
PROPOSED MODEL CONFIDENTIALITY AGREEMENT FOR THE PROVISION OF SERVICES ON THE NEXT GENERATION NATIONAL BROADBAND NETWORK

**Submission by the StarHub Group to the Info-
communications Development Authority of Singapore**

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A. Statement of Interest

- 1.1 StarHub Ltd is a Facilities Based Operator (“FBO”) in Singapore, having been awarded a licence to provide public basic telecommunication services (“PBTS”) by the Telecommunications Authority of Singapore (“TAS”) (the predecessor to IDA) on 5 May 1998. StarHub Ltd participated in the Network Company RFP of the NGNBN as part of the Infinity Consortium, and is currently bidding to be appointed as the Operating Company of the NGNBN.
- 1.2 StarHub Mobile Pte Ltd is a wholly-owned subsidiary of StarHub Ltd. StarHub Mobile Pte Ltd was issued a licence to provide public cellular mobile telephone services (“PCMTS”) by the TAS on 5 May 1998. StarHub launched its commercial PBTS and PCMTS services on 1 April 2000.
- 1.3 StarHub Ltd acquired CyberWay (now StarHub Internet Pte Ltd) for the provision of Public Internet Access Services in Singapore on 21 January 1999.
- 1.4 In July 2002, StarHub Ltd completed a merger with Singapore Cable Vision to form StarHub Cable Vision Ltd (“SCV”). SCV holds a FBO licence and offers broadband and cable TV services.
- 1.5 StarHub Online Pte Ltd is a wholly-owned subsidiary of StarHub Ltd. StarHub Online Pte Ltd was issued with a licence to provide Public Internet Access Services in Singapore on 22 February 2005.
- 1.6 This submission represents the views of the StarHub group of companies, namely, StarHub Ltd, StarHub Mobile Pte Ltd, StarHub Internet Pte Ltd, StarHub Online Pte Ltd and StarHub Cable Vision Ltd.

B. Executive Summary

StarHub welcomes the opportunity to provide our comments on OpenNet's Proposed Model Confidentiality Agreement ("MCA").

StarHub notes that, as drafted, the MCA is an improvement on the Confidentiality Agreement offered by SingTel under the Reference Interconnection Offer. Specifically, we note that it is no longer mandatory for Requesting Licensees ("RL") wanting to sign on to the OpenNet's Interconnection Offer ("ICO") to first execute the MCA. We believe that such process improvements are a step in the right direction, to ensure that RLs are able to acquire ICO services as seamlessly as possible.

However, StarHub would suggest two improvements to the MCA. We have provided our suggestions in the following section.

C. Detailed Comments

1. Entry into the MCA

The MCA is now being positioned as being required to be signed by OpenNet and the RL only in connection with the negotiation of a Customised Agreement (and not an ICO Agreement).

We understand the basis of this approach is that there is no need for negotiations on an ICO Agreement, and therefore, there should be no disclosure of information between the RL and OpenNet prior to entering into an ICO Agreement. The ICO Agreement will be signed “as is” by the RL, whereupon the confidentiality provisions in the ICO Agreement will be binding on the Parties.

However, we contemplate the possibility that a RL may not want to negotiate the ICO Agreement, but may require clarification from OpenNet on certain provisions of the ICO Agreement and/or the scope of services provided thereunder. We submit that in the process of such clarification, the RL and OpenNet may disclose confidential and proprietary information to each other.

To address this scenario, we propose that the option of entering into an MCA be made available to a RL who does not wish to negotiate a Customised Agreement with OpenNet, but requires clarification from OpenNet on the ICO Agreement.

2. Third Party Rights

We propose to include the following additional clause in the MCA as new clause 29:

“A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore to enforce any term of this Agreement.”,

for clarity that only the parties to the MCA will be entitled to enforce the MCA. The above clause is a common boilerplate in most contracts governed by Singapore law.