

## EXPLANATORY MEMORANDUM

1. This Explanatory Memorandum is issued by IDA to set out its decision on the Reconsideration Request submitted by OpenNet on 25 July 2011 in respect of the Direction of 11 July 2011 which applies to OpenNet's proposed modifications to OpenNet's obligation to test the optical performance of residential fibre connections under OpenNet's ICO.
2. In arriving at the Reconsideration Decision, IDA has carefully considered the issues raised by OpenNet in the Reconsideration Request. IDA maintains the Direction in its entirety for the reasons set out in the following sections of this Explanatory Memorandum. IDA also reaffirms the reasons previously provided by IDA in the Explanatory Memorandum to the Direction.
3. Unless specifically defined herein, all capitalised terms used in this Explanatory Memorandum shall have the meanings ascribed to them in the Direction and the Explanatory Memorandum to the Direction.

### **OpenNet's Submission and IDA's Response**

#### Requesting Licensees' Entitlement to Service Level Guarantee for Delay in Service Activation Period & Billing Date Delay for Installation-Related Fault

4. According to OpenNet, the issues of a Service Level Guarantee for a delay in the Service Activation Period and a delayed billing start date should not be viewed as separate matters but should be viewed jointly. OpenNet indicated that if a Residential End-User Connection experienced an installation-related fault that was attributed to OpenNet, OpenNet would treat the line as a non-working fibre connection and would delay the commencement of the contract term of twelve (12) months for the fibre connection. OpenNet submitted that such a treatment was fair compensation to the Requesting Licensee as the Requesting Licensees would not have to pay for Residential End-User Connections that were not in working condition for reasons attributed to OpenNet. Since the billing start date for such faulty connections would be delayed to the date of service restoration, OpenNet is of the view that the Service Level Guarantee for a delay in the Service Activation Period should not apply. OpenNet takes the view that IDA's requirement that OpenNet should provide a Service Level Guarantee for a delay in the Service Activation Period will result in multiple compensations to the Requesting Licensees for a single fault occurrence, and would not be fair and equitable since OpenNet would already be penalised for providing a non-working line through delaying the billing start date.
5. OpenNet further submitted that if IDA insisted on OpenNet providing a Service Level Guarantee for a delay in the Service Activation Period for installation-related faults, then the Requesting Licensees should be allowed to claim the Service Level Guarantee from the date on which the Requesting Licensees report an installation-related fault, to the date when OpenNet rectifies the fault

or determines that the fault does not lie on OpenNet's network. OpenNet is of the view that it should not be unfairly penalised if the Requesting Licensee does not report the fault to OpenNet immediately, but reports the fault late or on the last day of the Service Activation Period.

6. Finally, OpenNet submitted that it was unfair and unreasonable for IDA to require a delay in the billing start date by OpenNet when the delay in the Requesting Licensee's ability to commence offering its services is not caused by OpenNet.
7. IDA reiterates that it is fair and reasonable for OpenNet to provide a Service Level Guarantee for a delay in the service activation date caused by an installation-related fault which is due to OpenNet and/or found on OpenNet's network because this lies within OpenNet's control and responsibility. Under its ICO, OpenNet is obliged to provision services within a certain service activation period, failing which OpenNet will offer compensation to the Requesting Licensee. Where OpenNet fails to deliver a working service within the service activation period, OpenNet would have failed in its commitment to provision the service within the stipulated period. A compensation for such a failure is, therefore, in accordance with OpenNet's ICO. With regard to the delay in billing, it is a consequence of the time taken by OpenNet to repair the fault in recognition that the fault ought to have been detected under an end-to-end fibre testing model before delivering a fibre connection to the Requesting Licensee but, instead, such a fault could only be detected thereafter with the revised scheme. It is only fair and reasonable for billing to be delayed to account for the time taken by OpenNet to repair the fault. IDA therefore disagrees with OpenNet's view that it will be providing multiple compensations for the faulty fibre connection. For the above reasons, IDA also disagrees with OpenNet that the Service Level Guarantee should only commence from the date that the Requesting Licensee makes a fault report to OpenNet. In addition, IDA believes that the Requesting Licensees have little incentive to delay reporting the faults as the end-users will be inconvenienced by the delay. With regard to the billing start date where the fault is not caused by the Requesting Licensee, IDA reiterates that it is OpenNet's obligation to deliver the fibre connections in working condition to its customers. Therefore, where the fibre connections fail to work and the failure is not shown by OpenNet to be due to the Requesting Licensees, IDA considers that the more reasonable and fairer approach is for OpenNet to also take responsibility for the non-working connections and to delay the billing start date accordingly, until evidence could be produced to show otherwise.

#### Prescribed List of Checks by Requesting Licensees Prior to Activating Fault Investigation Scheme

8. OpenNet submitted that its proposal to require its Requesting Licensees to conduct a list of prescribed checks in the ICO prior to activating the joint fault investigation scheme was not onerous and was in the end-users' interest since any unnecessary joint fault investigation would be a waste of the end-users' time. OpenNet disagreed that Requesting Licensees would have little motivation to activate the joint fault investigation scheme frivolously and

indicated that there were instances where the Requesting Licensees had failed to exercise due care and diligence when referring fault incidents to OpenNet. In addition, OpenNet pointed out that some Requesting Licensees had expressed the wish for clarity in the fault clearing roles and responsibilities between OpenNet and the Requesting Licensees and OpenNet strongly believed that such understanding would reduce potential disputes between OpenNet and the Requesting Licensees. OpenNet was of the view that, under the three-layer industry structure of the Next Gen NBN, it was important that each party be clearly aware of its duty to exercise due care in investigating faults, and OpenNet was not assured that the Requesting Licensees would perform OpenNet's proposed prescribed list of checks if they were placed in an operation manual and not stipulated in the ICO. Also, OpenNet was of the opinion that if Requesting Licensees were already carrying out the checks, there should not be any objection from the Requesting Licensee to specify the checks in the ICO.

9. As indicated in IDA's Direction, IDA believes that Requesting Licensees do not have any incentive to frivolously activate the joint fault investigation scheme without conducting their own comprehensive checks first as the joint fault investigation disrupts both the Requesting Licensees' installation schedule and end-user's schedule, and may lead to frustration on the part of end-users. As indicated in the Direction, if there is indeed an unacceptable number of frivolous requests from the Requesting Licensees for the joint fault investigation scheme, IDA may subsequently consider allowing OpenNet to amend the ICO to levy an Onsite Charge where it is determined that such faults lie on the Requesting Licensee's network and not on OpenNet's network or are caused by the Requesting Licensee.
10. IDA agrees with OpenNet that it is important for OpenNet and the Requesting Licensees to have a clear understanding of the demarcation of the roles and responsibilities in investigating an installation-related fault so that fault clearing is well co-ordinated amongst the parties to achieve efficiencies and reduce potential disputes. However, IDA wishes to remind OpenNet of its commitment in the ICO, approved by IDA on 30 October 2009, to conduct end-to-end fibre testing of all Residential End-User Connections prior to service delivery. The purpose of such end-to-end testing was to ensure that all fibre connections delivered to the Requesting Licensees were in working condition in order that the Requesting Licensees would not face any installation-related faults when they carried out installation of their network terminal equipment at the end-user premises. While IDA subsequently agreed to OpenNet's proposal to replace the end-to-end fibre testing obligation with the One (1) Hour Joint Fault Investigation Scheme (with modifications by IDA), this was only for the reason that the former may lead to greater end-user inconvenience should OpenNet and Requesting Licensees be unable to properly co-ordinate their schedules for the end-to-end fibre test. It is therefore unacceptable for OpenNet to attempt to impose pre-conditions in the ICO on the Requesting Licensees before they can activate the joint fault investigation scheme, when the responsibility to deliver working fibre connections to Requesting Licensees rests solely with OpenNet. IDA believes that it is likely for Requesting Licensees to first conduct their own checks prior to activating the joint fault investigation scheme for the reasons

mentioned above, and that it is unfair for OpenNet to convert the conduct of the checks into an obligation on the part of the Requesting Licensee in the ICO, when OpenNet was obliged to deliver the fibre connections in working condition in the first place. IDA would like to add that, as indicated in paragraph 9 of this Explanatory Memorandum to the Reconsideration Decision, if the Requesting Licensees are found to be consistently frivolous in requesting the joint fault investigation scheme, IDA may subsequently consider allowing OpenNet to levy an Onsite Charge if the reported faults are determined to lie on the Requesting Licensee's network and not on OpenNet's network or are caused by the Requesting Licensee.

11. Finally, IDA would like to clarify that IDA's 21 July 2011 direction on the review of OpenNet's ICO required OpenNet to provide clarity to parties on the fault investigation and reporting process for No Fault Found cases relating to non-installation faults only, instead of installation-related faults.

#### Onsite Charge

12. OpenNet submitted that IDA's rejection of OpenNet's proposal to levy an Onsite Charge on the Requesting Licensee was unfair and unreasonable in the event that a fault reported under the joint fault investigation scheme falls under the following scenarios (i) the fault lies with the Requesting Licensee's network, (ii) the fault is caused by the Requesting Licensee or (iii) if the Requesting Licensee fails to conduct OpenNet's proposed mandatory checks. In the absence of the Onsite Charge, OpenNet was not convinced that a Requesting Licensee would be deterred by the disruption caused by the joint fault investigation to the Requesting Licensee's installation schedule and the end-user's schedule from making a frivolous request for the joint fault investigation, and claimed that there had been instances of frivolous requests being made for the joint fault investigation. OpenNet indicated that the efforts expended by OpenNet in investigating frivolous reports from Requesting Licensees were a strain on OpenNet's resources and were costly, and would impede OpenNet's ability to (i) provide the support that the Requesting Licensees could have from OpenNet without the frivolous reports and (ii) comply with the QoS standards imposed by IDA on OpenNet's installation-related service levels. Finally, OpenNet was of the view that if the Requesting Licensees were indeed not reporting faults frivolously, they ought not to be concerned with the Onsite Charge.
13. For the reasons explained in the Direction and paragraphs 9 and 10 of this Explanatory Memorandum to the Reconsideration Decision, IDA maintains its view that the Requesting Licensees have little incentive to request the joint fault investigation scheme frivolously. Furthermore, IDA reiterates that OpenNet's original ICO commitment was to deliver all fibre connections in working condition via a prior end-to-end fibre testing process. It is therefore unreasonable for OpenNet to now seek to impose additional charges and conditions on Requesting Licensees under the joint fault investigation scheme when no such charges or conditions applied to OpenNet's original obligation to conduct end-to-end fibre testing, which the joint fault investigation scheme serves to replace. If there is indeed an unacceptable number of frivolous

reports from the Requesting Licensees, IDA reiterates that it may subsequently consider allowing OpenNet to amend the ICO to levy an Onsite Charge if the reported faults are found to lie on the Requesting Licensee's network and not on OpenNet's network or are caused by the Requesting Licensee.

14. IDA is unable to agree with OpenNet's suggestion that OpenNet will not be able to provide full support for the joint fault investigation scheme if its resources are occupied by the investigation of frivolous reports. Given that OpenNet's original ICO commitment was to conduct end-to-end fibre testing on every fibre connection and that the total installation-related fault rate on OpenNet's network is only a small fraction of total installations, it is unacceptable for OpenNet to suggest that it will not be able to provide full support for the joint fault investigation scheme under the circumstances described.
15. IDA also finds it unacceptable that OpenNet is attempting to link OpenNet's efforts expended on the joint fault investigation scheme with OpenNet's ability to comply with IDA's QoS standards on OpenNet's installation-related service levels. IDA wishes to point out that OpenNet is required to deliver working services to its Requesting Licensees under its ICO. In addition, it is entirely within OpenNet's control as well as responsibility to do so. Requesting Licensees will activate the joint fault investigation scheme only where OpenNet fails to deliver working services to the Requesting Licensees. As explained in paragraphs 9, 10 and 13 of this Explanatory Memorandum, Requesting Licensees have no incentive to activate OpenNet for the joint fault investigation scheme frivolously. It is therefore entirely within OpenNet's control to prevent its resources from being expended on the joint fault investigation scheme in the first place where OpenNet delivers working services to its Requesting Licensees. IDA would like to clarify that IDA's QoS framework on OpenNet's installation-related service levels is independent of OpenNet's joint fault investigation scheme to the Requesting Licensees. Therefore, OpenNet's attempt to link the two is inappropriate.

#### Requesting Licensees to Sign-Off on Joint Fault Investigation Report

16. OpenNet submitted that its proposal to require Requesting Licensees to jointly sign-off on the outcome of the joint fault investigation should be retained to minimise any potential disputes subsequently, such as over No Fault Found cases. OpenNet opined that OpenNet's and RL's personnel deployed to the joint fault investigation would be in the best position to ascertain and confirm the outcome of the joint fault investigation, and that it was "counter-intuitive" to suggest that those who were directly involved in the fault clearing work were not capable of arriving at a reasonable conclusion of the joint fault investigation outcome. OpenNet was of the view that if the personnel from OpenNet and the Requesting Licensee were not empowered or given the opportunity to discuss and agree on the outcome of the joint fault investigation, it would be more difficult for OpenNet and the Requesting Licensee to conclude the matter subsequently.
17. As OpenNet is aware, it may be possible that the personnel of OpenNet and the Requesting Licensee are unable to agree on the outcome of a joint fault

investigation, especially where OpenNet classifies a reported fault as a No Fault Found case. Under this scenario, there will be the undesirable outcome of an impasse at the end-user's premise, resulting in the Requesting Licensee being unable to fulfil the proposed ICO obligation to jointly sign-off on the joint fault investigation report. IDA is of the view that it is more expedient to require the Requesting Licensee to sign-off on the actions and the fibre readings taken by OpenNet during the joint fault investigation as such information is factual, can be verified by the Requesting Licensee and is not contentious in nature. In addition, IDA does not believe that there would be unmeritorious disputes being raised as a proper record exists detailing the actions and readings taken by OpenNet which provides objective evidence to support the outcome of a joint fault investigation.

18. Finally, IDA would like to clarify that IDA's 21 July 2011 direction on the review of OpenNet's ICO relates to OpenNet's and the Requesting Licensee's respective roles and responsibilities with regard to troubleshooting and bearing of various charges associated with fault investigations are not installation-related.

#### Cancellation Charge

19. OpenNet has requested that in the event the Requesting Licensee wishes to stop the fault rectification work after seventy-two (72) hours from the commencement of the joint fault investigation between OpenNet and the Requesting Licensee, the Requesting Licensee should be required to inform OpenNet of the decision clearly and explicitly. OpenNet indicated that it would not waive the Cancellation Charge if OpenNet did not receive any instruction from the Requesting Licensee to cease fault rectification and OpenNet had continued to carry out fault rectification works after seventy-two (72) hours from the commencement of the joint fault investigation. In addition, OpenNet requested that where a Requesting Licensee cancelled an order due to OpenNet's inability to rectify an installation-related fault within seventy-two (72) hours from the commencement of the joint fault investigation, and subsequently decided to order the service again, OpenNet should be allowed to reasonably recover the costs for the efforts and resources that it had expended previously if it was able to successfully provision service for the end-user for the subsequent service request.
20. IDA is unable to accede to OpenNet's request that the waiver of the Cancellation Charge should not apply if the Requesting Licensee who wishes to cancel the order due to the installation-related fault does not request the fault rectification work to cease within seventy-two (72) hours from the commencement of the joint fault investigation scheme. OpenNet's proposal effectively compels the Requesting Licensee to cancel the order within the said seventy-two (72) hours, even if the Requesting Licensee wishes to provide OpenNet with more time or OpenNet itself requires more time to carry out the fault rectification before the Requesting Licensee cancels the order, in the hope that the fault can be rectified within the extended period. In this regard, IDA wishes to point out that it is OpenNet's responsibility to ensure that the installation-related fault is rectified, and OpenNet should not attempt to limit its

obligation for the fault rectification period to the said seventy-two (72) hours. Nevertheless, IDA agrees with OpenNet that where a Requesting Licensee wishes to cancel the order after the said seventy-two (72) hours from the commencement of the joint fault investigation, the Requesting Licensee must be clear and explicit in its instruction to OpenNet to do so, to avoid OpenNet having to carry out unnecessary rectification works.

21. With regard to OpenNet's request to allow OpenNet to recover the costs for the efforts and resources that it has previously expended if the Requesting Licensee decides to order a service again after cancelling the previous order, IDA disagrees that OpenNet should be entitled to recover the said costs. As the cancellation by the Requesting Licensee is due to OpenNet's failure to deliver a working service, it would not be reasonable to treat the Requesting Licensee ordering the service subsequently any differently from a Requesting Licensee ordering a new service.

#### Billing Date Delay for Installation-Related Fault – Non-Residential End-User Connection Service

22. OpenNet submitted that it was unreasonable to require OpenNet to delay the billing start date for the Non-Residential End-User Connection Service, if the installation-related fault on the fibre connection could not be attributed to OpenNet. OpenNet was of the view that if an installation-related fault occurred in the period between OpenNet's handover of a working line to the Requesting Licensee and the time of the Requesting Licensee's installation, it would be unfair and unreasonable to penalise OpenNet since OpenNet would have had no control over the events during this intervening period that might have affected the performance of the fibre connection.
23. IDA would like to clarify that the intent of the Direction is not to delay the billing start date if a fault is not an installation-related fault. Hence, if OpenNet has indeed handed over a working line to the Requesting Licensee within the service activation period and the Requesting Licensee subsequently encounters a fault during its installation at the end-user's premise, IDA would not require OpenNet to delay the billing start date since the fault should not be regarded as an installation-related fault. However, where OpenNet fails to deliver a working line within the service activation period due to a fault that is attributable to OpenNet, the fault would be regarded as an installation-related fault and OpenNet must delay the billing start date until the fault is rectified as required by IDA in the Direction.

#### Reconsideration Decision

24. Taking into account all of the above, IDA considers that OpenNet has not raised any compelling reasons in its Reconsideration Request for IDA to vary its Direction. Accordingly, IDA maintains its decision as set out in the Direction in its entirety.