monthly charges. However, the provisions of the RIO itself enable SingTel to increase the Security Requirement without limitation. StarHub submits that the maximum Security Requirement of 2.5 times monthly charges should be consistently applied within the drafting of the RIO, as identified below in relation to clauses 6.6 and 22.3 of Part 2 of the RIO.

3.2 **Clause 2.1(b) (Interconnection-Related Services):** SingTel has a statutory obligation to ensure that its current RIO incorporates *all* IRS as required by the Competition Code. Accordingly, StarHub submits that the words "*as defined by SingTel's then current RIO*" should be deleted. This wording is inconsistent with the Competition Code as it suggests SingTel has a residual discretion to reject applications for IRS based on SingTel's own definitions in the RIO. In fact, the Competition Code clearly provides that SingTel must provide all IRS under the RIO, with IRS defined in the Competition Code.

3.3 **Clause 2.1(d) (Notification of Acceptance**): As presently drafted, SingTel could reject notifications of acceptance even if they contain immaterial and typographical errors. The RL would then need to resubmit all documentation. StarHub submits that in such circumstances, SingTel should be obliged to notify the RL within 5 business days and allow the RL to rectify the non-conformity. In this manner the RL could quickly address immaterial issues, thereby avoiding the RL submitting all documentation all over again. This is consistent with the Competition Code which does not provide SingTel a discretion to reject acceptances of its RIO (as such discretion would provide scope for SingTel to delay interconnection).

3.4 **Clause 2.1(e) (Existing Agreement):** StarHub submits that this clause should be deleted. Existing interconnection agreements do not necessarily permit, and may in fact prohibit, termination by the RL in the manner contemplated by the clause. Accordingly, clause 2.1(e) has the indirect potential effect of contractually preventing RLs from accepting a RIO. This is contrary to the objectives of the Competition Code. While IDA partly addressed this issue at page 2 of the IDA's Explanatory Memorandum of 31 January 2001 when the RIO was initially approved ("**IDA's 2001 EM**"), IDA still needs to address restrictions on termination within existing interconnection agreements. StarHub submits that SingTel should contractually agree in Part 1 of the RIO that the RL have the right to terminate the whole or any relevant part of any existing interconnection agreements with SingTel, without any liability, once the RL notify acceptance of the RIO.

Similarly, the RL may wish to continue to receive certain existing interconnection related services under existing customised commercial agreements but acquire new interconnection-related services under the standardised RIO. For example, the RL may wish to retain existing co-location arrangements for a specific site, but acquire new co-location arrangements under the RIO for another site. Such flexibility is important in preserving commercial arrangements between SingTel and the RL that have been tailored to each RL's unique circumstances. The RIO should not be drafted as an "all or nothing" agreement that overrides all existing commercial arrangements, and thereby interferes with existing negotiated customised

solutions. Rather, the RIO should be provide a means for RLs to adopt standardised commercial terms for issues not yet agreed.

3.5 **Clause 2.1(f) (Exemption):** Consistent with Section 1.5.6 of the Competition Code, all exemptions given to SingTel affecting the RIO should be made publicly available to all RLs. Otherwise, RLs will have no means of knowing current RIO coverage. RLs cannot be expected to accept a RIO offering by SingTel in circumstances where RLs do not have full visibility of all the terms and conditions of that RIO offering.

3.6 **Clause 2.2 (Exemption Application):** StarHub submits that IDA should not permit SingTel to make detrimental amendments to the RIO (including removal of services and schedules) without IDA first engaging in formal industry consultation with RLs. This is consistent with the requirements in Sections 1.5.6 and 5.3.4 of the Competition Code. Such a consultation requirement is crucial to natural justice and the effective operation of the RIO, particularly as RLs are uniquely dependent upon IDA to protect their commercial interests. StarHub submits that IDA should always seek to ensure that submissions from SingTel are balanced by submissions received from the industry so that IDA has visibility of both sides of the issue. SingTel's exemption submissions are likely to favour SingTel's own self-interest with little regard to the effect on the industry as a whole.

Similarly, SingTel should be required to provide the industry with at least 1 month's notice before seeking exemptions from IDA. This will give the industry sufficient time to prepare submissions to IDA identifying any adverse consequences if such an exemption were to be granted. In this manner, IDA could make its decision with the benefit of receiving informed views from all parties affected by an exemption. Again, this is an important safeguard against submissions by SingTel which do not necessarily convey the full picture or identify the consequences for downstream competition in Singapore markets.

3.7 **Clause 2.3 (Suspension Pending Exemption):** IDA should be reluctant to suspend the Acceptance Procedures pending consideration of a SingTel exemption application. Such a suspension would appear to be contrary to the procedure set out in the Competition Code. The Competition Code does not contemplate suspension, but rather provides for an exemption to take effect only once made. This was previously expressly noted by IDA on page 3 of the IDA's 2001 EM. SingTel should not be permitted to use an IDA review as an excuse to discontinue providing service in the absence of an IDA decision mandating this.

Similarly, where IDA makes a decision to include new services in the RIO, SingTel should have an express obligation to make such services available immediately from the date IDA makes its decision. SingTel should not be permitted to use delays in drafting service schedules as an excuse to deny provision of service.

3.8 **Clause 2.4 (Acceptance of Acceptance):** As currently drafted, the clause provides considerable discretion to SingTel which could potentially be exercised in an unreasonable manner contrary to the objectives of the Competition Code. Consistent with the offer-acceptance mechanism contemplated by the Competition Code, SingTel's ability to reject an acceptance of the RIO should be extremely limited. SingTel is making a legally binding "offer" to the industry and should not have the ability to exercise any discretion to prevent reasonable acceptances of that offer. Such discretion is not contemplated by the Competition Code. The words "*, acting reasonably,*" should therefore be added after the word "SingTel".

3.9 **Clause 2.4(a) and (d) (Notification of Rejection):** StarHub submits that the word "promptly" is too ambiguous and a time frame of 5 business days should be specified. Certainty of time frames is critical to such issues as migration of services and the provision of satisfactory supply arrangements to downstream customers.

StarHub also refers to its comment in relation to clause 2.1(d) above. A rejection should only be permitted by SingTel if the RL does not rectify within 5 business days of notification by SingTel that the RL's acceptance is non-conforming. If SingTel does not notify the RL that the acceptance is non-conforming within 5 business days, SingTel should be deemed to have

accepted the Notification. Such a mechanism is important in preventing SingTel from delaying interconnection by stalling processing of any acceptance of the RIO.

3.10 **Clause 2.5 (Execution):** As drafted, this clause is inconsistent with clause 7.1. At page 3 of the IDA's 2001 EM, IDA expressly directed that RLs should be permitted to obtain services on an interim basis under the RIO pending the adoption of an Individualised Agreement. Clarification is required that if a RIO is executed on an interim basis, the RL may terminate the RIO *without incurring any liability* once the Individualised Agreement has been executed. StarHub submits that the following words should therefore be added at the end of clause 7.1:

> "*If the Requesting Licencee is executing the RIO on an interim basis under clause 7.1, it shall be an express term of the RIO Agreement that the Requesting Licence may terminate the RIO by written notice without incurring any liability upon the execution of the Individualised Agreement and that any services supplied under the RIO at that time will be deemed to be supplied under the terms and conditions of the Individualised Agreement without any further cost, charge or expense*".

StarHub submits that clause 2.5 should also be redrafted so that the parties are automatically deemed to have executed a RIO once the RL submits a conforming acceptance. This will prevent further potential for delay. This is entirely consistent with the "offer-acceptance" mechanism contemplated by the Competition Code and will prevent delays associated with any SingTel not executing documents in a timely manner

3.11 **Clause 3.2 (SingTel Warranties):** The RIO should be valid, binding and enforceable against SingTel in the same manner that it is valid, binding and enforceable against the RL. SingTel should therefore be subject to a reciprocal warranty in clause 3.2 which is the inverse of the warranty in clause 3.1(c). It is directly contrary to the intent of the Competition Code that the RIO should be valid, binding and enforceable against RLs, but not necessarily valid, binding and enforceable against SingTel. IDA previously commented on 13 December 2000 on reciprocity issues when reviewing the original draft RIO in the following terms (as set out on page 1 of Schedule A (General Concerns) of IDA's notification to SingTel) ("**Schedule A of IDA's 2000 Notification**"):

> *"The proposed RIO frequently provides that SingTel alone will have certain rights, whilst the Requesting Licensee alone will have certain obligations… SingTel must modify the proposed RIO to provide that, where appropriate, both Parties will have mutual rights and obligations."*

3.12 **Clause 3.4 (RL Indemnity):** Similarly, the RL should benefit from a reciprocal indemnity to the indemnity set out in clause 3.4. A reciprocal indemnity is necessary to give proper contractual effect to the warranties by SingTel in clause 3.1. If SingTel fails to maintain all necessary authorisations, for example, the RL should have the benefit of an indemnity to protect the RL against SingTel's failure. Again, it would appear to be directly contrary to the intent of the Competition Code that the RIO should be valid, binding and enforceable against RLs, but not necessarily against SingTel.

3.13 **Clause 5.3 (Amendment to RIO):** The cross-reference in clause 5.3 may need to be amended in light of the amendments to clause 2.5 proposed above.

3.14 **Clauses 6.1 and 6.2 (Effect of Variation):** The *model* RIO is an "offer" on standardised terms. The individual RIO Agreements are formal contracts entered into as a result of the acceptance of that offer. While the model RIO should be viewed as a document which evolves over time by way of intervention by IDA alone, the RIO Agreements should be treated differently. This is because the RIO Agreements constitute binding bilateral contracts between SingTel and the RL. Accordingly, the consent of the RL should be required before any amendments to RIO Agreements are made.

Rather, all amendments to the *model* RIO should constitute automatic offers made by SingTel to RLs to vary the terms of each existing RIO Agreement. RLs should then have a discretion whether or not they accept that offer to vary. Such a requirement is critical to contractual

certainty in Singapore interconnection arrangements. RLs cannot be expected to enter into contractual arrangements which are subject to amendment at any time and over which they have no control. Such a situation does not provide sufficient contractual certainty to RLs and increases business risk to the detriment of investment decisions.

If RL does not accept an offer to vary the terms of a RIO Agreement, such that the pre-existing RIO Agreement differs from the model RIO, then the RIO Agreement should automatically become an "Individualised Agreement". This would create greater contractual certainty for RLs while more effectively promoting the operation of the Competition Code.

IDA previously commented at page 5 of Schedule A of IDA's 2000 Notification as follows:

> *"The proposed RIO must contain an approach that meets Requesting Licensees' need for a reasonable degree of business certainty. One way in which SingTel could achieve this goal is to provide that each RIO Agreement will have a fixed term, such as five years, which will start on the date that the Licensee signs the RIO Agreement".*

In addition, if amendments or withdrawals are made to the model RIO, the industry should be provided with at least 30 days notice. In this manner, RLs can assess any impact on their respective RIO Agreements. RLs cannot be expected to contract under interconnection agreements which are subject to amendment without notice at any time, given the very considerable business risk that this entails.

3.15 **Clause 7 (Interim Acceptance):** As identified in relation to clause 2.5 above, further drafting is required to give proper legal effect to the interim acceptance procedure. RLs need an ability to terminate a RIO if they have entered into the RIO on an interim basis pending the conclusion of an Individualised Agreement. At present, notwithstanding that a RIO may have been entered into on an "interim basis", there is no apparent right to terminate the "interim" arrangement. This is contrary to IDA's intent in the IDA's 2001 EM when mandating that an interim acceptance procedure should be included. The IDA also commented at page 5 of Schedule B of IDA's 2000 Notification in the following terms:

> *"Interim RIO. Pursuant to subsection 5.5.3 of the Code, the RIO must provide a procedure whereby a Requesting Licensee that has submitted a request to negotiate an Individualised Interconnection Agreement can obtain IRS from SingTel - on an interim basis - pursuant to prices, terms and conditions specified in the RIO".*

The relevant word from the comment above is the word "procedure". While clause 7 provides a mechanism for interim acceptance, no supporting "procedure" is currently set out in Part 1 of the RIO. This is contrary to IDA's express request to SingTel to provide for such a procedure.

Similarly, StarHub submits that clause 7 should specify acceptance procedures for acceptance of *particular services* on an interim basis. The procedures should be similar to the acceptance procedures set out in clauses 1 and 2 above (subject to the amendments proposed above).

4 Part 2 - Main body of the RIO

4.1 **Recital C (Legal obligations on SingTel):** StarHub submits that Recital C should identify that SingTel is subject to relevant legal obligations under the terms of its FBO Licence and the Telecommunications Act as well as under the Competition Code. These legal obligations in aggregate govern the terms and conditions of the RIO.

4.2 **Recital E (Reciprocal supply by RLs):** As discussed in detail in relation to clause 19.1 below, it is not always appropriate that the RL supply IRS to SingTel on the same terms and conditions under the RIO. The terms and conditions have been drafted by SingTel for SingTel based on SingTel's customised requirements.

4.3 **Clause 3.2 (Supply of Service):** StarHub refers to the comment below in relation to clause 19.

4.4 **Clause 4.1 (Submission to IDA):** StarHub submits that the words "*as soon as practicable*" are too ambiguous and a time frame of 3 business days should be specified. Any ambiguity in timing set out in the RIO can result in delays to the detriment of competition. Generally, all time frames in the RIO should be expressed precisely in terms of the number of business days, thereby avoiding potential for delay.

4.5 **Clause 4.2 (Term of RIO):** Given that it is almost 3 years since a number of RLs first entered into the RIO Agreements with SingTel, an important current concern for RLs involves what will happen when their respective RIO Agreements expire. StarHub submits that the RIO should be amended to include an automatic right of renewal, exercisable at the RL's discretion, for a further 3 years to ensure continuity of supply. If such a provision is not included, the RIO will terminate upon its expiry resulting in consequential service disruptions while a new RIO Agreement is entered into between the parties. Similarly, upon the expiry of the RIO Agreement a number of provisions of the RIO are triggered, including expiry of licences under various Schedules and SingTel's ability to exercise its "put option" to force Licencees to acquire certain infrastructure.

StarHub submits that RIO Agreements should continue indefinitely, on a 3 year rolling basis at the discretion of the RL, for such time as SingTel is required to offer a RIO under the provisions of the Competition Code, or unless the RL enters into an Individualised Agreement or unless the IDA or the relevant RL agrees otherwise. In this manner, the RIO will provide the basis for continuity of supply (and thus competition) on a sustainable long-term basis without the risk of service interruptions.

A related issue arises under the various Schedules to the RIO which each provide that a licence to use a particular service is only available for a period of 3 years. Again, these licences should automatically roll-over for a further period of 3 years at their expiry to avoid service disruptions and discontinuity of supply.

Likewise, on the expiry of particular Schedules of the RIO, SingTel should not have the ability to immediately discontinue supply. Rather, supply should continue on the same terms and conditions until such time as new arrangements have been agreed between SingTel and the RL. StarHub also refers to its comment in relation to clause 13.8 below.

4.6 **Clause 4.3 (IDA Review of RIO):** Consistent with the comments in relation to clause 3.2 of Part 1, SingTel should not have the ability to unilaterally amend RIO Agreements once they have been executed with RLs. All amendments to the model RIO approved or authorised by IDA should be automatically offered by SingTel to the RL. If the RL does not accept the amendments offered by SingTel, the particular RIO with that RL should not be amended but should rather become an "Individualised Agreement". This procedure is critical to contractual certainty of interconnection agreements in Singapore.

4.7 **Clause 4.3 (IDA Review of RIO):** In addition, before SingTel seeks IDA's approval for amendments to the RIO, SingTel should notify the industry of the amendments sought. StarHub submits that IDA should engage in a formal consultation process with the industry in relation to such amendments. See the comment above in relation to clause 2.2 of Part 1.

4.8 **Clause 5.2 (Additional Cost Recovery):** Clause 5.2 should be deleted as the amendment of charges is already adequately addressed by clause 5.3. Notwithstanding the need for IDA approval, the existence of this clause creates very considerable contractual uncertainty for RLs. It is critical to the contractual certainty of Singapore interconnection agreements that all charges should be known in advance. RLs will make investment and contracting decisions on the basis of such charges. Once charges have been authorised by IDA, they should apply for the period of authorisation.

4.9 **Clause 5.6 (IDA Amendment to Charges):** StarHub submits that the words "*as soon as practicable*" are too ambiguous and a time frame of 5 business days should be specified.

SingTel has every incentive to immediately implement price adjustments in its favour, but to delay implementing price adjustments that favour RLs.

4.10 **Clause 5 (Reciprocal application):** SingTel has drafted the RIO (via clause 19) in such a manner that it also forces RLs to supply certain services to SingTel on the same terms and conditions. SingTel will therefore be potentially making payment to RL for services received. As potential suppliers under the RIO, RLs should therefore be entitled to the benefit of the same provisions as SingTel relating to amendments to charges. Clauses 5.2 and 5.6 should therefore be drafted to have reciprocal application between the parties in the same manner as the other provisions of the RIO (rather than assuming SingTel is always the supplier). As previously noted, IDA previously commented in Schedule A of IDA's 2000 Notification as follows:

> *"The proposed RIO frequently provides that SingTel alone will have certain rights, whilst the Requesting Licensee alone will have certain obligations… SingTel must modify the proposed RIO to provide that, where appropriate, both Parties will have mutual rights and obligations."*

4.11 **Clause 6.6 (Security Deposit Increases):** StarHub submits that the considerable discretion provided to SingTel by clause 6.6 as currently drafted should be restricted to protect RLs. The words "*As a general principle*" should be deleted so that SingTel cannot request unreasonable security amounts from RLs at any time. Rather, the security deposit of 2.5 times should be expressed as a *maximum* amount that SingTel may request (i.e., a maximum cap on the value of the security requirement under the RIO). The clause should be qualified so that SingTel can only request additional security if this is *reasonably necessary* to protect SingTel's credit risk. SingTel should be required to return the security deposit to the RL within 14 days after the date of termination of the RIO.

4.12 **Clause 6.7 (Retention of security):** StarHub submits that the words "*under this RIO Agreement*" should be inserted immediately after the words "*made available to the Requesting Licensee*" at the end of clause 6.7. As currently drafted, the clause extends beyond the scope of the RIO.

4.13 **Clause 6.8 (Right of set-off):** StarHub submits that the words "under this RIO Agreement" should be inserted immediately after the words "*owed to SingTel by the Requesting Licensee*" at the end of Clause 6.8. As currently drafted, the clause extends beyond the scope of the RIO.

SingTel should also be required to give reasonable notice in the form of a "default notice" to RLs before SingTel exercises its right under clause 6.8. This will give RLs an opportunity to rectify unintended payment errors. Clause 6.8 should also only apply to charges under the RIO. SingTel should not be entitled to immediately claim on the security over a matter of liability which is contested by the RL, particularly where the RL has no reciprocal ability to claim on security in the event the RL suffers damage due to SingTel's conduct.

4.14 **Clause 6 (Reciprocal application):** SingTel has drafted the RIO (via clause 19) in such a manner that it also forces RLs to supply certain services to SingTel on the same terms and conditions. SingTel will therefore be potentially making payment to RL for services received. RL will therefore have a credit exposure to SingTel. RLs should be entitled to security from SingTel in order to protect against such credit exposure in the same manner that SingTel is entitled to security in order to protect against its credit exposure to RLs. Clauses 6.6, 6.7 and 6.8 of the RIO should therefore be supplemented with an additional clause to reinforce the reciprocal relationship between the parties, and clearly impose reciprocal obligations (rather than assuming SingTel is always the supplier).

4.15 **Clause 11.1 (Non-discrimination):** The word "manner" in clause 11.1(b) does not appear to address timeframes, which are critical to fault repair given that faults result in service outages of a particular duration. Accordingly, StarHub submits that the words "and the same timeframe" should be inserted after the word "manner" to ensure the provision of IRS on a non-discriminatory basis in accordance with section 5.3.5.1 of the Competition Code.

StarHub also submits that IDA should take the opportunity to clarify the nature of the non-discrimination obligations imposed on SingTel. The non-discrimination obligations imposed in Australia provide an ideal precedent in this regard and have proved highly effective. Under section 152AR of the Trade Practices Act 1974 in Australia, the key non-discrimination obligations are drafted, as follows, so that the service provider must:

> *"take all reasonable steps to ensure that the technical and operational quality of the active declared service supplied to the service provider is equivalent to that which the access provider provides to itself"*
>
> *"take all reasonable steps to ensure that the service provider receives, in relation to the active declared service supplied to the service provider, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which the access provider provides to itself".*

4.16 **Clause 11.2 (Remedies for Delayed Delivery):** This clause has the apparent effect of removing all SingTel liability for a failure to provide timely services, but rather confining any remedy to that specified in a service schedule. Accordingly, it operates in a manner inconsistent with the non-discrimination obligation in section 5.3.5.1 of the Competition Code. IDA previously directed in the IDA's 2001 EM that SingTel should ensure consistency with that obligation. StarHub submits that the clause should be redrafted so that the words "*but only to the extent specified*" are deleted and the clause is qualified so that it is expressly "*without prejudice to any other remedies that the Requesting Licensee may have under this Agreement or at law*".

StarHub submits that clause 11.2 should also be modified so that the remedies SingTel provides for late delivery of Services are of the same quality and standard as SingTel provides to itself and its affiliates.

4.17 **Clause 12.1(e) (Suspension Rights):** StarHub submits that the suspension right for this particular suspension event should be slightly modified so that the Suspending Party must give at least 7 days' cure notice of the contravention before it can exercise its right of suspension. It may be that the particular contravention could be immediately addressed by the other party.

4.18 **Clause 13.1(g) (Termination Rights):** As with clause 12.1(e), the termination right for this particular termination event should be slightly modified so that the Terminating Party must give at least 7 days' cure notice of the contravention before it can exercise its right of termination. It may be that the particular contravention could be immediately addressed by the other party.

4.19 **Clause 13.7 (Termination on revocation of model RIO):** The continued existence of a particular RIO Agreement should not depend on the continued existence of the model RIO. Such contingency undermines sanctity of contract as it means that every interconnection agreement entered into under the RIO offer mechanism would automatically and immediately cease to exist merely because the IDA considered that a model RIO was no longer necessary.

The existence of such a clause has the effect that IDA could never remove the requirement for a model RIO from Singapore's telecommunications regime as, in doing so, all interconnection agreements entered into under the RIO offer mechanism would immediately terminate. Rather, as noted above in relation to clauses 6.1 and 6.2 of Part 1, each RIO Agreement should be viewed as having a contractual existence entirely separate from the model RIO. The model RIO should only be viewed as an "offer" to contract on standardised terms and conditions of interconnection. Once the offer is accepted, those standardised terms and conditions are immediately crystallised into a bilateral contract which then continues until the expiry of the term of the RIO, regardless of the status of the model RIO, unless the RL agrees to amendments.

IDA relevantly commented at page 5 of Schedule A of IDA's 2000 Notification as follows:

"SingTel, however, apparently has construed sub-section 5.3.5.8 to mean that all RIO Agreements can terminate by 29 September 2003. This approach would have significant adverse consequences. The Requesting Licensees require a reasonable degree of business certainty. In particular, they must know that they will have access to IRS for a reasonable minimum period of time… The proposed RIO must contain an approach that meets Requesting Licensees' need for a reasonable degree of business certainty. One way in which SingTel could achieve this goal is to provide that each RIO Agreement will have a fixed term, such as five years, which will start on the date that the Licensee signs the RIO Agreement".

4.20 **Clause 13.8 (Removal of service):** Similarly, the continued existence of a service schedule in the RIO Agreement should not depend on the continued existence of that service schedule in the model RIO. If SingTel wishes to withdraw a service, such withdrawal should be agreed with RLs. RLs will be dependent upon that service and will have entered into their own contractual agreements with their own customers depending on that service. As currently drafted, clause 13.8 exposes RLs to unacceptable levels of business risk.

4.21 **Clause 15.4 (Liability Cap):** StarHub submits that the words "*arising from this Agreement*" should be inserted immediately after the words "*course of business, or otherwise*". The current drafting could inadvertently be interpreted as applying to any liability between the parties, beyond the RIO alone.

4.22 **Clause 15.9 (Liability for failure to deliver services):** StarHub submits that the words "*, provided that such delay or failure is not occasioned by the wilful misconduct, negligence or wilful breach of this RIO Agreement by that Party*" should be inserted immediately after the words "*at the prescribed time*". It defeats the purpose of the RIO if SingTel could refuse to provide services, yet have no liability for doing so. The whole purpose of the RIO is to require SingTel to provide services, such requirement reinforced by contractual liability in the event of non-compliance.

4.23 **Clause 19.1 (Reciprocal Supply Obligation):** The current drafting of this clause raises very considerable problems:

(a) First, clause 19.1 is contrary to the intent of the RIO as set out in the Competition Code. A RIO is supposed to be an arrangement for the supply of services *by the dominant licensee* to RLs. However, clause 19.1 forces *RLs* to supply services to the dominant licensee.

(b) Second, such supply by RLs is required to be on the same terms and conditions as set out in the RIO. This is not always appropriate. The terms and conditions of the RIO have been drafted by SingTel for SingTel and have been heavily customised for SingTel's own network arrangements. They are not necessarily appropriate for the network arrangements of RLs as suppliers to SingTel. An example is set out in **Attachment A** to this submission.

(c) Third, this means that if the model RIO is amended by IDA in relation to the terms and conditions of supply by SingTel, then the terms and conditions of supply by the RL (as supplier) are automatically amended. RLs therefore have little control over their own terms and conditions of supply. IDA also has not to date viewed RLs as potential suppliers under the RIO, so has not consulted with RLs from a supplier perspective in relation to amendments to the RIO.

To address these issues, StarHub proposes that RL should only be required to provide the necessary IRS on terms and conditions *broadly consistent* with those in the RIO. Where the RL wishes to supply of terms and conditions differing from those in the RIO, the RL should be permitted to notify IDA of the differing terms and conditions. On approval from IDA, SingTel should be required to execute a side letter to the RIO confirming the application of the different terms and conditions. All other terms and conditions would be the same as those in the RIO..

4.24 **Clause 21.1(a) (Insurance Requirement):** StarHub submits that IDA should undertake a careful review of the quantum of insurance with regard to all claims made under all RIO in place over the past years. StarHub submits that the $20 million of insurance cover required by SingTel is unreasonable, unjustifiable and excessive. It is out of all proportion to services obtained and acts as a barrier to entry, particularly for smaller industry participants. StarHub has been attempting to optimise its own insurance cover over the past couple of years, but has been contractually prevented from doing so given the existence of the $20 million requirement. StarHub submits that the appropriate maximum amount is $10 million if *all* services are acquired under the RIO. However, if not all services are acquired, the insurance cover should be reduced by pro-rating accordingly.

4.25 **Clause 21 (Reciprocity of Insurance Requirement):** As noted above, in relation to clauses 5, 6 and 11.2, the current drafting of the RIO assumes that it is only SingTel that is the supplier of services under the RIO. However, as currently drafted the RIO contemplates that the RL can also be the supplier. SingTel has drafted the RIO (via clause 19) in such a manner that it also forces RLs to supply certain services to SingTel on the same terms and conditions. As suppliers, RLs are entitled to the same insurance protection that SingTel is also entitled to as supplier. Clause 21 should be drafted to apply reciprocally to cover situations where the RL is the supplier and SingTel is acquirer, consistent with the remainder of the RIO.

4.26 **Clause 22 (Reciprocity of Security Requirement):** See comment in relation to clauses 5, 6, 11.2 and 21 above. As suppliers, RLs are entitled to the same security protection that SingTel is also entitled to as supplier. StarHub submits that clause 22 should be drafted to apply reciprocally to cover situations where the RL is the supplier and SingTel is acquirer, consistent with the remainder of the RIO.

4.27 **Clause 22.2(a) (Security Requirement):** The requirement for the RL to maintain the security for a period of 3 months following the termination of the RIO is excessive. This 3 month period only applies where all outstanding amounts have been paid, given the operation of clause 22.2(b). However, given that all outstanding amounts would have then been paid, there is no further need for the security. There is no logical reason why ST needs to hold on to the Security Requirement once outstanding amounts are paid. The word “later” should be replaced by the word “earlier”.

4.28 **Clause 22.3 (Information request):** StarHub submits that there is no need for the RL to provide creditworthiness information in circumstances where the RL has provided a banker’s guarantee to the level of 2.5 times monthly charges. Necessarily, a banker’s guarantee provides adequate protection to SingTel. The nature of the information sought by SingTel may be highly commercially sensitive and detrimental to the competitive position of the RL. If creditworthiness information is to be provided, it should be provided to an independent third party subject to confidentiality undertakings with that third party then producing a creditworthiness report for SingTel.

4.29 **Clause 22.3 (Security Requirement):** StarHub submits that there should be a maximum cap on the value of the Security Requirement. See the comments in relation to clause 6.6 above.

4.30 **Clause 24.3 (Reciprocity of Payment Obligations):** See comment in relation to clauses 5, 6, 11.2, 21 and 22 above. The current drafting assumes that RLs do not supply services under the RIO. However, SingTel has drafted the RIO (via clause 19) in such a manner that it also forces RLs to supply certain services to SingTel on the same terms and conditions. Clearly, RLs should be entitled to the same rights and obligations as suppliers as SingTel has given itself as supplier. Clause 24.3 should be drafted to have reciprocal application in the same manner as the other provisions of the SingTel RIO.

4.31 **Clause 25.3(b) (Reciprocity of Protection Against Representations):** Again, as with clauses 5, 6, 11.2, 21, 22 and 24.3 above, the clause should be drafted reciprocally to recognise that the RL may potentially be the supplier under the RIO. As currently drafted, clause 25.3(b) assumes that it is only SingTel that is supplier.

4.32 **Clause 26.2 (Assignment):** Clause 26.2 should be modified such that SingTel must first obtain IDA's prior written consent before it can assign and/or transfer the RIO Agreement to any party. The RIO is an agreement which is specifically intended under the Competition Code to apply to the dominant licensee. The dominant licensee is SingTel. SingTel should not be permitted to assign the RIO to an entity other than the dominant licensee. IDA's prior written consent should therefore be required to ensure the RIO remains with the SingTel entity that has the dominant licensee obligations.

4.33 **Clause 36.1 (Amendments to RIO):** Consistent with the comments in relation to clause 3.12 of Part 1, SingTel should not have the ability to unilaterally amend RIO Agreements. All amendments to the model RIO approved or authorised by IDA should be automatically *offered* by SingTel to the RL. If the RL does not accept the amendments offered by SingTel, the particular RIO with that RL should not be amended but should rather become an "Individualised Agreement". This procedure is critical to contractual certainty of interconnection agreements in Singapore.

4.34 **General comment – SingTel's discretion:** StarHub remains concerned that the drafting of the RIO still leaves too many aspects of the Licensees' relationship to SingTel's discretion, rather than providing for objective standards. This is manifested by the repeated references to SingTel's "reasonable opinion". The addition of the word "reasonable" does not alter the fact that this is still a *subjective* test, based on SingTel's *subjective opinion*. Generally, StarHub submits that all references to "SingTel's opinion or reasonable opinion" should be deleted so that the standard defaults to a wholly objective test based on normal principles of contractual interpretation. This is supported by IDA's comments in page 1 of Schedule A of IDA's 2000 Notification, as follows:

> *"The proposed RIO leaves too many aspects of the Licencees' relationship to SingTel's discretion, rather than providing objective standards. The RIO must contain a "comprehensive and complete" statement of the proposed agreement between the Licensees (Section 5.3.2). The proposed RIO repeatedly seeks to vest SingTel with the discretion to impose additional requirements that it deems necessary (such as requiring the Requesting Licensee to provide additional information) or take actions based on its unilateral determination (such as refusing to provide service if SingTel is "not satisfied" with information provided by the Requesting Licensee). Whilst IDA does not expect SingTel to anticipate every possible situation, SingTel must revise the proposed RIO so that, to the maximum extent possible, it contains reasonable and objective standards that will provide the basis for SingTel's decision-making".*

4.35 **General comment - Local Leased Circuits:** StarHub submits that Local Leased Circuits, Co-location at SingTel's managed facilities and access to these managed facilities should be included in the RIO. StarHub has made detailed submissions to IDA in the context of the IDA's current review of Local Leased Circuit issues.

4.36 **General comment - More frequent IDA's reviews of RIO:** Consistent with StarHub's comments in the executive summary to this submission, StarHub submits that IDA should seek to fine-tune the RIO on a regular basis to ensure its effectiveness in addressing industry issues. With this in mind, StarHub submits that a triennial review of the RIO is not sufficient. Rather, IDA should also hold more limited annual reviews to sweep up more pressing issues arising with the RIO from time to time. IDA should also provide an opportunity for Licensees to make submissions to IDA on particular issues with the RIO as and when they arise, such submissions potentially triggering public consultation by IDA on the particular issues if IDA considers the issues are worthy of public consultation at the time.

5 Schedule 1A - Physical and/or Virtual Interconnection for FBOs

5.1 **Clauses 6.2 (Physical Interconnection Capacity):** StarHub submits that as currently drafted, this clause is anti-competitive as it forces RLs to acquire Local Leased Circuits from SingTel. For example, it requires the RL to enter into an agreement which may, for example, breach Section 8.5.3 of the Competition Code. SingTel should not be permitted to force RLs

to acquire additional services from SingTel in this manner. Rather, RLs should be permitted to exercise their discretion regarding from whom they acquire Local Ceased Circuits. Accordingly the words "*shall acquire Local Leased Circuits from Sing*Tel" should be deleted and replaced by the words "*operate or procure transmission capacity*". In addition, Local Leased Circuits are not currently governed by the RIO, hence there is no protection to RLs against supply by SingTel on unreasonable terms, particularly where RLs are forced by the RIO to acquire such Local Leased Circuits from SingTel.

5.2 **Clause 8.14.1 (Virtual Interconnection Capacity):** StarHub refers to its comment in relation to clause 6.2 above. The RL should be responsible for providing sufficient transmission capacity, not necessarily by ordering Local Leased Circuits from SingTel.

5.3 **Clause 8 (Forecasting):** A number of mechanisms are required to prevent call congestion. The procedures for forecasting and provisioning of interconnect capacity should include a methodology whereby once utilisation reaches a certain threshold level, the affected party must upgrade its capacity within a specified time frame in order to meet "grade of service" requirements. Prior to such upgrade, the affected party must loan capacity from the other party at a pre-determined price to alleviate the congestion. Criteria establishing the threshold level at which upgrades should occur should be clearly identified. Penalties should be included to address circumstances in which congestion occurs and there is a failure by a party to rectify that congestion.

StarHub proposes the following conceptual outline for that drafting. StarHub is happy to propose specific drafting for the benefit of IDA to review if this would assist IDA:

(a) Traffic utilisation measurement parameters are adopted consistent with those used to measure forecasting utilisation. The methods of measurement are clearly stated. Both parties agree to use these traffic statistics to identify future traffic utilisation and as a basis for notification to the other party whenever utilisation reaches a level which is too high and thus causes concern to the notifying Party. StarHub proposes an 85% utilisation level as a trigger for notification, such utilisation occurring for all the circuit groups within the same link.

(b) Upon receiving such notification, the receiving Party must acknowledge and inform the notifying Party within 3 business days if its own statistics confirm the 85% utilisation level If the receiving Party's statistics show a utilisation of less than 85%, both parties will exchange their respective traffic reports within 5 Working Days and seek to identify which statistics are accurate. If the differences cannot be resolved within 3 Working Days, both parties will exchange the traffic statistics for another 7 days period. In the event that the results still do not match and one of the parties' statistics shows that the traffic utilisation has been breached, the higher value of the two will be taken to be the final utilisation report.

(c) If the receiving Party's statistics also show a utilisation of more than 85%, or the parties otherwise agree that utilisation is more than 85%, or if the higher value is taken as above, then the parties will work out possible solutions to alleviate the high utilisation. Both parties will meet within a week to discuss possible solutions and to agree procedures for implementation. If the parties cannot agree a solution, the party with the congested capacity must loan from the other party capacities to alleviate the congestion. StarHub submits that the rates applicable for such loan capacity should be:

(i) where the RL loans capacity from SingTel, SingTel's standard wholesale LLC rates; and

(ii) where SingTel loans capacity from RL, the RL's standard wholesale rates.

(d) Penalties apply in the event that the receiving Party does not upgrade its interconnect links, or adopt an alternative agreed solution, to meet the grade of service requirements once congestion is identified.

Relevantly, DA previously commented at page 2 of Schedule B of IDA's 2000 Notification in relation to grade of service obligations in the following terms:

> *"The RIO must provide a "description of the quality of service that [SingTel] will provide" pursuant to the RIO. A general statement that SingTel will provide Interconnection Related Services ("IRS" on a non-discriminatory basis is not sufficient. Rather, the RIO must provide objective service quality standards - such as grade of service and network availability. The RIO must also include a description of the ways in which SingTel's compliance with these standards will be measured, such as the provision of monthly monitoring reports. The RIO must further provide a description of the procedures SingTel will use to remedy any service quality deficiencies disclosed by the monitoring process. Finally, the RIO must specify the remedy that SingTel will provide the Requesting Licensee of it fails to meet the quality standards."*

5.4 **Clause 2, Annex B (Fault Rectification):** Annex B should contain a clarifying clause that each Party is responsible for identifying and rectifying faults on its own side of the POI. This provision should complement the obligation in clause 2.1.1 of Annex B. At present, the demarcation of responsibility is unclear.

6 Schedule 2A - Call origination service

6.1 **Clause 2 (Customer billing):** The drafting of this clause does not recognise that for non toll-free call origination services, the Supplier actually bills the end customer directly. The drafting of the clause should be amended to address these non-standard billing arrangements for certain non-standard call types.

6.2 **Annex 2A-4 (List of Call Types):** StarHub submits that a new Schedule 2D should be incorporated into the RIO to address other call types not currently defined in the existing definitions of O/T/T. For example, a number of call types currently defined in Annex 2A-4 are not consistent with the definition of a "Call Origination" service as the charging principles are different. These call types will typically involve charging principles that involve a non-standard application of the O/T/T charging principles, hence specific drafting is required in the RIO to describe the particular call type and how it is charged under interconnect arrangements.

Alternatively, the charging principles for O/T/T in respect of such call types should be amended to address the non-standard application of the O/T/T charging principles.

7 Schedule 2B - Call termination service

7.1 **Clause 3 (Number Level Activations):** While two weeks notice must be given in relation to requirements for Number Level Activations, there is no express obligation for the Supplied to perform the Number Level Activations on the requested date. If the Supplier does not inform the Acquirer that the Number Level Activations cannot be performed on the requested date, the Supplier should have an obligation to perform the Number Level Activations on the requested date.

7.2 **Annex 2B-4 (List of Call Types):** StarHub submits that Annex 2B-4 should be modified to list out the specific Call Types relating to "SingTel International Incoming Call Service" and "SingTel Local Call Termination Service", an example of which can be found in Annex 2A-4. Currently, the descriptions of both call services are ambiguous. The description could be interpreted, for example, to mean all "SingTel International Incoming Call Service" and "SingTel Local Call Termination Service", whether existing at the date of the RIO Agreement

or introduced after the date of the RIO Agreement. However, such an interpretation would render clause 2 of Schedule 2B redundant. This illustrates the need for greater precision in the definition of particular call types.

8 Schedule 3A - Licensing of Local Loop / Subloop

8.1 Many of the proposed drafting amendments identified below apply equally to other Schedules of the RIO, including Schedules 3B, 3C and 3D. For the sake of brevity, StarHub has avoided duplicating comments in relation to other Schedules of the RIO. Rather, StarHub notes that where other schedules of the RIO adopt the same formulation of drafting, the same comments apply. IDS should bear this in mind when reviewing other Schedules of the RIO.

8.2 **Clause 1 (Time frames for compliance):** Clause 1 should contain a provision that if SingTel fails to meet any timeframes in Schedule 3A relating to ordering/assessment or requests/access, and such failure is caused by SingTel, SingTel should provide compensation to the RL. StarHub is concerned at the potential for SingTel to breach the specified timeframes without any liability. If no penalty is imposed on SingTel in relation to a failure to meet specified timeframes, then SingTel will have little incentive to comply with those time frames notwithstanding that they are specified in the contract. Rights of termination, for example, are of no use to RLs given that SingTel remains the only supplier in most circumstances and RLs have no other alternative. SingTel's compliance with the specified time frames is critically important to the quality of service provided to Singapore consumers.

8.3 **Clauses 2.2 and 4.5(d) (Availability):** StarHub submits that the availability of each part of the Subloop or Local loop is currently very subjective. SingTel has considerable discretion to deny availability with little accountability in circumstances where SingTel has denied availability. The drafting of clauses 2.2 should be tightened so that the specified matters are the only matters to which SingTel may have regard. In particular:

(a) SingTel must be required to justify why Local Loop or Subloop is not available, as further identified in relation to clause 4.5 below.

(b) SingTel should be required to provide a regular status report identifying availability with an *on-line checking system* available to RLs to improve transparency and accountability and to minimise manual processes.

(c) Clause 2.2(a) and (b) should be modified so that availability is assessed as at the time of application by the RL and the two (2) year reservation period is reduced to 6 months. If additional lines are required 2 years into the future, for example, SingTel can always build out local loops. The reservation period should thus be aligned with the time frame required to build local loops under clause 6.9.

(d) Clause 2.(e) should be modified so that SingTel can only reject a request for Local Loop or Sub-loop which has been earmarked for decommissioning if such decommissioning will occur within 6 months from the date of the request. There may be a considerable period of time before decommissioning occurs during which the Local Loop or Subloop could be utilised by the RL.

8.4 **Clause 4.5 (Reasons for Rejection):** SingTel should provide a reasonable explanation and reasons for its rejection wherever a rejection occurs. This is important in ensuring SingTel accountability and to ensure that RLs can rectify any issues within their control that have lead to such rejection. IDA has previously commented on this issue at pages 1 and 2 of Schedule A of IDA's 2000 Notification in the following terms:

> *"Whilst IDA does not expect SingTel to anticipate every possible situation, SingTel must revise the proposed RIO so that, to the maximum extent feasible, it contains reasonable and objective standards that will provide the basis for SingTel's decision making. In addition the RIO must provide that, whenever it imposes an obligation or*

rejects a Requesting Licensee's request, SingTel will provide a reasonable explanation to the Requesting Licensee".

8.5 **Clause 4.6 (Application Fee):** The RL should not be required to pay an application fee to SingTel if its Request is unsuccessful. Such an application fee creates incentives for SingTel to err on the side of rejection, thereby benefiting from further application fees when the same Request is later resubmitted. In particular, the RL should not be required to pay an application fee to SingTel in the event of an unsuccessful request which is rejected due to circumstances beyond the RL's control (e.g., rejection under clauses 4.5(d) and 4.5(e).

8.6 **Clause 5.1 (Provisioning Date):** SingTel should be required to notify the RL as soon as SingTel becomes aware that it cannot meet the provisioning date. SingTel should be obliged to use its best endeavours to meet the provisioning date. At present, there is no obligation on SingTel to provision the service in a timely manner. A specific timeframe for provisioning is required for RLs to act with certainty. This is essential to allow RLs to deal with end users in a commercially reasonable manner in providing services, including specifying target provisioning timeframes to the end user. StarHub proposes that provisioning should occur within 3 Business Days, thereby enabling RLs to provide a fast and efficient service to Singapore consumers.

8.7 **Clause 5.2 (Testing):** StarHub submits that SingTel should be required to provide a test report or result to confirm the local loops and sub-loops have been properly tested prior to delivery. The outcome of the testing report should be notified to the RL at the same time that SingTel notifies the completion of provisioning of the Local Loop or Sub-loop. Again, this will ensure that SingTel's accountability in provisioning services is increased and that services are provisioned to an objective service quality standard.

IDA previously commented on the service quality issue at page 2 of Schedule B of IDA's 2000 Notification in the following terms:

"…the RIO must provide objective service quality standards - such as grade of service and network availability…The RIO must further provide a description of the procedures SingTel will use to remedy any service quality deficiencies disclosed by the monitoring process…"

8.8 **Clause 6.2 (Minimum SingTel Build):** The minimum quantity for two hundred (200) pairs of loop feeder or five (5) pairs of loop distribution is currently set at a level which is too high. StarHub submits that the proposed minimum pairs should be 50 pairs with incremental build in multiples of 10 pairs. By setting a very high minimum quantity, SingTel is discriminating against smaller RLs and will create considerable delay in circumstances where low volumes are involved and volumes need to be aggregated over time.

8.9 **Clause 6.9 (Time period for Build):** SingTel should be required to complete construction within a maximum specified time frame. StarHub submits that the maximum time frame for construction should be 3 months, as end customers are unlikely to commit if the time frame is any longer.

8.10 **Clause 11.6 (Fault response time):** StarHub submits that the 3 day time frame for SingTel to respond to a fault via a "First Appointment" is totally unreasonable. Consistent with the approach in other nations, faults should be addressed and rectified very quickly, with the space of 1 or 2 hours (e.g., maximum 2 hours). Consumers will typically suffer considerable service disruption during the period of a fault so a rapid response time should be required to ensure a high quality of service. IDA should take the opportunity to require SingTel to dramatically improve the quality of service that SingTel provides, thereby dramatically improving the quality of telecommunications services supplied to retail customers

Similarly, there needs to be a specified commitment period for the restoration of faults in the Local Loop and Subloop. For example, the First Appointment should occur within 2 hours, the fault diagnostics should be completed within another 2 hours, restoration of the service

and correction of the fault should occur within 1 hour of diagnosis. SingTel should pay damages to the RL if the fault cannot be restored within that time frame.

Again, this issue is partly addressed by IDA's comment on service quality standards at page 2 of Schedule B of the IDA's 2002 Notification in which the IDA stated that:

> *"The RIO must further provide a description of the procedures SingTel will use to remedy any service quality deficiencies disclosed by the monitoring process. Finally, the RIO must specify the remedy that SingTel will provide the Requesting Licensee if it fails to meet the quality standards".*

8.11 **Clauses 11.10 and 11.11 (Responsibility for fault rectification)**: The concept of "interfering Party" is not properly defined. StarHub submits that it should be clarified that that the Requesting Licensee is required to remove the cause of interference only if the cause is *due to its fault*.

8.12 **Clause 11.14 (SingTel liability for loss):** As presently drafted, SingTel absolves itself from liability for any loss suffered caused by repair or upgrading. However, if any loss or damage incurred by the RL is due to SingTel's fault (including intentionally or negligently), it is only fair that SingTel should be liable for such loss or damage. Imposition of liability on SingTel in such circumstances will ensure that SingTel acts with due care and skill in carrying out repairs and upgrades. Clause 11.14 should be redrafted accordingly.

8.13 **Clause 13.4 (Licence Term):** The term of each licence should correspond with the term of the RIO and should be automatically renewed at the same time the term of the RIO is renewed. SingTel should not have an ability to terminate the licence on 6 months' notice. Such discretion for SingTel to terminate does not provide sufficient contractual certainty to RLs. Upon the expiry of the term, there is no guarantee that SingTel will continue to provide Local Loop or Subloop. Accordingly, there is a high risk that the RL may lose the customer. This undermines the business case of the RL by providing insufficient certainty for investment decisions.

8.14 **Clause 14.1 (Suspension of Licence):** SingTel's rights of suspension of the RL's licence in relation to the Local Loop or Sub Loop should be subject to the qualifications on suspension as set out in clause 12.12 of the main body of the RIO. Clause 12.12 of the main body of the RIO provides that where the relevant schedule provides that clause 12.12 applies to the licence, the IDA must give prior written approval for any suspension. As currently drafted, clause 14.1 of Schedule 3A gives very considerable discretion to SingTel which could be used to SingTel's competitive advantage. It is important that the IDA can ensure that such discretion is exercised reasonably by SingTel.

Furthermore, SingTel should also provide for a form of remedy to the RL where the harm arises through the fault of SingTel and thus necessitates suspension. Clause 14.1 should be modified accordingly.

8.15 **Clause 14.2 (Damages for Suspension):** If SingTel wrongly suspends the RL's licence, SingTel should be liable to the RL for damages. Such suspension is likely to place the RL in breach of its contract to its own customer.

8.16 **Clause 15 (Licence Termination):** As with clause 14.1 above, clause 15 of Schedule 3A should contain a requirement that clause 13.2 of the main body of the RIO applies to SingTel's exercise of any termination rights under Schedule 3A, including all termination rights under clause 15. StarHub refers to its comments in relation to clause 14.1 above.

8.17 **Clause 15.1 (Termination rights):** Various provisions of clause 15.1 should be subject to a requirement that SingTel give a 7 day "cure notice" prior to exercising a right of termination. This will ensure that the RL is provided with time to correct any breaches. This obligation is particularly important given the severe consequences of termination in which SingTel can effectively force the RL to pay for network build via the "put option". Provisions of clause 15.1 which should be subject to a "cure notice" include clauses 15.1(b), 15.1(c) and 15.1(e).

8.18 **Clause 15.2 (Termination for breach):** SingTel should only be permitted to exercise a right of termination in relation to a *material* breach. The right of termination is a draconian right which should only be exercised in the worst circumstances, particularly given the severe consequences of termination identified above. SingTel should not be permitted to exercise a right of termination for any breach, no matter how technical or minor.

IDA previously recognised this issue at page 4 of Schedule A of IDA's 2000 Notification in which IDA commented:

> *"IDA recognises that SingTel has the right to suspend or terminate a RIO Agreement in the event that the Requesting Licensee materially breaches or fails to satisfy a material condition. However, as currently drafted, the proposed RIO contains numerous provisions that would allow SingTel to terminate the RIO Agreement for trivial or inappropriate reasons. SingTel must eliminate all such provisions".*

8.19 **Clause 15.7 (Liquidated Damages):** SingTel should not be permitted to recover liquidated damages from the RL in circumstances in which it is SingTel that exercises a right of termination. Liquidated damages should only apply where the RL seeks to terminate.

8.20 **Clause 15.8 (Forced Acquisition):** SingTel should not be permitted to force the RL to acquire Local Loop or Sub Loop from SingTel. The "put option" acts as a significant deterrent to RLs seeking to acquire the Local Loop or Sub Loop service from SingTel as they could be forced by SingTel to take ownership of SingTel's underlying infrastructure. The supply of Local Loop or Sub Loop under the Competition Code does not contemplate that RLs must ultimately acquire SingTel's underlying infrastructure as part of such supply. Rather, the option should be expressed as a "buy option", where RLs have a discretion whether to acquire the Local Loop or Sub Loop from SingTel given that it is RLs that have requested the build of the particular Local Loop or Sub-Loop *and it is the RL that has paid for such build.* SingTel's concept of a "put option" effectively gives SingTel a right to keep infrastructure which rightly belongs to the RL and for which RL has compensated SingTel for construction costs.

8.21 **Service / Network Diagram of Building Blocks:** At present, it is unclear to RLs which components need to be acquired from SingTel in order that the RL can provide a full service to its customers. This creates significant problems for RLs. StarHub submits that IDA should require SingTel to identify in the RIO, by way of a diagram, all the components and schedules that are required in order that the RL can provide an end service to Singapore consumers. This should include, for example:

(a) a diagram explaining the building blocks for delivery of an xDSL service using subloop and local loop;

(b) a diagram explaining the building blocks for delivery of an xDSL service using subloop only; and

(c) a diagram explaining the building blocks for delivery of an xDSL service using line sharing.

This will also assist RLs' understanding of the various terms used by SingTel in the RIO and will ensure better clarity and transparency.

IDA should also carefully assess the aggregate time frame under the RIO for the provisioning of all network elements by SingTel in the context of the RL acquiring a full package of unbundled services.

8.22 **Clause 2.9, Annex 3A.1**: Clause 2.9 should be modified so that the RL is not required to indemnify SingTel for loss or damage if the loss/damage is due to the fault, negligence or wilful conduct of SingTel.

9 Schedule 3B - Line Sharing

9.1 Comments made in relation to particular clauses in Schedule 3A above apply equally to Schedule 3B where the same drafting formulation has been adopted in the RIO. StarHub has avoided repeating comments for the sake of brevity and to avoid repetition.

9.2 **Clause 4.5(h) (Rejection due to interference):** StarHub submits that SingTel should provide the RL with a list of prohibited equipment and services once the RL opts into Schedule 3B. SingTel should also provide the RL with an updated list on a quarterly basis or otherwise on request. If an equipment or service does not fall within the list (or updated list), it is only fair that SingTel should not be permitted to reject a request; otherwise, the right of rejection could be exercised quite arbitrarily. RL's also need sufficient certainty that they can plan which equipment they will use to provide xDSL services in advance of requesting Line Sharing. Clause 4.5(h) therefore ought to be modified accordingly.

9.3 **Quality of service obligations for broadband/xDSL services:** StarHub submits that IDA should take the opportunity to encourage broadband take-up in Singapore and Internet adoption (e.g., for e-commerce and e-learning). This would be complementary to IDA's initiatives in a number of other areas. IDA could use the RIO to assist in this regard by requiring SingTel to provision services to particular quality of service standards. In this manner, RLs could rely on such quality of service standards when providing their own competitive services to Singapore consumers. StarHub submits that it is therefore important that the RIO identifies minimum specifications for xDSL/ADSL/Broadband deployment to ensure that RLs receive a certain standard of service from SingTel under the RIO (not just POTS quality).

9.4 **Fault clearance obligations:** Consistent with previous comments in relation to Schedule 3A, SingTel should be required to commit to improved fault response and restoration time frames. if Singapore residential and business consumers are using broadband services for e-commerce and e-applications they will not usually be able to accept significant periods of service disruption. IDA has set a minimum guideline of 99% availability for xDSL/Broadband service that translates into 7.2 hrs of unavailability per month. The market is asking for 99.9% which is approximately 0.72 hr per months. SingTel must give commitment to clearing faults in term of less than 1 hr (if not better).

Similarly, all planned maintenance and upgrades shall be carried out from 12am to 4am subject to RL agreement and 10-14 days early notification. In this manner, RLs will be able to minimise disruption to business customers during business hours. RLs will also be able to provide sufficient notice to business customers to enable such customers to make suitable arrangements during the period of the service outage.

10 Schedule 3C - Sale of Internal Wiring

10.1 Comments made in relation to particular clauses in Schedule 3A above apply equally to Schedule 3C where the same drafting formulation has been adopted in the RIO. StarHub has avoided repeating comments for the sake of brevity and to avoid repetition.

10.2 **Self-build:** StarHub submits that RLs should not be restricted under the RIO from self-building their own internal wiring. Self-build enables RLs to have more flexibility and better control. It also facilitates infrastructure-based competition over the last-mile wiring. Self-build enables RLs to have more direct communications with their end customers.

10.3 **Clause 6.3 (Compensation for damage):** This clause should be drafted to apply reciprocally. If it is discovered after the purchase of the Internal Wiring that the Internal Wiring is damaged due to SingTel's fault, SingTel should compensate the RL for the damage caused. Clause 6.3 therefore ought to be modified accordingly.

10.4 **Clause 8.1 (Sale of Internal Wiring):** Clause 8.1 should be modified so that the RL is only required to use reasonable endeavours to assist ST to sell the Internal Wiring "*to the Requesting Licensee"*. As currently drafted, clause 8.1 could potentially apply to any sale of internal wiring by SingTel. Clearly this was not the intention of the clause.

10.5 **Clause 10.1 (Fault reporting):** Clause 10.1 should be amended so that the RL is only required to pay SingTel for the *reasonable* cost for attending and restoring the fault. The word "reasonable" should be inserted before the word "cost".

11 Schedule 3D - Licensing of Building MDF Distribution Frame

11.1 Comments made in relation to particular clauses in Schedule 3A above apply equally to Schedule 3D where the same drafting formulation has been adopted in the RIO. StarHub has avoided repeating comments for the sake of brevity and to avoid repetition.

11.2 **Self-build:** As with Schedule 3C, StarHub submits that RLs should not be restricted under the RIO from self-build. The same reasons as identified in Schedule 3C apply.

11.3 **Clauses 5.1 and 5.2 (Studies and approvals):** The timeframes within clauses 5.1 and 5.2 should be shortened and prescribed. StarHub submits that SingTel should notify the RL of rejection or acceptance of the Request for the Distribution Frame Mounting within 3 business days. Otherwise, clauses 5.1 and 5.2 may be interpreted broadly by SingTel enabling delay in notifying the RL.

11.4 **Clause 6.1(b) (Detailed information on work method statement):** StarHub submits that it is impracticable to require the RL to provide the detailed information as requested in clause 6.1(b). The RL does not have any information about SingTel's existing MDF equipment. Rather, it is SingTel that should have the obligation to provide RLs the requisite information. Clause 6.1(b) should be modified accordingly.

11.5 **Clause 6.2 (Time frame for acceptance):** Consistent with the comments and reasons above, SingTel should be required to revert with its acceptance or rejection of the plans, timetable and work method statement within 3 business days. Clause 6.2 should be modified accordingly.

11.6 **Clause 9.11 (Cancellation):** Clause 9.11 should be modified so that the RL is only required to pay SingTel's *reasonable* costs arising from the Construction Order up to the time of cancellation. StarHub submits that the word "reasonable" should be inserted before the word "cost".

11.7 **Clause 16.4 (Costs on termination):** SingTel submits that it is only fair that if SingTel exercises its right of termination under clause 16.3, it is SingTel that ought to bear the RL's cost associated with the termination. Termination under clause 16.3 involves termination due to reasons associated with SingTel no longer providing service. Clause 16.4 should be modified accordingly. (**Note**: This amendment should apply to all similar clauses in the other Schedules of the RIO).

11.8 **Clause 16.6 (Failure to disconnect):** Clause 16.6 should be modified so that the RL has no claim whatsoever against SingTel "*in connection with the removal of the Requesting Licensee's equipment".* As currently drafted, clause 16.6 could potentially apply to any claim.

12 Schedule 4B - Submarine Cable Connection Service

12.1 Comments made in relation to particular clauses in Schedule 3A above apply equally to Schedule 4B where the same drafting formulation has been adopted in the RIO. StarHub has avoided repeating comments for the sake of brevity and to avoid repetition.

12.2 **Clause 2.2(a) (New Cable Systems):** As presently drafted, clause 2.2(a) has the effect of preventing the RL obtaining connectivity services unless the RL is an IRU holder or cable system owner. This is contrary to the intent of the Competition Code. The clause operates in this manner because it requires RLs to have obtained co-location space under Schedule 8D of the RIO. However, a condition of obtaining such co-location space is that the RL must be an IRU holder or cable system owner.

The existence of this restriction prevents RLs from obtaining connectivity to cable systems such that RLs cannot provide competitive backhaul services. Accordingly, the existence of the restriction is anti-competitive and significantly disadvantageous to the development of competition in the provision of backhaul transmission and other international services. StarHub understands that IDA is already in the process of reviewing this issue. The requirement for RLs to have obtained co-location under Schedule 8 of the RIO should be deleted.

12.3 **Clauses 2.2(c) and (d) (Request for Service):** StarHub submits that the stated time frames should be reduced to accelerate service provisioning. A one month waiting period before SingTel formulates terms and conditions is not necessary. Rather, SingTel should be required to formulate terms and conditions as soon as a request is made. However, if StarHub's submission above is accepted that new cable systems should be automatically incorporated into the RIO, then this clause would no longer be necessary.

12.4 **Clause 4.1 (Activation requests):** StarHub submits that the LCAR form should be provided to SingTel no less than 5 business days prior to the requested date of activation, rather than the current requirement of 30 business days. StarHub submits that 30 business days, (being six weeks) is totally unreasonable for such "last-inch" interconnection between SingTel's DDF / ODF and the cable systems' DDF / ODF. In any case, SingTel would have already laid sufficient cable capacities between SingTel's DDF / ODF and the cable systems' DDF / ODF. SingTel would not need to install additional capacity on per request basis.

12.5 **Clause 4.2 (Processing of request):** StarHub submits that the LCAR form should be processed by SingTel within 3 business days, rather than 5 business days. Business certainty is crucial to the provision of service by RLs to their customers. Reduced lead-times are necessary for RLs to be able to provide such certainty to their customers.

12.6 **Clause 6.2(a) (International industry standards):** StarHub submits that the requirement for SingTel to maintain and operate the Connection Service "*in accordance with international industry standards*" is too ambiguous. StarHub has already identified above that IDA requested in Schedule B of IDA's 2002 Notification that such general statements are not sufficient to discharge SingTel's obligations under the RIO to provide a "*general description of the quality of service that [SingTel] will provide*". Rather, the RIO must provide objective service quality standards.

StarHub proposes that clause 6.2(a) should be supplemented by the following service levels and rebates based on the industry standard. (SingTel's service level guarantees on its IPLC can be obtained from its website.)

Circuit Provisioning	
Delay	**Rebate**
1 working day	10% of the Activation Charge
2 working days	20% of the Activation Charge
3 working days	50% of the Activation Charge
4 or more working days	100% of the Activation Charge

Monthly Service Availability (Based on 99.9% availability)	
Unavailability	**Rebate**
44 – 173 mins of unavailability	10% of Monthly Charge (which is the respective Annual Charge in Schedule 9 / 12 months)
174 – 259 mins of unavailability	20% of Monthly Charge
260 – 345 mins of unavailability	30% of Monthly Charge
346 – 432 mins of unavailability	40% of Monthly Charge
More than 432 mins of unavailability	50% of Monthly Charge

In relation to service performance, the service must also meet the following three criteria:

- Bit Error Rate (BER) < 1 x 10E-7
- % Error Free Seconds (EFS) > 99.9%
- Severely Errored Seconds (SES) < 5 seconds

StarHub proposes that if the service falls below these performance criteria, SingTel must report the failure to RL immediately. After RL receive SingTel's report, RL will test the circuit for the segment in which the fault had been detected in blocks of 15 minutes to determine whether it meets the above performance criteria. Upon verification that the segment meets the above performance criteria, RL will notify SingTel for the hand-over and acceptance of the Service.

StarHub proposes that the period during which the Service falls below the above performance criteria is known as "Unavailable Time". Provided that RL has confirmed that the Service has failed to meet above the performance criteria, Unavailable Time will be calculated from the time RL receive SingTel's report and SingTel return the relevant circuits to RL for testing to the time RL confirm that the Service is restored. Unavailable Time excludes periods during which the Service has been restored using other cables or medium of transmission.

StarHub proposes that the compensation would be paid in the form of cheque to RL or deducted off from RL's next bill.

12.7 **Clause 6.1(c) (Tie cables):** Clause 6.1(c) provides that the RL must provide and install tie cables between its own equipment and SingTel's distribution frame. However, this is inconsistent with Attachment A of Schedule 8D which provides at clause 1.5.3 that SingTel must install and terminate such tie cables. StarHub submits that the wording from Schedule 8D should be adopted.

12.8 **Clause 8.2 (Planned maintenance):** The industry standard for notification of planned maintenance is 14 calendar days, rather than 5 business days. Greater notification of planned maintenance by SingTel is required to enable RLs to provide sufficient time for their customers to make alternative arrangements.

12.9 **Clause 9.1 (Linkage to co-location):** The Connection Service is currently expressed as continuing until the expiry or termination of the licence for co-location space in respect of the Co-location Equipment at the relevant Submarine Cable Landing Station under Schedule 8D of the RIO. However, the term of the Connection Services should be delinked from the license for Co-location Space. There may be instances where the relevant co-location space is governed by a separate arrangement and does not fall under the RIO.

12.10 **Annex 4B.5 (List of cable systems):** StarHub submits that the list of cable systems should be updated. The i2i cable system, for example, should be included. Furthermore, a general

clause with the following wording should be added to the Annex to achieve greater flexibility in relation to the list of cable systems:

> *"(c) Any other Submarine Cable systems landing in Singapore from time to time and that are not categorised as "Group A Cable Systems" or "Group B Cable Systems" above must be categorised as a "Group A Cable System" or a "Group B Cable Systems" for the purposes of this Annex 4B.5 by SingTel within 3 business days of receiving a request in writing from the Requesting Licensee requesting such categorisation."*

12.11 **Satellite Earth Station Connection Services:** While Schedule 4B covers connection services to Cable Systems, it does not cover connection services to Satellite Earth Station Connection Services. StarHub submits that Schedule 4B should be expanded to cover connectivity to Satellite Earth Station Connection Services. Alternatively, a new Schedule should be incorporated into the RIO.

13 Schedule 5A - Licensing of Lead-in Duct and its Associated Lead-in Manholes

13.1 Comments made in relation to particular clauses in Schedule 3A above apply equally to Schedule 5A where the same drafting formulation has been adopted in the RIO. StarHub has avoided repeating comments for the sake of brevity and to avoid repetition.

13.2 **Clause 1.2 (Proof of ownership):** The RL may seek a licence in relation to lead-in duct ("**Duct**") and or lead-in manhole ("**Manhole**") "*owned by SingTel*". However, it is not always clear who owns the relevant Duct or Manhole. StarHub submits that SingTel should be required to provide evidence that it actually owns the Duct or Manhole in each case, otherwise SingTel should not be entitled to exclude other RLs from accessing such Ducts or Manholes, which should be deemed a common resource for the industry regulated by IDA.

13.3 **Clauses 1.4(a) and (b) (Pre-Provisioning timeframe):** If SingTel is delayed in relation to provisioning work due to events outside of its reasonable control, SingTel should be required to notify the RL immediately after becoming aware of such delay. SingTel should also be required to evidence that the delay is in fact caused by matters outside SingTel's reasonable control. In the event that a delay can be redressed if the RL were to intervene, such intervention should be permitted (e.g., submissions by RL to assist with approval by authorities). All extensions to timeframes sought by SingTel as a result of matters beyond SingTel's control should be agreed with the RL and should then become subject to the remedy provisions in clause 1.5.

13.4 **Clause 2.2 (Availability):** SingTel should be required to provide reasonable alternative solutions to the RL where the requested Duct and its associated Manhole is not available. Particularly, as each request must identify the location and required Duct and Manhole under clause 3.2(c). SingTel should automatically provide alternative solutions based on the RL's request. The RL should have the discretion to accept or decline the proposed alternatives. Where RL declines the proposed alternative, SingTel should re-propose another reasonable solution for RL's consideration.

If such a procedure is not in place, the RL would be required to re-submit another request and the whole process would be significantly delayed.

The same additional issues arise as with availability as identified in relation to clause 2.2 and 4.5(d) of Schedule 3A above. In particular, "unavailability" should not include maintenance pipe bore.

13.5 **General comment in relation to clause 3(Ordering and Provisioning), clause 4 (Studies) and clause 5 (Delivery):** The process as currently drafted from ordering to delivery is lengthy and cumbersome. The following is a summary of the current process:

Step No.	Clause in RIO	Action required.	Time frame allowed (business days)	Accumulative business days
1	3.2	RL to submit request.	NA	0
2	3.5	SingTel to acknowledge request and notify RL of estimated Processing Date.	1	2
3		SingTel to process request per estimated Processing Date.	No limit - as estimated by SingTel.	2 + SingTel timeframe (Processing Date)
4	4.1 and 4.2	SingTel to undertake desk study and notify RL of result of In-Principle Approval.	10	12 + SingTel timeframe (Processing Date)
5	4.5	RL to notify SingTel to proceed to Project Study	5	17 + SingTel timeframe (Processing Date)
6	4.6 and 5.1	SingTel to undertake and complete Project Study.	20	37 + SingTel timeframe (Processing Date)
7	5.3	SingTel to notify RL of Final Approval.	No limit specified.	37 + SingTel timeframe (Processing Date)
8	5.4	RL to agree to proceed to construction of Connection Duct.	5	42 + SingTel timeframes (Processing Date and Final Approval)
9	5.5	SingTel to construct Connection Duct.	25 or such longer time as SingTel notifies the RL.	67+ SingTel timeframes (Processing Date; Final Approval; construction of Connection Duct)
10	5.7	SingTel to notify RL of Completion Date.	None specified.	67+ SingTel timeframes (Processing Date; Final Approval; construction of Connection Duct; and notice of Completion)
11	5.7	RL to connect its duct to Connection Duct.	25 or as agreed with SingTel.	92 + SingTel timeframes (Processing Date; Final Approval; construction of Connection Duct; notice of Completion; connecting RL duct to Connection Duct).

As summarised above, cable installation currently takes around 144 working days under the existing Schedule 5A procedures, or around 7.2 calendar months. However, customers are seeking lead-times of around 1 month for cable installation.

The procedure set out in Schedule 5A is therefore excessively lengthy and inefficient. Several provisions also lack precision and provide considerable discretion for SingTel to unilaterally impose or extend timeframes. StarHub has proposed below a number of amendments that could be made to Schedule 5A to improve these time frames and reduce SingTel's discretion.

13.6 **Clause 3.1 (Ordering and Provisioning):** The current drafting is ambiguous as to the meaning of Duct and Manholes that are "*currently not being used for any other purpose*". As the clause is not cross-referenced to the concept of availability under clause 2.2, it appears to

create a separate and very extensive discretion for SingTel to argue that certain Ducts and Manholes are not capable to being subjected to the ordering and provisioning procedure. As with clause 2.2(3) above, the breadth of the discretion could be exercised in an uncompetitive manner and should be limited accordingly. StarHub submits that the words "*currently not being used for any other purpose*" should be deleted and replaced with "*available as defined under clause 2.2*".

13.7 **Clause 3.4 (Daily cap on applications):** For consistency, the word "applications" should be replaced by "requests" and reference to Schedule 5C should be deleted, as that Schedule was previously removed.

The cap of 4 applications per day *for the entire industry* is also unreasonable and anti-competitive. The existence of the cap creates business uncertainty for RLs, particularly where there is an industry-wide surge in demand. SingTel itself is not subject to any cap in the services it provides, so the existence of the cap discriminates against RLs. StarHub submits that the limit should be eliminated altogether and the number of applications should be determined as a consequence of market forces. To the extent any cap remains, it should be clarified to apply on a "per Requesting Licensee" basis.

IDA has previously commented in relation to this issue at page 2 of Schedule A of IDA's 2000 Notification in which IDA commented as follows:

> *"IDA is particularly concerned about the stringent limits on the number of applications or orders for IRS that SingTel is willing to process each day or week. SingTel must deploy adequate personnel to meet the demand for IRS in a commercially reasonable manner. SingTel may recover the reasonable costs of meeting such demand through cost-based, non-discriminatory charges".*

13.8 **Clause 3.5 (Processing Date):** The current drafting does not place any limits on the timeframe of the estimated Processing Date. SingTel has the unfettered discretion to nominate an estimated Processing Date. StarHub submits that a time limit of 3 business days for request processing should be stipulated such that the Processing Date is within 3 business days from the date SingTel acknowledges the RL's request.

13.9 **Clause 4.3(b) (Rejection on basis of prescribed form):** The current drafting potentially allows SingTel to reject applications for minor deviations from the prescribed form. The word "*materially*" should be inserted before the words "*in the prescribed form",* to limit SingTel's ability to reject applications where they contain minor errors (e.g., typographical errors or errors that are easily capable of remedy).

13.10 **Clause 4.3(c) (Rejection on basis of required information):** As with clause 4.3(b) above, the current drafting provides considerable discretion to SingTel which could be potentially exercised in an anti-competitive manner to delay provisioning. StarHub submits that rather than rejecting a request on the basis of insufficient information, SingTel should be required to ask RL to provide the missing information within a specified time period (e.g., 5 business days). Only if the RL does not provide the missing information within that time period should SingTel then be able to reject the request. In this manner, the process is more efficient, eliminating delay and duplication of work where the missing information is immaterial or could easily be provided.

13.11 **Clause 4.3(d) (Rejection on basis of availability):** As submitted in relation to clause 2.2 above, SingTel should offer alternative solutions in cases where the requested Duct and Manhole is not available. This is consistent with the principle of cooperation under the Competition Code. Accordingly, the words "*and there are no reasonable alternative solutions*" should be inserted at the end of the clause. In circumstances where there has been rejection on the basis of unavailability of requested facilities, SingTel should be required (after consultation with the Requesting Licencee) to offer reasonable alternative solutions. In circumstances where alternative solutions are not available, SingTel should be required to specify its reasons for rejection and when availability will arise.

13.12 **Clause 4.3 (Reasons for Rejection):** As above, SingTel should provide a reasonable explanation and reasons for its rejection wherever a rejection occurs. This is important in ensuring SingTel accountability and to ensure that RLs can rectify any issues within their control that have lead to such rejection. IDA has previously commented on this issue at pages 1 and 2 of Schedule A of IDA's 2000 Notification in the following terms:

> *"Whilst IDA does not expect SingTel to anticipate every possible situation, SingTel must revise the proposed RIO so that, to the maximum extent feasible, it contains reasonable and objective standards that will provide the basis for SingTel's decision making. In addition the RIO must provide that, whenever it imposes an obligation or rejects a Requesting Licensee's request, SingTel will provide a reasonable explanation to the Requesting Licensee".*

13.13 **Clause 4.5 (Notification to proceed to Project Study):** In order to speed up the provisioning process, StarHub submits that the desk and project study should be undertaken together. Ideally, the need for a desk study should be eliminated altogether, as the function of a desktop study could be subsumed within the project study. This would reduce the time frame to complete both studies from 30 days to around 10 days.

13.14 **Clause 5.3 (Final Approval):** The current drafting does not specify the timeframe between the completion of the Project Study under clause 5.2 and notification of Final Approval in clause 5.3. StarHub submits that SingTel should be required to notify the RL within a specified time frame whether the Request has received Final Approval. Accordingly, the words "*within 2 days of the completion of Project Study*" should be inserted after the words "*If the Building Lead-in Duct and its associated Lead-in Manhole is available,".*

13.15 **Clauses 5.4 and 5.5 (Construction of Connection Duct):** The current drafting of clause 4.5 allows SingTel to unilaterally extend the timeframe in relation to the construction of Connection Ducts. Limitations should be placed on SingTel's discretion to ensure that the discretion is not exercised to delay construction and provisioning. SingTel should not be permitted to extend the provisioning time without the RL's consent. If SingTel does not meet the construction timeframe, SingTel should be required to provide compensation under clause 1.5 of Schedule 5A.

In addition, there should be no requirement for the RL to acquire Connection Ducts from SingTel for the purposes of enabling the RL to connect to the Manhole. Rather, the RL should be permitted to directly construct its connection to the Manhole without the need to acquire a Connection Duct from SingTel. Therefore, upon receipt of the Final Approval, the RL should be permitted to proceed with the necessary physical access procedures for construction of the connection to SingTel's Manhole. StarHub has made submissions on the issue of connecting lead-in pipes through the walls of SingTel manholes in **Attachment A** to this submission.

13.16 **Clause 5.6 (Revised estimates):** SingTel is provided with substantial discretion to issue revised cost estimates without any limitations as to the degree of variance between original estimate and the revised estimates. Further, SingTel is also provided with the right to suspend construction if the RL does not agree to these revised estimates. To ensure that this discretion is not exercised in a manner contrary to the Competition Code to delay provisioning, limitations should be placed on the degree of variance allowed between the original estimates and revised estimates. Furthermore, SingTel should be held accountable for the discrepancies and should give reasons for the variance. If the variation exceeds the original estimate by more than 15%, it is SingTel that should bear the additional costs. No more than 2 revised estimates should be permitted in relation to any one request.

As noted above in relation to clauses 5.4 and 5.5, clause 5.6 should not apply if the RL decides to construct its own Connection Ducts. In this manner, the RL is better able to manage the costs and risks.

13.17 **Clause 5.7 (RL to connect Connection Duct):** The obligations of the RL to complete connection to the Connection Duct within the specified timeframe should correspond to SingTel's obligation to complete the construction of Connection Duct under clause 5.5. If the

suggestion in relation to clause 5.5 is not accepted and SingTel retains an unilateral right to extend the timeframe in relation the construction of Connection Duct, the RL must also a corresponding right to unilaterally extend the timeframe under this clause 5.7.

In any event, if the RL is required to seek an extension of time under clause 5.7, SingTel should be obliged to respond to that request within 3 business days. Otherwise, SingTel can delay the provisioning process by delaying responding to a request for extension of time.

13.18 **Clause 6.1 (Notification of Cable Pulling):** StarHub submits that a request for cable pulling should be made no less than 5 days in advance, rather than 10 days in advance. There is no good reason why SingTel needs 10 days notice, rather it creates significant disadvantages for the RL. No specific duration should be stated in relation to the time frame after the Completion Date in circumstances where the RL has constructed its own duct to the Manhole.

13.19 **Clause 6.5 (Completion of Cable Pulling):** It is not possible for RLs to comply with the 25 day period allocated by SingTel for cable pulling. Rather, RLs own timeframe for cable pulling is influenced by the timeframes of building developers and contractors who need to complete their own construction works before RLs are able to complete cable pulling activities. Accordingly, StarHub submits that the time frame should be able to be extended by RLs by notice to SingTel without any penalty.

13.20 **Clauses 6.6 and 6.7 (Application Fee):** The RL should not be required to pay an processing charges to SingTel if its application is unsuccessful. Such a processing fee creates incentives for SingTel to err on the side of rejection, thereby benefiting from further processing fees when the same application is later resubmitted. In particular, the RL should not be required to pay a processing charge to SingTel in the event of an unsuccessful application which is rejected due to circumstances beyond the RL's control

In addition, any alternative installation schedule is proposed by SingTel, it should remain subject to approval by the RL. Again, the RL is frequently dependent on third party developers to complete their own building development works before StarHub is in a position to pull cables to that building.

13.21 **Clause 6.10 (Failure to submit Work Completion Report):** SingTel should give the RL at least 10 days notice before SingTel proceeds with verification of work completion. Alternatively, the RL should be able to extend the timeframe for submission of the work completion report by notifying SingTel.

13.22 **Clause 6.11 (Photographic record):** If SingTel disputes any photograph submission, it should simply request the RL to submit another photograph. SingTel should not have the ability to reject the entire work completion report and then undertake its own verification at the RL's expense. This gives SingTel a very broad and unreasonable discretion which it can exercise at the cost and expense of the RL to increase the RL's costs and create further delays.

13.23 **Clause 6.12 (Charges for inspection):** SingTel should not be permitted to charge the RL for the costs incurred in undertaking site inspections. Such site inspections would occur in any event as a part of SingTel's normal O&M programme.

13.24 **Clause 6.13 (Cancellation charges):** SingTel should not be permitted to charge a cancellation fee. Such a fee acts as a penalty which increases the RL's costs. The RL has already paid fees for SingTel to the processing of the application to enable SingTel to recover its processing costs.

13.25 **Clause 7 (Underground Equipment)**: As Underground Equipment is already existing and SingTel would have prior knowledge of the presence of the Underground Equipment, a lengthy notification process is not appropriate. StarHub submits that notification under this clause should be by fax within 3 business days before any commencement of work.

13.26 **Clause 8.1 (Restrictions on building connections):** SingTel should not be permitted to use the RIO as a means of constraining the RL's downstream customer connections. StarHub submits that clause 8.1 is unnecessary and should be deleted. In addition, by imposing a constrain of only one riser for each building, SingTel is constraining the RL's cable routing within the building.

13.27 **Clause 9.1(Maintenance):** As currently drafted, SingTel's obligations in relation to "maintaining and administering" the Duct and the Manhole is unclear and unspecified. SingTel's obligation should be clarified. SingTel's maintenance and administration requirements for Ducts should expressly include repairing ducts due to choke, blockage, dislocation, damage by any source, and sunken/movement of solid/earth. SingTel's maintenance and administration requirements for Manholes should expressly include exposing frames and covers, replacing damaged frames and covers, removing oil residue and debris, raising frames and covers, and maintaining visible manhole identification on the cover and inside the manhole wall.

13.28 **Clause 9.5 (Underground Equipment):** The current drafting provides SingTel with extensive discretion to unilaterally assess and determine whether RL's Underground Equipment poses a threat. Further, it allows SingTel to incur costs on the RL's behalf. Such discretion should be limited. SingTel should notify the RL where it considers the Underground Equipment to pose a threat, and allow RL the opportunity to rectify the problem. In addition, the word "*reasonable*" should be inserted before "interim measure" to limit the extent of rectification that SingTel can unilaterally take and the costs it can incur.

13.29 **Clause 9.6 (Priority to SingTel):** SingTel's requirement that SingTel always has priority access is discriminatory to the RL in circumstances where the RL's need for access may be more pressing. In addition, it creates considerable problems where the RL's personnel are already on-site and have commenced work, as the RL's personnel would be required to halt work while SingTel's personnel undertake their own. A fair, more efficient, more reasonable and non-discriminatory way of determining priority for access would be to give priority to the personnel that are on site first.

13.30 **Clause 10.1 (Licences and consents):** The RL should not be responsible for obtaining consents where such consents are required by SingTel. Rather, it is SingTel that should have responsibility for obtaining such consents.

13.31 **Clause 11 (Unauthorised Access):** In circumstances where SingTel claims unauthorised access has occurred, SingTel should be required to provide documentary evidence that SingTel actually owns the infrastructure to which it claims unauthorised access has occurred.

13.32 **Clause 12.1 (Physical access procedure):** Not all procedures specified in clause 12.1 are applicable in all circumstances. Accordingly, the words "*the following procedures, to the extent they are applicable in the circumstances*" should be inserted at the end of the clause.

13.33 **Clause 12.1(a) (Physical access for Underground Plant):** As currently drafted, SingTel is given the absolute discretion to unilaterally amend the procedures in relation to physical access. Such a right defeats the purpose of a RIO which is intended to ensure all procedures are agreed in advance under IDA oversight. In accordance with the Competition Code, any changes to the Physical Access Procedures should be agreed between the parties and/or should be subject to IDA approval. Accordingly, the word "SingTel" should be deleted and replaced by "*agreement in writing between the Parties".* This is supported by IDA's comments in page 1 of Schedule A of IDA's 2000 Notification, as follows:

> *"The proposed RIO leaves too many aspects of the Licencees' relationship to SingTel's discretion, rather than providing objective standards. The RIO must contain a "comprehensive and complete" statement of the proposed agreement between the Licensees (Section 5.3.2). The proposed RIO repeatedly seeks to vest SingTel with the discretion to impose additional requirements that it deems necessary (such as requiring the Requesting Licensee to provide additional information) or take actions based on its unilateral determination (such as refusing to provide service if SingTel is*

"not satisfied" with information provided by the Requesting Licensee). Whilst IDA does not expect SingTel to anticipate every possible situation, SingTel must revise the proposed RIO so that, to the maximum extent possible, it contains reasonable and objective standards that will provide the basis for SingTel's decision-making".

13.34 **Clause 12.1(b) (Standard Operating Procedures):** As with clause 12.1(a) above, SingTel retains the right to unilaterally amend procedure at its absolute discretion. Accordingly, the word "SingTel" should be deleted and replaced by "*agreement in writing between the Parties*".

13.35 **Clause 12.1(c) (Compliance with codes):** StarHub submits that clause 12.1(c) is superfluous given that the main body of the RIO already contains a requirement to comply with all applicable laws.

13.36 **Clause 12.1(d) (Written instructions from SingTel):** As with clause 12.1(a) and (b) above, SingTel should not have the ability to give instructions to the RL at its absolute discretion at any time. Such instructions would have the effect of unilaterally varying the RIO without the consent or approval of the IDA. All procedures should be agreed to in advance and approved by the IDA. If an amendment is sought, it should be subject to due process and agreed between the Parties. Accordingly, the words "written instructions provided to the Requesting Licensee by SingTel" *must be deleted and replaced with "other procedures agreed between the Requesting Licensee and SingTel*".

13.37 **Clause 14 (Marking of Underground Equipment):** Consistent with the comments above, SingTel should not have the ability to unilaterally direct cable markings. Rather, markings should be as agreed between SingTel and the licensee or otherwise by IDA oversight.

13.38 **Clause 16 (Requesting Licensee Rights):** Where the RL constructs the lead-in pipe, the RL should retain rights, title and proprietary interest in that lead-in pipe. Clause 16 should be amended accordingly.

13.39 **Clauses 17, 19 and 20 (Term of Licence):** The term of the licence, and payment, should commence after the acceptance by SingTel and the completion of cable installation. The term should be five years, extendable in periods of 2 years, given that cable installation in ducts is a long-term infrastructure measure. Alternatively, the term of each licence should correspond with the term of the RIO and should be automatically renewed at the same time the term of the RIO is renewed.

SingTel should not have an ability to terminate the licence on 6 months' notice. Such discretion for SingTel to terminate does not provide sufficient contractual certainty to RLs. Upon the expiry of the term, there is no guarantee that SingTel will continue to provide access. This undermines the business case of the RL by providing insufficient certainty for investment decisions. StarHub is concerned that SingTel may seek to require the RL to remove cabling from SingTel's ducts in circumstances where SingTel wishes to install its own cabling in such ducts.

Clauses 17 and 19 should contain a requirement that clause 13.2 of the main body of the RIO applies to SingTel's exercise of any termination rights under Schedule 5A, including all termination rights under clauses 17 and 19.

13.40 **Clause 18.1 (Suspension of Licence):** SingTel's rights of suspension of the RL's licence should be subject to the qualifications on suspension as set out in clause 12.12 of the main body of the RIO. Clause 12.12 of the main body of the RIO provides that where the relevant schedule provides that clause 12.12 applies to the licence, the IDA must give prior written approval for any suspension. As currently drafted, clause 18.1 gives very considerable discretion to SingTel which could be used to SingTel's competitive advantage. It is important that the IDA can ensure that such discretion is exercised reasonably by SingTel.

Furthermore, SingTel should also provide for a form of remedy to the RL where the harm arises through the fault of SingTel and thus necessitates suspension. Clause 18.1 should be modified accordingly.

13.41 **Clause 18.2 (Damages for Suspension):** If SingTel wrongly suspends the RL's licence, SingTel should be liable to the RL for damages. Such suspension is likely to place the RL in breach of its contract to its own customer.

13.42 **Clause 19 (Extension of time):** Consistent with the comments above, if the RL requests an extension of time, SingTel should be required to respond within 5 days.

13.43 **Clause 19.2(d) (Termination right where removal of equipment):** This provision should be deleted. The removal or abandonment of underground equipment does not automatically mean that the RL does not need access to the Duct or Manhole.

13.44 **Clauses 19 to 20 (Ownership of Duct and Manhole):** The drafting should be modified to address circumstances in which the RL constructs the lead-in duct.

13.45 **Annex B, Clause 2.2 (Notification of approval of Physical Access Request):** StarHub submits that SingTel should be required to provide notification by fax of any approval for physical access. SingTel should not be permitted to post approvals to RLs by mail, thereby delaying the approval process via delays in the postal system.

StarHub is concerned that there is no incentive on SingTel to process applications within the time indicated in this Annex. RLs have little apparent remedy if SingTel were to delay responding to applications in a manner which, in turn, delayed RLs from providing services to their customers. Such a delay would deny RLs from accessing SingTel manholes. Accordingly, incentives on SingTel to respond promptly must be created within the drafting of this Annex. StarHub proposes that such an incentive for SingTel to respond promptly would be created if authorisation were deemed to have been granted if SingTel did not respond within the specified time period.

13.46 **Annex B, Clause 3 (Emergency physical access request):** StarHub submits that a definition of "emergency" is required to avoid disputes and for clarification. StarHub suggests that the following definition be adopted:

> "*For the purposes of this clause 3, an "emergency" includes any instance where there is, or is likely to be, or the circumstances may lead to, a major service interruption (i.e., an interruption of service to any RL customers) and the RL requires access to SingTel's manholes too perform restoration work and/or address the risk of, or the circumstances leading to, the major service interruption.*"

13.47 **Annex B, Clause 3.2 (Request for emergency access):** Current drafting requires the RL to provide written and verbal request before emergency access is granted. Due to the nature of an emergency, the RL should be permitted to direct its resources to responding to the emergency rather than to paperwork. Request for emergency access should first be verbal notification via telephone. The telephone notification should provide the material details and upon such telephone notification, emergency access should be deemed to be granted. The RL can subsequently provide a confirmation of emergency access by providing the necessary paperwork.

In an emergency situation, time is of the essence and a rapid response is paramount. RLs' response to an emergency should not be hindered by SingTel paperwork and time consuming administrative procedures. Most importantly, SingTel should not have a discretion to deny RL's from responding to an emergency on the basis that paperwork is incomplete. The nature of an emergency may mean that RL's resources are best directed to responding to the emergency, rather than filling out paperwork. It is not in the interests of the Singapore public that there should be any scope for delay in responding to emergencies.

13.48 **Annex B, Clause 3.3 (Request for Emergency Access):** Consequential changes are required to reflect amended procedures for emergency access.

13.49 **Annex B, Clause 3.5 (Maximum period of emergency access):** As currently drafted, the RL is only allowed 8 hours for emergency access. The maximum period should be extended

to 24 hours, allowing for serious emergencies and/or those which require significant work to address the situation. Further, the RL must be able to request an extension to the emergency access period from SingTel. In such circumstances, SingTel must not unreasonably withhold its agreement to such an extension.

13.50 **Annex B, Clause 3.7 (SingTel priority):** StarHub submits that there is no basis for SingTel to have priority over the RL in cases of emergency. Discrimination against the RL in favour of SingTel is contrary to the Competition Code. StarHub proposes that the parties should be permitted simultaneous access to a manhole to respond to emergencies that affect them both, supported by obligations of co-operation. If a co-ordinated response or simultaneous access is not possible, the first personnel on site should be permitted the first access (i.e., avoiding the issue of RL personnel being half-way through rectifying an emergency when SingTel personnel arrive and demand access). However, there would be a carve-out to address the situation in which one party is likely to suffer significantly greater damage than the other, in which case that party should be given priority access.

Accordingly, StarHub proposes that the words "*SingTel will have priority with the RL's knowledge*" should be deleted and replaced with "*the Parties shall co-operate in good faith to ensure both parties can undertake corrective action. Where possible, the RL will be permitted simultaneous access with SingTel and the respective personnel of both parties on site shall co-ordinate their corrective action. If simultaneous access is not possible, the Party with the first personnel on site shall be permitted the first access, unless the other Party can clearly indicate that it will suffer significantly greater damage than the first Party if the other Party does not have priority access*".

13.51 **Annex B, Clause 4.1 (Rejection of access requests):** Consistent with the comments above, StarHub proposes the following amendments to reduce the scope of SingTel's discretion:

(a) It is important that SingTel's ability to reject applications is defined exhaustively, by use of the word "only". SingTel's only right to reject applications should be the rights set out in clause 4.1 of Annex B.

(b) SingTel should be placed under an obligation to act reasonably when exercising its right to reject applications. SingTel should not be permitted to act unreasonably in a manner that would delay access by RLs.

(c) SingTel's ability to reject applications on the basis they are incomplete should be addressed to avoid circumstances in which SingTel may reject applications on the basis of typos, spelling errors, immaterial mistakes, and easily correctable errors. Such circumstances should not provide SingTel with the ability to delay providing access. In circumstances where an error in an application can be easily corrected, or omitted information can readily be obtained, SingTel should not have the ability to reject an Application and require that the entire Application should be re-submitted. Such rejection creates inefficiency and delay. Rather, SingTel should contact the RL by telephone to seek clarification. If the information cannot be provided immediately, the 2 working day processing period will be extended by the amount of time that RL takes to respond.

StarHub considers this approach is reasonable and would prevent SingTel rejecting entire applications on the basis of simple errors or mistakes in one aspect of an application. The missing information is not of such a nature that there would be a significant delay in RLs obtaining such information. Rather, such information could be provided quickly by RLs.

(d) SingTel should not have the ability to reject an application because one of the persons named on the application is not on the master list or is barred from access. Rather, SingTel should accept the application subject to the RL nominating an alternative person that is on the master list and is not barred from access within 2 business days of receiving notification of acceptance.

(e) StarHub understands that SingTel will need to schedule SingTel's own maintenance work. However, SingTel should not have a discretion to schedule maintenance work in a manner which is intended to deny access by RLs, hence SingTel should be placed under an obligation to act reasonably and in good faith. SingTel should also be required to advise RLs when the maintenance work will be completed so that RLs can schedule their own access to coincide with that completion date, thereby avoiding delay.

(f) SingTel should not be permitted to form its own *subjective* view whether access *may* threaten health and safety, etc. SingTel should be required to exercise its discretion to reject an application on an *objective* basis, subject to a test of reasonableness, based on the fact that access *will* threaten health and safety, etc. Again, StarHub's principal concern is that SingTel could use this grounds of rejection as a means to unreasonably deny access.

(g) Again, SingTel should be required to act objectively and reasonably in determining whether an area is unsafe. SingTel should not have the ability to make an unreasonable determination that an area is unsafe and use this as a basis for denying RL's access.

StarHub submits that SingTel should be required to clearly identify why it is rejecting a physical access request, consistent with the comments earlier in this submission. Furthermore, SingTel should be under a contractual obligation to act reasonably and co-operate in good faith with RLs in relation to the consideration of requests for physical access, thereby ensuring that SingTel cannot continually reject access requests for spurious reasons.

13.52 **Annex C, Clause 1.2 (Removal of debris):** The RL should only be required to remove some debris from inside the manhole too the extent necessary for the RL to perform the required work. The RL should not have an obligation to maintain SingTel's manholes on behalf of SingTel. Accordingly, StarHub submits that the clause should be deleted.

13.53 **Annex C, Clause 2.3 (Obstruction):** StarHub submits that the word "material" should be added before "obstruction" for clarity.

13.54 **Annex C, Clause 2.5 (Approval):** The words "*If applicable*" should be inserted to clarify that a sub-Duct may not be required in all circumstances. Further, current drafting provides considerable scope for SingTel to delay the process by withhold approval for an unlimited time. Accordingly, the words "and must be granted within 2 business days of receiving the request" should be added to the end of the clause.

13.55 **Annexes D and E (Application Forms):** Consequential amendments are required as a result of the amendments identified above.

13.56 **New Provision - Notification of need for maintenance:** The RL may encounter site problems such as duct blockage, duct congestion or missing manholes and duct segments due to inaccurate digital maps or any other situation (including manhole inaccessibility, hidden manhole covers, need for manhole cover exposure, or need for cleaning of debris from manholes). Such site problems may prevent the RL from accessing the approved duct sections and associated manholes to install its cables or construct the manhole connection. In such circumstances, the RL should have the ability to notify SingTel by fax or email, indicating the location(s) of the site problem.

StarHub submits that within 10 working days from the date of receipt of such notice, SingTel should proceed with all necessary maintenance works (including, for example, clearance of blocked and congested ducts, locating missing manholes, exposing, raising or lowering of manhole covers and repair of ducts) to correct the site problem at SingTel's own cost. SingTel should ensure accessibility of availability of the relevant ducts and their associated manholes. SingTel should inform the RL on completion of the maintenance works.

14 Schedule 5B - Licensing of Tower Space & Co-location Space at Tower Site

14.1 Comments made in relation to particular clauses in Schedule 3A above apply equally to Schedule 5B where the same drafting formulation has been adopted in the RIO. StarHub has avoided repeating comments for the sake of brevity and to avoid repetition.

14.2 Comments made in relation to particular clauses in Schedule 5A above apply equally to Schedule 5B where the same drafting formulation has been adopted in the RIO. Again, StarHub has avoided repeating comments for the sake of brevity and to avoid repetition.

14.3 For consistency, references to "Singapore Telecom" should be deleted and replaced with "SingTel".

14.4 **Clause 1.4 (SingTel not responsible):** The RL should benefit from a reciprocal clause.

14.5 **Clause 4.2 (Project Study):** The Project Study should only comprise of one joint site visit and should include the RL's personnel and consultant (if any). StarHub submits that the preliminary site survey and joint site survey should be undertaken at the same time.

14.6 **Attachment A, Clause 1.1.1 (Installation of Co-location Equipment):** As currently drafted, substantial discretion is provided to SingTel for the approval of installation plans. The words "*Approval must not be unreasonably withheld, and must be granted within 2 business days of receiving the plans."* should be inserted at the end of the clause.

14.7 **Attachment A, Clause 1.7.1 (Interference):** For clarity, the word "material" should be inserted after the words "*Where the Requesting Licensee's equipment is causing*".

14.8 **Attachment A, Clause 1.8.1 (SOP and Safety):** Please refer to comments in relation to clause 12.1(a) of Schedule 5A above. The word "*and any written instructions which are provided to the RL by SingTel*" should be deleted and replaced by " *by agreement in writing between the Parties*".

14.9 **Attachment A, Clause 1.8.2 (SOP and Safety):** Please refer to comments in relation to clause 1.8.1 above. The word "*and any written instructions which are provided to the RL by SingTel*" should be deleted and replaced by "*agreement in writing between the Parties*".

15 Schedule 6 - Number Portability

15.1 StarHub notes that number portability is an essential building block of an open competitive environment. Without efficient systems to enable the porting of numbers, customers can be reluctant to change services, thus providing a significant barrier to competitive entry. It is therefore vital that appropriate procedures be implemented to facilitate the porting of numbers to and from SingTel as incumbent.

15.2 **Number Portability for 1800 and 1900 services:** StarHub submits that Schedule 6 should be expanded to incorporate Number Portability for 1800 & 1900 services. Such expansion of Schedule 6 should also address the following issues relevant to the portability of 1800 and 1900 services:

(a) Processing Procedure for RNO;

(b) Processing Procedure for DNO;

(c) Exceptions; and

(d) Termination of 1800/1900 services.

At page 2 of Schedule B of the IDA's 2000 Notification, IDA expressly stated "*SingTel must add procedures that will allow the "porting" of 1-800 and 1-900 numbers*".

15.3 **Testing and Provisioning:** StarHub submits that Schedule 6 should incorporate provisions addressing the testing and provisioning of Number Portability services. Implementation of the Number Portability service, based on the "Query on Release" method requires not only two numbers for the network, but also Signalling Requirement Information Flows between the parties. To ensure successful porting based on the Query on Release method on the fifth business day in accordance with the timeline, there should therefore be a set of test items identified and conducted for the Number Portability Inter-Operator Testing.

15.4 **Fault Reporting and Restoration:** StarHub submits that Schedule 6 should incorporate provisions addressing:

(a) Procedures for NP Fault Reporting and Resolution; and

(b) Fault Escalation & NP Fault Escalation Contact List.

The Number Portability Services are implemented based on the Query on Release method which will involve both parties. In the event of a fault which relates, or is deemed related, to the Number Portability service, both parties should investigate based on an agreed Fault management process between both parties in order to rectify the fault promptly.

In addition to the fault management process, both parties would need to know the contact points in order to escalate the issues to ensure that the fault are highlighted to the respective contact points so that the faults are rectified promptly.

15.5 **Annex 6A, Clause 1.1.7 (Porting Volume Limitation):** The limit of 100 numbers ported per day for all industry participants is unreasonable and anti-competitive. It clearly has the effect of preventing SingTel losing market share to market entrants. It impedes RLs from undertaking intensive marketing campaigns targeted at consumers. It also prevents efficient porting of large business customers with significant telephone numbers. StarHub submits that the limit should be eliminated altogether or increased significantly to 10,000 numbers per day.

IDA has previously commented in relation to this issue at page 2 of Schedule A of IDA's 2000 Notification in which IDA commented as follows:

> *"IDA is particularly concerned about the stringent limits on the number of applications or orders for IRS that SingTel is willing to process each day or week. SingTel must deploy adequate personnel to meet the demand for IRS in a commercially reasonable manner. SingTel may recover the reasonable costs of meeting such demand through cost-based, non-discriminatory charges".*

15.6 **Annex 6A, clause 1.2.3 (Number portability activations):** The words "use its reasonable endeavours" should be deleted so that number portability activations *must* occur within 5 business days. StarHub submits that a "reasonable endeavours" obligation provides considerable scope for delaying number portability to the detriment of competition. The timeframe should be a committed timeframe as the RNO will also need to ensure its own systems are ready by the relevant date. Uncertainty over the date would result in the RNO not being able to plan and execute its own implementation plan according to its original intended schedule.

15.7 **Annex D, clause 1.3 (Wrongful rejection):** If the DNO wrongly rejects an NP Application, the DNO should have an obligation to redress that wrongful rejection. The DNO should be required to implement and effect the NP Application within 5 business days of becoming aware of the wrongful rejection.

15.8 **Annex D, clause 1.4.3 (Implementation of activation**): StarHub proposes that the number portability process should be accelerated to ensure more efficient and speedy implementation.

StarHub proposes that implementation of the NP Service should be carried out by both Operators in three batches, as follows:

(a) The first batch should be carried out between midnight and 8:30am of the 5th Business Day of the processing Date.

(b) The second batch will be from 2:00 to 4:00pm of the 5th Business Day of the processing Date.

(c) The third batch will be from 5:30 to 9:30pm.

In the absence of specific instructions, all numbers should be ported between midnight and 8:30 am.

15.9 **Annex 6A, Clause 4.1.1 (Porting Block Limitation):** Similarly to clause 1.1.7, the requirement of porting in blocks of 100 for DDI/DID numbers is too inflexible. It prevents RLs from porting small batches, thereby delaying number portability where volumes are low. It prevents RLs from efficiently porting large batches. Porting should be permitted in blocks of 1, 10 and 1000 numbers for DDI/DID.

15.10 **Annex 6H (Rejection Code):** StarHub submits that a "Temporary Disconnect" status should also be included as a rejection code. DNO has the right to reject an application should the service to be ported are temporarily disconnected. As such, in the event that DNO received such an application, the Temporary Disconnect rejection code, as proposed, will be indicated to reject the application.

15.11 **Annex 6J (Number Portability Call Scenarios):** StarHub submits that call scenarios for 1800 and 1900 numbers should be included. As identified above, IDA expressly notified SingTel in December 2000 that the RIO should be amended to provide procedures for the portability of 1800 and 1900 numbers.

16 Schedule 8 - Co-location

16.1 Comments made in relation to particular clauses in Schedule 3A above apply equally to Schedules 8, 8A, 8B, 8C and 8D where the same drafting formulation has been adopted in the RIO.

16.2 Comments made in relation to particular clauses in Schedule 4B above apply equally to Schedules 8, 8A, 8B, 8C and 8D where the same drafting formulation has been adopted in the RIO.

16.3 StarHub has avoided repeating comments for the sake of brevity and to avoid repetition.

17 Schedule 8A - Co-location for Point of Interconnection (POI)

17.1 Many of the proposed drafting amendments identified below apply equally to other Schedules of the RIO, including Schedules 8B, 8C and 8D. For the sake of brevity, StarHub has avoided duplicating comments in relation to other Schedules of the RIO. Rather, StarHub notes that where other schedules of the RIO adopt the same formulation of drafting, the same comments apply. IDA should bear this in mind when reviewing other Schedules of the RIO.

17.2 **Clauses 2.1 and 3.4(e) (Availability):** Refer to the comments in relation to clauses 2.2 and 4.5(d) of Schedule 3A above. Note also Section 5.3.5.5.3 of the Competition Code which prevents a dominant licensee from denying availability on the basis that excess capacity has been "reserved" for future use. The dominant licencee must also "*demonstrate that it will need to use a portion of currently unused space in order to achieve reasonably projected rates of growth over a 2 year period*"

17.3 **Clause 2.1(e) (Unavailability due to decommissioning):** Clause 2.(e) should be modified so that SingTel can only reject a request for Co-location Space which has been earmarked for decommissioning if such decommissioning will occur with a reasonable time frame from the date of the request. There may be scope for co-location space to be used by the RL prior to such decommissioning occurring.

17.4 **Clauses 3 and 4 (Ordering & Provisioning):** The Ordering/Provisioning Procedure should be merged with the Project Study. It is unreasonable that a Project Study can only commence after SingTel's preliminary acceptance of Co-Location Request. Such an approach delays the ordering and provisioning process. Clauses 3 and 4 should be modified accordingly.

17.5 **Clause 3.3 (Application Fee):** The RL should not be required to pay an application fee to SingTel if its Request is unsuccessful. Such an application fee creates incentives for SingTel to err on the side of rejection, thereby benefiting from further application fees when the same Request is later resubmitted. In particular, the RL should not be required to pay an application fee to SingTel in the event of an unsuccessful request which is rejected due to circumstances beyond the RL's control (e.g., rejection under clauses 2.1(a), (b), (d) and (e)).

17.6 **Clause 4.4(b) and (c) (Lead-in Manhole):** SingTel should designate two lead-in manholes for diversity purposes. Clause 5.3 should also be amended accordingly.

17.7 **Clauses 4.4(e) and 5.2 (Site Preparation Work Timeframes):** SingTel should be required to complete the Site Preparation Work within a specified timeframe. There are two potential timeframes. A maximum timeframe of 3 weeks should apply where no renovations are required. A maximum timeframe of 6 weeks should apply where renovations are required. The concept of "renovations" should be clearly defined by reference to such matters as installation of air conditioning and raising of floor levels. A failure by SingTel to comply with these timeframes should trigger appropriate compensation to the RL.

SingTel should also provide a detailed project schedule in relation to the site preparation works. This should include, for example, all electrical, cable tray, tie cable installation, and lead-in pipe construction. Such a schedule enables each RL to plan and allocate resources to follow-up works.

17.8 **Clauses 7.1 to 7.3 (Licence Term):** The term of each licence should correspond with the term of the RIO and should be automatically renewed at the same time the term of the RIO is renewed. SingTel should not have an ability to terminate the licence on 6 months' notice. Such discretion for SingTel to terminate does not provide sufficient contractual certainty to RLs. Upon the expiry of the term, there is no guarantee that SingTel will continue to provide co-location. Accordingly, there is a high risk that the RL may lose the customer. This undermines the business case of the RL by providing insufficient certainty for investment decisions.

17.9 **Clause 7.2 and 7.4 (Termination rights):** Various provisions of clause 7.2 and 7.4 should be subject to a requirement that SingTel give a 7 day "cure notice" prior to exercising a right of termination. This will ensure that the RL is provided with time to correct any breaches. This obligation is particularly important given the severe consequences of termination. Provisions of clause 7.4 which should be subject to a "cure notice" include clauses 7.4(b), (c), (d), (e) and (f).

17.10 **Clause 7.4 (Termination for breach):** SingTel should only be permitted to exercise a right of termination in relation to a *material* breach. The right of termination is a draconian right which should only be exercised in the worst circumstances, particularly given the severe consequences of termination identified above. SingTel should not be permitted to exercise a right of termination for any breach, no matter how technical or minor.

IDA previously recognised this issue at page 4 of Schedule A of IDA's 2000 Notification in which IDA commented:

"IDA recognises that SingTel has the right to suspend or terminate a RIO Agreement in the event that the Requesting Licensee materially breaches or fails to satisfy a material condition. However, as currently drafted, the proposed RIO contains numerous provisions that would allow SingTel to terminate the RIO Agreement for trivial or inappropriate reasons. SingTel must eliminate all such provisions".

17.11 **Clause 9.1 (Replacement of equipment):** The timeframes and procedures for SingTel to revert to the RL on the RL's request for replacement, modification, rearrangement and additional Co-Location Equipment should be prescribed in detail. Such timeframes should be short. SingTel should allow the RL to commence such replacement, modification or rearrangement etc., 3 business days after the RL has submitted the request. StarHub submits that such requests relating to co-location equipment should not be treated as a separate Co-Location Request (subject to the lengthy procedures for obtaining access to co-location space) so long as additional Co-Location Space is not required.

18 Schedule 8B - Co-location for Point of Access (POA)

18.1 Comments made in relation to particular clauses in Schedule 8A above apply equally to Schedule 8B where the same drafting formulation has been adopted in the RIO. StarHub has avoided repeating comments for the sake of brevity and to avoid repetition.

19 Schedule 8C - Co-location at Satellite Earth Station

19.1 Comments made in relation to particular clauses in Schedule 8A above apply equally to Schedule 8C where the same drafting formulation has been adopted in the RIO. StarHub has avoided repeating comments for the sake of brevity and to avoid repetition.

19.2 **Clause 1.5 (List of co-location sites):** The list of co-location sites should be updated. RLs are currently prevented from obtaining co-location at new satellite earth stations given the existence of clause 1.5. As IDA will be fully aware of new satellite systems providing service in Singapore, IDA should mandate that SingTel should automatically expand the list in Schedule 8C.1 to cover new satellite earth stations without any need for an individual RL to approach SingTel separately on the issue and undertake lengthy negotiations.

IDA relevantly commented on a similar issue at page 2 of Schedule A of IDA's 2000 Notification as follows:

"The proposed RIO leaves too many terms for negotiation between the Licensees. The obligation to provide a "comprehensive and complete" statement of the proposed agreement between the Licensees is intended to ensure that, if the Requesting Licensee adopts the RIO, no further negotiations will be required. Rather, "further discussions will be limited to implementing the accepted prices, terms and conditions". Subsection 5.3.2 of the Code further provides that "[s]uch discussions should generally last no more than 30 days". The proposed RIO leaves numerous issues for post-acceptance "negotiation". SingTel must revise the RIO to limit, to the maximum extent feasible, the need for post-acceptance discussions."

19.3 **Direct connections to customers:** StarHub submits that it should be expressly permitted to connect directly to the equipment of customers located in SingTel's satellite earth stations. Such direct connection is more efficient and less costly than being required to connect off-site.

20 Schedule 8D - Co-location at Submarine Cable Landing Station

20.1 Comments made in relation to particular clauses in Schedule 8A above apply equally to Schedule 8D where the same drafting formulation has been adopted in the RIO. StarHub has avoided repeating comments for the sake of brevity and to avoid repetition.

20.2 **Clause 1.2 (Prerequisite for access):** Clause 1.2 should be modified so that the Requesting Licensee can access co-location space for the purposes of providing backhaul transmission and/or transit services without having to be an IRU holder or cable owner. As noted in relation to clause 2.2(a) of Schedule 4B above, the existence of this restriction prevents RLs providing competitive backhaul services and transit services. Accordingly, the existence of the restriction is anti-competitive and significantly disadvantageous to the development of competition in the provision of backhaul transmission. StarHub understands that IDA is already in the process of reviewing this issue. The pre-requisite for access should be deleted.

Furthermore, the co-located equipment at the cable landing station should not be cable system-specific. Rather, such equipment should be permitted to access all the cable systems at that cable landing station, both existing and new.

20.3 **Clause 9.1(b) (Linkage to co-location):** The Connection Service is currently expressed as continuing until the expiry or termination of the licence for co-location space in respect of the Co-location Equipment at the relevant Submarine Cable Landing Station under Schedule 8D of the RIO. However, the term of the Connection Services should be delinked from the license for Co-location Space. There may be instances where the relevant co-location space is governed by a separate arrangement and does not fall under the RIO.

21 Schedule 8 - Attachments

21.1 **Attachment A, clause 1.1.2 (Floor Loading):** The floor loading should be increased to 10 kN per sqm. Greater density saves space and therefore is beneficial for all parties. The figure of 10 kN per sqm is an industry norm.

21.2 **Attachment A, clause 1.4 (Cable and Fibre Restrictions):** The restrictions on the number of fibres and cables are not reasonable. For submarine cable stations, fibre terminations are undertaken at the RL's own equipment so should not be limited. The situation for POI terminations is slightly different given that termination occurs at SingTel's equipment. However, even for POI terminations the restrictions are still not reasonable and should be lifted as they impede competition.

21.3 **Attachment A, clause 1.5 (Tie Cables):** SingTel should advise the type of connectors to be used at SingTel's Distribution Frame and the length of cables between the RL's equipment and SingTel's Distribution Frame. The specified connectors should be commercially available and SingTel should make such connectors available on the RL's request.

21.4 **Attachment A, clause 1.5.3 (Spare Tie cables):** The provision of tie cables by SingTel should include reasonable spares for redundancy purposes to enable RL to connect.

21.5 **Attachment A, clause 1.6.1 (Earthing Requirements):** The earthing standards should be clearly defined. Such earthing requirements are necessary for the protection of equipment against electrical hazards. Less than 1 ohm is an industry standard, for example.

21.6 **Attachment A, clause 1.6.2 (Power Supply):** SingTel should provide protected power in the event of power failure. For example, A/C power back-up with a generator, D/C power back up with a battery and generator. If the power is not protected, the RL's equipment may cease to operate in the event of a power failure from the utility company or if the battery drains out. Protected power is standard international practice as a protection against the risk of power outages, particularly given the importance of telecommunications services.

21.7 **Attachment B (Hoisting Requirement):** Where hoisting is required to bring co-location equipment into the co-location space, SingTel personnel should be made available to undertake hoisting where requested by the RL. SingTel should make available the SingTel hoisting facility on-site and its operator. StarHub submits that a schedule of work could be provided to SingTel 10 days in advance so that SingTel has sufficient time to arrange this.

21.8 **Attachment B, clause 3(e):** The requirement that every worker is expected to "*have a decent haircut*" seems unnecessarily prescriptive, as to many of the other requirements in Attachment B.

21.9 **Attachment C:** Please refer to the comments in relation to the Physical Access Procedures in Annex B of Schedule 5.

21.10 **Attachment C, clause 1.5.1(c):** StarHub submits that the current limitation on the number of persons that may access a facility is unreasonable. In certain circumstances, more than 4 persons may need to obtain access to a facility. If more persons can access a facility, work can also be undertaken more efficiently and speedily. The number of personnel per access should be increased to a maximum of eight (8).

21.11 **Attachment H:** Diagrams should be included in Attachment H to address satellite earth station co-location and submarine cable landing station co-location.

22 Schedule 9 - Charges

22.1 **Need for greater transparency in charges:** StarHub submits that the RIO charges and their derivation should be made publicly available. Such lack of transparency raises very considerable concerns. RLs currently have no visibility regarding how charges are derived. Accordingly, RLs have little ability to make submissions to IDA on the issue whether the charges imposed by SingTel are reasonable relative to SingTel's underlying costs - or to provide any comment on the level of costs claimed by SingTel relative to industry benchmarks. If the charges and/or their derivation are made publicly known, the industry will be in a better position to identify whether the cost elements are true and correct. IDA may benefit greatly from the experience of other industry participants in assessing SingTel's claims.

StarHub submits that the inclusion of pricing in the RIO is clearly required by subsection 5.3.2 of the Competition Code which provides that the RIO must contain "*a comprehensive and complete written statement of the prices and terms and conditions on which the Dominant Licensee is prepared to provide Interconnection Related Services to any Requesting Licensee*." Pricing is also an issue that is regulated in considerable detail by the Competition Code, as evidenced by the express methodology set out in Appendix One of the Competition Code.

StarHub submits that public consultation on pricing is essential to delivering the Government's policy objectives with regard to promoting competition by allowing RLs to assess compliance with the FLEC and LRAIC pricing methodologies in the Competition Code. Such public consultation is consistent with best practice in maturing competitive environments elsewhere in the Asia Pacific region.

Consistent with the comments above, IDA should hold a specific public consultation on the Charges for Schedule 9 when the means of derivation of such charges is made publicly known.

23 Schedule 11 - Dispute Resolution

23.1 StarHub submits that a mechanism for effective dispute resolution is essential for ensuring the successful implementation of the RIO Agreement and the competitive benefits that are likely to flow from it.

23.2 **Modifications:** StarHub submits that the Dispute Resolution Procedures should be kept short and simple as far as possible in order to achieve a fair and expeditious disposal of the dispute. StarHub submits that the Dispute Resolution Procedures in Schedule 11 should therefore be modified with this in mind.

23.3 **Clause 2 (Initial Escalation Procedure):** If disputes are unresolved by exchange of correspondence, either party may presently escalate the issue and subsequently form an Inter-Working Group to discuss the issue. StarHub submits that these Inter-Working Group (IWG) dispute procedures in clause 2 should be amended so that an IWG is only formed where both parties agree in writing. If there is no IWG formed for a particular dispute, or if the IWG process is unsuccessful, either party should have the ability to refer the matter directly to IDA for dispute resolution.

The IWG procedure is lengthy and delays dispute resolution. The timeframe of 30 business days (10 business days for Notice of meeting and 20 business days for IWG meetings) has not assisted in expeditious resolution of issues, rather it has delayed the parties seeking IDA resolution, mediation or arbitration. Past experience has been the procedures are highly ineffective. Hardly any disputes have been resolved at the IWG level. There is little incentive for SingTel to act reasonably in resolving disputes.

23.4 **Clause 3 (Authority Dispute Resolution):** Currently if IDA does not have the power to act or is unwilling to resolve the matter, then a dispute will be referred back to the IWG. This means the IWG procedures & timelines will apply all over again. Such a process is inefficient in resolving the dispute, since the reason why the dispute has been escalated to IDA is because the parties could not agree in the first place.

In such a case, the parties should be able to "agree to disagree" without having to go through the IWG timeframes. Instead, if IDA will not decide on the matter, either party should be able to refer the dispute directly to Mediation or Arbitration in accordance with the process set out within the Schedule.

If IDA is unable or unwilling to resolve a dispute, then either party should have the ability to elect to refer the dispute to:

(a) Mediation if the other party is agreeable; or

(b) if not, to arbitration.

It should be expressly stipulated that a referral to Arbitration is not contingent on a referral of the dispute to Mediation.

24 Schedule 12 - Dictionary

24.1 **Clause 1.5 (Construction):** StarHub suggests that this clause should be deleted. SingTel is the dominant licensee and the RIO is intended to provide a means of asymmetric regulation to address that dominance. It is entirely appropriate that provisions in the RIO Agreement should be construed against SingTel and in favour of RLs in circumstances of ambiguity. In this manner, the effectiveness of the RIO will be heightened.

StarHub Pte Ltd
15 July 2003