

**ANNEX 1: M1'S COMMENTS ON IDA'S CONSULTATION ON PROPOSED INTERCONNECTION OFFER ("ICO") FOR THE PROVISION OF SERVICES ON THE NEXT GENERATION NATIONAL BROADBAND NETWORK – ADDITIONAL SCHEDULES**

Section/ Paragraph Reference	Description	Comments
Schedule 12A – QP to QP Interconnection Service		
General	Utilising the Transmission Tie Cable for interconnect between QP-to-QP	For QP-to-QP interconnection that uses fibres, QPs should also have the option of using one of Transmission Tie Cable terminated at each of the respective QPs' FDF for interconnection where the only applicable charge would be the patching charge at the CO. This would provide more flexibility and interconnection options to QPs.
Clause 1.6	General  "The Requesting Licensee and the Proposed QP shall be responsible for working out the terms . . ."	We note that the exclusion of OpenNet's liability for "any disputes, losses and damages arising from the QP to QP Interconnection" in Clause 1.6 appears inconsistent with the intent of Clause 1.7 (under which Clause 1.7 OpenNet is to be responsible for certain of its defaults). Accordingly, we propose that the words, "Subject to Clause 1.7 herein," be inserted before the words "OpenNet shall not be required" in Clause 1.6.
Clause 1.7	General  "OpenNet shall not be responsible for any damage to the Requesting Licensee's and the Proposed QP's Co-Location Equipment caused by . . ."	<p>The restriction of OpenNet's responsibility for damages in Clause 1.7 to that which "is the result of a grossly negligent, wilful or reckless breach of this ICO Agreement by OpenNet" may be overly broad.</p> <p>As an initial matter, additional obligations and duties of OpenNet may be set forth under the relevant statutes, common law, regulations and/or codes. It may thus be inappropriate to restrict OpenNet's responsibility for damages to that resulting from breach of the ICO Agreement only.</p> <p>Similarly, the additional restriction of OpenNet's responsibility to only that for damages resulting from "a grossly negligent, wilful or reckless breach" appears inappropriate – such responsibility should be predicated generally on actions or omissions of OpenNet (see e.g., Clause 5.2(a)).</p> <p>We further note that Clause 1.7 (when read with Clause 1.6) appears to imply a responsibility of OpenNet for damages only in respect of damages to Co-Location Equipment, rather than other types of loss or harm that may be suffered by the Requesting Licensee and/or the Proposed QP.</p> <p>In view of the above and the fact that it is fairer for Clause 5.2(a) to apply mutually to both the Requesting Licensee and OpenNet, we respectfully propose that Clauses 1.7 and 5.2(a) be</p>

		<p>deleted in their entireties, with Clause 5.2(a) revised as follows as the new Clause 1.7:</p> <p><u>“Each Party will fully indemnify and hold OpenNet the other Party harmless at all times against all actions, claims, proceedings, costs (including legal costs), losses or damages or expenses for injuries or death to any person whomsoever, which may be brought against OpenNet the second-mentioned Party by any person out of or in connection with any loss or damage to any property, including third party equipment, resulting from the actions or omissions of the first-mentioned Party, its Requesting Licensee’s employees or contractors;”</u></p>
Clause 1.9(a)	<p>General</p> <p>“OpenNet will provide Service Level Guarantees in respect of Project Studies and Site Preparation Work as set out in Annex 12AB. If OpenNet fails to meet any Service Level Guarantee applicable to this Schedule . . .”</p>	<p>In view of the capping of the remedy in Annex 12AB to 10% of each of the Project Study Fee and Site Preparation Charge for failure to meet the Service Level Guarantees exceeding 30 Calendar Days, we propose that Clause 1.9(a) be revised as follows:</p> <p><u>“OpenNet will provide Service Level Guarantees in respect of Project Studies and Site Preparation Work as set out in Annex 12AB. If OpenNet fails to meet any Service Level Guarantee applicable to this Schedule and the failure to meet such Service Level Guarantee is solely caused by OpenNet, OpenNet will provide a remedy to the Requesting Licensee in accordance with Annex 12AB provided however that provision of such remedy shall not relieve OpenNet from the obligation to provide the Project Studies and the Site Preparation Work or from any other liability or obligation under this ICO Agreement;”</u></p> <p>We additionally propose the deletion of the word “solely” because contributory failures by another party ought not, ipso facto, completely relieve OpenNet from its obligations to pay rebates for its failures.</p>
Clause 5.2(a)	<p>Installation and Maintenance of QP to QP Interconnection in Co-Location Space</p> <p>“it will fully indemnify and hold OpenNet harmless at all times against all actions, claims, proceedings . . .”</p>	<p>We respectfully propose the deletion of Clause 5.2(a), and its revision as new Clause 1.7, as discussed in further detail in our comment as to Clause 1.7.</p>