

21 November 2013

CityNet Infrastructure Management Pte Ltd (As Trustee-Manager of the NetLink Trust) ("**CityNet**")

Attention: Ms Jacqueline Ong
Acting Chief Executive Officer

The NetLink Trust (through its Trustee-Manager, CityNet)

Attention: Ms Jacqueline Ong
Acting Chief Executive Officer

Singapore Telecommunications Limited ("**SingTel**")

Attention: Mr Sean Slattery
Vice President (Regulatory and Interconnect)

OpenNet Pte Ltd ("**OpenNet**")

Attention: Mr Mark Blake
Chief Executive Officer

(collectively the "**Applicants**")

Dear Sirs

IDA'S DECISION ON THE LONG FORM CONSOLIDATION APPLICATION SUBMITTED BY THE APPLICANTS IN RELATION TO THE PROPOSED ACQUISITION BY CITYNET (IN ITS CAPACITY AS TRUSTEE-MANAGER OF THE NETLINK TRUST) OF 100% OF THE ISSUED AND PAID-UP SHARE CAPITAL IN OPENNET

1 We refer to the following:

- (a) The Applicants' letter dated 22 August 2013, enclosing a Long Form Consolidation Application ("**Consolidation Application**") jointly submitted by the Applicants pursuant to Sub-section 10.3.6.3(b) of the Code of Practice for Competition in the Provision of Telecommunication Services 2012 ("**Telecom Competition Code**"), in relation to the proposed acquisition by CityNet (in its capacity as trustee-manager of the NetLink Trust) of 100% of the issued and paid-up share capital in OpenNet ("**Consolidation**");
- (b) IDA's public consultation paper issued on 28 August 2013 on the Consolidation Application;
- (c) The responses to the public consultation paper received at the close of the consultation on 25 September 2013; and

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- (d) The Applicants' letter of 10 October 2013, enclosing the Applicants' comments to the responses received by IDA (the "**Reply**").

Unless specifically defined herein, all capitalised terms shall have the meanings ascribed to them under the Telecommunications Act (Cap. 323), the Telecom Competition Code, the Telecom Consolidation and Tender Offer Guidelines and the enclosed Explanatory Memorandum, as applicable.

- 2 IDA has fully considered and carefully assessed whether the proposed Consolidation is likely to substantially lessen competition in any Singapore telecommunication market and whether it gives rise to public interest concerns. Specifically, IDA has considered the extent to which regulatory requirements for the Next Generation Nationwide Broadband Network ("**Next Gen NBN**"), such as open access, quality of service, and universal service obligation ("**USO**") will continue to be fulfilled post-Consolidation, as well as how the proposed Consolidation would help to achieve the objectives of the Next Gen NBN in engendering a competitive and innovative retail broadband service market.
- 3 Based on IDA's review, IDA has identified potential competition restriction concerns in connection with the proposed Consolidation. However, IDA is satisfied that these concerns will be addressed by the Applicants' compliance with the conditions proposed by the Applicants as well as the conditions that IDA will impose as set out in paragraph 4. Where, and provided that, the potential competition related concerns in connection with the proposed Consolidation are addressed by the Applicants' compliance with these conditions, IDA is satisfied that the proposed Consolidation is not likely to substantially lessen competition in any Singapore telecommunications market or harm the public interest.
- 4 On this basis, and pursuant to Sub-section 10.5 of the Telecom Competition Code, IDA has decided to approve the Consolidation, subject to the Applicants' full and unqualified acceptance of the following conditions of approval ("**Conditions of Approval**"):-
- (a) SingTel Interactive Pte Ltd ("**SingTel Interactive**") shall as part of the Consolidation enter into a separate sale and purchase agreement to sell to the NetLink Trust (through its Trustee-Manager, CityNet) its approximate 30% of the issued and paid-up share capital in OpenNet at the same time that the NetLink Trust (through its Trustee-Manager, CityNet) enters into a sale and purchase agreement with Axia NGNetworks Asia Pte Ltd, SPH Net Pte Ltd and SPT Net Pte Ltd (together the "**Vendors**") to acquire the Vendors' combined approximate 70% of the issued and paid-up share capital in OpenNet. This sale and purchase agreement involving SingTel Interactive's approximate 30% of the issued and paid-up share capital in OpenNet shall occur as part of the Consolidation and shall be completed at the commencement of Phase 1 of the Consolidation.

- (b) SingTel shall as part of the Consolidation sell more than 75% of its unitholdings (i.e., at least 75% + 1 unit of its unitholdings) (which, for the avoidance of doubt, would include the associated unitholding voting rights) in the NetLink Trust by 22 April 2018. SingTel shall provide regular updates to IDA on the progress of the divestment.
- (c) SingTel undertakes, represents and warrants that so long as SingTel is the beneficial holder (whether directly or indirectly) of 25% or more of the units in the NetLink Trust, or has the ability to exercise (whether directly or indirectly) 25% or more of the voting rights attached to the units in the NetLink Trust, SingTel shall not do any or all of the following:
 - (1) Remove the Trustee-Manager, except on the following grounds:
 - (i) the Trustee-Manager has committed an offence under Singapore law or has contravened any material condition or restriction imposed on it by any Licences (as defined in the Trust Deed¹ constituting the NetLink Trust);
 - (ii) the Trustee-Manager has (A) acted fraudulently, in wilful default or in breach of trust; (B) failed to exercise Due Care (as defined in the Trust Deed constituting the NetLink Trust); or (C) otherwise committed a material breach of any of its obligations or covenants under the Trust Deed constituting the NetLink Trust;
 - (iii) any order by a court of competent jurisdiction is made for the liquidation, winding up or bankruptcy of the Trustee-Manager or the appointment of any receiver of any of the assets of the Trustee-Manager or any liquidator or provisional liquidator or judicial manager of the Trustee-Manager or any resolution is validly and effectively passed by the members or creditors of the Trustee-Manager for the liquidation or winding up (including but not limited to a resolution by its members for a voluntary liquidation or winding up) of the Trustee-Manager or any analogous procedure under any applicable law; and/or
 - (iv) subject to IDA's approval, such approval not to be unreasonably withheld, in the event that Clause 3.9.2 and/or Schedule 2 of the Trust Deed constituting the NetLink Trust have been amended or deleted and any of the following occurs:

¹ References to the Trust Deed shall, for the avoidance of doubt, mean the Trust Deed as amended from time to time.

- (A) the Trustee-Manager undertakes or performs any of the Authorised Matters (as such term is defined in the Trust Deed constituting the NetLink Trust as at the date thereof and prior to any amendment or deletion thereof) without being directed by SingTel or without the approval of SingTel;
 - (B) the Trustee-Manager refuses or fails to undertake or perform any of the Authorised Matters where directed to do so by SingTel; or
 - (C) the Trustee-Manager refuses or fails to take such actions and steps, including but not limited to making modifications, alterations or additions to the provisions of the Trust Deed constituting the NetLink Trust and/or making applications to such persons, bodies or authorities or appointments of such persons, as may be required of the Trust or the Trustee-Manager to undertake or perform in relation to the relevant Authorised Matters, in accordance with SingTel's directions;
 - (2) Approve any amendments, or take any action relating, to the Trust Deed constituting the NetLink Trust that are contrary to the Control and Ownership Requirements as set out in paragraph 4.2, Part A, Volume 1 of Singapore's Next Generation National Broadband Network Project – Network Company ("**NetCo**") RFP dated 11 December 2007 (and as amended from time to time) issued by IDA and bearing reference number IDA(RFP)-030;
 - (3) Approve any amendments to the Trust Deed constituting the NetLink Trust to vary the requirement to obtain IDA's approval for those matters set out in the Trust Deed constituting the NetLink Trust;
 - (4) Take any action relating to the NetLink Trust that requires approval from IDA under the Trust Deed without first obtaining such approval in accordance with the Trust Deed constituting the NetLink Trust; and/or
 - (5) Approve or direct the winding up of the NetLink Trust, save where such action is to facilitate the final structure for the divestment as described in paragraph 2.6 of the Authorised Matters.
- (d) So long as SingTel is the beneficial holder (whether directly or indirectly) of 25% or more of the units in the NetLink Trust, or has the ability to exercise (whether directly or indirectly) 25% or more of the

voting rights attached to the units in the NetLink Trust, SingTel shall not amalgamate or reconstruct, or change the structure or set up of the NetLink Trust or the manner in which any Trust Property (as defined in the Trust Deed) of the NetLink Trust is held, or enter into any merger of the NetLink Trust with any other body, that is not an action or step taken in pursuance of SingTel's divestment of its unitholdings in the NetLink Trust in accordance with paragraph 2.6 of the Authorised Matters (as defined in the Trust Deed) without first obtaining approval from IDA.

- (e) SingTel shall as part of the Consolidation amend the Trust Deed constituting the NetLink Trust such that the OpenNet Board and the CityNet Board shall consist of no more than 5 Directors, of which not more than 25% of its Directors shall be appointed by SingTel ("**SingTel Director**") as the 100% unitholder in the NetLink Trust, with the remaining 75% or more comprising independent Directors provided always that there shall be at least 1 SingTel Director.
- (f) SingTel shall as part of the Consolidation terminate the OpenNet Agreements; i.e., the following four short form agreements between SingTel and OpenNet within twelve (12) months of the commencement of Phase 1 of the Consolidation:
 - (1) Engineering, Procurement and Construction Agreement;
 - (2) Operations and Maintenance Agreement;
 - (3) Co-location Agreement; and
 - (4) Duct Use Agreement.

Upon the termination of the OpenNet Agreements, SingTel shall no longer provide to OpenNet the services under the OpenNet Agreements. The termination of the OpenNet Agreements shall occur on the same day that the OpenNet assets and business are transferred and integrated into the NetLink Trust. With the transfer of the OpenNet assets and business into the NetLink Trust and termination of the OpenNet Agreements, the relevant OpenNet and SingTel personnel, skills and expertise shall be transferred to United Maintenance Company Pte Ltd ("**UMC**") (or a separate equivalent) (subject to the NetLink Trust's agreement to employ the personnel and agreement by the relevant personnel to accept such employment) to provide manpower services to the NetLink Trust in relation to the installation, operation and maintenance of its dark fibre network.

The NetLink Trust may also retain the flexibility to take-over the existing sub-contracting arrangements that SingTel has in place to support the ongoing provision of services to OpenNet at the commencement of Phase 2 of the Consolidation, which includes

arrangements with sub-contractors to supply labour and materials for installation, operation and maintenance of OpenNet's dark fibre network. Alternatively, the NetLink Trust may call its own tenders for its sub-contracting arrangements if it so wishes. Prior approval from SingTel is not required in the selection of subcontractors for Outsourced Costs (i.e., the sub-contracting and outsourced costs incurred by OpenNet in the course of carrying on its Authorised Business).

- (g) The Applicants shall fully comply with their representations and commitments in the Consolidation Application as well as the submissions and assurances that they have provided to IDA (including but not limited to their Reply) as binding and enforceable obligations to IDA as a condition of approval. Without limitation, these commitments include but are not limited to those referred to in paragraphs 117 and 135 of the enclosed Explanatory Memorandum.
- (h) The Applicants shall complete the transition from Phase 1 to Phase 2 of the Consolidation, within twelve (12) months from the commencement of Phase 1 of the Consolidation.
- (i) The Applicants shall, within three (3) months from the commencement of Phase 1 of the Consolidation or such other date as may be agreed between the Applicants and IDA, submit to IDA for approval, a detailed implementation plan for the transfer of the OpenNet business, assets and the relevant OpenNet and SingTel personnel to the NetLink Trust and all other relevant or associated matters. The detailed implementation plan shall minimally include the:
 - (1) detailed timeline for the various activities relating to the transfer of the OpenNet business, assets and personnel and the transfer of the relevant SingTel personnel, skills and expertise to the NetLink Trust;
 - (2) assets to be transferred;
 - (3) relevant contracts to be novated or assigned;
 - (4) entity to which the assets and/or personnel shall be transferred;
 - (5) personnel and their respective roles and responsibilities;
 - (6) provision of regular updates on the progress of implementation;
 - (7) submission of the draft revised Trust Deed for Phase 2 of the Consolidation for IDA's consideration; and
 - (8) submission of the draft Deed of Undertaking referred to in subparagraph (p) below for IDA's consideration.

For the avoidance of doubt, the detailed implementation plan (and every step to be carried out thereunder including but not limited to (1) to (8) above) shall be binding and enforceable against the relevant Applicants as a condition of approval.

- (j) SingTel shall resolve the outstanding disputes between SingTel and OpenNet in relation to the provision of services by SingTel to OpenNet pursuant to the OpenNet Agreements at the commencement of Phase 1 of the Consolidation.
- (k) SingTel shall continue the current arrangements under the Master Framework Agreement dated 22 July 2011 (“MFA”) in relation to the future requirements of the NetLink Trust for inter-linking ducts and associated manholes for the installation of Next Gen NBN dark fibre to:
 - (1) the remaining 5% of residential and non-residential premises that were not included in the Rollout Plan covering the 95% of residential and non-residential premises in Singapore;
 - (2) meet its USO; or
 - (3) a Non-building Address Point (“NBAP”).

Following the Consolidation, the MFA between the NetLink Trust (through its Trustee-Manager, CityNet) and SingTel shall continue.

- (l) The Post-Consolidation Entity² shall seek IDA’s prior written approval before appointing any telecommunication or broadcasting licensees (and their Associates, as defined under Part VA of the Act) as its contractor, including but not limited to SingTel.
- (m) The Post-Consolidation Entity shall allow its activities, and SingTel shall allow its activities in relation to the Post-Consolidation Entity, to be monitored by a Monitoring Board, for purposes of ensuring their compliance with the Control and Ownership restrictions. This includes but is not limited to monitoring to ensure that SingTel does not abuse its role as OpenNet’s KSC and favour itself or its affiliates. For more details, please see paragraphs 167 to 172 of the enclosed Explanatory Memorandum. For the avoidance of doubt, as part of this condition of approval, the Post-Consolidation Entity (and where relevant, SingTel) shall render their fullest cooperation to the Monitoring Board, including but not limited to submitting regular reports, responding to any and all

² In Phase 1, the “Post-Consolidation Entity” would refer to the licensees, CityNet (which would hold 100% of the issued and paid-up share capital of OpenNet) and OpenNet. In Phase 2, the “Post-Consolidation Entity” would refer only to the licensee, CityNet.

queries from the Monitoring Board and providing all information relevant to their compliance activities to the Monitoring Board.

- (n) In carrying out its duties as the Trustee-Manager of the NetLink Trust, CityNet shall not take into account any interests of its unitholders that are unrelated to the unitholders' investment in the NetLink Trust (such as the unitholders' telecommunication business as an OpCo and/or RSP).
- (o) The Post-Consolidation Entity shall have full independence and powers in deciding all matters relating to prices, terms and conditions (under its Interconnection Offer ("**ICO**"), Customised Agreements and/or promotions) for its service offerings (both existing and/or new services), including both the provision of and the revisions to such service offerings, i.e., it shall not need to seek approval from unitholders nor be subject to directions from unitholders for such matters. Ahead of divestment by SingTel, SingTel's prior approval for the above matters shall not be required nor can SingTel issue a direction to CityNet if the matter does not or is not likely to have a material adverse effect on SingTel's ability to carry out its divestment of its unitholdings in the NetLink Trust in accordance with paragraph 2.6 of the Authorised Matters (as defined in the Trust Deed). In the event that SingTel withholds its approval or issues a direction for any of the above matters:
 - (1) CityNet shall be required to notify IDA and provide its views on whether the matter would have a material adverse effect on SingTel's ability to carry out its divestment in accordance with paragraph 2.6 of the Authorised Matters (as defined in the Trust Deed); and
 - (2) Should IDA deem it necessary, SingTel shall be required to submit a report to IDA explaining (with adequate substantiation and evidence) why in SingTel's view, the matter would have a material adverse effect on SingTel's ability to carry out its divestment in accordance with paragraph 2.6 of the Authorised Matters (as defined in the Trust Deed).
- (p) The Applicants shall provide a Deed of Undertaking to IDA, on terms acceptable to IDA, or any other legal instrument of equivalent effect and outcome to be approved by IDA, to ensure that the relevant Applicants shall be responsible for any breaches of the NetCo Contract by OpenNet and/or breaches of the Deed of Undertaking dated 20 October 2008 by SingTel and that the relevant Applicants shall perform all outstanding obligations of OpenNet under the NetCo Contract and of SingTel under the Deed of Undertaking dated 20 October 2008.

- (q) The Post-Consolidation Entity shall continue to meet all of CityNet's and OpenNet's regulatory and/or contractual obligations owed to IDA (including but not limited to the Control and Ownership restrictions).
- (r) SingTel shall at all times act reasonably and in utmost good faith in exercising its power or ability under the Reserved Matters and Authorised Matters in order to comply with the Control and Ownership restrictions. In any event, IDA reiterates that if there is any inconsistency between SingTel's power or ability to approve or direct CityNet and/or OpenNet as stipulated under the Reserved and Authorised Matters, and the Control and Ownership restrictions, the latter shall prevail to the extent of any inconsistency.
- 5 The grounds of IDA's decision and assessment, as well as the details of the Conditions of Approval imposed on the Applicants, are set out in the enclosed Explanatory Memorandum.
- 6 To accept the Conditions of Approval for the Consolidation, all of the Applicants must jointly sign on the attached Letter of Acceptance of Conditions and return the signed letter (in both softcopy and hardcopy) to IDA, **no later than 14 days** from the date of this Decision (i.e., **5 December 2013**). All the Applicants are jointly and severally liable to IDA to perform each and all of the Conditions of Approval. Upon receiving the executed Letter of Acceptance of Conditions signed by all the Applicants, IDA will be issuing Directions pursuant to Section 27(1) of the Telecommunications Act (Cap. 323) to additionally impose the Conditions of Approval as binding regulatory obligations owing to IDA.
- 7 In the event of acceptance of the Conditions of Approval, for the avoidance of doubt, all references to the commencement of Phase 1 of the Consolidation shall mean the date on which all the conditions precedent under the sale and purchase agreements are satisfied, including IDA's approval of the proposed Consolidation, and the completion of the acquisition of the 100% of the issued and paid-up share capital of OpenNet by CityNet, or 31 December 2013, whichever date is earlier. The Applicants shall confirm with IDA the date on which Phase 1 of the Consolidation commences if it is earlier than 31 December 2013.
- 8 In the event of acceptance of the Conditions of Approval, further, IDA would grant OpenNet and CityNet a temporary waiver from compliance with their respective No Effective Control obligations under their FBO licences during Phase 1 of the Consolidation, which shall be no longer than twelve (12) months. IDA reserves the right to take enforcement action against OpenNet and CityNet in the event that Phase 1 of the proposed Consolidation exceeds twelve (12) months. For the avoidance of doubt, the waiver granted is a limited waiver only for this specific cross-holding arising from the Consolidation. OpenNet and CityNet are required to comply with their Control and Ownership restrictions with respect to any other telecommunication or broadcasting licensee (including but not limited to

SingTel) and in all other circumstances unrelated to the Consolidation, including during Phase 1 of the Consolidation.

- 9 Please be reminded that if there is any material change affecting any basis on which IDA approved the Consolidation Application and the transaction related to such Consolidation Application remains uncompleted, the Applicants must immediately notify IDA in writing with full disclosure of the change in circumstances and seek IDA's decision on the continued validity of any approval granted. IDA reserves the right to require the Applicants to submit a new Consolidation Application incorporating the changed circumstances.
- 10 Please be further reminded that any false or misleading information or documents furnished to IDA in connection with the Consolidation Application, and/or any non-compliance with any of the above Conditions of Approval, can cause IDA to take such regulatory action, including but not limited to issuing directions pursuant to Sections 27 and 32D of the Telecommunications Act (Cap. 323), as may be appropriate.
- 11 Should you require any clarification, please contact the undersigned, via fax at 6211 2116 or via email at IDA_ILO@ida.gov.sg.

Yours faithfully,



Aileen Chia (Ms)
Deputy Director – General (Telecoms & Post)

Enclosed

Letter of Acceptance of Conditions

[insert date]

Infocomm Development Authority of Singapore

10 Pasir Panjang Road
#10-01 Mapletree Business City
Singapore 117438

Attn: Ms Aileen Chia
Deputy Director-General (Telecoms & Post)

Dear Sirs

LETTER OF ACCEPTANCE OF CONDITIONS OF APPROVAL

1. We refer to your letter dated 21 November 2013, entitled "IDA's Decision on the Long Form Consolidation Application Submitted by the Applicants in Relation to the Proposed Acquisition by CityNet (in its capacity as trustee-manager of the NetLink Trust) of 100% of the Issued and Paid-Up Share Capital in OpenNet", and the accompanying Explanatory Memorandum ("**IDA's Decision**").
2. We hereby confirm our full, unconditional and irrevocable acceptance of all the Conditions of Approval set out in IDA's Decision.

Yours faithfully,

[insert name and designation of
authorized representative]
[Name of Company and append
company stamp/seal.]

[insert name and designation of
authorized representative]
[Name of Company and append
company stamp/seal.]

[insert name and designation of
authorized representative]
[Name of Company and append
company stamp/seal.]

[insert name and designation of
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[Name of Company and append
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