



Australian Government

**Department of Communications,
Information Technology and the Arts**

FUNDING DEED

BETWEEN

**COMMONWEALTH OF AUSTRALIA
as represented by the Department of Communications,
Information Technology and the Arts**

ABN 51 491 646 726

AND

[Insert full name of Provider]

[Insert ABN/ACN of Provider]

in relation to Funding for
the Australian Broadband Guarantee Program

REF NO: ABG Provider 2007-2008 *[insert number]*

TABLE OF CONTENTS

1	INTERPRETATION	4
2	TERM OF THIS DEED	12
3	OTHER COMMONWEALTH FUNDING.....	12
4	INCENTIVE PAYMENT - GENERAL.....	12
5	INCENTIVE PAYMENTS AND TRAVEL COST PAYMENT	14
6	YOUR OBLIGATIONS.....	17
7	DETERMINATIONS OF ELIGIBILITY	27
8	LIMITATIONS ON PAYMENT OF FUNDING.....	28
9	RECORDS.....	29
10	REPORTING	30
11	AUDIT REQUIREMENTS.....	32
12	EXIT STRATEGY	34
13	TAXES, DUTIES AND GOVERNMENT CHARGES	34
14	COMMONWEALTH MATERIAL AND REPRESENTATIONS	35
15	INTELLECTUAL PROPERTY	36
16	DISCLOSURE OF INFORMATION	36
17	PROTECTION OF PERSONAL INFORMATION	38
18	INDEMNITY	40
19	INSURANCE.....	41
20	CONFLICT OF INTEREST	41
21	DELAY	42
22	TERMINATION WITH COSTS	42
23	TERMINATION FOR DEFAULT	43
24	YOUR RIGHT TO TERMINATE	46
25	SUBCONTRACTING	46
26	PROMOTION, ACKNOWLEDGMENT AND PUBLICITY.....	46
27	COMPLIANCE WITH LAWS AND OUR POLICIES	47
28	NEGATION OF LEGAL RELATIONSHIP OF EMPLOYMENT, PARTNERSHIP AND AGENCY.....	48
29	ENTIRE AGREEMENT, VARIATION AND SEVERANCE	48
30	WAIVER.....	48
31	ASSIGNMENT AND NOVATION	49
32	CHANGE IN CONSTITUTION.....	50
33	OTHER FUNDING PRECONDITIONS.....	50
34	DISPUTE RESOLUTION.....	50

35 APPLICABLE LAW AND JURISDICTION 51
36 LIAISON AND MONITORING 51
37 NOTICES 52
38 SURVIVAL OF CLAUSES 53
SCHEDULE 1
SCHEDULE 2
SCHEDULE 3
SCHEDULE 4
SCHEDULE 5

PARTIES

COMMONWEALTH OF AUSTRALIA ('Commonwealth'), represented by and acting through the **Department of Communications, Information Technology and the Arts**, ABN 51 491 646 726 ('Us' or 'We' or 'Our' as the case requires)

AND

[INSERT PROVIDER'S NAME], a company incorporated in the State/Territory of *[insert applicable details]*, having its registered office at *[insert address as recorded on ASIC]* and *[Insert ABN and ACN]* ('You' or 'Your' as the case requires).

PURPOSE

- A. We are committed to implementing the Program.
- B. You have been successfully registered as a Program Provider (Category *[insert category B and/or C, as applicable]*).
- C. You are committed to helping achieve the Program, through Your conduct of the Activity.
- D. As a result of this commitment, We have agreed to provide Funding to You subject to the terms and conditions of this Deed.
- E. We are required by law to ensure accountability for public money, and to be accountable for all Funds provided by Us.
- F. You agree to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Deed.

1 INTERPRETATION

1.1 In this Deed, unless the contrary intention appears:

'**ABN**' has the same meaning given in section 41 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

'**ACN**' means Australian Company Number as defined under the *Corporations Act 2001* (Cth);

'**Activity**' means the provision of a Service (including but not limited to the offering of a Service) and other support of the Program as described in this

Deed, and includes the provision of Activity Material;

‘Activity Material’ means all Material:

- (a) brought into existence for the purpose of performing the Activity;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b);

‘Added Value Service’ has the meaning given in the Guidelines;

‘Adjustment Note’ has the same meaning as it has in section 195-1 of the GST Act;

‘Advisers’ means Your or Our agents, contractors, franchisees, dealers or advisers engaged in the performance or management of this Deed;

‘Approved Auditor’ means a person who is:

- (a) registered as a company auditor under the *Corporations Act 2001* (Cth), or a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants; and
- (b) not a principal, member, shareholder, officer or employee of Yours or of a Related Body Corporate (as defined under section 9 of the *Corporations Act 2001* (Cth));

‘Auditor-General’ means the office established under the *Auditor-General Act 1997* (Cth) and includes any other entity that may, from time to time, perform the functions of that office;

‘Australia Connected Package’ is an Australian Government funding and a legislative initiative aimed at delivering fast and affordable broadband access;

‘Australian Accounting Standards’ refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth);

‘Australian Auditing Standards’ refers to the standards made by the Australian Auditing and Assurance Standards Board (on behalf of CPA Australia and the Institute of Chartered Accountants in Australia);

‘Australian Broadband Guarantee (transitional period)’ has the meaning given in the Guidelines;

‘Broadband Customer Online Management System’ or **‘BCOMS’** means the online Program management system provided at www.dcita.gov.au or any

other alternative system We implement in its place from time to time;

‘Broadband Service Locator’ has the meaning given in the Guidelines;

‘Business’ means an activity undertaken as a commercial enterprise on an ongoing basis, or engaged in for the purpose of profit on a continuous and repetitive basis;

‘CPE’ or **‘Customer premises equipment’** has the meaning given in the Guidelines;

‘CSG Service’ has the meaning given to it under the CSG Standard;

‘CSG Standard’ means the *Telecommunications (Customer Service Guarantee) Standard 2000 (No.2)* as amended from time to time;

‘Carrier Licence’ has the meaning given in section 7 of the *Telecommunications Act 1997 (Cth)*;

‘Commencement of the Program’ means 14 August 2007;

‘Commonwealth Material’ means any Material provided by Us to You for the purposes of this Deed or which is copied or derived from Material so provided, except for Activity Material;

‘Confidential Information’ means:

- (a) the information described in Item 6 of Schedule 1; or
- (b) information that is agreed between You and Us in writing after the Date of this Deed as constituting confidential information for the purposes of this Deed;

‘Conflict’ refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You engaging in any activity or obtaining any interest that is likely to conflict with or restrict You in providing the Activity fairly and independently;

‘Connected and Supplied’ has the meaning given in the Guidelines;

‘Constituent Prices’ means the prices charged for each element of a Service which, when added together, form the total price for the Service;

‘Contract Period’ means a consecutive period of three (3) years commencing on the date that a Service was first supplied to a Customer;

‘Customer’ means an Eligible Customer with whom You have Terms and Conditions in accordance with this Deed;

‘Attestation Form’ has the meaning given in the Guidelines;

'Data Speed' has the meaning given in the Guidelines;

'Date of this Deed' means the date specified in Item 1 of Schedule 1, and if no date is specified, means the date written on the execution page of this Deed, and if no date or more than one date is written there, then the date on which this Deed is signed by the last Party to do so;

'Deed' means this document and includes any Schedules;

'Department' or **'DCITA'** refers to the Department of Communications, Information Technology and the Arts and includes any department or agency of the Commonwealth which is from time to time responsible for administering this Deed;

'Electronic Communication' has the same meaning as in the *Electronic Transactions Act 1999* (Cth);

'Eligible Customer' has the meaning given in the Guidelines;

'Eligible Premises' has the meaning given in the Guidelines;

'Entry Level Service' has the meaning given in the Guidelines;

'Existing Material' means all Material in existence prior to the Date of the Deed:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of,

the Activity Material;

'Exit Strategy' means the strategy set out in Schedule 2;

'Funding Allocation' has the meaning given in the Guidelines;

'Funding' or **'Funds'** means the amount or amounts comprising Incentive Payments and Travel Cost Payments payable under this Deed by Us;

'Funding Period' means the period specified in Item 2 of Schedule 1;

'GST' has the meaning as given in section 195-1 of the GST Act;

'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

'Guidelines' means the Australian Broadband Guarantee Program Guidelines in Schedule 5 as amended from time to time by Us;

'Half-yearly Period' means each period from:

(a) 14 August to 31 December; and

(b) 1 January to 30 June,

occurring during the Term of this Deed, or any part of such a period occurring at the beginning or end of the Term of this Deed;

‘HiBIS’ has the meaning given in the Guidelines;

‘Incentive Payment’ means the amounts described in subclauses 4.4 to 4.7 of this Deed and includes a Partial High Cost Incentive Payment and a Partial Standard Incentive Payment;

‘Intellectual Property Rights’ means all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields but does not include moral rights, the rights of performers; or rights in relation to confidential information;

‘Interest’ means interest calculated at an interest rate equal to the general interest charge rate pursuant to section 8AAD of the *Taxation Administration Act 1953* (Cth), on a daily compounding basis;

‘Item’ means an item in the Schedules;

‘Last-mile Infrastructure’ has the meaning given in the Guidelines;

‘Material’ includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

‘Metro Broadband Connect’ has the meaning given in the Guidelines;

‘Metro-comparable Service’ has the meaning given in the Guidelines;

‘Metropolitan Area’ has the meaning given in the Guidelines;

‘Nominated Carrier Declaration’ means a nominated carrier declaration given under the *Telecommunications Act 1997*;

‘OPEL Networks’ has the meaning given in the Guidelines;

‘Partial High Cost Incentive Payment’ means the proportion of a High Cost Incentive Payment set out in Item 4 of Schedule 1;

‘Partial Standard Incentive Payment’ means the proportion of a Standard Incentive Payment set out in Item 4 of Schedule 1;

‘Party’ means a party to this Deed;

‘Period of the Program’ refers to the period from the Commencement of the Program to 30 June 2008;

‘Personal Information’ has the same meaning as under the *Privacy Act 1988* (Cth), which is information or an opinion (including information or an opinion forming part of a data base), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

‘Privacy Act’ means the *Privacy Act 1988* (Cth);

‘Privacy Commissioner’ means the Office of the Privacy Commissioner established under the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office;

‘Program’ means the Australian Broadband Guarantee Program as described in the Guidelines;

‘Program Area’ has the meaning given in the Guidelines;

‘Program Provider’ means a Provider of Satellite Broadband Services or Terrestrial Broadband Services, as the case requires, that is registered under the Program;

‘RCTI’ means a recipient created tax invoice which has the meaning given by section 195-1 of the GST Act;

‘Records’ includes documents, information and data stored by any means and all copies and extracts of the same;

‘Related Body Corporate’ has the meaning given in section 9 of the *Corporations Act 2001* (Cth);

‘Report’ means Activity Material that is provided to Us for reporting purposes on matters relating to the Activity, progress reports and evaluations of the Activity or compliance with Your obligations under this Deed, as stipulated in the Schedules;

‘Remote Australia’ has the meaning given in the Guidelines;

‘Residential Customer’ has the meaning given in the Guidelines;

‘Satellite Broadband Service’ has the meaning given in the Guidelines;

‘Schedule’ refers to a Schedule to this Deed;

‘Service’ means an Internet access service You supply to a Customer as set out in Item 3 of Schedule 1 which is a Threshold Service, an Added Value Service or an Entry Level Service;

‘Service Area’ means the geographic area situated in the Program Area in which You are required to offer to supply a Service, and which is set out in Item 4 of Schedule 1;

‘Service Commencement Date’ means the date specified in the table at Item 4 of Schedule 1 being the date from which You are obliged to commence offering the relevant Service in the relevant Service Area;

‘Service Solution’ has the meaning given in the Guidelines;

‘Taxable Supply’ has the meaning given under section of the 195-1 of the GST Act;

‘Terms and Conditions’ means the terms and conditions on which a Service is supplied by You to a Customer set out in Schedule 4 of this Deed, including mandatory terms and conditions under the Guidelines, and those referred to in subclause 6.19;

‘Term of this Deed’ refers to the period described in subclause 2.1;

‘Terrestrial Broadband Service’ has the meaning given in the Guidelines;

‘Third Party Interest’ means any legal or equitable right, interest, power or remedy in favour of any person other than You or Us in connection with this Deed, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;

‘Threshold Service’ has the meaning given in the Guidelines;

‘Travel Cost Payment’ means the amount (inclusive of GST) payable by Us under this Deed which relates to the travel or freight costs associated with the supply of a Service to a Customer at Eligible Premises situated in Remote Australia and as described in clauses 5.2 to 5.7;

‘Under-served Premises’ has the meaning given in the Guidelines;

‘Us’, ‘We’ and ‘Our’ means the Commonwealth of Australia represented by the Department and includes its officers, delegates, employees and agents;

‘Working Day’ has the meaning given in the Guidelines; and

‘You’ and ‘Your’ means *[insert Provider’s name and ABN and ACN]* and includes where the context admits, its officers, employees, agents, subcontractors and its successors.

1.2 In this Deed, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;

- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) all references to clauses are to clauses in this Deed;
- (e) all references to dollars are to Australian dollars and this Deed uses Australian currency;
- (f) a reference to an Item is to an Item in the Schedules;
- (g) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- (h) an uncertainty or ambiguity in the meaning of a provision of this Deed will not be interpreted against a Party just because that Party prepared the provision;
- (i) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) reference to Australian Taxation Office rulings includes those rulings or sites as amended, modified or repealed;
- (k) terms not defined in this Deed but defined in the Guidelines have the meaning given to them in the Guidelines; and
- (l) this Deed must be construed subject to the *Telecommunications Act 1997*.

1.3 The Schedules (and annexures and documents incorporated by reference, if any) form part of this Deed. Unless the contrary intention appears, in the event of any conflict or inconsistency between any part of:

- (a) the terms and conditions contained in the clauses of this Deed;
- (b) the Schedules (excluding the Guidelines);
- (c) the Guidelines;
- (d) the annexures, if any; and
- (e) documents incorporated by reference, if any,

then the material mentioned in any one of paragraphs (a) to (e) of this subclause 1.3 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

- 1.4 Where You are comprised of more than one person, this Deed binds those persons jointly and severally.

2 TERM OF THIS DEED

- 2.1 The Term of this Deed commences on the Date of this Deed and, unless terminated earlier, it expires on the last day of the Funding Period.

3 OTHER COMMONWEALTH FUNDING

- 3.1 If You receive other funding from the Commonwealth, a breach of any other arrangement (whether contractual or statutory) with the Commonwealth under which You receive Commonwealth funding may be regarded by Us as a breach of this Deed where We reasonably consider that the breach of that arrangement will materially impact upon the performance of Your obligations under this Deed.
- 3.2 On Our request, You must inform Us in writing within 20 Working Days of any other arrangement (whether contractual or statutory) under which You are entitled to receive funding from the Commonwealth.
- 3.3 Any payments under this Deed may be deferred or suspended by Us if You have outstanding or unacquitted moneys under any arrangement (whether contractual or statutory) with the Commonwealth, including between Us and You, under which You receive Commonwealth funding. Notwithstanding such suspension or deferral of any payments, You must continue to perform any obligations under this Deed, unless We agree otherwise in writing.

4 INCENTIVE PAYMENTS– GENERAL

- 4.1 Subject to:
- (a) clause 8;
 - (b) sufficient funds being available under the Funding Allocation; and
 - (c) compliance by You with this Deed,

We will provide You with the Funding at the times and in the manner specified in this Deed.

- 4.2 Without limiting Our rights, where You are in breach of Your obligations under this Deed, We may, at Our sole discretion, withhold or suspend any payment in whole or in part until You have rectified the breach and performed all of Your obligations that are required to be performed up to the date of resumption of payment under this Deed.
- 4.3 We may, at Our sole discretion, set off or deduct from any Funding payable to You under this Deed any moneys that are payable to Us by

You, whether in connection with this Deed or otherwise. Moneys that are payable to Us by You include any repayment or Interest under subclauses 6.39 to 6.40, whether or not a notice requiring repayment has been given in respect of that debt and whether or not the time provided under such a notice has expired.

Incentive Payments

- 4.4 Subject to subclauses 4.5, 4.6 and 4.7, the Incentive Payments under the Program are as follows:
- (a) Standard Incentive Payment - \$1,100 (inclusive of GST) ('Standard Incentive Payment');
 - (b) High Cost Incentive Payment - \$2,750 (inclusive of GST) ('High Cost Incentive Payment'); and
 - (c) where applicable, a Partial Standard Incentive Payment and/or a Partial High Cost Incentive Payment.
- 4.5 Unless a Partial Standard Incentive Payment applies in accordance with clause 4.7, a Standard Incentive Payment will apply where You have Connected and Supplied:
- (a) a Service in accordance with this Deed using an ADSL, ADSL2, ADSL2+, a cable-based or powerline-based Service Solution; or
 - (b) a Service in accordance with this Deed using a wireless-based Service Solution to a Premises that will have access to a broadband service under the network funded (in whole or part) under that component of the Australia Connected Package covered by OPEL Networks; and
- the Premises to which the Service was Connected and Supplied by You are Eligible Premises situated in a Service Area and were unable to access a Metro-comparable Service, as determined in accordance with the Guidelines.
- 4.6 Unless a Partial High Cost Incentive Payment applies in accordance with clause 4.7, a High Cost Incentive Payment will apply where You have Connected and Supplied:
- (a) a Service using a satellite Service Solution in accordance with this Deed; and
 - (i) the Premises to which the Service was Connected and Supplied by You are Eligible Premises situated in a Service Area(s); and
 - (ii) the Premises were unable to access a Metro-comparable

Service, as determined in accordance with the Guidelines; and

- (iii) the Premises were unable to access a Terrestrial Broadband Service, as determined in accordance with the Guidelines; or
- (b) a Service using a terrestrial Service Solution in accordance with this Deed;
 - (i) to a Premises that will not have access to a broadband service under the network funded (in whole or part) under that component of the Australia Connected Package covered by OPEL Networks; and
 - (ii) the Premises to which the Service was Connected and Supplied by You are Eligible Premises situated in a Service Area(s) which is not in a Metropolitan Area;
 - (iii) the Premises were unable to access a Metro-comparable Service, as determined in accordance with the Guidelines; and
 - (iv) We have determined in Our discretion that the payment of a High Cost Incentive Payment is appropriate.

4.7 A Partial Standard Incentive Payment or a Partial High Cost Incentive Payment applies where

- (a) in accordance with this Deed You have Connected and Supplied a Service in a specified Service Area (as set out in Item 1 of Schedule 1);
- (b) the Service was supplied using a new or non-standard Service Solution with new technology; and
- (c) We have determined, in Our discretion, that the criteria described in section 3.5.4 of the Guidelines relating to a partial incentive payment has been satisfied.

Funding Preconditions

4.8 The following matters are preconditions to the payment of any Incentive Payment or Travel Cost Payment by Us to You under this Deed:

- (a) sufficient funds being available under the Funding Allocation;
- (b) You have supplied to Us a copy of the duly completed and signed Attestation Form to which the claim relates;
- (c) the Service was first Connected and Supplied to a Customer by You during the Funding Period;

- (d) You have declared, so far as You are aware, that the claim for payment of the Funding is legitimate and accurate and that You hold sufficient evidence to substantiate the claim;
- (e) You have supplied Us with the particular Broadband Service Locator Identification Number pertaining to the Customer to which the claim relates;
- (f) You have complied with any other requirements set out in the Guidelines, or any notice We give, that may be applicable to demonstrating eligibility of the Customer and/or Premises;
- (g) You have complied with the reporting or other requirements that apply to the payment of the Funds under this Deed;
- (h) where applicable, You have complied with your requirements under this Deed that apply to the approval and payment of the Travel Incentive Payment claims;
- (i) You have supplied Us with the details of the Service Solution(s) and related technology platform relating to each Service for which a claim is submitted;
- (j) You are not in receipt of any funding under any other arrangement with another Commonwealth agency, or a State, Territory or local Government (whether contractual or statutory) in respect of the Service provided by You, unless You have notified Us in writing of that funding and We have agreed to pay You the Funding; and
- (k) any other pre-conditions specified in this Deed, including but not limited to those specified in subclause 27.2 and clause 33.

Claim processing

- 4.9 A claim for an Incentive Payment must be made within 10 calendar days after You have Connected and Supplied the Service to the Customer.
- 4.10 Payment will be made by Us within 30 calendar days of approval of the claim by Us in accordance with the process set out in sections 4.4 to 4.5 (inclusive) of the Guidelines..
- 4.11 If We do not process a claim for an Incentive Payment, We will advise You of the reasons for not processing the claim and You must rectify any error promptly before We are obliged to continue to process the claim to determine whether an Incentive Payment should be paid.
- 4.12 If an Incentive Payment is found to have been wrongly made to You, You must repay Us the amount that was wrongly paid in accordance with subclauses 6.39 to 6.43.

- 4.13 We may, at Our discretion, request You to supply to Us any additional information We consider necessary to demonstrate the validity of a claim prior to or during the processing the claim. If You do not respond to any such request within 10 Working Days of the request or other longer timeframe specified by Us, the claim will be declined for processing by Us.

5 INCENTIVE PAYMENTS AND TRAVEL COST PAYMENTS

Ongoing payments

- 5.1 Subject to clauses 5, 6 and 8, and compliance by You with this Deed, We will pay You the applicable Incentive Payment for each Service supplied by You to an Eligible Customer at Eligible Premises in the Service Area that were unable to access a Metro-comparable Service in accordance with this Deed (once-only for each Service Connected and Supplied to a Customer after You have commenced supplying the Service) if:
- (a) the requirements of subclause 4.8 have been satisfied;
 - (b) You have entered details of the Customer to which the Service was supplied and the requested details of the type of Service on BCOMS; and
 - (c) You have supplied to Us a copy of the Customer Attestation at the time of lodgement of the claim, or other time specified by Us.
 - (d) You have made a claim for payment within the timeframe set out under subclause 4.9.

Travel Cost Payment

- 5.2 A Travel Cost Payment will be paid in addition to a High Cost Incentive Payment or Partial High Cost Incentive Payment where:
- (a) You have submitted to Us the details of the proposed Travel Cost Payment claim prior to the supply by You of the Service(s) at each applicable Eligible Premises;
 - (b) each Eligible Premises, or all of the Eligible Premises, to which the Travel Cost Payment claim relates is/are situated in Remote Australia;
 - (c) We have assessed the proposed Travel Cost Payment claim as being in principle a reasonable claim.(for the sake of clarity and the avoidance of doubt, Our assessment of the proposed claim does not constitute approval of the claim for payment);
 - (d) after the completion of the journey to which the Travel Cost Payment claim relates, You have submitted to Us the full details and supplied

all supporting documents (as specified in Section 4 of the the Guidelines) to substantiate Your Travel Cost Payment claim; and

- (e) all relevant preconditions to the payment of Funding under this Deed have meet met;

5.3 A Travel Cost Payment:

- (a) will not be paid unless the distance travelled to supply the Service exceeds 100 kilometres (that is, a round trip of more than 200 kilometres);
- (b) is paid at the rate \$1.10 (GST inclusive) per kilometre travelled beyond the 200 kilometres round trip or other rate per kilometer determined by Us in Our discretion to apply to the Travel Cost Payment claim; and
- (c) is capped at \$1,100 (GST inclusive) for each round trip journey undertaken by You, unless another amount is determined by Us to apply.

5.4 The distance travelled is from Your depot listed in Schedule 3 from which the installer departs for the job to the point of installation at the Premises (and return).

5.5 Where multiple installations occur on a journey, the travel distance is deemed to be one journey only, that is, the distance travelled from the depot to reach the installation site furthest from the depot. However, unless otherwise determined by Us, the cap of \$1,100 per journey still applies.

5.6 If You need to make more than one visit to a Customer to complete an installation, a Travel Cost Payment may, in Our discretion, be claimed for each additional visit. However, the visits are to be treated cumulatively for the purposes of the cap on a Travel Cost Payment, unless We determine otherwise.

5.7 Where the journey has not been undertaken for the sole purpose of supplying a Service, the extent to which Travel Cost Payment claim can be made and the amount of the claim (if applicable) will be determined by Us with regard to the extent to which the journey related to the installation of the Service.

6 YOUR OBLIGATIONS

6.1 You agree to comply with the requirements of the Program set out in the Guidelines except where the Guidelines are inconsistent with the clauses of this Deed or the other Schedules.

Activity – General

- 6.2 During the Funding Period, You must, except as otherwise provided in this Deed, offer to provide, where technologically feasible, the Services set out in Item 3 of Schedule 1 to all Eligible Customers at Eligible Premises in the Service Area from the Service Commencement Date, as specified in the table at Item 4 of Schedule 1.
- 6.3 If there is more than one Service and more than one Service Area listed in Item 4 of Schedule 1, You must offer to provide the relevant Service to the relevant Service Area from the commencement date until the end date specified in Item 4 of Schedule 1 or an earlier date as notified by Us.

Your Obligations as a Provider

- 6.4 You must carry out the Activity within the Funding Period in accordance with this Deed (including the Guidelines and any other reasonable direction given by Us in relation to the Activity), diligently, effectively, and to a high professional standard.
- 6.5 In accordance with the Guidelines, You may provide only one Service listed in Item 3 of Schedule 1 to an Eligible Premises.
- 6.6 Where ownership of CPE resides with You after its installation at the Customer's Premises, You must for the duration of the contracted term under the Terms and Conditions ensure that the CPE is repaired and/or replaced in the event of a technical or mechanical fault. Your obligations under this subclause 6.6 continue, notwithstanding the expiry or earlier termination of this Deed.
- 6.7 You must have Connect and Supplied the Service to the Customer within 30 calendar days of the Customer's initial approach or request to You to supply the Service, unless a longer period has been approved by Us.
- 6.8 If a Customer changes from one Service provided by You to another service provided by You using the same technology, including the same CPE:
- (a) You must allow the Customer to return to the original Service to which the Customer subscribed at any time during the Contract Period for the original Service and if any charge is imposed by You to the Customer to facilitate this, the charge should be a fair and reasonable charge, reflective of the action;
 - (b) if the new service is a Service, You must provide that new Service on the Terms and Conditions required for that Service under this Deed for the remainder of the term of the Contract Period of the original Service; and

- (c) if the new service is not a Service, You are not required to provide or comply with Terms and Conditions in relation to that service.
- 6.9 After the initial Connection and Supply of the Service, You must continue to provide the Service at the agreed pricing and with the technical requirements as set out at Item 3 of Schedule 1, for the Contract Period, unless the Customer terminates the Service at an earlier time or an exceptional circumstance applies.
- 6.10 No additional Funding is payable by Us in relation to a Customer accepting another non-approved internet service provided by You or returning to the original Service in accordance with this clause. You must, if required by a Customer, provide the Service to the Customer for the Contract Period. The price for any Service must not be more than the amount set out in Item 3 of Schedule 1 for that Service.
- 6.11 Notwithstanding subclauses 6.2 and 6.3, if You are unable to offer Services to Eligible Customers because Your infrastructure is fully utilised and no further capacity is or is likely to be available, You:
- (a) must notify Us in writing within 15 Working Days, providing Us with sufficient information to allow Us to identify the location of the Premises to which the Services are not being offered;
 - (b) are not required to comply with subclauses 6.2 and 6.3 from the date of the notice referred to in paragraph 6.11(a); and
 - (c) must comply with all other obligations under this Deed, and Your obligations to Customers already Connected and Supplied by You with a Service.

By written notice to You, We may reduce any or part of a Service Area(s) specified at Item 4 of Schedule 1 where We form the view that You are unable to continue to offer the Services in the relevant Service Area(s) by the Service Commencement Date specified at Item 4 of Schedule.

- 6.12 Upon receipt of Our notice under subclause 6.11, You must reduce the performance of Your obligations under this Deed in accordance with the notice and Item 4 of Schedule 1 will be deemed to have been varied as at the date of the notice, in accordance with the terms of the notice. We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

Customer Checks

- 6.13 You must respond to any reasonable request from Us to advise whether a Service can be supplied to a relevant Customer within 7 days of the

notification by Us, in accordance with the applicable section of the Guidelines.

- 6.14 You must undertake any checks to ascertain whether a Service can be supplied to a relevant Customer in a professional manner and in accordance with any applicant standards.
- 6.15 You must, before supplying the Service, enter into Terms and Conditions with each Customer for each Service provided to that Customer and those Terms and Conditions:
- (a) without limiting subclause 6.9, must give Customers the option to contract with You for the Service for a period of not more than 18 months at any one time;
 - (b) are to contain Your agreement to provide the Service at the performance levels and price specified in this Deed;
 - (c) must not be varied without:
 - (i) Our prior written agreement; and
 - (ii) written agreement of all Customers receiving the relevant Service of the variation.
- 6.16 Notwithstanding paragraph 6.15(a), You must offer to provide, where technologically feasible, the Service at the performance levels and price specified in this Deed to the Customer for the Contract Period.
- 6.17 You must set out on Your website in a form approved by Us and write (by post or email) in a form approved by Us to each Customer at the commencement of supply of the Service to that Customer addressing the matters listed in section 4.3.3 of the Guidelines including but not limited to:
- (a) confirmation of the specific terms and conditions that You have included in the Terms and Conditions;
 - (b) an acknowledgement of the Australian Broadband Guarantee Program as an Australian Government initiative;
 - (c) an acknowledgement that You may make a claim for an Incentive Payment claim for the Connection and Supply of the Service and specify the maximum amount of the claim;
 - (d) relevant details of the Service including pricing, performance and functionality;
 - (d) for a Threshold Service and Entry Level Service, the requirement for the Service to achieve average data download and upload speeds of at

least 60% of the Service's specified peak or average speeds at least 75% of the time, as measured according to the Program data testing regime described in the Guidelines;

- (e) for Added Value Services the Program's for the Service to achieve the specific minimum or expected average data download and upload speeds as set out in Schedule 1, as measured according to the Program data testing regime described in the Guidelines;
- (f) the Data Speed testing requirements for the Service being provided to the Customer and the website address for the DCITA Online Data Speed tester, and identification of this as the definitive tool for Customers to use to measure the speed of their Service;
- (g) the availability of monthly updated reports of DCITA's testing of Your Service speeds performance and the website address where those reports can be obtained;
- (h) Your contact email or phone number for Customer complaints or queries;
- (i) a summary of the process for registering Customer complaints;
- (j) acknowledgement of the requirement for the Customer to experience Service availability 99% of the time;
- (k) the timeframes for Service connection and Service restoration;
- (l) where Your Terms and Conditions make provision for the application of an acceptable use policy, clear advice on the potential scope of that policy and how it might be applied to the Services (the acceptable usage policy must be approved by Us for consistency with the Guidelines and this Deed prior to entering into the Terms and Conditions with a Customer);
- (m) Your Exit Strategy, including Your strategy for withdrawal of the Service; and
- (n) the requirement for You to continue to offer the Customer the Service at or below the pricing for the Service in Item 3 of Schedule 1 for the Contract Period.

6.18 Before claiming an Incentive Payment in respect of the provision of a Service You must:

- (a) ensure that the Customer has duly completed and signed the Attestation Form indicating that they are eligible to receive the Service (in terms of Customer type and premises) and any other matters applicable to their circumstance;

- (b) ensure that the Customer acknowledges and accepts the obligations on the Customer under the Program, including consenting to You and Us using the Customer's Personal Information in accordance with section 2.5 and 4.3.3 of the Guidelines and the Privacy Act;
 - (c) confirm that You have commenced supplying the Service to the Customer; and
 - (c) ensure that You hold all relevant Records required to be maintained by You under this Deed in order to substantiate the claim.
- 6.19 When a Customer has been Connected and Supplied a Service, any claim for an Incentive Payment must be submitted by You via BCOMS in accordance with the timeframe set out in subclause 4.9.
- 6.20 If You become aware of an error regarding a claim, You must notify Us in writing immediately.
- 6.21 You will not be eligible for an Incentive Payment in respect of Premises where a Customer has had a service Connected and Supplied by another Program Provider and the Customer has elected to be provided with a service provided by You.
- 6.22 Where You have provided a Service to Premises where a Customer no longer has access to that Service due to circumstances beyond the Customer's control, You must, on or before lodging a claim in respect of that Service via BCOMS, notify Us in writing of the details of those circumstances.

Pricing

- 6.23 You must make the pricing for each Service in Item 3 of Schedule 1 available to all Eligible Customers within the Service Area for that Service.
- 6.24 You may offer special discounts on the pricing for each Service in Item 3 of Schedule 1 to particular groups of Eligible Customers (including all Eligible Customers) on a commercial basis, subject to compliance with all relevant laws.
- 6.25 You may change the Constituent Prices within the price of a Service provided it does not change the total price for the Service in Item 3 of Schedule 1. You must provide Us with 10 Working Days prior notification of any proposed change to Constituent Prices. The proposed changes to the Constituent Prices may be implemented (and Schedule 1 is deemed to be varied accordingly) unless We notify You to the contrary prior to the expiry of this period.

Data Speed

- 6.26 You agree to:
- (a) comply with the monitoring and enforcement of the Data Speed compliance and testing regime set out in the Guidelines;
 - (b) if requested by Your Customer, advise whether the Service complies with the expected average (or minimum if nominated) Data Speed;
 - (c) investigate and deal with any complaint by a Customer that You are not providing the Data Speed for the Service required under the Terms and Conditions; and
 - (d) if appropriate, advise the Customer how they may configure their computer to achieve the Data Speeds required under this Deed.
- 6.27 The Service must comply with the Data Speed requirements in the Guidelines and You must notify Us within 2 Working Days of any failure to achieve the Data Speed and undertake the necessary action to rectify the failure within a reasonable timeframe.
- 6.28 Subject to subclause 6.29 below, if, after supplying a Service to a Customer, You are unable to achieve the Data Speed for the Service under this Deed, You must:
- (a) notify Us immediately in writing; and
 - (b) repay to Us the Funding You received in relation to the supply of that Service to the Customer in accordance with subclauses 6.39 to 6.43.
- 6.29 Without limiting Our rights under this Deed or at law, We may agree with You that You may continue to provide the Service to the Customer provided that:
- (a) You notify Us immediately in writing of the fact that You are unable to achieve the Data Speed for the Service under this Deed;
 - (b) the Customer has been informed of the Customer's option to cancel the Service without penalty and receive a new service from another Program Provider (if such a service is available) at the Premises; and
 - (c) the Customer has agreed in writing to continue to receive the Service from You,
- in which case You are not required to repay the Funding You received in relation to the supply of that Service to the Customer, provided the claim was otherwise properly made under this Deed.

Other mandatory technical characteristics

- 6.30 You agree to comply with the mandatory requirements and technical characteristics described in Item 3 of Schedule 1 with respect to any Service provided by You.

Other Matters

- 6.31 You must notify Us in writing:
- (a) immediately if You become aware of any matter that affects or could affect Your ability to perform the Activity or comply with Your obligations under this Deed;
 - (b) immediately If You anticipate that You will be delayed in the enabling or deploying Your infrastructure in a particular Service Area which may affect Your ability to commence offering Services in that area, in accordance with clauses 6.2 and 6.3. We may at Our option:
 - (i) notify You in writing of a period of extension to carry out the Activity and vary this Deed (in particular the Service Commencement Date) accordingly;
 - (ii) notify You in writing of a reduction in the scope of the Activity (namely, the applicable Service Area) and vary this Deed accordingly; or
 - (iii) if the delay, in Our opinion materially impacts on Your ability to perform the Activity, We may terminate this Deed under clause 23 or take such other steps as are available under this Deed.
 - (c) immediately (and in any event, prior to the relevant change proposed) if You become aware of any changes proposed to Your:
 - (i) management;
 - (ii) entity structure;
 - (iii) ownership;
 - (iv) corporate standing;
 - (v) financial standing;
 - (vi) operational or technical capability; or
 - (vii) sustainability;that may affect Your ability to provide the Activity;
 - (d) immediately if You lodge a change in Your officeholders with the Australian Securities and Investment Commission ('ASIC') and You

- must attach a copy of the relevant ASIC form as proof of lodgement;
- (e) immediately in writing of any change in shareholding which either:
 - (i) effects a change in control; or
 - (ii) affects more than 20% of Your issued share capital in a single transaction;
 - (f) except for where You are a public company registered in Australia, immediately in writing of the grant by You of any fixed charge or fixed and floating charge in respect of any of Your assets which secures repayment of any amount greater than \$100,000;
 - (g) immediately in writing of any threatened or actual criminal or civil proceedings either against You or a Related Body Corporate, or initiated by You or a Related Body Corporate that may adversely affect Your ability to provide the Activity; and
 - (h) subject to subclause 6.32, of any failure by You to comply with this Deed or the Terms and Conditions in any way.
- 6.32 Notification of a breach of this Deed or the Terms and Conditions need not be made immediately to Us unless:
- (a) the breach is a breach of a material term of this Deed or the Terms and Conditions;
 - (b) the breach involves or resulted in an overpayment of Funding by Us to You;
 - (c) the breach is of a type of which We have, under the terms of this Deed, requested to be immediately notified; or
 - (d) following persistent breaches by You or complaints by Customers about You, We have requested that You notify all breaches to Us.
- 6.33 Subject to Our obligations in relation to Personal Information under the Privacy Act, information provided to Us in relation to Your Service coverage will be made available by Us to all Program Providers.
- 6.34 We may at any time undertake financial or other assessments to confirm Your ongoing viability to offer Services and or the suitability of Your registration status under the Program and You agree to comply with Our reasonable requests in relation to any such assessment.
- 6.35 If We undertake financial or other assessments in accordance with subclause 6.34 above, We will notify You in writing and We may, at Our discretion (not to be unreasonably exercised), withhold or suspend any payment in whole or in part until the assessment has been completed, or

reduce the scope of the Deed, as applicable.

- 6.36 Where, based on the results of the assessments undertaken under subclause 6.35, We form the opinion that Your registration under the Program is no longer appropriate We may, in Our discretion (not to be unreasonably exercised), terminate or reduce the scope of this Deed by written notice to You. We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this subclause or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.
- 6.37 Notwithstanding paragraphs 6.31(a) to 6.31(h) or Our rights under this Deed, You must take whatever action is necessary to comply with Your obligations under this Deed.
- 6.38 We are not responsible for the provision of additional money to meet any expenditure by You in connection with the Activity in excess of the Funds.

Repayment of Funds

- 6.39 If at any time during the Term of this Deed or after the expiry or earlier termination of the Deed:
- (a) it becomes apparent to Us than an amount of Funding paid to You exceeds the amount that was properly payable under this Deed;
 - (b) an amount of Funding paid to You representing GST exceeds the amount that was properly payable under the GST Act;
 - (c) We form the opinion based on reasonable grounds that any Funding paid to You has been claimed other than in accordance with this Deed;
or
 - (d) You do not supply a Service to a Customer for the whole of the Contract Period agreed with that Customer, unless due to Customer breach of their contract or any other exceptional circumstance,
- then:
- (i) the relevant amount must be refunded by You to Us within 20 Working Days of a written notice from Us to do so or otherwise dealt with as directed in writing by Us; or
 - (ii) We may withhold payment of Incentive Payments in respect of claims made by You until such time as We are satisfied that the Funding that would have otherwise been paid to You by Us in respect of these claims is equal in sum to the amount payable to Us.

- 6.40 If We notify You under subclause 6.39 that an amount is to be refunded to Us, and the amount is not refunded to Us within 20 Working Days of notification, Interest will accrue and be payable on the amount after the expiry of the 20 Working Days, until the amount is paid in full.
- 6.41 Any amount owed to Us under subclause 6.39, and any Interest owed under subclause 6.40, will without prejudice to any other rights available to Us, be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.
- 6.42 Where You are liable to pay Us any amount under this Deed, We may, in Our absolute discretion, elect to set off that amount against any Funding which subsequently becomes payable by Us to You under this Deed.
- 6.43 You agree to liaise with and provide information to Us as reasonably notified by Us and comply with all Our reasonable requests, directions, or monitoring requirements in relation to:
- (a) the performance of the Activity; or
 - (b) and any matter any other matters determined by Us to be relevant to the performance of Your obligations under this Deed.

Prohibition against use of funding as security

- 6.44 You must not use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of, any litigation:
- (a) the Funds; and
 - (b) this Deed or any of Our obligations under this Deed.

Agents

- 6.45 You are responsible for ensuring the suitability of an agent for any part of the Activity work proposed to be carried out on Your behalf and for ensuring that such work meets the requirements of this Deed.
- 6.46 Where You are using an agent to conduct any part of the Activity on Your behalf, You warrant that You have in place appropriate control mechanisms and procedures governing the conduct of Your agent.
- 6.47 You must immediately notify Us of any change to the agents or material change to the agency relationships as related to the conduct of the Activity, as detailed in Your application for registration under the Program.
- 6.48 You acknowledge that You will bear full responsibility for the acts of

Your authorised agents related to the Activity.

7 DETERMINATIONS OF ELIGIBILITY

- 7.1 An Incentive Payment will only be paid by Us to You in respect of an Eligible Customer who has been Connected and Supplied with a Service by You to Eligible Premises situated in Your Service Area(s).
- 7.2 If it is not clear from the Guidelines or otherwise whether:
- (a) a Customer is an Eligible Customer; or
 - (b) a Customer's Premises is an Eligible Premises;
 - (c) a Customer's Premises was able to access a broadband internet access service on a commercial basis from a non-Program provider or a Program Provider that was equivalent to a Metro-comparable Service in terms of price, performance and functionality; or
 - (d) a Customer's Premises will be in an area in which broadband services will be available through the network that is funded in part or whole under the network funded (in whole or part) under that component of the Australia Connected Package covered by OPEL Networks,

You will, prior to making any supply of a Service, make a written submission to Us seeking a determination on the relevant matter, and We will make a determination within a reasonable timeframe and that determination will be final.

8 LIMITATIONS ON PAYMENT OF FUNDING

- 8.1 The terms of this clause 8 apply notwithstanding any other provision of this Deed.
- 8.2 We are not obliged to pay You any Funding if there are no further funds available under the Funding Allocation.
- 8.3 We are not obliged to pay You any Funding in respect of a claim which relates to the Connection and Supply of a Service at a Premises situated in a Service Area any time after the Department has issued a notice to You under subclause 8.5.

Funding for the Program

- 8.4 We will notify You in writing when Our remaining funds available under the Funding Allocation reaches:
- (a) \$50 million;
 - (b) \$30 million;

- (c) \$20 million;
- (d) \$10 million; and
- (e) \$5 million;

respectively.

8.5 Upon receipt of a written notice under paragraph 8.4(c), You are not obliged to continue to offer to provide any of the Services in accordance with subclauses 6.2 and 6.3.

Particular Restrictions on Funding

8.6 Without limiting any other provision regarding entitlement to Funding under this Deed, You are not entitled to Funding if:

- (a) at the time of the Customer's application, the Customer's Premises had access to a broadband internet access service from a non-Program provider that was equivalent to a Metro-comparable Service in terms of price, performance and functionality; or
- (b) You have withdrawn access to the Metro-comparable Service from the Eligible Premises; or
- (c) the Premises had previously been supplied with a broadband internet service under HiBIS, Broadband Connect program, or Metro Broadband Connect program, Australian Broadband Guarantee (transitional period) program or the Program; or
- (d) at the time of the customer's application for the Service, the Customer's Premises had access to a broadband internet access service as a result of infrastructure deployed through the network that is funded (in part or whole) under that component of the Australia Connected Package covered by OPEL Networks.

9 RECORDS

9.1 You must keep financial Records relating to the Activity so as to enable:

- (a) the preparation of financial statements in accordance with Australian Accounting Standards; and
- (b) the audit of those Records in accordance with Australian Auditing Standards.

9.2 You must keep full and accurate Records of the conduct of the Activity, in a particular form if specified by Us, including, without limitation, Records in relation to:

- (a) Services registered under the Program;

- (b) Your technical capability;
- (c) Your corporate standing and sustainability;
- (d) Your financial standing;
- (e) Your compliance with the requirements of a Service;
- (f) Your marketing activities in relation to the Activity;
- (g) service performance for the Activity;
- (h) all reasonable records which demonstrate to Our satisfaction that You have Connected and Supplied the relevant Service to the relevant Customer's Eligible Premises;
- (i) all reasonable records which evidence the eligibility of the Customer and premises in accordance with the Guidelines;
- (j) Customers provided with the Services and their attestations of eligibility (including the results of the Broadband Service Locator, as applicable);
- (k) evidence that You have Connected and Supplied the Service to the relevant Eligible Premises and the date this occurred;
- (l) Your Travel Costs Payment claims;
- (m) Funding claimed and received by You under the Program; and
- (n) Customer complaints.

9.3 You must keep full and accurate Records in writing in relation to each claim for an Incentive Payment, including but not limited to:

- (a) each Customer's application;
- (b) each Customer's duly completed and signed Attestation Form;
- (c) all records relating to Your responses to Our inquiries regarding Your ability to Connect and Supply a Service to a Customer;
- (d) all records relating to, and supporting, each Travel Cost Payment claim;
- (e) all records demonstrating the checks You have undertaken to determine the eligibility of the Premises to which the claims relates;
- (f) a signed copy of the contract between You and the Customer (in either a paper or electronic form), or evidence of the Customer's acceptance of the Terms and Conditions;

- (g) evidence that the Terms and Conditions were communicated in writing to the Customer prior to execution of the contract between You and the Customer; and
- (h) evidence that You have Connected and Supplied the Service to the Customer at the Eligible Premises.

9.4 Records maintained under subclauses 9.1, 9.2 and 9.3 must be retained by You for a period of no less than 3 years after the expiration or earlier termination of this Deed.

10 REPORTING

- 10.1 You must provide to Us within 25 days of the end of the Half-yearly Period or upon earlier termination of this Deed, a detailed Report in a form satisfactory to Us in relation to all matters referred to in section 5.2 (table 1) of the Guidelines, and if any, in Item 6 of Schedule 1.
- 10.2 You must provide to Us within:
 - (a) 25 calendar days of the end of the Term of this Deed or upon earlier termination of this Deed , a detailed Report in a form satisfactory to Us on all matters referred to in section 5.2 (table 2) of the Guidelines except for items 2, 8, 9, 10 and 11, and as otherwise reasonably required by Us; and
 - (b) 92 calendar days of the end of the Term of this Deed or upon earlier termination of this Deed, a detailed Report in a form satisfactory to Us on items 2, 8, 9, 10 and 11 of table 2 of Section 5.2 of the Guidelines, and as otherwise reasonably required by Us.
- 10.3 The Report referred to in subclause 10.2(b) must include an audited detailed statement of receipts in respect of the Funding, which must include a definitive statement as to whether the financial accounts are complete and accurate.
- 10.4 Without limiting Our rights under this Deed, any deficiencies in fulfilling Your obligations shown in a Report provided by You under subclauses 10.1, or in review of Your performance under clause 11 must be promptly rectified by You.
- 10.5 Subject to Our obligations in respect of Confidential Information under this Deed, We may use Reports provided by You under this clause for any Commonwealth purpose, including but not limited to the following:
 - (a) to review, assess and report publicly on the performance of Services and Program Providers, including in relation to compliance with the terms of this Deed;

- (b) to prepare and publish an evaluation of the Program;
 - (c) to make Your service availability information available on the Broadband Service Locator;
 - (d) to publish Your average Data Speed test results for each of Your Services on BCOMS;
 - (e) to assist in the development of other relevant Commonwealth policies and programs; and
 - (f) any assessment by Us of Your suitability to participate in a similar program.
- 10.6 The audit referred to in subclause 10.2 must be carried out by an Approved Auditor and must comply with the Australian Auditing Standards.
- 10.7 Within 10 Working Days of Our written request, You must provide to Us Your estimate of monthly claims for the immediate month in advance in a format approved by Us.
- 10.8 You agree to:
- (a) provide all reasonable assistance required by Us;
 - (b) respond to all Our reasonable requests; and
 - (c) provide any information We reasonably require,
in relation to conducting a review or evaluation of the Program.
- 10.9 You acknowledge that the Funding Allocation for the Funding Period is limited.

11 AUDIT REQUIREMENTS

- 11.1 Subject to clause 11.12, an audit of part or all of Your activities in connection with this Deed may be undertaken at any time by Us. These audits may include investigation of:
- (a) the validity of claims for Funding lodged by You (whether or not Incentive Payments have been paid in respect of those claims);
 - (b) Your practices and procedures as they relate to this Deed, including security procedures;
 - (c) the manner in which You perform Your obligations under this Deed;
 - (d) the accuracy of Your Reports, invoices and financial statements in

relation to the provision of Services and the calculation and payment of Funds under this Deed;

- (e) Your compliance with Your confidentiality, privacy and security obligations under this Deed;
 - (f) the requirements, if any, described in Schedule 1; and
 - (g) any other matters determined by Us to be relevant to the performance of Your obligations under this Deed.
- 11.2 You must participate co-operatively in audits under this Deed. Audits may be conducted at the frequency, and in relation to the matters, specified by Us, including on an ad hoc basis, for the purpose of ensuring that this Deed is being properly performed and administered and for ensuring accountability for payment of Funding.
- 11.3 We may appoint an independent Approved Auditor to assist in the audits.
- 11.4 Where an audit conducted under this clause finds that there has been any defect, error or omission in the way You have:
- (a) complied with Your obligations under this Funding Deed; or
 - (b) claimed for an Incentive Payment,
- We will notify You of those findings and provide You with an opportunity to respond to the findings of the audit report.
- 11.5 You must provide Your response within 10 Working Days after receipt of notice given by Us under subclause 11.4, unless a longer timeframe is specified by Us.
- 11.6 Without limiting any of Our rights at law or under this Deed, We may consider any response given by You to the findings of the audit report and if, in Our opinion, there remains any error, defect or omission in relation to:
- (a) Your compliance with Your obligations under this Funding Deed; or
 - (b) Your claims for an Incentive Payment,
- You must, within 30 calendar days after notice is given by Us to You to do so, take corrective action to remedy the defect, error or omission where the error, defect or omission is capable of remedy.
- 11.7 Nothing in subclause 11.6 will limit in any way any rights We may have or may wish to exercise under this Deed or at law.
- 11.8 Without limiting any of Our other rights or remedies under this Deed,

where an audit under this clause reveals, in Our opinion, significant and/or systemic non-compliance by You with Your obligations under this Deed, We may immediately terminate this Deed in accordance with subparagraph 23.1(a).

- 11.9 If an audit under this clause 11 reveals that You do not have the Records required to be kept under clause 9 to support a claim for an Incentive Payment, that claim will be deemed to have been improperly made and any Funds received by You for that claim will be repayable with Interest in accordance with subclauses 6.39 to 6.43.
- 11.10 You must give Us, the Auditor-General, the Privacy Commissioner and persons authorised by Us including any Independent Auditor (referred to in this clause 11 collectively as ‘those permitted’) access to Premises at which and equipment on which Records associated with this Deed are stored at all reasonable times and allow those permitted to inspect and copy Records in Your possession or control, to verify Your compliance with this Deed or review Your performance under this Deed. You must also give those permitted reasonable access to Your employees for the same purpose.
- 11.11 You must provide all reasonable assistance requested by those permitted when they exercise their rights under subclause 11.10.
- 11.12 The rights referred to in subclauses 11.1 and 11.10 are subject to:
- (a) the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
 - (b) Your reasonable requirements as to security, confidentiality and health and safety procedures.
- 11.13 The requirement for access as specified in subclause 11.10 does not in any way reduce Your responsibility to perform Your obligations in accordance with this Deed.
- 11.14 This clause 11 applies for the Term of this Deed and for a period of three years from the date of expiration or earlier termination of this Deed.

12 EXIT STRATEGY

- 12.1 If You propose to terminate Your registration as a Program Provider during the Term of this Deed, You must:
- (a) comply with Your obligations under subclause 24.1 in relation to the termination of the Deed;
 - (b) give Your Customers at least 30 days written notice of Your intention to

cease being registered under the Program; and

- (c) comply with the relevant provisions under the Exit Strategy detailed in Schedule 2.
- 12.2 In the event that the Department terminates this Deed, You are obliged to comply with the relevant provisions under the Exit Strategy at Schedule 2.
- 12.3 If You propose to withdraw a Service under the Program, but continue Your registration as a Program Provider:
- (a) You must provide Us with at least 30 calendar days written notice;
 - (b) this Deed must, with Our agreement, be varied in accordance with clause 29; and
 - (c) You must comply with the relevant provisions under the Exit Strategy detailed in Schedule 2.

13 TAXES, DUTIES AND GOVERNMENT CHARGES

- 13.1 Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Deed must be borne by You.
- 13.2 The Funds payable by Us under this Deed include amounts on account of any GST payable by You in respect of any Taxable Supplies You make to Us.
- 13.3 The provisions of this clause in respect of GST apply if You are registered or are required to be registered for GST.
- 13.4 In consideration of Your undertaking not to issue Tax Invoices under subclause 13.6, We will issue RCTI in respect of the Taxable Supplies.
- 13.5 We will issue the RCTI within 28 days of determining the value of the Taxable Supplies to which the RCTI relates. Adjustment Notes relating to Taxable Supplies, for which a RCTI has been issued, will be issued within 28 days of the adjustment date.
- 13.6 In consideration of Our undertaking to issue RCTI pursuant to subclause 13.5, You will not issue any Tax Invoices in respect of the Taxable Supplies, unless:
- (a) We cease to comply with the requirements of *Goods and Services Tax Ruling 2000/10*; or
 - (b) We, for any reason, notify You that We will not issue an RCTI in respect of the Taxable Supplies.

- 13.7 If a payment to satisfy a claim or a right to claim under or in connection with this Deed (for example, a claim for damages for breach of the Deed) gives rise to a liability to pay GST, the payer must also pay the amount of that GST (except any GST for which the payee is entitled to an input tax credit).
- 13.8 If a Party has a claim under or in connection with this Deed for a cost on which that Party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that Party is entitled to an input tax credit).
- 13.9 If any Funding paid to You under this Deed is found not to be a Taxable Supply by the ATO, then We will issue an Adjustment Note, and notice for repayment under subclause 6.39 for the relevant amount of GST incorrectly paid.
- 13.10 Any refund under subclauses 6.39, 11.9 or 22.3 must be inclusive of GST and must be accompanied by any Adjustment Note required under the GST Act relating to Taxable Supplies.

14 COMMONWEALTH MATERIAL AND REPRESENTATIONS

- 14.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this Deed and in accordance with any conditions or restrictions specified by Us.
- 14.2 Upon the expiration of the Funding Period or earlier termination of this Deed, You may retain all Commonwealth Material remaining in Your possession, unless otherwise specified by Us.
- 14.3 You must handle, store and otherwise keep safely all Commonwealth Material You have been given for the purposes of this Deed.
- 14.4 Upon the earlier termination or expiry of this Deed, You must not undertake any conduct (either directly or indirectly) that represents to the public that You or any other associated entity is registered under the Program or in any way associated with the Program.

15 INTELLECTUAL PROPERTY

- 15.1 Subject to this clause 15, as between Us and You (but without affecting the position between You and a third party), Intellectual Property Rights in Activity Material vests immediately in You.
- 15.2 You grant to Us a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in any Report provided by You to

Us for any Commonwealth purpose, subject to the following restrictions:

- (a) We must comply with the confidentiality provisions of this Deed in respect of any Confidential Information contained in such Reports; and
- (b) We must not use, adapt or exploit the Reports in such a way as to make them incorrect or misleading.

15.3 This clause 15 does not affect the ownership of any Intellectual Property Rights in any Existing Material.

15.4 You:

- (a) must, if requested by Us to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 15, and
- (b) warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material and the Existing Material in accordance with this clause 15.

15.5 This clause does not apply to any Commonwealth Material incorporated in the Reports.

16 DISCLOSURE OF INFORMATION

16.1 Subject to subclause 16.5, You or We must not, without the prior written consent of the other, use or disclose any Confidential Information of the other.

16.2 In giving written consent to use or disclose its Confidential Information, a Party may impose such conditions as it thinks fit, and the other Party agrees to comply with these conditions.

16.3 We may at any time require You to arrange for:

- (a) Your Advisers; or
- (b) any person with a Third Party Interest,

to give a written undertaking in the form of a deed relating to the use and non-disclosure of Our Confidential Information.

16.4 If You receive a request under subclause 16.3, You must promptly use all reasonable endeavours to arrange for all such undertakings to be given, provided that if no undertaking is given You must not disclose any Confidential Information to that relevant party.

16.5 The obligations on You and Us under this clause 16 will not be taken to

have been breached to the extent that Confidential Information:

- (a) is disclosed by You or Us to Our Advisers or employees solely in order to comply with obligations, or to exercise rights, under, or seek advice in relation to, this Deed;
- (b) is disclosed to Your or Our internal management personnel, solely to enable effective management or auditing of Deed-related activities;
- (c) is disclosed by Us to Our Minister;
- (d) is disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is required to be disclosed to comply with any law, court order or binding directive of any regulatory authority or comply with the listing rules of any stock exchange on which Your securities are listed or quoted;
- (f) is disclosed by Us and is information in a material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property Rights in relation to that material form, has vested in, or is assigned to, Us under this Deed or otherwise, and that disclosure is permitted by that licence or otherwise; or
- (g) is in the public domain otherwise than due to a breach of this clause 16.

16.6 Where You or We disclose Confidential Information to another person:

- (a) pursuant to paragraphs 16.5(a) or (b), the disclosing Party must:
 - (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential;
- (b) pursuant to paragraphs 16.5 (c), (d) or (e) – the disclosing Party must notify the receiving party that the information is Confidential Information; and
- (c) You or We must use all reasonable endeavours to ensure any person receiving the Confidential Information of the other Party does not disclose the information except in the circumstances permitted in subclause 16.5.

16.7 You and We may agree in writing after Date of this Deed that certain additional information is to constitute Confidential Information for the purposes of this Deed.

- 16.8 Where You and We agree in writing after the Date of this Deed that certain additional information is to constitute Confidential Information for the purposes of this Deed, the documentation in relation to such an agreement is incorporated into, and becomes part of this Deed (and Schedule 1 is deemed to be varied accordingly), on the date You and We sign that documentation.
- 16.9 The obligations under this clause 16 continue, notwithstanding the expiry or earlier termination of this Deed:
- (a) in relation to an item of information described in Item 6 of Schedule 1 – for the period set out in Schedule 1 in respect of that item; and
 - (b) in relation to any information which You and We agree in writing after the Date of this Deed is to constitute Confidential Information for the purposes of this Deed – for the period agreed by You and Us in writing in respect of that information.
- 16.10 Nothing in this clause 16 derogates from any obligation which You may have either under the Privacy Act, or under this Deed, in relation to the protection of Personal Information.

17 PROTECTION OF PERSONAL INFORMATION

- 17.1 This clause applies only where You deal with Personal Information when, and for the purpose of, conducting the Activity under this Deed.
- 17.2 You agree to be treated as a ‘contracted service provider’ within the meaning of section 6 of the Privacy Act, and agree in respect to the conduct of the Activity under this Deed:
- (a) to use or disclose Personal Information obtained during the course of conducting the Activity under this Deed only for the purposes of this Deed or as otherwise agreed with the person who is the subject of the Personal Information;
 - (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
 - (c) to carry out and discharge the obligations contained in the IPPs as if You were an agency under that Act;
 - (d) to notify individuals whose Personal Information You hold, that complaints about Your acts or practices may be investigated by the Privacy Commissioner who has power to award compensation against You in appropriate circumstances;

- (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing), a National Privacy Principle (NPP) (particularly NPPs 7 to 10) or an Approved Privacy Code (APC), where that section, NPP or APC is applicable to You, unless:
 - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Deed; or
 - (ii) in the case of an NPP or an APC - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Deed, and the activity or practice which is authorised by this Deed is inconsistent with the NPP or APC;
 - (f) to disclose in writing to any person who asks the content of the provisions of this Deed (if any) that are inconsistent with an NPP or an APC binding a Party to this Deed;
 - (g) to immediately notify Us if You become aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 17, whether by You or any subcontractor;
 - (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are not inconsistent with the requirements of this clause 17, and
 - (i) to ensure that any of Your employees who are required to deal with Personal Information for the purposes of this Deed are made aware of Your obligations set out in this clause 17.
- 17.3 You agree to ensure that any subcontract entered into for the purpose of fulfilling Your obligations under this Deed contains provisions to ensure that the subcontractor has the same awareness and obligations as You have under this clause, including the requirement in paragraph 17.2(g) in relation to subcontracts.
- 17.4 You agree to indemnify Us in respect of any loss, liability or expense suffered or incurred by Us which arises directly or indirectly from a breach of any of Your obligations under this clause 17, or a subcontractor under the subcontract provisions referred to in subclause 17.4.
- 17.5 In this clause 17, the terms ‘agency’, ‘Approved Privacy Code’ (APC), ‘Information Privacy Principles’ (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meanings as they have in section 6 of the Privacy

Act, and 'subcontract' and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.

18 INDEMNITY

- 18.1 You indemnify (and keep indemnified) Us against any:
- (a) loss or liability incurred by Us;
 - (b) loss of or damage to Our property; or
 - (c) loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by Us, arising from:
 - (d) any claim, suit, demand, action or proceeding against Us in connection with this Deed to the extent that the liability, loss, damage or expense was caused or contributed to by Your fault;
 - (e) the use by Us of the Reports, including any claims by third parties about the ownership or right to use Intellectual Property Rights in Reports, but only to the extent that such Reports have not been altered by anyone other than You; or
 - (f) the use by Us of a Customer's Personal Information in accordance with this Deed.
- 18.2 The indemnity in paragraph 18.1(e) only applies where:
- (a) We give written notice to You of any claim or threatened or potential claim by a third party as soon as possible;
 - (b) We permit You, at Your expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow; and
 - (c) We provide You with all reasonable assistance at Your expense.
- 18.3 Your liability to indemnify Us under this clause 18 will be reduced proportionally to the extent that any fault on Our part contributed to the relevant loss, damage, expense or liability. In addition, We will take all reasonable steps to mitigate all losses, liabilities and expenses in respect of which We may claim the benefit of the indemnity under subclause 18.
- 18.4 Our right to be indemnified under this clause 18 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant liability, damage, loss or expense.

18.5 In this clause 18, 'fault' means any negligent or unlawful act or omission or wilful misconduct.

19 INSURANCE

19.1 You must, for as long as any obligations remain in connection with this Deed, have insurance as specified in Item 7 of Schedule 1.

19.2 All insurance under this clause 19 is to be taken out with an insurer recognised by the Australian Prudential Regulation Authority or regulated by a State/Territory Auditor-General or as otherwise agreed with Us.

19.3 Whenever requested, You must provide Us, within 10 Working Days of the request, with evidence satisfactory to Us that You have complied with Your obligation under this Deed to insure.

20 CONFLICT OF INTEREST

20.1 You must not, and must ensure that any of Your employees, agents or subcontractors do not, engage in any activity or obtain any interest during the Term of this Deed which constitutes a Conflict.

20.2 If, during the Term of this Deed, a Conflict arises, You must:

- (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
- (b) make full disclosure to Us of all relevant information relating to the Conflict; and
- (c) take such steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.

20.3 If You fail to notify Us under this clause 20, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this Deed in accordance with clause 23.

21 DELAY

21.1 You must take all reasonable steps to minimise delay in completion of the Activity.

21.2 If You become aware that You will be materially delayed in progressing or carrying out the Activity in accordance with this Deed, You must promptly notify Us in writing of the cause and nature of the delay. You are to detail in the notice the steps You will take to contain the delay.

21.3 On receipt of a notice of delay, We may at Our option:

- (a) notify You in writing of a period of extension to carry out the Activity

and vary this Deed accordingly;

- (b) notify You in writing of a reduction in the scope of the Activity and any adjustment to the Funds for You to complete the reduced Activity and vary this Deed accordingly; or
- (c) terminate this Deed under clause 23 or take such other steps as are available under this Deed.

21.4 If You become aware that You will be materially delayed in progressing or completing the Activity in accordance with this Deed and do not notify Us in accordance with subclause 21.3, We may, at Our sole discretion, terminate this Deed under clause 23 or take such other steps as are available under this Deed or at law.

22 TERMINATION WITH COSTS

22.1 We may, at any time by written notice to You, terminate this Deed in whole or reduce the scope of this Deed without prejudice to the rights, liabilities or obligations of either Party accruing prior to the date of termination. If this Deed is terminated or reduced in scope under this clause, We will only be liable for:

- (a) subject to subclause 22.3, payments under the payment provisions of this Deed; and
- (b) subject to subclauses 22.4 to 22.7 (inclusive) and subclauses 6.12 and 6.36, any reasonable costs incurred by You and directly attributable to the termination of this Deed or reduction in scope of the Deed. For the sake of clarity and avoidance of doubt, we will not be liable to pay compensation for any costs or loss of prospective profits or loss of any benefits that would have been conferred on You in respect of the termination of this Deed or reduction of Service Area(s) which occurs in accordance with subclause 6.12 and 6.36.

22.2 Upon receipt of a notice of termination or reduction in scope You must:

- (a) cease or reduce the performance of Your obligations under this Deed in accordance with the notice;
- (b) take all reasonable steps to mitigate all losses, costs and expenses arising from the termination or reduction in scope contained in the notice;
- (c) if the termination or reduction in scope results in You being required to repay any Funds to Us and We so direct You to repay any Funds, hold any such Funds on trust for Us for use only in accordance with Our written directions, and cease all other dealings with the Funds; and

- (d) comply with any written direction from Us requiring the publication of a statement in relation to the reduction in scope or termination of this Deed.
- 22.3 Where We terminate this Deed under subclause 22.1, We will not be obliged to pay to You any amount of the Funds except to the extent that those monies relate to the supply of a Service to a Customer before the date notice of termination given under subclause 22.1 is deemed to be received in accordance with subclause 37.3.
- 22.4 If there is a reduction in scope of the obligations under this Deed, Our liability to pay any part of the Funding will be reduced to the amount We specify in the notice under clause 22.1.
- 22.5 Subject to subclause 22.6, Our liability to pay any compensation under or in relation to this clause 22 is subject to:
- (a) Your strict compliance with this clause 22; and
 - (b) Your substantiation of any amount claimed under paragraph 22.1(b).
- 22.6 We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 22 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

23 TERMINATION FOR DEFAULT

- 23.1 Without limiting Our rights at law or under this Deed to take action in respect of any breach of this Deed, if You fail to fulfil, or are in breach of any of Your obligations under this Deed, then We - if We reasonably consider the failure is:
- (a) not capable of remedy – may, by notice, terminate this Deed immediately; or
 - (b) capable of remedy – may, by notice require that the failure be remedied within 10 Working Days and, if not remedied within that time, may terminate this Deed immediately by giving a second notice.
- 23.2 Without limiting Our rights at law to take action in respect of any breach of this Deed, if:
- (a) You are unable to pay all Your debts as and when they become due and payable or You fail to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);

- (b) proceedings are initiated with a view to obtaining an order for Your winding up or any shareholder, member or director convenes a meeting for the purpose of considering or passing any resolution for Your winding up;
- (c) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in Incorporated Associations legislation of the States and Territories or an order has been made for the purpose of placing You under external administration;
- (d) being an individual or an individual in a partnership, You become bankrupt or enter into a scheme of arrangement with creditors;
- (e) in relation to this Deed, You breach any law of the Commonwealth, or of a State or Territory;
- (f) You cease to carry on Business as an Internet service provider;
- (g) We are satisfied based on reasonable evidence that any statement made in Your claim for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to pay the Funding; or
- (h) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity,

then, in the case of any one or more of these events, You must notify Us as soon as possible and, whether or not You have so notified Us; We may immediately terminate this Deed by giving written notice to You of the termination.

23.3 If:

- (a) We receive a complaint from a Customer that You are in breach of any of Your material obligations under the Terms and Conditions with that Customer;
- (b) We request in writing that You respond to the complaint; and
- (c) either:
 - (i) You do not respond to Our request within 10 Working Days of receiving a notice from Us to do so; or
 - (ii) We do not consider Your response to be a satisfactory answer to the complaint,

then We may immediately terminate this Deed by giving written notice to You of the termination.

- 23.4 If We are satisfied, based on reasonable evidence, that any statement made in Your application for registration under the Program is incorrect, false or misleading in a material way which would have affected the original decision to approve Your registration under the Program, We may immediately terminate this Deed by giving written notice to You of the termination.
- 23.5 Where We terminate this Deed under subclauses 23.1, 23.2, 23.3 or 23.4, We will not be obliged to pay to You any outstanding amount of the Funds except to the extent that those monies relate to the supply of a Service to a Customer before the date notice of termination given under subclauses 23.1, 23.2, 23.3 or 23.4, is deemed to be received in accordance with subclause 37.3.
- 23.6 If Our termination of this Deed under subclause 23.1 results in You being required to repay any Funds to Us and We so direct You to repay any Funds, You must hold any such Funds on trust for Us for use only in accordance with Our written directions, and cease all other dealings with the Funds
- 23.7 Where We terminate this Deed under subclause 23.1 for Your failure to comply with subclause 6.14 or 6.15 , You must refund to Us all Funding paid to You under this Deed in respect of the particular Services provided to Customers which are the subject of the breach within 20 Working Days of a written notice from Us.
- 23.8 If We notify You under subclause 23.7 that an amount is to be refunded to Us, and the amount is not refunded to Us within 20 Working Days of notification, Interest will accrue and be payable on the amount after the expiry of the 20 Working Days, until the amount is paid in full.
- 23.9 Any amount owed to Us under subclause 23.7, and any Interest owed under subclause 23.8, will without prejudice to any other rights available to Us, be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.
- 23.10 Our rights of termination specified in this clause 23 does not limit or exclude any of Our other rights under this Deed including specific termination rights.

24 YOUR RIGHT TO TERMINATE

- 24.1 You may terminate this Deed by giving 20 Working Days written notice to Us of the termination. Upon termination of this Deed, We will not be obliged to pay to You any further Funding except where the right to payment arose prior to the date of termination.
- 24.2 Your registration as a Program Provider will be taken to have been

withdrawn from the date of termination of this Deed.

25 SUBCONTRACTING

- 25.1 You are fully responsible for the performance of Your obligations under this Deed, even though You may have subcontracted any of them.
- 25.2 You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Deed.
- 25.3 You must not enter into a subcontract under this Deed with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

26 PROMOTION, ACKNOWLEDGMENT AND PUBLICITY

- 26.1 You must, in all publications, promotional materials, marketing and advertising materials, public announcements and activities by You or on Your behalf in relation to the Activity, or any products, processes or inventions developed as a result of it, acknowledge the financial and other support You have received from Us, in the manner, if not set out in section 4.3 of the Guidelines, then to be approved by Us prior to its use.
- 26.2 You must submit any publications, promotional materials, marketing and advertising materials, public announcements and activities by You or on Your behalf in relation to the Activity to Us for approval at least 10 Working Days prior to the proposed use.
- 26.3 Without limiting subclauses 26.1 and 26.2, You must in all:
 - (a) publicity brochures and other printed material for a Service and the Activity;
 - (b) websites relating to a Service and the Activity;
 - (c) events involving the promotion of a Service and the Activity;
 - (d) speeches relating to a Service and the Activity; and
 - (e) billing related to a Service for the Contract Period,

by You and on Your behalf acknowledge the financial and other support You have received from Us, in the manner, if not set out in section 4.3 of the Guidelines, then to be approved by Us prior to its use.
- 26.4 You must:
 - (a) invite Our personnel to any publicity events that You undertake in

relation to the Activity;

- (b) support any Australian Government publicity associated with the Program as reasonably requested by Us; and
- (c) obtain Our written approval of all publications, promotional materials, marketing and advertising materials, public announcements and activities by You or on Your behalf in relation to the Activity prior to its dissemination.

26.5 We reserve the right to publicise and report on the awarding of Funding to You. We may do this by including in media releases general announcements about the Funding and in annual reports Your name, the amount of the Funds given to You and the title and a brief description of the Activity. However, any information relating to You or the Activity used in the publicity must be approved by You in advance. Such approval must not to be unreasonably withheld or delayed by You.

26.6 If notified by Us in writing You must cease all or any part of the acknowledgement pursuant to clause 26 in accordance with the notification.

26.7 This clause 26 applies until the end of the Program.

27 COMPLIANCE WITH LAWS AND OUR POLICIES

27.1 You must, in carrying out Your obligations under this Deed, comply with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or Local Authority, including those listed in Item 8 of Schedule 1. You should note that under section 137.1 of the *Criminal Code Act 1995* (Cth) giving false or misleading information is a serious offence.

27.2 You must, in carrying out Your obligations under this Deed, comply with any of Our policies copies of which have been provided by Us to You in writing, including those listed in Item 8 of Schedule 1.

27.3 You must in carrying out Your obligations under this Deed:

- (a) where required under the *Telecommunications Act 1997* (Cth), hold a current Carrier Licence or have in force a Nominated Carrier Declaration, and notify Us within 5 Working Days if You cease to hold a current Carrier Licence or the Nominated Carrier Declaration ceases to be in force at any time during the Term of this Deed; and
- (b) in accordance with the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth), be a current member of the Telecommunications Industry Ombudsman scheme and notify Us within 5 Working Days if You cease to be a current member of that

scheme at any time during the Term of this Deed.

28 NEGATION OF LEGAL RELATIONSHIP OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 28.1 You, Your employees, partners and agents will not, by virtue of this Deed, be or for any purpose be deemed to be Our legal employees, partners or agents.
- 28.2 You must not, and must ensure that Your employees, partners and agents do not, represent Yourself or themselves as being Our employees, partners or agents.

29 ENTIRE AGREEMENT, VARIATION AND SEVERANCE

- 29.1 This Deed records the entire agreement between You and Us in relation to its subject matter.
- 29.2 Except for action We are expressly authorised to take elsewhere in this Deed, no variation of this Deed is binding unless it is agreed in writing and signed by You and Us in the form of a deed.
- 29.3 If a court or tribunal says any provision of this Deed has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.

30 WAIVER

- 30.1 If either You or We do not exercise (or delay in exercising) any of Your or Our rights, that failure or delay does not operate as a waiver of those rights.
- 30.2 A single or partial exercise by You or Us of any of Your or Our rights does not prevent the further exercise of any right.
- 30.3 Waiver of any provision of, or right under, this Deed:
 - (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
 - (b) is effective only to the extent set out in the written waiver.
- 30.4 In this clause 30, 'rights' means rights or remedies provided by this Deed or at law or in equity.

31 ASSIGNMENT AND NOVATION

- 31.1 You must not assign Your rights under this Deed without prior written approval from Us.
- 31.2 You agree not to enter into negotiations with any other person for the

purposes of entering into an arrangement that will require novation of this Deed without first consulting Us.

- 31.3 You can only novate Your rights and obligations under this Deed:
- (a) to another Program Provider who has registered with Us under the Program, pursuant to section 3 of the Guidelines; and
 - (b) having first obtained Our written consent to the proposed novation.

32 CHANGE IN CONSTITUTION

- 32.1 You must provide a copy of Your Constitution to Us upon notification by Us.
- 32.3 You must inform Us by way of notice whenever there is a change in Your Constitution, structure, management or operations which could reasonably be expected to affect Your eligibility for Funding or have an adverse effect on Your ability to comply with Your obligations under this Deed. Upon receipt of such a notice, We may terminate this Deed in accordance with clause 23.
- 32.4 In this clause ‘Constitution’ means (depending on the context):
- (a) a company’s constitution, which (where relevant) includes rules and any amendments that are part of the company’s constitution; or
 - (b) in relation to any other kind of body:
 - (i) the body’s charter, partnership agreement, rules or memorandum; or
 - (ii) any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members.

33 OTHER FUNDING PRECONDITION

- 33.1 In addition to any other Funding preconditions specified in this Deed, You agree that it is a precondition of entitlement to the Funding that You must:
- (a) have an ABN and be registered for GST;
 - (b) immediately notify Us if You cease to be registered with an ABN
 - (c) immediately notify Us if You cease to be registered the GST;
 - (d) correctly quote the ABN on all documentation to Us;

- (e) supply proof of GST-registration status, if requested by Us; and
- (f) immediately notify Us of changes to Your GST status.

34 DISPUTE RESOLUTION

34.1 Subject to subclause 34.3, both You and We agree not to commence any legal proceedings in respect of any dispute arising under this Deed, which cannot be resolved by informal discussion, until the procedure provided by this clause has been utilised.

34.2 Both You and We agree that any dispute arising during the course of this Deed is dealt with as follows:

- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
- (b) the Parties will try to resolve the dispute through direct negotiation by persons to whom they have given authority to resolve the dispute;
- (c) the Parties have 15 Working Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- (d) if:
 - (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Working Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Working Days,

then, either You or We may commence legal proceedings.

34.3 This clause 34 does not apply to the following circumstances:

- (a) either You or We commence legal proceedings for urgent interlocutory relief;
- (b) action by Us under or purportedly under clauses 22 or 23,
- (c) where an investigation by an authority of the Commonwealth, a State or Territory of a breach or suspected breach of the law by You is being undertaken; or
- (d) where a referral for investigation by an authority of the Commonwealth, a State or Territory of a breach or suspected breach

of the law by You has been made by Us.

- 34.34 Despite the existence of a dispute, both You and We must (unless requested in writing by the other Party not to do so) continue to perform obligations under this Deed.

35 APPLICABLE LAW AND JURISDICTION

- 35.1 The laws of the Australian Capital Territory apply to this Deed.
- 35.2 Both You and We agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of any dispute under this Deed.

36 LIAISON AND MONITORING

- 36.1 You must:
- (a) liaise with and provide information to Us as reasonably required by Us; and
 - (b) comply with all Our reasonable requests, directions or monitoring requirements,
- in relation to Your obligations under this Deed.
- 36.2 You may nominate, from time to time, a person who has authority to receive and sign notices and written communications for You under this Deed and accept any request or direction in relation to the Activity.

37 NOTICES

- 37.1 A Party giving notice or notifying under this Deed must do so in writing or by electronic mail or facsimile transmission:
- (a) directed to the recipient's address, as varied by any notice; and
 - (b) hand delivered or sent by pre-paid post or transmitted electronically to that address.
- 37.2 The Parties' address details are as specified in Item 9 of Schedule 1. However, each of the Parties may nominate, from time to time, a person other than the person specified in Item 9 of Schedule 1 who has authority to receive and sign notices and written communications for each of them under this Deed and accept any request or direction in relation to the Activity.
- 37.3 A notice given in accordance with subclause 37.1 is taken to be received:
- (a) if hand delivered, on delivery;

- (b) if sent by pre-paid post, 5 Working Days after the date of posting unless it has been received earlier;
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if a notice was being given under a law of the Commonwealth, which is currently when the Electronic Communication enters the addressee's Information System.

38 SURVIVAL OF CLAUSES

- 38.1 Unless the contrary intention appears, the expiry or earlier termination of this Deed will not affect the continued operation of clause 4 [Incentive Payments - General]; clause 5 [Incentive Payment and Travel Cost Payment]; clause 6 [Your Obligations]; clause 7 [Determination of Eligibility]; clause 8 [Limitations on Payment of Funding]; clause 9 [Records]; subclause 10.1 [End of Term Report]; subclause 10.2 [Audited Financial Statements], clause 11 [Audit Requirements]; clause 12 [Exit Strategy]; clause 14 [Commonwealth Material and Representations]; clause 15 [Intellectual Property]; clause 17 [Protection of Personal Information]; clause 18 [Indemnity]; clause 19 [Insurance]; and clause 34 [Dispute Resolution] and any other provision which expressly or by implication from its nature is intended to continue.

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EXECUTED AS A DEED ON THE DAY OF 2007

[Select the appropriate signing clauses below as indicated and delete the others]

SIGNED, SEALED AND DELIVERED for and
on behalf of the **COMMONWEALTH OF
AUSTRALIA** represented by and acting through
the Department of Communications, Information
Technology and the Arts ABN 51 491 646 726 by:

.....

print full name and position

.....

sign here

in the presence of:

.....

print name and occupation of witness

.....

witness sign here

Name and occupation of Witness

.....

please print

[A company no longer needs to affix its Common Seal, but may execute the deed through two of its directors or a director and company secretary signing the deed on behalf of the company.]

SELECT APPROPRIATE CLAUSE

[EXECUTION CLAUSE - Company executing with seal]

The Common Seal of
[Insert NAME OF CORPORATION and
ABN/ACN], was affixed to this document by
authority of its Directors.

Affix common seal

Director

.....

sign here

Name of Director

.....

print full name

Director/Secretary

.....

sign here

Name of Director/Secretary

.....

print full name

[EXECUTION CLAUSE - Company executing WITHOUT seal]

SIGNED, SEALED AND DELIVERED for
and on behalf of [Insert NAME OF
CORPORATION and ABN/ACN], pursuant
to section 127(1) of the Corporations Act
2001 (Cth) by:

Director

.....
sign here

Name of Director

.....
please print

Director/Secretary

.....
sign here

Name of Director/Secretary

.....
please print

[EXECUTION CLAUSE - Sole director company WITHOUT Company seal]

SIGNED, SEALED AND DELIVERED for
and on behalf of [Insert NAME OF
CORPORATION and ABN/ACN] ,pursuant
to section 127(1) of the Corporations Act
2001 (Cth) by:

Sole Director

.....
sign here

Name of Sole Director

.....
please print

In the Presence of
Witness:

.....
sign here

Name and Occupation of Witness

.....
please print

OR OTHER MODE OF ATTESTATION REQUIRED FOR ENTITY

SCHEDULE 1

1 DATE OF THIS DEED (CLAUSE 1.1)

1.1 Not Applicable.

2 FUNDING PERIOD (CLAUSE 1.1)

2.1 The Funding Period commences on the Date of this Deed and ends on 30 June 2008.

3 PROGRAM SERVICES (CLAUSE 1.1)

3.1 You will offer the following Services using:

(a) *[insert the type of technology platform and technology to be used by the Provider, and if more than one platform/technology, insert the details as separate consecutively numbered subparagraphs immediately below]* ('Service Solution(s)').

3.2 You will offer *[insert type of technology platform, eg wireless, satellite, cable, ADSL]* **Threshold Service**[s] with the following specifications:

- (a) Threshold Service *[insert name given to the Service by the Provider]*
- (i) All necessary CPE to enable the provision of the Service at the required performance levels
 - (ii) Peak download Data Speed: *[insert speed in kbps]*
 - (iii) Peak upload Data Speed: *[insert speed in kbps]*
 - (iv) expected average (or minimum) download Data Speed: *[insert speed in kbps]*
 - (v) expected average (or minimum) upload Data Speed: *[insert speed in kbps]*
 - (vi) Monthly usage allowance: *[insert limit in MB or GB]*
 - (vii) Monthly access fee: *[\$[insert amount]*
 - (viii) Installation fee: *[\$[insert amount]*
 - (ix) Connection fee: *[\$[insert amount]*
 - (x) Hardware: *[\$[insert amount]*
 - (xi) Excess usage (download/uploads): *[insert amount per c/MB]*
 - (xii) Three-year package price: *\$*
 - (xiii) Service Solution(s)– refer to subitem 3.1 *[insert]* above

3.3 You will offer *[insert type of technology platform – where different to the platform specified above]* **Added Value Service**[s] with the following specifications:

- (a) Added Value Service *[insert name given to the Service by the Provider]*
- (i) All necessary CPE to enable the provision of the Service at the minimum performance levels
 - (ii) Peak download Data Speed: *[insert speed in kbps]*

- (iii) Peak upload Data Speed: *[insert speed in kbps]*
 - (iv) expected average (or minimum) download Data Speed: *[insert speed in kbps]*
 - (v) expected average (or minimum) upload Data Speed: *[insert speed in kbps]*
 - (vi) Monthly usage allowance: *[insert limit in MB or GB]*
 - (vii) Monthly access fee: *[\$[insert amount]*
 - (viii) Installation fee: *[\$[insert amount]*
 - (ix) Connection fee: *[\$[insert amount]*
 - (x) Hardware: *[\$[insert amount]*
 - (xi) Excess usage (downloads/uploads): *[insert amount per c/MB]*
 - (xii) Three-year package price: *\$*
 - (xiii) Service Solution(s)– refer to subitem 3.1 *[insert]* above
- (b) Added Value Service *[insert name given to the Service by the Provider]*
- (i) All necessary CPE to enable the provision of the Service at the required performance levels
 - (ii) Peak download Data Speed: *[insert speed in kbps]*
 - (iii) Peak upload Data Speed: *[insert speed in kbps]*
 - (iv) expected average (or minimum) download Data Speed: *[insert speed in kbps]*
 - (v) expected average (or minimum) upload Data Speed: *[insert speed in kbps]*
 - (vi) Monthly usage allowance: *[insert limit in MB or GB]*
 - (vii) Monthly access fee: *[\$[insert amount]*
 - (viii) Installation fee: *[\$[insert amount]*
 - (ix) Connection fee: *[\$[insert amount]*
 - (x) Hardware: *[\$[insert amount]*
 - (xi) Excess usage (downloads/uploads): *[insert amount per c/MB]*
 - (xii) Three-year package price: *\$*
 - (xiii) Service Solution(s)– refer to subitem 3.1 *[insert]* above

3.4 You will offer *[insert type of technology platform, eg wireless, satellite, cable, ADSL]* **Entry Level Service[s]** with the following specifications:

- (a) Entry Level Service *[insert name given to the Service by the Provider]*
- (i) All necessary CPE to enable the provision of the Service at the required performance levels
 - (ii) Peak download Data Speed: *[insert speed in kbps]*
 - (iii) Peak upload Data Speed: *[insert speed in kbps]*
 - (iv) expected average (or minimum) download Data Speed: *[insert speed in kbps]*
 - (v) expected average (or minimum) upload Data Speed: *[insert speed in kbps]*
 - (vi) Monthly usage allowance: *[insert limit in MB or GB]*
 - (vii) Monthly access fee: *[\$[insert amount]*

- (viii) Installation fee: \$[insert amount]
 - (ix) Connection fee: \$[insert amount]
 - (x) Hardware: \$[insert amount]
 - (xi) Excess usage (download/uploads): [insert amount per c/MB]
 - (xii) Three-year package price: \$
 - (xiii) Service Solution(s)– refer to subitem 3.1 [insert] above
- 3.5 A Customer will be Connected and Supplied to the Service(s) listed above by You within [insert number in days/hours] of the date of order, once infrastructure is in place, except where:
- (a) exceptional circumstances apply;
 - (b) the Customer requests or agrees to a longer timeframe; or
 - (c) the Service is a CSG Service, in which case the applicable connection time frame is that prescribed under the CSG Standard.
- 3.6 You will restore Service(s) listed above in the event of an outage for which You are responsible within [insert number in days/hours] from the time of the outage, except where:
- (a) exceptional circumstances apply;
 - (b) the Customer requests or agrees to a longer timeframe; or
 - (c) the Service is a CSG Service, in which case the applicable fault rectification time frame is that prescribed under the CSG Standard.
- 3.7 The circumstances which provide exceptions noted in Items 3.5(a) and 3.6(a) above are:
- (a) *[Insert details of the exceptional circumstances which provide exceptions noted in Items 3.5(a) and 3.6(a). If no exceptional circumstances apply, delete text at sub item 3.7 and insert “Reserved”].*
- 3.8 You will provide:
- (a) a free 24 hours a day, 7 days a week fault reporting service via *[insert mechanism, eg voicemail, email]*; and
 - (b) a staffed telephone help desk which operates from *[insert times, eg 08.30am-5.00pm AEST]* each *[insert days of operation, eg Monday to Friday]*.
- 3.9 You will publish the contact details of the helpdesk arrangements and reporting facility specified in Item *[insert item number, eg 3.8]* above on Your website and furnish Customers with details of these at the time of entering into Terms and Conditions.

- 3.10 *[Insert provisions regarding ownership of any Customer premises equipment, eg “Ownership of the CPE remains with You and does not vest in the Customer at any time, unless purchased by the Customer.” Or “Ownership of CPE transfers to the Customer upon installation at the relevant premises” or other applicable statement].*
- 3.11 You will provide an online means for the Customer to check their usage, if usage limitations apply to the Service supplied by You and this usage information shall be updated at least once per day.

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4 SERVICE AREAS AND INCENTIVE PAYMENTS (CLAUSES 1.1, 4.4, 4.5, 4.6, 4.7, 5.1, AND 6.2)

Column 1 Service	Column 2 Service Area	Column 3 Geographical identifiers (if applicable)	Column 4 Service Commencement Date	Column 5 Incentive Payment Type	Column 6 Proportion of Incentive Payment
<i>[Insert name of Service(s), eg All Services listed in Items 3.2, 3.3 and 3.4 above]</i>	<i>[Insert geographical description of area]</i>	<i>[Insert precise geographical coordinates, eg Longitude/Latitude for each area or particular ADSL-exchanges details, as applicable]</i>	<p><i>[Where the Service is to be offered from the commencement of the Deed, insert the words "From the Date of this Deed".</i></p> <p><i>[Where the Service is to be offered once infrastructure has been enabled or deployed, insert the date nominated by the Provider in its application - insert in DD Month Year format]</i></p>	<p><i>[Insert type of Incentive Payment, eg</i></p> <p><i>"Standard Incentive Payment"</i></p> <p><i>"Partial Standard Incentive Payment"</i></p> <p><i>"High Cost Incentive Payment"</i></p> <p><i>"Partial High Cost Incentive Payment"]</i></p>	<p><i>If a partial rate applies, insert the words:</i></p> <p><i>"X^[insert number]% of the Standard Incentive Payment/ High Cost Incentive^(delete which is not applicable) rate applies"</i></p> <p><i>If the full (100%) Incentive Payment is to apply, insert the words:</i></p> <p><i>"100% of the Standard Incentive Payment/ High Cost Incentive Payment^(delete which is not applicable) rate applies"</i></p>

[Note, a separate row should be completed for each Service Area]

5 REPORT DETAILS (CLAUSE 10)

5.1 HALF-YEARLY REPORT

[Insert details, if applicable, of any additional reporting requirements required in the Half-yearly Reports. Otherwise, insert the words “Not Applicable”.]

5.2 END OF DEED REPORT

[Insert details, if applicable, of any additional reporting requirements required at the end of this Deed. Otherwise, insert the words “Not Applicable”.]

6 DISCLOSURE OF CONFIDENTIAL INFORMATION (CLAUSE 1.1 AND 16)

OUR CONFIDENTIAL INFORMATION

DEED PROVISIONS/SCHEDULE/ANNEXURES

Item	Period of Confidentiality
<i>[Insert “None stated” if no part of the Deed, Schedules or Annexures is intended to be confidential.]</i>	<i>[Insert period, if applicable, if not, insert “NA”.]</i>

DEED-RELATED MATERIAL

Item	Period of Confidentiality
<i>[Insert “None stated” if no part of the Deed-related material is intended to be confidential.]</i>	<i>[Insert period, if applicable, if not, insert “NA”.]</i>

YOUR CONFIDENTIAL INFORMATION

DEED PROVISIONS/SCHEDULE/ANNEXURES

Item	Period of Confidentiality
<i>[Insert “None stated” if no part of the Deed, Schedules or Annexures is intended to be confidential.]</i>	<i>[Insert period, if applicable, if not, insert “NA”.]</i>

DEED-RELATED MATERIAL

Item	Period of Confidentiality
<i>[Insert “None stated” if no part of the Deed-related material is intended to be confidential,</i>	<i>[Insert period, if applicable, if not, insert “NA”.]</i>

7 INSURANCE (CLAUSE 19)

7.1 You must maintain:

- (a) workers compensation insurance that is required by law where You carry out Activities under this Deed. For the avoidance of doubt, this can include self-insurance where You have a licence under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) and We have agreed in writing that the licence is acceptable for Our purposes; and
- (b) public liability insurance to the value of at least \$10 million per claim, or occurrence giving rise to a claim, in respect to Activities undertaken under this Deed, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.

8. COMPLIANCE WITH LAWS AND POLICIES (CLAUSE 27)

8.1 You must comply with the following laws in carrying out the Activity:

- (i) *Equal Opportunity for Women in the Workplace Act 1999*;
- (ii) *Racial Discrimination Act 1975*;
- (iii) *Sex Discrimination Act 1984*;
- (iv) *Disability Discrimination Act 1992*;
- (v) *Crimes Act 1914*; and
- (vi) *Criminal Code Act 1995*.

9. NOTICES (SUBCLAUSE 37.2)

9.1 Our details are as follows:

Name: [Insert]

Position: [Insert]

Address: Department of Communications, Information Technology and
the Arts
GPO Box 2154
Canberra ACT 2601

Telephone: 02 6271-[Insert]

Facsimile: 02 6271 - [Insert]

E-mail: [Insert]

9.2 Your details are as follows: [Insert relevant details below]

Name: [Insert]

Position: [Insert]

Address: [Insert]

Telephone: [Insert]

Facsimile: [Insert]

E-mail: [Insert]

SCHEDULE 2

EXIT STRATEGY

- 2.1 In the event of Your registration as a Program Provider being terminated voluntarily or otherwise, You will:
- (a) honour Your contracts with Your Customers;
 - (b) if any of Your Customers elect to migrate to a comparable service offered by another Program Provider (if such a service is available), You will make arrangements for a seamless transition of Your Customers to the other Provider chosen by the Customer; and
 - (c) where title to the Customer's CPE continues to reside with You, either
 - (i) remove the Customer's CPE only after the Customer has been transitioned to another Program Provider, at no cost to the Customer; or
 - (ii) offer to sell the Customer's CPE to the other Program Provider referred to in Item 2.1(b) above if the same technology is used by that Provider.
- 2.2 In the event that You propose to withdraw a Service but continue Your registration as a Program Provider, and this proposal to withdraw the Services has been agreed in writing and signed by Us and You (as required under subclause 29.2 of this Deed), You will:
- (a) give Your Customers at least 30 days written notice of the withdrawal;
 - (b) offer to migrate the relevant Customers from the withdrawn Service to a comparable Service, if such a service is available; and
 - (c) if no comparable Service is available, You will offer to migrate the relevant Customer to any one of Your Threshold Service(s), or Added Value Service(s) as chosen by the Customer.
- 2.3 If the Customer nominates to migrate to any one of Your Threshold Service(s) or Added Value Service(s), as applicable, You will give effect to the migration without any additional charge to the Customer.
- 2.4 In the event the Customer does not elect to migrate to any one of Your Threshold Service(s) or Added Value Service(s), as applicable, You will:
- (a) provide to the Customer the contact details of all Program Providers that may be able to offer a comparable service to the Customer or details as to how they can ascertain such information; and
 - (b) provide reasonable assistance to the Customer in transferring to a new

comparable service, with another Program Provider (if such a service is available) as chosen by the Customer;

- (c) where title to the Customer's CPE continues to reside with You, either
 - (i) remove the Customer's CPE only after the Customer has been transitioned to another Program Provider, at no cost to the Customer; or
 - (ii) offer to sell the Customer's CPE to the other Program Provider referred to in Item 2.3(b) above if the same technology is used by that Provider.

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SCHEDULE 3

YOUR DEPOTS

[Insert details of Your depots, full address required. Insert “Not Applicable” if there are no depots.]

SCHEDULE 4

TERMS AND CONDITIONS FOR EACH SERVICE

[Insert approved terms and conditions]

SCHEDULE 5

PROGRAM GUIDELINES

[Insert Guidelines]