



**CONSULTATION PAPER ISSUED BY
THE INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE**

**LONG FORM CONSOLIDATION APPLICATION SUBMITTED BY OPENNET PTE
LTD, NETLINK TRUST, CITYNET INFRASTRUCTURE MANAGEMENT PTE LTD
AND SINGAPORE TELECOMMUNICATIONS LTD**

28 AUGUST 2013

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CONSULTATION DOCUMENT¹

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28 AUGUST 2013

In accordance with Sub-section 10.6(d) of the Code of Practice for Competition in the Provision of Telecommunication Services 2012 (the “**Telecom Competition Code**”), the Info-communications Development Authority of Singapore (“**IDA**”) hereby invites comments on the Long Form Consolidation Application submitted by OpenNet Pte Ltd (“**OpenNet**”), CityNet Infrastructure Management Pte Ltd (“**CityNet**”, as Trustee-Manager of the NetLink Trust), NetLink Trust (through its Trustee-Manager, CityNet) and Singapore Telecommunications Ltd (“**SingTel**”, as unitholder of the NetLink Trust).

PART I: INTRODUCTION

1. Pursuant to Section 32A(2) of the Telecommunications Act (Cap. 323) (the “**Act**”), IDA has declared every telecommunication licensee, which is granted a licence under Section 5 of the Act to provide facilities-based operations (“**FBO**”), to be a designated telecommunication licensee (“**DTL**”) for the purposes of Part VA of the Act. DTLs and parties proposing to acquire voting shares or voting power in DTLs are required to comply with various requirements relating to such proposed acquisitions, under the Act and Section 10 of the Telecom Competition Code. Without limitation, pursuant to Subsection 10.3.6 of the Telecom Competition Code specifically, a DTL and every Acquiring Party must seek IDA’s approval in connection with any transaction that constitutes a Consolidation with the DTL. Under the Telecom Competition Code, a Consolidation would occur if an acquisition would result in, *inter alia*, the Acquiring Party becoming a 30% Controller of a DTL, acquiring the business of a DTL as a going concern, or obtaining Effective Control over the DTL.

PART II: PROPOSED CONSOLIDATION

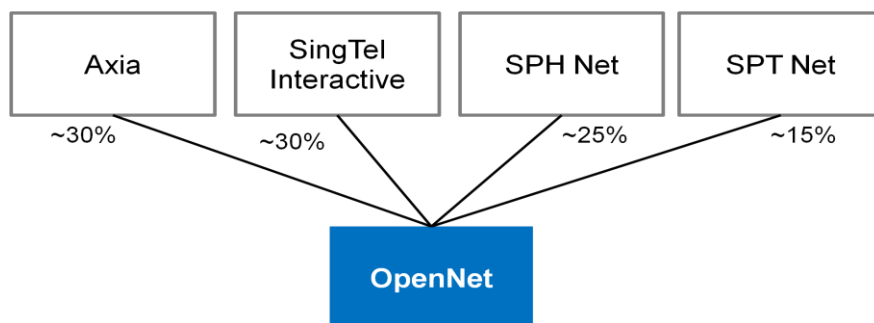
2. On 22 August 2013, OpenNet, CityNet, NetLink Trust and SingTel (together, the “**Applicants**”) jointly submitted a Long Form Consolidation Application to IDA for IDA’s consideration and approval in relation to a proposed acquisition by CityNet (in its capacity as Trustee-Manager of the NetLink Trust) of 100% of the issued share capital in OpenNet, an FBO licensee and DTL (the “**Consolidation**”).
3. The non-confidential version of the Long Form Consolidation Application jointly submitted by the Applicants is enclosed as **Annex A**. The non-

¹ Unless otherwise defined, all capitalised terms in this consultation paper shall have the same meanings ascribed to them in the Act, the Telecom Competition Code or the Telecom Consolidation and Tender Offer Guidelines as applicable.

confidential annexes to the Long Form Consolidation Application are also enclosed².

4. IDA has conducted a preliminary review of the information submitted and has determined that the Long Form Consolidation Application has satisfied the minimum information requirements specified in Sub-section 10.4.6.4 of the Telecom Competition Code. Where IDA is of the view that additional information is necessary for IDA to assess the impact of the proposed Consolidation, IDA may request additional information from the Applicants.
5. According to the Applicants' submission, the proposed Consolidation involves an acquisition of 100% of the issued share capital of OpenNet by CityNet (in its capacity as Trustee-Manager of the NetLink Trust). This will be implemented through a Sale and Purchase Agreement between CityNet, Axia NGNetworks Asia Pte Ltd ("**Axia**"), SPH Net Pte Ltd ("**SPH Net**"), SPT Net Pte Ltd ("**SPT Net**") and SingTel Interactive Pte Ltd ("**SingTel Interactive**") for the sale and purchase of approximately 70% of the issued and paid-up share capital of OpenNet, as well as another Sale and Purchase Agreement between CityNet and SingTel Interactive for the sale and purchase of approximately 30% of the issued and paid-up share capital of OpenNet.
6. OpenNet was issued a licence by IDA in 2009 to install, operate and maintain the passive infrastructure and systems of the Next Generation Nationwide Broadband Network ("**Next Gen NBN**") and provide "Layer 1" connectivity services and other ancillary services. It is a joint venture between four parties: SingTel Interactive (approximately 30%), Axia (approximately 30%), SPH Net (approximately 25%) and SPT Net (approximately 15%). See Figure 1.

Figure 1. Pre-Consolidation Structure of OpenNet



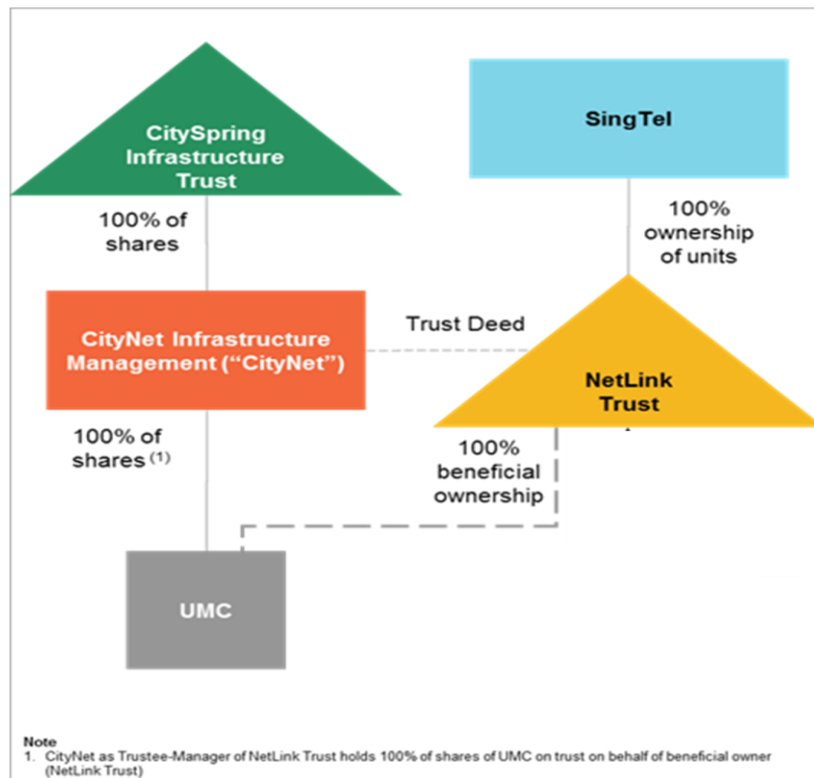
7. CityNet is the Trustee-Manager of the NetLink Trust, a registered business trust established by SingTel in July 2011 to hold the passive infrastructure assets (underground ducts, manholes and Central Offices ("**COs**")) used to support OpenNet's deployment of dark fibre and other infrastructure for the Next Gen NBN. CityNet was issued a licence by IDA in 2011 to install, operate and maintain the ducts, manholes and co-location space in central

² Namely Annexure 1: SingTel Group Annual Report for year ended 31 March 2013, Annexure 11: OpenNet's Audited Statement for the year ended 31 March 2013, Annexure 12: NetLink Trust's Audited Statement for the year ended 31 March 2013 and Annexure 13: CityNet's Audited Statement for the year ended 31 March 2013.

offices and lease them to other licensees. It is a wholly-owned subsidiary of CitySpring Infrastructure Trust (“**CitySpring Trust**”) (through its Trustee-Manager, CitySpring Infrastructure Management Pte Ltd (“**CitySpring**”)).

8. The CitySpring Trust is an infrastructure trust registered with the Monetary Authority of Singapore. It was established with the principal objective of investing in infrastructure assets and providing unitholders with long-term, regular and predictable distributions and the potential for long-term capital growth. Its portfolio comprises 100% of City Gas Trust, 70% of SingSpring Trust, 100% of Basslink (including 100% of Basslink Telecoms) and 100% of CityNet³.
9. CityNet (in its capacity as Trustee-Manager of the NetLink Trust) holds 100% of the issued and paid-up capital in United Maintenance Company Pte Ltd (“**UMC**”). UMC provides manpower services to CityNet in relation to the installation, operation and maintenance of the NetLink Trust network of ducts, manholes and COs.
10. SingTel holds 100% of the units in the NetLink Trust. See Figure 2.

Figure 2. Pre-Consolidation Structure of the NetLink Trust



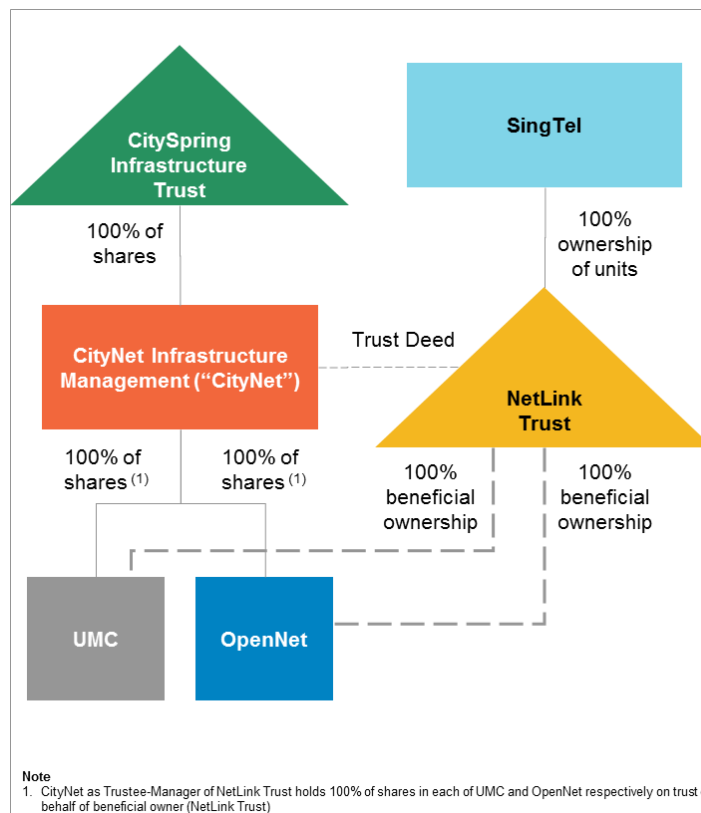
³ Taken from CitySpring’s website, available at: www.cityspring.com.sg/about-us/overview/

11. The Applicants submitted that the proposed Consolidation will be completed in two phases:

(a) **Phase 1:**

Immediately following satisfaction of the conditions precedent under the sale and purchase agreements, including IDA’s approval of the proposed Consolidation and completion of the acquisition of OpenNet thereunder, CityNet (in its capacity as Trustee-Manager of the NetLink Trust) will hold 100% of the issued and paid-up capital of OpenNet. See Figure 3.

Figure 3. Post-Consolidation Structure (Phase 1)



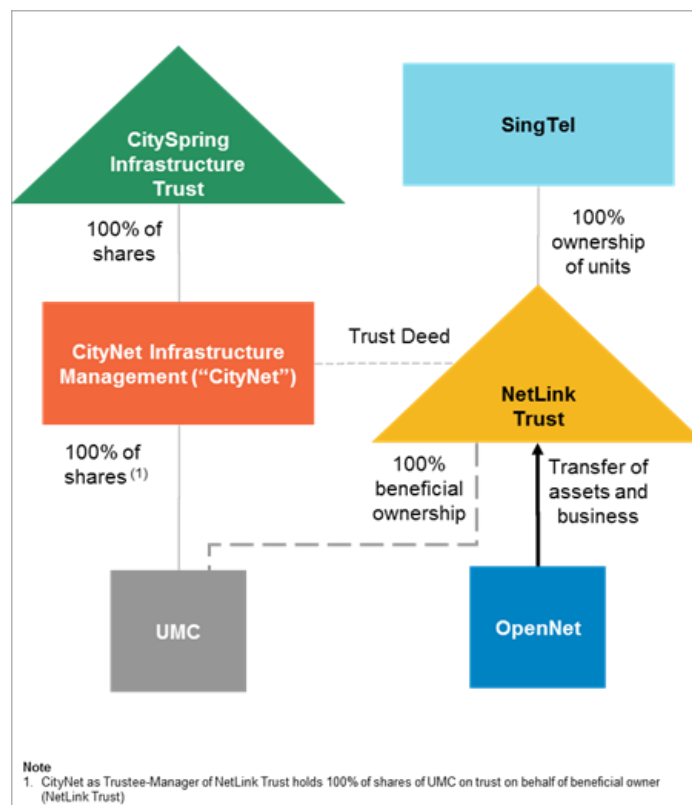
(b) **Phase 2:**

Within 12 months of the commencement of Phase 1 of the proposed Consolidation, the assets and business of OpenNet will be transferred and integrated into the NetLink Trust. At about the same time, SingTel will terminate its agreements with OpenNet to be its Key Sub Contractor (“KSC”) (these agreements are henceforth referred to as the “OpenNet Agreements”)⁴ and transfer the relevant OpenNet and SingTel personnel, skills and expertise to UMC or a separate equivalent legal entity (subject to the NetLink Trust’s agreement to

⁴ These refer to the four agreements between OpenNet and SingTel, in relation to (a) Engineering, Procurement and Construction; (b) Operations and Maintenance; (c) Co-location; and (d) Duct Use.

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. CityNet will remain as the neutral, independent Trustee-Manager of the NetLink Trust. With the transfer of the OpenNet assets, business and personnel to UMC or an equivalent separate legal entity established under the NetLink Trust (through its Trustee-Manager, CityNet), as submitted by the Applicants, OpenNet will surrender or terminate its FBO licence and CityNet will request for its FBO licence to be amended to enable it to install, operate and maintain the systems and provide the services previously undertaken by OpenNet. On the commencement of Phase 2 of the proposed Consolidation, there will be a single registered business trust – the NetLink Trust. CityNet will remain as the neutral, independent Trustee-Manager of the NetLink Trust. See Figure 4.

Figure 4. Post-Consolidation Structure (Phase 2)



The time interval between the commencement of Phase 1 and the commencement of Phase 2 of the proposed Consolidation will be up to 12 months.

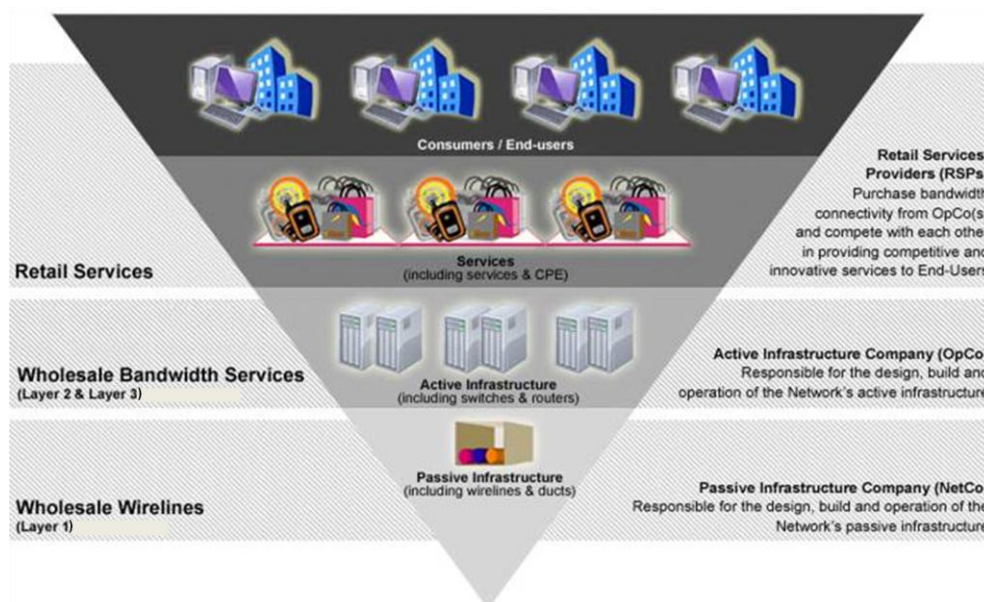
PART III: THE NEXT GENERATION NATIONWIDE BROADBAND NETWORK

12. The Next Gen NBN is the wired network of the Next Generation National Information Communications Infrastructure under the Intelligent Nation 2015 (“iN2015”) master plan⁵ to provide nationwide ultra-high speed broadband access of 1Gbps and more to all physical addresses including homes, schools, government buildings, businesses and hospitals.

Next Gen NBN Industry Structure

13. When IDA first launched the Request for Proposals (“RFP”) for the Next Gen NBN in 2007, IDA had proposed a three-layered industry structure comprising the following (see Figure 5):
- (a) The first layer, a Network Company (“**NetCo**”), which is responsible for the design, build and operation of the passive infrastructure, which includes the dark fibre network and ducts;
 - (b) The second layer, an Operating Company (“**OpCo**”), which will provide wholesale network services over the active infrastructure, comprising switches and transmission equipment; and
 - (c) The third layer, the Retail Service Providers (“**RSPs**”), which will offer services over the Next Gen NBN to end-users, including businesses and consumers.

Figure 5. Three-Layered Next Gen NBN Industry Structure proposed in RFP



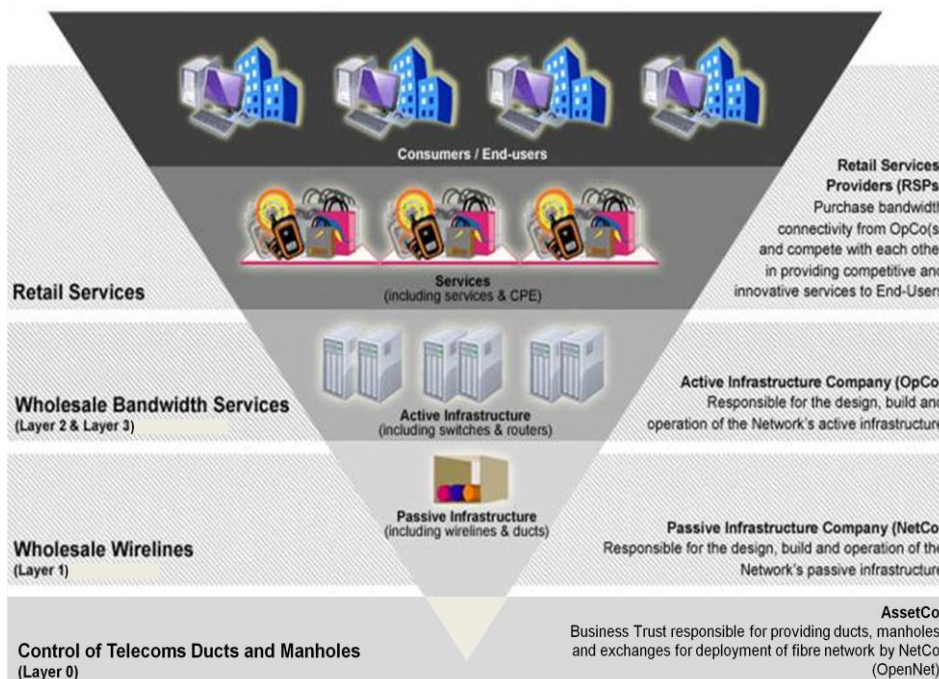
⁵ In 2005, IDA launched its 10-year master plan iN2015 with the aim of enhancing the competitiveness of the economy as a whole. Some of the key goals are: to be the best in the world in harnessing infocomm to add value to the economy; a two-fold increase in the value-add of the infocomm industry to S\$26 billion; a three-fold increase in infocomm export revenue to S\$60 billion; to create 80,000 additional jobs; to achieve 90% broadband usage in all homes; and to achieve 100% computer ownership in homes with school-going children.

OpenNet was appointed as the Next Gen NBN's NetCo in 2008, while Nucleus Connect Pte Ltd ("**Nucleus Connect**") was appointed as the OpCo in 2009.

14. Besides offering attractive wholesale prices, the OpenNet consortium had offered to make use of the existing ducts and other underlying passive infrastructure assets belonging to SingTel, thereby minimising disruption to the public and enabling the network to reach homes and buildings nationwide ahead of IDA's stipulated timeline. As part of the OpenNet proposal, SingTel had committed to transfer the ownership and control of the relevant underlying passive infrastructure assets (comprising relevant ducts, manholes and COs) that are used to support the deployment of the Next Gen NBN infrastructure by OpenNet (the "**Underlying Assets**") to an independent neutral party, called the Asset Company ("**AssetCo**"). SingTel had also committed to reducing its stake in AssetCo by April 2014 (subject to relevant approvals being obtained) to satisfy the structural separation requirement, which is one of the key regulatory requirements of the NetCo RFP. Taking into account the commitments and undertakings as set out above, IDA had accepted the OpenNet consortium's proposal. SingTel subsequently established the NetLink Trust, a business trust registered under the Business Trusts Act (Cap. 31A) for the purposes of forming AssetCo. CityNet was appointed by SingTel to be the independent Trustee-Manager of the NetLink Trust to carry out the business of establishing, installing, operating and maintaining the Underlying Assets. For this purpose, IDA issued CityNet an FBO licence, classified it as a Public Telecommunication Licensee ("**PTL**") and designated it as a DTL.

15. Based on OpenNet consortium's proposal, the current industry structure of the Next Gen NBN includes a new "Layer 0", in the form of an AssetCo, as follows (see Figure 6):

Figure 6. Current Next Gen NBN Industry Structure



Regulatory Requirements

Effective Open Access

16. To ensure that the Next Gen NBN NetCo and OpCo provide effective open access to downstream operators, and do not discriminate between the downstream operators, structural separation and operational separation were implemented at the NBN NetCo and OpCo layers respectively.
17. Structural separation requires a licensee (acting alone or in concert with its Associates) not to have Effective Control⁶ of any other telecommunication or broadcasting licensee; not to be under the Effective Control of any other telecommunication or broadcasting licensee; and not to be under the Effective Control of the same Controlling Entity as any other telecommunication or broadcasting licensee. Accordingly, OpenNet is required under its licence to ensure that it is not under the Effective Control of, or does not have any Effective Control over, any other telecommunication or broadcasting licensee. IDA understands that, currently, for all intents and purposes, OpenNet and its downstream customers (i.e. the OpCos and the RSPs) are separate entities, each with fully autonomous decision-making considerations.
18. Under the operational separation requirements, the OpCo, Nucleus Connect, which is a 100% owned subsidiary of StarHub Ltd (“**StarHub**”), is required to operate at an arm’s length and as a separate entity from its parent, for its operations, complete with separate branding, physical premises and staff. Nucleus Connect is required to comply with a set of Operational Separation indicators, and its compliance is monitored by the IDA Monitoring Board.
19. To ensure the independence and neutrality of CityNet (in its capacity as Trustee-Manager of the NetLink Trust), CityNet is also required under its licence to ensure that it is not under the Effective Control of, or does not have any Effective Control over, any other telecommunication or broadcasting licensee. CityNet must also obtain IDA’s prior approval for any changes to its ownership structure. Although SingTel is currently the 100% unitholder of the NetLink Trust and SingTel appointed CityNet as the independent Trustee-Manager, to ensure that SingTel is unable to exercise any Effective Control over CityNet, SingTel is allowed to appoint no more than 30% of CityNet’s board of directors. At least a 70% majority of the CityNet board of directors are independent of SingTel. SingTel had also committed to reduce its

⁶ “Effective Control” means the ability of a Controlling Entity to cause a Controlled Entity to take, or prevent the Controlled Entity from taking, a decision regarding the management and major operating decisions of the Controlled Entity, and without limitation, includes the situation where such ability –

- (i) is exercisable by the Controlling Entity through direct or indirect voting power in the Controlled Entity; or
- (ii) is exercisable on the basis of rights acquired via contracts, agreements or any other arrangements entered into between the Controlling Entity and the Controlled Entity.

This definition of Effective Control is similarly captured under sub-section 10.1.1(p) of the Telecom Competition Code.

unitholdings in the NetLink Trust to less than 25% by April 2014, subject to the relevant approvals being obtained.

20. As additional safeguards to ensure that OpenNet, CityNet and Nucleus Connect remain neutral upstream wholesalers of Next Gen NBN services, they are not permitted under their licences to offer any retail telecommunication systems and/or services or wholesale transmission services without IDA's approval.

Interconnection

21. To facilitate other licensees' access to the Next Gen NBN, OpenNet and Nucleus Connect are required to offer standard Interconnection Offers ("ICOs"), which set out clearly the prices, terms and conditions at which they will offer their respective interconnection and access services to all qualifying persons.
22. IDA has similarly required CityNet, as a Dominant Licensee⁷, to offer a Reference Access Offer ("RAO"), which specifies the prices, terms and conditions at which it will offer (a) building lead-in duct space; and (b) access to building lead-in manholes.
23. The ICOs and RAO were approved by IDA and are reviewed regularly by IDA⁸, with input from the industry.

Universal Service Obligation

24. To ensure nationwide coverage, IDA accepted OpenNet's commitment to reach 60% of all residential and non-residential premises by December 2010 and 95% of all residential and non-residential premises by June 2012.
25. To cover the remaining areas, IDA imposed a Universal Service Obligation ("USO") on OpenNet, which requires OpenNet to provide the Mandated Services to all Physical Addresses, upon the request of any Requesting Licensee, and all other locations as may be reasonably requested. The USO took effect on 1 January 2013.

⁷ Under the Telecom Competition Code, a Licensee will be classified as dominant if:

- a. it is licensed to operate facilities used for the provision of Services in Singapore that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication market in Singapore by an efficient competitor; or
- b. it has the ability to exercise Significant Market Power in any market in which it provides Services pursuant to its licence. Dominant Licensees have to comply with additional obligations under the Code such as IDA's tariff regime and the offering of a Reference Interconnection Offer.

⁸ The latest NetCo and OpCo ICOs are available at <http://www.ida.gov.sg/Policies-and-Regulations/Industry-and-Licensees/Next-Gen-NBN/OpenNets-Interconnection-Offer-2012> and <http://www.ida.gov.sg/Policies-and-Regulations/Industry-and-Licensees/Next-Gen-NBN/Nucleus-Connects-Interconnection-Offer> respectively. The RAO is available at <http://www.ida.gov.sg/Policies-and-Regulations/Regulations/Store/CityNets-Reference-Access-Offer-2011>.

26. As a PTL, CityNet is required to provide, to any PTL designated by IDA under Section 6 of the Act that requests ducts and/or associated manholes, (a) access to and use of available ducts and manholes; and (b) where there are no available ducts and associated manholes, CityNet is required to procure or deploy such ducts and manholes and provide access to and use thereof.

Quality of Service

27. To ensure a minimum standard of service provisioning, IDA has imposed Quality of Service (“**QoS**”) standards on installation-related faults on OpenNet’s residential and non-residential end-user connections as well as OpenNet’s timeframe in provisioning residential and non-residential end-user connection services⁹.

Current Status of Next Gen NBN

28. The Next Gen NBN has reached 95% of all residential and non-residential buildings by June 2012. Currently, OpenNet is able to accept orders for fibre services to all homes and businesses, including the remaining homes and businesses.
29. The structural separation and operational separation requirements imposed on the NetCo and the OpCo layers respectively have also been successful in engendering a competitive and innovative retail broadband service market. There are now eight OpCos taking fibre-based services over the Next Gen NBN at the wholesale level from OpenNet and more than 20 RSPs providing fibre-based services at the retail level to residential and business customers.
30. Residential and business customers can choose from various fibre-based broadband plans in the market today, some of which are being offered at more competitive prices compared to non-Next Gen NBN services. The residential fibre plans available today range from 25 Mbps to 1 Gbps, with promotional prices for a 200 Mbps plan starting from as low as S\$39; and the business fibre plans available range from 10 Mbps to 1 Gbps.
31. To differentiate themselves from the competition, several RSPs have offered specially tailored service plans to meet the needs of specific user segments, (such as online gamers); packaged their new ultra-high speed broadband services with value added services such as interactive TV applications, cloud services and online learning resources; or provided more attractive terms such as shorter or no lock-in contract periods.
32. The subscriber base of fibre-based services has grown from 100,000 subscribers in January 2012 to about 400,000 as at July 2013.

⁹ The QoS frameworks imposed on OpenNet are available at:
<http://www.ida.gov.sg/~media/Files/PCDG/Licensees/StandardsQoS/QualityofService/QoSFramework.pdf> and
http://www.ida.gov.sg/~media/Files/PCDG/Licensees/StandardsQoS/QualityofService/QoSFramework_OpenNetServiceTimeframe.pdf

PART IV: IDA'S ASSESSMENT APPROACH

33. Under the Telecom Competition Code, it is provided that IDA will not approve a transaction where IDA determines that the transaction is likely to substantially lessen competition in any telecommunication market within Singapore or harm the public interest. IDA will find that a Consolidation substantially lessens competition where the Consolidation would be likely to: (a) result in a significant reduction in existing competition in the Singapore telecommunications market; or (b) significantly impede the development of future competition in the Singapore telecommunications market. IDA may also approve the Consolidation Application, subject to conditions designed to reduce any anti-competitive harm or effect. Applicants may propose possible conditions for IDA's consideration that could reduce any potential adverse competitive impact of the Consolidation.
34. To establish whether such a transaction will lead to a substantial lessening of competition in the market or harm the public interest, among other things, IDA will assess the likely "horizontal" and "non-horizontal" effects of the transaction in the telecommunications market. Horizontal Consolidations, which involve two or more entities that are *current competing providers* of the same services or services that are reasonable substitutes, generally pose the greatest threat to competition while Non-horizontal Consolidations, which involve two or more entities that are *not* current competing providers, can often facilitate competition.
35. To determine whether a Consolidation is Horizontal or Non-horizontal, IDA will first determine the relevant telecommunications markets within Singapore in which the Applicants participate to assess if there is any overlap in the services they provide. In conducting its market analysis, IDA will begin with defining the service market(s) which will be impacted by the proposed Consolidation. For each of the relevant markets, IDA would assess whether the proposed Consolidation would lead to an increased risk of unilateral and/or concerted anticompetitive conduct such that it is likely to substantially lessen competition in the market post-Consolidation.
36. IDA will also consider whether the proposed Consolidation will result in significant efficiencies that could not have been achieved absent the Consolidation and which would likely be passed to customers, as well as any other public interest considerations. In addition, IDA will consider whether any proposed conditions by the Applicants would address any potential adverse competitive effect arising from the proposed Consolidation.
37. In this case, IDA notes the Applicants' submission that the proposed Consolidation essentially seeks to integrate the "Layer 0" and "Layer 1" of the network into a single "Layer 1", under a single entity (referred to hereinafter as the "**Consolidated entity**") – CityNet (in its capacity as Trustee-Manager of the NetLink Trust), thereby resulting in a Next Gen NBN industry structure (as illustrated in Figure 6) reverting to the structure which was originally contemplated and proposed by IDA during the Next Gen NBN RFP stage (as illustrated in Figure 5). Specifically in relation to this proposed Consolidation,

IDA will in its assessment pay special attention to the extent to which the regulatory requirements for the Next Gen NBN, such as effective open access, quality of service, and universal service will continue to be fulfilled, as well as how the proposed Consolidation would help to achieve the original objectives of the Next Gen NBN in terms of engendering a competitive and innovative retail broadband service market.

PART V: SUMMARY OF APPLICANTS' SUBMISSION

38. In this Part V, IDA sets out a summary of the Applicants' submissions in its Consolidation Application. IDA will proceed to assess the Consolidation Application in its entirety based on all the facts and circumstances, including the responses received in this Public Consultation, before making its decision on the Consolidation Application.

No Substantial Lessening of Competition

39. The Applicants have submitted that the proposed Consolidation is a Non-horizontal one, as the Applicants operate predominantly in separate telecommunications markets:

- (a) CityNet (in its capacity as Trustee-Manager of the NetLink Trust) operates in the market for access to "Layer 0" passive infrastructure in Singapore, namely access to ducts, manholes, COs and Essential Support Facilities¹⁰ ("ESFs");
- (b) OpenNet operates in the market for wholesale "Layer 1" dark fibre services in Singapore, which may be divided into sectors involving wholesale Layer 1 residential dark fibre service and wholesale Layer 1 non-residential dark fibre service; and
- (c) SingTel predominantly operates in the retail and wholesale market for "Layer 1.5" to "Layer 3" services in Singapore.

40. The Applicants have submitted that the proposed Consolidation will not result in any negative change to the relevant market concentration levels. Competition in downstream markets remains unaffected by the proposed Consolidation because neither CityNet nor OpenNet are permitted to provide services in these markets under their respective FBO licences.

Open Access and Non-Discrimination

41. The Applicants have also submitted that both CityNet (in its capacity as Trustee-Manager of the NetLink Trust) and OpenNet are highly regulated,

¹⁰ These refer to the relevant underlying passive infrastructure assets (comprising relevant ducts, manholes and exchange buildings) that are used to support the deployment of the Next Gen NBN infrastructure by OpenNet, which were transferred from SingTel to CityNet (in its capacity as Trustee-Manager of NetLink Trust), as mentioned in paragraph 14.

open access network businesses which operate in separate telecommunications markets in Singapore.

42. According to the Applicants, the proposed Consolidation will not alter the extent and scope of IDA's regulation of "Layer 0" services offered by CityNet (in its capacity as Trustee-Manager of the NetLink Trust). In Phase 1 and Phase 2 of the proposed Consolidation, CityNet will continue to exist as an FBO licensee and a Dominant Licensee and continue to be required to provide access to its lead-in ducts and associated lead-in manholes under the IDA-approved RAO and to provide its other wholesale services in accordance with IDA-approved tariffs under the Telecom Competition Code.
43. Similarly, the Applicants submitted that the proposed Consolidation will not alter the extent and scope of IDA's regulation of OpenNet's "Layer 1" dark fibre services. In Phase 1 of the proposed Consolidation, OpenNet will continue to be a Dominant Licensee and be required to comply with OpenNet's FBO licence, the NetCo Interconnection Code and the Telecom Competition Code. OpenNet will continue to provide open and non-discriminatory access to wholesale "Layer 1" dark fibre services and ancillary services pursuant to the IDA-approved ICO. At the commencement of Phase 2 of the proposed Consolidation, CityNet (in its capacity as Trustee-Manager of the NetLink Trust) will continue to be a Dominant Licensee and be required to comply with its expanded FBO licence, the NetCo Interconnection Code and the Telecom Competition Code. CityNet (in its capacity as Trustee-Manager of the NetLink Trust) will continue to provide open and non-discriminatory access to wholesale "Layer 1" dark fibre services and ancillary services pursuant to the IDA-approved ICO.

Efficiencies

44. The Applicants have also submitted that the proposed Consolidation will enable some efficiencies to be realised due to the increased level of integration between "Layer 0" and "Layer 1" passive infrastructure, such as:
 - (a) Improved network fault detection and resolution;
 - (b) Improved co-ordination and planning of the deployment of the "Layer 0" and "Layer 1" passive infrastructure;
 - (c) Improved operational efficiency and responsiveness with the transfer of the personnel, skills and expertise to the NetLink Trust;
 - (d) Improved efficiency in maintenance of the "Layer 0" and "Layer 1" passive infrastructure of the Next Gen NBN; and
 - (e) Personnel and management efficiency benefits.
45. In particular, where a fault appears in the Next Gen NBN, the increased level of integration between "Layer 0" and "Layer 1" passive infrastructure will reduce the layers of communication required to ascertain precisely where the fault exists and what remedy is required.
46. In addition, the Applicants put forth that where the "Layer 1" dark fibre and "Layer 0" ducts and manholes are owned, operated and maintained by

CityNet (in its capacity as Trustee-Manager of the NetLink Trust), co-ordination and planning for the deployment of “Layer 0” ducts and manholes to support the requirements for “Layer 1” dark fibre deployment will be more efficient. CityNet (in its capacity as Trustee-Manager of the NetLink Trust) can ensure that “Layer 0” ducts and manholes are made available as-and-when needed for the deployment of “Layer 1” dark fibre thereby reducing the risk of delay, disruption or a mismatch in “Layer 0” ducts and manholes and “Layer 1” dark fibre deployment priorities.

47. With the termination of the OpenNet Agreements and the transfer of the relevant SingTel personnel, skills and expertise to the NetLink Trust, another layer in the supply process (i.e., the sub-contractor layer) is removed and CityNet (in its capacity as Trustee-Manager of the NetLink Trust) will have full visibility and control over “Layer 0” and “Layer 1” of the Next Gen NBN (if it chooses to perform the service itself).
48. The integration in Phase 2 of the proposed Consolidation will also provide better alignment of the priorities and concerns in respect to both “Layer 0” and “Layer 1” passive infrastructure by having a single party to co-ordinate with external parties on its requirements and maintenance schedule. For example, post-Consolidation, the Consolidated entity will be able to take into consideration the risk of certain activities damaging “Layer 0” and/or “Layer 1” passive infrastructure such as where a site contractor proposes to support exposed ducts over the construction site as a temporary cost cutting measure instead of laying temporary ducts and diverting the “Layer 1” dark fibre.

No Effective Control

49. The Applicants have submitted that “[u]pon the commencement of Phase 2 of the Consolidation, the no ‘Effective Control’ requirements will be met for the following reasons:
 - (a) *The NetLink Trust structure has been previously determined by IDA as meeting the no ‘Effective Control’ requirements under the CityNet FBO licence;*
 - (b) *No telecommunications licensee or broadcasting licensee will exercise ‘Effective Control’ over the NetLink Trust and/or the Trustee-Manager, CityNet;*
 - (c) *The NetLink Trust will be separately managed by a neutral and independent Trustee-Manager, CityNet. CityNet will have no ‘Effective Control’ over any other telecommunication licensee or broadcasting licensee nor will CityNet be under the ‘Effective Control’ of any other telecommunication licensee or broadcasting licensee; and*
 - (d) *SingTel will have no equity interest in OpenNet and/or in CityNet (the Trustee-Manager of the NetLink Trust). SingTel will simply hold units in the NetLink Trust and be only an economic beneficiary of the NetLink Trust.”*

The Applicants submitted that the conditions they have proposed (as elaborated in the next section) further serve to address any perceived concerns with regard to the level of independence of the Consolidated entity.

50. However, during the limited transition period from Phase 1 to Phase 2 of the proposed Consolidation, CityNet (in its capacity as Trustee-Manager of the NetLink Trust) will hold 100% of the issued and paid-up capital in OpenNet. This interim relationship between CityNet and OpenNet may technically breach the no Effective Control requirements under their respective FBO licences. The Applicants have therefore requested that IDA “grant to CityNet and to OpenNet, a waiver from compliance with the relevant FBO licence condition during Phase 1 of the Consolidation. As indicated above, upon commencement of Phase 2 of the Consolidation, the Consolidat[ed] entity will meet the no ‘Effective Control’ requirements.”
51. Notwithstanding this, during this transition period, OpenNet will continue to have its own separate CEO and management team. Although the current OpenNet Board members will resign and the current CityNet Board members will be appointed to the OpenNet Board, the Applicants submitted that “the directors on the OpenNet Board will have to discharge their fiduciary duties owed to, and take into account the interests of, OpenNet, when considering matters relating to OpenNet.” The OpenNet Board will reflect the Board composition of CityNet that is: “(a) the OpenNet Board will 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; and (b) the Chairman of the OpenNet Board will be an independent director.” Further, any changes to the Board of OpenNet are subject to IDA’s approval, and all the voting shares in CityNet are held by an independent party, CitySpring (as Trustee-Manager of the CitySpring Trust).

Proposed Conditions

52. Notwithstanding the Applicants’ view that the proposed Consolidation does not give rise to any competitive concerns, the Applicants have proposed measures to enhance the actual and perceived independence of the consolidated entity (“**Proposed Conditions**”). The key measures, as submitted by the Applicants, are set out below:
 - (a) SingTel Interactive will as part of the proposed Consolidation enter into a separate sale and purchase agreement to sell to CityNet (in its capacity as Trustee-Manager of the NetLink Trust) its approximate 30% of the issued and paid-up capital in OpenNet at the same time that CityNet (in its capacity as Trustee-Manager of the NetLink Trust) enters into a sale and purchase agreement with Axia, SPH Net and SPT Net to acquire their combined approximate 70% of the issued and paid-up capital in OpenNet. Consequently, SingTel will be a beneficiary of the NetLink Trust only and have no equity interest in OpenNet or in CityNet

(in its capacity as Trustee-Manager of the NetLink Trust). The NetLink Trust will continue to be separately managed by a neutral, independent Trustee-Manager, CityNet. This is to eliminate any control or ownership that SingTel may be perceived to possess through its direct interest in approximately 30% of the issued and paid-up capital in OpenNet.

- (b) SingTel will, as part of the proposed Consolidation, sell down its current unitholding in the enlarged NetLink Trust to less than 25% by 22 April 2018¹¹. SingTel undertakes and commits to IDA to do all that is necessary in order to divest more than 75% of its unitholdings by 22 April 2018, including but not limited to, restructuring the balance sheet of the NetLink Trust (in particular, without limitation, the debt to equity ratio) to arrive at an optimal capital structure that is conducive to and will facilitate the divestment of more than 75% of its unitholdings. This is to eliminate any perception that SingTel possesses control of the Consolidated entity and/or its operations through SingTel's current unitholdings in the NetLink Trust.
- (c) SingTel will undertake, represent and warrant, as part of the proposed Consolidation, 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 will not remove the Trustee-Manager (except on specific grounds as mentioned in the Consolidation Application); approve any amendments or take any action relating to the Trust Deed that are contrary to the Control and Ownership Requirements as set out in IDA's RFP reference number IDA(RFP)-030; approve any amendments to the Trust Deed to vary the requirement to obtain IDA's approval for those matters set out in the Trust Deed; 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; and/or approve or direct the winding up of the NetLink Trust, save where such action is to facilitate the final structure for the divestment.
- (d) As part of the proposed Consolidation, 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 will 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) or the NetLink Trust is held, or any merger of the NetLink Trust with any other body,

¹¹ The Applicants submitted that with the proposed Consolidation, the consolidated entity will need time to integrate the "Layer 0" and "Layer 1" business and operations and achieve a steady-state prior to divestment. Additional time is required to effect the orderly transfer of the OpenNet assets, business and personnel to the NetLink Trust and for the transfer of the relevant SingTel personnel, skills and expertise to the NetLink Trust in relation to the installation, operation and maintenance of the dark fibre network.

that is not an action or step taken in pursuance of an Authorised Matter as set out in paragraph 2.6 of the Authorised Matters (as defined in the Trust Deed) without first obtaining approval from IDA.

- (e) SingTel will, as part of the proposed Consolidation, amend the Trust Deed such that the OpenNet board and the CityNet board will consist of no more than 5 directors, of which not more than 25% of its directors shall be appointed by SingTel 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. This is to eliminate any perception that SingTel possesses control over the decision-making in OpenNet and/or CityNet.
- (f) SingTel will, as part of the proposed Consolidation, terminate the OpenNet Agreements and transfer the relevant OpenNet and SingTel personnel, skills and expertise to UMC or an equivalent separate legal entity established under the NetLink Trust (through its Trustee-Manager, CityNet) 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 proposed Consolidation, which includes arrangements with sub-contractors to supply labour and materials for the 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. SingTel shall, within three months of IDA's approval of the proposed Consolidation or such other date as may be agreed between SingTel 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. This will enhance the capability and institutional competence of the NetLink Trust, and is to eliminate any control which may be perceived to arise as a result of SingTel providing to OpenNet the services under the OpenNet Agreements.
- (g) SingTel will, as part of the proposed Consolidation, 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 proposed Consolidation.
- (h) SingTel will, as part of the proposed Consolidation, 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. Following the proposed Consolidation, the MFA between CityNet (in its capacity as Trustee-Manager of the NetLink Trust) and SingTel will continue. This is to eliminate any

perceived concern regarding the ability of the NetLink Trust to meet the Next Gen NBN's ongoing requirements for inter-linking ducts and associated manholes for the installation of dark fibre.

Commitment to OpenNet's Contractual/Regulatory Obligations

53. The Applicants have committed that pending commencement of Phase 1 of the Consolidation (and during Phase 1 of the Consolidation), CityNet (in its capacity as Trustee-Manager of the NetLink Trust) and OpenNet will continue to meet their respective contractual and/or regulatory obligations to IDA and to the Qualifying Persons ("QPs"). At the commencement of Phase 2 of the Consolidation, the Consolidated entity will continue to meet all contractual and/or regulatory obligations to IDA and to the QPs.
54. The Applicants noted that following the proposed Consolidation, the Consolidated entity will have a strong asset base and stable revenues to fund ongoing "Layer 0" and "Layer 1" deployment.

PART VI: INVITATION TO COMMENT

55. Pursuant to Sub-section 10.6(d) of the Telecom Competition Code, IDA hereby invites comments on whether the proposed Consolidation as submitted in the Long Form Consolidation Application will substantially lessen competition in any Singapore telecommunications market or harm the public interest. Respondents are also invited to comment on any other related issues (with factual support and reasoned analysis to the extent feasible) not covered in this document, if they believe that such issues are relevant to the proposed transaction involving the Applicants. IDA is especially interested in obtaining comments regarding the following issues:
 - (a) Is the proposed Consolidation (together with the conditions proposed by the Applicants) likely to substantially lessen competition in any telecommunications market in Singapore, especially in downstream markets, or harm the public interest?
 - (b) To what extent, if any, is the proposed Consolidation likely to result in significant efficiencies, or other competitive benefits in any of the relevant market(s) affected by the proposed Consolidation? To what extent, if any, could these benefits be obtained absent the proposed Consolidation?
 - (c) To what extent would the conditions proposed by the Applicants help to reduce any anti-competitive harm or effect resulting from the proposed Consolidation? Are there further conditions that IDA should consider imposing in order to preserve or increase competition or meet public interest objectives, and why?

56. All submissions must reach IDA **before 12 noon on 18 September 2013**. A softcopy, in Microsoft Word or PDF format, must be provided. Parties submitting comments should include their personal/company particulars as well as the correspondence address, contact number and email addresses on the cover page of their submission. All comments should be addressed to:

**Ms Aileen Chia
Deputy Director-General (Telecoms & Post)
Infocomm Development Authority of Singapore
10 Pasir Panjang Road
#10-01 Mapletree Business City
Singapore 117438**

Please submit your softcopy via email to: IDA_Consultation@ida.gov.sg. You may also submit a hardcopy to fax number: (65) 6211 2116.

57. IDA reserves the right to make public any written submissions and to disclose the identity of the source. Commenting parties may request confidential treatment for any part of the submission that the commenting party believes to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If IDA grants confidential treatment, it will consider, but will not publicly disclose the information. If IDA rejects the request for confidential treatment, it will return the information to the party that submitted it and will not consider this information as part of its review. As far as possible, parties should limit any request for confidential treatment of information submitted. IDA will not accept any submission that requests confidential treatment of all, or a substantial part, of the submission.