NUCLEUS CONNECT'S RESPONSE TO IDA'S CONSULTATION ON THE PROPOSED INTERCONNECTION OFFER FOR THE PROVISION OF SERVICES ON THE NEXT GENERATION NATIONAL BROADBAND NETWORK

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ADDITIONAL SCHEDULES

22 June 2009

NUCLEUS CONNECT'S RESPONSE TO IDA'S CONSULTATION ON THE PROPOSED INTERCONNECTION OFFER FOR THE PROVISION OF SERVICES ON THE NEXT GENERATION NATIONAL BROADBAND NETWORK - ADDITIONAL SCHEDULES

1. Nucleus Connect ("Nucleus") welcomes the opportunity to submit our views and comments to IDA on OpenNet's proposed Additional Schedule 12A.

2. Nucleus Connect, a wholly-owned subsidiary of StarHub incorporated on 14 April 2009, is responsible for designing, building and operating the active infrastructure of Singapore's Next-Gen National Broadband Network ("NGNBN"). It will offer comprehensive and flexible services that will help Retail Service Providers select and deliver broadband connectivity services to their target markets quickly and seamlessly, bringing a more enriching experience to the end users.

3. We believe that the ICO plays a crucial role in ensuring that the NGNBN achieves its stated objectives, given that all Qualifying Persons ("QPs") have to obtain services via the ICO. Therefore, we would strongly urge IDA to take into serious consideration all comments provided to IDA thus far as part of the ICO consultation process, to ensure that OpenNet's ICO meets the standards, and can achieve the objectives of NGNBN.

4. In particular, we would note that many comments provided to IDA on 9 April 2009 on OpenNet's Schedule 12 are also relevant to Schedule 12A.

5. Nucleus is pleased to provide our detailed comments in the following section.

Clause	Nucleus Connect's Comments
Clause 1.3(b)	We believe that there is a missing word "the" before "Requesting Licensee".
Clause 1.3(c)	If the Requesting Licensee has not consented to the costs proposed by OpenNet within the 5 Business Days but OpenNet nevertheless chooses to proceed with the relevant works, it must be made clear that the Requesting Licensee should not be liable to bear any costs resulting therefrom.
Clause 1.7	As the co-location service provider, OpenNet should ensure that it has insured Requesting Licensees against damage to the Requesting Licensees' equipment. We would note that the situations listed by OpenNet in this clause have a direct bearing on the standards of maintenance carried out by OpenNet on its co-location facilities. Clearly, if OpenNet has failed in its duty to maintain its co-location facilities, Requesting Licensees must have the right to claim against OpenNet for damages to their Co-location Equipment. Such right to claim against OpenNet should not be limited to circumstances of "grossly negligent, willful or reckless breach" of the ICO Agreement.
Clause 1.8	We would suggest that OpenNet provides a list of situations that might be "beyond OpenNet's reasonable control". While we accept that this list may not be comprehensive, such a list would help to provide clarity to Requesting Licensees. In the event of any dispute, IDA must be willing to intervene to determine whether a situation is truly "beyond OpenNet's reasonable control".
Clause 1.9(a)	OpenNet should be obliged to provide rebates to Requesting Licensees for any failure to meet any Service Level Guarantee that is caused by any reason whatsoever, with the exception of causes "that are beyond OpenNet's reasonable control". We submit that it is unreasonable for OpenNet to limit its obligation to provide a remedy only to failures that are solely caused by OpenNet.
Clause 2.3(c)	There should not be any restriction on Requesting Licensees to use the QP to QP Interconnection only for the "provision of services over the OpenNet Network". QPs are only entitled to use this service if they are co-located within OpenNet's CO. The purpose for which they intend to interconnect with each other should not be any cause of concern for OpenNet. Therefore, Nucleus would propose that the words "and the provision of services over the OpenNet Network" be deleted.
Clause 2.5	Where the QP to QP Interconnection Request is unsuccessful, and the reason is not due to any action by the Requesting Licensee, the QP to QP Interconnection Ordering Charge should not apply. It is not possible for a Requesting Licensee to determine whether any of the reasons for rejection listed in Clause 2.6 hold true. Therefore, it is clearly not fair to impose such a charge on the Requesting Licensee. This Clause be re-phrased to clarify that the QP to QP Interconnection Ordering Charge is only payable upon successful provision of the service , or - in the case of unsuccessful provision -

Clause	Nucleus Connect's Comments
	is only payable if the cause of non-provision is directly attributable to the Requesting Licensee.
Clause 2.6(d)	OpenNet should make known on its website, and any online platform accessible by Requesting Licensees, any CO it intends to decommission at least 18 months in advance. This will ensure that Requesting Licensees have adequate information for their own planning, and avoid the situation where Requesting Licensees apply for a Co-location service only to find out that OpenNet has plans to de-commission its CO. This timeframe is inline with IDA's decision on the "Decommissioning of Co-location Sites under SingTel's Reference Interconnection Offer" dated 7 June 2007. Further, we believe that OpenNet should be able to easily determine whether a CO is due for de-commissioning and will not require 3 Business Days to revert to Requesting Licensees. Nucleus therefore submits that this reason for rejection be taken into account under Clause 2.4.
Clause 3.2(a)	It should be clarified that the estimated Charges for Site Preparation Work will be provided in accordance with Clause 1.3(b).
Clause 4.1	It should not be mandatory for the Requesting Licensee to confirm that it agrees to pay the estimated Charges for Site Preparation Work. As mentioned in Clause 1.3(c), it should be the other way round, that OpenNet requires Requesting Licensee's approval to such estimated Charges before proceeding with the relevant works. Do note that under Clause 1.3(d), the Requesting Licensee has a chance to dispute such estimated costs which shall then be resolved in accordance with Schedule 17.
Clause 4.2	This is inconsistent with the fairer position under Clause 1.3(b)(ii), which is that OpenNet's cost estimates will form a binding quote to the Requesting Licensee in respect of the work to be undertaken by OpenNet. OpenNet would not be entitled to change the costs set out in such binding quote once accepted by the Requesting Licensee. This clause is therefore not correct and should be deleted.
Clause 4.3	It should be clarified for the avoidance of doubt, that such notification by OpenNet shall not affect the Requesting Licensee's right to claim SLG rebates.
Clause 4.4	Clauses 4.3 and 4.4 appear to repeat each other. For clarity, we would propose that both Clauses be merged, taking into account the comments to Clauses 4.2 and 4.3 above.
Clause 5.2(a)	The indemnity should only cover loss or damage to property: (i) located at the relevant Central Office (and not anywhere else); and (ii) that is caused by the gross negligence, or willful or reckless act or omission, of the Requesting Licensee's employees or contractors. This is consistent with Clause 1.7 of this Schedule, which provides that OpenNet is not responsible for the Requesting Licensee's Co-Location Equipment caused by fire, etc. other than to the extent that they are the result of a grossly negligent, willful or reckless breach of the ICO Agreement by OpenNet.

Clause	Nucleus Connect's Comments
Clause 5.3	OpenNet's discretion should be expressly stated to be exercised reasonably in such a scenario.
Clause 6.2	OpenNet must be liable for any Loss suffered by the Requesting Licensee resulting from any suspension, if such suspension was caused by OpenNet's default. .
Clause 7.1	The main body of the ICO Agreement provides that the Requesting Licensee may terminate any Schedule of the ICO Agreement under the prescribed circumstances and subject to IDA's consent to such termination being obtained. OpenNet should clarify if in the case of QP to QP Interconnection Service, it is proposing that the Requesting Licensee may terminate the same without reason and without obtaining IDA's prior consent thereto. .
Clause 7.3	It is too onerous to expect the Requesting Licensee to immediately disconnect all dedicated equipment. The Requesting Licensee should be given at least 5 Business Days to disconnect their equipment.
Annex 12AB, paragraphs 1 and 2	The level of rebate offered by OpenNet (10%) is too low, and is below industry practice. We believe that at such a low level, there is no incentive for OpenNet to ensure that it meets its Service Level Guarantees. Nucleus therefore submits that OpenNet be required to increase the level of rebates offered by it.
Annex 12AB, paragraphs 1 and 2	If OpenNet missed the timeframe for completion of Project Study or Site Preparation Work by more than 30 Calendar Days, SLG rebates would not be an adequate remedy. That should constitute a breach of this Schedule, giving rise to compensation to the Requesting Licensee not limited to the SLG rebates and a right on the part of the Requesting Licensee to terminate the service without liability to OpenNet.
Annex 12AB, paragraph 3(a)	Nucleus submits that 14 Calendar Days to make a claim is too short. We believe that 30 Calendar Days is more appropriate.
Annex 12AB, paragraph 3(b)	The rebate should be processed and credited into the Requesting Licensee's account no later than 30 Calendar Days from the date the claim is made. The 30 Calendar Day timeframe should not be counted from the date the claim is approved, because OpenNet may be incentivised to delay the approval process.
Annex 12AB, paragraph 3(c)(i)	The reference to "of an ex gratia nature" should be deleted, as the rebates provided by OpenNet are contractual rebates, akin to liquidated damages for failure to perform its obligations under this Schedule. The rebates are not given out of goodwill or on an ex-gratia basis.