

APPENDIX 5

REQUIRED MODIFICATIONS TO SCHEDULE 4

SCHEDULE 4

CO to CO Connection

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CO TO CO CONNECTION

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SCHEDULE 4

CO TO CO CONNECTION

IDA Directed Modifications: The industry has requested for a diagram depicting the key features in OpenNet's Network to be included in Schedule 4 (CO to CO Connection). IDA agrees that there is merit in incorporating such a diagram, as it increases clarity in understanding OpenNet's ICO. Accordingly, IDA requires OpenNet to provide a diagram which should clearly illustrate the demarcation of responsibilities between the Parties.

1. SCOPE

This Schedule 4 sets out the terms and conditions under which OpenNet will provide the Requesting Licensee with a licence for Layer 1 Service (a service provided by OpenNet for the use of passive optical fibre cable) from one Central Office (or "CO") to another Central Office (**CO to CO Connection**).

1.1 This Schedule only applies to Requesting Licensees who are FBOs.

2. SERVICE LEVEL GUARANTEES

2.1 OpenNet will provide the Service Level Guarantees in respect of the CO to CO Connection as set out in this Schedule. If OpenNet fails to meet any service activation period, Mean Time To Recovery or service level availability (collectively called the **Service Level Guarantees**) applicable to this Schedule and the failure to meet the Service Level Guarantees is solely and directly caused by OpenNet or its contractors and/or suppliers, OpenNet will provide a remedy in the form of a rebate to the Requesting Licensee in accordance with:

- (i) Clause 6.8 and any terms and conditions contained in this Schedule in respect of request and provisioning timeframes;
- (ii) Clause 11.13 and any terms and conditions contained in this Schedule in respect of fault rectification timeframes; and
- (iii) Clause 12.1 and any terms and conditions contained in this Schedule in respect of service level availability.

IDA Directed Modifications: There was general industry feedback received that OpenNet's obligation to provide a remedy in the form of a rebate should not be limited

to failures to meet the Service Level Guarantees which are “solely caused by OpenNet”.

In considering this point, IDA is of the view that it is justified for OpenNet to be made responsible also for the actions of its contractors and/or suppliers. This is because it is reasonable to expect OpenNet to have in place separate recourse or remedies against its own contractors and/or suppliers - for example, contractually negotiated provisions in the supply agreements with its contractors and/or suppliers, in the event of any default by such contractors and/or suppliers.

Accordingly, IDA directs OpenNet to modify clause 2.1 to make clear that OpenNet will still be liable to pay rebates to the Requesting Licensees where the failure to meet the Service Level Guarantees is caused by any default by OpenNet’s contractors and/or suppliers.

2.2 A claim by the Requesting Licensee shall be made in writing within ~~fourteen~~ thirty (30) Calendar Days of the completion of the relevant calendar month on which the Service Level Guarantees are measured. The amount in respect of any claim shall be paid to the Requesting Licensee in the form of a rebate. The Requesting Licensee acknowledges that a failure to make a claim within the specified timeframes under this paragraph means that the Requesting Licensee waives any entitlement to the Service Level Guarantee payment in respect of that claim.

IDA Directed Modifications: The industry has commented that the fourteen (14) Calendar Day period for making claims is too short and should be extended to thirty (30) Calendar Days.

As IDA understands, in order for a Requesting Licensee to submit a claim for rebates for a failure by OpenNet to meet the Service Level Guarantees, such Requesting Licensee may need to refer to past information on Service Level Availability and other relevant fault details.

Moreover, given the fact that all Requesting Licensees who fail to meet the specified timeframe are automatically disentitled from rebates, even where there was a clear failure in meeting the Service Level Guarantees which would otherwise entitle them to those rebates, IDA considers it reasonable to extend the fourteen (14) Calendar Day claim period to thirty (30) Calendar Days. A period of thirty (30) Calendar Days will give Requesting Licensees reasonable time to make a claim and is unlikely to cause any material prejudice to OpenNet.

Accordingly, IDA directs OpenNet to modify clause 2.2 to allow up to thirty (30) Calendar Days for a claim to be made.

2.3 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.

2.4 The guarantee and rebates provided by OpenNet are:

- (i) of an ex-gratia nature and personal to the Requesting Licensee and are non-transferable; and
- (ii) subject to this Schedule.

2.5 Despite anything to the contrary in this section, if the Requesting Licensee qualifies for any claim, OpenNet shall honour its obligations in respect of that claim but in the event of a dispute as to whether the Requesting Licensee qualifies for a claim or as to the quantum of the claim payable to the Requesting Licensee, the dispute shall be resolved in accordance with the Dispute Resolution Procedures in Schedule 17 of the ICO Agreement, or in the case of a Billing Dispute, in accordance with Schedule 16 of the ICO Agreement.

2.6 In addition to the specific terms and conditions of the Service Level Guarantees, the Service Level Guarantees shall not apply in any of the following circumstances:

IDA Directed Modifications: Service Level Guarantees set out a supplier's commitment to provide services at an agreed quality and specify the level of rebate that the customer would be entitled to should the service not be provided at the quality agreed. Together with the rebate, they are essential elements to ensuring that the supplier has an incentive to either deliver service at a pre-agreed level of quality or compensate its customer accordingly.

As a general policy principle, IDA requires OpenNet to fully meet its Service Level Guarantees, which represent its commitment as to the quality of service that it will provide to Requesting Licensees. OpenNet should not be excused from its Service Level Guarantees owing to any suspension that is due to its fault.

Accordingly, IDA directs OpenNet to propose, for IDA's approval, modifications to clause 2.6(a), to provide that OpenNet should not be excused from its Service Level Guarantees owing to any suspension that is due to its fault.

- (a) the CO to CO Connection is disconnected and/or reconnected by reason of it being suspended under the terms and conditions of this Schedule or ICO Agreement, except where the suspension is due to OpenNet's fault;
- (b) fault due to any equipment, wiring and/or cabling owned or operated by the Requesting Licensee or on behalf of the Requesting Licensee;
- (c) provision or restoration of the CO to CO Connection where any site-coordination meeting, Joint Investigation Meeting or fault identification coordination meeting is involved, except where (a) the fault was caused by OpenNet; and (b) the Requesting Licensee has not contributed to any delay in setting up the meeting. Notwithstanding the above, in determining whether the Service Level Guarantees have been met by OpenNet, the time taken from the start of arranging any site-coordination meeting, Joint Investigation Meeting or fault identification coordination meeting up to the end of the meeting, shall always be excluded;
- (d) ~~or~~ where OpenNet needs to obtain or maintain any licence or permission necessary to the provision or restoration of the CO to CO Connection;

IDA Directed Modifications: Industry feedback was received that if a site-coordination meeting, Joint Investigation Meeting or fault identification coordination meeting is necessitated due to the fault of OpenNet or upon the request by OpenNet, and findings show that the fault lies with OpenNet, then the Service Level Guarantees should not be excluded.

As explained in IDA's directed modification to clause 2.6(a) above, Service Level Guarantees are essential elements to ensure that OpenNet has an incentive to either deliver service at a pre-agreed level of quality or compensate its customers accordingly.

In this respect, there should not be any incentive by which the Service Level Guarantees can be avoided through requests for coordination or investigation meetings.

As such, IDA directs OpenNet to propose, for IDA’s approval, modifications to clause 2.6(c), such that the Service Level Guarantees are not excluded on the basis of a site-coordination meeting, Joint Investigation Meeting or fault identification coordination meeting being required, provided that: (a) the fault was caused by OpenNet; and (b) the Requesting Licensees have not contributed to any delay in setting up these meetings.

At the same time, IDA considers it fair and reasonable that the actual time taken for arranging and conducting such meetings should be excluded in determining whether the Service Level Guarantees have been met. As a suggestion, OpenNet may toll the time taken commencing from the start of arranging the meeting up to the end of the meeting. IDA directs OpenNet to propose, for IDA’s approval, a process to implement the requirements specified above.

- (e) delay in the provision or restoration of the CO to CO Connection caused by events beyond OpenNet’s reasonable control;
- (f) OpenNet network outages for which the Requesting Licensee has not reported a fault;

IDA Directed Modifications: As a matter of good practice and consistent with the requirements of the Code (see Section 2.2) which requires OpenNet to provide Mandated Services Information to the Requesting Licensees, the Requesting Licensees should be informed of any network outages affecting their CO to CO Connections. Accordingly, IDA directs OpenNet to propose, for IDA’s approval, a provision to be included in this Schedule, providing that it will make such information available to Requesting Licensees in a manner that is easily accessible.

- (g) fault is reported by the Requesting Licensee but no fault is found or confirmed after due and careful investigation, and verification by OpenNet;

IDA Directed Modifications: For clarity, and to ensure that the Parties exercise due diligence in all fault reporting, IDA directs OpenNet to modify clause 2.6(f) to incorporate an obligation that OpenNet may only confirm that no fault is found after “due and careful investigation, and verification by OpenNet”.

It was suggested during the consultation that IDA should monitor the frequency in which OpenNet avoids applying the Service Level Guarantees by claiming “No Fault Found”, and that it should intervene where these cases are frequent. Unless IDA receives a well-founded complaint in relation to such an errant practice, IDA does not see a specific need for regulatory intervention to be laid down at this stage. Such

monitoring by IDA could in fact be administratively cumbersome for the Parties involved and hamper the smooth and efficient running of OpenNet's operations in service provisioning. Notwithstanding, IDA will not hesitate to take appropriate enforcement measures if it detects any errant practice.

- (h) OpenNet is required to carry out scheduled service interruption and the Requesting Licensee has been informed in accordance with clause 9.5; or
- (i) OpenNet is required to carry out fibre diversion at the request of the Government Agencies, private developers or other relevant parties and the Requesting Licensee has been informed in accordance with clause 9.5.

IDA Directed Modifications: As currently drafted, clause 2.6(h) is not subject to clause 9.5. Similar to clause 2.6(g), IDA considers it fair and reasonable that OpenNet should inform Requesting Licensee in advance of carrying out fibre diversion under clause 2.6(h) as the diversion has an impact on, and could result in a disruption to the Requesting Licensee's CO to CO Connection. Accordingly, IDA directs that clause 2.6(h) should be modified to be subject to clause 9.5.

2.7 If the Requesting Licensee disputes OpenNet's reason for rejection, its records and/or the amount of rebate, the Requesting Licensee shall not be entitled to be credited with any rebate until and unless the dispute has been resolved.

2.8 A failure by OpenNet to meet any Service Level Guarantee does not constitute a breach of the ICO Agreement or this Schedule.

2.9 The Requesting Licensee acknowledges that the relevant remedy provided under clause 2.1 is a genuine pre-estimate of the Requesting Licensee's loss and will be the sole and exclusive remedy available to the Requesting Licensee for such failure to meet the relevant Service Level Guarantees for the CO to CO Connection and shall be OpenNet's sole and exclusive liability to the Requesting Licensee for such failure.

3. SERVICE DESCRIPTION AND ACCESS POINTS

3.1 OpenNet will provide a licence for the CO to CO Connection to the Requesting Licensee with the following:

- (a) one (1) fibre strand from OpenNet’s Fibre Distribution Frame (**FDF**) at one Central Office to OpenNet’s FDF at the other Central Office if requested by the Requesting Licensee; and
- (b) one (1) Patching Service at each of OpenNet’s FDFs at the two Central Offices.

3.2 The Requesting Licensee shall access the CO to CO Connection at OpenNet’s FDFs located at the two Central Offices or the Requesting Licensee’s FDF at the Central Office.

IDA Directed Modifications: As the Requesting Licensee may be accessing the CO to CO connection either at OpenNet’s FDF or Requesting Licensee’s FDF at the Central Office depending whether the Requesting Licensee is co-located at the same Central Office, the reference to “OpenNet’s FDF at the Central Office” in clause 3.2 should be amended to also include “Requesting Licensee’s FDF at the Central Office”.

3.3 For the purposes of this Schedule, OpenNet may have regard to any Requesting Licensee’s requirements which have been ordered but not yet delivered when assessing the availability of the CO to CO Connection.

IDA Directed Modifications: IDA refers OpenNet to the directed modification at clause 5.6(e) below. OpenNet cannot reject an application for a CO to CO Connection due to insufficient capacity. Accordingly, unless OpenNet can provide satisfactory justification to retain this clause, IDA directs OpenNet to delete this clause 3.3 in its entirety.

[OpenNet Comment: Please refer to the proposed modification with respect to the original clause 5.6(e). OpenNet would request that IDA retains clause 3.3, as OpenNet could provide a qualified acceptance in respect of a CO to CO Connection Request only if we have already scheduled for capacity to be increased by a definite date.

OpenNet will need to check whether resources would be available for fibre installation on the revised service activation date. We will not be able to commit to a definite revised service activation date if we do not have any visibility as to the nearest availability of resources for fulfilling a CO to CO Connection Request, or if available resources are already earmarked for CO to CO Connection Requests OpenNet has accepted earlier (either from the same Requesting Licensee or other Requesting Licensees).]

4. ORDERING AND PROVISIONING PROCEDURE

IDA Directed Modifications: IDA notes the industry's comment that OpenNet should be required to provide information relating to OpenNet's network rollout, its coverage in terms of premises reached, premises passed and all other relevant information that is to be provided by the OpenNet Platform. The above information must be made available to Requesting Licensees through manual processes even if the OpenNet Platform is not ready.

IDA agrees with the comment and finds it to be consistent with the provisions in the Code (see Section 2.2), which require OpenNet to make available to the Requesting Licensees Mandated Services Information. This will include information which Requesting Licensees will need before ordering services under the ICO.

Accordingly, IDA directs OpenNet to include a provision that it will make such information available to Requesting Licensees in a manner that is easily accessible. At a minimum, such Mandated Services Information should be accessible by the Requesting Licensees on OpenNet's website during the interim period prior to the implementation of the OpenNet Platform.

4.1 The Requesting Licensee shall submit its request for the CO to CO Connection (**Request**) to OpenNet on a Business Day in the form of Annex 4A stating, but not limited to the following information:

- (a) the Central Offices; and
- (b) where applicable, the Transmission Tie Cable Port to which the CO to CO Connection is to be connected at each Central Office.

IDA Directed Modifications: IDA understands that it is not always necessary for there to be a Transmission Tie Cable to connect a CO to CO Connection in the relevant Central Office. Accordingly, IDA requires OpenNet to insert the words "where applicable" in front of clause 4.1(b) of Schedule 4.

4.2 Relocation of the CO to CO Connection is not allowed.

4.3 Initially, information relating to the Mandated Services will be available on OpenNet's website, for access by the Requesting Licensee through secured means. The secured access to OpenNet's website will require the payment of a one-time charge for each user account created. Initially, information relating to network outages will be sent to the Requesting Licensee via email. The

information relating to the Mandated Services and the information relating to network outages shall be made available on the OpenNet Platform in due course.

[OpenNet Comment: In order to allow Requesting Licensees access to the Mandated Services Information on OpenNet's website during the interim period (before the OpenNet Platform is ready), OpenNet will have to bring forward the implementation of certain features of the OpenNet Platform.

OpenNet therefore proposes to similarly bring forward the imposition of one-time charge for each user account created for such access. We believe this charge is reasonable, as Requesting Licensees would be paying for a service originally envisaged under the NetCo ICO (as part of the OpenNet Platform), and that it is incurred now because the RFS date for these features of the OpenNet Platform are being brought forward for the benefit of Requesting Licensees.]

5. CO TO CO CONNECTION REQUEST

- 5.1 OpenNet shall process all Requests for the CO to CO Connection on a 'first come, first served' basis ~~up to the maximum number specified in clause 5.2.~~
- 5.2 For ~~each week~~Business Day, OpenNet shall process a combined total of no more than ~~2050~~410 Requests for Basic Mandated Services and Layer 1 Redundancy Services (**Maximum Quota**) from all Requesting Licensees, and a daily roll-over mechanism shall apply for additional Requests beyond the Maximum Quota.
- 5.3 Within three (3) Business Days of the date on which OpenNet receives the request for CO to CO Connection (Request Date) and subject to clause 5.2, OpenNet must notify the Requesting Licensee (and shall provide the Requesting Licensee with a unique reference number or a similar form of identification in the notification) whether its Request is accepted, or if rejected, for any one of the following reasons: OpenNet shall process Requests beyond the Maximum Quota of an additional thirty percent (30%) above the Maximum Quota for all requests for Basic Mandated Services and Layer 1 Redundancy Services. The service activation period for such additional Requests shall be twice the service activation period of Requests which fall within the Maximum Quota. The additional Requests will be counted in the following week's Maximum Quota.
- (a) the Request for CO to CO Connection is not in the prescribed form;

- (b) the Request does not contain all the required information or the information provided is inaccurate or misleading;
- (c) the service activation date requested is less than three (3) Business Days from the date of receipt of a Request;
- (d) the Requesting Licensee has committed a material breach of the ICO Agreement or this Schedule;
- (e) the equipment or services that the Requesting Licensee proposes to use or to provide interfere with, or cause deterioration to services supplied by OpenNet;
- (f) the Transmission Tie Cable (installed pursuant to Co-location Service in Schedule 12) for connection to the CO to CO Connection is not operational at the point in time of OpenNet's provisioning of the CO to CO Connection;
- (g) the Transmission Tie Cable Port to be connected at the Central Offices in relation to the Request for CO to CO Connection is already in use;
- (h) OpenNet has not rolled out its Network to the requested Central Offices;
or
- (i) OpenNet needs to increase capacity to provide the CO to CO Connection.

5.4 Notwithstanding anything in clause 5.3 to the contrary, OpenNet shall give a qualified acceptance to the Requesting Licensee with a revised service activation period if:

- (a) the Transmission Tie Cable (installed pursuant to Co-location Service in Schedule 12 for connection to the CO to CO Connection is not operational at the point in time of OpenNet's provisioning of the CO to CO Connection, but OpenNet has, at the time of the Request, already scheduled for such Transmission Tie Cable to be operational by a definite date; or
- (b) OpenNet needs to increase capacity in order to provide the CO to CO Connection, but OpenNet has, at the time of the Request, already scheduled for capacity to be increased by a definite date.

[OpenNet Comment: OpenNet could provide a qualified acceptance in respect of a CO to CO Connection Request only if we have already scheduled for Transmission Tie Cable or capacity to be installed/increased by a definite date.

OpenNet will need to check whether resources would be available for fibre installation on the revised service activation date. We will not be able to commit to a definite revised service activation date if we do not have any visibility as to the nearest availability of resources for fulfilling a CO to CO Connection Request, or if available resources are already earmarked for CO to CO Connection Requests OpenNet has accepted earlier (either from the same Requesting Licensee or other Requesting Licensees).]

~~5.3 — In the event that the Request exceeds the Maximum Quota, OpenNet will inform the Requesting Licensee of the same and that Request shall be processed at twice the service activation period of Requests which fall within the Maximum Quota.~~

IDA Directed Modifications: The industry has noted an anomaly in the current procedure in clauses 5.3 and 5.4. As an example, if a Requesting Licensee places an order on a Friday and the order happens to be beyond the Maximum Quota, but within the additional 30% capacity, OpenNet would contractually only need to activate this Requesting Licensee's service six (6) Business Days from the request date. However, if this request had simply been rolled over to Monday, the connection would have to be activated within three (3) Business Days.

At the same time, IDA considers it fair, reasonable and necessary that a request should not be rejected simply because it is beyond the weekly Maximum Quota. Otherwise, over and above the uncertainty in service provisioning, the Requesting Licensee will also have to incur costs in resubmitting its application.

Accordingly, IDA directs OpenNet to propose, for IDA's approval, a cost-effective and efficient mechanism in order to address the anomaly and requirements specified above; for example, a roll-over mechanism for its ordering and provisioning procedure.

~~5.4 — Within one (1) Business Day of the date on which OpenNet receives the request for the CO to CO 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:~~

IDA Directed Modifications: One respondent suggested that when OpenNet notifies the Requesting Licensee of its acceptance of the Request, such notification should include a unique reference number. IDA considers that there is merit in this suggestion as it helps to simplify identification processes. Accordingly, IDA directs OpenNet to modify clause 5.5 to incorporate this requirement.

- ~~(a) — the Request for the CO to CO Connection is not in the prescribed form;~~
- ~~(b) — the Request does not contain all the required information or the information provided is inaccurate or misleading;~~
- ~~(c) — the Request has exceeded the threshold of 30% above the Maximum Quota;~~

IDA Directed Modifications: IDA refers OpenNet to the directed modifications at clause 5.4 above. IDA requires that OpenNet puts in place a procedure that allows all requests exceeding the Maximum Quota to be queued instead of being rejected.

- ~~(d) — where the service activation date requested is less than three (3) Business Days from the date of receipt of a Request; or~~
- ~~(e) — where the Requesting Licensee has committed a material breach of the ICO Agreement or this Schedule.~~

~~5.5 — If OpenNet has provided its in principle acceptance to the Request for the CO to CO Connection, OpenNet will proceed with its provisioning and inform the Requesting Licensee within three (3) Business Days of the Request Date whether or not it is able to provide the CO to CO Connection, taking into consideration the following:~~

- ~~(a) — whether the equipment or services that the Requesting Licensee proposes to use or to provide interfere with, or cause deterioration to services supplied by OpenNet;~~
- ~~(b) — whether the Transmission Tie Cables (installed pursuant to Co-location Service in Schedule 12) for connection to the CO to CO Connection are operational at the~~

~~point in time of OpenNet's provisioning of the CO to CO Connection;~~

IDA Directed Modifications: IDA notes a typographical error in the first line of clause 5.6(b). Accordingly, IDA directs OpenNet to remove the hyphen in the reference to "Transmission Tie-Cable".

~~(c) whether the Transmission Tie Cable Ports to be connected at the Central Offices in relation to the Request for the CO to CO Connection are already in use;~~

~~(d) whether OpenNet has rolled out its Network to the requested COs; and~~

~~(e) whether OpenNet needs to increase capacity to provide the CO to CO Connection.~~

IDA Directed Modifications: IDA agrees with industry feedback that the ordering and provisioning procedure as currently structured is cumbersome and can be improved upon.

Under clause 5.5, the Requesting Licensee must first obtain OpenNet's in-principle acceptance of the Request for CO to CO Connection.

Thereafter, under clause 5.6, OpenNet will proceed with its provisioning and inform the Requesting Licensee within three (3) Business Days of the Request Date whether or not it is able to provide the CO to CO Connection.

Lastly, under clause 5.8, OpenNet may reject the Request on the third Business Day if any of the conditions specified in clause 5.8(a) to (d) arises.

This process is cumbersome and confusing as it may potentially involve two rounds of review of the Requesting Licensee's Request by OpenNet after in-principle acceptance. In this respect, IDA requires the process to be simplified and should result in the following outcomes: (a) an acceptance of the Requesting Licensee's application; (b) a rejection of the Requesting Licensee's application; or (c) a qualified acceptance of the Requesting Licensee's application (i.e. acceptance with notification that there will be delays in the delivery timeframe).

Having reviewed the considerations listed in clause 5.6, IDA is of the view that the situations referred to in clause 5.6(b) and 5.6(e) should not warrant an outright rejection, since these issues may be rectified. Instead, IDA considers it reasonable for such Requests to be accepted on a qualified basis, subject to rectification of the underlying issues. For example, using clause 5.6(b) as an illustration, the Request should only be fully accepted once the Transmission Tie Cables for connection to the CO to CO Connection become operational. Therefore, it is fair and reasonable that where any of the situations in clauses 5.6(b) and 5.6(e) apply, it should produce a “qualified acceptance” outcome. For the avoidance of doubt, if OpenNet reverts with a qualified acceptance, OpenNet must also inform the Requesting Licensee of a revised service activation period.

Accordingly, IDA directs OpenNet to propose for IDA’s approval, modifications to clauses 5.6 and 5.8, to streamline the ordering and provisioning procedure as specified above.

5.5 The Requesting Licensee shall pay OpenNet the applicable Installation Charge specified in Schedule 15 (Charges) for the provisioning of the CO to CO Connection.

~~5.7 OpenNet may reject a Request for the CO to CO Connection on or before the third Business Day after the Request Date if:~~

~~(a) the equipment or services that the Requesting Licensee proposes to use or to provide may interfere with, or cause deterioration to services supplied by OpenNet;~~

~~(b) the Transmission Tie Cables (installed pursuant to Co location Service in Schedule 12) for connection to the CO to CO Connection are not operational at the point in time of OpenNet’s provisioning of the CO to CO Connection;~~

IDA Directed Modifications: IDA refers OpenNet to the directed modification at clause 5.6(b) above. Accordingly, IDA directs OpenNet to make a similar amendment to this clause 5.8(b).

~~(e) the Transmission Tie Cable Ports to be connected at the Central Offices in relation to the Request for the CO to CO Connection are already in use; or~~

~~(d) OpenNet has not rolled out its Network to any of the requested COs.~~

5.6 Where OpenNet rejects the Request for the CO to CO Connection, OpenNet shall provide reasons explaining the basis for rejection.

6. DELIVERY

6.1 Subject to clauses ~~5.28~~, 5.3 and 6.2, OpenNet shall provide the CO to CO Connection by the end of three (3) Business Days from the receipt of a valid Request from the Requesting Licensee.

6.2 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 subject to clause 5.2 provide the CO to CO Connection within forty (40) Business Days from the receipt of a valid Request from the Requesting Licensee.

6.3 Unless otherwise stated, OpenNet shall retain the responsibility for working at OpenNet's FDF at the Central Office, including Patching Service at OpenNet's FDF at the Central Office in accordance with Schedule 13 (Patching Service). The Requesting Licensee shall bear the Charges for such work carried out by OpenNet.

6.4 OpenNet will use optical fibre cable based on the ITU-T G.652D standard for outdoor installations and the ITU-T G.657A standard for in-building installations (where applicable) to deliver the CO to CO Connection.

6.5 OpenNet will test the optical fibre cable from OpenNet's FDF at the requested Central Office or the Requesting Licensee's FDF at the requested Central Office to OpenNet's FDF at the other Central Office to ensure that the CO to CO Connection falls within the specified optical performance. Testing will be conducted at wavelengths of 1310nm, 1490nm and 1550nm.

IDA Directed Modifications: IDA refers OpenNet to the directed modification at clause 3.2 above. IDA directs OpenNet to amend the reference to also include “Requesting Licensee’s FDF at the Central Office”.

[OpenNet Comment: OpenNet has requested that IDA reconsiders its directive in respect of clauses 6.5.]

- 6.6 OpenNet shall ensure that the optical power loss does not exceed -0.4dB per km and -0.5dB per connector.
- 6.7 OpenNet shall promptly notify the Requesting Licensee upon the completion of provisioning the CO to CO Connection.
- 6.8 Subject to clause 6.9, in the event OpenNet fails to meet the applicable service activation period for a Request, OpenNet shall compensate the Requesting Licensee an amount equal to the number of days of delay multiplied by the weekly recurring charge for the CO to CO Connection, subject to a maximum of 30 times the weekly recurring charge for the CO to CO Connection (**Weekly Recurring Charge**), where:

$$\text{Weekly Recurring Charge} = \text{Monthly recurring charge} \times 7 / 30$$

- 6.9 Except for Requests with service activation periods which have been extended beyond the standard service activation period pursuant to clauses 5.4 and 6.2, OpenNet shall not be required to compensate the Requesting Licensee under any of the following circumstances:

- (a) The Requesting Licensee has requested for a service activation date that is beyond the stipulated service activation period; or

IDA Directed Modifications: As there is no requested date for activation in the Request Form, IDA directs OpenNet to propose for IDA’s approval, modifications to clause 6.9 (a) to clarify how and where the Requesting Licensee should indicate its requested activation date if it is beyond the standard service activation period.

[OpenNet Comment: OpenNet has updated Annex 4A to incorporate this change.]

- (b) The Requesting Licensee requests the deferment of the service activation date.

IDA Directed Modifications: For all the scenarios listed in clause 6.9 above, IDA expects that OpenNet must keep to the revised service activation period, failing which the Service Level Guarantees will apply. IDA directs OpenNet to propose, for IDA's approval, such modifications which are necessary to implement this intended outcome.

7. RESPONSIBILITY AT OPENNET FDF

- 7.1 The Requesting Licensee shall not, and shall ensure that its employees, agents and contractors do not, at any time access OpenNet's FDF at the Central Office.
- 7.2 Where the Requesting Licensee wishes to change the existing patching connection at OpenNet's FDF at the Central Office, the Requesting Licensee shall submit an application for termination of the existing Patching Service and order for a new Patching Service at the Central Office in accordance with Schedule 13 (Patching Service).

8. DEACTIVATION

- 8.1 Subject to the minimum contract term, the Requesting Licensee may terminate the CO to CO Connection by giving OpenNet not less than one (1) month prior written notice.
- 8.2 If the CO to CO Connection is terminated by the Requesting Licensee pursuant to clause 8.1 before the expiry date of the minimum contract term, the Requesting Licensee must pay OpenNet one hundred percent (100%) of the ~~monthly~~ Monthly recurring ~~Recurring charge~~ Charge for the remainder of the minimum contract term.

IDA Directed Modifications: IDA refers OpenNet to the Explanatory Memorandum, in particular paragraph 40 therein. Accordingly, IDA directs OpenNet to propose, for IDA's approval, the necessary modifications to clause 8.2, to clarify that the Requesting Licensee will be liable to pay the Monthly Recurring Charge for the remainder of the minimum contract term, only where the CO to CO Connection is terminated by the Requesting Licensee pursuant to clause 8.1.

Further, IDA directs OpenNet to replace "monthly recurring charge" with a reference to "Monthly Recurring Charge" since this is a term defined in Schedule 18 (Dictionary).

- 8.3 Where any Patching Service is no longer required as a result of the termination of the CO to CO 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). Notwithstanding the above, the Requesting Licensee shall not be liable to pay any Charges for the removal of Patching Service related to or in connection with the termination of the CO to CO Connection, if such termination is the result of OpenNet's fault.

IDA Directed Modifications: IDA refers OpenNet to the Explanatory Memorandum, in particular paragraph 39 therein. Accordingly, IDA directs OpenNet to propose, for IDA's approval, the necessary modifications to clause 8.3, to provide that the Requesting Licensee will not be liable to pay any Charges for the removal of Patching Service related to or in connection with the termination of the CO to CO Connection service, if such termination is the result of OpenNet's fault.

9. STANDARD TERMS AND CONDITIONS

- 9.1 OpenNet shall at its sole discretion determine its network deployment, including but not limited to the access points and fibre cable routing from which the CO to CO Connection is provided.
- 9.2 OpenNet will be responsible for the maintenance of the CO to CO Connection, excluding all Patching Services installed under this Schedule. The terms and conditions of Patching Services provided are set out in Schedule 13 (Patching Service). For the avoidance of doubt, if there is a fault at the Patch Cable, OpenNet will not charge the Requesting Licensee an additional Patching Charge if OpenNet (or its contractors and/or supplier) was solely and directly responsible for the fault at the Patch Cable.

IDA Directed Modifications: IDA refers OpenNet to the directed modification at clause 2.1 above. IDA directs OpenNet to modify clause 9.2 to make clear that OpenNet will also not charge the Requesting Licensee a Patching Charge if the fault at the Patch Cable is caused by any default by OpenNet's contractors and/or suppliers.

- 9.3 Except 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 of OpenNet's trademarks or the fact that any service is supplied using OpenNet's Network in promoting the Requesting Licensee's service.
- 9.4 The Parties shall in good faith co-operate with each other and take reasonable measures to ensure that there is no interference with or deterioration to OpenNet's

existing services or those of a Third Party as a result of the Requesting Licensee's use of the CO to CO Connection.

- 9.5 If it is necessary to carry out any scheduled service interruption, including but not limited to planned repair, or replacement or upgrade to any equipment or facility forming part of the CO to CO Connection, OpenNet shall provide the Requesting Licensee with at least one (1) month's ~~three (3) weeks~~ written notice in advance of such interruptions, repairs or upgrades. OpenNet shall take reasonable measures to minimise any service disruption to the Requesting Licensee.

IDA Directed Modifications: IDA considers it fair, reasonable and necessary that Requesting Licensees affected by scheduled service interruptions should be informed how long such interruptions will be. This is because Requesting Licensees will likely owe a similar obligation to their customers to notify them of any service interruption and its length. IDA also considers the period of at least three (3) weeks' notice may not be sufficient for the Requesting Licensees and their customers to plan for and to minimise the effects of the interruptions.

Accordingly, IDA directs OpenNet to modify clause 9.5 to provide that it will inform Requesting Licensees of the period of service interruption. In addition, OpenNet must also provide Requesting Licensees with no less than one (1) month's prior written notice of such interruptions so as to enable Requesting Licensees and their customers to plan ahead of such scheduled interruptions.

- 9.6 If the scheduled service interruption affects ~~50 or more~~ CO to CO Connections, OpenNet will carry out the scheduled service interruption between ~~midnight~~ 1 am and 6am.

IDA Directed Modifications: IDA understands from industry feedback that peak usage is expected to last beyond midnight. As such, to minimise any disruption to the CO to CO Connection, IDA directs OpenNet to modify clause 9.6 to provide that it will carry out all scheduled service interruptions between 1am – 6am. In addition, as all service interruptions would have an adverse impact on End-Users, the revised scheduled interruption period should be applicable regardless of the number of CO to CO Connections that will be affected.

[OpenNet Comment: OpenNet has requested that IDA reconsiders its directive requiring all scheduled service interruptions to take place only between 1:00am and 6:00am.]

9.7 Subject to Requesting Licensee acquiring redundancy service, OpenNet ~~would~~shall, where ~~possible~~technically feasible, provide assistance to Requesting Licensee to divert its CO to CO Connection to the redundancy service before commencing the scheduled service interruption.

IDA Directed Modifications: Given that Requesting Licensees will purchase Redundancy Services from OpenNet, IDA considers it reasonable, justified and necessary for OpenNet to provide assistance to these Requesting Licensees in diverting the CO to CO Connections to Redundancy Services, before OpenNet commences any scheduled service interruption. Accordingly, IDA directs OpenNet to modify this clause 9.7 to provide that prior to the commencement of the scheduled service interruption, OpenNet shall be required, where technically feasible, to provide the Requesting Licensees assistance in diverting the CO to CO Connections to Redundancy Services.

9.8 Where there are available resources, OpenNet will, where possible, first divert critical links to alternative routings before commencing the scheduled service interruption.

9.9 OpenNet shall not be liable for any loss caused by such scheduled service interruption.

IDA Directed Modifications: IDA refers OpenNet to the directed modification at clause 9.6 above. It is foreseeable that where scheduled service interruption is carried out outside of the stipulated period, Requesting Licensees may incur loss due to disruption to the CO to CO Connections. In this respect, IDA considers that it is fair, reasonable and appropriate for OpenNet to propose for IDA's approval, modifications to provide for a suitable remedy in such circumstances.

[OpenNet Comment: OpenNet has requested that IDA reconsiders the directed modification to clause 9.6. It would not be equitable or reasonable if OpenNet were to

be penalised for carrying out maintenance activities outside of the stipulated period, if such works and scheduling were intended to benefit Requesting Licensees, their customers and End-Users, while at the same time minimise any disturbance to members of the public.

In the meantime, while OpenNet awaits IDA's decision on its Reconsideration Request, OpenNet would refer IDA to the revised clause 9.6 (as amended above) and clause 12.3, which comply with IDA's directive on clause 9.9.]

9.10 The Requesting Licensee shall be responsible to the Requesting Licensee's Customers for all aspects of the Requesting Licensee's services including but not limited to the operations and maintenance of the Requesting Licensee's service.

9.11 The Requesting Licensee must procure and maintain at its own cost:

- (a) any equipment or software needed to implement, receive or use the CO to CO Connection; and
- (b) co-location at the Central Offices; ~~and~~
- ~~(c) connection to RSPs and the Requesting Licensee's Customers.~~

IDA Directed Modifications: IDA notes that connections to RSPs and the Requesting Licensee's Customers are not within the scope of this Schedule 4 (CO to CO Connection), and accordingly directs OpenNet to remove clause 9.11(c) in its entirety.

9.12 Nothing in this Schedule vests in the Requesting Licensee any right, title or proprietary interest in the optical fibre cable, equipment or facilities forming part of the CO to CO Connection.

10. ACCESS AND APPROVALS REQUIRED

10.1 The Parties shall comply with clause 15.5 of the main body of this ICO Agreement in relation to the obtaining of all licences, permits, consents, waivers, authorisations and intellectual property or other rights required for the provision of the CO to CO Connection.

11. FAULT REPORTING AND CLEARING

- 11.1 Each Party must have or establish a Fault Reporting and Control Centre (FCC) to act as a single point of contact for the reporting, management and clearing of faults. The FCC must be available twenty-four (24) hours a day, seven (7) days a week.
- 11.2 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 network before reporting the fault to OpenNet.
- 11.3 Upon receipt of a fault report from the Requesting Licensee under clause 11.42, OpenNet shall ~~use its reasonable endeavours to~~ investigate the cause of the fault experienced by the Requesting Licensee in a diligent and responsible manner as would be expected of a competent service provider. OpenNet shall update the Requesting Licensee as and when there is a change in status of the fault investigation/rectification work.

IDA Directed Modifications: As currently drafted, OpenNet is only required to use "reasonable endeavours" to investigate the cause of the fault experienced by the Requesting Licensee which does not lie within the latter's own network.

IDA considers that this threshold for discharging OpenNet's obligation is insufficient and instead, it is fair, reasonable and necessary to hold OpenNet to a higher standard in its assessment of Network faults. The NGNBN is meant to be a ubiquitous network. Faults in the Network can have serious consequences for Requesting Licensees and ultimately, End-Users. Therefore, IDA considers faults in the Network to be of grave concern, and OpenNet, as the exclusive Network provider, must be the entity with the obligation to correct such faults, to the best of its abilities. IDA also notes that the Requesting Licensee would have already fulfilled its duty to ensure that the fault does not lie within its own network, and IDA considers this is a duty that Requesting Licensees will take seriously because it could face "No Fault Found" Charges imposed by OpenNet for erroneous fault reporting. Hence, IDA considers that OpenNet, as the exclusive Network provider, must be required to discharge its fault identification and rectification obligations in a responsible and diligent manner.

Accordingly, IDA directs OpenNet to propose, for IDA's approval, modifications to clause 11.3, to provide that upon receipt of a fault report from the Requesting Licensee under clause 11.2, OpenNet shall investigate the cause of the fault experienced by the Requesting Licensee in a diligent and responsible manner as would be expected of a competent service provider.

Further, IDA directs OpenNet to provide a process for keeping the Requesting Licensees informed of the progress and outcome of such investigation and/or verification conducted by OpenNet.

Lastly, IDA also notes there is a typographical error in the first line of clause 11.3, and directs OpenNet to replace “under clause 11.1” with the phrase “under clause 11.2”.

11.4 If, following investigation, OpenNet determines that the fault is at the Transmission Tie Cable at the Central Office, OpenNet will patch the CO to CO Connection to another available Transmission Tie Cable Port and charge the Requesting Licensee a Patching Charge in accordance with Schedule 15 (Charges). OpenNet will not charge the Requesting Licensee a Patching Charge if OpenNet (or its contractors and/or suppliers) was solely and directly responsible for the fault at the Transmission Tie Cable at the Central Office.

IDA Directed Modifications: IDA refers OpenNet to its directed modification at clause 2.1 above. Accordingly, IDA directs OpenNet to modify clause 11.4 to make clear that OpenNet will also not charge the Requesting Licensee a Patching Charge if the fault at the Transmission Tie Cable at the Central Office is caused by any default by OpenNet’s contractors and/or suppliers.

11.5 If, following investigation, OpenNet determines that no fault is found or the fault is not with 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).

11.6 If OpenNet is unable to identify any fault, OpenNet will call for a fault identification coordination meeting between OpenNet and the Requesting Licensee to identify the fault. The Requesting Licensee shall provide all reasonable assistance requested by OpenNet. Each Party is to bear its own cost for attending such fault identification coordination meeting as well as any testing or trouble-shooting activities required as a result of such a meeting.

11.7 The CO to CO Connection is deemed to be restored when OpenNet has tested and confirmed to the Requesting Licensee that the CO to CO Connection has been restored.

11.8 Where the 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 but suspects that there is a fault with the CO

to CO Connection, the Requesting Licensee may request OpenNet for a joint investigation. The Requesting Licensee shall propose the date, time and venue for the joint investigation. Subject to OpenNet's resource availability and agreement to the date, time and venue, OpenNet shall attend the joint investigation and charge the Requesting Licensee the Joint Investigation Charge according to Schedule 15 (Charges).

11.9 The Requesting Licensee acknowledges that OpenNet may temporarily disconnect the Requesting Licensee's CO to CO Connection to perform reasonable fault analysis and line testing on the CO to CO Connection. OpenNet shall notify the Requesting Licensee at least thirty (30) minutes before the temporary disconnection and provide its reasons for the temporary disconnection.

IDA Directed Modifications: IDA considers it fair, reasonable and necessary to require OpenNet to inform the Requesting Licensee in advance of any temporary disconnection to perform fault analysis and line testing on the CO to CO Connection, as such temporary disconnection has an impact on, and results in a disruption to, the CO to CO Connection.

Accordingly, IDA directs OpenNet to modify clause 11.9 such that: (a) it shall be required to provide notice to the Requesting Licensee before disconnecting the Requesting Licensee's CO to CO Connection; and (b) any such disconnection by OpenNet under this clause 11.9 must be deemed necessary.

[OpenNet Comment: OpenNet has proposed a notice period of 30 minutes for temporary disconnection. We believe this timeframe is feasible and reasonable, and that it ensures that OpenNet, Requesting Licensees and relevant parties act to rectify any fault expeditiously.

OpenNet is concerned that a longer notice period would impede the progress of fault diagnosis and service restoration works of engineers and contractors deployed by OpenNet.

Further, OpenNet would note that the Residential End-User Connection intended for disconnection temporarily pursuant to clause 11.9 is a connection already found to be faulty (which has been previously reported by the Requesting Licensee as such i.e. faulty); therefore the End-User is unlikely to be significantly and adversely affected by any disconnection pursuant to clause 11.9.

Finally, we would clarify that disconnecting a faulty connection is a key part of fault analysis and investigative works commonly performed by network and system engineers when trouble-shooting and debugging problems.]

11.10 Each Party shall maintain and store its own records of faults and repairs.

Mean Time To Recovery

11.11 OpenNet shall restore any fault within a standard Mean Time To Recovery (MTTR) of eight (8) hours.

11.12 Subject to clause 2.6, the MTTR shall be the average time OpenNet took to restore service for all fault incidents for all CO to CO Connections acquired **by the Requesting Licensee** under this Schedule during a month, measured from the time each fault is reported by the Requesting Licensee to the time OpenNet confirms that the fault is restored, excluding fault incidents where OpenNet is prevented or restricted from restoring the service owing to matters that are not within OpenNet's control.

IDA Directed Modifications: As currently drafted, it is unclear from this clause 11.12 whether the MTTR is based on all fault incidents relating to CO to CO Connections acquired by all Requesting Licensees, or only those acquired by the relevant Requesting Licensee.

For clarity, IDA directs OpenNet to modify this clause to provide that the MTTR shall be the average time taken for OpenNet to restore service for fault incidents for all connections acquired by the relevant Requesting Licensee under this Schedule during a month.

11.13 In the event OpenNet fails to meet the standard MTTR for a particular month, OpenNet shall compensate the Requesting Licensee an MTTR Rebate equal to the difference between the MTTR experienced by the Requesting Licensee and the standard MTTR in terms of number of days, multiplied by the number of services affected, multiplied by the Weekly Recurring Charge for the CO to CO Connection, subject to a maximum of 30 times the Weekly Recurring Charge for the CO to CO Connection.

12. SERVICE LEVEL AVAILABILITY

12.1 OpenNet shall offer a service level availability of 99.99% per month for the CO to CO Connection. OpenNet shall offer to rebate the Requesting Licensee ten percent (10%) of the Monthly Recurring Charge if OpenNet fails to meet the service level availability for that month.

12.2 Service level availability for the CO to CO Connection is calculated as follows:

$$\frac{(A - B)}{(A)} \times 100\%$$

Where A = 24 hours x number of days for the month (in hours); and

B = total network outage time for the CO to CO Connection in the same month (in hours)

12.3 Subject to clause 2.6, the total network outage time is the sum of all minutes for which the CO to CO Connection is unavailable measured from the time each fault is reported by the Requesting Licensee to the time OpenNet confirms that the fault is restored, excluding fault incidents where OpenNet is prevented or restricted from restoring the service owing to matters that are not within OpenNet's control.

13. PROTECTION AND SAFETY

13.1 Each Party is responsible for the safe operation of its Network and in particular the safe operation of any equipment within its Network on its side of the connection at the FDF in both COs.

13.2 Each Party shall, so far as reasonably practicable, take all necessary steps to ensure that the licence of the CO to CO Connection, its operations and its implementation of this Schedule:

- (a) do not endanger the safety or health of any person, including the employees and contractors of the Parties; and
- (b) do not damage, interfere with or cause any deterioration in the operation of the OpenNet Network.

14. TERM OF LICENCE

- 14.1 The minimum contract term for the CO to CO Connection shall be twelve (12) months starting from the service activation date of the CO to CO Connection.

15. SUSPENSION

- 15.1 ~~Subject to clause 11.2 of the main body of this ICO Agreement,~~ OpenNet may suspend the Requesting Licensee's licence to the CO to CO Connection at any time until further notice to the Requesting Licensee if the CO to CO Connection licence 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 the OpenNet Network. If the suspension is the result of the Requesting Licensee's fault, the Requesting Licensee shall continue to pay the Monthly Recurring Charge during the period of suspension.

IDA Directed Modifications: IDA is of the view that the service provisioning and suspension process will become unduly cumbersome and tedious if its prior approval has to be sought for every instance of suspension of a licence for CO to CO Connection. Accordingly, IDA directs OpenNet to remove the phrase "Subject to clause 11.2 of the main body of this ICO Agreement" from this clause 15.1.

- 15.2 Without limiting the exclusions or limitations of liability in this ICO Agreement, OpenNet shall not be liable to the Requesting Licensee for any Loss resulting from, or in connection with, suspension of the CO to CO Connection licence under this clause 15.

16. TERMINATION OF LICENCE

- 16.1 The Requesting Licensee shall keep OpenNet informed on the Requesting Licensee's utilisation of each CO to CO Connection six (6) months from the service activation date and when there are changes to the utilisation.

- 16.2 The Requesting Licensee must use or, where applicable, activate a service to a Retail Service Provider using the CO to CO Connection within six (6) months from the service activation date of the CO to CO Connection. If the Requesting Licensee fails to do so, OpenNet will deactivate the CO to CO Connection upon giving the Requesting Licensee ten (10) Business Days prior notice. ~~OpenNet may terminate the licence in respect of the CO to CO Connection after giving the Requesting Licensee ten (10) Business Days prior written notice if: (1) the~~

~~Requesting Licensee abandons its CO to CO Connection; or (2) the Requesting Licensee is not providing any service over the CO to CO Connection; and the Requesting Licensee did not dispute such written notice given by OpenNet.~~

IDA Directed Modifications: IDA directs OpenNet to propose, for IDA's approval, modifications to align clause 16.2 to comply with Section 2.8 of the Code. As an example of possible drafting, IDA would suggest an amended version of clause 16.2 of Schedule 4 (CO to CO Connection), which would read as follows:

"The Requesting Licensee must use or , where applicable, activate a service to a Retail Service Provider using the CO to CO Connection within six (6) months from the service activation date of the CO to CO Connection. If the Requesting Licensee fails to do so, OpenNet will deactivate the CO to CO Connection upon giving the Requesting Licensee ten (10) Business Days prior notice."

16.3 ~~Subject to clause 12.3 of the main body of this ICO Agreement,~~ OpenNet may immediately terminate a licence of the CO to CO Connection under this Schedule if:

IDA Directed Modifications: IDA is of the view that the service provisioning and termination process will become unduly cumbersome and tedious if its prior approval has to be sought for every instance of termination of a licence for CO to CO Connection. Accordingly, IDA directs OpenNet to remove the phrase "Subject to clause 12.3 of the main body of this ICO Agreement" from this clause 16.3.

- (a) the Requesting Licensee is no longer an FBO;
- (b) the OpenNet ICO is revoked by the Authority under clause 12.8 of the ICO Agreement;
- (c) the Authority removes the requirement for OpenNet to supply the CO to CO Connection under the OpenNet ICO or exempts OpenNet from supplying the CO to CO Connection under the ICO Agreement, provided that the date of termination shall not be earlier than the effective date of the Authority's decision;
- (d) in OpenNet's reasonable opinion, the Requesting Licensee is using the CO to CO Connection in contravention of an applicable law, licence, code, regulation or direction and OpenNet has the necessary confirmation

from the relevant Government Agencies that the Requesting Licensee is in contravention of the applicable law, licence, code, regulation or direction;

- (e) in OpenNet's reasonable opinion, the Requesting Licensee is using the CO to CO Connection in a manner which places or allows a Third Party to act in contravention of an applicable law, licence, code, regulation or direction and OpenNet has the necessary confirmation from the relevant Government Agencies that the Third Party is in contravention of the applicable law, licence, code, regulation or direction;

~~(f) the CO to CO Connection is used other than the purposes specified in clause 1;~~

IDA Directed Modifications: IDA notes that clause 1 does not state the purpose for the use of the CO to CO Connection. On this basis, subject to OpenNet providing IDA with satisfactory justification why clause 16.3(f) should be retained, IDA directs OpenNet to delete clause 16.3(f) in its entirety.

- (f) the licence in respect of Co-Location Space to which the CO to CO Connection is connected has been terminated or has expired;
- (g) the CO to CO Connection has become unsafe for its purpose; or
- (h) OpenNet's right to own, maintain or operate the CO to CO Connection has been revoked or terminated or has expired; ~~or,~~

~~(j) the use of the CO to CO Connection 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.~~

IDA Directed Modifications: Unless OpenNet can provide IDA with a satisfactory justification for retaining clause 16.3(j) above, IDA requires clause 16.3(j) to be deleted. This is because IDA considers the remedy of suspension in clause 15.1 of this Schedule to be adequate and more appropriate, as any termination of a CO to CO Connection licence will likely result in material adverse impact on the Requesting Licensee's operations. Instead, OpenNet should suspend the CO to CO Connection

licence until such reasonable time when the Party who has caused the physical or technical harm has resolved the harm. In this regard, IDA considers a period of sixty (60) Calendar Days to be a reasonable period for resolving the harm resulting in the suspension. Failing such resolution within the permitted period, either Party can terminate the CO to CO Connection licence. Accordingly, IDA directs OpenNet to propose for IDA's approval, modifications to clauses 16.3 and 16.4, to provide a process incorporating the above requirements.

16.4 ~~Subject to clause 12.3 of the ICO Agreement, e~~Either Party (Terminating Party) may terminate the CO to CO Connection:

IDA Directed Modifications: IDA refers to its directed modification at clause 16.3 and accordingly requires OpenNet to remove the phrase "Subject to clause 12.3 of the ICO Agreement".

- (a) if the other Party is in breach of this Schedule other than failure to pay any sum for which the Requesting Licensee has been invoiced, and such breach remains un-remedied for a period of sixty (60) Calendar Days after receiving notice from the Terminating Party;
- (b) if the Requesting Licensee's CO to CO Connection licence has been suspended pursuant to clause 15.1, and the cause of such suspension has not been remedied or rectified for a period of sixty (60) Calendar Days from the date of the suspension; or
- (c) if the Requesting Licensee is in breach of this Schedule by its failure to pay any sum for which the Requesting Licensee has been invoiced, and such breach remains un-remedied for a period of fourteen (14) Calendar Days after receiving notice from the Terminating Party. For the avoidance of doubt, this sub-clause shall not apply pending the resolution of any Billing Dispute in accordance with the provisions of Schedule 16 (Billing).

16.5 Upon expiry or termination of the licence of the CO to CO Connection:

- (a) the Requesting Licensee must immediately discontinue use of the CO to CO Connection;

- (b) the Requesting Licensee must immediately promptly and without undue delay disconnect all equipment connected to the CO to CO Connection; and

IDA Directed Modifications: IDA is of the view that it is unrealistic and impractical to expect the Requesting Licensee to be able to remove its equipment “immediately” upon expiry or termination of the licence. Hence, IDA considers a more reasonable position is to require the Requesting Licensee to remove its equipment “without undue delay”, Accordingly, IDA directs OpenNet to modify clause 16.5(b) to incorporate the requirements set out above.

- (c) OpenNet shall be responsible for removing all necessary Patching Services at the Requesting Licensee’s cost in accordance with Schedule 15 (Charges). Notwithstanding the above, the Requesting Licensee will not be liable for OpenNet’s costs of removing all necessary Patching Services, if the termination is the result of OpenNet’s fault.

IDA Directed Modifications: IDA refers OpenNet to the Explanatory Memorandum, in particular paragraph 39 therein. Accordingly, IDA directs OpenNet to propose, for IDA’s approval, the necessary modifications to clause 16.5(c), to provide that the Requesting Licensee will not be liable to pay any Charges for the removal of Patching Services related to or in connection with the termination of the CO to CO Connection, if such termination is the result of OpenNet’s fault.

Where, for example, termination has occurred because OpenNet’s right to operate the CO to CO Connection has been revoked due to its own default, it would be unfair to require the Requesting Licensee to be liable for OpenNet’s costs of removing all Patching Services. Therefore, IDA is of the view that it is justified and reasonable to modify clause 16.5(c) as aforementioned.

- 16.6 ~~Upon termination of~~ If the licence of the CO to CO Connection is terminated as a result of the Requesting Licensee’s fault, the Requesting Licensee shall be liable to OpenNet for the Monthly Recurring Charges for the remainder of the minimum contract term.

IDA Directed Modifications: IDA refers OpenNet to the Explanatory Memorandum, in particular paragraph 40 therein. Accordingly, IDA directs OpenNet to propose, for IDA’s approval, the necessary modifications to clause 16.6, to reflect that the Requesting Licensee will not be liable to pay the Monthly Recurring Charges for the remainder of the minimum contract term, unless such termination is the result of the Requesting Licensee’s fault.

IDA considers this position to be reasonable because it is unfair to expect the Requesting Licensee to continue to pay Monthly Recurring Charges when its CO to CO Connection licence has been terminated, through no fault of its own. In light of the above, IDA is of the view that it is justified and reasonable to require OpenNet to modify clause 16.6 as directed above.

16.7 If the Requesting Licensee fails to disconnect its equipment from the CO to CO Connection under clause 16.65(b), OpenNet may at its sole discretion remove and/or dispose of the Requesting Licensee's equipment. The Requesting Licensee shall pay to OpenNet all reasonable costs associated with the work undertaken by OpenNet including the cost of disposing the Requesting Licensee's equipment. The Requesting Licensee shall have no claim whatsoever against OpenNet in connection with the removal and/or disposal of the Requesting Licensee's equipment from the CO to CO Connection.

IDA Directed Modification: IDA notes there is a typographical error in the second line of clause 16.7 and accordingly directs OpenNet to replace "clause 16.6(b)" with a reference to "clause 16.5(b)".

17. REDUNDANCY SERVICE

17.1 The Requesting Licensee may acquire the following Redundancy Service for the CO to CO Connection:

IDA Directed Modifications: IDA directs OpenNet to clarify in this Schedule the Request Form that the Requesting Licensee is to use in order to request for Redundancy Service for the CO to CO Connection.

[OpenNet Comment: OpenNet has updated Annex 4A to incorporate this change.]

- (a) one separate fibre strand from OpenNet's FDF at one CO to OpenNet's FDF at the other CO via the same duct and along the same path as the CO to CO Connection (**Redundancy Service with Wireline Diversity**);

- (b) one separate fibre strand from OpenNet's FDF at one CO to OpenNet's FDF at the other CO via a separate duct along the same path as the CO to CO Connection (**Redundancy Service with Duct Diversity**); or
- (c) one separate fibre from OpenNet's FDF at one CO to OpenNet's FDF at the other CO via a separate path from the CO to CO Connection (**Redundancy Service with Path Diversity**),

at the same prices, terms and conditions as the CO to CO Connection, unless stipulated otherwise in this clause 17.

17.2 The Requesting Licensee is eligible to acquire a Redundancy Service for the CO to CO Connection provided that the Requesting Licensee has already acquired an equivalent CO to CO Connection between the same two COs.

17.3 The Requesting Licensee shall be responsible, at its own cost and equipment, for the implementation of diversity or redundancy for its services using the Redundancy Service provided by OpenNet.

17.4 OpenNet shall make the Redundancy Service available to the Requesting Licensee, except where OpenNet is unable to build the requisite infrastructure to provide the Redundancy Service~~The supply of the Redundancy Service is subject to the availability of OpenNet's resources.~~

IDA Directed Modifications: The industry has commented, and IDA agrees, that the provision of Redundancy Service is essential, and IDA refers OpenNet to the Explanatory Memorandum regarding its provision of Redundancy Service, in particular paragraphs 59 to 61 therein. Accordingly, IDA directs OpenNet to amend clause 17.4, to clarify that OpenNet should not refuse to provide Redundancy Services to a Requesting Licensee, except in the very limited situation where OpenNet finds itself unable to build the requisite infrastructure to provide the necessary Redundancy Service (e.g. there is no space to build the requisite ducts).

ANNEX 4A: REQUEST FORM FOR CO TO CO CONNECTION

Request for CO to CO Connection

Requesting Licensee	Date of Application: _____ Requested Date of Activation: _____	Application Reference Number: _____
	Segment from: _____ CO	Assigned Transmission Tie Cable Port: _____
	To: _____ CO	Assigned Transmission Tie Cable Port: _____
	Any other info: _____ <input type="checkbox"/> Redundancy Service is required	

For and on Behalf of Requesting Licensee

Requesting Licensee	Sign: _____	Company Stamp: _____
	Name: _____	Company Name: _____
	Designation: _____	
	Contact Number, Fax and email address _____	

Part 1: Date: _____

OpenNet	<input type="checkbox"/> Application accepted in principle: Circuit Identification Number: _____ Tentative Provision Date : _____	
	<input type="checkbox"/> Application rejected Reason for rejection: _____	
	OpenNet Name / Signature: _____	Queue Status: _____

Part 2: Date: _____

OpenNet	<input type="checkbox"/> Circuit Provision: Revised Provision Date (where applicable): _____ Reason: _____ Insufficient Capacity (Y/N) Any other reason: _____	
	<input type="checkbox"/> Application rejected Reason for rejection: _____	
	OpenNet Name / Signature: _____	