



Australian Government

Australian Broadband Guarantee

Australian Broadband Guarantee

Program Guidelines

2007–2008

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1. Introduction

1.1 Objectives of the Australian Broadband Guarantee

The Australian Broadband Guarantee aims to provide access to affordable metro-comparable broadband services for all Australians. It complements the roll-out of broadband services by OPEL Networks Pty Limited (as provided through the Australia Connected Package) in addressing premises not able to access metro-comparable broadband internet services as result of that program or commercial investments. It replaces the Australian Broadband Guarantee (transitional period). The Australian Broadband Guarantee (transitional period) in turn replaced the Broadband Connect Incentive Program and Metro Broadband Connect in April 2007.

The Australian Broadband Guarantee offers financial assistance (in the form of Incentive Payments) to Registered Providers to supply Metro-comparable Services to residential and small business premises where such services would not otherwise be available. The Australian Broadband Guarantee builds on the Higher Bandwidth Incentive Scheme (HiBIS), the Broadband Connect Incentive Program, and the Metro Broadband Connect program by continuing to offer eligible consumers access to subsidised, price-capped broadband with a guaranteed minimum level of service.

The Australian Broadband Guarantee is not intended to provide ongoing financial support for Providers to maintain their businesses. Applicants seeking Registration under the Australian Broadband Guarantee are required to demonstrate that they will have a viable business case beyond the life of the Program.

Internet Service Providers (ISPs) considering applying to participate in the Australian Broadband Guarantee program should therefore consider whether their current and projected financial position, and business and operational plans would enable them to maintain sustainable businesses without Australian Government financial assistance.

1.2 Overview of Key Requirements for Providers Offering an Australian Broadband Guarantee Service

To assist in achieving the Program objectives described in section 1.1, the Department of Broadband, Communications, and the Digital Economy (the Department) expects all Registered Providers under the Australia Broadband Guarantee to adhere to the following key requirements in offering Services to Customers.

All Providers must provide Customers with:

- reliable service offerings that are metro-comparable in terms of speed, data usage and price;
- quality Customer service (including expeditious follow up where problems arise with the Service);
- proper complaint handling procedures that are consistent with the TIO's constitution, procedures and policies, and the Australian Communications Alliance Ltd's Complaint Handling Code and applicable industry codes;
- fair Terms and Conditions consistent with the Guidelines, *Telecommunications Act 1997* and related legislation, *Trade Practices Act 1974*, and other consumer legislation, and other applicable industry codes ;

- accurate and truthful advertising of services which complies with applicable Commonwealth and State/Territory laws, and which acknowledges the financial support received from the Australian Government under the Australian Broadband Guarantee, consistent with the requirements of these Guidelines; and
- scalable and improved services into the future: the Provider should offer a range of Service Plans now and have capacity to upgrade the speed and functionality of those services in the future.

In participating in the Program, all Providers must:

- comply with the requirements of the Program Guidelines and their Funding Deeds;
- take all reasonable steps to ensure that all claims submitted for payment (including Attestations) are valid and accurate;
- provide full disclosure of any circumstances that may breach the Guidelines and/or their Funding Deed; and
- ensure that records related to their Australian Broadband Guarantee activities are kept for at least three years following the end of the Program.

The Department seeks to work co-operatively with all Providers and the conduct of its officers is regulated by Commonwealth legislation, such as the *Public Service Act 1999* (incorporating the Australian Public Service Values and Code of Conduct), the *Financial Management and Accountability Act 1997*, and Departmental policies, such as the Department's Client Service Charter.

A key principle of the Australian Broadband Guarantee is that a Program Service is available to all consumers unable to access a Metro-comparable Service. Consequently, no claims can be made where a commercially available Metro-comparable Service (including a retail service provided through OPEL Networks) is available.

1.3 Overview of the Operation of the Australian Broadband Guarantee Guidelines

These Guidelines describe the operation of the Australian Broadband Guarantee from 14 August 2007 to 30 June 2008 (or an earlier time should the Funding Allocation be fully expended prior to this date).

Legal enforcement of the operational rules set out in these Guidelines will be through the Funding Deed between each Registered Provider and the Australian Government (as represented by the Department). In the event of any inconsistency between the Funding Deed and the Guidelines, the Funding Deed will prevail. The standard Program Funding Deed is available separately at www.dbcde.gov.au/communications_for_business/funding_programs_and_support/broadband_guarantee. Applicants should note that the Department makes no representations that it will enter into any agreement in exactly the terms of the standard Funding Deed.

All requests for clarification or determination of the meaning of provisions in these Guidelines should be referred to the Department in writing. If a Provider under this Program applies to the Department for clarification of a provision in the Guidelines or

a determination on a particular issue, the Department's written decision on the matter is final.

The Department reserves the right to vary these Guidelines (including any assessment process) at its discretion for any reason, including but not limited to a change in Australian Government policy. The Australian Government will notify all potential applicants (by means of a media release and an appropriate notice on the Department's website), or all Applicants where the time for submission of applications has closed, of any changes made to these Guidelines.

If a Provider has received an approval to undertake a specific activity under HiBIS, Broadband Connect Incentive Program, Metro Broadband Connect and/or Australian Broadband Guarantee (transitional period), that approval does not apply under the Australian Broadband Guarantee, unless it is separately sought and provided in relation to the Australian Broadband Guarantee program.

1.4 Program Funding

An amount of \$97.446 million (excluding GST) is allocated for the period 14 August 2007–30 June 2008. When the remaining funding allocation has reached \$20 million and Providers duly notified, the obligation of Providers to offer services to new Customers under the Australian Broadband Guarantee will cease. Other notifications will be provided in line with section 4.4.1 of the Guidelines. In these circumstances, Providers will continue to have obligations to provide services to existing Customers according to their contractual obligations and Funding Deeds/Agreements with the Department.

The Department has authority to administer these funds and the Program as a whole.

1.5 Key concepts and terminology

The Guidelines include reference to a number of terms which are defined below.

A

'ACCC' means the Australian Competition and Consumer Commission.

'ACMA' means the Australian Communications and Media Authority.

'Added Value Service' means the Service described at section 2.3.3.

'ADSL' means Asymmetric Digital Subscriber Line. This is a technology for the delivery of digital data over existing twisted pair copper subscriber lines.

'Applicant', according to the context, means:

- (a) an ISP that is applying to become a Registered Provider under the Australian Broadband Guarantee Program; or
- (b) a Provider that is applying for approval to register Service Solutions, Service Plans and/or Service Areas.

'ASIC' means the Australian Securities and Investments Commission.

'Assessment Panel' means the panel convened by the Department to make decisions on the registration of Applicants, Service Plans and Service Areas under the Program.

'ASX' means the Australian Stock Exchange.

'ATO' means the Australian Taxation Office.

‘Attestation Form’ - see **‘Customer Attestation Form’**

‘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 a Provider or of a Related Body Corporate (as defined under section 9 of the *Corporations Act 2001* (Cth)).

‘Australian Broadband Guarantee’ or ‘Program’ means the Australian Government funding Program described in these Guidelines.

‘Australian Broadband Guarantee (transitional period)’ means the Australian Broadband Guarantee (transitional period) program that operated from 2 April 2007 to 13 August 2007.

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

B

‘Blackspot’ means Under-served Premises unable to obtain either a Metro-comparable Service or a service through OPEL Networks.

‘Broadband Connect Incentive Program’ means the Broadband Connect Incentive Program which operated between 1 January 2006 and 13 March 2007.

‘Broadband Customer Online Management System’ or ‘BCOMS’ means the primary management tool for Registered Providers to lodge and review claims for Incentive Payments under the Australian Broadband Guarantee.

‘Broadband Service Locator’ means the form available on the Department’s website at <http://bcoms.dcita.gov.au/BSL> to enable potential Customers to determine whether their premises may be eligible for a Service under the Australian Broadband Guarantee.

‘Business’ means an enterprise with an Australian Business Number which is undertaking a commercial activity on a going concern basis, or which is engaged in commercial activity for the purpose of profit on a continuous and repetitive basis.

C

‘Category A’ means an ISP that, according to the Broadband Service Locator, is able to provide a Metro-comparable Service to a customer’s premises. This category can include Providers that are offering Metro-comparable Service on a commercial basis.

‘Category B’ means a Provider that is registered to provide a Terrestrial Broadband Service to Customers in nominated Service Areas.

‘Category C’ means a Provider that is registered to provide a Satellite Broadband Service to Customers unable to obtain a Metro-comparable Service either through a Category A ISP or a Category B Provider.

‘Connected and Supplied’ means that the Eligible Customer has a broadband connection at their premises, and they are actively receiving a Program Service from

this connection. At a minimum, a Customer will be considered by the Department to be actively receiving a relevant Service where it can be shown that:

- the Customer is able to connect a computer (or other relevant device) at their Eligible Premises to the respective Service without any further deployment of infrastructure, cabling or CPE by the Provider; and
- the Customer has entered into a contract with the Provider for the provision of the Service. See section 4.3.3 and 4.5.2 for further discussion.

‘CPE’ means Customer premises equipment that enables Customers to access broadband services. Examples include modems, satellite dishes, antennae for wireless services, and related cabling. This is not an exhaustive list and CPE to be installed will vary according to the technology being used to supply the broadband service.

‘Customer’ according to the context, means:

- (a) a person who is seeking a broadband service or has been approached about receiving a Service under the Program by a Provider; or
- (b) a prospective recipient of a Program Service who has expressed an interest in receiving a Service from a Provider; or
- (c) a person eligible to receive a Service with whom a Provider has a contract to Connect and Supply a Service.

‘Customer Attestation Form’ or **‘Attestation Form’** means the mandatory form sent by the Department to a Customer that must be completed by a Customer in order to receive a subsidised broadband service under the Australian Broadband Guarantee from a Registered Provider. In completing the form, the Customer is required to attest (at a minimum):

- (a) to their eligibility (customer-type) and eligibility of their premises; and
- (b) that they cannot receive a Metro-comparable Service to their premises from a Category A ISP; and
- (c) if applicable, any other matters relevant to their circumstances.

‘Customer Register’ means the register available at the Department’s website that allows Eligible Customers to register their interest in being supplied with a Service.

D

‘Data Speed’ means the speed at which data bits, comprising both protocol headers and data payload, are carried by a service. This contrasts with throughput, which refers to the delivery of actual payload data bits (i.e. the content useable by end-users), excluding protocol overheads. Data Speed is measured in bits per second, and is determined through the testing regime established by the Department.

‘The Department’ means the Department of Broadband, Communications, and the Digital Economy or such other agency of the Australian Government as may, from time to time, have responsibility for administering the Australian Broadband Guarantee Program.

‘Deed’ or **‘Funding Deed’** means the legally binding agreement between the Department and a Provider in respect of the Program activities, the supply of Services and the conditions and arrangements for the payment of Incentive Payments.

E

‘Eligible Customer’ means, subject to these Guidelines:

- (a) a Residential Customer;
- (b) a Small Business with 20 or fewer FTEs at the time of application for a Service;
or
- (c) an Indigenous Community Council where no FTE limit applies.

‘Eligible Premises’ means, subject to these Guidelines, any premises in the Program Area, being:

- (a) a Small Business premises;
- (b) the premises of an Indigenous Community Council; or
- (c) the principal place of residence of a Residential Customer,

that did not have access to a Metro-comparable Service when an application for a Service at the premises was submitted to a Provider. The Department is the final arbiter of whether any particular premises is considered to be an Eligible Premises.

‘Entry Level Service’ means the Service described at section 2.3.2.

‘Exit Strategy’ means the arrangements by which a Provider manages its Program Customer base if and when it ceases to provide Services. In particular, it refers to actions to be taken by the Provider to ensure that there is minimal negative impact on its Program Customers if it ceases to provide Services.

F

‘FTE’ means full-time equivalent employees, regardless of whether or not the employees are permanent employees.

‘Funding Allocation’ means the amount of funding, being \$97.446 million (excluding GST) which is allocated for the Program in the financial year 2007–2008.

G

‘Guidelines’ means these Australian Broadband Guarantee Guidelines, as issued by the Department and as amended from time to time.

H

‘HiBIS’ means the Higher Bandwidth Incentive Scheme which commenced on 8 April 2004 and ended on 31 December 2005.

‘High Cost Incentive Payment’ has the meaning given to it in section 4.5.2.2.

I

‘Incentive Payment’ means either a Standard Incentive Payment or a High Cost Incentive Payment as defined in sections 4.5.2.1 and 4.5.2.2, to be paid, subject to funding being available, after the Provider has Connected and Supplied a Service to an Eligible Customer at Eligible Premises, and upon receipt by the Department of a properly submitted and supported claim accepted by the Department.

‘ISP’ means an Internet Service Provider offering Internet services.

K

'kbps' means kilobits per second.

'Kilobyte' means 1000 bytes.

L

'Last-mile Infrastructure' means the infrastructure used to provide the link from a Customer's premises to the Provider's nearest point of aggregation. For example, a Provider offering a wireless broadband service to the Customer would be providing Last-mile Infrastructure using wireless broadband technology.

M

'MB' means megabyte, which equals 1000 Kilobytes.

'Metro Broadband Connect' means the Metropolitan Broadband Connect program that commenced on 8 March 2006 and formally ended on 30 June 2007.

'Metro-comparable Service' means a broadband service with the following features:

- (a) access to the Internet at a peak Data Speed of at least 512/128 kbps and 1000 MB per month usage allowance (with no restrictions within these limits on downloads or uploads or usage time);
- (b) a price to the Customer over three years of no more than \$2500 (GST inclusive) including equipment, installation, connection, account establishment, travel costs and ongoing provision of the service. Providers can seek to claim travel costs where relevant (refer section 4.5.2.3); and
- (c) the Provider or commercial ISP offering the broadband service can install the service within a reasonable period of time. [Note, a reasonable period of time in this context will ordinarily be within thirty (30) calendar days of the service order being processed or any other longer period of time determined by the Department to be reasonable.]

'Metropolitan Area' means, for the purposes of the Australian Broadband Guarantee:

- (a) the capital cities of Canberra, Sydney, Melbourne, Brisbane, Adelaide, Perth, Hobart and Darwin; and
- (b) the adjacent high population centres of Wollongong (NSW), the Central Coast of NSW, Newcastle (NSW), Geelong (Vic), Palmerston (NT) and the Gold Coast (Qld) including Tweed Heads (NSW),

the boundaries of which are defined by the relevant Urban Centre/Locality boundaries published by the Australian Bureau of Statistics as at 30 September 2002 in 2909.0 – Statistical Geography: Volume 3 – Australian Standard Geographical Classification (ASGC) Urban Centres/Localities (Issue 2001 released 30 September 2002; ISBN 0 642 47821 X).

O

'OPEL Networks' means OPEL Networks joint venture between Optus Networks and Elders Telecommunications awarded funding by the Australian Government under the Australia Connected Package announced on 18 June 2007.

P

‘Premises’ means Eligible Premises to which a Provider is supplying a Service.

‘Program’ – refer to **‘Australian Broadband Guarantee’**.

‘Program Area’ means the areas within Australia (including Christmas Island and Cocos (Keeling) Islands) where Under-served Premises are located. Norfolk Island and the other external territories are excluded from the Program.

‘Program Service’ or **‘Service’** means an Internet access service meeting the performance and pricing requirements of these Guidelines that is registered under the Australian Broadband Guarantee and included for supply by a Provider under its Funding Deed, being an Entry Level Service, Threshold Service or Added Value Service

‘Program Service Plan’ or **‘Service Plan’** means a plan or plans (detailing the prices charged for providing the Service) Registered with the Department which Providers will offer to Customers under the Australian Broadband Guarantee. Service Plans can be registered for an Added Value Service, an Entry Level Service and a Threshold Service.

‘Provider’ means an Internet service provider (ISP) Registered under the Australian Broadband Guarantee.

R

‘Registered’ in relation to a Provider or a Program Service means approved by the Department and where the Provider and the Australian Government (as represented by the Department) have executed a Funding Deed under the Australian Broadband Guarantee Program and, in relation to a Program Service, means an Australian Broadband Guarantee Service detailed in the Provider’s current Funding Deed.

Registration Round means the period announced by the Department from time to time, when the Department requests applications for registration from ISPs under the Program, as detailed in Section 3.

‘Remote Australia’ means the areas defined as being within a Telstra Extended Zone, as identified by the Department at www.dbcde.gov.au/communications_for_business/funding_programs_and_support/broadband_guarantee, and offshore islands and territories where those islands and territories are more than 100km from a state or mainland territory capital city (measured in a straight line from the GPO of that city) and not connected to the mainland via a fixed road transport link.

‘Residential Customer’ is a Customer who requests that a Program Service be provided at premises that are their principal place of residence, primarily for private and personal use. Premises of a Residential Customer include those places of residence described at section 2.1.1.

S

‘Satellite Broadband Service’ means a Service Solution delivered by a two-way satellite service, or other service determined by the Department to be satellite based. Where satellite backhaul is provided for a Service delivered by terrestrially based Last-mile Infrastructure, the Service is not a Satellite Broadband Service, for the purposes of these Guidelines.

‘Service’—see definition of Program Service.

‘Service Area’ means the geographical location(s), provided in a format acceptable to the Department (as outlined in section 3.5.4) that have been included in a Provider’s Funding Deed as the areas to which it will offer a particular Service.

‘Service Solution’ means the particular technical solution to extend an existing technology platform or to deploy a new technology platform to supply a Service. Providers must identify the types of Service Solutions they are using as part of registering a Service. When making claims for Incentive Payments, Providers must identify the Service Solution used to supply the Service. Examples of Service Solutions might include:

- provision of ADSL through the installation of ADSL DSLAMs;
- provision of ADSL through transpositions of a service to a copper path able to support ADSL; and
- provision of wireless services through the construction of wireless towers and transceiver equipment.

‘Service Upgrade’ means the arrangements by which a Program Customer changes from a lower level to a higher level of Service in terms of Service performance, quality of Service and/or any other feature or functionality.

‘Small Business’ has the meaning given at section 2.1.2.

‘Standard Form of Agreement’ means a standard form of agreement for the purposes of section 479(2)(b) of the *Telecommunications Act 1997* (Cth).

‘Standard Incentive Payment’ has the meaning given to it in section 4.5.2.1.

T

‘Terms and Conditions’ means the terms and conditions on which a Service is supplied by a Provider to a Customer, including mandatory terms and conditions required under the Program.

‘Terrestrial Broadband Service’ means a Service Solution delivered by ground based networks, including ADSL (and variants), cable type services, wireless services, or any other service determined by the Department to be terrestrially based.

‘Threshold Service’ means the Service described at section 2.3.1.

‘TIO’ means the Telecommunications Industry Ombudsman.

‘Travel Distance’ means the distance travelled from the depot from which the installer departs for the job to the point of installation (and return) for the purpose of installing a Program Service. 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.

U

‘Under-served Premises’ means those premises located within the Program Area that do not have access to a Metro-comparable Service, other than through a Registered Provider under the Australian Broadband Guarantee.

W

‘Working Day’ means a day other than:

- (a) a Saturday or a Sunday; or
- (b) a day that is a public holiday or an Australian Public Service holiday in the Australian Capital Territory.

2. Customer Participation in the Australian Broadband Guarantee

2.1 Eligible Customers and Eligible Premises

A Customer is eligible to apply for an Australian Broadband Guarantee Service from a Registered Provider if:

- (a) they are an Eligible Customer (as defined in these Guidelines); and
- (b) their premises, being Eligible Premises, do not have access to a Metro-comparable Service at their principal place of residence or Small Business premises other than through the provision of an Australian Broadband Guarantee Service.

An Eligible Customer may only receive one Program Service at their Eligible Premises.

2.1.1 Residential Customer—Principal Place of Residence

A principal place of residence is defined to be a Customer's sole or principal place of residence that is self-contained and supports independent living. This includes:

- (a) a distinct house, including a 'granny flat' on a block of ground under a single title;
- (b) a flat or apartment in a block of flats or apartments;
- (c) houses, cottages or other dwellings on a farming property that are separate places of residence for the property owner and a staff member(s);
- (d) self-contained and distinct places of residence within retirement villages and nursing homes;
- (e) a caravan, cabin or like structure that is permanently located at a caravan park (i.e. the premises cannot be moved) and is the principal place of residence of the Customer;
- (f) a permanently moored vessel that is the principal place of residence of the Customer; and
- (g) self-contained and distinct places of permanent residence (more than six consecutive months) within a mining or work camp, mining town or like isolated community.

2.1.1.1 What is Excluded as a Residential Premises

The following premises are excluded under the Australian Broadband Guarantee Program:

- (a) premises that are occupied by a particular occupant for less than six consecutive months. These include hotel rooms, holiday apartments, serviced apartments, boarders' rooms and dormitories;
- (b) barracks (both military and civil);
- (c) any mobile premises (for example, boat or caravan or bus) or a demountable or other temporary building that is not permanently located in a particular location (for example, a caravan park as identified in section 2.1.1); and

- (d) vacant land on which CPE is erected, unless the site is directly connected to the Premises of a Residential Customer (such as a satellite dish built next to a house).

2.1.1.2 Ability of a Residential Customer to Receive a Service as a Small Business Customer

A Residential Customer is not precluded from being supplied with a Service in its capacity as a Small Business Customer, provided that the Service being Connected and Supplied to the Customer is at separate Eligible Premises and meets eligibility requirements described in section 2.1.2. A home office established in the Customer's residential premises is not an Eligible Premises for the purposes of receiving a Service as a Small Business if there is already a Service that has been supplied to that premises.

2.1.2 Small Business

A Small Business is an Eligible Customer under the Australian Broadband Guarantee where the Business has:

- (a) a total employment of 20 or fewer FTEs across Australia (including in any subsidiary offices such as branches or direct-employed agents). This includes franchises providing the franchise is a separate legal entity from the franchisor and the franchisor is not in partnership with, or does not own all or part of, the franchise;
- (b) a unique ABN (Australian Business Number) and registered trading name; and
- (c) a unique work location. If the business is co-located in premises with other businesses, the business must have a clearly identified work location.

A Small Business is eligible to receive one Program Service at each of its places of Business that is an Eligible Premises, subject to all other eligibility requirements (as outlined in these Guidelines) being met. The place(s) of Business must be set up in a manner that represents a distinct place of operations for the Business (for example, an office).

A site established for re-transmission of broadband services is not a place of Business.

2.1.2.1 What is Excluded as a Small Business Premises

The following premises are excluded under the Australian Broadband Guarantee:

- (a) vacant land;
- (b) a temporary or other demountable building that is not permanently located at a particular location; and
- (c) buildings such as sheds, barns or outbuildings that have been erected for the purposes of housing livestock, machinery or other equipment associated with the operation of the Business but are not the Small Business' primary place of operation. However, if that building is the residence of an Eligible Customer (for example, a farm worker) it may be an Eligible Premises subject to satisfying the requirements under section 2.1.1.

2.1.2.2 Education Facilities Excluded from the Program

Schools, day care centres and other education facilities (regardless of whether they are Government controlled or private) are not Eligible Customers and their related premises are not Eligible Premises for the purposes of this Program.

2.1.3 Indigenous Community Council (ICCs)

This is defined to be any Australian Indigenous Community Council constituted under state, territory or Australian Government legislation.

2.1.3.1 ICCs situated in Queensland

For the purposes of the Australian Broadband Guarantee, an ‘Indigenous Community Council’ located in Queensland means:

- (a) an Aboriginal Council constituted under the *Community Services (Aborigines) Act 1984* (Qld); or
- (b) an Island Council constituted under the *Community Services (Torres Strait) Act 1984* (Qld).

2.1.3.2 ICCs situated in the Northern Territory

For the purposes of the Australian Broadband Guarantee, an ‘Indigenous Community Council’ located in the Northern Territory means:

- (a) an indigenous community government council established under the *Local Government Act* (NT); or
- (b) an incorporated indigenous association recognised as a ‘local governing body’ by the Australian and Northern Territory Governments in order that Australian Government funding can be made for local government type-services.

An Indigenous Community Council must be able to substantiate its legal status to a Provider and, if requested, to the Department. No limit on the number of permanent FTEs employed by such Councils applies for the purposes of these Guidelines.

2.2 No Access to a Metro-comparable Service

A Customer is considered not to have access to a Metro-comparable Service if, at the time of ordering a Service from a Registered Provider, that Customer could not access a Metro-comparable Service (as defined), through a Category A ISP other than a Provider.

For the purposes of the Program, a Customer is not considered to have access to a Metro-comparable Service, if the Category A ISP charges any fees in any manner that would cause the cost of the Metro-comparable Service to be increased above \$2500 (GST inclusive) over three years. Examples where a service would not be regarded as a Metro-comparable Service for the purpose of the Australian Broadband Guarantee include (but are not limited to):

- if the Customer is required to pay installation costs in instalments that would result in the total cost of the service to the customer exceeding \$2500 (GST inclusive); and
- if the Customer is required to pay travel and/or freight costs to receive the service where the total cost would exceed \$2500 (GST inclusive).

A Customer without a fixed line telephone service at their premises is not automatically eligible for a Program Service. If a fixed line service is available and can readily be connected to the premises, and as a result a Metro-comparable Service would then be commercially available over that fixed line, then the premises would not be eligible for a Program Service. Where this circumstance exists, the price of connecting the fixed line service is not included in the assessment of the cost of the broadband service, for the purposes of assessing whether the service is a Metro-comparable Service. The Broadband Service Locator is provided to assist Customers with assessing whether a Metro-comparable Service is available to the Customer premises (see Section 2.4 below for further details).

2.2.1 Other Ineligible Premises

Where a Customer is receiving a broadband service which has a peak download Data Speed of between 256kbps and 512kbps, a peak upload speed of between 64kbps and 128 kbps, and minimum data usage of 500MB per month, as a result of support under the HiBIS, Broadband Connect Incentive Program, Metro Broadband Connect or the Australian Broadband Guarantee (transitional period), the Customer will generally not be eligible to receive an Australian Broadband Guarantee Service, provided their service can reasonably be upgraded to a Metro-comparable Service by their provider on a commercial basis. In these circumstances an Incentive Payment will not be paid to an Australian Broadband Guarantee Provider to upgrade the Customer to a Metro-comparable Service.

Customers are not eligible to receive an Australian Broadband Guarantee Service at their premises, if their premises have previously been connected to a broadband service under HiBIS, the Broadband Connect Incentive Program, or Metro Broadband Connect as above. The only exceptions to this are where:

- a Customer has lost that service for reasons beyond their control (further details regarding this exceptional case are provided at section 2.6); or
- a Customer meets any of the other criteria detailed in sections 2.6.1-2.6.4.1.

In either case, applications may be considered on a case-by-case basis. Only one Program Service may be provided to an Eligible Premises at any one time.

A Customer will not be eligible to apply for a Program service if the Customer's premises is able to be supplied with a Metro-comparable Service from a Category A ISP but the ISP refuses to do so for non-technical reasons (for example, the Customer's poor credit history/rating). Providers and Category A ISPs must not unfairly withhold a service or otherwise discriminate against individual customers unlawfully.

Where a Customer believes they have been unfairly denied a service, the Customer may seek to take action either through their State/Territory Office of Fair Trading, or where refusal of a service may represent discrimination, through the anti-discrimination body operating in their State/Territory.

2.3 Minimum Requirements of Registered Australian Broadband Guarantee Services

2.3.1 Requirements for Threshold Services

All Providers must offer a Threshold Service for each Service Solution with the following features:

- (a) access to the Internet at a peak upload/download Data Speed of at least 512/128 kbps and 1000 MB per month usage allowance (with no restrictions within these limits on downloads or uploads or on usage time). Providers may offer a Threshold Service with a higher peak Data Speed or higher data usage, provided all other provisions of this section are met;
- (b) a price to the Customer over three years of no more than \$2500 (GST inclusive) including equipment, installation, connection, account establishment and ongoing provision of the service. This amount excludes the cost of installing a fixed line telephone service to premises where such a service is available but not connected;
- (c) availability 99 per cent of the time (averaged over a quarterly period) with average data download and upload Data Speeds of at least 60 per cent of these peak Data Speeds at least 75 per cent of the time as measured according to the prescribed Australian Broadband Guarantee testing schedule for test computers located in different geographic regions;
- (d) either ownership of the CPE passes to the Customer within the three year period over which Program pricing is to apply or the ownership of the CPE resides with the Provider. Where the CPE remains the property of the Provider, the Provider is to ensure that appropriate arrangements are in place to maintain the CPE during the term of the contract, and where necessary, to repair or replace it within the overall pricing package being offered;
- (e) free helpdesk support for common Customer connection problems and service faults as agreed between the Department and the Provider; and
- (f) the ability for the Customer to be informed within 24 hours of current usage and any associated costs.

As a requirement of Registration, Providers must offer at least one Threshold Service for each Service Solution registered.

2.3.2 Entry Level Services

All Providers must offer a Threshold Service but may also choose to offer one or more Entry Level Services that provide the following:

- (a) access to the Internet at a peak upload/download Data Speed of at least 256/64 kbps and a minimum 500 MB per month usage allowance (with no restrictions within these limits on downloads or uploads or usage time). Providers may offer an Entry Level Service with a higher peak Data Speed or higher data usage, provided all other provisions of this section are met;
- (b) a price to the Customer over three years of no more than \$2500 (GST inclusive) including equipment, installation, connection, account establishment and ongoing provision of the service. This amount excludes the cost of installing a fixed line

telephone service to premises where such a service is available but not connected;
and

(c) all other service provisions that apply to a Threshold Service (see section 2.3.1).

Providers may seek to register multiple Entry Level Services, provided they are also offering a Threshold Service.

2.3.3 Added Value Services

Providers are also encouraged to apply to register under this Program Service Plans with greater functionality including higher Data Speeds and other usage allowances which exceeds that applying to a Threshold Service.

When registering an Added Value Service, the Provider is required to demonstrate that:

- it is appropriately taking account of the Incentive Payment in setting the price for that Service;
- the price of the Added Value Service is reasonable (commensurate with the additional features) relative to the price of the Provider's Threshold Service using the same Service Solution;
- the Service meets or exceeds requirements at section 2.3.1(d)-(f).

The Data Speeds/usage must equal or exceed that applying to a Threshold Service to be recognised as an Added Value Service. For the purposes of Data Speed Testing outlined in section 4.6.4, Providers must nominate a peak Data Speed and either an average (at least 60 per cent of peak data speed) or minimum Data Speed (for a high speed broadband service) that is greater than the Data Speed applying to a Threshold Service.

The provision of additional optional functionality (for example, access to a VoIP service) but with a Data Speed or data usage limit lower than that applicable to a Threshold Service will not be registered as an Added Value Service.

Any Service, apart from a Provider's Threshold Service, that meets or exceeds all of the requirements for a Threshold Service will be deemed an Added Value Service. Providers can have multiple Added Value Services, provided they are also offering a Threshold Service.

2.3.4 Other Matters

The Australian Broadband Guarantee does not preclude Providers offering special discounts on Service to particular groups of Eligible Customers (including all Eligible Customers) on a commercial basis, subject to compliance with all relevant laws. Providers must notify the Department if they intend to offer and promote any discounts, including on their websites.

The Department will not approve for Registration under this Program any constructed service bundle (for example, including VoIP and pay TV) as a Threshold Service or Entry Level Service. Providers are able to offer a service bundle as an Added Value Service, provided that the Threshold Service or Entry Level Service is also offered separately as a stand-alone service and the Service would otherwise meet or exceed the requirements for a Threshold Service.

Providers should note that bundling conduct is subject to compliance with all relevant Commonwealth and State/Territory laws, including the *Trade Practices Act 1974*.

A Provider may, in its discretion, decline to offer to provide a Service to a Customer where the Provider has evidence that the Customer has a poor credit history, subject to the operation of consumer, anti-discrimination and other relevant laws (see section 2.2.1).

2.3.5 Payments for Service Plans

Providers are encouraged to offer Customers, as appropriate, a range of options to pay for their Service Plans, including credit card, direct debit from bank account and/or payment by cheque or money order. Where a payment option is not normally available, Providers are encouraged to give customers alternative payment arrangements where Customers are unable to access the Provider's standard method of payment.

Pre-paid cards may not be used to pay for Service Plans unless they are approved by the Department.

2.4 Steps Required by a Customer to Receive an Australian Broadband Guarantee Service

The Customer, or a person acting on the authority of the Customer, must enter the Customer's details on the Department's Broadband Service Locator at <http://bcoms.dcita.gov.au/BSL>. Where a person is claiming to be acting on the authority of the Customer, that person must be able to provide evidence of that authority if requested by the Department.

It is a criminal offence under the *Criminal Code Act 1995* for a Customer or persons acting on the authority of the Customer to provide false or misleading information to the Department. The Department will actively pursue any persons (including Providers) who provide false or misleading information to the Department, including by way of information included in the Attestation Form.

2.4.1 Information to be Provided by the Customer on the Broadband Service Locator

The following Customer details must be entered in relation to that Customer's premises:

- customer name and whether the application is for:
 - a residential premises (see section 2.1.1). If the Customer is applying for this Service, the Customer must indicate that the premises are the Customer's principal place of residence (see section 2.1.1.1 for exclusions);
 - a business with up to 20 FTEs (see section 2.1.2). If a Customer is applying for this Service, the business's ABN, GST status, work location, and number of employees must be included; or
 - an Indigenous Community Council (see section 2.1.3);
- unit/street number and street name. Customers may also submit latitude and longitude details for their premises in the Broadband Service Locator. Where the Broadband Service Locator is unable to locate the address supplied, the latitude

and longitude entered will be used instead. Where the application is from a small business, the address of the place of business must be identified in full;

- suburb or town or locality (no other name, such as an electorate name or local government area name can be accepted);
- state/territory;
- postcode;
- telephone number(s). Where a fixed line service is operating at the premises, that telephone number must be included;
- e-mail address (if the Customer can access an e-mail service or other e-mail contact should the Customer authorise this);
- confirmation that the Customer is an Eligible Customer (section 2.1)
- confirmation that the premises are Eligible Premises in accordance with section 2.1.1 (for Residential Customers) or 2.1.2 (for small business Customers);
- advice as to whether the premises has received a Service under the Australian Broadband Guarantee or a subsidised broadband service under HiBIS, Broadband Connect Incentive Program, Metro Broadband Connect or Australian Broadband Guarantee (transitional period). If such service has previously been supplied to the premises, the Customer will need to provide full details as to whether:
 - the service is not operating. In this case, the Customer must provide the full details as to why the service is not operating;
 - the service is still operating. If it is, the customer is not eligible for a second service at the premises.

The Broadband Service Locator will not accept information such as:

- RMB numbers;
- Post Office Box Numbers;
- Incomplete or incorrect addresses;
- Names of Properties (for example, rural property titles). This material can be added to the “Other Details” box but cannot be used to assist with determining eligibility.

Once the Customer has asked to save their details, the Broadband Service Locator will create a Customer ID number. The Customer ID will be mailed to the Customer.

When the Customer agrees to register their details on the Broadband Service Locator, the Customer consents to having address information being made available to Category A ISPs and Providers.

Customer records will remain on the Broadband Service Locator for no more than ninety (90) calendar days. A Customer will need to re-register if they have not obtained a service by that time, either from a Category A ISP or a Category B or C Provider.

2.4.2 Category A ISPs

Category A ISPs whose details are listed on the Broadband Service Locator in accordance with section 4.2 of the Guidelines will be invited to participate in an online process that will allow them to view the location details of Customers seeking a broadband service.

Category A ISPs will have log-in access to an interface that will display this information and will be able to click a check-box to indicate that they are able to provide a Metro-comparable Service on a commercial basis to the Customer.

Each customer record will remain visible for seven (7) calendar days. The Customer record will comprise the location of the Customer's premises (in latitude and longitude), state/territory and the first eight digits (including the area code) of the Customer's telephone number. Once seven (7) calendar days have elapsed, the record will no longer be accessible to Category A ISPs.

Where one or more Category A ISPs indicate(s) that they are likely to be able to supply a Metro-comparable Service to the location or to the phone number, the customer will be mailed a list of:

- Category A ISPs who offer Metro-comparable Services. The Customer will need to contact at least one ISP on that list to determine whether a Metro-comparable Service is available. The Customer must contact each of these ISPs to determine whether a Metro-comparable Service is able to be Connected and Supplied to their premises. In the event that ADSL1 Services are likely to be available at the premises, the Customer should receive written advice that an ADSL1 Service is not available at the premises for technical reasons; and
- A list of other ISPs that could offer broadband services but are not Metro-comparable Services. The Customer has the option to contact these ISPs. If a Service is obtained commercially from one of these ISPs, the premises will no longer be regarded as Eligible Premises, except if they fall within one or more of the exceptions outlined in section 2.6 below.

2.4.2.1 *Progression to Category B*

If none of the Category A ISPs advise that they can offer a Metro-comparable Service to the premises, or no providers respond to the request for advice within the Department's specified timeframe, the Customer is eligible to receive an Australian Broadband Guarantee Service and the application will be elevated to either a Category B (see section 2.4.3) or Category C Provider (section 2.4.4).

Where a Customer is originally advised by a Category A ISP that a Metro-comparable Service could be provided and a site survey finds a service cannot be provided, the Customer should advise this to the Department to have their listing re-activated. The Customer will need to quote their Customer ID number (located on the letter issued to the Customer after submitting their details in the Broadband Service Locator) and advise which Category A ISPs were contacted and the reasons given for a Metro-comparable Service not being connected, including evidence to support their assertions (for example, correspondence from the ISP that the service cannot be offered).

2.4.3 Category B Providers

Where a Customer is unable to obtain a Service from a Category A ISP, the Broadband Service Locator will search for a Category B Provider that could offer the Customer a Terrestrial Broadband service.

Category B Providers will have log-in access to an interface that will display this information and will be able to click a check-box to indicate that they are likely to provide a Terrestrial Broadband Service under the Australian Broadband Guarantee to the Customer.

Each customer record will remain visible for seven (7) calendar days. The Customer record will comprise the location of the Customer's premises (in latitude and longitude), state/territory and the first eight digits (including the area code) of the Customer's telephone number. As Service Areas being registered for the Australian Broadband Guarantee generally do not overlap, normally only one Category B Provider will be notified. Once seven (7) calendar days have elapsed, the record will no longer be accessible to Category B Providers.

The Customer will receive a letter from the Department advising of eligibility to obtain a Service under the Australian Broadband Guarantee and the Provider(s) that indicated they are likely to provide a Service. An e-mail notification will also be sent to the nominated e-mail address (if applicable).

The letter will include a list of Category B Providers that are likely to provide a service. The Customer will need to contact each of the Category B Providers to determine if a Service can be provided.

The letter includes a pre-populated Attestation Form that requires the Customer to confirm:

- that the name, address and other contact details are correct;
- that a Metro-comparable Service cannot be provided by a Category A ISP;
- that the customer is an Eligible Customer and their premises are Eligible Premises (as defined in these Guidelines); and
- that the premises have not previously received a service under the Australian Broadband Guarantee or a predecessor program, unless the Department has otherwise advised this situation is not an impediment;

The Attestation Form must be signed by the Customer and submitted to the Category B Provider that the Customer nominates and that can Connect and Supply the Service.

2.4.4 Category C Providers

Where the premises are unable to be connected to a service from a Category A ISP or a Service from a Category B Provider, the Customer may seek a Satellite Broadband Service from a Category C Provider. The Customer will receive a letter similar to that outlined in section 2.4.3 including a pre-populated Attestation Form that can be submitted to any Category C Provider together with a list of the Category C Providers. The Attestation Form must be signed by the Customer and submitted to the Category C Provider that the Customer nominates and that can Connect and Supply the Service.

An e-mail notification will also be sent to the nominated e-mail address (if applicable).

If a Customer's premises are located in an area where there is no existing terrestrial network coverage, then this customer's location details will be immediately passed to Category C Providers without the need for review by Category A ISPs or Category B Providers.

2.4.5 Provider Obligations

While Providers can generally rely on the Broadband Service Locator, Providers are strongly encouraged to undertake their own checks, where relevant, to re-confirm the eligibility of the Customer and their premises (as per section 2 of the Guidelines) to apply to receive an Australian Broadband Guarantee Service prior to the installation of a Service at the relevant Customer's premises.

Providers are strongly encouraged to confirm with a Customer that they have the appropriate authority to agree to have a service installed. An example of this would be where the Customer is renting the premises and the Customer does not have authority to authorise installation of a broadband service to their premises.

Connection and Supply of a Service must occur within thirty (30) calendar days of the date that the Customer has requested a Service from a Provider and has supplied the Provider with their Customer ID number (unless another time is otherwise approved by the Department).

There is no obligation for a Customer to sign up to a Service offered by an ISP, regardless of whether or not the ISP is a Category A ISP, Category B Provider or Category C Provider. A Customer that seeks a specific Service Solution and which the Broadband Service Locator advises is not available to the Customer (for example the Customer is seeking a Satellite Broadband Service but is located in premises that could obtain a Terrestrial Broadband Service through a Category A ISP or Category B Provider) is not eligible to obtain such a Service through the Australian Broadband Guarantee. If the ISP is a Category B or C Provider, the Provider is ineligible to claim an Incentive Payment for a Customer in such circumstances.

2.4.6 Customer Confirmation of Service

2.4.6.1 *Metro-comparable Service Under Category A*

Where a Customer is advised that a Metro-comparable Service is available from a Category A ISP, no further action is required and the Customer is NOT eligible to receive a Program Service, unless exceptional circumstances apply. The Customer's record will be automatically deleted from the Broadband Service Locator in ninety (90) calendar days after the initial registration.

2.4.6.2 *Service Provided Under the Australian Broadband Guarantee*

If a Customer requests a Service from a registered Australian Broadband Guarantee Provider, the Customer must supply the Customer ID number they received when initially registering on the Broadband Service Locator and the completed Attestation Form.

A precondition for lodging an Incentive Payment is that the provider has Connected and Supplied a Service to the Eligible Customer. Claims must only be lodged via BCOMS *after* the Program Service has been Connected and Supplied to the Customer and within the specified lodgement timeframes specified in section 4.4.

Connection and Supply of a Service must occur within thirty (30) calendar days of the date that the Customer has requested a Service from a Provider and has supplied the Provider with their Customer ID number. An application for Incentive Payment cannot be accepted without both the Customer ID Number and confirmation that the Service has been Connected and Supplied.

Once the Department receives advice that the Provider has Connected and Supplied the Service, the Customer will be invited to log onto the Department's website using the Customer ID number to provide feedback, including whether their service has been Connected and Supplied.

2.4.7 Penalties for Misuse of the Broadband Service Locator

Misuse of the Broadband Service Locator by a Provider will be treated as a breach of the Provider's Funding Deed. The Department will conduct ongoing monitoring of Providers' use of the Broadband Service Locator.

Customers that make false or misleading statements in their declarations on the Broadband Service Locator or in their Customer Attestation Form may be subject to criminal proceedings under the *Criminal Code Act 1995*.

2.4.8 Records to Support Claim for Incentive Payment

Following the Connection and Supply of the Service, and submission of a claim for Incentive Payment by the Provider through BCOMS, a Provider must be able to produce relevant proof to support the information in their claim if requested by the Department, in addition to any other obligations it may have. This includes the original Attestation Form signed by the Customer and proof that a Service has been Connected and Supplied (as defined).

2.5 Use of Customer Information by the Department

The Department requires that Providers ensure that under their Terms and Conditions, Customers agree, for the purposes of the *Privacy Act 1988* (the 'Privacy Act'), to their Customer details being provided by Providers to the Department and potentially other appropriate agencies for the purposes of Program administration, regulation and evaluation, and policy development. Providers are required to also adhere to the requirements under the Privacy Act in respect of Customer's personal information.

Customers' personal information (which may include information relating to their identity, contact details, the Services they are having supplied and the details of their Premises) is to be handled by the Department in accordance with the provisions of the Privacy Act, which sets standards for the collection, storage, use and disclosure of personal information. Personal information is disclosed only as provided for in these Guidelines or with the permission of the individual to whom it relates, or where otherwise permitted by the Privacy Act.

2.6 Loss of an Australian Broadband Guarantee or HiBIS/Broadband Connect Incentive Program/Metro Broadband Connect Service

There are a range of circumstances where a Customer may lose access to an Australian Broadband Guarantee, Broadband Connect Incentive Payment, Metro Broadband Connect, HiBIS Service, or any other Metro-comparable Service, and in some of these circumstances they may be eligible to access an additional Service. The

following rules apply. Please note, where a Provider is uncertain about the application of the Guidelines to a particular circumstance, the Provider should seek written advice from the Department about the application of the Guidelines to those circumstances.

2.6.1 Customer Loses Access to an Australian Broadband Guarantee Service, a Metro-comparable Service or a Government Supported Service through Circumstances Beyond their Control

Where a Customer has received from their current premises:

- an Australian Broadband Guarantee (transitional period) service;
- an Australian Broadband Guarantee Service;
- a HiBIS service, a Broadband Connect Incentive Program service;
- a Metro Broadband Connect Service; or
- any other Metro-comparable Service;

and where, in circumstances beyond the control of the Customer (for example, loss of CPE or other equipment that connected to the CPE, due to natural disaster, the Provider ceasing to trade, or where a service at the end of the contract is not maintained in line with that Customer's terms and conditions), that service is no longer offered to the Customer or is not offered on at least the same terms and conditions as originally offered, the Customer may be eligible for an Australian Broadband Guarantee Service, subject to satisfying all other eligibility requirements as described in these Guidelines.

2.6.1.1 Loss of CPE

In respect of the possible loss of CPE, Customers and Providers should ensure that whoever owns the CPE has appropriate insurance arrangements in place to cover damage to equipment caused by accident, natural disaster, vandalism and theft. This could include insurance (in the case where the Customer owns the CPE) or an appropriate arrangement to repair/replace equipment (in the case of Provider ownership). A Customer must seek to replace any lost CPE they own through the proceeds s/he has received from the lodgement of a claim under the governing insurance policy, or in instances where no insurance is held (or the insurance claim is not successful) at their own cost. A Provider must repair/replace equipment they own at their own cost or under their own insurance arrangements. The Department bears no responsibility for the replacement of CPE.

However, where the Customer loses the Service due to exceptional circumstances, they may be eligible to receive a new Service. In such cases, when seeking another Program Service the Customer must attest (on the Customer Attestation Form) to losing the service and detail fully the reasons for the loss of that service (including any accompanying documentation to support assertions). The Department will assess each claim on a case-by-case basis and any decision taken is final.

Where the Provider who is no longer providing the service, or has changed the Terms and Conditions of the service, is an Australian Broadband Guarantee Provider, that Provider will not be eligible to receive an Incentive Payment for provision of an additional Australian Broadband Guarantee Service to that Customer at the Customer's Premises.

The loss of the Service may amount to the Provider breaching an obligation under the Funding Deed. In such cases, the Provider may be required to repay the Incentive Payment it had received for provision of that Service, and the Department may take any other action (as considered appropriate) under the terms of the Funding Deed.

Where a Customer has come to the end of the three year contract period for a HiBIS Service, a Broadband Connect Incentive Program Service, Metro Broadband Connect Service or an Australian Broadband Guarantee (transitional period) Service, and the level of service is not maintained at the former level (in terms of price and functionality) by the ISP/Provider, the Customer may be eligible for a new Service by a different Provider under the Australian Broadband Guarantee (where appropriate). However, where the Customer is seeking to upgrade to a higher level Service and the existing service is being maintained by the ISP/Provider, the Customer will not be eligible to receive an Australian Broadband Guarantee Service.

2.6.2 Customer who Terminates their Service or who Changes to Another ISP

Where a Customer voluntarily relinquishes their Program Service at their premises to take up another broadband service, that Customer is not eligible to receive another Australian Broadband Guarantee Service from any Registered Provider.

The Department does not place any restrictions on termination by a Customer of a Program Service. The Customer is only bound by their contract with the Provider in this regard, as would be the case with any other commercial arrangement.

Termination of the supply of a Program Service by a Customer does not affect the Incentive Payment that has been paid to the Provider. The only exception is where the termination arises as a result of the Provider being unable to continue to provide the Service to the Customer according to the requirements of their Funding Deed, during the period of the Program. In these cases, the Incentive Payment must be refunded.

Similarly, the Australian Broadband Guarantee does not place restrictions on a Customer leaving one Provider for another ISP (churning), whether to a Category B or C Provider or Category A ISP . However, where a Customer churns to another Provider, no Incentive Payment will be payable to the new Provider, and there is no obligation on the new Provider to offer Program Terms and Conditions to the Customer.

2.6.3 Customers who Move to New Premises

If a Customer moves to new premises and those premises are an Eligible Premises (as defined in these Guidelines), then the Customer is eligible to receive a new Service at those premises.

Generally, where a Customer moves to a premises that had been previously supplied with a HiBIS, Broadband Connect Incentive Program, Metro Broadband Connect, Australian Broadband Guarantee (transitional period) or Australian Broadband Guarantee Service, and where access to that service remains available to the Customer under a contract with the previous occupant's Provider, then the Customer is generally not eligible to receive a Program Service at those premises.

However, where a Customer moves to premises previously supplied with a HiBIS, Broadband Connect Incentive Program, Metro Broadband Connect, Australian Broadband Guarantee (transitional period) or Australian Broadband Guarantee

Service and such a Service is no longer available (for example, due to removal of significant infrastructure either by the previous occupant or their Provider) the premises may be eligible to receive a new Program Service.

If the Customer occupies premises that have previously been supplied with:

- (a) a Service under this Program, or
- (b) supplied with a subsidised broadband internet service under the HiBIS, Broadband Connect Incentive Program, Metro Broadband Connect program or Australian Broadband Guarantee (transitional period) program,

and the CPE is available but is not operating, the Customer should contact the Department immediately to seek advice on which Provider may have previously installed the Service to determine whether the Customer is eligible to apply for a new Service under this program.

Where the Department determines that the Customer is eligible in such cases:

- (a) where the Provider has previously installed and operated the service, a partial Incentive Payment may be paid, in the Department's discretion, to the Provider to reactivate the CPE, subject to the Department's approval; or
- (b) where the Provider that initially installed the equipment is unable to provide the Service, the Customer may seek a Service from another Australian Broadband Guarantee Provider (Category B or C), in line with the processes described in section 2.4.

Where the Service is no longer available due to actions of the former Provider (for example, where a Provider has withdrawn a service or substantially increased the price of a service) that Provider is not eligible to receive another incentive payment for the provision of a new Service to those premises.

Where a Provider is not certain as to whether a Customer is eligible to receive an Australian Broadband Guarantee Service at their new premises, they must seek written advice from the Department. When a request is made, the Department will consider particular circumstances of each case on a case-by-case basis, and will make a determination on eligibility which is final.

2.6.4 Customer who Moves to an Upgraded Service Plan

Providers are encouraged (but not obliged) to offer Customers a range of Service Plans under the Program. Service Solutions should be scalable in speed and data levels from Threshold levels to enable Customers to upgrade and improve the quality of their Service.

A Customer may move to an upgraded Service Plan offered by their Provider (for example, a Service Plan with greater data usage or Data Speed), subject to the Terms and Conditions offered by the Provider, and subject to paying any additional charges required by the Provider. No further Incentive Payment is payable in relation to such Service upgrades.

In these circumstances, if the new service is a Program Service, the Provider is required to provide the Service on the applicable Program Service Terms and Conditions for a period of three years from the time that the first Program Service was provided to the Customer.

If the new service is not a Program Service, the Provider has no obligation to provide Program Terms and Conditions in relation to the service, and the supply of that service will not attract an Incentive Payment.

A Provider may agree to a Customer's request to return to a Service Plan to which the Customer was previously Connected and Supplied under HiBIS, Broadband Connect Incentive Program, Metro Broadband Connect or Australian Broadband Guarantee (transitional period), subject to their being no technical impediment and subject to the Customer paying any additional charges to the Provider. Where a Provider levies charges in relation to transfer between Service Plans, those charges are to represent the actual administrative cost of transferring the Customer between Service Plans. Any such charges must also be detailed in the Provider's Terms and Conditions.

2.6.4.1 Customer with a Commercial Service Transferred to an Australian Broadband Guarantee Service

Section 2.6.4 of the Guidelines precludes the payment of Incentive Payments to Customers who are transferred to an upgraded Service Plan, or who choose to move back to the original Service Plan. This restriction also applies to Customers who have service plans that are not registered with the Australian Broadband Guarantee (i.e. commercial service plans) and who are seeking to be transferred to Australian Broadband Guarantee Service Plans using the same infrastructure and/or CPE (regardless of ISP).

Where a customer who has already been connected and supplied on the same infrastructure and, including CPE that is able to be upgraded to a new service plan that meets the requirements of a Metro-Comparable Service under the Program Guidelines, no Incentive Payment will be payable for such Service Plan upgrades.

A customer receiving a Service and who is an Eligible Customer at Eligible Premises may only move to a Service Plan provided under Australian Broadband Guarantee Terms and Conditions if the Provider is required to upgrade and/or replace CPE to facilitate the upgrade. In these circumstances the Department may consider payment of a partial Incentive Payment. The partial Incentive Payment claim must relate to Customer Premises situated in a Provider's registered Service Area and as reflected in the Provider's Funding Deed. Any such application for a partial Incentive Payment must be made to the Department at least twenty (20) calendar days prior to the planned installation. The Department reserves the right to decline to make any partial Incentive Payments.

2.6.5 Exit Strategy

Applicants have to submit a proposed Exit Strategy setting out the Applicant's proposed plans in respect of the migration of Customers to other Service Plans, or Providers if they:

- cease to offer a Service; or
- are de-registered from the Program (either voluntarily or otherwise).

The Exit Strategy must contain the following key elements:

- a minimum thirty (30) calendar days notice to affected Customers;

- details of arrangements to transfer Customers to different Service Plans or (in the event of de-registration) details of other Registered Providers that may be able to offer a comparable Program Service;
- commitment to assist Customers migrate to a comparable service offered by another Registered Provider, in the event of deregistration;
- information about the ownership of CPE action to be undertaken where ownership is retained by the Applicant/Customer in the event of deregistration or Service withdrawal where the Customer has terminated the contract; and
- in the case of a withdrawal of a Service, but continuation of registration, they must offer to migrate impacted Customers of the withdrawn Service to a comparable Australian Broadband Guarantee Service being offered by the Provider, if such a service is available, and grant the Customer the option of terminating the contract.

The minimum requirements are detailed in the sample Funding Deed on the Department's website and in the application form. An Applicant who does not provide an Exit Strategy or whose proposed Exit Strategy is less than the minimum, as specified in the application form, may be declined for registration.

The Applicant/Provider may wish to further specify Exit Strategy commitments. For example, a Registered Provider may wish to, but is not obliged to, include a provision relating to offering the Customer a negotiated arrangement with an incoming Registered Provider. The Department will assess at its discretion any other further proposals.

2.7 Commitments to Customers Signed up Under the Australian Broadband Guarantee (transitional period), Broadband Connect Incentive Program, Metro Broadband Connect and HiBIS

Providers Registered under the Australian Broadband Guarantee and that were registered under the Australian Broadband Guarantee (transitional period), Broadband Connect Incentive Program, Metro Broadband Connect and HiBIS, are reminded that they may have continuing legal obligations in respect of the provision of services to those respective Customers under those programs.

Providers who have supplied services under the Australian Broadband Guarantee (transitional period), Broadband Connect Incentive Program, Metro Broadband Connect and/or HiBIS are encouraged after the expiration of the original Customer contract under those programs to offer to transfer current Customers to any of its Australian Broadband Guarantee Services at the Customer's choice within a reasonable period. However, the Provider will not be entitled to receive an Incentive Payment in respect of the new supply of a Program Service as the Customer's premises will generally be ineligible, unless an exceptional circumstance (as outlined in Section 2) applies.

3. Provider Registration under the Australian Broadband Guarantee

3.1 Introduction

The following chapter covers the application process that all Applicants must undertake to be considered for registration under the Program. Any ISP interested in participating in the Program, including ISPs previously registered under the Australian Broadband Guarantee (transitional period), Broadband Connect Incentive Program, Metro Broadband Connect or HiBIS are required to lodge an application for registration under the Program.

All Applicants are required to register:

- (a) themselves (noting the requirements outlined in this chapter);
- (b) the Service Solution(s) proposed to be deployed;
- (c) the Service Plans proposed to be offered (refer criterion 3 at section 3.5.3). Each Applicant is required to register at least one Threshold Service for each Service Solution and has the option of registering one or more Threshold, Entry Level or Added Value Services; and
- (d) each Service Area in which the Applicant intends to offer a Service (refer criterion 4 at section 3.5.4).

Applications are assessed by a Departmental Assessment Panel, drawing on expert advice from external consultants as necessary. The Department may also draw, as necessary, on the expertise of other departments and agencies of the Australian Government (for example, ACMA, ACCC).

If the Application is approved by the Assessment Panel, and all preconditions have been satisfied, which may include requiring the Applicant to provide an appropriate form of security (this may include a bank undertaking in favour of the Commonwealth to secure their performance; or a parent company guarantee and indemnity), the Department will notify the Applicant and forward a Funding Deed (either by e-mail, courier or post) for signature. The Applicant must return the Funding Deed to the Department for its execution. Once the Funding Deed has been executed by the Department, the Applicant's Registration as a Provider under the Australian Broadband Guarantee will become effective. The Provider's registration status and public contact details will also be put on the Department's website.

In addition, the Department may approve at its discretion, registration subject to certain additional conditions.

All Applicants will be advised in writing of the Assessment Panel's decision.

The Australian Government will not make any payment for any Services Connected and Supplied by an Applicant who is successfully registered under this Program prior to the commencement of the Funding Deed under the Program.

Applicants are advised to seek their own legal advice in relation to the execution of the Funding Deed, including the taxation treatment of any funding provided under this Program.

3.2 When Applications can be Made

The Department reserves the right to announce Registration Rounds (including Registration Rounds specifically relating to Service Areas) at its discretion, at any other time during the operation of the Program. Details of any future Registration Rounds (if and when announced), including the date for receipt of applications under the Registration Round, will be notified on the Department's website.

For the any subsequent Registration Rounds (if and when announced), existing Providers may submit applications for new Service Plans, Service Solutions and/or new Service Areas. Such applications must be on the relevant part of the approved application form, and will be assessed according to the relevant assessment criteria, as set out in these Guidelines. The Department will notify Providers of any subsequent Registration Round and provide application forms to be used by prospective applicants.

All Applicants must complete the application form which will be available from www.dbcde.gov.au/communications_for_business/funding_programs_and_support/broadband_guarantee during a Registration Round and submit it together with all accompanying documentation to the Department.

Complete applications for an announced Registration Round must be received by the Department by 5.00pm AEST on the day advised on the Department's website.

The applicant must provide two complete, unbound, signed and dated copies of the application and accompanied by one complete electronic copy on CD-ROM or DVD-ROM. Applications received by e-mail will not be accepted. Electronic documents must be provided in a Microsoft-compatible format or be accessible using Microsoft tools. Geo-spatial information such as maps should be provided in MapInfo TAB file format.

Service Areas Registered under a Registration Round and reflected in a Provider's Funding Deed will remain Registered with the Provider, subject to the terms of the Provider's Funding Deed and these Guidelines (i.e. a Provider that has already Registered a Service Area will not lose that Service Area as the result of a Registration Round itself being called).

3.3 Overview of Assessment Process

3.3.1 Three-Stage Assessment Process

Applications are subject to a three-stage assessment process.

Stage One will involve an initial screening. During this stage, all applications will be screened to ensure that they are compliant with the requirements set out in these Guidelines and associated documentation, and provide sufficient information to be effectively assessed. The Department may exclude from further consideration applications which do not meet the minimum eligibility requirements, or do not substantively address all four (4) assessment criteria.

Stage Two will involve benchmarking the remaining applications in detail against the selection criteria described at sections 3.5–3.5.4 (i.e. these will be all the selection criteria except for those that apply in Stage 3). Applications that do not satisfy these criteria will be excluded from further consideration at this point.

Stage Three will involve the assessment of proposed Service Areas. Under this stage a comparative assessment of Applications proposing terrestrial-based Internet services in the same area will also be undertaken. Section 3.5.4 sets out the criteria that will be used for the comparative assessment. Applicants should note that the result of the comparative assessment will be that only one Service Area for terrestrial-based Services will be registered in a particular area (although there may be some overlap of terrestrial service areas). Applications will be ranked in accordance with the provisions in Section 3.6.

Applicants should note that the Department reserves the right to decline to further assess applications for terrestrial-based Services Areas which completely or substantially overlap with terrestrial-based Service Areas approved for other Providers.

During the assessment, the Department may seek and take into account comments or advice received from its internal and external technical, financial, or legal advisers in relation to Applications.

A decision as to which applications are successful will be made by the Assessment Panel. All Applicants will be advised in writing of Panel decisions in relation to their application.

3.3.2 Further Details on the Assessment Process

Applications must be submitted by the closing date for Registration Rounds specified at section 3.2 and/or notified on the Department's website (in the case where a general extension to the closing date is announced). Applicants should note that the Department will assess applications on the material submitted, and revisions to applications after the Registration Round closing date will not be accepted. However, the Department may, at its discretion, ask Applicants to clarify information provided in their applications. Where an Applicant does not provide clarification responses within a specified timeframe, the application may be declined.

Unsuccessful Applicants may submit further applications for registration in later Registration Rounds (if and when announced).

The Department reserves the right:

- not to register Applicants under the Program; and
- to vary, amend or terminate a Registration Round at any time.

The Department will not in any circumstances meet any costs or expenses incurred by an Applicant in connection with their applications. Applicants bear their own costs and expenses associated with the application and assessment process and execution of the related Funding Deed or any other required documentation in respect of registration under the Program.

The application and assessment process described in these Guidelines is not an offer by the Australian Government to enter into legal relations. No action or inaction in relation to these Guidelines, whether the issue of the Guidelines, the making or assessment of an Application, any steps in relation to the assessment process as described in these Guidelines, or otherwise, creates any contract, or a binding undertaking of any kind by the Australian Government, including without limitation, quasi-contractual rights, promissory estoppel or rights with a similar legal basis.

The Department reserves the right to defer the processing of an application submitted by an Applicant who is currently the subject of a planned or current compliance audit of its activities under the Broadband Connect Incentive Program, Metro Broadband Connect or Australian Broadband Guarantee (transitional period) pending the outcomes of the audit.

3.4 Stage One: Screening of Applications

Application for registration under the Program is open to ISPs who are current members of the TIO scheme as required by the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

The following Applicants will not be accepted for registration under the Australian Broadband Guarantee:

- Applicants who propose to offer only wholesale broadband services;
- Applicants who propose to resell an end-to-end wholesale terrestrial broadband internet service provided by a wholesale provider;
- Applicants who propose to resell another ISP's end to end retail Satellite Broadband Service; and
- Applicants who do not substantially address the selection criteria outlined in section 3.5 or do not complete all of the information requirements contained in the Australian Broadband Guarantee application form.

The Department reserves the right to defer the processing of an application submitted by an entity who is currently the subject of a planned or current compliance audit of its activities under the Broadband Connect Incentive Program, Metro Broadband Connect or Australian Broadband Guarantee (transitional period) pending the outcomes of the audit.

3.4.1 Screening Process for Terrestrial Broadband Service Areas

The Department reserves the right to decline to register an Applicant's Service Areas where the Service Area is found to be ineligible for registration under the Program. See section 3.5.4 below.

Where an Applicant is able to satisfy the other provisions of Stage 1, but all of the Applicant's Service Areas are found to be ineligible for registration, the Applicant will continue to be assessed in Stage 2 on criteria 1–3. If the Applicant fully satisfies criteria 1–3, the Applicant may be invited to submit a streamlined application in the next Service Area Registration Round. This will be at the Department's discretion.

3.5 Stage Two: Assessment

Applications to register for the Australian Broadband Guarantee will be assessed against the following assessment criteria:

- Criterion 1: the Applicant's financial viability and operational sustainability;
- Criterion 2: past performance of the Applicant (where applicable) in relation to its compliance with other government funding programs;
- Criterion 3: the Service Solutions and Service Plans the Applicant proposes to offer; and

- Criterion 4: the Service Areas the Applicant proposes to serve.

It is noted that each of the assessment criteria must be addressed to the Department's satisfaction. The Department reserves the right to decline further assessment of an Application if one or more criteria are not addressed to the Department's satisfaction.

3.5.1 Criterion 1: Financial Viability and Operational Sustainability

An Applicant's financial viability and operational sustainability will be considered against the following sub-criteria:

Basis of assessment

- Solvency: The Applicant is financially solvent at the time of Application.
- Audit status: The Applicant is able to submit audited accounts that indicate the auditor does not have any qualifications or concerns about the financial position of the Applicant.
- Ongoing ability to fund Program commitments: There are no material commitments that would call into question the Applicant's ability to sustain its proposed Program operations.
- Applicant has access to adequate funds: The Applicant has access to sufficient funds (but not including projected Program funding) to operate its business while participating in the Program.
- Financial performance: The Applicant's past financial performance and projected financial performance demonstrates that the Applicant is profitable and has positive net assets (current and fixed); and is projected to be profitable. This should be reflected in the Applicant's financial accounts (historical and projected) and business plan.
- Managerial integrity: Key Managerial staff have no criminal conviction, charges pending or other serious breaches as at the time of application.
- Board experience (**if applicable**): Where an applicant is a corporate organisation, its Board as a whole should have six (6) years minimum combined industry experience at Board or senior executive level and at least two (2) Board members with at least three (3) years industry experience each at Board or senior executive level. Where an applicant is a partnership, its partners should have at least six (6) years combined industry experience.
- Senior Management experience: The Applicant's management team should have at least six (6) years minimum, combined industry experience at senior management level and at least two (2) managers with at least three (3) years industry experience each at senior management level.
- Sustainable business plan: The Applicant can demonstrate that its broadband Internet business is viable on an ongoing basis, including if necessary without the support of government funding. The business plan should assume that broadband services would continue to be offered on a metro-comparable basis into the future, in order to remain competitive with other available broadband services.
- Risk Management: Applicants must demonstrate awareness of key technical and operational risks associated with their operations and have effective strategies to address them, particularly in the context of the Australian Broadband Guarantee.

An Applicant may be declined from registration if the information submitted in response to this criterion indicates a disproportionate reliance on Program funds for the business to be viable.

Information required

In order for an Applicant to address criterion 1, the Applicant must submit the following material with its application:

- Audited financial accounts (or at minimum audited profit & loss statement, balance sheets and cashflow statements) for full years 2004/05, 2005/06 and 2006/07.
 - Where the Applicant cannot supply audited financial accounts for the past three financial years, the Applicant can seek to provide their accounts reviewed in line with Auditing Standard Australia AUS 902 “Review of Financial Reports” (further details at www.auasb.gov.au). In exceptional circumstances, a shorter period may be considered if the Applicant can satisfactorily demonstrate current and ongoing financial viability. The audit must be completed by an appropriately qualified Auditor.

Where the Applicant claims to be exempt from the requirement to submit audited accounts under the *Corporations Act 2001*, the Provider will still be required to provide audited accounts (preferred) or accounts reviewed under AUS902.
 - Where the Applicant is a majority owned subsidiary of another company and is being financially supported by that company, the above financial information of the parent company (or relevant controlling business) is to be supplied in addition to their own information;
 - Where the Applicant has obligations under the *Corporations Act 2001* to prepare an annual report with audited financial statements, that information may be used. If an audit opinion is qualified, the Applicant should provide a copy of the management letter accompanying the adverse audit opinion;
- A statutory declaration from the Applicant’s CEO, Principal, Partner, or other appropriate authorised officer (as the case may be) stating that no material events have occurred since the date of the audit report that would affect the overall validity of the audit report;
- A copy of the company’s business plan, financial plan and risk management plan (or equivalent material covering financial, technical and operational matters) that identify such matters as financial viability on an ongoing basis, access to funds and demonstrated ability to continue to provide a Service under the Program, and if necessary without Australian Government funding support. This information may be contained in a single document. Such documents supplied to the Department will be treated as “commercial-in-confidence” in line with the provisions in section 3.7.2 of the Guidelines;
- Details of the Applicant’s corporate structure, including relationships between the Applicant and financially related entities;
- Copies of any unconditional bank guarantees or other instruments (for example, a parent company guarantee and indemnity in favour of the Applicant, where applicable) upon which the Applicant seeks to rely upon to demonstrate its

financial standing. Where the Applicant is a majority-owned subsidiary of another company and the Applicant cannot supply three years' audited accounts, the Applicant is required to submit the parent company's (or controlling business') audited financial accounts (or at minimum audited profit & loss statement, balance sheets and cashflow statements) for the past three (3) financial years;

- Certified copies of National Police Certificates across all Australian police jurisdictions for each director and executive manager from the police in the state or territory where the company/entity is registered, or advice that commensurate material was lodged in accordance with ASX or ASIC requirements for directors and executive management (in the case of applicants who are public companies);
- For corporate applicants, details of Board members and their relevant experience, and if applicable, a copy of a current ASIC Current and Historical company extract, including notification of directors' appointments;
- Details of the organisational structure and details of executive or relevant senior managers including their roles, qualifications and relevant industry experience.

3.5.2 Criterion 2: Regulatory and Other Compliance Issues

An assessment of the Applicant's compliance with regulatory obligations (and related matters) and obligations under former Government broadband programs will be considered against the following sub-criteria:

Basis of assessment

- Regulatory status: Applicants must demonstrate that they are up to date with lodgements and other statutory requirements with: ASIC, ATO, ASX, ACMA, ACCC and TIO.
- Compliance with past Australian Government broadband programs: Where applicable, Applicants must demonstrate satisfactory compliance with past Australian Government broadband funding programs, including the Higher Bandwidth Incentive Scheme (HiBIS), Broadband Connect, Metro Broadband Connect, the Australian Broadband Guarantee (transitional period), and the Coordinated Communications Infrastructure Fund (CCIF).
- Compliance with requirements of other state/territory and local government broadband funding programs: Applicants must demonstrate, if they are receiving funding from state/territory and local governments which have similar objectives to the Australian Broadband Guarantee that they are complying with the requirements of those program(s).
- Where the Applicant has received adverse compliance findings under past Australian Government broadband programs, the Applicant must demonstrate how it has addressed the issues and concerns raised in those compliance findings to the satisfaction of the Department.

Information required

- The Applicant must provide a statutory declaration made by a duly authorised officer stating that the Applicant is up to date with lodgements and other statutory requirements with ASIC, ATO, ASX, ACMA, ACCC and TIO and a statement identifying and giving the details of any alleged breaches of law being pursued by ASIC, the ATO, ACMA or ACCC at the time of registration (if any).

- The Applicant must provide details of any other funding the Applicant receives from the Australian Government, and state or territory governments, details of the funding and whether these programs have a similar objective to the Australian Broadband Guarantee.
- The Applicant must provide a statutory declaration made by a duly authorised officer stating that the Applicant is up to date with its compliance and reporting requirements for all funding programs in which the applicant is participating.
- The Applicant must identify any significant compliance issues arising under previous Australian (or state/territory) Government broadband programs, including adverse audit findings, formal consumer complaints, TIO investigations, and any existing audit investigations that may be proposed, currently underway and not yet be completed. The Applicant must identify any significant non-compliance or Customer service issues identified as a result of any past events, and set out what (if any) actions have been taken to resolve the identified issues.

3.5.3 Criterion 3: Service Solutions and Service Plans

This criterion must be responded to by:

- All Applicants seeking to register under the Australian Broadband Guarantee; and
- Registered Providers seeking to offer additional Service Solutions or change their Service Plans under the Australian Broadband Guarantee. Any substantial amendments to Service Plans are required to be submitted as applications under Registration Rounds. Minor amendments that benefit Customers, such as a lower price for the Service or improved data usage, may be accepted by the Department at any time during the operation of the Program.

If an Applicant proposes to offer more than one Service Solution (e.g. satellite and wireless), the Applicant must detail each Service Solution and the related Service Plans on a separate copy of Part 3 of the Application Form.

Basis of assessment

The following will be taken into account in assessing the suitability of the Service Solution(s) and Service Plans being proposed.

Service Solutions

- **Material Investment:** The extent to which the proposed Service Solution amounts to “material investment” (see guidance below) in new infrastructure, rather than modification of existing infrastructure at minor cost. Applicants will be asked to detail the value of their investment in the infrastructure. Proposed new service coverage that results from modification of existing infrastructure, and that does not result in material new investment, will not be approved for registration as a Service Solution. Examples of investments the Department would not consider material include:
 - software upgrades;
 - minor technical improvements to existing infrastructure, such as upgrading components, replacement of network cards, etc.;
 - the realignment of existing infrastructure;

- replacement and/or upgrade of CPE, where brought about by improvements in the network or not; and
- realignment of satellite dishes.
- Robustness and reliability of technology platform: If the proposed technology platform is not already proven or deployed elsewhere on a wide scale, the Applicant must demonstrate the robustness of any new technological platform on which the service is to be supplied.
- Scalability of Service Solution: The ability of the Service Solution to be further developed and improved, enabling Customers to receive a higher level of Service.
- Technical Capability of Key Operations Officer(s): Details of the technical capability and experience of the Applicant's Chief Technology Officer and/or Chief Operations Officer.
- Adequate Technology support: The Applicant has adequate systems to support the technology platform on which the service is to be supplied.
- Use of agents (see section 4.1 for further details): If the Applicant is using an agent to sell its Services, the arrangements must ensure that:
 - the Applicant has full responsibility for the provision of the proposed Service; and
 - the Applicant has in place appropriate control mechanisms and procedures governing the conduct of the agent.

Service Plans

- Threshold Service(s): Whether the proposed services comply with the requirements for metro-comparability, as set out in these Guidelines.
- Entry Level Service(s): Consistent with the definition in section 2.3.2, the extent to which the price is reduced below the Threshold Service level, and the extent to which the proposed service offers a cost-effective outcome for consumers.
- Added Value Services(s): Consistent with the definition in section 2.3.3, the extent to which the proposed service offers a cost-effective outcome for consumers, and adequately takes into account the subsidy being paid.
- Non-price terms and conditions: Whether the non-price terms and conditions are compliant with or exceed the requirements of the Australian Broadband Guarantee.
- Future commitments to service: The willingness of the Applicant to commit to offering the Service on at least as favourable arrangements (including price) to existing Customers once the mandatory three year term has expired.
- Readiness: The Applicant's ability to promptly offer and supply the proposed Threshold Service (and any other proposed Services).
- Exit Strategy: Applicants proposed Exit Strategy meets the minimum requirements of the Department's standard Exit Strategy (refer section 2.6.5).

Information required

- Details of the Service Solution(s) proposed by the Applicant to supply Australian Broadband Guarantee Services (for example, ADSL, cable, wireless, two-way satellite, etc.), including the brand of equipment to be used, information on testing results, details of proposed operational deployment, details of compliance with applicable technical standards;
- Information that demonstrates that the proposed Service Solution amounts to material new infrastructure, and that significant cost would be incurred in implementing the new Service Solution;
- Details of architecture of the Applicant's broadband network (at least back to the point of interconnection with upstream connecting networks), including details of proposed hardware, CPE, technical standards and protocols, spectrum use (where relevant), and network peering. Schematic diagrams should be attached to the application;
- The extent to which the technology has been successfully deployed commercially elsewhere in Australian and/or overseas;
- The names of Chief Technology Officer (CTO and/or Chief Operating Officer (COO), summary information of the CTO and/or COO's qualifications and experience (minimum two (2) years), including recent relevant major projects, tertiary qualifications in IT, Communications Engineering or other relevant discipline; or technical competence otherwise demonstrated, and statement as to whether the CTO/COO are on contract and, if so, the date the contract expires;
- Details of the operational support systems (both in-house and outsourced) to support the level of Service to Customers;
- Information on the key technical risks for the Service Solution and the strategies to mitigate those risks;
- (where appropriate) How each Service Solution interacts with other Service Solutions deployed by the Applicant (for example, if the Applicant offers a wireless service and a satellite service);
- Whether the Service Solution has a viable upgrade path that will enable supply of higher quality services over time;
- The extent to which the proposed Service Solution could be scaled to provide broadband Internet access services to additional Customers or offer a greater range of services to Customers (for example, a range of Data Speeds and usage levels);
- Details of the billing system to be operated;
- If the Applicant is using an agent(s) (see section 4.1 for further details) to sell services on its behalf, details of the relationship with each agent(s), including:
 - names and addresses of each agent;
 - what Service Solutions and Service Plans are proposed to be offered by the agent;
 - provide full details about any contractual arrangements between the Applicant and the agent(s). This should include any documents supporting

the arrangement, and where possible, a copy of any contract. If no agreement exists, the Department will assume that common law principles govern the relationship. [Note: It is a matter for each Applicant to determine the commercial terms and conditions governing such arrangements. It is also the Applicant's responsibility to determine if it requires legal advice about such matters];

- a statutory declaration that the Applicant will be the legal party contracting with a Customer to provide the Service. Where an agency relationship exists, Customer contracts will be between the Provider (as principal) and the Customer, not the agent and the Customer. It is not permitted under the Program for a Provider to allow other parties to offer their Program Services except where the other party is a genuine agent of the Provider; and
- a statutory declaration that the Applicant will be responsible for the conduct of the agent in relation to Program activities undertaken by the agent on the Applicant's behalf.
- The price (including GST) and functionality of Applicant's Threshold Service(s) and of any Entry Level Services or Added Value Services, detailed in the following terms:

hardware charges

- + installation (excluding travel charges)
- + connection (if applicable)
- + account establishment (if applicable)
- + monthly (usage) charges (x 36 months)
- + any other relevant charges (x number required in the period)
- = total package price

- Details of any other charges, such as late fees, credit card charges and other such fees. Any such charges must be contained in the terms and conditions and be approved by the Department;
- Details of the Data Speed and data usage to apply to each Service Plan, and how excess usage will be treated (i.e. through additional charges and/or shaping);
- Copy of the proposed Terms and Conditions;
- Copy of Exit Strategy or confirmation that the Applicant will adopt the Department's standard Exit Strategy; and
- Where required to under the *Telecommunications Act 1997*, evidence that the Applicant holds a carrier licence or has in force a nominated carrier declaration, or has applied to ACMA for a carrier licence or to have a nominated carrier declaration registered. If the applicant does not require either a carrier licence or a nominated carrier declaration to provide the service, it should provide legal advice or other documentation demonstrating that neither is required.

3.5.4 Criterion 4: Service Areas

This criterion must be responded to by:

- All applicants seeking to register under the Australian Broadband Guarantee; and

- Registered Providers seeking to register additional Service Areas under the Australian Broadband Guarantee.

Where an Applicant is able to pass all other provisions of Stage 2, but all of the Applicant's Service Areas are, after assessment, not registered, the Applicant will be assessed in Stage 2 on criteria 1–3, and if registered, will need to apply for Service Areas in the next announced Registration Round.

Basis of assessment

- The Applicant can demonstrate they will provide their proposed Service(s) to the vast majority of premises within the Service Area.
- The proposed Service Area fits efficiently with the Applicant's existing broadband network.
- The services to be offered are of high quality, scalable and sustainable beyond the life of the Australian Broadband Guarantee.
- The proposed Service Area complements the roll-out of wholesale broadband services by OPEL Networks (i.e. the Service Area is registered where a roll-out is not due to occur for at least six months).
- The Service Areas can be activated in a timely manner. This would normally be within sixty (60) calendar days from the time of registration, unless the Applicant can demonstrate that a longer period is reasonably required. Where a roll-out schedule has been agreed by the Department, then the Service Area must be activated within thirty (30) calendar days of the date nominated by the Applicant/Provider as the activation date.

Important Points for Applicants in Determining their Proposed Service Areas

For Satellite Broadband Services, the whole Program area or any area within the Program Area (for example, a single state or territory) may be registered as a Service Area.

Service Areas for proposed terrestrial-based Service

For proposed Terrestrial Broadband Services, the proposed Service Area for an Applicant/Provider is not a Service Area registered by that Applicant/Provider under HiBIS or the Broadband Connect Incentive Program where at least one incentive payment was claimed under either of those programs.

The Department may consider an application by an Applicant to register a terrestrial Service Area(s) in which an incentive payment was claimed by that Applicant for the same broadband infrastructure under previous programs where the Applicant can demonstrate the following:

1. The proposed Service Area or whole of region network is supported under state/territory and/or local government programs for the expansion of broadband infrastructure; and
2. The whole of region network has community support; and
3. The network is sustainable, scalable and can provide a quality broadband service beyond the life of the Program; and

4. There were special circumstances applying that prevented the Applicant from claiming the planned amount of incentive payments under previous programs; and
5. Further incentive payments are required to make the network sustainable into the future.

In addition the Department will consider, on a case-by-case basis, applications to register a terrestrial Service Area(s) in which an incentive payment was claimed by that Applicant/Provider for the same broadband infrastructure under previous programs, where the Applicant can demonstrate the following:

1. The Service Area will be serviced with a new or non-standard service solution, being special equipment (such as a high gain antenna at the Customer premises) required to extend the existing service to premises within the Service Area not capable of being provided with a Metro-comparable Service using the standard equipment;
2. The Applicant can demonstrate that the new or non-standard service solution, rather than its existing service solution, is necessary to provide Metro-comparable Services to under-served premises within the Service Area;
3. The new service solution will incur material additional costs; and
4. The Applicant can demonstrate that a partial payment is necessary to enable Metro-comparable Service delivery to the premises.

In these circumstances, if the new Service Area is approved and the Provider is registered under the Program, the Department will determine in its discretion whether a partial incentive payment is to apply to these premises. This partial payment will be based on the additional cost of the new service solution, and will be standardised, to the greatest extent possible, for all Applicants/Providers applying that particular type of service solution.

Information required

- The Applicant must provide sufficient information to the Department to map the proposed Service Area. While the Department is aware that this may prove difficult in relation to exact coverage across the proposed area, Applicants must make best endeavours to identify key features, such as mountains and valleys that may limit coverage.
- The Applicant must demonstrate that the proposed Service Area is an eligible area, as outlined at the start of this section;
- The Applicant must indicate when it could commence providing the service in the proposed new service area. The Provider must be able to Connect and Supply the first Customer:
 - within sixty (60) calendar days from the time of registration of the Service Area, or such other similar period as can be demonstrated to be required to implement the required infrastructure; and
 - within thirty (30) calendar days of the date on which the Applicant has indicated on the submitted agreed schedule that the Service Area will become operational. Applicants should submit a roll-out schedule detailing the areas in which they will offer services.

A Provider may forfeit the Service Area(s) if they fail to meet the commencement date commitments for the Service offerings (see section 4.6.3 for more details).

- The Applicant must demonstrate how the new proposed Service Areas fit with the Applicant's existing network;
- The Applicant should provide details of the level of investment in significant new infrastructure to service each proposed Service Area;
- The Applicant should provide any information that would substantiate that the proposed new service area is inadequately served by existing commercial ISPs/Providers, and is likely to contain significant numbers of Under-served Premises;
- The Applicant should provide information of any community or other government support for the applicant's roll-out of broadband services into the proposed new Service Area. Applicants should also indicate any future ongoing plans for consultation with relevant organisations/communities and the proposed objectives of such consultation;
- (for Terrestrial Broadband Services) A description of the Service Area, including copies of maps (preferably in MapInfo.tab file format) showing the Service Area and any major parts of the Service Area where coverage may not be achieved (for example, mountainous terrain). Applicants should contact the Department if they wish to use another mapping format. Service Area applications may be rejected if there is insufficient information provided;
- (for Satellite Broadband Services) A description of the proposed Service Area: Service Areas may be immediately Registered (subject to the Applicant meeting all selection criteria as defined in these Guidelines) in any part of the Program Area (including the whole Program Area) where Providers can demonstrate an ability to provide Services to Customers who cannot access a Metro-comparable Service (as set out in section 2.2); and
- The Applicant must provide information on the proposed Service Solution to be used in the proposed Service Area (this is also covered in criterion 3).

3.6 Stage Three: Comparative Assessment of Service Areas

If two or more Applicants propose substantially similar Service Areas under the same Registration Round, the Department will approve the Service Area application that best meets assessment criterion 4 as set out in Stage 2 and (where appropriate) criterion 3 of the application process.

Applicants should note that a degree of overlap of Service Areas may be allowed, where:

- such overlap can be reasonably justified;
- is in the best interests of consumers as determined by the Department; and
- does not amount to substantial or complete duplication of existing or proposed service coverage.

The Department will assess each application and a final comparative assessment will be undertaken to determine which proposal best satisfies assessment criterion 4 (and where appropriate criterion 3). All proposals will be ranked against each other as a

result of the comparative assessment. The Applicant that is ranked the highest will be granted registration of that particular Service Area. Applications that are clearly uncompetitive with other similar applications will be excluded from further consideration and not allocated a ranking.

However, if a Service Area is approved for an Applicant and the Applicant as a Registered Provider does not comply with the agreed roll-out timeframes (as outlined in section 3.5.4), the Department will notify that Provider and require it to show cause why the Service Area should not be withdrawn from registration under the Program. The Department will consider any such response and make a determination as to whether a withdrawal is warranted. If the Service Area is withdrawn, the Department reserves the right to allocate the Service Area to the next ranked Applicant that is proposing service offerings in the same proposed Service Area. Alternatively, the Department may call a further Registration Round for that Service Area.

Basis of Assessment

- Assessments will be undertaken based on the content of the responses to criterion 4 and (where appropriate) criterion 3.

The Department may seek to clarify information contained in applications, or ask for modification of a proposed Service Area during this assessment phase.

Where an Applicant is able to pass all other provisions of Stages 1 and 2 but has been unable to register a Service Area, the Applicant may be invited to submit a streamlined application in the next Service Area Registration Round.

3.7 Other Matters

3.7.1 Assessment of Applicants is for Australian Broadband Guarantee Purposes Only

The assessment of Applicants by the Department is solely for the purpose of the Department determining whether the Applicant should be registered as a Provider under this Program. The Department's assessment, including its assessment of financial information, is not to be taken by the Applicant/Provider or any other person as a representation by the Department as to that Provider's financial viability or operational status. Accordingly, no Provider or any third party should rely upon the assessment for any other purpose.

3.7.2 Confidentiality of Applicant Information

For the purpose of assessing applications, some or all of the information provided in the applications may be disclosed to officers of the Department and relevant Australian Government departments and agencies. Information may also be provided to contracted advisers on legal, financial, technical and other aspects of the applications.

Applicants should provide details in respect of any information that they would require the Department to treat as confidential. Examples of confidential information to be protected may include:

- commercial secrets;
- proprietary information, for example information about how a particular technical or business solution is to be provided;

- an Applicant's internal costing information or information about its profit margins;
- pricing structures (where this information would reveal whether an applicant was making a profit or loss on the supply of a particular good or service) which excludes publicly available pricing structures; and
- intellectual property matters where these relate to an Applicant's competitive position.

Further information in respect of confidentiality can be found on the Department of Finance and Administration website at www.finance.gov.au/procurement/confidentiality_contractors_info.html.

The Department is accountable to the Australian Parliament and to the public in respect of all aspects of the Program. The Department may need to disclose details of applications to the responsible Minister, Parliamentary Committees, the Auditor-General, and as required by law.

Information provided in applications should be identified as confidential if the Applicant wishes it to be treated as such.

The Australian Government will hold in confidence those parts of applications identified as confidential, provided that the Australian Government may disclose information contained in, or provided in connection with, an application if:

- that disclosure is required by law;
- that disclosure is required to meet the reporting or accountability requirements of the Department or its Minister as required by relevant legislation (including the *Financial Management and Accountability Act 1997* and the *Freedom of Information Act 1982*), the Australian National Audit Office or any other auditor, the Commonwealth Parliament and its committees, and the Commonwealth Ombudsman;
- the information is, or becomes, public knowledge, other than by breach of confidentiality by the Australian Government or other unlawful means by the Australian Government; or
- disclosure is to any of the Australian Government's officers, employees, contractors, consultants, advisers or agents and, if the information is confidential, those persons are under an obligation of confidentiality.

3.7.2.1 Personal privacy

Documents containing personal information are handled and protected in accordance with the provisions of the Privacy Act, which sets standards for the collection, storage, use and disclosure of personal information and section 2.5 of the Guidelines. Personal information is disclosed only as provided for in these Guidelines or with the permission of the individual to whom it relates, or where the Privacy Act allows.

4. Provider Operation under the Australian Broadband Guarantee

Providers can access general information on the Australian Broadband Guarantee at www.dbcde.gov.au/communications_for_business/funding_programs_and_support/broadband_guarantee.

This includes Program Guidelines, related administrative and policy information.

Providers must advise the Department of their contact details and notify the Department promptly if there are any changes in those contact details during the course of the Australian Broadband Guarantee. These details will also be used as part of the Broadband Service Locator.

4.1 Provider-Agent Relations

Providers are permitted to use agents to sell Service Solutions and Service Plans under the Program on behalf of the Provider. For the purposes of the Guidelines, an agent includes, for example, a common law agent, contracted agent, retail outlet, authorised dealer, sales representative or other person or entity holding itself out to be a representative of the Provider, a Provider uses or proposes to use to sell its Services on the Provider's behalf. The arrangements must ensure that:

- the Provider has full responsibility for the provision of the Service or proposed Service; and
- the Provider has in place appropriate control mechanisms and procedures governing the conduct of the agent(s).

However, Providers must accept responsibility for the conduct of their agents when making representations to Customers about the Provider's Services. It is the responsibility of the Provider to obtain their own independent legal advice as to the legal risks and liabilities associated with agency relationships.

The Department will view the actions of an agent to be the acts of the Provider, consistent with the common law and these Guidelines. Where the Department becomes aware of conduct by an agent that breaches the Provider's Funding Deed, the Provider will be liable for the breach under the terms of their Deed. In the event of a dispute between a Customer of a Provider and the Provider's agent, the Provider is responsible for ensuring the dispute is properly resolved.

4.1.1 Disputes Between a Provider and an Agent

The Department will not intervene in commercial disputes between a Provider and its agent(s).

4.1.2 Inquiries from Agents

The Department's legal relationship is with the Provider. Consequently, the Department will not provide information to agents about matters affecting Providers (for example, providing Customer ID numbers or the operation of the Australian Broadband Guarantee).

Authorised agents of a Provider should refer any questions or information requests relating to the operation of the Australian Broadband Guarantee to the Provider in the

first instance. The Provider can approach the Department if it has any questions or needs any information.

4.2 Broadband Service Locator

Customers (or Providers on behalf of Customers) use the Broadband Service Locator to identify whether a Metro-comparable Service may be provided by a Category A ISP and, if no service is available, whether a Category B or Category C Provider can offer the Service.

4.2.1 Information Requirements for Participants

Category A ISPs and Providers who offer a Metro-comparable Service on a commercial basis are invited to submit information for possible inclusion on the Broadband Service Locator.

Category A ISPs (including Providers) listed on the Broadband Service Locator are to supply the following information:

- contact details including physical address, phone number and email;
- detail of the technology platform being used (for example, ADSL, satellite, wireless or other options);
- details of the Service Plans being offered, especially the Plan(s) that are metro-comparable;
- mapping information (including latitude and longitude of equipment) that accurately reflects service coverage including notification of any known blackspots. Providers that are also Category A ISPs should ensure that they distinguish between registered Service Areas under the Australian Broadband Guarantee and unregistered areas where they may offer a Category A ISP service ; and
- confirmation that listed service offerings are Metro-comparable Services as defined in the Guidelines.

The Department reserves its right to decline any request from a Category A ISP to include its Service Plan details on the Broadband Service Locator where the information is determined by the Department to be misleading, false or incorrect.

Providers will have information contained in their Funding Deeds or Variations to Funding Deeds uploaded to the Broadband Service Locator.

Providers and Category A ISPs listed on the Broadband Service Locator are responsible for ensuring that the information supplied to the Department about their Metro-comparable Service offerings is accurate and advising the Department promptly of any changes.

4.2.2 Conduct Requirements for Participants

Providers and Category A ISPs listed on the Broadband Service Locator should conduct themselves in a professional and courteous manner in all dealings with Customers, Providers and Category A ISPs.

Providers and Category A ISPs listed on the Broadband Service Locator must also comply with the following requirements:

- Providers or Category A ISPs receiving a request for information from a Customer must provide full and correct information about their ability to provide a Metro-comparable Service to the Customer within five (5) working days, as outlined in section 4.2.1;
- Providers and Category A ISPs must not refuse to respond or properly cooperate with requests for information from a Customer . A Provider or Category A ISP has the right to respond either over the telephone or in writing (for example, by e-mail or fax);
- Providers and Category A ISPs must not charge fees for providing any information or for conducting service checks.

4.2.3 Failure to Follow Obligations Relating to the Broadband Service Locator

The Department will monitor the information that is placed on the Broadband Service Locator and reserves the right to amend any information that has been provided. The Department also invites all participants to report any instances of alleged failure of other Providers to follow obligations relating to the Broadband Service Locator.

(a) Providers

If the Department determines that a Provider has failed to conduct itself in a manner consistent with the obligations outlined in section 4.2.1 and 4.2.2 above, the Department may undertake the following actions:

- ask the Provider to show cause as to why its details should not be modified or removed from the Broadband Service Locator. Should the Department not be satisfied with a response to a show cause notification (including no receipt of a response within an advised timeframe), the Department will remove or modify information at its discretion.; and
- seek to take further action in accordance with the provisions of a Provider's Funding Deed.

The above procedures do not apply where the Department determines that it is necessary to remove or modify the information immediately.

(b) Category A ISPs

If the Department determines that a Category A ISP has failed to conduct itself in a manner consistent with the obligations outlined in section 4.2.1 and 4.2.2 above, the Department may ask the Category A ISP to show cause as to why its details should not be modified or removed from the Broadband Service Locator. Should the Department not be satisfied with a response to a show cause notification (including no receipt of a response within an advised timeframe), the Department will remove or modify information at its discretion.

The above procedures do not apply where the Department determines that it is necessary to remove or modify the information immediately.

4.3 Promotion of Services

Any public marketing or media-related material used by Providers or by entities acting on behalf of Providers in relation to the Australian Broadband Guarantee must be approved by the Department prior to its dissemination.

Providers are encouraged to submit their marketing and media-related material to the Department at least 10 Working Days prior to the proposed public release/dissemination of the proposed material. The Department reserves the right to decline to approve marketing material where the Provider has not provided sufficient time to allow for a review.

Australian Broadband Guarantee Providers are required under their Deed with the Department to acknowledge clearly and prominently the Australian Broadband Guarantee as an Australian Government initiative in all instances where the Provider is undertaking marketing of Australian Broadband Guarantee Services.

The exact words of acknowledgement required to be used are as advised and agreed by the Department, and may change from time to time depending on Australian Government policy. Providers are obliged to seek clearance by the Department of all acknowledgements proposed for publicity before dissemination.

<i>Promotional activity</i>	<i>Acknowledgement Required</i>
Radio and TV advertising, including live reads	Providers must include the following words following the main advertising message: “This offer is made possible with support from the Australian Government’s Australian Broadband Guarantee”
Print advertising, fliers, brochures or other product promotional material for example, websites)	Providers must use the Australian Broadband Guarantee logo on publicity material, maintaining all requirements of Australian Government branding. Guidelines on the use of Australian Government logos are available from www.dbcde.gov.au/logo/ or on request from the Department’s Corporate Communications Section. Note that the Crest must be no smaller than 2cm across and no other logo should be more prominent. Acknowledgement must also be given by using the following wording: “This offer is made possible with support from the Australian Government’s Australian Broadband Guarantee.”
Confirmation and advice to Customers	Providers must write (by post or email) to each Program Customer at the commencement of a Service to that Customer, confirming the specific terms and conditions Providers have included in their Contract with the Customer. The text of the letter or email must be approved by the Department and comply

	with the requirements of the Australian Broadband Guarantee Program Guidelines.
Media Releases	Acknowledgement must include the following wording: “This offer is made possible with support from the Australian Government’s Australian Broadband Guarantee.”

Providers must also ensure that their advertising does not criticise other ISPs or other Service Solutions.

4.3.1 Service Plan Special Offerings

If a Provider offers Customers a “free trial” period, the Provider must not lodge claims for those Customers with the Department until they have signed the appropriate Terms and Conditions to receive the Provider’s full Program Service Plan.

4.3.2 Initial Offer to Customers

Providers must write (by post or email) to each Customer at the commencement of a Service to that Customer, confirming the specific Terms and Conditions (including an Acceptable Use Policy where applied) that the Australian Guarantee Provider has included in its contract with the Customer.

The Australian Broadband Guarantee specific components of the text of the letter or email is required to be approved by the Department, and must include the following information:

- (a) acknowledgement of the Australian Broadband Guarantee as an Australian Government Program;
- (b) the specific amount of the Incentive Payment for which the Provider may be eligible to receive on provision of the Service;
- (c) the details of Service being provided to the Customer;
- (d) the Data Speed Testing requirements for the Service being provided to the Customer and the address of the Department Data Speed testing service;
- (e) contact details for the Provider and the Department;
- (f) a summary of the process for registering Customer complaints about their Service consistent with the TIO’s Guide to Complaint Handling (www.tio.com.au/members/MemberPublications/TIO%20Complaint%20Handling%20Guide%202002.pdf);
- (g) acknowledgement of the Australian Broadband Guarantee requirement for the Customer to experience network availability 99 per cent of the time;
- (h) the timeframes for Service connection and restoration;
- (i) the Provider’s approved Exit Strategy, including its strategy for withdrawal of Service; and

- (j) the requirement for the Provider to continue to offer the Customer the same Service at or below its registered price for a minimum of three years from the date the Service is first Connected and Supplied to the Customer.

Changes to the text of the letter or email must be approved by the Department prior to use.

4.3.3 Customer Contracts—Customer Terms and Conditions

All Applicants seeking to register for the Australian Broadband Guarantee must submit a copy of the Terms and Conditions and the Acceptable Use Policy an applicant intends to offer to Customers.

Providers are required to enter into a contract (Terms and Conditions) with each Customer in relation to the conditions and terms governing the supply of the particular Service. These Terms and Conditions need to be submitted to the Department as part of the application for Registration. The Department's assessment of a Provider's Terms and Conditions does not constitute an assessment in any way of the appropriateness of those Terms and Conditions from a commercial perspective. It is a matter for each Provider to determine what commercial terms and conditions should be contained in their Terms and Conditions, within the parameters of the Guidelines. It is also the Provider's responsibility to determine if it requires legal advice about such matters.

A Standard Form of Agreement is not able to be used for this purpose.

In drafting Terms and Conditions for use under the Australian Broadband Guarantee, Providers should review the following provisions to ensure compliance:

- (a) **Maximum Terms**—Providers must offer their Customers the option to have a maximum contract period of no longer than 18 months. The Provider may also offer longer contract periods (for example, 24 months and 36 months), to Customers in addition to a maximum 18 month contract. Providers can offer Customers the option to have contracts with no minimum term, or a very short term with automatic renewal (for example, month by month) provided such arrangements do not result in loss by the Customer of access to Program approved Terms and Conditions and Program pricing during the three year period.
- (b) **Customer compliance**—Providers can include conditions that allow them to discontinue or change a service where it is demonstrated that the Customer has breached the contract in relation to payment for Services, care of CPE or other reasonable conditions. However, Customers must be provided with adequate notice of any claimed breach of the contract, and with the opportunity to rectify any problems.
- (c) **Acceptable Use Policy**—Where a contract makes provision for the use or introduction of an Acceptable Use Policy (AUP), the AUP must be reviewed by the Department to ensure that it is consistent with these Guidelines prior to its use. There is no requirement on a Provider to place an AUP in their Deed, unless it forms part of the text of Terms and Conditions as a whole.
- (d) **Compliance with Government Legislation**—Contracts must comply with all relevant Commonwealth, state, territory and local Government legislative requirements. Providers are responsible for seeking their own legal advice that their contracts comply with legislative requirements.

- (e) Consistency with Australian Broadband Guarantee Guidelines—The contract should not be inconsistent with the specific objectives and requirements of the Australian Broadband Guarantee (for example, service performance and data testing).
- (f) Where the Australian Broadband Guarantee-specific terms form part of a general terms—that the Australian Broadband Guarantee specific terms override the general terms, in the case of inconsistency.
- (g) Personal information—the Department requires Providers to obtain agreement from Customers, for the purposes of the Privacy Act, to their Customer details being provided by the Provider to the Department, and potentially other appropriate agencies for the purposes of program administration, regulation and evaluation, and policy development.
- (h) No assignment without consent—the Department requires the Provider to include a provision in the contract which specifies that the Provider shall not assign the whole or part of the contract to another party without the prior written consent of the Customer. A Provider has the option to impose a similar prohibition against assignment by the Customer to another party. Examples include:
 - situations where a Provider assigns the responsibility for installation and maintenance of CPE, or the provision of help desk services to another company;
 - where a Customer moves from Premises where a Service has been Connected and Supplied and allows the Service and CPE to be used by the new occupant of the Premises.
- (i) Exit Strategy—The Terms and Conditions are to include appropriate provisions which are consistent with the Provider’s Exit Strategy. For example, the Department requires the Provider to include provisions in the Customer contract which:
 - specify that in the event that the Provider’s Registration is terminated (voluntarily or otherwise) that the Customer may elect to terminate the Customer contract;
 - specify that in the event that the Customer’s Service is withdrawn, the Provider will:
 - give the Customers at least thirty (30) calendar days written notice of the withdrawal and offer to migrate the Customer from the withdrawn Service to a comparable Service, if such a service is available; or if no comparable Service is available, offer to migrate the Customer to any of its Threshold Service(s), or Added Value Service(s) as chosen by the Customer; and
 - give the Customer the option of terminating the contract if they are not satisfied with the comparable service offerings; and
 - specify which party owns the CPE (and if applicable, details when ownership of CPE transfers from the Provider to the Customer);

As outlined in section 2.6.5 of the Guidelines, the Provider may wish to further specify Exit Strategy commitments. For example, a Provider may wish to, but is not obliged to, include a provision relating to offering the Customer a negotiated

arrangement with an incoming Registered Provider. The Department will assess any other further proposals. A full copy of the standard Exit Strategy is provided in the sample Funding Deed on the Department's website.

Any changes to Customer Terms and Conditions during its operation must be approved by the Department before they are implemented and agreed with Customers. Providers are also expected to provide impacted Customers with written notice of the change, once effected.

4.4 Claims Management

Claims will be assessed according to a four step process:

- lodgement with the Department in BCOMS (notified in BCOMS as lodged claims);
- reviewed prior to consideration of payment for those claims (notified in BCOMS as pending claims);
- claims subject to further clarification (notified in BCOMS as queried claims). These claims may be subsequently accepted or rejected, depending on the information provided by a Provider in support of that claim; and
- claims that the Department agrees to pay to the Provider (notified in BCOMS as paid claims) or claims that the Department does not agree to pay to the Provider (notified in BCOMS as declined claims)

Providers should be aware that lodgement of a claim for payment within BCOMS does not represent approval for payment by the Department of that claim. The Department will approve claims in accordance with the provisions of sections 4.4-4.5 (inclusive) of the Guidelines and the Funding Deed.

4.4.1 Funding Allocation

The Australian Government has allocated \$97.446 million (excluding GST) for the Australian Broadband Guarantee during 2007/2008.

Advice will be provided to all Providers when available funds allocated to the Program (determined by value of claims accepted by the Department for payment) are at \$50 million, \$30 million, \$20 million, \$10 million, \$5 million and \$0.

When the balance of available funding reaches \$20 million, all Providers will be notified that they are no longer obliged under their Deed to connect new Services under the Australian Broadband Guarantee. The Department may, at its discretion, provide further information about the balance of available funding.

4.4.2 Broadband Customer Online Management System (BCOMS)

All Providers lodging claims for Incentive Payments must do so using BCOMS, unless otherwise directed by the Department. In relation to the BCOMS system, the Department will provide the following for all Registered Providers:

- log-in access including a unique user name and password; and
- access to a register where potential Customers can be identified.

In the event that BCOMS is not operational for more than 24 hours at any time during the Program's operation, Providers will be notified and a notice will also be published

on the Department website. In the event of extended operational issues, the Department will institute alternative claims lodgement arrangements.

The Department will not lodge claims data on behalf of any Provider under any circumstance. Providers may seek advice from the Department about problems they may encounter with BCOMS (for example lodging claims, producing reports, etc).

4.4.3 Lodgement of Claims

4.4.3.1 When Claims May be Lodged

(a) General

Subject to eligibility requirements, claims may be lodged for Services Areas registered under the Program until funds are expended or 30 June 2008, whichever event occurs first.

(b) Provider/Service Area Must be Registered Before Claims are Lodged

Claims for connections may only be lodged once the Provider is registered and the Service Area in which a Service is being Connected and Supplied is registered. Registration of a Provider, Service Areas and related Services is effective from the date the Funding Deed (which reflects all these things) has been duly executed by both the Provider and the Commonwealth. Claims may only be lodged once Registration is effective, and the Funding Deed is in place.

(c) Special Arrangements for Customers Connected and Supplied under the Australian Broadband Guarantee (transitional period)

The Department, at its discretion, may consider acceptance of claims where:

- the claim was eligible under the Australian Broadband Guarantee (transitional period); and
- the Service Area is still a registered Service Area for that Provider; and
- the Customer is still an Eligible Customer; and
- the premises remain Eligible Premises under the Australian Broadband Guarantee.

Providers should submit full details in writing for consideration by the Department.

4.4.3.2 Lodgement Period for Individual Claims

Incentive Payments become payable by the Department after a Provider has Connected and Supplied a Service to an Eligible Customer at Eligible Premises in its Service Area, and submitted a valid claim for payment via BCOMS and the claims have been accepted by the Department for payment.

A claim for payment must be made within forty-five (45) calendar days after the Provider has Connected and Supplied the Service to the Customer. A Provider must not disconnect and reconnect an Eligible Customer at Eligible Premises where this disconnection and reconnection is in order to meet the forty-five (45) calendar day's lodgement timeframe for claims under the Provider's Deed. Any such claims will be rejected.

4.4.3.3 Data Required to Lodge a Claim

(a) Use of the Customer ID Number and Submission of Claim Form

The Customer ID number generated by the Broadband Service Locator is required in order to submit a claim in BCOMS.

When a Provider enters the Customer ID into the respective BCOMS form, this will populate form fields with relevant customer information data. The Provider will then be required to populate the remaining fields, which will include:

- Service Plan name;
- Service Request Date by the Customer (the date the Customer requested the Service from the Provider), and
- date of Connection and Supply of the Service.

A facility to allow the bulk upload of multiple claims will be made available soon after the start of the program.

All Provider claims for Incentive Payments must be lodged via BCOMS within forty-five (45) calendar days of the Connection and Supply of the Service to the Customer.

Providers will also be required to submit a pdf copy of the Attestation Form signed by the Customer under section 2.4.3 or 2.4.4 of the Guidelines prior to having a claim considered for payment.

As per section 2.4.5, Providers are encouraged, where relevant, to make their own enquiries to ensure that the Customer is eligible to receive the Service.

(b) Record keeping obligations

Providers will need to keep a range of records in relation to their activities, **including but not limited to** the following records:

- original signed Attestation Forms from Customers;
- the date of the request by a Customer to Connect and Supply a Service that has been approved for payment under the Australian Broadband Guarantee and evidence of this request being received;
- copies of correspondence (electronic and/or hard copy) between the Provider and Customers;
- full and accurate records of any checks undertaken by the provider to test accessibility to the service;
- evidence that an Australian Broadband Guarantee Service has been Connected and Supplied, including the date of Connection and Supply.

Providers that fail to keep adequate records of these contacts will be in breach of their Funding Deed.

The Department encourages Category A ISPs who are not Providers to retain similar records.

(c) Responsibility for Lodgement of Claims

Responsibility for lodgement of claims for Incentive Payments rests solely with the Provider. The Department staff will provide advice where Providers are having

difficulties with lodgement of claims. The Department staff are not authorised to lodge claims on behalf of Providers.

(d) Providers with Outstanding Customer Attestation Forms Under the Australian Broadband Guarantee (transitional period)

Providers who were registered under the Australian Broadband Guarantee (transitional period) who hold outstanding Attestation Forms from the Australian Broadband Guarantee (transitional period) in respect of current applications for the supply of broadband services (and for which no service has yet been Connected and Supplied to the Customer's premises) should ask those Customers to enter their details into the Broadband Service Locator in order to determine the eligibility of the premises to receive a Metro- comparable Service under the Australian Broadband Guarantee.

Alternatively, Providers may, with the authority of the Customer, complete this information for the Customer in line with the provisions of section 2.4.

(e) Providers with Outstanding Customer Attestation Forms Under Broadband Connect Incentive Program and Metro Broadband Connect Program

Providers who were registered under the Broadband Connect Incentive Program or the Metro Broadband Connect Program who hold outstanding applications for the supply of broadband services (**and for which no service has yet been connected to the Customer's premises**), and provided that the Customer remains eligible for a Service and is in an approved Service Area for that Provider under the Program, are required to have their Customers re-enter their details on the Broadband Service Locator as outlined in section 2.4

4.5 Assessments of Claims and Payments

4.5.1 Process for Assessment of Claims

Claims will be processed on a regular and timely basis by the Department, with the order of processing claims to be determined according to the time of lodgement of claims on BCOMS.

The Department reserves its right to defer the processing of any claim lodged by BCOMS where warranted.

Providers should not rely on past precedent for the processing of claims. For example, if claims have been paid fortnightly for a period of time, the Department may change that regime without notice if required for operational reasons.

The Department will issue a Recipient Created Tax Invoice to the relevant Provider in respect of the Incentive Payments to be paid in respect of claims that have been approved by the Department for payment.

The total of approved claims lodged by a Provider in a particular batch is treated as the Provider's invoice for the purpose of Incentive Payments. Providers are given the opportunity to confirm this total. In the event of any discrepancy between the Provider's own records and BCOMS, the onus is on the Provider to demonstrate the error and to substantiate any request for correction (for example, location of Customer, eligibility to receive a Program Service).

Providers must report to the Department any over-payment of Incentive Payments immediately such an over-payment is identified.

In all instances, the Incentive Payments paid to Providers are subject to repayment in the event that a claim is found to have been wrongly made or paid, regardless of the party at fault.

When, as part of an audit of the Provider's compliance with the Australian Broadband Guarantee, the Department or its auditor identifies claims incorrectly paid during the life of the Australian Broadband Guarantee, the Department reserves the right to seek repayment of such monies and take over action under the Funding Deed with the Provider.

The Department reserves the right to reduce the scope of, or terminate the Deed in cases where a breach is identified and not capable of remedy.

4.5.2 Validity of Individual Claims and clarification on the meaning of 'Connected and Supplied'

Claims will be rejected where the date on which the Service was Connected and Supplied occurs before the Customer Attestation Form was lodged via the Broadband Service Locator (refer section 2.4).

Providers are only able to lodge one Incentive Payment claim for each Service they have Connected and Supplied, and the Incentive Payment can only be claimed *after* the Service has been Connected and Supplied to a Customer and the claim must be made within the required timeframe.

At a minimum, a Customer will be considered by the Department to be actively receiving a relevant Service where it can be shown that:

- the Customer is able to connect a computer (or other relevant device) at their Eligible Premises to the respective Service without any further deployment of infrastructure, cabling or Customer equipment by the Provider; and
- the Customer has entered into Terms and Conditions (as defined) with the Provider for the provision of the Service.

Unless otherwise approved by the Department, claims will be rejected where the time elapsed:

- where the time elapsed between the date the Customer asked a Provider to Connect and Supply the Service (in line with sections 2.4.5-2.4.6) is more than thirty (30) calendar days; or
- where the time elapsed between the date the Service was Connected and Supplied and the claim was submitted into BCOMS is more than forty-five (45) calendar days.

Claims will not be considered valid where a Provider lodges a claim for the Connection and Supply of a Service to a Customer which is not governed by the Provider's approved Terms and Conditions, (as Registered and which form a Schedule to the Provider's Terms and Conditions).

Claims will not be considered valid where the supply of service is made to a premises or site for the purpose of re-transmitting the service to other premises and Customers.

Such premises are not considered to be eligible premises under the Program. For certainty, this includes the establishment of wi-fi hotspot sites.

In claiming Incentive Payments, Providers are required to declare that the claims are legitimate and accurate and that the Provider holds and can produce on demand, evidence to substantiate the claim. Providers must lodge duly completed Customer Attestation Forms for each claim submitted into BCOMS before the claim will be assessed. Providers must make all reasonable steps to ensure that claims are valid, including in regard to the Connect and Supply of Services and the eligibility of both Customers and Premises and completion of Attestation Forms before a Service is Connected and Supplied.

No claims can be made where a commercially available Metro-comparable Service (including a retail service provided through OPEL Networks) is available.

Payments made by the Department to Providers may be subject to audit, and any monies found to be wrongly paid or not to be legitimately payable to the Provider under its Funding Deed are required to be repaid. To ensure the accuracy of Provider claims the Department will pursue a number of strategies, which may include data matching, contact with Customers and ad hoc audits of Providers. The Department's audit and compliance program is consistent with its financial management obligations under the *Financial Management and Accountability Act 1997*.

Providers should also ensure that all claims are located within identified Service Areas detailed in their Deeds. No Incentive Payments will be made for any claims outside the Provider's Registered Service Area.

4.5.2.1 Processing of Claims and Request for Information

As part of the processing of claims for payment lodged by Providers, the Department reserves the right to seek additional information from Providers about their lodged claims (for example, in circumstances where a Provider lodges a claim for a Customer outside its Registered Service Area).

Where a Provider is asked by the Department to provide further information about claims lodged on BCOMS, the Provider has ten (10) Working Days to provide a response or to request further time to complete an investigation of the issues, unless a longer timeframe is specified by the Department. Where a response is not provided to the Department within the appropriate timeframe, the Department reserves the right to decline the relevant claim(s).

4.5.3 Determination of Rates for Payment of Claims

4.5.3.1 Standard Incentive Payment—\$1100

A Standard Incentive Payment of \$1100 (GST inclusive) applies for Program Services Connected and Supplied to Eligible Premises in the following circumstances:

1. where an ADSL, ADSL2, ADSL2+ or cable service is Connected and Supplied;
or
2. where a wireless Terrestrial Broadband Service is Connected and Supplied to a premises in an area which is indicated on the Broadband Service Locator to be covered by a broadband service through OPEL Networks i; and

3. where any Terrestrial Broadband Service is Connected and Supplied in a Metropolitan Area.

4.5.3.2 High Cost Incentive Payment—\$2750

A High Cost Incentive Payment of \$2750 (GST inclusive) applies for Program Services Connected and Supplied to Eligible Premises in the following circumstances:

1. where a Satellite Broadband Services is Connected and Supplied to an Eligible Premises and that Premises was not able to receive a Metro-comparable Service or Terrestrial Broadband Service at the time of application;
2. where a wireless Terrestrial Broadband Service is Connected and Supplied to an Eligible Premises in an area (other than a Metropolitan Area) that is indicated on the Broadband Service Locator as not being covered by a broadband service through OPEL Networks, ; and
3. the Department may, at its discretion, consider whether this payment (or part thereof) may be available for the deployment of other Service Solutions that may incur significant establishment costs.

4.5.3.3 Claims for Travel Cost Payment

Providers are not permitted to charge Customers costs for travel or freight to deliver CPE as part of the total offering for a Metro-comparable Service.

Providers can seek to claim travel cost payments where eligible. The Department may, at its discretion, approve travel cost payments where the Customer is located in Remote Australia (see definition under section 1.5).

Providers must submit details of travel costs to the Department prior to Connecting and Supplying a Customer. The Department will then assess eligibility and provide written notification to the Provider. It should be noted that this notification is only approval of eligibility and does not constitute approval for payment, should the claim be subsequently found to be invalid.

The following provisions apply to the assessment of requests to approve travel cost payments:

- (a) Travel Distances must exceed 100 kilometres each way (that is, a round trip of more than 200 kilometres);
- (b) Customer's premises must be in Remote Australia;
- (c) Providers must provide details of the location(s) of the Customers to be Connected and Supplied to the Service, and any instances where work other than installation of Services under the Australian Broadband Guarantee is undertaken. Any such stops will not be considered for payment of travel costs ;
- (d) payment is made on the basis of \$1.10 per kilometre travelled beyond the 200 kilometres round trip or other rate per kilometre determined by the Department to apply to the travel cost payment claim; and
- (e) the travel allowance payment is capped at \$1,100 (GST inclusive) for each round trip journey undertaken by a Provider, unless another amount is determined by the Department to apply. Where additional funding may be required, the Provider must seek this in their initial request to the Department prior to completing any of the installations to which the travel cost payment claim relates.

If a Provider needs to make more than one visit to a Customer to complete an installation, travel costs may be claimed for those additional visits. However, the visits will generally be treated cumulatively for the purposes of the cap on travel allowance, unless the Department determines that an exceptional circumstance applies. For example, if an installation requires two round trips of 600 kilometres each, both trips can be counted, but only to the value of 1000 kilometres or \$1100. Where travel cost payments have been approved by the Department, claims for travel costs must be submitted to the Department. The Provider must provide the following details with the claim for travel costs:

- a copy of the Department's approval to incur travel costs;
- the Customer ID number for each Customer installed;
- evidence that cost has been incurred in travel. Evidence may include:
 - a copy of any receipts for fuel, hire of vehicles (including aircraft, etc); and/or
 - a copy of the logbook records detailing where travel has been undertaken. The logbook may be that used in compliance with the relevant Commonwealth or State/Territory legislation (where applicable) or in industry codes and/or guidelines (as appropriate).

The Department, at its discretion, may impose further information requests in relation to travel. This will be advised to the Provider as part of the initial pre-approval process.

The Department may subsequently decline a claim if this information is not provided, or where provided, does not satisfy the Department's requirements.

4.5.3.4 Taxation Status of Claims

The Incentive Payments stated in these Guidelines are recorded as inclusive of GST. Providers are responsible for managing all taxation matters associated with receipt of Incentive Payments.

4.6 Compliance and Audit Issues

4.6.1 Ongoing Compliance

Throughout the life of the Program and while three year contracts with Customers are in place, Providers must meet the following compliance requirements:

- (a) Notifications of changes in company structure or financial situation—Providers must advise the Department if they become aware of any material change in their corporate standing (trading, management, entity structure or ownership) which could affect their ongoing ability to meet their obligations under the Australian Broadband Guarantee. Failure to notify the Department of any such change may lead to action being taken by the Department, including reduction in scope or termination of a Deed.
- (b) Complaint Handling—Providers should have in place appropriate complaint handling mechanisms as specified in an applicable industry code or under the Telecommunication Industry Ombudsman's complaint handling process (www.tio.com.au/policies/index.htm). Where a complaint cannot be satisfactorily

resolved, the Customer may lodge a complaint with the TIO. Details may be obtained from (www.tio.com.au/make_a_complaint.htm).

- (c) Data Speed testing—to ensure Data Speed complies with the Data Speed requirements under section 4.6.4, all Providers must:
 - (i) supply their Customers with information about the Department’s Data Speed test facility (see section 4.6.4) and satisfactorily respond to complaints from Customers who have used this facility to test data speed;
 - (ii) fully participate in the Department’s data testing regime (see section 4.6.4)
 - (iii) ensure that all Customer modems provide user data access via an industry standard data port (for example, 10/100 Ethernet, USB, IEEE-1394 or PCMCIA).
- (d) Maintenance of CPE—where CPE ownership remains with the Provider, the Provider must ensure that CPE is repaired or replaced in the event of technical or mechanical faults, even if the CPE is no longer covered by the manufacturer’s warranty.
- (e) Record Keeping—appropriate and adequate records in all formats (electronic and print) must be maintained to enable a Provider to satisfy all Program claims, auditing, compliance reporting, and review and evaluation requirements. Where a Registered Provider is a company registered under the *Corporations Act 2001*, all record keeping must comply with the requirements of the Act. A Provider must retain records, as identified above, for no less than three years after the end of the Australian Broadband Guarantee. Records in relation to each claim for an Incentive Payment must include, but are not limited to, the following information:
 - (i) Customer application and Customer Attestation Form;
 - (ii) evidence of the Customer’s acceptance of the contract Terms and Conditions, either as a signed and dated copy of the contract (for a written Attestation) or in another format approved by the Department;
 - (iii) evidence that the Contract terms were communicated to the Customer prior to execution of the Contract;
 - (iv) evidence that a Program Service has been Connected and Supplied; and
 - (v) where the Provider has checked the Broadband Service Locator on behalf of the Customer, evidence of the output of the Broadband Service Locator.

A Provider must retain all records related to their activity under the Program (including, but not limited to documents to support claims, etc.) for no less than three years after the end of the Program.

At the end of the 2007/2008 financial year or when all funds are expended (whichever occurs first) each Provider must report to the Department within the timeframe outlined in the Provider’s Funding Deed, on its compliance with its obligations under the Australian Broadband Guarantee, particularly the obligation to provide Services at the performance and price levels set out in its Deed.

Providers must also provide a financial report to the Department at the end of

the financial year. A summary of compliance reporting obligations common to all Providers is at section 5.2.

- (f) Awareness and compliance of relevant legislation—Providers are required to comply with any legislative or regulatory requirements relevant to their operations.
- (g) Proper conduct and representation—A Registered Provider must not undertake any conduct (either directly or indirectly) that misrepresents the status or actions of the Provider or any affiliated or subsidiary entity. Penalties may include reduction in scope or termination of the Deed.

Providers who are found to be in breach of their obligations (including failure to supply reports or other material requested within the timeframe provided in the Funding Deed and the Guidelines) will be required to take remedial action (including repayment of money received as a result of invalid claims) and, in the event of continued or serious breaches, their Deed may be terminated.

Providers failing to meet their obligations to Customers under their Customer Terms and Conditions may also be subject to investigation and action by the TIO and/or the applicable state/territory Office of Fair Trading.

Applicants are advised to seek their own legal advice in relation to the execution of the Funding Deed, including the taxation treatment of any funding provided under this Program.

4.6.2 Changes in Circumstance

Providers are required to continue to offer at least the agreed Terms and Conditions to Customers for a period of three years following Connection and Supply of Services.

A Provider must notify the Department as soon as possible of any significant changes proposed to its:

- management;
- entity structure; and/or
- ownership.

In instances where there is no change in legal entity (for example, where there is a change in majority ownership or management) a new Funding Deed will not be required. However the Provider may be required to undergo a financial or other assessments (according to the terms outlined in Section 3 for registration of ISPs seeking to enter the Program) to confirm its registration, including its ongoing viability to offer and provide Services. The Provider's registration may be suspended until the assessment is completed and the new arrangements are approved. The Department reserves the right to terminate the Deed if, in its opinion, the Provider is unable to satisfy the financial or other assessment.

Where a Provider's business assets are purchased by another business and there is a consequential change in the legal entity providing the Service, the Provider's registration will be terminated. The new entity will need to undergo a financial or other assessments (according to the terms outlined in Section 3 for registration of ISPs seeking to enter the Program), including its ongoing viability to offer and provide Services. If the new entity is approved for registration, a new Funding Deed will be

issued. The Department reserves the right to decline to register the new entity if, in its opinion, the new entity is unable to satisfy the financial or other assessment requested.

The Department reserves the right to decline an application or to place conditions on registration (including the registration of Service Areas).

4.6.3 Roll-out of Service Areas

If a Provider fails to offer and supply its Services in the applicable Service Area(s) within the submitted timeframe approved by the Department (as set out in section 3.5.4 and as defined as part of a Metro-comparable Service), the Department will notify the Provider to show cause why the Service Area should not be withdrawn from registration under the Program due to non-compliance.

In these circumstances, the Department would seek detailed explanation of any circumstances outside of the Provider's control that may have prevented Services being offered within the approved timeframes.

4.6.4 The Department's Data Testing Regime

4.6.4.1 Obligation of Providers to Participate

Australian Broadband Guarantee Providers are required to:

- (a) maintain test computers (configured like a computer that would be installed in a Customer's Premises);
- (b) fully participate in the Department's Data Speed (Phase 1) testing;
- (c) fully participate in follow-up (Phase 2) testing where initial test results are substandard; and
- (d) where the Provider contends the Data Speed problem is not within its own network, undertake further follow-up (Phase 3) testing within its own network and provide the results to the Department to confirm this is the case.

Where Phase 2 or 3 testing results indicate a systemic failure by a Program Provider to meet its average Data Speed requirements, the Department may issue a notice in writing requesting that the breach be rectified. If the Provider fails to do this, the Department may terminate the Deed, or undertake other action (as appropriate) available to it under the Deed, such as suspension of funding.

4.6.4.2 Testing Regime

The Department conducts a three tiered data testing regime.

(a) Tier 1—Customer Testing

The Department has established an online facility at which Program Customers are able to test their average Data Speeds. This facility is at www.bctest.com.au/speedtest.html

Providers are required to supply their Customers with information about the Data Speed testing facility, including the URL, when they connect the Customer to a Program Service. Customers should test their Service in accordance with the Department's Data Speed test guidelines published on the test website. Where a complaint is made based on the results other than those provided by the Department's

test facility, Customers will be asked to re-test their Service using the Department's facility.

Where testing undertaken by a Customer using the Department's testing facility indicates that the Service is not performing at the required average Data Speed, the Customer should raise the issue with their Provider and seek an explanation. Customers also need to recognise that such results may be caused by factors outside their Provider's control and therefore may not signify a breach of the Provider's obligations.

If the Customer is not satisfied by the Provider's explanation, the Customer should contact the Department immediately. As a consequence, the Department may require Providers to undergo an examination of Service performance. In some circumstances, the Department may also refer the Customer to the TIO for further action.

Where complaint data indicates possible systemic non-compliance by a Provider with its average Data Speed obligations, the Department may require further formal testing, and, if necessary, rectification of the situation, or other action considered to be appropriate by the Department.

Special Circumstances

Where a Provider identifies a situation where a particular Customer is unable to receive a service meeting the average or minimum Data Speed, the Provider may propose to the Department that it withdraw the Customer's Service and repay the Incentive Payment for that Service to the Department. Subject to the Customer and the premises remaining eligible, the affected Customer would then be able to receive another Program Service from another Provider.

A Provider may continue to provide a Service that is not achieving the required average Data Speed, provided that the Customer has been informed of their right to another Program Service as described above, and elects to continue to receive the existing Service. In this circumstance the Incentive Payment does not need to be repaid by the Provider to the Department. Once the decision is taken by the Customer, the premises will no longer be eligible for a new Program Service. However, under the special circumstances listed here, if the Customer elects not to continue to receive the existing Service, the Provider is obliged to release the Customer from their contract and repay the Incentive Payment to the Department.

Customers that identify issues with their Service should follow the procedure outlined in section 4.6.4.2 above.

(b) Tier 2—Ongoing Monitoring and Reporting

The Data Speed testing facility established by the Department is used by test computers to download and upload a specified test file once a month in order to test average download and upload speeds. A Provider passes the Data Speed when the test file is able to be uploaded and downloaded at the average/minimum Data Speed applying to a set of Service Plans. This is Phase 1 testing.

The Department will use best endeavours to notify each Provider who has failed the test in a particular month of their test result.

Where a Provider's Data Speed tests do not achieve the average Data Speeds required during this test:

- The Provider will be required to provide an explanation to the Department within two (2) working days of the date on which it receives a notification from the Department stating that the Provider has failed a Data Speed test and seeking advice on the reasons for the issue and, if possible, advice on when the issue may be rectified; and
- The Department may require the Provider to enter into a program of daily Phase 2 testing. This means that for a period of three successive days the testing schedule as described above will be carried out. In certain circumstances, (for example, technical problems limiting access to a Provider's test computer) it may not be possible for this testing to occur over three consecutive days.

If, after three days testing, the results indicate the required average/minimum Data Speeds are still not being achieved, the Department will notify the Provider of the overall test results, and require (within ten (10) working days) a further explanation and description of what remedial action, if any, it intends to take.

Where the Provider contends that its failure to meet the required average Data Speeds is due to factors beyond its control, the Provider must institute a program of Phase 3 testing of equal or greater frequency to the Phase 2 testing (i.e. at least three successive days). Phase 3 testing is to be undertaken within the Provider's network, between the CPE and the Provider's border router, or such other point as the Provider satisfies the Department is appropriate given the configuration of its network.

Where ongoing systemic failure is identified or it appears past non-compliance has been hidden, the Department reserves the right to undertake further investigation and/or action, including possible termination of the Funding Deed with the Provider, suspension of Incentive Payments and, where invalid claims are identified, seeking repayment of funding paid in respect of those claims and/or any other action considered appropriate.

(c) Tier 3—Ad-Hoc Auditing

In addition to the above requirements, average Data Speeds for Program Services are subject to audits. This may involve the Department (or its contractors) making arrangements directly with Customers or making site visits to Providers and making use of their facilities. Providers must comply with all reasonable requests in relation to such audits, including making available facilities for audit purposes.

The Department reserves its rights to undertake audits of Data Speed, either on an ad hoc basis for example, in response to complaints by Customers about Data Speeds for their Services or on a routine basis. Providers are obliged to co-operate with these audits if they are required.

(d) Publication of Data Speeds

The Department publishes regularly on the website each Provider's average Data Speed test results for each Service tested. Unless specifically sought, monthly data for Providers that pass the Data Speed test will not be provided to Providers.

The Department's monthly summary of the results of Providers may be accessed through www.dbcde.gov.au/abg_for_consumers.

4.6.5 Action the Department can take in respect of a Provider's failure to comply with the Guidelines or a Deed

As soon as a Provider becomes aware that it has failed to meet its obligations under its Deed or under the Guidelines, it must report such failure to the Department, and take immediate steps to rectify the failure (if the failure is capable of remedy).

Where the Department notifies a Provider that the Provider is in breach of its obligations under its Deed and/or under the Guidelines, the Provider must rectify the breach within ten (10) Working Days of receiving the notice. If the Provider fails to do so, the Department may take further action, which can include reduction in scope or termination of its Funding Deed with the Provider.

4.6.6 The Department's Right to Vary the Guidelines

The Department reserves the right to vary these Guidelines in light of changes to Australian Government policy and ongoing experience with the Australian Broadband Guarantee.

Prior to any significant variation in these Guidelines, the Department's general policy would be to consult with Providers and the wider community where appropriate and possible. The Department may consider any comments/objections raised by Providers to a variation of these Guidelines prior to implementation.

The Department will notify by email and via the website if the Guidelines are varied. Providers should regularly check the Department's website to ensure they are up to date with the Australian Broadband Guarantee Guidelines and any other news relating to the Australian Broadband Guarantee.

4.7. The Department's Contact Details

Queries relating to these Guidelines, the ongoing operation of the Australian Broadband Guarantee may be directed in writing to:

Manager
Broadband Provider Management
Broadband Infrastructure Branch
Department of Broadband, Communications, and the Digital Economy
Post: GPO Box 2154, Canberra, ACT 2601
Courier: 38 Sydney Avenue, Forrest, ACT
Email: *abgproviders@dbcde.gov.au* (Category B and C Providers)
abg@dbcde.gov.au (Category A ISPs and Customers)
Phone: 1800 883 488

A written request is preferred if a question about the Guidelines or the Program is likely to raise significant issues.

5. Forms and Compliance Matters

5.1 *Optional Installation Sign Off Form*

After Connection and Supply of a Service, Customers may be asked by the provider (or their installer) to advise that the Service has been Connected and Supplied. A sample format that may be used by the provider (at its discretion) to document that the supply is provided below for information only:

<p>AUSTRALIAN BROADBAND GUARANTEE</p> <p>CERTIFICATE OF CONNECTION AND SUPPLY OF SERVICE</p> <p>Customer Name:</p> <p>Business/Indigenous Community Council Name:</p> <p>Installation Address:</p> <p>Contact Number:</p> <p>Declaration: I declare that my Provider has Connected and Supplied (as defined in the Australian Broadband Guarantee Guidelines) a Service under the Australian Broadband Guarantee and that the connection is operating.</p> <p>Signature:</p> <p>Print Name:</p> <p>Date:</p>
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A copy of the certificate, or other evidence demonstrating that the Service has been Connected and Supplied, should be provided to the Customer and the original scanned retained by the Provider (as a record), in the event of a dispute.

5.2 Matters to be Covered in Reports

This section identifies the key matters that must be covered in:

- the half-year compliance report due in early 2008; and
- the annual compliance report due at the end of the Program.

Providers must also report on other matters they consider material to their participation under the Program or otherwise relevant.

The information specified in Table 1 relating to the six months to 31 December 2007 must be submitted by Providers no later than 25 January 2008. A template for completion of this half-year compliance report will be sent to Registered Providers by 30 June 2007.

The information specified in Table 2 relating to the 2007–08 financial year must be submitted by Providers by no later than:

- 30 September 2008, for items 2, 8, 9, 10 and 11; and
- 25 July 2008, for the remainder of the items.

A template for completion of the annual compliance report will be sent to Registered Providers by 31 December 2007.

Table 1: Australian Broadband Guarantee Half-year Compliance Report

Nature of information required
Statutory Declaration as to continued solvency
Statutory Declaration that Board and Senior Management continue to have specified minimum experience
Statutory Declaration that Board and Senior Management continue to be free from criminal convictions
Changes in material commitments since registration that may affect ability to deliver on Australian Broadband Guarantee commitments
Material changes in technology plans or technical staff since registration
Performance against business plan
Customer service performance, including billing
Estimate of incentive claims over the second half-year
Confirmation of acknowledgement of Australian Broadband Guarantee as an Australian Government initiative
Confirmation of verification of Customer eligibility
For each service registered, copy of standard Customer contract or URL being provided to Customers
For each service registered, length of Australian Broadband Guarantee contract with Customers
Fault reporting and helpdesk—confirmation and brief description
Data speed performance tools—confirmation and brief description of how Customers are provided with information about the Australian Broadband Guarantee Customer data speed test facility
Service availability, including network availability and reasons for downtimes
Confirmation that copies of all Customer Attestation Forms provided to the Department
Connection timeframes
Service restoration/fault repair timeframes
Offer of Australian Broadband Guarantee services to Eligible Customers—confirmation and process description
Customer complaints—confirmation of processes, brief description, Australian Broadband Guarantee complaint numbers by major categories and Customer postcode
Participation in the Telecommunications Industry Ombudsman (TIO) scheme—confirmation and Australian Broadband Guarantee complaint numbers to TIO by major categories
Number of Australian Broadband Guarantee Customers—by Customer type, service type, Customer postcode, level of incentive payment claimed
Incentive payments received
Provider comments on the Australian Broadband Guarantee program

**Table 2: Australian Broadband Guarantee Compliance Report
2007–08**

Nature of information required
Statutory Declaration as to continued solvency
Unqualified audit reports
Statutory Declaration that Board and Senior Management continue to have specified minimum experience
Statutory Declaration that Board and Senior Management continue to be free from criminal convictions
Lodgements with all relevant authorities are current
Changes in material commitments that may affect ability to deliver on Australian Broadband Guarantee commitments
Material changes in technology plans or technical staff
Profitability, net assets, net current assets (i.e. Profit and Loss Statement and Balance Sheet)
Capital to which provider has ongoing access, including the source and amount of financial capital available
Ratio of material future commitments to net assets
Performance against financial plan, particularly in terms of Customer acquisitions and capital and operational expenditure
Performance against business and financial plans
Customer service performance, including billing
Confirmation of acknowledgement of Australian Broadband Guarantee as an Australian Government initiative
For each service registered, length of Australian Broadband Guarantee contract with Customers
Fault reporting and helpdesk—confirmation and brief description
Data Speed performance tools—confirmation and brief description of how Customers are provided with information about the Australian Broadband Guarantee Customer Data Speed test facility
Service availability, including network availability and reasons for downtimes
Confirmation that copies of all Customer Attestation Forms provided to the Department
Connection timeframes
Service restoration/fault repair timeframes
Offer of Australian Broadband Guarantee services to Eligible Customers—confirmation and process description
Customer complaints—confirmation of processes, brief description, Australian Broadband Guarantee complaint numbers by major categories and Customer postcode
Participation in the Telecommunications Industry Ombudsman (TIO) scheme—confirmation and Australian Broadband Guarantee complaint numbers to TIO by category

Number of Australian Broadband Guarantee Customers—by Customer type, service type, Customer postcode, level of incentive payment claimed
Incentive payments received
Provider comments on the Australian Broadband Guarantee program