M1'S RESPONSE TO IDA'S CONSULTATION PAPER ON THE PROPOSED INTERCONNECTION OFFER (“ICO”) FOR THE PROVISION OF SERVICES ON THE NEXT GENERATION NATIONAL BROADBAND NETWORK (“NGNBN”)

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1 M1 welcomes the opportunity to submit our views and comments to IDA for its consideration in its review of the proposed ICO by OpenNet Private Limited ("OpenNet").

2 M1 entered the cellular mobile market in April 1997 as Singapore's first alternative cellular mobile operator and in 2000, we launched our international telephone services. In February 2005, M1 took the lead in introducing 3G technology and launching our 3G services. This was followed by the launch of our Mobile Broadband service in December 2006, reaffirming M1's commitment to offer customers high quality services that complements mobility with high speed and wide area coverage for data-intensive applications in the home, office and mobile broadband market. In August 2008, M1 became a full-fledged broadband player with the introduction of M1 Fixed Broadband service.

3 The NGNBN is envisaged to play a key role in bringing about a competitive and vibrant broadband market in Singapore, by providing Retail Service Providers ("RSPs") with open access to the NGNBN infrastructure. As a dynamic multi-play operator with interests in both mobile and fixed sectors, we strongly desire to see the NGNBN succeed in Singapore and true open access established across the entire NGNBN structure. Hence, M1 has been actively involved in the NGNBN since the launch of this programme. We believe that it is crucial to promote and invest in another ubiquitous, facilities-based competition through NGNBN. This coupled with full open access in a level playing field would likely be the long-term, sustainable solution in resolving the competition issues faced in the existing fixed-line markets despite 9 years of market liberalisation. We also look forward to be an integral part of this new NGNBN ecosystem that aims to catalyze the transformation of Singapore's info-communications industry, with introduction of exciting and innovative service offerings that could positively change the lives of Singaporeans.

4 We believe the intent of the ICO, similar to the implementation of the Reference Interconnect Offer ("RIO"), is to help facilitate interconnection between dominant licensees eg. OpenNet or Singapore Telecommunications Limited ("SingTel") and other telecom licensees on just, reasonable and non-discriminatory terms. In view of the critical importance of NGNBN, the significant government funding to be disbursed, and technological advancements, one would expect OpenNet's ICO terms to be an improvement over industry interconnection offers and/or the existing SingTel RIO. However, M1 notes that many aspects of OpenNet's proposed ICO does not even meet universal industry norms or prevailing prices or terms. In fact, OpenNet's ICO deviated from prevailing terms that were associated with IDA's directives issued to SingTel's RIO during its past reviews. The table below shows some key deviations from industry norms or SingTel's RIO.

Table 1: Key deviations from Industry norms or SingTel's RIO

Description	OpenNet's ICO	Industry norms or SingTel's RIO
Lengthy tie-in period	25 years for ICO or Schedule 2 on C-location Service (with significant early termination penalties)	Nil (Short contract term of 3 years)
Banker's Guarantee ("BG") requirement	BG requirement for all Requesting Licensees ("RLs")	BG requirement only for RLs with more than S$1m paid-up capital

Reciprocity principle	Removal of reciprocity in Clause 9	Reciprocity principle applied
Interest on Overdue Amounts	6%	2%
Application of Cost-based pricing principle	For similar services eg. co-location space, power charge, onsite charges etc., OpenNet's ICO prices are significantly higher than the amount offered in SingTel RIO (audited by IDA to be on a cost-based pricing principle). As the same cost-based pricing principle applies to OpenNet's ICO, there should not be any difference in the prices of such services. In fact, since OpenNet receives government funding for the rollout of NGNBN, the price of services ought to be lower than SingTel RIO taking into consideration the subsidies received.	

5 Further detailed comments on OpenNet's proposed ICO can be found in our attached Annex 1. We strongly urge IDA to conduct a comprehensive review of OpenNet's ICO to address all the issues highlighted.

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

Section/ Paragraph Reference	Description	Comments
Part 1 – Acceptance Procedures		
Clause 1.5	Notification of Acceptance of ICO	We respectfully propose to IDA that an additional reference to OpenNet's obligation to provide, at no additional costs, a Qualifying Person requesting Mandated Services with certain information, as set forth in sections 2.2 and 2.3 of the NetCo Interconnection Code 2009, be incorporated into Clause 1.5, in connection with the required discussions therein – as required under paragraph 2.1 of Appendix 1 to the NetCo Interconnection Code 2009.
Clause 1.8	Enquiries in relation to the status of OpenNet's assessment of the Notification of Acceptance of ICO	To ensure that NetCo QP's enquiries are handled promptly, we request for a minimum of 2 OpenNet contacts be provided in the ICO. In the event that one contact person is unavailable, NetCo QP's enquiries can still be handled by the alternate/back-up contact. Alternatively, OpenNet could provide a hotline contact (with its necessary back-up support) to handle NetCo QP's enquiries.
Clause 1.9(c)	"a designated contact person, a Singapore telephone and facsimile number and address in Singapore"	We propose the addition of e-mail contact as follows: "a designated contact person, a Singapore telephone and facsimile number, <u>a valid e-mail contact</u> and address in Singapore"
Clause 1.9(d)	Requirement of Banker's guarantee or security deposit	In line with current industry and RIO requirements, NetCo QPs with a paid-up capital of S$1 million or more are assessed to be of lesser financial risk and should not be saddled with unjustified costs to furnish the Security Requirement. M1 submits that NetCo QPs with a paid-up capital of S$1 million or more should be exempted from the Security Requirement. Please review and amend the whole ICO to reflect this.
Clause 1.9(f)	Requirement of a broad form public liability insurance policy to the value of S$10 million.	We note that such requirement may be unduly excessive and burdensome on Qualifying Persons. Any insurance policy requirement should be predicated on and reflective of the nature of the Services to be requested by the Qualifying Persons.

Clause 2.1	Assessment of Notification of Acceptance of ICO “OpenNet may find a Notification of Acceptance of ICO to be non-conforming if:….”	M1 proposes the following: “OpenNet may (and shall in the case of sub-Clause 2.1(b)) find a Notification of Acceptance of ICO to be non-conforming only if:” (i) We propose the first revision as tracked in the interest of clarity, so as make clear the mandatory rejection requirement of Clause 1.3 notwithstanding the discretionary word “may” in this Clause. (ii) Further, consistent with section 2.4 of the NetCo Interconnection Code 2009 and in the interest of providing Qualifying Persons with visibility and certainty on the applicable criteria, we propose the second revision as tracked.
Clause 2.2	Assessment of Notification of Acceptance of ICO “OpenNet may apply to the Authority for an exemption or suspension from providing Mandated Services to the Requesting Licensee at any time.”	While the exemption or suspension referenced in Clause 2.2 requires IDA approval, we are of the view that Clause 2.2 may (a) be inconsistent with section 2.4 of the NetCo Interconnection Code 2009, which section states that OpenNet may not refuse to provide Mandated Services requested, except in specific, enumerated circumstances; (b) undercut visibility and certainty to the Requesting Licensee; and (c) heighten risk of disparate treatment of various Requesting Licensees. Accordingly, we propose the removal of this clause from the NetCo ICO.
Clause 2.3	Assessment of Notification of Acceptance of ICO “Subject to OpenNet obtaining the Authority’s prior written approval…”	We respectfully refer to our comment in respect of Clause 2.2 and propose the removal of this clause from the NetCo ICO.
Clause 3.4	Representations and Warranties “Each Party agrees to indemnify the other Party…”	M1 proposes the following: “Subject to Clause 14 of Part 2 – Interconnection Offer Agreement (without regard to whether Part 2 is entered into by the Parties), ~~E~~each Party agrees to indemnify the other Party on demand for any liability, loss, damage, cost or expense (including legal fees on a full indemnity basis) incurred or suffered by the other Party which arises out of or in connection with any breach of any of the representations given in this Clause 3.” It may be beneficial to both Parties for the liability arising under Clause 3.4 to be subject to (via the revision as tracked) Clause 14 of Part 2 (as proposed to be further revised hereinafter), including the limitation of liability quantum and the exclusion of consequential or indirect liability, loss or damage therein.

Clause 5.1	Effect of Variation of OpenNet's ICO "OpenNet may amend or withdraw its ICO from time to time with the consent of the Authority."	We propose the removal of this Clause 5.1 because Clause 5.1 appears to grant OpenNet the unfettered discretion (see also Clause 4.4 of Part 2 of the ICO Main Body) to seek amendment or withdrawal of it's ICO (albeit subject to the consent of the Authority), and such unfettered discretion appears in conflict with: (i) section 10.1(d) of the NetCo Interconnection Code 2009, which section indicates that, in respect of review and modification of the ICO terms other than pricing, the OpenNet request must be a "reasonable request"; and (ii) sections 12.2 and 12.3 of the NetCo Interconnection Code 2009, which sections indicate that, in respect of review and modification of the prices under the ICO, price review and modification as sought by OpenNet may only occur at specific price review points.
Clause 5.2	Effect of Variation of OpenNet's ICO "Any amendments made by OpenNet to this ICO will automatically form part of this ICO Agreement."	We respectfully refer to our comment in respect of Clause 5.1. Further, we propose the revision as tracked in the interest of clarity. "Any amendment made by OpenNet to this ICO, as consented to by the Authority, will automatically form part of this ICO Agreement."
Part 2 – Interconnection Offer Agreement		
Clause 4.1	Commencement, Duration and Review "This ICO Agreement shall be submitted to the Authority by OpenNet after being executed by both Parties".	Similar to IDA's direction to SingTel regarding its RIO dated 3 Jun 05, this clause should be modified to specify a timeframe of X Business Days (where X = or < 3) for OpenNet to submit the executed ICO Agreement to IDA. This is to avoid the potential for delay after the ICO Agreement has been executed and in the interest of certainty. The proposed amendment as follows: "This ICO Agreement shall be submitted to the Authority by OpenNet within X Business Days (where X = or < 3) of being executed by both Parties".
Clause 4.2 (d)	Commencement, Duration and Review "(d) a period of 25 years from [Effective Date]."	Clause 10.1(a) of the NetCo ICO Code clearly states that the ICO would be reviewed every 3 years from the date that the ICO was first offered by the Licensee. Accordingly, this clause should be amended to reflect the requirements stated as follows: "(d) a period of 3 years from [Effective Date]."
Clause 4.4	Commencement, Duration and	We respectfully refer to our comment in respect of

	Review "Subject to clause 32, at any time, OpenNet may review and propose amendments to the OpenNet ICO, and seek the Authority's approval to such amendments to ….	Clause 5.1 of Part I (Acceptance Procedures); and accordingly, we propose the revision to Clause 4.4 as follows: "Subject to clause 32, ~~at any time,~~ OpenNet may review and propose amendments to the OpenNet ICO in accordance with the NetCo Interconnection Code 2009 and/or other directions of the Authority, and seek the Authority's approval to such amendments to the OpenNet ICO and this ICO Agreement as ~~it~~ the Authority considers necessary ~~or desirable~~. For the avoidance of doubt, no amendment or proposed amendment to this ICO or the ICO Agreement may be effective prior to the IDA approval."
Clause 7	Ongoing Information Requirements	We respectfully propose to IDA that an additional reference to OpenNet's obligation to provide, at no additional costs, a Qualifying Person requesting Mandated Services with certain information, as set forth in sections 2.2 and 2.3 of the NetCo Interconnection Code 2009, be incorporated into Clause 7 – as required under paragraph 2.1 of Appendix 1 to the NetCo Interconnection Code 2009.
Clause 9	Approved Attachments and Customer Equipment "The Requesting Licensee shall not connect or knowingly permit the connection….."	Our view is that the principle of reciprocity should be applied for this clause and we therefore propose the following amendment: "Neither Party shall connect or knowingly permit the connection…."
Clause 10.3	Quality of Mandated Service "Without Prejudice to any Service Level Guarantees that apply…"	M1 proposes the following changes: "Without prejudice and in addition to any Service Level Guarantees that apply to the provision of Mandated Services and any express warranty and warranty implied by law under this ICO Agreement, OpenNet ~~neither Party~~ warrants that its Network or Network Facilities are or will be free from material faults. Each Party will comply with the fault identification and reporting guidelines set out in this ICO Agreement." Firstly, we propose as tracked that OpenNet warrant that its Network and Network Facilities are free, at a minimum – from material faults – because this would (a) discourage service disruption and promote quality of Mandated Service; (b) provide assurance and certainty to other stakeholders; (c) ensure consistency with Clause 14.2. Secondly, we respectfully submit that the NetCo ICO may be an inappropriate venue for a reference to such warranty on the part of the Requesting Licensee, since OpenNet is the Party

		providing the Services under the NetCo ICO, rather than the Requesting Licensee.
Clauses 11.2 and 12.3	Suspension and Termination Provisions	In respect of both Clauses 11.2 and 12.3, we respectfully propose replacing the words "will notify the Authority" with the words "will notify the Authority and the other Party", so as to put on notice the other Party and allow the other Party an opportunity to make appropriate submission/response to the Authority to help the Authority to make an informed assessment of the circumstances relating to the requested suspension/termination.
Clause 11.4	Suspension "Where any Service has been suspended…"	We note that not all of the bases entitling the suspension of the ICO Agreement relate, ipso facto, to a default of the Requesting Licensee (see, for example, Clauses 11.1(g) and (h)). Thus – absent a causal link between the Requesting Licensee's default and the suspension – it may be unreasonable to require the Requesting Licensee to underwrite OpenNet's risks in respect of the suspension. Accordingly, we propose the revision as follows: "Where any Service has been suspended (whether or not at the request of the Requesting Licensee) <u>for causes attributable to the default of the Requesting Licensee</u>, the Requesting Licensee shall continue to pay those Charges in respect of that Service for the period during which the Service has been suspended and, in the event the Service is reconnected or reinstated, all reconnection or reinstatement Charges set out under Schedule 15."
Clause 12.1(d)	Termination "the other Party has committed a material breach…with Schedule 16;"	Firstly, we note that the drafting of Clause 12.1(d) by OpenNet appears to imply that a failure to pay "any sum" would automatically constitute a material breach of the ICO Agreement (subject to Schedule 16). Respectfully, we submit that a failure to pay "any sum" should not ipso facto constitute a material breach of the ICO Agreement, because the quantum of the sum at issue must – at a minimum – have some relevance to the determination of the occurrence of a material breach. Secondly, even if a failure to pay "any sum" may somehow be deemed to be a material breach, Clause 12.1(d) in its present form appears inconsistent with paragraph 19.1(e)(iv) of Appendix 1 (Minimum Requirement for ICO) to the NetCo Interconnection Code 2009 – which states a sixty (60) day cure period for material breach that is capable of being remedied.

		Thirdly, we respectfully submit that any act taken by OpenNet in response of a failure to pay should be appropriately measured, taking into consideration the sum at issue and the possible impact of service disruption. Accordingly, termination under Clause 12.1(d) should be no more extensive than termination of those parts of the ICO Agreement that relate to the specific Mandated Service at issue. We therefore recommend the revisions as tracked: "the other Party has committed a material breach of this ICO Agreement by its failure to pay ~~any~~ <u>a material</u> sum, whether in respect of any one or more Service, for which the other Party has been Invoiced, the Terminating Party has given ~~fourteen~~<u>sixty</u> (~~14~~<u>60</u>) Calendar Days notice of such breach (which period may operate concurrently with the period in clause 2.6 of Schedule 16) and the other Party has failed to rectify such breach within that time. For the avoidance of doubt, this subclause shall not apply pending the resolution of any Billing Dispute in accordance with Schedule 16<u>, and any such termination shall be limited to those parts of the ICO Agreement that relate to the Mandated Service for which the other Party has so failed to pay</u>;"
Clause 12.1(h) and 12.1(g)	Termination "any material information provided or representation made by either Party to the other Party is untrue, misleading or inaccurate and has an adverse material impact on the other Party in relation to its provision of Services under this ICO Agreement."	We note that Clause 12.1(h) as drafted by OpenNet appears more extensive than the parameters for termination as set forth in paragraph 19.1(e) of Appendix 1 (Minimum Requirement for ICO) to the NetCo Interconnection Code 2009. We are of the view that in the event of a material breach of the ICO Agreement due to a Party's provision of untrue information, the Party ought to be afforded an opportunity to rectify such breach, if such breach is capable of remedy. Similarly, we note that the Requesting Licensee in Clause 12.1(g) ought to be afforded an opportunity to rectify the breach referenced therein. We propose the deletion of this Clause 12.1(h) (and a revision of 12.1(g) in accordance with the comment above), because this same issue is already adequately addressed by Clause 12.1(c).
Clause 13.1	Force Majeure	To promote the minimisation of any delay or service disruption and to give certainty to users relying on the network, we recommend that the force majeure provision be based on references to only a narrower set of enumerated events, rather than the reference to "any other cause whether similar or dissimilar outside the reasonable control of that Party." Additionally, we recommend that

		the force majeure provision be appropriately subject to (a) a duty of the affected party to mitigate the effects of force majeure; (b) non-foreseeability of the event of force majeure; (c) the materiality of the event of force majeure; and (d) the event of force majeure not being attributable to any default of the affected Party. We thus respectfully propose the following tracked revision: "Neither Party shall be liable for any breach of this ICO Agreement (other than a breach by non-payment) caused by an act of God, insurrection or civil disorder, war or military operations, national emergency, ~~acts or omissions of government, highway authority,~~ fire, flood, lightning, explosion, pandemic outbreak, subsidence, industrial dispute of any kind (whether or not involving that Party's employees), acts or omissions of persons or bodies for whom that Party affected thereby is not responsible (for the avoidance of doubt, OpenNet shall be deemed responsible for acts of its personnel, its procurement processes and/or its sub-contractors), provided always that (a) the Party affected by force majeure shall use its best endeavours to mitigate the effects of force majeure; (b) the force majeure event shall not have been reasonably foreseeable by the Party affected; (c) the affected Party's performance of its obligations under the ICO Agreement shall have been materially affected by the force majeure event; and (d) the event of force majeure shall not have been attributable to any default of the affected Party ~~or any other cause whether similar or dissimilar outside the reasonable control of that Party~~ (force majeure)."
Clause 14.4	Limitation of Liability "Subject to clause 14.5, if a Party (Breach Party) is in breach of any of its obligations under this ICO Agreement to the other Party (excluding obligations arising under this ICO Agreement to pay monies in the ordinary course of business), or otherwise arising under this ICO Agreement (including liability for negligence or breach of statutory duty), the Breach Party's liability to the other Party shall be limited to S$1,000,000 for any one event or series of connected events	We note that liability limits as proposed by OpenNet in Clause 14.4 may be inconsistent with that set forth in paragraph 20.6(d) of Appendix 1 (Minimum Requirement for ICO) to the NetCo Interconnection Code 2009.

	and S$3,000,000 for all events (connected or unconnected) occurring in a calendar year.”	
Clause 14.5	Limitation of Liability “Neither Party excludes or restricts its liability for death or personal injury caused by its own negligence.”	We note that the carve-outs (in Clause 14.5) from the limitation of liability (in Clause 14.4) must additionally include “gross negligence or wilful default”, as set forth in paragraph 20.6(c) of Appendix 1 (Minimum Requirement for ICO) to the NetCo Interconnection Code 2009. Further, we respectfully propose that OpenNet’s liability in respect of the indemnity for Third Party intellectual property rights claims against the Requesting Licensee as set forth in Clause 15.4 be additionally carved out in Clause 14.5, given the culpability and so as to provide appropriate certainty and assurance to the Requesting Licensee, who is relying on OpenNet’s Network. Accordingly, we propose the revision as tracked: “Neither Party excludes or restricts its liability for death or personal injury caused by its own negligence or gross negligence or wilful default; or in the case of OpenNet, OpenNet’s liability in respect of Clause 15.4.”
Clause 14.6	Limitation of Liability “Each Party (Indemnifying Party) must indemnify and keep indemnified…”	We are of the view that Clause 14.6 may unfairly require the Requesting Licensee to bear the risk of OpenNet’s default. Firstly, notwithstanding an appearance of mutuality, the indemnity in Clause 14.6 is not mutual and in fact favours only OpenNet at the expense of the Requesting Licensee. Specifically, under Clause 14.6 as drafted by OpenNet, the Third Party claim must relate to “the Indemnified Party’s supply of a Service to the Indemnifying Party or the use of a Service by the Indemnifying Party or any other person, or any delay or failure of the Indemnified Party to provide a Service”. Because “Service” is defined as a service provided by OpenNet, the Indemnified Party under the foregoing drafting would refer only to OpenNet. Secondly, Clause 14.6 as drafted by OpenNet would require the Requesting Licensee to indemnify OpenNet in event of any such Third Party claim – even absent any default of Requesting Licensee and even if such Third Party claim is attributable to a default of OpenNet (as long as such default does not amount to a grossly negligent, wilful or reckless by OpenNet). Accordingly, we propose the revision as tracked:

		"Each Party (Indemnifying Party) must indemnify and keep indemnified the other Party (Indemnified Party), its employees and agents against any Loss (including Consequential Loss) which the Indemnified Party suffers or incurs as a result of or in connection with any claim by a Third Party to the extent such claim is attributable to the default of the Indemnifying Party. ~~relating to the Indemnified Party's supply of a Service to the Indemnifying Party or the use of a Service by the Indemnifying Party or any other person, or any delay or failure of the Indemnified Party to provide a Service other than to the extent that it is the result of a grossly negligent, wilful or reckless breach of this ICO Agreement by the Indemnified Party.~~"
Clause 14.7	Limitation of Liability "Subject to Clause 14.6, neither Party will…"	Despite its appearance of mutuality, we note that this Clause may operate in practice to shield only OpenNet from liability, since the Requesting Licensee (rather than OpenNet) is likely the Party "providing a telecommunication service under a contract" to the Third Party. More importantly, we note that Clause 14.7 may operate to shield OpenNet from liability for harm suffered by the Requesting Licensee – even if such harm is due to the culpable defaults of OpenNet. We respectfully submit that it is unreasonable and impractical to impose on the Requesting Licensee the obligation and burden of ensuring the procurement of all possible exclusion and reduction of liability in all of its contracts with Third Parties, since the terms of such contracts are not determined solely by the Requesting Licensee. Further, Clause 14.7 may conflict with the intent behind clauses in the ICO Agreement respecting quality of Mandated Services and service levels – since arguably all liability (except for liability for death, personal injury, etc.) in connection thereto could possibly be excluded or reduced. Accordingly, we propose the deletion of this Clause.
Clause 14.9	Limitation of Liability "For the avoidance of doubt, neither Party shall be liable for any breach of this ICO Agreement caused by the delay or failure of any supplier to deliver equipment to that Party at the prescribed time, except where such a delay or failure is	To ensure minimisation of service disruption, and to provide assurance and certainty to the Requesting Licensees, and further downstream stakeholders, OpenNet should be accountable for any breach of this ICO Agreement caused by delay or failure of any of its suppliers. In the first instance, OpenNet has control over the conduct of its suppliers, and in any event has the ability to address such risk in its contracts with its suppliers.

	a result of gross negligence or a wilful or reckless breach of this ICO Agreement by that Party.”	Further, to the extent that OpenNet has no such control, the force majeure provisions of the ICO Agreement should suffice to address OpenNet’s concerns. Accordingly, we propose the deletion of this clause.
Clause 14.10	Limitation of Liability “To the extent that a Schedule contains a remedy in relation to the performance by a Party (Liable Party)…”	We recommend the deletion of this Clause 14.10. The availability of a remedy in a Schedule ought not, in and of itself, render the remedy exclusive. Indeed, due to the nature of the Services and reliance by other stakeholders on OpenNet’s performance, the availability of a remedy ought not prejudice or exclude other rights and remedies available, whether under the ICO Agreement or otherwise. Neither does the provision of a remedy relieve OpenNet’s obligation to ultimately perform.
Clause 16	Forecasts and Capacity	We note that there are no forecasting requirements stated in all the schedules and suggest the removal of this section. If the decision is to retain this section, then please clarify: i) how OpenNet would determine if a forecast is “reasonable” or “unreasonable” in accordance with the ICO Agreement. Please list the objective criteria used in such an evaluation; ii) how OpenNet would determine whether a forecast provided was in “good faith” and provide the objective criteria that OpenNet would use in such evaluation.
Clause 17.1	Requirement of a broad form public liability insurance policy to the value of S$10 million.	We note that such requirement may be unduly excessive and burdensome on Requesting Licensees. Any insurance policy requirement should be predicated on and reflective of the nature of the Services to be provided to the Requesting Licensees.
Clause 19.6(b)	Confidentiality “in the case of Authorised Persons referred to in clauses 19.5(b) and 19.5(c), the Receiving Party shall obtain and provide to the Disclosing Party a written undertaking in favour of the Disclosing Party from the Authorised Person(s) to comply with the terms of this ICO Agreement as if the Authorised Person(s) is a party hereto.”	We note that requirement that the Receiving Party must submit written undertaking by the Authorised Persons to the Disclosing Party may be impractical and unduly burdensome, and may be in any event unnecessary in light of the fact that the Receiving Party is to remain liable, under Clause 19.6, for any unauthorised disclosure of the Confidential Information by the Authorised Persons.

Clause 19.11	Confidentiality "The Receiving Party shall inform the Disclosing Party of any disclosure to Third Parties by the Receiving Party under clause 19.10…"	We recommend the tracked revision so as to permit the Disclosing Party the ability to take pre-emptive measures to mitigate or prevent disclose of the Confidential Information. "The Receiving Party shall inform the Disclosing Party of any disclosure to Third Parties by the Receiving Party under clause 19.10 prior to any such disclosure, so as to provide, where circumstances reasonably permit, the Disclosing Party with the opportunity to take appropriate, legal actions to mitigate or prevent the disclosure."
Clause 20.3	Customer Relationship "Where a Requesting Licensee receives Services under this ICO Agreement, the Requesting Licensee acknowledges and agrees that . . .."	If the failure by Customers of the Requesting Licensee to pay is attributable to OpenNet's default, the Requesting Licensee should not remain liable to pay to OpenNet the relevant Charges. Thus, for the sake of clarity and in the interest of fairness, we propose the following tracked revision: "Where a Requesting Licensee receives Services under this ICO Agreement, the Requesting Licensee acknowledges and agrees that notwithstanding any failure by any of its Customers to pay in respect of a Service, the Requesting Licensee is liable to OpenNet in respect of the relevant Charges for Services supplied under this ICO Agreement, unless such failure is attributable to OpenNet's default."
Clause 22.2	Requesting Licensee's Representations and Communications "Subject to clause 22.3, either Party may assign or transfer any or all of its rights under this ICO Agreement, subject to the prior written consent of the other Party…"	"Subject to clause 22.3, either Party may assign or transfer any or all of its rights under this ICO Agreement, subject to the prior written consent of the other Party (which consent shall not be unreasonably withheld by OpenNet, if sought by the Requesting Licensee), provided that such assignee has an FBO or SBO Licence granted to it under the Act or is a Broadcasting Licensee, and provided further that the assigning Party will continue to remain fully responsible for the performance of all obligations owed to the other Party under the ICO Agreement if reasonably requested by the other Party." i) We propose the first tracked revision in view of the requirement set forth in paragraph 20.4(a) of Appendix 1 (Minimum Requirement for ICO) to the NetCo Interconnection Code 2009. ii) We propose the second tracked revision because the necessity of the assigning Party's continued responsibility (whether by way of a guarantee or otherwise) would depend on the specific circumstances.

Clause 23.1	Waivers “No failure on the part of either Party to exercise, and no delay on its part in exercising, any right or remedy under this ICO Agreement…”	We respectfully refer to our comments in respect of Clause 14.10; and accordingly, we propose the revision as tracked. “No failure on the part of either Party to exercise, and no delay on its part in exercising, any right or remedy under this ICO Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof under this ICO Agreement or the exercise of any other right or remedy. Subject to ~~clause 14 and~~ any ~~other~~ clauses of this ICO Agreement specifying an exclusive remedy, the rights and remedies provided in this ICO Agreement are cumulative and not exclusive of any other rights or remedies (whether provided by law or otherwise).”
Attachment A – Notification of Acceptance of ICO – OpenNet Interconnection Offer		
4th Paragraph, Attachment A, Page 1	“Is acceptance of ICO….pending adoption of an Individualised Agreement?”	There is no definition of “Individualised” in the ICO. We believe that Individualised Agreement is the specific terminology used to refer to those agreements where modifications are made to the prices, terms and conditions of SingTel’s RIO. In view of the above, please amend this paragraph to: “Is acceptance of ICO….pending adoption of a Customised Agreement?”
2nd Paragraph, Attachment, Page 2	“The Requesting Licensee is licensed to provide the following types of telecommunication networks or services or broadcasting services…”	OpenNet only requires information on whether QP is a NGNBN OpCO/FBO/SBO/Broadcasting Licensee to ascertain its eligibility for the various ICO services. Such information is already provided in the 1st paragraph. Hence, we suggest the removal of this 2nd Paragraph requesting for details of QP’s licence scope.
1st Paragraph, Attachment A, Page 3	“The Requesting Licensee’s designated contact person in Singapore is: Name: … Singapore Facsimile Number:”	Please refer to our comments in Clause 1.9(c). We propose the following addition: “The Requesting Licensee’s designated contact person in Singapore is: Name: … Singapore Facsimile Number: E-mail:_____________”
4th Bullet point, Attachment A, Page 5	“A banker’s guarantee…”	Please refer to our comments in Clause 1.9(d) and amend accordingly.

Attachment B – Acceptance of Additional Mandated Service		
2nd Paragraph, Attachment B, Page 2	"The Requesting Licensee is licensed to provide the following types of telecommunication networks or services or broadcasting services…"	Please refer to our comments in 2nd Paragraph, Attachment, Page 2 of Attachment A.
Attachment C – Form of Banker's Guarantee		
Paragraph 1	"In consideration of OpenNet Pte. Ltd. (hereinafter called "OpenNet") having agreed to provide …validity period of this Guarantee."	We propose the tracked revision, so as to make clear that the guarantee is in respect of sums due and owing by the Requesting Licensee to OpenNet in connection with the ICO Agreement only. "In consideration of OpenNet Pte. Ltd. (hereinafter called "OpenNet") having agreed to provide [Company name and Address] (hereinafter called "the Customer") with certain agreed mandated services (hereinafter called "Mandated Services") pursuant to an interconnection agreement between OpenNet and the Customer, we [banker's name] of [banker's business address] (hereinafter called "the Guarantor") hereby unconditionally and irrevocably undertake to pay to OpenNet on demand all sums of monies which shall at any time be due and owing by the Customer to OpenNet <u>in connection with such interconnection agreement</u> up to a limit of Singapore Dollars X Thousand Only (hereinafter called "the Guarantee"). It is further agreed that the Guarantor shall not concern itself with whether any sums claimed are properly payable to OpenNet by the Customer or with whether any event or transaction giving rise to any claims actually occurred within the validity period of this Guarantee."
General Comments on Schedules		
General	Diagram on the demarcation of Point of Interconnection ("POI") and Responsibilities of each Party on its side of the POI	M1 requests that OpenNet includes a diagram, indicating clearly the demarcation of POI and Responsibilities of each Party on its side of the POI.
General	Laying of fibres into CO	Clause 3.3(A) of Schedule 1 states that: "…the Requesting Licensee shall access the Residential End-User Connection at OpenNet's FDF at the Central Office…" We note that Clauses 3.3 (A) and (B) of Schedule 1 and similar clauses in the rest of the schedules indicate that the POI is at OpenNet's FDF at the Central Office; or OpenNet's FDF at the Building MDF room etc.

		As such, M1 submits that the ICO should state clearly that QPs have the options of laying their own fibres, or engaging 3rd parties to lay their fibres, into OpenNet's CO for the purpose of interconnecting to the QP's co-location equipment and to the OpenNet's fibre infrastructure for accessing the Layer-1 Connection. We note that similar provisions are offered under the current RIO. We request that IDA directs such an offer or provision in the ICO as OpenNet should not be allowed to create any "monopolistic" situation limiting access or service provision which is against the spirit of Open Access and Competition.
Schedule 1 – Residential End-User Connection		
Clause 2.3	Service Level Guarantees "If the Requesting Licensee is entitled to a rebate pursuant to the claim made hereunder, the amount of the rebate will be credited into the Requesting Licensee's account after it has been processed by OpenNet and will be reflected in OpenNet's bill to the Requesting Licensee in accordance with OpenNet's billing cycle."	After OpenNet has processed the Requesting Licensee's claim, it should notify the Requesting Licensee of the status/outcome of its claim. Hence, we propose this clause be amended to include the above. Accordingly, we also recommend the above for the same/similar clause found in the rest of the schedules.
Clause 4.1	Ordering and Provisioning Procedure "The Requesting Licensee shall submit its request for Residential End-User Connection (Request) to OpenNet on Business Day …"	As the request would be submitted via the Platform/Web portal, we request that the ICO should allow submission of requests on a non-business day as the system would allow queuing of requests and processing of requests on the next business day.
Clause 4.4	Ordering and Provisioning Procedure "OpenNet shall at its sole discretion determine the serving CO and Building MDF Room from which the Residential End-User Connection will be provided."	We respectfully submit that the determination as referenced in Clause 4.4 should be reasonable, and OpenNet's discretion to make such determination should not be unfettered. A requirement of reasonableness here is necessary, so as to prevent potential anti-competitive actions that may be taken to delay activation or impose unnecessary or unjustified costs on certain Requesting Licensees. In connection with this same point, and consistent with the requirements of sections 2.2 and 2.3 of the NetCo Interconnection Code 2009, we would also like to highlight the importance of OpenNet providing information on the specific CO serving

		specific End-User. Requesting Licensees would need such information to fill in the "Assigned Transmission Tie Cable Port" in the application form. Transparency of such information is also important to prevent potential anti-competitive actions that may be taken to delay activation or impose unnecessary or unjustified costs. Without such information, OpenNet could (in "its sole discretion") reject any application based on the reason that the specific End User was served by another CO. Requesting Licensees would have to re-apply, re-enter all the details and re-queue. The issue is a greater concern for niche Requesting Licensees who are only serving a specific area of Singapore e.g. Jurong West and Bukit Panjang only. These niche Requesting Licensees would only interconnect to a few of OpenNet's COs e.g. at Jurong West and Bukit Panjang only. Without information on the coverage area of each CO, specifically the serving CO for each End User, they may sign up End-Users that are presumably within the coverage area but were in fact served by another CO e.g. Tuas CO. This would result in additional costs in interconnection to Tuas CO as well as delay in service provisioning for End Users. Accordingly, the above also applies to the same/similar clause found in the other schedules.
Clause 5.4	Residential End-User Connection Request "In the event that the Request exceeds the Maximum Quota, OpenNet shall inform the Requesting Licensee and the Request will be processed at twice the service activation period of Requests which fall within the Maximum Quota."	We propose the following to specify a timeframe for OpenNet to inform Requesting Licensee: "In the event that the Request exceeds the Maximum Quota, OpenNet shall inform the Requesting Licensee <u>within one (1) Business Day</u> and the Request will be processed at twice the service activation period of Requests which fall within the Maximum Quota." Accordingly, we also recommend the above for the same/similar clause found in the rest of the Schedules
Clause 5.5	Residential End-User Connection Request Within one (1) Business Day of the date on which OpenNet receives the request for Residential End-User Connection (Request Date), OpenNet must notify the Requesting Licensee whether its application is in principle accepted or rejected for any one of the following reasons:	For clarity, we propose the following amendment: "Within one (1) Business Day of the date on which OpenNet receives the request for Residential End-User Connection (Request Date), OpenNet must notify the Requesting Licensee whether its application, <u>together with the unique Application Reference Number of the application</u>, is in principle accepted or rejected for any one of the following reasons:" Accordingly, we also recommend the above for the same/similar clause found in the rest of the schedules.

Clause 5.6	Residential End-User Connection Request “5.6 If OpenNet has provided its in-principle acceptance to the Request for Residential End-User Connection,…	For clarity for all concerned parties, OpenNet should provide a firm SAP date in its in-principle acceptance of Requesting Licensee’s request. Accordingly, we also recommend the above for the same/similar clause found in the rest of the schedules.
Clauses 5.6 and 5.8	Residential End-User Connection Request “5.6 If OpenNet has provided its in-principle acceptance to the Request for Residential End-User Connection,… 5.8 OpenNet may reject a Request for Residential End-User Connection on the third Business Day.”	Our view is that this process of in-principle acceptance followed by subsequent rejection would cause unnecessary confusion and costs to the QPs/End-Users. It also creates potential disputes on SAP expectations and obligations. Instead of rejecting the request whereby NGNBN OpCo/RSP would have to re-apply again and re-enter all the details, we suggest that OpenNet includes such scenarios in their SAP exclusion list whereby Requesting Licensee could agree to a later provisioning date. This would be more user-friendly, efficient and cost-effective for all parties concerned.
Clause 5.8	“OpenNet has not rolled out its Network to the Residential Building (similar clause in other schedule)”	We note that this refers to a situation where OpenNet has already issued an in-principle acceptance to the Request for Residential End-User Connection. Given that the fact referenced in Clause 5.8(e) is readily verifiable by OpenNet at the time of the issuance of its in-principle acceptance and that the Requesting Licensee ought to be able to rely on such issuance to provide Service Activation Period commitments to its customers, we propose that Clause 5.8(e) be deleted. Where OpenNet has not rolled out its Network to the Residential Building, OpenNet should be required to defer its in-principle acceptance to a later date in mutually agreement with the Requesting Licensee.
Clause 6.2	Delivery “Where there is insufficient capacity to provide the Residential End-User Connection, OpenNet shall provide the Residential End-User Connection: (a) within ten (10) Business Days if additional capacity is required to be installed between the FTTB Node of the Residential Premise and the First Termination Point of the	Please clarify when OpenNet will inform/notify the Requesting Licensee for the 2 scenarios described in both (a) & (b). Please also clarify if the ten (10) Business Days stated here include the three (3) Business Days stated in Clause 5.6.

	Residential Premise; or (b) within forty (40) Business Days if additional capacity is required to be installed between the designated Central Office and the First Termination Point of the Residential Premise."	
Clause 6.3	Delivery "Where the home owner…requests the installation of internal cabling that exceeds 15 metres and/or requires the use of deployment…"	M1 submits that such a proposal is inefficient and causes great inconvenience to the End-Users. It also unnecessarily slows down deployment and delay service activation. We recommend that OpenNet provides an option for End-Users to pay directly to OpenNet or its contractor for the extra installation charges if the internal cabling exceeds 15m. Accordingly, we also recommend the above for: • Non-Residential End-User Connection (Schedule 2, Clause 6.5); • Building MDF Room to Residential Premise Connection (Schedule 8, Clause 6.3); • Building MDF Room to Non-Residential Premise Connection (Schedule 9, Clause 6.4)
Clauses 6.7 and 6.8	Delivery "6.7 OpenNet will test the optical fibre cable from OpenNet's FDF at its designated Central Office to the First Termination Point at the Residential Premise…" "6.8 OpenNet shall ensure that the optical power loss:…"	As it is OpenNet's responsibility to hand-over a optical fibre cable that is in good working condition, all the test results for Clauses 6.7 and 6.8 are to be provided to Requesting Licensees at no additional costs. Please amend the clauses to reflect this clearly in the ICO. Specifically for Clause 6.8, M1 submits that the estimated loss due to the Transmission Tie Cable and FDF located at the Requesting Licensee's Co-location space in the Optical Power Loss measurement should also be included to ensure that the full End-to-End optical power loss is within the GPON equipment operating limit. Accordingly, we recommend the above for the same/similar clauses found in the rest of the schedules.
Clause 8.3	Deactivation "Where any Patching Service is no longer required…"	The deactivation charge for each Residential, Non-Residential, and NBAP End-User Connection shall only be limited to the deactivation charge for deactivating the Patch Cable at the CO. The deactivation charge at the MDF Room, FTTB Node, NBAP DP, etc should not apply. Hence, we propose the tracked change: "Where any Patching Service is no longer required as a result of the termination of the Residential End-User Connection, OpenNet shall

		remove the Patching Service at all the relevant access points and the Requesting Licensee shall be liable for the termination charges in accordance with Schedule 15 (Charges), limited to the deactivation charge for the Patch Cable at the CO." Accordingly, we recommend the above for the same/similar clause found in the rest of the schedules.
Clause 9.2	Standard Terms and Conditions "OpenNet shall be responsible for the maintenance of the Residential End-User Connection, excluding all Patching Services installed under this Schedule. The terms and conditions of Patching Services provided shall be pursuant to Schedule 13 (Patching Service)."	As OpenNet is the only party that can access and carry out the patching services at the CO and Building MDF room, it is therefore OpenNet's responsibility to maintain these patching services. We propose that changes be made to this clause to include the patching services. Accordingly, we recommend the above for the same/similar clause found in the rest of the schedules.
Clause 9.3	Standard Terms and Conditions "Except to the extent strictly necessary to accurately describe the service…the Requesting Licensee shall not use OpenNet's name, any OpenNet's trademarks…in promoting the Requesting Licensee' service	To have a vibrant open access ecosystem, the 3 separate layers of NGNBN (ie. OpenNet, Operating Company and Retail Service Provider) would have to work cooperatively. This clause is unduly restrictive and does not serve to promote the NGNBN services. The fact is that Requesting Licensee actually uses OpenNet's network and would be expected to provide such factual information to its customers or any parties querying its services. Further, we note that the foregoing fact is information that is publicly available. As such, we recommend that this clause be modified to make it less restrictive, as follows: "Except as consistent with this ICO Agreement and/or to the extent strictly necessary to accurately describe the service to actual or potential Customers, the Requesting Licensee shall not use ~~OpenNet's name,~~ any OpenNet's trademarks ~~or the fact that any service is supplied using OpenNet's Network~~ in promoting the Requesting Licensee's service." Accordingly, we also recommend the above for the same/similar clause found in the rest of the schedules.
Clause 11.1	Fault Reporting and Clearing "Each Party must have establish a Fault Reporting and Control Centre (FCC)…The	NetCo QPs should be given the flexibility to decide on their service level or operating hours for FCC, considering its business strategies and customer service support. As such, we submit that OpenNet should not impose a 24 X 7 FCC

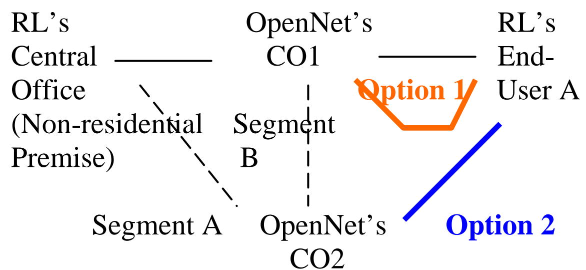
	FCC must be available twenty-four (24) hours a day, seven (7) days a week.	requirement on its QPs. Accordingly, we also recommend the above for the same/similar clause found in the rest of the schedules.
Clause 11.2	Fault Reporting and Clearing "It is the Requesting Licensee's responsibility to determine the source of the fault at its own cost and to ensure that the fault does not lie within its own network before reporting the fault to OpenNet. "	The Requesting Licensee will ensure that the fault does not lie within its own network before reporting the fault to OpenNet. However, the Requesting Licensee will not be able, on its own accord, determine the root cause or "source" of the fault, if the fault is not within its own network. We thus propose the following tracked revision: "Where the fault lies within the Requesting Licensee's own network, ~~I~~it is the Requesting Licensee's responsibility to determine the source of the fault at its own cost and to ensure that the fault does not lie within its own network before reporting the fault to OpenNet. Where the fault lies outside the Requesting Licensee's own network, OpenNet shall reimburse the Requesting Licensee for any reasonable costs incurred by the Requesting Licensee to make such determination and to report the fault to OpenNet." Accordingly, we also recommend the above for the same/similar clause found in the rest of the schedules.
Clauses 11.4 and 11.5	Fault Reporting and Clearing	We propose that the clauses be amended to reflect that the Requesting Licensee can ask for a joint investigation. Further, we note that to be fair, OpenNet should not charge the Requesting Licensee to the extent OpenNet is responsible for the fault. We thus propose the following respective tracked revisions to Clauses 11.4 and 11.5, in relevant parts: "11.4 . . .. OpenNet will not charge the Requesting Licensee a Patching Charge ~~if~~ to the extent OpenNet was ~~solely~~ responsible for the fault at the Transmission Tie Cable at the Central Office. The Requesting Licensee may require a joint investigation involving the Requesting Licensee, to mutually make such foregoing determination." "11.5 . . .. OpenNet will not charge the Requesting Licensee a Patching Charge ~~if~~ to the extent OpenNet was ~~solely~~ responsible for the fault at the Patch Cable at the Building MDF Room. The Requesting Licensee may require a joint investigation involving the Requesting Licensee, to mutually make such foregoing determination."

		Accordingly, we also recommend the above for the same/similar clause found in the rest of the schedules.
Clause 11.6	Fault Reporting and Clearing "If, following investigation, OpenNet determines that no fault is found or the fault is not due to the OpenNet Network or equipment, then OpenNet shall charge the Requesting Licensee a No Fault Found Charge for the fault report in accordance with Schedule 15 (Charges)."	If, following investigation, OpenNet determines that no fault is found or the fault is not due to the OpenNet Network or equipment, then the Requesting Licensee has the right to call for a fault identification coordination meeting between OpenNet and the Requesting Licensee to identify fault. As such, the ICO should specify this before OpenNet is allowed to impose any "No Fault Found Charges". Accordingly, we also recommend the above for the same/similar clause found in the rest of the schedules.
Clause 11.9	Fault Reporting and Clearing "Where Requesting Licensee has lodged with OpenNet a fault report and OpenNet is in the process of investigating the fault or where the Requesting Licensee has not lodged a fault report…"	M1 submits that if the fault is due to OpenNet, the Requesting licensee should not be charged. It would be unreasonable to impose any charges for fault due to OpenNet. Accordingly, we also recommend the above for the same/similar clause found in the rest of the schedules.
Clause 11.10	Fault Reporting and Clearing The Requesting Licensee acknowledges that OpenNet may temporarily disconnect the Requesting Licensee's Residential End-User Connection to perform reasonable fault analysis and line testing on the Residential End-User Connection.	This clause is unacceptable for the Requesting Licensee or any End-Users as it would result in service disruption. Granting such rights would also create a loop-hole for potential anti-competitive practices. M1 submits that OpenNet is requested to consult and obtain agreement from the Requesting Licensee with regard to any fault-finding activities which may necessitate the temporary disconnection of the Requesting Licensee's Residential End-User Connection. As for line testing, there must also be a mutual agreement by all stakeholders before line testing can be carried out on the Requesting Licensee's Residential End-User Connection. We propose the following amendment: "The Requesting Licensee acknowledges that OpenNet may, <u>with approval from the Requesting Licensee</u>, temporarily disconnect the Requesting Licensee's Residential End-User Connection to perform reasonable fault analysis and line testing on the Residential End-User Connection." Accordingly, we also recommend the above for the same/similar clause found in the rest of the schedules.

Clause 16.4 (d), (e), (f), (g), (h) and (j)	Termination of Licence	Given that Clause 16.4 entitles OpenNet to immediately terminate a licence of the Connection, we note that Clause 16.4 is unnecessary in light of the termination provisions under Clause 12 of the main body of the ICO. Further, we note that in respect of Clause 16.4(d), (e), (f), (h) and (j), the Requesting Licensee ought to be given an opportunity to rectify the breach (assuming the breach is a material breach), as consistent with the requirement set forth in paragraph 19.1(e)(iv) of Appendix 1 (Minimum Requirement for ICO) to the NetCo Interconnection Code 2009. We further note that the circumstances referenced in Clause 16.4(h) and (j) may not be necessarily attributable to the Requesting Licensee, and in fact may be attributable to defaults of OpenNet. In respect of sub-Clause 16.4(g), we respectfully refer to our comment regarding Clause 9.5 of Schedule 12. We thus respectfully propose the deletion of the foregoing sub-clauses. Accordingly, we also recommend the above for the same/similar clause found in the rest of the schedules.
Clause 16.7	Termination of Licence "Upon termination of the license…"	M1 submits that for termination of licence that is beyond Requesting Licensee's control, for example, termination by the Authority, the Requesting Licensee should not be required to pay OpenNet the Monthly Recurring Charges for the remainder of the minimum contract term. Accordingly, we also recommend the above amendments for the clause in the rest of the Schedules.
Clause 17.2	Redundancy Service "OpenNet shall provide the Redundancy Service via the same duct…without Duct Diversity and without Path Diversity…"	M1 would like to highlight that RSPs and/or End Users' expectation of a redundancy service includes diversity in path, duct and/or cable (ie. "true" end-to-end redundancy). The service described in OpenNet's ICO would not be acceptable by the industry or market or End-Users. It is not meaningful to subscribe for a redundancy service where there is no diversity of path (ie. path is within the same duct and same path) as any incident (eg. disaster/power/damage) that could cause service disruption is highly likely to impact/affect the other fibre/line in the same duct and the same path. We would also like to highlight the complications, unnecessary and unjustified costs/liabilities that RLs would have if OpenNet does not offer any "true" end-to-end redundancy service in its ICO. If an End-User insists on "true" end-to-end redundancy, then to serve this customer, RL

would not be able to order a per-end connection for this End-User and enjoy the subsidized price. Instead, RLs would have to make separate orders for many different, additional segment connections from OpenNet to establish the end-to-end connection and achieve their own "true" end-to-end redundancy.

Please refer to the following scenario as a simplified diagram of a "true" redundancy plan: Segments A and B are additional segments that RL has to purchase to achieve "true" redundancy from RL's Central Office (ie. Non-Residential Premise) to OpenNet's CO1 for RL's End-User A.



Option 1

Redundant fibre cable shall be provisioned by OpenNet using a different path and separate duct from CO all the way to the RL's End-User A.

Option 2

Redundant fibre cable shall be provisioned by OpenNet from CO2 all the way to RL's End-User A. This would be the most secured form of path and cable diversity that any RSPs or End-Users would need in terms of redundancy and security.

To achieve "true" redundancy from RL's Central Office to OpenNet's CO1 for RL's End-User A, RLs would have to separately order for additional segments A and B from OpenNet. As these are separate orders subjected to separate processing and request queue, they would be subjected to different activation periods and minimum contract terms/obligations. Segment A may be provisioned in May 2009 but segment B could be delayed for 2-3 months as the low threshold quota of 2,050 per week has been reached. Hence, the minimum contractual periods for Segment A and Segment B are May 2009 to May 2010 and Aug 2009 to Aug 2010 respectively.

Please refer to the illustration below:

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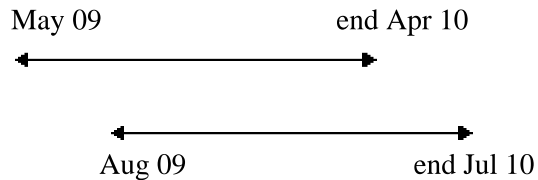
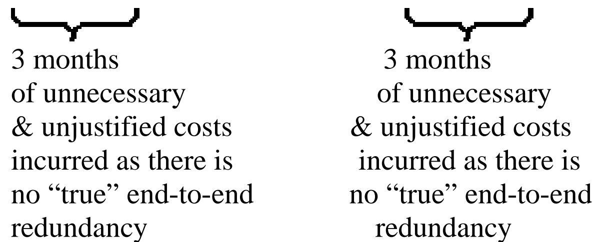


Only achieve 9 months of "true end-to-end" redundancy despite 12 months of minimum contract signed up for the 2 segments,



In view of the above, we strongly urge IDA to direct OpenNet to provide a "true" end-to-end redundancy service in its ICO on a cost-based pricing as:

- this is a basic, essential requirement for most RSPs and/or End Users;
- it is unacceptable to expect RLs to purchase separate segments for "true" end-to-end redundancy as this approach is inefficient, complicated and may result in unnecessary and unjustified costs/liabilities that are beyond RL's control; and
- it is against the spirit of promoting a vibrant NGNBN ecosystem without such a basic, essential service in OpenNet's ICO.

M1 also submit that 2 options of "true" end-to-end redundancy service should be provided in OpenNet's ICO to cater to the different redundancy needs of RSPs/End-Users:

- **Option 1**
  Redundant fibre cable shall be provisioned by OpenNet using a different path and separate duct from CO all the way to the RL's End-User A.

- **Option 2**
  Redundant fibre cable shall be provisioned by OpenNet from CO2 all the way to RL's End-User A. This would be the most secured form of path and cable diversity that any RSPs or End-Users would need in terms of redundancy and security.

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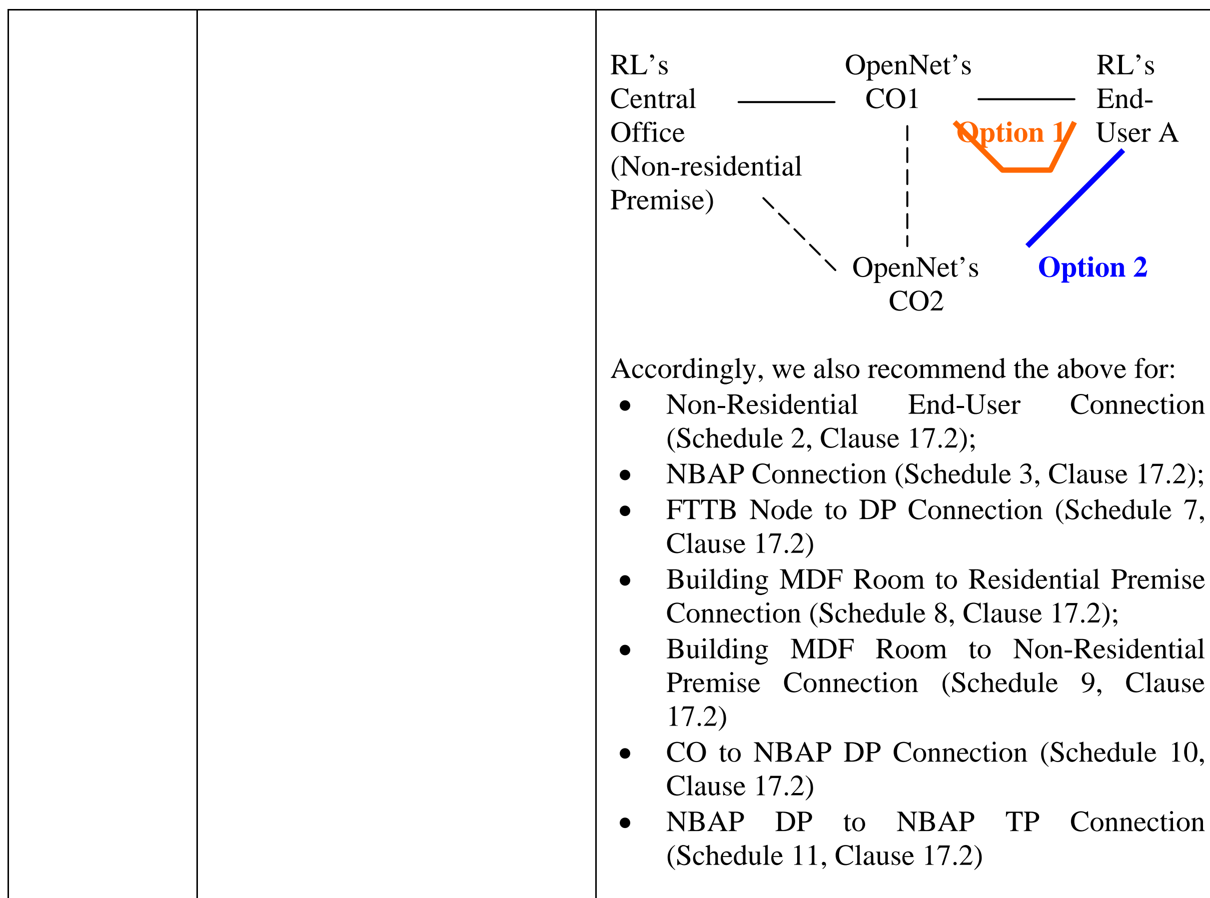

		Accordingly, we also recommend the above for: • Non-Residential End-User Connection (Schedule 2, Clause 17.2); • NBAP Connection (Schedule 3, Clause 17.2); • FTTB Node to DP Connection (Schedule 7, Clause 17.2) • Building MDF Room to Residential Premise Connection (Schedule 8, Clause 17.2); • Building MDF Room to Non-Residential Premise Connection (Schedule 9, Clause 17.2) • CO to NBAP DP Connection (Schedule 10, Clause 17.2) • NBAP DP to NBAP TP Connection (Schedule 11, Clause 17.2)
Schedule 2 – Non-Residential End-User Connection		
Clause 5	Non-Residential End-User Connection Request	Under the first-come-first serve process, it is possible for large QPs to hog all available slots for requests regardless of whether customers have already been secured for the NGNBN lines. As such, we suggest that IDA review and refine the process to address such concerns. Accordingly, we also recommend the above for all corresponding clauses in the rest of the schedules.
Clauses 9.7 and 9.8	Standard Terms and Conditions "Subject to Requesting Licensee acquiring redundancy service, OpenNet would, where possible, …" "Where there are available resources, OpenNet will, where possible,.."	OpenNet shall assist the Requesting Licensee to divert its Non-Residential End-User Connection to the redundancy service at no cost to the Requesting Licensee in cases where the Requesting Licensee has acquired redundancy service. All parties shall in good faith co-operate with each other and take reasonable measures to minimise the risk of service disruption during the process of service diversion to redundancy service. Accordingly, we also recommend corresponding amendments for the same/similar clauses found in the rest of the schedules.
Clause 11.13	"Subject to clause 1.9, the MTTR…"	Please amend the editorial error in reference to the clause as underlined.

Clause 12.3	"Subject to clause 1.9, the total network outage time…"	Please amend the editorial error in reference to the clause as underlined.
Schedule 3 – NBAP Connection		
Clause 4.1(b)	Ordering and Provisioning Procedure "the NBAP TP address and a map demonstrating the location of the NBAP TP;"	Please clarify the kind of map required and the information needed in the map.
Clause 5.5(d)	NBAP Connection Request "(d) the NBAP TP location is determined to be inaccessible; or"	Instead of rejecting the request whereby NGNBN OpCo/RSP would have to re-apply again and re-enter all the details, we suggest that the Requesting Licensee should be given the option of conducting a joint site survey with OpenNet for a suitable location for the NBAP TP. This location shall be mutually agreed by both OpenNet and the Requesting Licensee. This would be more user-friendly, efficient and cost-effective for all parties concerned. Accordingly, we also recommend corresponding amendments for: • CO to NBAP DP Connection (Schedule 10, Clause 5.5(d)) • NBAP DP to NBAP TP Connection (Schedule 11, Clause 5.5(d))
Clause 5.6(f)	NBAP Connection Request "(f) whether the NBAP TP location is accessible;"	Please refer to our comments in Clause 5.5(d). Accordingly, we also recommend corresponding amendments for: • CO to NBAP DP Connection (Schedule 10, Clause 5.6(f)) • NBAP DP to NBAP TP Connection (Schedule 11, Clause 5.6(c))
Clause 5.9(f)	NBAP Connection Request "(f) where upon OpenNet's site survey, the NBAP TP location is determined to be inaccessible; or"	Please refer to our comments for Clause 5.5(d). We recommend the removal of this item. Accordingly, we also recommend corresponding amendments for: • CO to NBAP DP Connection (Schedule 10, Clause 5.9(f)) • NBAP DP to NBAP TP Connection (Schedule 11, Clause 5.9(c))
Clause 5.11	NBAP Connection Request "Where OpenNet informs the Requesting Licensee that the Request is accepted, OpenNet will inform the Requesting Licensee of the one-time charge payable for the	Requesting Licensee should also be informed of any applicable charges indicated in Clause 6.2. Accordingly, we also recommend corresponding amendments for: • CO to NBAP DP Connection (Schedule 10, Clause 5.11) • NBAP DP to NBAP TP Connection

	installation of the OpenNet Network…”	
Schedule 4 – CO to CO Connection		
Clause 5.2	CO to CO Connection Request “For each week, OpenNet shall process a combined total of no more than 2050 Requests for Basic Mandated Services and Layer 1 Redundancy Services (Maximum Quota) from all Requesting Licensees.”	We would like to highlight that the maximum quota of 2,050 per week should only apply to Per-End-User Connection service requests. This is to ensure that that the success of NGNBN and its pervasive adoption by End-Users would not be hindered/limited by the low quota threshold of OpenNet. Considering the implementation of a Platform whereby all the processing of applications would be done on an on-line, real time basis, a quota of 2,050 per week is already a very low quota solely for per-end-user connections. Only a maximum of 106k End Users (includes Residential, Non-Residential, and NBAPs) can migrate to the NGNBN network in a year. At such an adoption rate, its unlikely that Singapore can achieve its high level of adoption of High-speed broadband even if it has: - Best in class NGNBN infrastructure - High level of NGNBN coverage - Competitive and affordable pricing Additionally, with such a low potential adoption, it’s unlikely that NGNBN can be an equivalent competitor to the 2 existing fixed-line broadband providers even with its ubiquitous coverage.
Clause 6.2	Delivery “Where there is insufficient capacity to provide the CO to CO connection and additional capacity is required to be installed between the Central Offices, OpenNet shall provide the CO to CO connection within forty (40) business days.”	Please clarify if the forty (40) business days in this clause include the three (3) business days mentioned in Clause 5.6.
Schedule 12 – Co-location Service		
Clause 1.2(b)(ii)	General “Based on the information setup in paragraph part (i), a binding quote to the Requesting Licensee in respect of the work to be undertaken by OpenNet which shall be valid for a period of five (5) business days from the date they are notified to the Requesting Licensee by	The Requesting Licensee should be given sufficient time to verify/clarify the details of the cost components with OpenNet and to seek approval for the work to be carried out. As such, we propose the following: “Based on the information setup in paragraph part (i), a binding quote to the Requesting Licensee in respect of the work to be undertaken by OpenNet which shall be valid for a period of thirty (30) business days from the date they are notified to the Requesting Licensee by OpenNet.”

<table>
<tr><td></td><td>OpenNet.”</td><td>We would like to highlight that binding quotations with a minimum validity period of thirty (30) business days or one (1) calendar month are common for most industries.</td></tr>
<tr><td>Clause 3.3(c)</td><td>“the term of the licence required (either two (2) years or twenty-five (25) years.”</td><td>M1 submits that the contract term for any of the ICO services should not be more than 3 years (ie. the term of the ICO Agreement). Unduly long contract terms, coupled with or resulting in prohibitively high early termination charges (as proposed in Clause 9.7(c) of this schedule) is unreasonable and overly punitive.

A comparison of the terms proposed by OpenNet with the same service offered in SingTel RIO (see Table below) clearly shows that OpenNet’s proposal of 25 years contract term is unreasonable, unacceptable and ought to be removed from the ICO.

<table><tr><th>OpenNet’s Proposal</th><th>Industry/SingTel RIO</th></tr><tr><td>25 years</td><td>Less than or equal to 3 years</td></tr></table>
If IDA approves such lengthy contract term in the ICO, M1 request that clarifications/justifications be provided on the need for such a lengthy co-location contractual period.</td></tr>
<tr><td>Clause 4.3</td><td>Project Study

“OpenNet shall be entitled to levy and receive the Project Study Fee provided in Schedule 15 (Charges) irrespective of whether the Requesting Licensee proceeds.”</td><td>M1 submits that this is unreasonable. OpenNet shall be compensated based on the actual costs/expenses to-date in so-far as Project Study is concerned.</td></tr>
<tr><td>Clause 5.1</td><td>Site Preparation Work

“Within five (5) working days from the date of notification of the result of the Project Study under clause 4.2, the Requesting Licensee shall confirm in writing that it wishes to proceed with Co-Location and it agrees to pay the estimated Charges for Site Preparation Work.”</td><td>Please refer to our comments for Clause 1.2(b)(ii). We propose the following:

“Within thirty (30) business days from the date of notification of the result of the Project Study under clause 4.2, the Requesting Licensee shall confirm in writing that it wishes to proceed with Co-Location and it agrees to pay the estimated Charges for Site Preparation Work.”</td></tr>
<tr><td>Clause 6.4(a)</td><td>Installation and Maintenance of Co-location equipment in Co-location space</td><td>To ensure that OpenNet installs sufficient Transmission Tie Cable and do not over or under provision, we propose the following change:</td></tr>
</table>

	"(a) the necessary, in OpenNet's sole opinion, …"	"(a) the necessary, in OpenNet's reasonable opinion after consultation with and agreement from the Requesting Licensee,.."
Clause 6.8	Installation and Maintenance of Co-location equipment in Co-location space	We respectfully recommend that all of the sub-Clauses under Clause 6.8 be fairly revised to apply mutually to both OpenNet and the Requesting Licensee. Further, we respectfully recommend that sub-Clause 6.8(a) be fairly revised so that the indemnification obligation therein (i) apply mutually in respect of both OpenNet and the Requesting Licensee, to the extent of each of their defaults; and (ii) is subject to an appropriate limitation to be specified under Clause 14.4 of the main body of the ICO Agreement, to the extent permissible by law.
Clause 6.9	Installation and Maintenance of Co-location equipment in Co-location space	OpenNet's discretion to make the determination referenced in Clause 6.9 should not unfettered. Accordingly, we propose replacing the words "(in its discretion)" with the word "reasonably".
Clause 7.1	Term of Licence "The term of a Co-Location Service licence…either two (2) years or twenty-five (25) years…"	M1 submits that the two options for the term of Co-Location Service licence are at the extreme ends of the spectrum – 2 years is too short, while 25 year is too long. We recommend that OpenNet offer the options of 3 years (in line with ICO review), 5 years, 10 years and 25 years.
Clause 8.1	Suspension of Licence "Subject to clause 11.2 of the ICO Agreement OpenNet may suspend the Requesting Licensee's Co-Location Service licence at any time until further notice to the Requesting Licensee if the Co-Location Equipment causes or is likely to cause physical or technical harm to any telecommunications network, system or services (whether of OpenNet or any other person) including but not limited to causing damage, interfering with or causing deterioration in the operation of OpenNet's Network."	To fairly protect the Requesting Licensee's interest, and to provide the Requesting Licensee an opportunity to cure, we respectfully propose that Clause 8.1 be deleted in its entirety – especially in light of the fact that the suspension provision to be set forth under Clause 11 of the main body of the ICO Agreement (as revised, see above) would have adequately addressed the issue here. We also recommend the above approach for the same or similar clause found in the rest of the schedules. Alternatively, we propose that Clause 8.1 be replaced with the following: "Subject to clause 11.2 of the ICO Agreement OpenNet may seek to suspend the Requesting Licensee's Co-Location Service licence, provided that OpenNet shall put in writing to the Requesting Licensee the reasons for suspension. The Requesting Licensee shall respond within five (5) working days. Otherwise, the matter will be referred to the dispute resolution process under Schedule 17."
Clause 9.2(b)	Termination of Licence	M1 propose that the period be changed to 14

	"(b) if the Requesting Licensee is in breach…un-remedied for a period of fourteen (14) Calendar Days…"	Business Days instead of 14 Calendar Days to allow Requesting Licensee reasonable opportunity and time to remedy any breach to avoid service termination.
Clause 9.3(b)	Termination of Licence "Subject to 12.3 of the ICO Agreement, OpenNet may immediately terminate a licence of Co-Location Service if…."	We respectfully refer to our comment to Clause 16.4 of Schedule 1, which comment is also applicable here. Alternatively, we also respectfully refer to our comment to Clause 8.1 of this Schedule 12 for an analogous revision here.
Clauses 9.3(d), (e), (f) and (g)	Termination of Licence	We note that Clauses 9.3(d), (e), (f) and (g) refer to circumstances that, by their nature, likely involve culpability of OpenNet rather than the Requesting Licensee. Accordingly, the right to immediately terminate a licence of Co-Location Service in such circumstances should also be conferred to the Requesting Licensee.
Clause 9.5	Termination of Licence "If at any time during the term that the licence of a Co-Location Service is to be terminated because of the closure of that Central Office, …"	In the interest of minimising service disruptions, we are of the view that Clause 9.5 should be carefully scrutinised, in view of its potential adverse impact to the Requesting Licensee and users. Because the termination of licence as contemplated under Clause 9.5 is to be initiated by OpenNet rather than the Requesting Licensee -- and the circumstances requiring such termination would in most circumstances have been known by and/or under the control of OpenNet -- OpenNet should be required to (i) provide reasonable, sufficient notice to the Requesting Licensee of the termination, with such notice to be not less than six (6) months prior to closure; (ii) provide reasonable, equivalent alternative Co-Location Space to the Requesting Licensee; (iii) provide assistance at its own costs as is necessary to help the Requesting Licensee migrate its existing traffic to such alternative Co-Location Space to ensure minimisation of service disruption; and (iv) obtain at its own costs the Authority's approval of the closure of the Co-Location Space and the alternative Co-Location Space.
Clause 9.7(b)	"(b) OpenNet shall reinstate…"	M1 submits that the reinstatement cost should not be recovered from the Requesting Licensee if the termination is due to OpenNet's fault and proposes that the clause be amended to reflect this.
Clause 9.7(c)	"the Requesting Licensee shall pay OpenNet the charges….for the remainder of the term of the Co-location Service	OpenNet has proposed that for service terminated prior to the end of its term, a premature termination charge ("PTC") will be imposed. The PTC will be equivalent to the full monthly fees

	licence…”	payable for the remaining term for that service. We note that in the case of a lengthy term, the PTC can amount to more than a disproportionate, substantial sum. In view of this, please clarify how this clause would comply with S3.2.3 of the Telecom Competition Code which states that “the amount of any early termination liability must be reasonably proportionate to the extent of the discount or special consideration that the Licensee has provided and the duration of the period during which the End User took services.” The proposed PTC, which is higher the earlier termination occurs, would unreasonably restrict NetCo QP from terminating services when it’s no longer required. We are concerned that the NetCo QPs are made to pay full monthly fees for services they no longer consume. Please clarify the cost justifications for PTC and how it is in accordance with the cost-based pricing principles for ICO. Specifically: • if all avoidable costs are excluded in the PTC • if network resources, freed up as a result of the service termination and can be re-deployed for other services etc. are excluded in the PTC. Also, in light of the burden of a twenty-five year contract term as proposed by OpenNet, the Requesting Licensee ought not be further subject to risk and burden of subsequent price increases in respect of the charges for the lease of the Co-Location Space. Specifically, assuming and to the extent that section 4.3(b) of the NetCo Interconnection Code 2009 requires an amendment of the ICO Agreement in the event the Authority requires or approves an ICO modification: (a) any such amendment should only effect an price decrease – rather than a price increase – in respect of the lease charges under the twenty-five year contract; and (b) in the event a price increase is required by the Authority in respect of the lease charges, the Requesting Licensee ought to be given the option to terminate the licence of Co-Location Service, without having to incur any liability in respect of Clause 9.7(c) of Schedule 12. Accordingly, we respectfully propose that Clause 9.7(c) be revised to reflect points (a) and (b) above. Further, we note that as Clauses 7.1(a) (where the

		Requesting Licensee is the non-breaching Party terminating the Co-Location Service licence) and 7.1(b) refer to a scenario involving no default of the Requesting Licence, it is unfair to require the Requesting Licensee to pay to OpenNet the charges for the lease of Co-Location Space for the remainder of the Co-Location licence – especially in a case of a twenty-five year term contract. Similarly, Clause 9.3(g) does not necessarily refer to a scenario involving default of the Requesting Licensee. Thus, we respectfully request that Clause 9.7(c) be further revised to carve-out Clauses 7.1(a), 7.1(b) and 9.3(g) from any applicability of premature termination charges. Indeed, because Clauses 7.1(a) (where the Requesting Licensee is the non-breaching Party terminating the Co-Location Service licence), 7.1(b), 9.3(d), 9.3(e) and 9.3(f) refer to circumstances involving default of OpenNet, we are of the view that principles of fairness and reciprocity require that Clause 9.7(c) be revised so as to require OpenNet to pay to the Requesting Licensee the charges for the lease of Co-Location Space for the remainder of the Co-Location licence in such circumstances.
Annex 12A, Clause 4(b)	Claim Procedures "(b) If the Requesting Licensee is entitled to a rebate…"	We submit that OpenNet should notify or provide an update of the status of Requesting Licensee's claim.
Annex 12D, Clause 1.1.2	"The Requesting Licensee shall house only the following rack types in the Co-Location Space: (a) 600mm by 600mm… (b) 800mm by 1000mm by 42RU racks..."	M1 would like to highlight that there are equipment that are rack-based but do not fall into the 2 rack types specified. As such, we propose that OpenNet should be flexible on the racks used as long as it does not cause a hazard, interference, or obstruction to OpenNet's operation of the Central Office.
Annex 12D Clause 1.1.3	"The Requesting Licensee must ensure that the floor loading of its Co-Located Equipment shall be limited to a maximum 5 kN per sqm or otherwise specified by OpenNet…"	Any threshold lower than 5kN (the typical industry standard for Data Centre Co-location space) would mean that fewer equipment can be installed per square metre, resulting a higher cost for Requesting Licensee. Hence, we propose the following amendment: "The Requesting Licensee must ensure that the floor loading of its Co-Located Equipment shall be limited to a maximum 5 kN per sqm or otherwise specified by OpenNet <u>but not lower than 5kN per sqm</u>."
Annex 12D Clause 1.1.3	"The Requesting Licensee must ensure …The Requesting Licensee shall engage a Professional Structural	The need to engage Professional Structural Engineer should not be required if the Requesting Licensee is using standard rack types and 19" rack mounted equipments since the vendors would

	Engineer… ”	have already factored in the concern of loading when they design such rack mounted equipment. M1 submits that the imposition of such requirement only increases the Requesting Licensing cost unnecessarily.
Annex 12D Clause 1.5.2(a)	"(a) a minimum of twenty (20) fused Amps and multiples thereof where the Requesting Licensee requires direct current;"	We submit that the increment should be in multiples of 10 Amps as 20 Amps is too large a multiple.
Annex 12D Clause 1.7.4	Standard Operating Procedures and Safety "OpenNet may attend the Co-Location Space to which access has been approved for installation,....The cost of such attendance shall be borne by the Requesting Licensee."	M1 submits that the cost of such attendance should be covered under the escort fee (which is unreasonably high if such costs are excluded).
Annex 12D Clause 1.7.11	Standard Operating Procedures and Safety "OpenNet shall rectify any damage in any way it deems fit, the cost and expense in connection with the damage including the repair thereof shall be borne by the Requesting Licensee."	We propose the following amendment: "OpenNet shall rectify any damage in <u>a reasonable manner</u>, the reasonable cost and expense in connection with the damage including the repair thereof shall be borne by the Requesting Licensee."
Annex 12F Clause 1.11.4	Conditions of Physical Access "A representative of OpenNet may attend and specify an entry to the Co-Location Space and verify that the Requesting Licensee complies with the conditions of physical access. The cost of such attendance shall be borne by the Requesting Licensee."	Please refer to our comments in Annex 12D, Clause 1.7.4.
Schedule 13 – Patching Service		
Clause 3	Deactivation	For cost efficiency, the Requesting Licensee should be allowed to request for the reuse of an existing Patch Cable.
Clause 4.3(a)	Standard Terms and Conditions	M1 submits that the limit of ten (10) metres should apply only to the Patch Cable from the OpenNet FDF to the Requesting Licensee Co-location Equipment. This limit should not apply if the Patch Cable is within the OpenNet Layer-1 network.

<table>
<tr><th colspan="3">Schedule 15 – Charges</th></tr>
<tr><td>General</td><td>OpenNet ICO Charges</td><td>Similar to RIO, M1 submits that the IDA approved prices for OpenNet ICO should be publicly available. Greater transparency of pricing information would help RSPs/End Users better understand the underlying costs/cost drivers of NGNBN, help them make more accurate business decisions and provide useful feedback to IDA in its price review or regulation. This is also in line with IDA’s regulatory principle of transparent and reasoned decision making.</td></tr>
<tr><td>Clause 12.14.1</td><td>Fibre Splicing Charge</td><td>We would like to highlight that if a Requesting Licensee request for more than 10 splices in the same order, it would be unreasonable to charge on a “per slice” basis. This is because the work done for fibre splicing is a one-time job carried out at the same time and unreasonable overcharging occurs if the charging principle remains on a “per slice” basis. Hence, M1 submits that the charging principle to be reflected as:

<table><tr><th>Description</th><th>Charges (S$)</th></tr><tr><td>Fibre Splicing at the Requesting Licensee’s FDF
(< 10 splices per order)</td><td></td></tr><tr><td>Fibre Splicing at the Requesting Licensee’s FDF
(> or = 10 splices per order)</td><td></td></tr></table></td></tr>
<tr><td>Clause 13.3</td><td>Patching Charge</td><td>Please refer to our comments in Clause 12.14.1 above which would also apply for Patching Charges.</td></tr>
<tr><td>Clause 13.4</td><td>Termination Charge</td><td>Please refer to our comments in Clause 12.14.1 above which would also apply for Patching Charges for termination.</td></tr>
<tr><th colspan="3">Schedule 16 - Billing</th></tr>
<tr><td>Clause 2.2</td><td>Billing and Settlement

“The Invoicing Party may send invoices by way of facsimile transmission on the date of issue of the invoice, followed by a hard copy via post.”</td><td>Please review this clause to include invoice transmission via electronic form as stated in Clause 2.1.</td></tr>
<tr><td>Clause 2.5</td><td>Billing and Settlement

“The Invoiced Party shall pay the Charges… to the Invoicing Party regardless of whether the Invoiced Party has received payment from its customers”</td><td>We propose the revision as tracked, because the Requesting Licensee ought not be required to pay the OpenNet where the failure of the Requesting Licensee’s customers to make payment is attributable to OpenNet.

“The Invoiced Party shall pay the Charges payable under this ICO Agreement, and upon the terms, and subject to the conditions, set out in this ICO Agreement, no later than thirty (30) Calendar</td></tr>
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<td>Days from the date of the relevant invoice (“Due Date”). The relevant requirements of Clause 5 of the main body of this ICO Agreement (“Main Body”) shall apply in relation to such payments. For the avoidance of doubt, the Invoiced Party shall pay these Charges to the Invoicing Party regardless of whether the Invoiced Party has received payment from its customers, unless the failure of the Invoiced Party to receive payment from its customers is attributable to OpenNet’s default.”</td>
</tr>
<tr>
<td>Clause 3.2</td>
<td>Interest on Overdue Amounts

“Interest shall accrue on that overdue sum….equal to the sum of six (6%) percent and….”</td>
<td>The imposition of such high interest rates by OpenNet (3 times more than industry or SingTel RIO requirements) is clearly unreasonable.

<table>
<tr><th>OpenNet’s Proposal</th><th>Industry/SingTel RIO</th></tr>
<tr><td>6%</td><td>2%</td></tr>
</table>

Please review and amend the rate to not more than the industry rate of 2%.</td>
</tr>
<tr>
<td>Clause 4.4</td>
<td>Other Payment Terms and Conditions

“The Invoiced Party may file a claim from the Invoicing Party for its failure to provide and maintain Mandated Services pursuant to the service level guarantee under the ICO Agreement. The Invoiced Party must file the claim…within 14 days…”</td>
<td>We propose the first two revisions as tracked in the interest of clarity.

We propose the third revision as tracked because the rebates given would not be ex-gratia in nature because they are provided pursuant to OpenNet’s obligations in respect of the service level guarantees under the ICO Agreement.

We propose the last revision as tracked to make clear that OpenNet’s provision of credit for breach of the service level guarantee does not preclude OpenNet’s liability other than those in respect of the breach of the service level guarantee.

“The Invoiced Party may file a claim ~~from~~ with the Invoicing Party for ~~its~~ the Invoicing Party’s failure to provide or maintain Mandated Services pursuant to the service level guarantee under the ICO Agreement. The Invoiced Party must file the claim with the Invoicing Party within 14 calendar days from the completion of the provisioning or maintenance work online through the OpenNet Platform. The Invoicing Party will investigate the claim and compensate the Invoiced Party the amount in respect of the claim in the form of a credit in the next bill if the claim is valid. The guarantee and rebates provided by the Invoicing Party under the service level guarantee are ~~of ex-gratia nature and~~ personal to the Invoiced Party, and are non-transferable. Except for the claims that the Invoiced Party may make as above, the Invoicing Party shall not be liable to the Invoiced Party or any person claiming through the Invoiced Party for any direct, indirect, consequential or</td>
</tr>
</table>

		incidental damages or losses or expenses whatsoever, such as, but not limited to, loss of profits or business, in connection with the breach of service level guarantee.
Clause 5.2	Invoice Errors "If the Invoicing Party has omitted or miscalculated Charges from an invoice, the Invoicing Party may include or amend (respectively)…"	Where the Requesting Licensee has underpaid due to OpenNet's omission or miscalculation of the Charges, the subsequent payment pursuant to the later invoice should not be subject to interest, since there is no fault on the part of the Requesting Licensee. Conversely, where the Requesting Licensee has overpaid due to OpenNet's overstatement of Charges, OpenNet should return the overpayment with interest so as to make the Requesting Licensee whole. "If the Invoicing Party has omitted or miscalculated Charges from an invoice, the Invoicing Party may include or amend (respectively) those Charges in a later invoice, as long as the Invoicing Party is able to substantiate these Charges to the Invoiced Party and the inclusion or amendment is made within six (6) months of the issuing of the invoice, and any payment of such previously omitted amount by the Invoiced Party shall be made without interest. If the Invoicing Party has invoiced an amount in excess of the amount payable, the Invoicing Party shall notify the Invoiced Party as soon as practicable and shall return or credit any resulting overpayment to the Invoiced Party with interest pursuant to Clause 3.2 of this Schedule."
Clause 5.3	Invoice Errors "If the Invoiced Party makes an overpayment in error,…or credit the amount overpaid to the Invoiced Party."	In light of the six (6) months timeframe proposed by OpenNet in respect of Clause 5.2 of this Schedule, in the interest of fairness to both Parties, we propose revising Clause 5.2 to specify a same timeframe of (6) months, as tracked. Further, we note that where the Requesting Licensee's overpayment is due to OpenNet's errors, then the six (6) month limit for notification of error ought not be imposed on the Requesting Licensee. "If the Invoiced Party makes an overpayment in error, it shall notify the Invoicing Party accordingly within ~~thirty (30) Calendar Days~~ six (6) months of the date on which the overpayment was made with sufficient details for the Invoicing Party to be able to identify the overpayment, provided that the foregoing shall not apply if the overpayment is attributable to OpenNet. The Invoicing Party will investigate and if the Invoicing Party's claim is found to be legitimate, the Invoicing Party shall return or credit the

		amount overpaid to the Invoiced Party."
Clause 5.4	Invoice errors "Notwithstanding any other provision…"	We are of the view that interest on overpayment is reasonable and justified where the overpayment is caused by errors of the Invoicing Party. We believe that our revisions to Clauses 5.2 and 5.2 as set forth above fairly address the issue. Accordingly, we propose the deletion of this clause.
Clause 5.5	Invoice errors "The Parties acknowledge…"	We respectfully submit that Clause 5.5, in combination with Clauses 5.2 through 5.4 as proposed by OpenNet, may not promote issuance of accurate invoices. Accordingly, we propose the deletion of this clause.
Clause 6	Procedures for Billing Dispute Notification	In light of Clause 6.3 of this Schedule as proposed by OpenNet and the requirement of paragraph 12.4(b) of Appendix 1 (Minimum Requirement for ICO) to the NetCo Interconnection Code 2009, we propose that Clause 6 include a sub-clause setting forth OpenNet's obligation to provide back-up records.
Clause 6.1	Procedures for Billing Dispute Notification	We note the apparent inconsistency between the definition of Billing Dispute Notification Period as set forth in Clause 6.1 of this Schedule and as set forth in Schedule 18. In view of the payment term of thirty (30) days under Clause 2.5 of this Schedule, we assume the definition in Schedule 18 is erroneous.
Clause 6.2	Procedures for Billing Dispute Notification	We respectfully propose the deletion of this Clause 6.2, because (i) the relevant factor justifying a Billing Dispute is whether there is a reasonable ground for a Party to raise such dispute; and (ii) to the extent that the specific enumeration of circumstances in Clause 6.2 may operate to preclude the raising of a reasonable Billing Dispute, the limitation of circumstances in Clause 6.2 is inappropriate.
Clause 6.4	Procedures for Billing Dispute Notification "For the avoidance of doubt,…the Billing Dispute Notification Period."	We propose the revision as tracked to make clear that the bar of disputes does not apply in the context of matters arising from invoice errors. Further, we recommend that the thirty (30) day limitation be inapplicable in respect of paid invoices. "For the avoidance of doubt, subject to Clause 5 of this Schedule and except where the invoice has been paid, no invoices may be disputed after the expiration of the Billing Dispute Notification Period."
Clause 7.2	Procedures for Billing Dispute	In light of Clause 7.2 of this Schedule and in the

	Resolution “Where the Invoiced Party paid the invoice in full while…”	interest of fairness, we respectfully propose the revision as tracked. “Where the Invoiced Party paid the invoice in full while the billing dispute is in progress, the Invoicing Party shall ~~is not required to~~ pay interest on any amount if the dispute is resolved against the Invoicing Party.”
Clause 7.3	Procedures for Billing Dispute Resolution “Where the Invoiced Party has paid an amount…”	In respect of our first proposed revision as tracked, we respectfully refer to our comment on Clause 6.4 of this Schedule. In respect of our second proposed revision as tracked, we respectfully refer to our comment on Clause 7.2 of this Schedule. “Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount ~~within the Billing Dispute Notification Period~~, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Where the dispute is resolved against the Invoicing Party, the Invoicing Party is shall ~~not required to~~ pay interest on any amount refunded.”
Schedule 17 - Dispute Resolution		
Clause 3.3(a)	Inter-Working Group	We note that the reference to section 6.6 of the Code in Clause 3.3(a) may be erroneous.
Clause 5.8	Mediation	We note that Clause 5.8 is duplicative of Clause 5.5.
Clause 6.14	Arbitration “OpenNet shall not be precluded…”	In the interest of fairness and in light of Clause 1.2 of this Schedule, we respectfully propose that Clause 6.14 be revised as tracked. “~~OpenNet~~ Each Party shall not be precluded from applying for urgent interlocutory relief from any court of competent jurisdiction.”
Schedule 18 - Dictionary		
Page 3	“**“Breaching Party”** means a Party…”	“Breach Party” instead of “Breaching Party” was being used in the Main Body of the ICO Agreement. Please amend this term in Dictionary to: “**“Breach Party”** means a Party…”
Page 13	“Residential Premise”…	We request that in the event of any doubt as to whether a premise is of residential nature, OpenNet shall make available to the Requesting Licensee Inland Revenue Authority of Singapore’s classification to verify.