

## EXPLANATORY MEMORANDUM

1. This Explanatory Memorandum explains the Direction dated 30 October 2009, issued by IDA to OpenNet, directing it to incorporate specific drafting language to the proposed NetCo ICO to give effect to:-
  - a. IDA's 3 July 2009 Direction, 7 August 2009 Direction and 20 August 2009 Decision on Reconsideration; and
  - b. The subsequent discussions between IDA and OpenNet to improve on OpenNet's ICO service ordering and provisioning processes and to increase the clarity of the ICO terms and conditions.
2. Unless the context requires otherwise, all capitalised terms used in this Explanatory Memorandum shall have the same meanings as in the ICO (including Schedule 18 - Dictionary).

### Background

3. Following IDA's review of OpenNet's proposed main ICO and Additional ICO Schedules taking into consideration the industry feedback received during the respective consultations of the proposed main ICO and Additional ICO Schedules, IDA issued the 3 July 2009 Direction and 7 August 2009 Direction requiring OpenNet to submit its proposed modifications to the proposed ICO.
4. IDA also issued the 20 August 2009 Decision on Reconsideration to vary the 3 July 2009 Direction to allow OpenNet to carry out scheduled maintenance outside of the 1am – 6am period where it is unavoidable to do so.
5. Subsequently, OpenNet submitted to IDA, the Proposed ICO Modifications on 11 August 2009, 21 August 2009 and 3 September 2009 for review and approval.

### IDA's Assessment of OpenNet's Proposed Modifications to the Proposed ICO

6. IDA has carefully reviewed OpenNet's Proposed ICO Modifications and found that the majority of the Proposed Modifications are in conformity with IDA's respective directions. However, a number of the OpenNet's proposed modifications have not completely met IDA's requirements. In this regard, IDA shall require OpenNet to modify its proposed ICO to incorporate specific drafting language to give effect

to IDA's directed modifications. In particular, IDA requires OpenNet to adopt the following:-

#### Removal of "Qualified Acceptance" Process

7. In the 3 July 2009 Direction, IDA had indicated that in situations where the underlying issues may be rectified, such as where the building owner, building management, home owner or End-User had initially obstructed OpenNet's installation, OpenNet should not reject Requests submitted by the Requesting Licensees. Instead, OpenNet should accept the Requests with qualification, subject to the rectification of the underlying issues. Upon review of OpenNet's Proposed ICO Modifications (and OpenNet's supporting explanation), which included requiring the Requesting Licensees to re-submit a confirmed date for access to the said premise, IDA takes the view that the "qualified acceptance" process is cumbersome for OpenNet and the Requesting Licensee to administer and comply with. It would be simpler for OpenNet to reject the Request, and the Requesting Licensee to submit a new application when the underlying issues have been addressed by the Requesting Licensees. IDA considers that this is fair and reasonable, given that the underlying issues are not a result of any fault of OpenNet.

#### Retention of Weekly Maximum Quota

8. Arising from IDA's requirement to address the anomaly in OpenNet's previously proposed mechanism to deal with orders exceeding the Maximum Quota, OpenNet has proposed a daily roll-over mechanism, whereby OpenNet will process 410 Requests per Business Day instead of 2050 Requests per week. IDA is of the view that a weekly Maximum Quota where OpenNet will process 2050 Requests per week provides more flexibility to the industry as compared to OpenNet's proposed daily Maximum Quota. The weekly Maximum Quota will require OpenNet to process more than 410 Requests on a certain Business Day if there is high demand on that particular Business Day, as long as the cap of 2050 Requests has not been exceeded in that week.

#### **Additional Changes to the Proposed ICO**

9. IDA has continued to engage OpenNet to improve on the ICO service ordering and provisioning process, in preparation for Qualifying Persons taking up ICO services when OpenNet commences commercial operations by end 2009. IDA has also sought to increase the clarity of the ICO terms and conditions to avoid ambiguity and potential disputes. The key changes arising from the above are as follows:-

### Change of Use from GPON to OE or from OE to GPON

10. IDA considers it fair and reasonable for OpenNet to allow the Requesting Licensee to change the use of the fibre connection service from GPON to OE and vice versa, without requiring the Requesting Licensee to terminate the existing service and reapply for a new service. IDA understands that to enable the change of use, OpenNet will only need to provide the necessary Patching Service to the Requesting Licensee, the costs of which may be recovered from the Requesting Licensee.

### Preferred Timeslot for Installation of First Termination Point

11. In order to assist Requesting Licensees to arrange for a suitable time with Retail Service Providers and End-Users (where applicable) for OpenNet to carry out the installation of the First Termination Point at a premise, the Requesting Licensees ought to be able to indicate in the application form a preferred timeslot (i.e. morning or afternoon slot) for the installation. Such an arrangement will help to facilitate co-ordination between the relevant parties and to minimise the number of visits to the premise.

### Option to Reject Underlying Fibre Connection Service if Redundancy Service is Unavailable

12. IDA considers it fair and reasonable that OpenNet should provide Requesting Licensees an option to request OpenNet to reject an underlying fibre connection service if OpenNet is unable to provision the associated redundancy service. Some End-Users may have strict redundancy service requirements and may not wish to proceed with the underlying fibre connection service if the redundancy service is unavailable. In this regard, it will be unreasonable if the Requesting Licensee is required to proceed with the underlying fibre connection service or has to bear the cancellation charges.

### Assignment of Transmission Tie Cable Port

13. As OpenNet is the party responsible for OpenNet's Fibre Distribution Frame at the OpenNet's Central Office, no party other than OpenNet should assign the Transmission Tie Cable Port on OpenNet's Fibre Distribution Frame in connection with a Request. Hence, there is merit to modify the proposed ICO to clarify this arrangement.

### Insufficient Capacity is Not a Valid Reason for Request Rejection

14. Under the OpenNet ICO, e.g. Schedule 1 (Residential End-User Connection), in the event that there is insufficient capacity, OpenNet is still obliged to provision a fibre connection service albeit within a longer service activation period. Insufficient capacity is therefore not

a valid reason for rejection of a Request. The draft ICO should therefore be modified to reflect this intent.

#### Licence of Basic Mandated Services

15. Generally, OpenNet requires a minimum term of 12 months for the Basic Mandated Services. OpenNet will continue to provide the Basic Mandated Service to the Requesting Licensee after the initial 12 months unless the Requesting Licensee requests to deactivate the service or if the service is terminated. In this regard, it should be made clear that upon the expiry of the initial minimum term of 12 months, the service shall not be automatically terminated.