

**CityNet**

**Reference Access Offer**

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## Part A Acceptance Procedures

### Making of offer

This Reference Access Offer is made:

- 1 by **CityNet Infrastructure Management Pte Ltd.** (company registration number : 201117019K), a company incorporated in the Republic of Singapore with its registered office at 1 Serangoon North Avenue 5, #04-02, Singapore 554915, acting in its capacity as trustee-manager of NetLink Trust (**CityNet**);
- 2 on 8<sup>th</sup> January 2013;
- 3 pursuant to Subsection 6.3.1 of the Code of Practice for Competition in the Provision of Telecommunication Services.

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### Background

- A The Info-communications Development Authority of Singapore (the **Authority**) has published a Code of Practice for Competition in the Provision of Telecommunication Services in the Republic of Singapore (the **Code**).
- B Subsection 6.3.1 of the Code requires Dominant Licensees to submit a proposed Reference Access Offer (**RAO**) to the Authority for approval. This RAO is made pursuant to that subsection of the Code and accepted by the Authority on 26 September 2011, with further amendments approved by IDA on 17 April 2012 and 10 May 2012.
- C This RAO is in two parts – the first outlines the procedures necessary to accept the RAO and enter into a RAO Agreement with CityNet; the second includes the minimum terms and conditions on which CityNet will enter into such an agreement with telecommunications Licensees, the detailed terms and conditions being contained in the relevant schedules.

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## 1 Acceptance of RAO

### 1.1 Acceptance by an FBO

- (a) If a Facilities Based Operator (**FBO**) wishes to acquire the Services offered in this RAO from CityNet, that FBO must submit a written acceptance (**Notification of Acceptance**) to CityNet (and the Authority) in the form provided at Attachment A – Notification of Acceptance.
  - i Before submitting a Notification of Acceptance of RAO under clause 1.1, a Facilities Based Operator (FBO) may request a clarification regarding the RAO by submitting a request to CityNet at [thomas.tsang@citynetlink.com.sg](mailto:thomas.tsang@citynetlink.com.sg)

- ii CityNet shall provide its response within three (3) Business Days from the date of receipt of the request for clarification under clause 1.1(a)(i).
- (b) An FBO which submits such a Notification of Acceptance will be known as the **Requesting Licensee**.
- (c) The Requesting Licensee, by submitting the Notification of Acceptance, will become bound by the provisions of this Part A of this RAO, including the representations and warranties contained in clause 3.
- (d) The Requesting Licensee must submit the Notification of Acceptance in writing to:

CityNet Infrastructure Management Pte Ltd

1 Serangoon North Avenue 5, #04-02, Singapore 554915

Fax: (65) 6887 9334

Attn: General Manager
- (e) For enquiries in relation to the status of CityNet's assessment of the Notification of Acceptance, the Requesting Licensee may contact CityNet at:

Telephone: (65) 6887 9333

Email: [thomas.tsang@citynetlink.com.sg](mailto:thomas.tsang@citynetlink.com.sg)
- (f) The Requesting Licensee's Notification of Acceptance must contain:
  - i the Services which it wishes to receive;
  - ii the type of telecommunications services licensed for provision by the Requesting Licensee;
  - iii a designated contact person;
  - iv if the Requesting Licensee is requesting a service under this RAO for the first time and the paid up capital of the Requesting Licensee is less than S\$1,000,000, either a banker's guarantee or security deposit (at the Requesting Licensee's option) for the amount of S\$20,000; and
  - v such other information as specified in Attachment A – Notification of Acceptance.

## **1.2 Execution of an Agreement**

- (a) An agreement entered into on the same terms and conditions as those in Part B of this RAO will be referred to as a **RAO Agreement**.
- (b) Subject to clause 2, following the Requesting Licensee's execution of the RAO Agreement, the parties will use reasonable endeavours to:
  - i commence discussions in relation to the implementation of the accepted prices, terms and conditions of the RAO Agreement within seven (7) calendar days of the receipt of the Notification of Acceptance; and
  - ii complete such discussions within thirty (30) calendar days of the receipt of the Notification of Acceptance.
- (c) The obligations in clause 1.2(b) do not apply if CityNet is not obliged to enter into a RAO Agreement with the Requesting Licensee for any reason set out in clause 2.

## **1.3 Dispute resolution by the Authority**

In addition to the dispute resolution procedures provided for in Schedule 5 of the RAO Agreement, both the Requesting Licensee and CityNet may jointly request the Authority to provide assistance in resolving disputes regarding the acceptance of a RAO Agreement.

## **1.4 Services outside the scope of the RAO**

If the Requesting Licensee requests services outside the scope of the RAO, the terms and conditions of the provision of such services will remain outside the scope of this RAO.

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# **2 Assessment of Notification of Acceptance**

- (a) CityNet may find a Notification of Acceptance to be non-conforming if:
  - i the Requesting Licensee is not an FBO;
  - ii the services requested are not Services offered by CityNet's then-current RAO;
  - iii the services requested are outside the scope of the services that CityNet is required to supply to the Requesting Licensee;
  - iv the Requesting Licensee has not provided a notification in the form set out in Attachment A - Notification of Acceptance, or has not included all required details in such form;
  - v CityNet is already supplying the requested Services which are the subject of the Notification of Acceptance to the Requesting



Licensee pursuant to an existing agreement and the Requesting Licensee has not notified CityNet of its intention to terminate the provision of the Services under that existing agreement; or

- vi CityNet is or has been granted an exemption by the Authority from the supply of the requested Services to the Requesting Licensee or generally.
- (b) CityNet may apply to the Authority for an exemption from providing Services to the Requesting Licensee at any time.
- (c) Subject to CityNet obtaining the Authority's prior written approval, the operation of this RAO in respect of the Requesting Licensee's Notification of Acceptance will be suspended for such time as an exemption request in clause 2(b) is being processed or in operation.
- (d) If CityNet finds a Notification of Acceptance to be non-conforming under this clause 2(a) it will:
  - i notify the Requesting Licensee in writing within ten (10) calendar days of receipt of the Notification of Acceptance;
  - ii provide reasons for rejection to the Requesting Licensee with the notice; and
  - iii not be required to enter into a RAO Agreement pursuant to the Notification of Acceptance.
- (e) If CityNet notifies the Requesting Licensee that the Notification of Acceptance is conforming, the Requesting Licensee must execute the RAO Agreement as soon as reasonably practicable if it has not already done so.

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### **3 Representations and warranties**

- (a) By submitting a Notification of Acceptance, the Requesting Licensee represents and warrants that:
  - i it has power to enter into and observe its obligations under the RAO Agreement;
  - ii it has all authorisations and permissions necessary to enter into the RAO Agreement, and observe obligations under it, and that all such authorisations and permissions are in full force and effect such that the RAO Agreement may be enforced;
  - iii the obligations which it has accepted by entering into the RAO Agreement are valid and binding and are enforceable against it in accordance with the terms of the RAO Agreement;

- iv all information provided to CityNet in the Requesting Licensee's Notification of Acceptance is complete, true and correct, and not misleading;
  - v except where clause 3(c) applies, it is not a trustee of any trust or settlement; and
  - vi it is the holder of an FBO licence.
- (b) CityNet represents and warrants that:
- i it has power to enter into and observe its obligations under the RAO Agreement;
  - ii it has all authorisations and permissions necessary to enter into the RAO Agreement, and observe obligations under it, and that all such authorisations and permissions are in full force and effect such that the RAO Agreement may be enforced; and
  - iii the obligations which it has accepted by entering into the RAO Agreement are valid and binding and are enforceable against it in accordance with the terms of the RAO Agreement.
- (c) Where the Requesting Licensee is a trustee of a trust or settlement, it is a condition precedent to the RAO Agreement coming into force and effect that the Requesting Licensee, the directors of the Requesting Licensee and the beneficiaries of the relevant trust have entered into a deed of covenant and indemnity in a form satisfactory to CityNet to assure CityNet that the Requesting Licensee has:
- i the power and authority to enter into the RAO Agreement; and
  - ii an appropriate right of indemnity out of trust assets in respect of its liability under the RAO Agreement.
- (d) Each Party indemnifies the other Party on demand for any liability, loss, damage, cost or expense (including legal fees on a full indemnity basis) incurred or suffered by the other Party which arises out of or in connection with any breach of any of the representations given in this clause 3.

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## 4 Effect of variation of CityNet's RAO

- (a) CityNet may amend or withdraw its RAO from time to time with the consent of the Authority.
- (b) Any amendments made by CityNet to this RAO will automatically form part of each RAO Agreement entered into on the terms of this RAO.

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## **5 Acceptance of RAO pending adoption of Individualised Agreement**

A Requesting Licensee that has notified CityNet it wishes to negotiate an Individualised Agreement may obtain Services on the prices, terms and conditions specified in this RAO on an interim basis pending the negotiation and agreement of the Individualised Agreement, either as a result of voluntary agreement or the dispute resolution procedure specified in the Code.

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## Part B Reference Access Offer Agreement

### Parties

This Reference Access Offer is made:

- 1 **CityNet Infrastructure Management Pte Ltd.** (company registration number 201117019K), a company incorporated in the Republic of Singapore with its registered office at 1 Serangoon North Avenue 5, #04-02, Singapore 554915, acting in its capacity as trustee-manager of NetLink Trust (**CityNet**); and
- 2 **Telstra Singapore Pte Ltd.** (company registration number 200209830G), a company incorporated in the Republic of Singapore with its registered office at 1 Jalan Kilang Timor, #09-01 Pacific Tech Centre, Singapore 159303,

(the **Parties**).

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### Background

- A The Authority granted to CityNet the CityNet Licence on 22 September 2011 to establish, install and maintain a telecommunication system upon the terms, and subject to the conditions, of the CityNet Licence.
- B The Requesting Licensee has been granted a licence as a Facilities Based Operator (**FBO**).
- C CityNet is under obligations pursuant to the Code of Practice for Competition in the Provision of Telecommunication Services in the Republic of Singapore (**Code**) published by the Info-communications Development Authority of Singapore (the **Authority**) to permit, amongst other things, access to its Building Lead-In Ducts and Building Lead-in Manholes.
- D Pursuant to the Code, this RAO Agreement sets out the terms and conditions upon which CityNet will supply Services set out in this RAO Agreement and accepted by the Requesting Licensee.
- E CityNet agrees to supply and the Requesting Licensee agrees to acquire the Services in respect of which the Requesting Licensee has submitted to CityNet a conforming Notification of Acceptance and on the terms and conditions set out in this RAO Agreement.
- F The Parties acknowledge that a third party may not rely on this RAO Agreement to obtain similar benefits from either Party. Third parties may, however, enter into a separate agreement on the terms and conditions of an existing agreement in accordance with sub-section 6.2.2 of the Code.

The Parties agree as follows:

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## **1 Definitions, interpretation and structure**

- (a) In this RAO Agreement, except where otherwise specified, words and expressions have the meanings set out in Schedule 1, and this RAO Agreement is to be construed in accordance with that Schedule.
- (b) The following documents form part of this RAO Agreement:
  - i The main body of this RAO Agreement (including attachments);
  - ii Schedule 1 Dictionary;
  - iii Schedule 2 Licensing of Building Lead-in Ducts and Lead-in Manholes;
  - iv Schedule 3 Licensing of Access to Mandated Services;
  - v Schedule 4 Billing and Charges; and
  - vi Schedule 5 Dispute Resolution.
- (c) In the event of an inconsistency between the main body of this RAO Agreement, the Schedules, Annex and Attachments, the order of precedence (unless expressly stated to the contrary) is as follows:
  - i the main body of this RAO Agreement;
  - ii Schedule 4;
  - iii the other Schedules;
  - iv the Annexes; and
  - v the Attachments.
- (d) If the Parties mutually agree to vary this RAO Agreement the variation must be approved by the Authority. If the variation is so approved, the agreement is no longer a RAO Agreement, but an Individualised Agreement under the Code.
- (e) Part A (Acceptance Procedures) forms part of this RAO Agreement.

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## **2 Scope of agreement**

The following Services are covered by this RAO Agreement and terms and conditions of supply as set out in the relevant Schedules for the Licensing of Building Lead-in Ducts and Lead-in Manholes, and Licensing of Access to Mandated Services in accordance with Schedule 2 and Schedule 3 respectively.

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### **3 Supply of Service**

CityNet agrees to supply those Services listed in clause 2 to the Requesting Licensee on the prices, terms and conditions set out in this RAO Agreement to the extent:

- (a) the Requesting Licensee requests the Service in a Notification of Acceptance under Part A of this RAO; and
- (b) CityNet confirms to the Requesting Licensee that the Notification of Acceptance is conforming under Part A of this RAO.

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### **4 Commencement, duration and review**

#### **4.1 Commencement and duration**

- (a) CityNet will submit this RAO Agreement to the Authority within three (3) Business Days of it being executed by both Parties.
- (b) This RAO Agreement will commence on the Effective Date and, without prejudice to clause 12, continues in force until the earlier of:
  - i the expiry or termination of the CityNet Licence where CityNet is not simultaneously granted another licence of that type;
  - ii the expiry or termination of the Requesting Licensee's Licence where the Requesting Licensee is not simultaneously granted another licence of that type;
  - iii the termination of this RAO Agreement by a Party in accordance with clause 11 or any other right at law; or
  - iv a period of three (3) years from 26 September 2011.

#### **4.2 Review**

If the Authority reviews and amends the Code at any time, CityNet may review the RAO and this RAO Agreement and seek the Authority's approval to such amendments as it considers necessary or desirable in accordance with clause 18.13(b).

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### **5 Charges**

- (a) Subject to clause 5(b), the Requesting Licensee must pay to CityNet the Charges specified in Schedule 4 for Services supplied by CityNet to the Requesting Licensee from time to time.
- (b) If CityNet wishes to amend existing Charges or impose new charges under Schedule 4 at any time, CityNet shall seek the Authority's approval to amend the existing Charges or impose new charges under Schedule 4.

- (c) If CityNet incurs additional costs in relation to the provision of Services to the Requesting Licensee which cannot otherwise be recovered by CityNet as a Charge under Schedule 4, CityNet may recover these costs from the Requesting Licensee in accordance with the procedures set out in the relevant Schedule.
- (d) The Charges contained in Schedule 4 apply for a period of three (3) years from 26 September 2011, subject to review and adjustment by the Authority, except where otherwise specified in this RAO Agreement.
- (e) If there is a difference between a Charge for a Service specified in Schedule 4 and a Charge determined by the Authority, the Charge determined by the Authority prevails.
- (f) The Charges for a Service will vary as a result of an approval, order, direction, determination or requirement of the Authority.
- (g) Following an order, direction, determination or consent by the Authority in relation to a Charge (or the means of calculating that Charge or a variation of that Charge), CityNet will make any necessary amendments to Schedule 4 so that it accords with such order, direction, determination or consent and will inform the Requesting Licensee of the changes.

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## 6 Payment

- (a) All Charges in this RAO Agreement are exclusive of GST unless the contrary is expressly stated. GST must be added to the payment of all or any part of the Charges under this RAO Agreement to which GST applies under the GST Act.
- (b) The Parties will bear and pay all taxes as required by Singapore law that result from the implementation of this RAO Agreement or the acquisition of Services under this RAO Agreement.
- (c) If the Requesting Licensee is required under Singapore law or the law of any jurisdiction outside Singapore to deduct or withhold any sum as taxes imposed on or in respect of any amount due or payable to CityNet, the Requesting Licensee will make such deduction or withholding as required and the amount payable to CityNet will be increased by any such amount necessary to ensure that CityNet receives a net amount equal to the amount which CityNet would have received in the absence of any such deduction or withholding.
- (d) Invoices are due and payable in Singapore Dollars.
- (e) All payments must be:
  - i paid in the manner required in Schedule 4;

- ii subject to billing dispute resolution under Schedule 4, paid without counterclaim and free and clear of any withholding or deduction; and
  - iii accompanied by such information as is reasonably required by the Party receiving the payment to properly allocate payments received.
- (f) The Parties will comply with Schedule 4 in relation to all aspects of the billing, settlement and dispute of payments under this RAO Agreement.

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## **7 On-going information requirements**

- (a) The obligations of each Party to provide information to the other Party are as set out in this clause 7, or as otherwise agreed in writing between the Parties, and are subject to the requirements of confidentiality imposed by clause 17.
- (b) Each Party must provide the other Party on a timely basis with all agreed information reasonably required to determine Charges to be billed by one Party to the other Party.
- (c) Each Party will also provide to the other Party:
  - i the information expressly required by this RAO Agreement; and
  - ii such other information relevant to Services provided under this RAO Agreement as the other Party may from time to time reasonably require.
- (d) Nothing in this RAO Agreement requires either Party to provide any information that is proprietary, confidential or commercially sensitive. If information of a confidential nature is disclosed, such information and its use and disclosure are subject to the terms and conditions of clause 17 of this RAO Agreement.
- (e) Subject to clause 13, each Party indemnifies the other Party and will keep it indemnified, against Claims and Losses arising as a consequence of any failure by that Party to comply with any reasonable condition relating to the use of any information disclosed by the other Party where the other Party stipulated that condition at the time of disclosure.
- (f) Nothing in this RAO Agreement obliges either Party to do anything which would cause it to be in breach of any statutory, regulatory or contractual obligation of confidentiality or any code of practice on the confidentiality of information issued by the Authority or pursuant to their respective Licences.



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## **8 Protection and safety**

### **8.1 Parties responsible for safety**

- (a) Each Party is responsible for the safe operation of its Network and any of its equipment, plant, facilities, property and personnel.
- (b) Each Party must, so far as is reasonably practicable, take all necessary steps to ensure that its Network, its equipment, plant, facilities, property and personnel, its use of Services and the implementation of this RAO Agreement:
  - i do not endanger the safety or health of any person, including the employees and contractors of either Party; and
  - ii do not adversely affect the security, safety or accessibility of either Party's property, infrastructure, equipment, plant or facilities.
- (c) Neither Party may:
  - i use, or permit the use of, any Service; or
  - ii install, connect, link or use (or permit the installation, connection, linking or use of) any telecommunications equipment,in contravention of any law.
- (d) Each Party will ensure that its Network and operating procedures comply in all respects with this RAO Agreement.

### **8.2 Corrective action**

- (a) If either Party considers that the other Party is acting, or is likely to, act in contravention of clause 8.1(c), the first-mentioned Party may seek the Authority's approval to take necessary corrective action, unless an imminent threat to life or property arises (or is likely to arise) by such action, in which case the first-mentioned Party may take immediate necessary corrective action.
- (b) On receipt of the Authority's approval under clause 8.2(a) (except as otherwise provided in clause 8.1(d)), the first-mentioned Party may take the necessary corrective action.

### **8.3 Reporting of incidents**

- (a) The Requesting Licensee must immediately report any incident, injury or harm, fatal or otherwise, that occurs at any site related to this RAO Agreement to CityNet and the relevant authority.

- (b) In case of any fatal or serious accident, the Requesting Licensee must ensure the accident site is left undisturbed to facilitate the relevant authority to investigate the circumstances leading to the accident.
- (c) The Requesting Licensee must immediately report to the Ministry of Manpower, the police and the insurance company of any fatal accident having occurred at any site related to this RAO Agreement.

#### **8.4 Requesting Licensee responsible for its acts and omissions**

- (a) The Requesting Licensee is liable for, indemnifies and must keep indemnified CityNet against all Losses and Claims related to any:
  - i injuries or death to any person whomsoever; or
  - ii loss or damage to any property whatsoever,which arise out of or as a consequence of any act or omission of the Requesting Licensee's employees and contractors in relation to CityNet's Building Lead-in Duct or Lead-in Manhole.
- (b) The Requesting Licensee certifies that all work to be performed by the Requesting Licensee is performed by appropriately qualified, skilled and trained personnel.

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## **9 Service Level Guarantees**

- (a) CityNet will provide the Services to the Requesting Licensee in accordance with applicable Service Level Guarantees (if any) set out in the relevant Schedule.
- (b) Each Party will comply with the fault identification and reporting guidelines set out in this RAO Agreement and issued by the Authority from time to time.

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## **10 Suspension**

### **10.1 Right to suspend**

Subject to clause 10.2(a), either Party (the **Suspending Party**) may suspend this RAO Agreement or any part of it by providing notice to the other Party if:

- (a) the other Party's Network adversely affects the normal operation of the Suspending Party's Network or is a threat to any person's safety;
- (b) the other Party's Network or the supply of a Service to the other Party under this RAO Agreement may pose an imminent threat to life or the property of the Suspending Party;

- (c) the other Party's Network causes or is likely to cause physical or technical harm to any telecommunications network, system or services;
- (d) the other Party has committed a service affecting material breach of this RAO Agreement, the Suspending Party has given seven (7) calendar days' notice of such breach and the other party has failed to rectify such breach within that time;
- (e) the other Party has committed a non-service affecting material breach of this RAO Agreement (including but not limited to failure to pay any sum, whether in respect of any one or more Services, for which the other Party has been Invoiced), the Suspending Party has given fourteen (14) calendar days' notice of such breach and the other Party has failed to rectify such breach within that time;
- (f) in the Suspending Party's reasonable opinion, the other Party attempted to use, is likely to use, or has used any Service supplied under this RAO Agreement (whether with or without the authorisation and/or permission of the Suspending Party) in contravention of law and the Suspending Party has the necessary confirmation from the relevant Government Agencies that the other Party is in contravention of law;
- (g) compliance with legal or regulatory obligations requires immediate action;
- (h) continued operation of this RAO Agreement would be unlawful or would pose an imminent threat to life or property;
- (i) any material information provided or representation made by either Party to the other Party is untrue, false, misleading or inaccurate and has an adverse material impact on the other Party in relation to its provision of Services under this RAO Agreement; or
- (j) the other Party is unable to pay its debts, becomes insolvent, or has ceased or threatens to cease business, or a petition for winding up or bankruptcy has been filed, a resolution for voluntary winding up has been passed, a receiver and manager or judicial manager has been appointed over the whole or substantial part of its assets or property, or the other Party ceases to carry on business, or any action is taken by any creditor of the other Party to recover, realise or enforce any security over any assets of the other Party or to enforce any judgment against the other Party.

## **10.2 Limitations on right to suspend**

- (a) A Suspending Party will only suspend this RAO Agreement or any Schedule or any licence granted under a Schedule (where the relevant Schedule provides that this clause 10.2(a) applies to that licence) to the extent necessary to address the relevant event.

- (b) Prior to suspending this RAO Agreement or any Schedule or any licence granted under a Schedule (where the relevant Schedule provides that clause 10.2(a) applies to that licence), the Suspending Party will notify the Authority and request the Authority's written approval of such suspension.
- (c) Suspension rights will not be exercised without the Authority's approval unless imminent threats to life or property or compliance with other legal or regulatory obligations require immediate action, in which case the Suspending Party may immediately suspend the operation of this RAO Agreement or Schedule or licence.

### **10.3 Approved suspensions**

- (a) If the Authority issues an order granting in whole or in part the request under clause 10.2, the Suspending Party may immediately suspend this RAO Agreement, any part of this RAO Agreement or any licence granted under it for such period of time as the Authority approves (or indefinitely if the Authority does not specify a period of time) by giving written notice to the other Party.
- (b) Where any Service has been suspended (whether or not at the request of the Party acquiring the Service), the acquiring Party must continue to pay Charges in respect of that Service for the period of suspension and, in the event the Service is reconnected or reinstated, all reconnection or reinstatement Charges set out under any relevant Schedule.
- (c) If this RAO Agreement, any part of this RAO Agreement or licence granted under it, is suspended under this clause 10.3(a) for more than sixty (60) calendar days, the Suspending Party may, subject to clause 11.2(a), terminate this RAO Agreement, Schedule or licence (as the case may be) with immediate effect by giving the other Party written notice.

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## **11 Termination**

### **11.1 Mutual Termination**

Subject to clause 11.2, either Party (**Terminating Party**) may terminate this entire RAO Agreement, or any Schedule of this RAO Agreement by providing notice to the other Party if:

- (a) the Requesting Licensee ceases to be an FBO;
- (b) the other Party has committed a service affecting material breach of this RAO Agreement, the Terminating Party has given seven (7) calendar days' notice of such breach and the other party has failed to rectify such breach within that time;

- (c) the other Party has committed a non-service affecting material breach of this RAO Agreement (including but not limited to failure to pay any sum, whether in respect of any one or more Service, for which the other Party has been Invoiced), the Terminating Party has given fourteen (14) calendar days' notice of such breach (which period may operate concurrently with any billing dispute notice under Schedule 4) and the other Party has failed to rectify such breach within that time;
- (d) the other Party is unable to pay its debts, becomes insolvent, or has ceased or threatens to cease business, or a petition for winding up or bankruptcy has been filed, a resolution for voluntary winding up has been passed, a receiver and manager or judicial manager has been appointed over the whole or substantial part of its assets or property, the other Party ceases to carry on business, or any action is taken by any creditor of the other Party to recover, realise or enforce any security over any assets of the other Party or to enforce any judgment against the other Party;
- (e) continued operation of this RAO Agreement would be unlawful or would pose an imminent threat to life or property;
- (f) in the Terminating Party's reasonable opinion, the other Party attempted to use, is likely to use, or has used any Service (whether with or without the authorisation and/or permission of the Terminating Party) in contravention of any law and the Terminating Party has the necessary confirmation from the relevant Governmental Agencies that the other Party is in contravention of law; or
- (g) any material information provided or representation made by the other Party to the Terminating Party is untrue, misleading or inaccurate and has an adverse material impact on the Terminating Party in relation to its provision or receipt of Services under this RAO Agreement.

## **11.2 Limitations on mutual termination**

- (a) Prior to terminating this RAO Agreement or any Schedule or any licence granted under a Schedule in full or to the extent necessary, the Terminating Party will notify the Authority that it proposes to terminate this RAO Agreement or one or more Schedules or licences, and request the Authority's written approval of such termination.
- (b) A Party may not exercise termination rights without the Authority's approval, unless imminent threats to life or property or compliance with other legal or regulatory obligations require immediate action, in which case the Terminating Party may immediately terminate the operation of this RAO Agreement or one or more Schedules or licences.

- (c) If the Authority issues an order granting in whole or in part the request under clause 11.2(b), the Terminating Party may immediately terminate this RAO Agreement, the Schedule(s) or licence(s) or those parts of this RAO Agreement or Schedules or licence(s) covered by the Authority's order by giving written notice to the other Party provided such notice complies with the conditions of any order of the Authority in relation to the termination of this RAO Agreement.

### **11.3 Termination pursuant to actions of the Authority**

- (a) If the RAO is revoked or is to be revoked by the Authority, this RAO Agreement will automatically and immediately terminate on and from the date of revocation notified by the Authority.
- (b) If the Authority removes a Service supplied under this RAO Agreement from being required to be supplied under an RAO or exempts CityNet from supplying a Service, CityNet may immediately terminate the supply of such Service and those aspects of this RAO Agreement which relate to such Service, by giving written notice to the Requesting Licensee with effect on or after the effective date of such removal or exemption as notified by the Authority.

### **11.4 Consequences of termination**

- (a) In the event that this RAO Agreement or one or more Schedule(s) or licence(s) under this RAO Agreement is terminated:
  - i all sums due, or accrued or payable to each Party in relation to this RAO Agreement or terminated part of this RAO Agreement, up to (and including) the date of termination, becomes immediately due and payable (including any termination Charges due and any costs incurred by the Terminating Party in terminating this RAO Agreement or part of it);
  - ii Each Party shall immediately remove all of that Party's equipment, facilities, plant and other property located on the other Party's premises used under this RAO Agreement or in relation to that terminated Schedule;
  - iii Each Party shall immediately return to the other Party at its own expense all equipment, facilities, plant and other property of the other Party used under this RAO Agreement or in relation to that terminated Schedule in good working condition, fair wear and tear only excepted; and
  - iv A Party shall be entitled to charge the other Party the cost incurred in repossessing or acquiring a replacement of any equipment, facilities, plant and other property which the other Party has failed to return under clause (iii) above within thirty (30)

calendar days of the date of termination and/or of acquiring a replacement of any equipment which is returned in a damaged or defective condition.

- (b) If the Requesting Licensee does not comply with its obligations under clause 11.4(a)ii within thirty (30) calendar days after the date of termination, CityNet may remove the Requesting Licensee's Underground Equipment, facilities, plant and other property and recover all costs incurred from the Requesting Licensee.
- (c) On termination of this RAO Agreement or Schedule, all Services, leases, licences and other rights conferred on CityNet or the Requesting Licensee under this RAO Agreement or Schedule (as the case may be) immediately terminate.
- (d) On termination of this RAO Agreement, each Party must, at its own expense, deliver to the other Party, or after notice from that other Party, destroy or erase all documents or other forms of storage which comprise or contain the other Party's Confidential Information or from which the other Party's Confidential Information can be reproduced.
- (e) Termination or expiry of this RAO Agreement or any Schedule, Service or licence:
  - i is not a breach of any provision of this RAO Agreement or any Schedule, Service or licence; and
  - ii does not affect either Party's rights, liabilities or obligations that have accrued prior to such termination or expiry.
- (f) Notwithstanding the termination or expiry of this RAO Agreement, clauses 6, 8, 13, 14, 15, 17, 18.4 and 18.7 inclusive shall continue in full force and effect.

### **11.5 Preservation of rights**

A Party's right to suspend or terminate performance of this RAO Agreement or Schedule or licence under the terms of this Agreement is without prejudice to any other rights or remedies available to that Party.

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## **12 Force majeure**

### **12.1 Suspension of obligations for force majeure**

- (a) Neither Party is liable for any breach of this RAO Agreement (other than a breach by non-payment) caused by an act of God, insurrection or civil disorder, war or military operations, national emergency, acts or omissions of government, highway authority, fire, flood, lightning,

explosion, subsidence, industrial dispute of any kind (whether or not involving that Party's employees), acts or omissions of persons or bodies for whom that Party affected thereby is not responsible or any other cause whether similar or dissimilar outside the reasonable control of that Party (**force majeure**).

- (b) The Party affected by force majeure must promptly notify the other Party of the estimated extent and duration of any inability to perform its obligations under this RAO Agreement (**force majeure notification**).
- (c) If, as a result of force majeure, the performance by either Party of its obligations under this RAO Agreement is only partially affected, subject to the provisions of clause 12.2, such Party remains liable for the performance of those obligations not affected by force majeure.
- (d) To the extent that the Party affected by force majeure cannot provide all or part of the Services to be provided by it under this RAO Agreement, the other Party is released to such extent from its obligations to make payment in respect of those Services.

## **12.2 Cessation of force majeure and termination for continued force majeure**

- (a) Upon the cessation of the delay or failure resulting from force majeure, the Party affected by force majeure must promptly notify the other Party of such cessation.
- (b) In the case of either Party making a force majeure notification:
  - i if the force majeure lasts for a continuous period of sixty (60) calendar days or less from the date of the force majeure notification (whether or not notice of cessation has been given pursuant to clause 12.2(a) of this RAO Agreement), any Party affected by the force majeure must perform any affected obligation as soon as reasonably practicable after the force majeure has ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party; and
  - ii if the force majeure lasts for more than a continuous period of sixty (60) calendar days from the date of the force majeure notification, notice of cessation has not been given pursuant to clause 12.2(a) and such force majeure continues to prevent the affected Party from performing its obligations in whole or in material part, the other Party is entitled (but not be obliged) to terminate this RAO Agreement by giving not less than thirty (30) calendar days' written notice to the other Party after expiry of the said sixty (60) calendar day period.
- (c) In the event that a notice of cessation of the force majeure pursuant to clause 12.2(a) is received by the other Party prior to the expiry of the



thirty (30) calendar days' notice under clause 12.2(b)ii, this RAO Agreement will not be terminated under that clause 12.2(b)ii and the other Party's notice of termination has no effect.

- (d) If this RAO Agreement is not terminated in accordance with the provisions of clause 12.2(b)ii, the Party affected by the force majeure will fulfil any outstanding obligations as soon as reasonably practicable after the force majeure has ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party.

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## **13 Limitation of liability**

### **13.1 General**

- (a) In performing any of its obligations under this RAO Agreement (without limiting any expressly stated obligation elsewhere in this RAO Agreement) CityNet will exercise the reasonable care and skill of a competent telecommunications operator.
- (b) Except as otherwise provided under this RAO Agreement, this clause 13 regulates the liability of each Party to the other Party:
  - i under or in relation to this RAO Agreement;
  - ii in relation to any act, omission or event relating to or arising out of this RAO Agreement;
  - iii whether arising in contract, in tort, under statute or in any other way; and
  - iv whether due to negligence, wilful or deliberate breach, breach of statutory duty or any other cause.

### **13.2 Monetary limitations to liability**

Subject to clause 13.3(b), each Party's liability to the other Party in contract, tort (including, without limitation, negligence), under statute or otherwise under or in connection with this RAO Agreement is limited to:

- (a) S\$1,000,000 in respect of any one cause of action or series of related causes of action; and
- (b) S\$3,000,000 in respect of all causes of action which arise in any period of twelve (12) calendar months.

### 13.3 Exclusions of liability

- (a) Neither Party is liable to the other Party (whether in contract, in tort, under statute, under any indemnity, or otherwise unless caused by wilful or deliberate breach, acts or omissions) for:
  - i any loss of profits, revenue, goodwill, business, production, reputation, data, anticipated savings, management time, opportunity, entitlement to special damages or credit rating; or
  - ii any other Consequential Loss or indirect Loss,suffered by the other Party and arising from or in connection with this RAO Agreement.
- (b) Neither Party excludes or restricts its liability for death or personal injury resulting from its own negligence or the negligence of its employees or agents while acting in the course of their employment or agency.
- (c) CityNet is not liable to the Requesting Licensee to the extent:
  - i that liability is incurred in connection with a Claim brought or made by a third party to whom the Requesting Licensee provides a Telecommunication Service under a contract; and
  - ii that liability could legally have been excluded or reduced in that contract by the Requesting Licensee.
- (d) Where the Requesting Licensee has not excluded or limited liability as described in clause 13.3(c), it indemnifies and must keep indemnified CityNet against any Claim or Loss arising from or in connection with any Claim by a third party relating to CityNet supplying a Service to the Requesting Licensee or its use by the Requesting Licensee or any person, or any delay or failure of CityNet to provide a Service other than to the extent that such a Claim or Loss is the result of a grossly negligent, wilful or reckless breach of this RAO Agreement by CityNet.

### 13.4 Exclusive remedies

To the extent that a Schedule contains a remedy in relation to the performance by a Party (**Liable Party**) of an obligation under that Schedule, that remedy is the sole and exclusive liability of the Liable Party, its Related Corporations, directors, employees, agents and contractors to the other Party in connection with the performance of that obligation and is the sole remedy of the other Party against the Liable Party, its Related Corporations, directors, employees, agents and contractors in connection with the performance of that obligation.

### 13.5 Construction of liability provisions

Each provision of this clause 13 is to be construed as a separate provision applying and surviving even if for any reason one or more of the other of the provisions is held inapplicable or unreasonable in any circumstances.

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## 14 Intellectual property rights

### 14.1 Intellectual property rights generally

- (a) Except as expressly provided otherwise in this RAO Agreement, all trade marks, inventions, patents, copyrights, designs, design rights, trading names (whether or not registered) and all other intellectual property rights (**intellectual property**) remain in the ownership of the person creating or owning the same.
- (b) Nothing in this RAO Agreement confers or may be deemed to confer on either Party any rights or licences in the intellectual property of the other Party or of any third party.
- (c) Neither Party is entitled to use any trade marks or service marks (whether registered or not) of the other Party in any medium without the prior consent in writing of that other Party.
- (d) The Parties will negotiate arrangements (including in respect of title) concerning intellectual property jointly developed in the course of performing this RAO Agreement or otherwise in connection with this RAO Agreement.

### 14.2 Intellectual property rights indemnity

- (a) Where one Party (referred to in this clause as the **indemnifying Party**), discloses or licenses the other Party to use any intellectual property under this RAO Agreement, the indemnifying Party indemnifies and will keep indemnified the other Party against:
  - i all liability or loss arising directly or indirectly from; and
  - ii all reasonable costs, charges and expenses incurred in connection with,  
  
any Claim alleging infringement by that other Party of the rights of a third party arising from the other Party's use of such intellectual property.
- (b) The indemnification in clause 14.2(a) is the only remedy and form of compensation available to the other Party in relation to intellectual property licensed or disclosed by the indemnifying Party under this RAO Agreement.

- (c) The indemnification in clause 14.2(a) is subject to clause 13.

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## 15 Insurance

- (a) Without limiting either Party's obligations under this RAO Agreement, unless otherwise agreed by CityNet, the Requesting Licensee will have in force and maintain with an insurance company licensed in Singapore for the term of this RAO Agreement a broad form public liability policy of insurance to the value of S\$10 million.
- (b) On CityNet's request, the Requesting Licensee will immediately produce evidence that it has complied with and continues to comply with its obligations under this clause 15.

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## 16 Credit management and security requirements

### 16.1 Security requirements

- (a) The Requesting Licensee must provide, at its sole cost and expense, to CityNet, and maintain for the term of this RAO Agreement, the security requirements detailed in Attachment A – Notification of Acceptance.
- (b) If, at any time during the term of this RAO Agreement, the amount of paid up capital of the Requesting Licensee falls below S\$1 million, the Requesting Licensee must notify CityNet in writing within ten (10) Business Days of such occurrence, in which case CityNet may upon notice in writing require the Requesting Licensee to provide CityNet with either a banker's guarantee or security deposit (at the Requesting Licensee's option) for 2.5 times the amount of the recurring Charges that the Requesting Licensee has incurred in a month or S\$20,000, whichever amount is greater (a **Security Requirement**).
- (c) For the purposes of ensuring compliance with clause 16.1(b), CityNet may from time to time reasonably request information from the Requesting Licensee to determine and verify the paid up capital of the Requesting Licensee. The Requesting Licensee must provide such information to CityNet within ten (10) Business Days of receipt of a request from CityNet for such information.
- (d) Where the Requesting Licensee has provided a Security Requirement under this RAO Agreement:
- i CityNet may at any time require the Requesting Licensee to provide an amended Security Requirement; and
  - ii the Requesting Licensee may at any time require CityNet to revise the Security Requirement,

in order to ensure that the value of the Security Requirement is maintained at 2.5 times the amount of the recurring Charges that the Requesting Licensee has incurred in a month or S\$20,000, whichever amount is greater.

- (e) If, at any time during the term of this RAO Agreement, a Requesting Licensee fails to make a payment in accordance with the terms of this RAO Agreement (which is not subject to a bona fide dispute under Schedule 4 or Schedule 5) and the Requesting Licensee has not provided any Security Requirement to CityNet under this RAO Agreement, CityNet may upon notice in writing require the Requesting Licensee to provide CityNet with either a banker's guarantee or security deposit (or amended banker's guarantee or security deposit) (at the Requesting Licensee's option) for 2.5 times the amount of the Charges that the Requesting Licensee has incurred in a month or S\$20,000, whichever amount is greater.
- (f) The Requesting Licensee must provide the banker's guarantee or security deposit (or amended banker's guarantee or security deposit) to CityNet within twenty (20) Business Days of receipt of a notice under clause 16.1(b), 16.1(d) or 16.1(e) (as the case may be).
- (g) CityNet may, at its absolute discretion, treat a failure by the Requesting Licensee to provide a banker's guarantee or security deposit in accordance with clause 16.1(f) as a material breach of this RAO Agreement.

## **16.2 Use of Security Requirement to pay Charges**

- (a) The Requesting Licensee may not require CityNet to use a banker's guarantee or security deposit it has provided to CityNet towards payment of the Charges.
- (b) The provision of a banker's guarantee or security deposit does not relieve the Requesting Licensee from its obligations to pay amounts to CityNet as they become due and payable, nor does it constitute a waiver of CityNet's right to suspend, disconnect, or terminate the Services in accordance with the terms of this RAO Agreement.
- (c) CityNet may on reasonable notice in writing to the Requesting Licensee call on the banker's guarantee or use the security deposit (or part of it) to settle any amount due or payable to CityNet by the Requesting Licensee under this RAO Agreement.

## **16.3 Discharge of Security Requirement**

CityNet will return the Security Requirement to the Requesting Licensee within fourteen (14) calendar days of:

- (a) the termination of this RAO Agreement; or
- (b) payment by the Requesting Licensee of all outstanding amounts under this RAO Agreement,

whichever is later.

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## 17 Confidentiality

### 17.1 Obligation to maintain confidentiality

- (a) Notwithstanding any other provision of this RAO Agreement, unless otherwise provided in the Code and approved by the Authority, the Parties must not reveal, make known or divulge to any third party in any manner howsoever the contents of those parts of this RAO Agreement (in full or in part) which the Authority has withheld from publication.
- (b) Each Party will keep confidential all Confidential Information of the other Party which:
  - i is disclosed, communicated or delivered to it pursuant to this RAO Agreement; or
  - ii comes to its knowledge or into its possession in connection with this RAO Agreement,whether such Confidential Information is received before, during or after the date of this RAO Agreement.
- (c) Neither Party will use, copy, store or disclose to any third party the Confidential Information of the other Party except for the purposes of this RAO Agreement or for such other purposes related to the provision of Services under this RAO Agreement.
- (d) Each Party must establish and observe procedures adequate to protect the Confidential Information of the other Party including by ensuring each of its directors, officers, employees, agents, contractors, representatives and advisers is subject to, and maintains, the confidentiality obligations in this RAO Agreement.
- (e) A Party which receives Confidential Information of the other Party must exercise no lesser security or degree of care it applies to its own Confidential Information of an equivalent nature, but in any event not less than the degree of care which a reasonable person with knowledge of the confidential nature of the information would exercise.
- (f) This RAO Agreement contains the entire understanding between the Parties with respect to the safeguarding of the Confidential Information and supersedes all prior communications and understandings with respect thereto.

## 17.2 Disclosure of Confidential Information

- (a) A Party (the **Recipient**) which has received the Confidential Information of the other Party (the **Discloser**) may, without notifying the Discloser of the particulars of the disclosure or giving the Discloser the opportunity to take any available steps to challenge the disclosure or make it subject to an obligation of confidence, disclose Confidential Information to:
- i the Recipient's personnel (includes but without limitation the Recipient's directors, officers, employees, agents, contractors or representatives) to the extent necessary in order to exercise its rights or perform its obligations under this RAO Agreement;
  - ii the Recipient's professional advisers, but only to the extent necessary for those advisers to provide advice, or protect or enforce the rights of the Recipient under this RAO Agreement; and
  - iii the Recipient's appointed financial advisers or bankers, but only to the extent necessary for those financial advisers or bankers to provide financial advice or services to the Recipient.

(each an "Authorised Person", and collectively, the "Authorised Persons")

- (b) In the case of any disclosure under clause 17.2(a)i the Recipient shall ensure that the Authorised Person(s) to whom all or any Confidential Information is disclosed shall hold it strictly confidential and shall not disclose it to any other person.
- (c) In the case of any disclosure under clause 17.2(a)ii and 17.2(a)iii the Recipient shall obtain and provide to the Discloser a written undertaking, in favour of the Discloser, from the Authorised Person(s) to comply with the terms of this RAO Agreement as if the Authorised Person(s) is a party hereto. In any event, the Recipient shall remain liable for any disclosure by the Authorised Person(s) to any other person.
- (d) Save as provided under this RAO Agreement, no news releases, public announcements or any other form of publicity concerning this RAO Agreement or the terms of this RAO Agreement shall be conducted or released by the Recipient without the prior written consent of the Discloser.
- (e) The Recipient's obligations hereunder shall not apply to Confidential Information if the same is:
- i in or enters the public domain, other than by breach by the Recipient or any of its Authorised Person(s);

- ii known to the Recipient on a non-confidential basis prior to disclosure under this RAO Agreement, at the time of first receipt, or thereafter becomes known to the Receiving Party or any of its Authorised Persons without similar restrictions from a source other than the Discloser, as evidenced by written records; or
  - iii is or has been developed independently by the Recipient without reference or reliance on the Discloser's Confidential Information.
- (f) Except as otherwise provided in this RAO Agreement, a Recipient may not disclose the Confidential Information of the Discloser except in the following circumstances:
- i the disclosure is authorised in writing by the Discloser to the extent of that authority;
  - ii the disclosure is made pursuant to a directive issued by the Authority or any judicial, statutory or Government Agency;
  - iii the disclosure is made to the Authority:
    - A for the purpose of registration of this RAO Agreement or any amendment, modification or alteration of this RAO Agreement;
    - B under or pursuant to the IDA Act or the Act, or under or pursuant to the Discloser's or the Receiver's Licence;
    - C for the purpose of a review by the Authority or a determination by the Authority; or
    - D as otherwise specified in this RAO Agreement;
  - iv the disclosure is made to Emergency Service Organisations;
  - v the disclosure is made to any arbitrator or expert appointed to resolve disputes under this RAO Agreement; or
  - vi the disclosure is made pursuant to any applicable laws, rules, regulations or directions of a statutory or regulatory authority or stock exchange or order of a relevant court of law.
- (g) In the case of any disclosure under clause 17.2(f) the Recipient shall inform the Discloser of any disclosures to third parties by the Recipient prior to any such disclosure.
- (h) The rights of the Recipient under clauses 17.2(a) and 17.2(f) are in addition to any other rights of the Recipient under this RAO Agreement.



### **17.3 Accuracy of Confidential Information**

- (a) Confidential Information provided by one Party to the other Party is provided for the benefit of that Party only and shall be used solely for the purposes for which it is disclosed.

### **17.4 Monetary damages an inadequate remedy**

Each Party acknowledges that a breach of this clause 17 by one Party may cause the other Party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, a Party may seek injunctive relief against such a breach or threatened breach.

### **17.5 Consequences of termination**

- (a) All written Confidential Information or any part thereof (including, without limitation, information incorporated in computer software or held in electronic storage media) together with any analysis, compilations, studies, reports or other documents or materials prepared by the Recipient or on its behalf which reflect or are prepared from any of the Confidential Information provided by the Disclosing Party shall be returned to the Discloser or destroyed by the Recipient, when requested by the Discloser at any time, or when the Recipient's need for such information has ended or when this RAO Agreement expires or is terminated, whichever is earlier. In the event of destruction, the Recipient shall certify in writing to the Discloser within thirty (30) calendar days, that such destruction has been accomplished. The Recipient shall make no further use of such Confidential Information nor retain such Confidential Information in any form whatsoever.
- (b) The Parties acknowledge that the provision of this clause 17 shall continue in full force and effect regardless of variations, assignments or termination of other provisions of this RAO Agreement. The obligation to maintain confidentiality of the Confidential Information provided hereof and the undertakings and obligations in this clause 17 shall continue for two (2) years upon the expiry or termination of this RAO Agreement.

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## **18 General**

### **18.1 Assignment, novation and other dealings**

- (a) This RAO Agreement shall be binding upon and ensure to the benefit of each of the Parties and its successors and permitted assigns.

- (b) Subject to clause 18.1(c), either Party may assign or transfer any or all of its rights under this RAO Agreement without the prior written consent of the other Party provided that such assignee has an FBO Licence granted to it under the Act and provided further that the assigning Party will continue to remain fully responsible for the performance of all obligations owed to the other Party under the RAO Agreement.
- (c) The assigning Party shall give notice to the other Party of any assignment permitted to be made without the other Party's consent as soon as practicable. The other Party may require the assigning Party to provide reasonable assurance that the assigning Party will remain fully responsible for the performance of all obligations owed to the other Party under the RAO Agreement.
- (d) Neither Party may delegate its obligations under this RAO Agreement (novation) without obtaining the prior written consent of the other Party.
- (e) Any purported assignment, novation or dealing in breach of this clause 18.1 is of no effect.

## **18.2 Costs, expenses and duties**

The Parties agree to bear their own legal and other costs incurred in relation to the preparation, negotiation and execution of this RAO Agreement and all documents contemplated by it, except where this RAO Agreement or those other documents expressly provide to the contrary.

## **18.3 Counterparts**

This Agreement may be executed in any number of counterparts, each of which, when executed, is an original. Those counterparts together make one instrument.

## **18.4 Cumulative rights**

Except as expressly provided in this RAO Agreement, the rights of a Party under this RAO Agreement are in addition to, and do not exclude or limit, any other rights or remedies provided by Law.

## **18.5 Entire agreement**

- (a) This Agreement is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

## **18.6 Good faith and Non-Exclusivity**

- (a) Each Party agrees to act in good faith in relation to the other Party with respect to all matters relating to or contemplated by this RAO Agreement.

- (b) The Parties acknowledge that nothing in this RAO Agreement shall prevent, limit or restrict in any way whatsoever either Party from supplying any Service to any person by means of such Party's Network.
- (c) Notwithstanding any provisions of this RAO Agreement, neither Party shall be prohibited in any way whatsoever from entering into an agreement with another person for similar Services.

### **18.7 Governing law**

The interpretation, validity and performance of this RAO Agreement shall be governed in all respects by the laws of the Republic of Singapore, including the Code.

### **18.8 Notices**

- (a) A notice, consent or other communication under this RAO Agreement is only effective if it is:
  - i in writing and in legible English, signed by or on behalf of the Party giving it;
  - ii addressed to the Party to whom it is to be given; and
  - iii either:
    - A sent by pre-paid registered mail or delivered to that Party's address;
    - B sent by fax to that Party's fax number; or
    - C sent by email, if solely for the purpose of submission of requests for services.
- (b) Subject to clause 18.8(c) a notice, consent or other communication under this RAO Agreement is, in the absence of earlier receipt, regarded as given and received:
  - i if it is delivered, on delivery at the address of the relevant Party;
  - ii if it is sent by fax, at the time and on the day it was successfully sent;
  - iii if it is sent by mail, on the 3rd Business Day after the day of posting, or if to or from a place outside Singapore, on the 7th Business Day after the day of posting; or
  - iv if it is sent by email, on the Business Day which it is sent provided the sender does not have any cause to believe that it has not been

delivered (such as a rejection notice from the intended recipient's email server).

- (c) If a notice, consent or other communication under this RAO Agreement is given and received on a day that is not a Business Day, it is regarded as being given and received on the next Business Day.
- (d) For the purposes of this clause 18.8, a Party's address and fax number are those set out below, unless the Party has notified a changed address or fax number, then the notice, consent, approval or other communication must be to that address or number:

the Requesting Licensee

Address: 1 Jalan Kilang Timor,  
#09-01 Pacific Tech Centre,  
Singapore 159303  
Fax: (65) 6284 8803  
Attention: Lai Yuan Jiun  
Manager, Field Services Singapore

CityNet Infrastructure Management Pte Ltd  
Address: 1 Serangoon North Avenue 5  
#04-02  
Singapore 554915  
Fax: (65) 6887 9333  
Attention: General Manager  
Email: thomas.tsang@citynetlink.com.sg

- (e) Any process or other document relating to litigation, administrative or arbitral proceedings relating to this RAO Agreement may be served by any method contemplated by this clause 18.8 or in accordance with any applicable Law.
- (f) The Requesting Licensee may submit its requests for services (with the request forms attached) via email to thomas.tsang@citynetlink.com.sg. Each request for services submitted via email must include the format "<name of Requesting Licensee> <number and name of RAO Schedule >" in the subject line of the email. Where the Requesting Licensee fails to comply with the above requirement when submitting its request for services via email, the Requesting Licensee shall not be entitled to the applicable Service Level Guarantee in respect of that request. For the avoidance of doubt, the Requesting Licensee shall not submit more than one (1) request for services per email
- (g) Either Party may from time to time notify the other Party of a change of address, facsimile number or email address.

### **18.9 Relationship of the parties**

- (a) Each of the Parties is and shall remain at all times an independent contractor fully responsible for its own acts or defaults (including those of its employees or agents). Neither Party is authorised and neither of the Parties nor their employees, agents or representatives shall at any time attempt to act or act on behalf of the other Party to bind the other Party in any manner whatsoever to any obligations. Neither Party nor its employees, agents or representatives shall engage in any acts which may lead any person to believe that such Party is an employee, agent or representative of the other Party. Nothing in this RAO Agreement is to be construed to create a partnership, joint venture or agency relationship between the parties.
- (b) Neither Party may attempt to bind or impose any obligation on a Party or incur any joint liability without the written consent of the other Party.
- (c) If either Party appoints an agent for the purposes of this RAO Agreement, and notifies the other Party, then the other Party shall deal with the appointed agent for such purposes until the first Party notifies the other Party that the appointment has been terminated.

### **18.10 Dispute resolution**

- (a) All disputes arising under or pursuant to this RAO Agreement will be resolved in accordance with the dispute resolution procedures set out in Schedule 5 with the exception of Billing Disputes which will be dealt with in accordance with Schedule 4.
- (b) The Parties will comply with the dispute resolution procedures in relation to any disputes which arise under this RAO Agreement.

### **18.11 Severability**

If any provision of this RAO Agreement shall be held to be illegal, invalid or unenforceable in any respect under any applicable law, then the remainder of the RAO Agreement, or the application of such provision to other situations or circumstances shall not be affected, and the Parties agree to amend this RAO Agreement to reflect the original intention of the Parties and/or the directions of the Authority (where applicable) to the extent permissible by such applicable law.

### **18.12 Subcontractors**

A Party may use subcontractors or other agents to meet any of its obligations under this RAO Agreement, but it will remain responsible, and liable to the other Party, for the performance of those obligations in accordance with this RAO Agreement.

### **18.13 Variation**

Except as expressly provided for in this RAO Agreement, no variation of this RAO Agreement is effective unless:

- (a) made in writing and signed by each Party; or
- (b) an amendment is approved or required by the Authority to the RAO from time to time, in which case it will be deemed to have been accepted by both Parties.

### **18.14 Waiver**

- (a) No waiver of a right or remedy under this RAO Agreement is effective unless it is in writing and signed by the Party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under this RAO Agreement does not prevent a further exercise of that or of any other right or remedy.
- (c) Failure to exercise or delay in exercising a right or remedy under this RAO Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

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## Attachment A Notification of Acceptance - CityNet Reference Access Offer

If a Facilities Based Operator (**FBO**) seeks to acquire Services from CityNet on the prices, terms and conditions contained in CityNet's Reference Access Offer (**RAO**), that FBO must submit this written Notification of Acceptance to CityNet in the form as provided in Attachment A to the RAO.

An FBO which submits this Notification of Acceptance to CityNet will be known as the **Requesting Licensee**. The Requesting Licensee, by submitting the Notification of Acceptance, will become bound by the provisions of Part A of this RAO Agreement, including the representations and warranties contained in clause 3.

If CityNet finds this Notification of Acceptance to be non-conforming according to the criteria in Part A of CityNet's RAO, it will follow the procedures in that clause.

Is acceptance of RAO on an interim basis pending adoption of an Individualised Agreement?

YES / NO (delete where in applicable)

The Requesting Licensee is:

Name of company: **[insert]**  
Company registration number: **[insert]**  
Having its registered office at: **[insert]**

The Requesting Licensee's designated contact person is:

**[insert]**

The Requesting Licensee requests the following Services (please tick the appropriate boxes):

Schedule 2 – Licensing of Building Lead-in Ducts and Lead-in Manholes ..... [ ]  
Schedule 3– Licensing of Access to Mandated Services ..... [ ]

The following sections are common to all RAO Agreements:

Main Body ..... [✓]  
Schedule 1 – Dictionary ..... [✓]  
Schedule 4 – Billing ..... [✓]  
Schedule 5 – Dispute Resolution ..... [✓]

The Requesting Licensee must provide to CityNet along with its Notification of Acceptance, at its sole cost and expense, the following creditworthiness, security and insurance information:

- A full list of shareholders and directors;
- A statement of current paid-up capital;
- Evidence of the insurance required under clause 15 of the RAO Agreement.

If the paid up capital of the Requesting Licensee is less than S\$1,000,000, the Requesting Licensee must provide CityNet with either a banker's guarantee or security deposit (at the Requesting Licensee's option) for the amount of S\$20,000.

CityNet may amend the Requesting Licensee's credit, security and insurance requirements in accordance with the RAO Agreement.