

IDA's reference: IDA.INTC.05.0011  
(Please quote this in all correspondences on this matter)

27 March 2009

OpenNet Pte. Ltd.  
152 Beach Road  
#31-02/04 Gateway East  
Singapore 189721

By Fax Only  
No. of pages: 3  
(including this page)

Attention: Mrs Tan Kah Rhu  
Chief Executive Officer  
Fax: 6294 1218

Dear Sir

**SUBMISSION OF REVISED MODEL CONFIDENTIALITY AGREEMENT  
("MCA")**

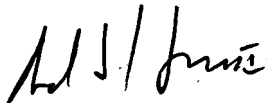
1. We refer to OpenNet Pte. Ltd.'s ("**OpenNet**") letter dated 24 March 2009 ("**OpenNet Letter**") submitting its revised proposed MCA to IDA for approval ("**Revised Proposed MCA**"). Capitalised terms used herein but not otherwise defined shall have the meanings ascribed to them in the Revised Proposed MCA.
2. In paragraph 3 of the OpenNet Letter, OpenNet requested IDA to consider reinstating the requirement in its proposed Clause 9, that the Receiving Party obtain written undertakings from its Authorised Person(s) in favour of the Disclosing Party. After careful consideration, IDA rejects OpenNet's request for the reasons set out below.
3. As explained by IDA in its notification and explanatory memorandum to OpenNet on 17 March 2009 ("**IDA 17 March 09 Letter**"), Clause 9 already imposes a positive duty on the Receiving Party to inform its Authorised Person(s) to safeguard Confidential Information. Where an Authorised Person commits a breach of confidentiality, the Receiving Party will be liable to the Disclosing Party for such breach committed by the Authorised Person. In this respect, the indemnity clause in the MCA would have provided an adequate remedy to the Disclosing Party against the Receiving Party for any breach by the Authorised Person. Since such recourse is available, IDA is of the view that the Disclosing Party's interests are already sufficiently protected, and it is neither necessary nor reasonable to place upon the Receiving Party the additional obligation to procure written undertakings from its Authorised Person(s).

4. OpenNet has also submitted that such written undertaking “helps to protect the Receiving Party who shall remain liable for any disclosure by the Authorised Person(s)”. IDA considers that it should be the commercial decision of each Receiving Party as to how it wishes to protect itself against any breach by its Authorised Person(s). Hence it is unnecessary to prescribe for this requirement to safeguard the Receiving Party’s interest.
5. OpenNet has cited the example of NDUs given by its legal advisors for the NGNBN project, to substantiate its view that the provision of written undertakings from the Receiving Party’s Authorised Person(s) is “common practice in the market for disclosure of confidential and sensitive information of any company”. IDA is of the view that OpenNet’s example of NDUs given by its legal advisors for the NGNBN project should not be taken as any indication of a common practice. IDA would also clarify that it had required an undertaking in the NGNBN project from OpenNet’s legal advisors because information protected by the Official Secrets Act (Cap. 213) may be disclosed to OpenNet and its advisors. This must be contrasted against the context of a model confidentiality agreement where the parties involved are negotiating a customised agreement on a commercial basis for the provision of services. In this respect, IDA considers that the confidentiality obligation under Clause 9 is reasonable and sufficient for the protection of the Disclosing Party’s interests in a commercial transaction.
6. In response to OpenNet’s suggestions in paragraph 5 of the OpenNet Letter, IDA notes that this still does not address the issue of the Receiving Party being unwilling to disclose to OpenNet the identity of its professional advisors, bankers and consultants.
7. Accordingly, IDA maintains the view that requiring a written undertaking from an Authorised Person(s) under Clause 9 of the MCA is not necessary. Accordingly, OpenNet must modify its Revised Proposed MCA to incorporate the specific drafting language set out below into Clause 9 of the MCA:

*“The Receiving Party may disclose some or all of the Confidential Information to the Authorised Person(s) provided that prior to a disclosure under clauses 8(b) and 8(c), the Receiving Party must inform the Authorised Person(s) that they are obligated to protect the Disclosing Party’s Confidential Information in a manner consistent with this Agreement and shall take reasonable steps to ensure that the Authorised Person(s) safeguard the Confidential Information. In any event, the Receiving Party shall remain liable for any disclosure by the Authorised Person(s) to any other person.”*

8. Subject to OpenNet incorporating the amendment to Clause 9 of the Revised Proposed MCA as set out in paragraph 7 above, IDA hereby approves OpenNet's amendments to the Revised Proposed MCA submitted to IDA on 24 March 2009.
9. OpenNet must submit to IDA one clean hardcopy and one clean softcopy (for posting on IDA's website) of the Revised Proposed MCA incorporating the specific language stated in paragraph 7 of this letter, within 7 calendar days from the date of this letter. The softcopy submission must be made in Adobe PDF and Microsoft Word formats, and emailed to Lee\_Noog@ida.gov.sg.
10. Any clarification to this notification must be made in writing and marked for the attention of Mr Andrew Haire, Deputy Director-General (Telecoms & Post) and faxed to 6211-2116.

Yours sincerely



Andrew Haire  
Deputy Director-General (Telecoms & Post)