



Australian Government

Australian Broadband Guarantee

AUSTRALIAN BROADBAND GUARANTEE

Draft program guidelines 2008–09

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1. Introduction

1.1 Objectives of the Australian Broadband Guarantee

The Australian Broadband Guarantee provides all Australian residents with access to Metro-comparable Broadband Services by offering financial assistance (in the form of Incentive Payments) to Registered Providers to supply Metro-comparable Broadband Services to residential and small business premises where such services would not otherwise be available.

The Australian Broadband Guarantee is intended to allow viable internet service providers (ISPs) to extend the range of their service coverage to cover under-served areas and premises. It is not intended to be a source of financial support for Providers that enables them to maintain a viable business. Applicants seeking Registration under the Australian Broadband Guarantee are required to demonstrate that they have a viable business plan without Australian Broadband Guarantee support and that they will have a viable business case beyond the life of the Program.

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.

The Australian Broadband Guarantee will complement the roll-out of fast broadband under the Australian Government's National Broadband Network (NBN) by providing access to subsidised and Metro-comparable Broadband Services for those Australians in remote areas beyond the coverage of NBN services, and in other areas while the NBN is being rolled out.

Under the Australian Broadband Guarantee the Government will particularly target areas and regions in more remote areas where commercial infrastructure has not been extensively deployed and where a significant percentage of premises remain under-served. Providers will be encouraged to roll out sustainable terrestrial infrastructure into these targeted areas.

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 (as defined in these guidelines and in Funding Deeds)
- quality customer service (including expeditious follow up where problems arise with the Service)
- proper complaint handling procedures that are consistent with the constitution, procedures and policies of the Telecommunications Industry Ombudsman (TIO), the Australian Communications Alliance Ltd's Complaint Handling Code, and other 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
- scalable and enhanced 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 their Funding Deeds and these Program Guidelines
- take all reasonable steps to ensure that all claims submitted for payment (including Attestation Forms) are valid and accurate
- provide full disclosure of any circumstances that may result in them possibly breaching the Guidelines and/or their Funding Deed
- 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. The conduct of Departmental 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 objective of the Australian Broadband Guarantee is that a Program Service is available to all residential consumers and small businesses unable to access a Metro-comparable Broadband Service. The rules of the Program are aimed at targeting support to those premises where such a service is not available. Conversely the Program excludes those premises where a commercially available Metro-comparable Broadband Service (including a retail service provided through other government-funded networks) is available, and Providers are required to exert all due diligence to ensure that they do not claim incentive payments for such premises.

1.3 Overview of the operation of the Australian Broadband Guarantee Guidelines

These Guidelines describe the operation of the Australian Broadband Guarantee from 1 July 2008 to 30 June 2009 (or an earlier time should the Funding Allocation be fully expended prior to this date).

It should be noted that core concepts relevant to the operation of the Australian Broadband Guarantee are capitalised and defined at section 1.5.

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 (*web address to come*).

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 Past Programs, that approval does not apply under the current Australian Broadband Guarantee during 2008–09, unless it is separately provided for under these Program Guidelines.

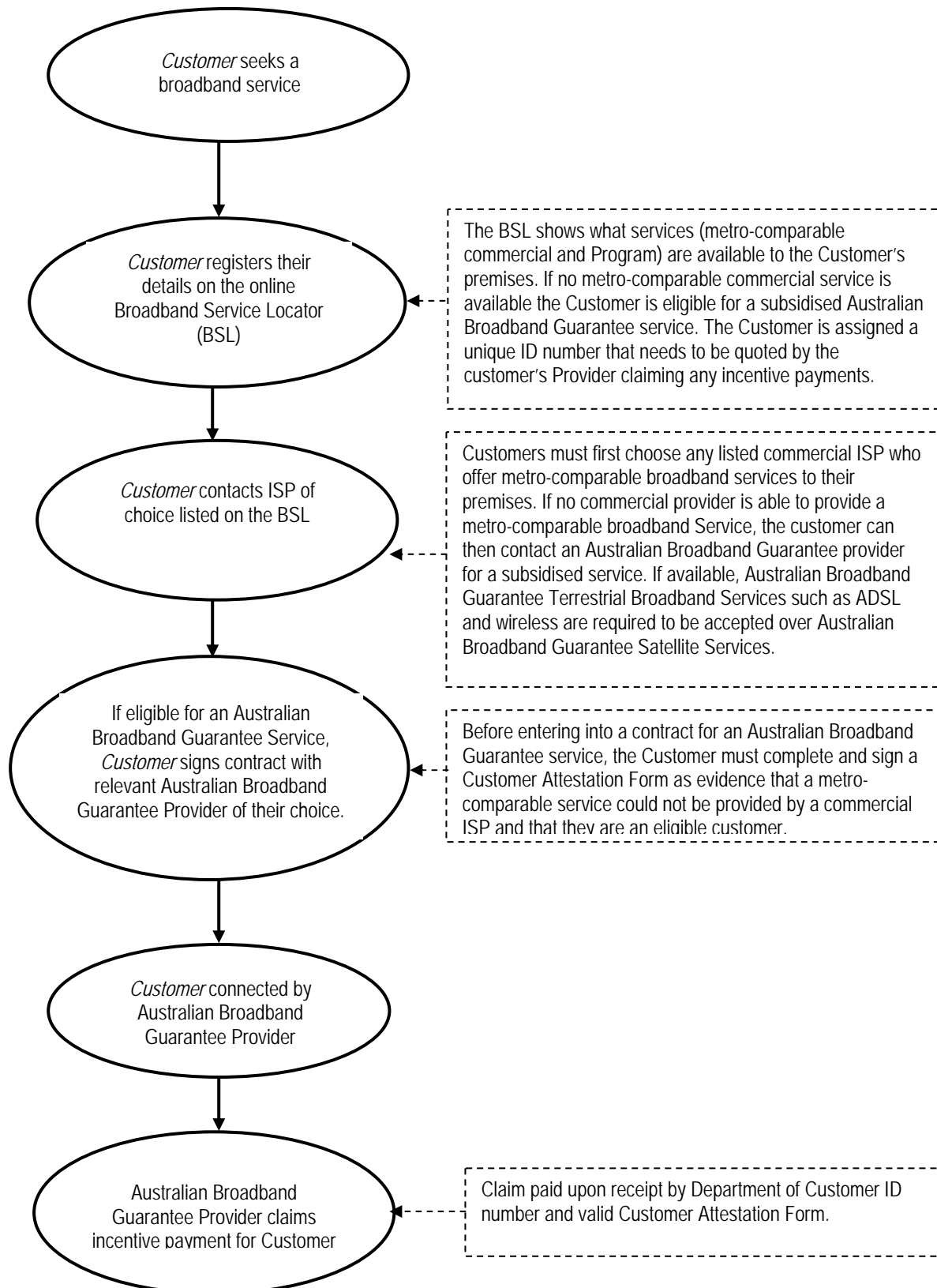
Applicants for registration under the Australian Broadband Guarantee are able to obtain guidance through these Guidelines and through material posted from time-to-time on the Department's website.

The following parts of the Guidelines may be of key interest to potential Applicants and other stakeholders:

- Definition of Metro-comparable Broadband Service level: definition on page 12
- Rules for Eligible Premises: Section 2.1
- Required Service levels for Program Services: Section 2.3
- Steps required to be undertaken by Customers: Section 2.4
- Application process and assessment criteria: Section 3
- Approach to registering Service Areas: Sections 3.5.4 and 3.6
- Incentive levels: Section 5.5

Overview of Program operation

The chart below provides a simplified overview of the key steps involved in applying for and receiving an Australian Broadband Guarantee Service. It should be noted that this flowchart does not represent the full detail of requirements under the Program.



1.4 Funding Allocation for Program

The Australian Government has allocated \$91 million (excluding GST) for the Australian Broadband Guarantee during the 2008–09 financial year ('Funding Allocation'). The Funding Allocation may be expended at an earlier time, depending on the level of Program activity.

Advice will be given to all Providers when the balance of the Funding Allocation (determined by value of claims accepted by the Department for payment) reaches \$50 million, \$30 million, \$20 million, \$10 million, \$5 million and \$0 (fully expended).

When the remaining Funding Allocation reaches \$20 million and Providers have been notified, each Provider's obligation under its Funding Deed to offer Services to new Customers under the Australian Broadband Guarantee will cease.

The Department has delegated authority to administer the Program and the allocated funding.

1.5 Key concepts and terminology

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

A

'Aboriginal Community Council' means an incorporated organisation acting on behalf of its discrete remote Aboriginal and/or Torres Strait Islander community or administering an activity on behalf of another discrete remote Aboriginal and/or Torres Strait Islander community. This category of Eligible Customers was known as an **Indigenous Community Council** under Past Programs.

'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.

'Agent' means, for the purposes of these Guidelines, any entity that a Provider uses or proposes to use to market or sell its Services on their behalf. It includes authorised dealers or sale representatives (including a franchisee acting in an agency capacity).

'Applicant', according to the context, means:

(a) an ISP seeking to become a Registered Provider under the Australian Broadband Guarantee Program

or

(b) a Provider (i.e. an ISP registered under the Program) seeking 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
- (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 to 13 August 2007.

‘Australian Broadband Guarantee (2007/08)’ means the Australian Broadband Guarantee Program that operated from 14 August 2007 to 30 June 2008.

B

‘Blackspot’ means Under-served Premises unable to obtain a Metro-comparable Broadband Service.

‘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 program management system which Registered Providers are able to use to lodge and review claims for Incentive Payments under the Australian Broadband Guarantee.

‘Broadband Service Locator’ or BSL means the form available on the Department’s website at (*web address to come*) to enable potential Customers to determine whether their premises may be able to receive a Metro-comparable Broadband Service on a commercial basis, or be eligible for a Service under the Australian Broadband Guarantee.

‘BSL Listing Form’ means the form that a commercial ISPs may submit to the Department in order to participate (on a wholly voluntary basis) in the Broadband Service Locator listing and notification process. The form is made available online on the Departmental website (*web address to come*).

‘Business’ means an enterprise or going concern with an Australian Business Number.

C

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

‘Category B’ means a Provider that is registered to provide a Terrestrial Broadband Service under the Program 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 Broadband Service either through a Category A ISP or a Category B Provider.

‘Commercial ISP’ means, for the purposes of these Guidelines an ISP (either Registered or unregistered) that is able to provide a Metro-comparable Broadband Service commercially to customers (i.e. without requiring Incentive Payments).

‘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 requiring any further deployment of infrastructure, cabling or CPE by the Provider
- the Customer has entered into a contract with the Provider for the provision of the Service. See section 4.3 and 4.4 for further details.

‘CPE’ means customer premises equipment that enables Customers to access broadband services. Examples include modems, satellite dishes, antennae for wireless services, and related cabling or any other equipment installed to enable the supply of 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
 - (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 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
- (b) that they cannot receive a Metro-comparable Broadband Service to their premises from a Category A ISP
- (c) if applicable, any other matters relevant to their circumstances.

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 usable 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’ or ‘DBCDE’ 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 Aboriginal or Torres Strait Islander Community Council, with no FTE limit applying.

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

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

that did not have access to a Metro-comparable Broadband 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 are considered to be Eligible Premises.

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

‘Excess Data’ means, in the context of Service Plans, data usage above the Customer’s allotted monthly data usage limit as provided for under the relevant service plan.

‘Exit Strategy’ means the arrangements by which a Provider manages its Program Customer base if and when 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 \$91 million (excluding GST) which is allocated for the Program during the 2008–09 financial year.

G

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

H

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

I

‘Incentive Payment’ means the amount of funding paid to a Provider for the provision of a Program Service. The level of payment which may apply varies depending on a number of factors (such as the type of Service Solution used, whether the connection involves equipment upgrades etc.). See section 5.5 for further details about the five different levels of payment.

‘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 ended on 30 June 2007.

‘Metro-comparable Broadband 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 3GB 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
- (c) the Provider or commercial ISP offering the broadband service can install the service within a reasonable period of time.

‘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
- (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 21 August 2007 in publication 1259.0.30.003 – Australian Standard Geographical Classification (ASGC) Urban Centres and Localities (UC/L) Digital Boundaries, Australia, 2006.

‘National Broadband Network’ refers to the Government’s commitment to provide up to \$4.7 billion to fund an open access, high-speed, fibre-based broadband network to service 98 per cent of Australian homes and businesses.

P

‘Past Programs’ refers to the following Government broadband subsidy programs: Higher Bandwidth Incentive Scheme, Broadband Connect, Metro Broadband Connect, Australian Broadband Guarantee (transitional period), Australian Broadband Guarantee (2007–08) or any other Government programs providing access to a Metro-comparable Broadband Service.

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

‘Program’ refers to the **‘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 including Macquarie Island, Herd Island and the Australian Antarctic 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.

‘Provider’ means an ISP registered under the Australian Broadband Guarantee during 2008–09.

R

‘Registered’ in relation to a Provider or a Program Service means approved by the Department and where the Provider and 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 those areas classified by the Department as ‘remote’ or ‘very remote’.

‘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. For clarity, 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 described in the Guide for Australian Broadband Guarantee Applicants) that have been included in a Provider’s Funding Deed as the areas to which it will offer a particular Service.

‘Service Plan’ or **‘Program 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 and in accordance with these Guidelines.

‘Service Solution’ means the particular technical solution to extend an existing technology platform or to deploy a new technology platform to supply a Service (for example ADSL DSLAM or a particular wireless platform). Providers must identify the types of Service Solutions they are using as part of registering a Service.

‘Shaping’ means the practice of slowing data speed once the monthly data usage limit, as specified in a Service Plan, is reached. Where shaping is used by a Provider, the reduced shaped speed must be specified in the Service Plan.

‘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).

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 and excludes a Standard Form of Agreement (as defined in section 479(2)(b) of the *Telecommunications Act 1997*).

‘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.

‘Torres Strait Islander Community Council’ means an incorporated organisation acting on behalf of its discrete remote Aboriginal and/or Torres Strait Islander community or administering an activity on behalf of another discrete remote Aboriginal and/or Torres Strait islander community.

U

‘Under-served Premises’ means those premises located within the Program Area that do not have access to a Metro-comparable Broadband Service, other than through a Registered Provider under the Australian Broadband Guarantee. Information about Under-served premises will be made available on the Department’s website at (*web address to come*)

V

'VOIP' means voice over internet protocol.

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

The following section outlines the requirements and processes involved in determining a Customer's eligibility to receive an Australian Broadband Guarantee Service.

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)
- (b) their premises, being Eligible Premises, do not have access to a Metro-comparable Broadband 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, houses, cottages or other dwellings on a farming property that are separate places of residence for the property owner and a staff member(s)
- (c) self-contained and distinct places of residence within retirement villages and nursing homes
- (d) 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
- (e) a permanently moored vessel that is the principal place of residence of the Customer
- (f) self-contained and distinct places of permanent residence (more than six consecutive months) within a military establishment, 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, dormitories and self-contained rooms that are used by more than one occupant on a rotating basis (or other similar arrangement)
- (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)
- (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 to the Customer as a 'Residential Customer'.

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 Australian Business Number
- (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). The site of Business may be co-located in a separate building (for example, a shed) subject to the exclusions under Section 2.1.2.1.

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
- (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 for a residential service subject to satisfying the requirements under section 2.1.1
- (d) a site established for re-transmission of broadband services.

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.

2.1.2.3 Government organisations excluded from the Program

Government organisations, including local government organisations, with the exception of Aboriginal or Torres Strait Islander Councils, are not Eligible Customers and their related premises are not Eligible Premises for the purposes of this Program.

2.1.3 Aboriginal or Torres Strait Islander Community Council

This is defined to be any Australian Aboriginal or Torres Strait Islander Community Council constituted under state, territory or Australian Government legislation.

In the case where Aboriginal or Torres Strait Islander Community Councils are shire councils, such councils and their related premises are the only form of local government entities eligible under this program.

These inclusions are designed to cover the amalgamation of former Indigenous Community Councils with local government municipalities or shires in Queensland and any forthcoming amalgamations with any other state or territory.

Aboriginal or Torres Strait Islander Community Councils operating as a Small Business or operating Small Businesses, should apply under the provisions for a Small Business if they are eligible for an Australian Broadband Guarantee Service. Such businesses will not be considered an Aboriginal or Torres Strait Islander Community Council for the purposes of this Program.

An Aboriginal or Torres Strait Islander 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 Broadband Service

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

For the purposes of the Program, a Customer is not considered to have access to a Metro-comparable Broadband Service, if the Category A ISP charges any fees in any manner that would cause the cost of the Metro-comparable Broadband Service to be increased to be more than \$2500 (GST inclusive) over a three year period. Examples where a service would not be regarded as a Metro-comparable Broadband 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) over a three-year period
- 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) over a three-year period.

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 Broadband 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 Broadband Service.

The Broadband Service Locator is provided to assist Customers with assessing whether a Metro-comparable Broadband 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 meets the defined standards of a Metro-comparable Broadband Service for a Past Program Service the Customer will generally not be eligible to receive an Australian Broadband Guarantee Service.

The exception to this is where a Customer no longer has access to a Metro-comparable service for reasons beyond their control or is not able to be upgraded to a Metro-comparable Broadband Service at the expiry of the contract governing the supply of the service. Further detail regarding such circumstances is provided at section 2.7.

In these circumstances, applications to have premises recognised as Eligible Premises are allowed for through the Broadband Service locator and the Customer Attestation Form, and will be considered on a case-by-case basis.

Only one Program Service can 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 Broadband Service from a Category A ISP but the ISP refuses to do so for legitimate reasons relating to the customer's behaviour (for example, the Customer's poor credit history). 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 for Australian Broadband Guarantee Services offered to Customers

There are three categories of Service that Service Providers can offer under the Australian Broadband Guarantee program:

- a Threshold Service
- an Entry Level Service
- an Added Value Service.

The requirements of these services are described below. In addition to these requirements, Providers must inform customers of the full range of their approved Service Plans. This is to allow customers to make informed choices about the plan that would best suit their needs.

The Department also requires Providers to provide ongoing maintenance of Services as outlined in section 2.6.

2.3.1 Requirements for Threshold Services

All Providers must offer at least one Threshold Service with the following features:

- (a) Access to the internet at a peak upload/download Data Speed of at least 512/128 kbps and 3GB per month usage allowance (with no restrictions within these limits on downloads or uploads or on usage time or peak/off peak limitations). 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 service. This amount excludes the cost of installing a fixed line telephone service to premises where such a service is available but not connected. No additional costs are to be charged to a Customer for non-standard installations. A non-standard installation may include, but not be limited to, installation of larger satellite dishes, cyclone-proofing of equipment, higher gain receivers and separate mountings where necessary.
- (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) Shaping of data to no less than 64kbps at no cost or excess data charges of no more than five cents per megabyte with no shaping for any data used above the specified monthly data usage allowance (which may include advance purchase of blocks of data).
- (e) 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 must 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.
- (f) Free helpdesk support for common Customer connection problems and service faults as agreed between the Department and the Provider.
- (g) 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 1 GB per month usage allowance (with no restrictions within these limits on downloads or uploads or usage time or peak/off peak limitations). 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, including equipment, installation, connection, account establishment and ongoing provision of service, that is appropriately discounted below the threshold price cap, and that appropriately takes into account the speed and functionality of the service and the incentive payment applying to the service.

The price excludes the cost of installing a fixed line telephone service to premises where such a service is available but not connected. No additional installation costs are to be charged to the Customer for non-standard installations. A non-standard installation may include but not be limited to installation of larger satellite dishes, cyclone-proofing of equipment and areas, higher gain receivers and separate mountings.

The Department reserves the right not to register proposed Entry Level Services where an appropriate price discount is not applied.

- (c) Shaping of data to no less than 64kbps at no cost OR excess data charges of no more than five cents per megabyte with no shaping for any data used above the specified monthly data usage allowance (which may include advance purchase of blocks of data).
- (d) 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 register Service Plans with greater functionality including higher Data Speeds and other usage allowances which exceeds that applying to a Threshold Service. These are called Added Value Services, and a condition of registration is that Providers must have registered at least one Added Value service with a speed of at least 1024/256 kbps, and at least 5GB per month download limit.

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

- it is appropriately taking into account 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(a)-(g).

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 5.6.5, 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.

A proposed service which provides additional optional functionality (for example, access to a VOIP service) but where the Data Speed or data usage limit is lower than that applicable to a Threshold Service, will not be registered as an Added Value Service. All Added Value Services must exceed the functionality requirements of the minimum Threshold Service level. Providers can have multiple Added Value Services, provided they are also offering at least one Threshold Service.

The total three-year cost to the Customer for any Service Plan must include equipment installation, connection, establishment of an account and ongoing provision of service. For the purposes of determining the maximum price to the Customer of the Service, any fee or charge associated with the installation of a fixed line telephone service (where no such service is actually connected) is not included.

2.3.4 Other matters

The Australian Broadband Guarantee does not preclude Providers offering special discounts on Services 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 of all intended offerings, in line with section 4.3 and specify the duration of the special offer. Providers seeking to make a discount a permanent feature of the Service Plan will need to apply to the Department to have that change reflected as a new (or varied) Registered Service under their Funding Deed.

2.3.4.1 Bundling

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 for proposed Added Value Service, provided that a 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 compliance with all relevant laws (see section 2.2).

2.3.5 Payments for Service Plans

Providers are encouraged to offer Customers, as appropriate, a range of different payment options to pay for their Service Plans, including credit card, direct debit from bank account and/or payment by cheque or money order. Providers must not unreasonably restrict payment options by requiring the Customer to use a single payment method.

Pre-paid cards may not be used as a payment mechanism for Services without the Department's prior written approval.

2.4 Steps required by a Customer to receive an Australian Broadband Guarantee Service

In order to apply to receive an Australian Broadband Guarantee Service, the Customer must be registered on the Department's Broadband Service Locator at <http://bcoms.dbcde.gov.au/BSL>. This site provides full details of the processes to be undertaken by Customers to register for a Service. Registration is undertaken by the Applicant, or a person authorised to act on behalf of the Applicant. Any person acting on behalf of the Applicant person must ensure that they hold, and are able to produce to the Department, evidence of that authority.

2.4.1 Information pack and Customer Attestation Forms

Once a Customer has been successfully registered on the Broadband Service Locator, an information pack is sent to their premises that contains an introductory letter from the Department and a list of ISPs that can potentially provide a Service to the Customer.

Where a Customer is located in an area where a Service can only be provided by a Category B or Category C Provider, the Customer also receives an Attestation Form from the Department. The Customer should complete the form and sign it once they are satisfied that the details on the form are correct.

Where the initial application on the Broadband Service Locator was from a Residential Customer, the Attestation Form can be completed by another person who permanently resides at the same premises (and is a 'Residential Customer' as defined under the Guidelines), provided that the other person can be readily verified and references to the original contact person on the Attestation Form (at the beginning of the Attestation Form and on the signature block) are appropriately amended.

Where the application is from a Business Customer or an Aboriginal or Torres Strait Islander Community Council (as defined under the Guidelines), the Attestation Form can be completed and signed by another appropriately authorised person representing that organisation, provided that the other person can be readily verified and all references to the original contact person on the Form (at the beginning of the Form and on the signature block) are appropriately amended.

All other significant alterations to the Attestation Form will be declined by the Department. Customers, or Providers acting on the Customer's behalf should contact the Department with any requests for significant alteration of an Attestation Form. This will be assessed by the Department and either changed manually, or the Customer may be asked to re-enter their details for a new Broadband Service Locator search. The reason for this approach is that integrity of data is essential in the use of the Broadband Service Locator, and significant changes may change eligibility status;

for example, any changes to listed addresses locate the Customer in an ineligible area. All enquiries by Customers should be to Freecall 1800 883 488, or by Providers (acting on the Customer's behalf) to *ABGBSL@dbcde.gov.au*.

2.4.2 Category A ISPs (commercial providers)

Where the Customer is provided with a list of Category A ISPs offering Metro-comparable Broadband Services commercially, as a general rule the Customer must contact each listed ISP to determine whether a Metro-comparable Broadband Service is available to be Connected and Supplied to their premises. The exception to this is where listed ISPs are offering ADSL or ADSL2+ services using Telstra copper wire Last Mile Infrastructure, in which case the customer must contact at least two of these providers.

A list of other ISPs that could offer broadband services but are not Metro-comparable Broadband Services may also be provided where relevant. The Customer has the option to contact these ISPs.

Where a Customer is advised that a Metro-comparable Broadband 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 or the Customer's status is changed as outlined in Section 2.4.2.

Progression to Category B or Category C

If none of the Category A ISPs advise that they can offer a Metro-comparable Broadband Service to the premises, or no ISPs respond within the required seven-day timeframe for response, the Customer's premises will be deemed to be eligible to receive an Australian Broadband Guarantee Service (provided all other eligibility criteria are met), and the application will be progressed to either a Category B (see section 2.4.3) or Category C Provider (section 2.4.4) status. This is done by the Customer contacting the Department (currently via Freecall 1800 883 488).

Where a Customer is originally advised by a Category A ISP that a Metro-comparable Broadband Service can be provided and a site survey or subsequent service check determines that a service cannot be provided, the Customer should advise this to the Department to have their listing re-activated. The Customer must quote their Customer ID number (located on the letter issued to the Customer after submitting their details in the Broadband Service Locator) and advise that they have contacted the listed providers. The Department will send out an Attestation Form which requires the Customer to complete details on which Category A ISPs were contacted and the reasons given by the relevant ISP(s) for being unable to Connect and Supply the customer with a Metro-comparable Broadband Service. The Customer must retain evidence to support their attestation (for example, correspondence from the ISP that the service cannot be offered).

When the Customer has received the Attestation Form through this process, the Customer must complete Part B on the back of the Attestation Form, detailing the ISPs/Providers contacted and the advice provided as to why a Metro-comparable Broadband Service was not available.

Before connecting Customers to a Service, Providers should ensure that Customers who have had their status changed on the Broadband Service Locator have completed Part B of the Attestation Form.

The Department may contact the Category A ISP or Provider specified in an Attestation Form to verify the Customer's statements.

2.4.3 Category B Providers (Terrestrial Broadband Service Providers)

Where a Customer is unable to obtain a Service from a Category A ISP and has contacted the Department, the Broadband Service Locator will identify any Category B Providers able to supply a Terrestrial Broadband Service to the Customer's premises.

Category B Providers will then be provided with a link to the Department's system (BCOMS) allowing them to access an interface that will display relevant information about the Customer (the 'Customer record'). The Provider is required to indicate that they are likely to be able to provide a Terrestrial Broadband Service to the Customer.

Each Customer record will remain visible to the Category B Provider for up to seven 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 calendar days have elapsed, the Customer 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.

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 Broadband 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)
- that the premises have not previously received a service under the Australian Broadband Guarantee or a Past Program, unless the Department has advised that, as allowed for in these Guidelines, the Customer and the Premises are eligible even though they have been provided with a Service under the Australian Broadband Guarantee or a Past Program.

The Attestation Form must be signed by the Customer and submitted to the Category B Provider that the Customer nominates for the supply of the Service. Providers should ensure that Customers who have had their status changed on the Broadband Service Locator have completed Part B of the Attestation Form. Providers must not supply the Service unless and until they hold the duly completed and executed Customer Attestation Form from the Customer.

2.4.4 Category C Providers (Satellite Broadband Service Providers)

Where the premises are unable to be supplied with 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, after contacting the Department if necessary. 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 duly completed and executed Attestation Form is to be given to the Category C Provider.

Where the Customer was unable to obtain a service from a Category A ISP or a Category B Provider, the Customer will need to advise the Department and receive a new Attestation Form. When the Customer has received the Attestation Form through this process, the Customer will need to complete Part B on the back of the form, detailing the ISPs/Providers contacted and the advice provided as to why a Metro-comparable Broadband Service was not available.

The Department reserves the right to contact a Category A ISP or a Category B provider to seek advice on whether a Customer, or an authorised person, has actually contacted that ISP about obtaining a Metro-comparable Broadband Service.

If a Customer's premises are located in an area where there is no existing terrestrial network coverage, then the 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.

It should be noted that penalties may apply under the law in respect of false or misleading information supplied to the Department. Providers should ensure that they hold appropriate paperwork, including properly completed and executed Attestation Forms, before arranging installations for the supply of a Service.

2.4.5 Provider obligations in using the Broadband Service Locator

Providers can generally rely on the Broadband Service Locator to identify whether Metro-comparable Broadband Services are available to particular premises. However, there are other determinants of eligibility, such as whether the premises have previously received a Program Service under Past Programs, which are not covered by the Broadband Service Locator. Therefore, Providers are strongly encouraged to exercise due diligence in checking the eligibility of the Customer and their premises to receive an Australian Broadband Guarantee Service (as per Section 2 of the Guidelines) prior to the installation and supply 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.

The initial Connection and Supply of a Service must occur within 30 calendar days of the date that the Customer has entered into the Terms and Conditions with a Provider unless a longer timeframe has been approved by the Department using the *Request for an extension of time to complete connection and supply* form (refer Departmental website).

Such requests must be received before the expiry of the 30-day period. The Department may decline a request for extension where:

- (a) it is unreasonable (as determined by the Department)
 - (b) inadequate evidence or explanation to support the request for extension has been provided
- or
- (c) the form was received by the Department after the 30-day period.

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.

Once the Provider has Connected and Supplied the Service, the Customer is able to log onto the Department's website using the Customer ID number to provide feedback, including confirmation as to whether their service has been appropriately Connected and Supplied as well as their satisfaction with the Service.

2.4.6 Misuse of the Broadband Service Locator

Providers are required to use the Broadband Service Locator in accordance with the Program Guidelines. The Department will conduct ongoing monitoring of Providers' use of the Broadband Service Locator and will take action against any misuse by a Provider, such as entering Customer data without the Customer's authority.

2.4.7 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 they may have (see Section 5 for further details).

2.5 Use of Customer information by the Department

The Department requires that Providers ensure that under their Terms and Conditions, Customers agree, according to 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) must 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 Maintenance and repairs

Providers are required to provide ongoing maintenance of Services including timely and appropriate servicing of CPE.

Providers must not charge call out fees or repair charges (and any associated labour charges) unless the failure of the CPE could have reasonably been prevented by the

Customer. Where CPE ownership is to reside with the Provider for the Contract term, the Provider, must ensure that it has appropriate insurance or other arrangements in place to cover replacement and repair of that CPE.

The Department also requires Providers to notify Customers of any necessary insurance arrangements the Customer needs to put in place in the case of damage to CPE caused by accident, natural disaster, vandalism and theft (as outlined in the Core Contract Inclusions).

The Department bears no responsibility for the replacement or repair of CPE.

2.7 Loss of a Past Program Service

There are a range of circumstances where a Customer may lose access to a Metro-comparable Broadband Service provided under a Past Program, and in some of these circumstances they may be eligible to receive a new Australian Broadband Guarantee Service. This Section outlines the conditions under which customers may be eligible to receive such a service. It should be noted that 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.

2.7.1 Customers who lose access to an Australian Broadband Guarantee Service or a Metro-comparable Broadband Service through circumstances beyond their control

Where Providers have provided Services to Customers under a Past Program, they are expected to maintain their Services to Customers in line with their contractual obligations (reflecting the relevant Past Program guidelines).

Customers whose premises have received a service under a Past Program are eligible to apply for a new Service where the Provider cannot continue to provide the original subsidised Service, and does not maintain the Service at a Metro-comparable level at the end of the three-year Service Plan period.

In certain circumstances the Provider may be eligible to receive a partial incentive payment (Level 1 payment) to upgrade the Service, where there is a cost involved in maintaining the Service at a Metro-comparable level beyond the three-year Service Plan period that the Department determines the Provider is not able to absorb commercially.

In this circumstance the Customer also has the choice of moving to a completely new Australian Broadband Guarantee Service, even if the Provider is able to upgrade the Service to a Metro-comparable level with support from the Australian Broadband Guarantee. However, if the Provider is able to offer a Metro-comparable Service commercially at this time, then the Customer will not be eligible to receive a Program Service under the Australian Broadband Guarantee.

The Customer may also be eligible to apply for a Program Service if the Customer loses access to the Service at a Metro-comparable level (under the recent Past Program) through no fault of their own during the contract term or three-year period of the Service Plan.

In either of these circumstances, a Customer is required to enter their details into the Broadband Service Locator to determine their eligibility for a Category B or Category C Service. The Customer is also required to complete an Attestation Form attesting

that they are no longer able to access a Metro-comparable Broadband Service through their Provider.

Depending on eligibility, the Customer may select between an upgrade from their existing Provider (if offered and in accordance with the Provisions in these Guidelines for an existing Provider to upgrade the Service), or a new Service from another Provider. Upgrade payments (Level 1 payments) for particular Service Plans will only be approved where the Provider can demonstrate to the Department's satisfaction that a payment is required, either to support the upgrade of infrastructure or to reduce the price of existing infrastructure, and this cost cannot be absorbed commercially.

A Customer would generally not be eligible where they are still bound by a contract with a Provider. However, Section 2.7.2 outlines conditions under which the Department may consider approving the premises for a second subsidised Service in certain circumstances where the Customer terminates an existing contract.

Where the ISP who has ceased providing the service or has changed the Terms and Conditions applicable to that service during the three-year Service Plan period is an Australian Broadband Guarantee Provider, that Provider will not be eligible to receive an Incentive Payment for provision of a second Service to that Customer at the Customer's Premises. The only exception will be if the Provider can demonstrate to the Department exceptional circumstances for the loss of Service (for example, the Service was lost due to an event beyond the control of both the Customer and the Provider).

The loss of a Service during the three-year Service Plan period may amount to the Provider breaching an obligation under the relevant 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 relevant Funding Deed.

2.7.1.1 Customers who lose Customer Premises Equipment (CPE)

Where the CPE is owned by the Customer and the Customer loses the CPE due to exceptional circumstances and is not able to replace it, the Customer 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. Failure to take out insurance for CPE where required under the contract with the Provider may mean that the Customer will not be supported for a second subsidised Service.

2.7.2 Customers who terminate their Service or who change to another ISP

Where a Customer voluntarily terminates their current Program Service or a Service provided under a Past Program, that Customer is not eligible to receive another Australian Broadband Guarantee Service from any Registered Provider unless the Service, at the time it was terminated by the Customer, no longer met the defined standards of a Metro-comparable Service for the particular Program under which it was provided. The Customer must attest to this by re-entering their details into the Broadband Service Locator as outlined in Section 2.4.

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 by a Customer 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 or in cases where an Incentive Payment has been incorrectly or improperly paid.

Similarly, the Australian Broadband Guarantee does not place restrictions on a Customer leaving one Provider for another ISP. However, where a Customer churns to another Provider, further Incentive Payments will only be payable subject to this section.

Customers seeking to change Providers solely for the purpose of obtaining a lower price for a service are not entitled to a second Service under the Australian Broadband Guarantee.

2.7.3 Customers who move to new premises

If a Customer moves to new premises and those premises are 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 premises that had been previously supplied with a Service under a Past Program 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 Service under a Past Program 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 either an upgraded Service or a new Program Service.

If the Customer moves to premises that had previously been supplied with a Service under this or a Past Program, and the CPE is available but is not operating, the Customer should contact the Department to seek advice on which Provider may have previously installed the Service and to determine eligibility to apply for a new Service under this program.

Where the Provider that initially installed the equipment is unable to provide the Service or is required to upgrade the service at significant cost, the Customer may be eligible to seek an Australian Broadband Guarantee Service subject to the processes described in section 2.4.

2.7.4 Customers who move to higher level Service Plans

Providers must provide at least one Added Value Service (see Section 2.3.3) and are expected to offer Customers a range of Service Plans under the Program, including Service Plans that offer higher speeds or improved functionality beyond the Threshold Service level.

A Customer may move to a higher level 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 to the Provider if a Customer moves to such a Service Plan.

In these circumstances, 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.

The Provider may also offer higher level services that are not registered under the Program. If the Customer moves to such a service, the Provider has no obligation to provide Terms and Conditions in relation to the service, and the supply of that service will not attract an Incentive Payment.

Where a Provider levies charges to its Customers for transfer between Service Plans, those charges must be reasonable and reflect the administrative cost of transferring the Customer between Service Plans. Any such charges must also be detailed in the Provider's Terms and Conditions, which must be approved by the Department.

2.7.5 Customers with a Commercial Service who can be upgraded to an Australian Broadband Guarantee Service

Providers who have customers on commercial service plans that are not registered with the Australian Broadband Guarantee (and which are not Metro-comparable) may be able to upgrade these customers to a Metro-comparable Broadband Service under the Australian Broadband Guarantee. In these circumstances the Provider may seek to register the upgraded Service Plan under the Australian Broadband Guarantee and, if approved, would be able to receive a Level 1 Incentive Payment (refer section 5.5.1) for upgrading existing commercial customers to a Metro-comparable service. Such Service Plans will only be approved by the Department if the Provider can demonstrate to the Department's satisfaction that a partial incentive payment (Level 1) is necessary to provide a Metro-comparable Broadband Service to the Customer.

2.7.6 Customers registered but not connected under the Australian Broadband Guarantee 2007–08 program

Customers who have registered on the Broadband Service Locator prior to 1 July 2008, but who have not been connected and supplied with a Program Service, and for whom a Provider has not lodged a claim for payment prior to 30 June 2008, are able to use their previous Attestation Form to progress their application with an eligible Provider under this Program. The Department will advise Customers if there are changes to their eligibility or status because their chosen Provider or Service Plan is no longer available.

3. Registering Providers and their Services

3.1. Introduction

This part of the Guidelines covers the Program's approach to registering Providers, their Service Solutions, their Service Plans and their proposed Service Areas. It covers in detail the application process that all Applicants must undertake to be considered for registration under the Australian Broadband Guarantee program.

Internet Service Providers interested in participating in the Program, including ISPs previously registered under a Past Program, are required to complete and lodge an Australian Broadband Guarantee Application Form (available at - *web address to come*) which addresses the criteria set out in these guidelines.

ISPs are also **required** to read the Australian Broadband Guarantee Program Guidelines for information about the operation of the program and the requirements placed on Providers who may participate in the Program. The Program Guidelines also provide definitions and further clarifying information about terms and concepts used in this document. The Application Form contains a requirement for Applicants to attest that they have read the Guidelines in full.

3.1.1 Key requirements

All Applicants to the Australian Broadband Guarantee are required to register:

- (a) themselves (noting the requirements outlined in this section)
- (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 and one Added Value Service for each Service Solution and has the option of registering additional Threshold, Entry Level or Added Value Services
- (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 for registration 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, the Department will notify the Applicant and forward a Funding Deed (either by email, 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 posted on the Department's website.

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

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

No funding is payable for any services connected and supplied by an Applicant before they are registered 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 conducts Registration Rounds (including Registration Rounds specifically relating to Service Areas) at its discretion, at any 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 any future Registration Rounds, existing Providers may submit applications for new Service Plans, Service Solutions, and/or new Service Areas. Such applications must be submitted using the approved application form available on the Department's website, and will be assessed according to the assessment criteria set out in these Guidelines. The Department will notify Providers when it announces a Registration Round.

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, as well as one complete electronic copy on CD-ROM or DVD-ROM. Applications received by email 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 set out 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. That is, a Provider will not lose a registered 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 involves an initial screening. During this stage, all applications are screened to determine if the application is complete and accompanied by sufficient information to be effectively assessed and whether the Applicant has satisfactorily addressed the relevant screening criteria.

NOTE: Applications which do not meet any or all of the screening criteria during stage one are not further assessed and are declined.

Stage two involves benchmarking the remaining applications in detail against the selection criteria described at sections 3.5–3.5.4. Applications that are assessed not to satisfy the criteria are excluded from further consideration at this point and the application is declined.

Stage three involves the comparative assessment of applications proposing Terrestrial-based Services if proposed Service Areas overlap to any material extent. Section 3.5.4 sets out the criteria that will be used for the comparative assessment and section 3.6 sets out the ranking criteria. The objective of the Program is to avoid overlap of Service Areas for Terrestrial-based Services, although there may be some minor overlap in some areas.

The Department reserves the right to decline applications for Terrestrial-based Services Areas which completely or substantially overlap with Terrestrial-based Service Areas already approved for other Providers.

All Applicants will be advised in writing of the Assessment Panel's decision in relation to the outcome of the assessment of 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 or as notified on the Department's website (in the case where a general extension to the closing date is announced).

The Department assesses applications on the material submitted, and revisions to applications after the Registration Round closing date are not 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
- 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 application. Applicants bear their own costs and expenses associated with the application and assessment process and execution of the related Funding Deed and any other required documentation.

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 a Past Program, 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 wholesale Satellite Broadband Service
- Applicants with no experience in deploying broadband infrastructure.

In addition, Applications that do not address the selection criteria or are incomplete will be declined at the screening phase.

Where an Applicant is able to satisfy the provisions of Stage one, but all the Applicant's proposed Service Areas are found to be ineligible for registration, the Applicant will continue to be assessed in Stage two on criteria 1–3. If the Applicant fully satisfies criteria 1–3, the Applicant will be provisionally registered and may be invited to submit a streamlined application in a future 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.
- Criterion 4: the Service Areas the Applicant proposes to serve.

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.

NOTE: The Applicant is to notify the Department in writing of any change to its business, ownership or other related matter that takes effect during the assessment process and that could impact on the Department's assessment of its application or would substantially impact on the accuracy and merit of its application.

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 preliminary assessment (Stage one screening)

- In considering financial performance and financial viability, Applicants will be required to meet acceptable standards with regard to financial ratios. While not considered in isolation, the achievement of the following ratios will be viewed as positive indicators of financial performance and financial viability:

- current ratio (current assets/current liabilities) of greater than one
- quick ratio (current assets less inventory less debtors/current liabilities) of greater than one
- debt to equity ratio (interest bearing debt/equity) of less than two
- times interest cover (profit less interest and tax/interest expense) of greater than three
- positive profit ratios (net profit/revenue and net profit/total assets) that do not indicate declining profitability.

If an Applicant is not able to adequately meet the ratios outlined above, or demonstrate (through supporting materials) alternative and ongoing sources of financial support (as outlined below) the application may be declined at Stage one.

Basis of full assessment

- Solvency: The Applicant is financially solvent at the date of application.
- Audit status: The Applicant is able to submit audited accounts that include the Auditor's report. The Auditor's report should detail that the Auditor does not have any qualifications or concerns about the financial position of the Applicant, in particular any material concern in respect of the Applicant as a going concern.
- 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 on a financially viable basis 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.
- Board experience and integrity: Where an Applicant is a corporate organisation, its board as a whole should have six years minimum combined industry experience at Board or senior executive level. At least two board members should have at least three years industry experience each at board or senior executive level. Where an Applicant is a partnership, its partners should have at least six years combined industry experience. Board members should have no criminal conviction, charges pending or other serious breaches (as determined by the Department) at the time of application.
- Senior management experience and integrity: The Applicant's management team should have at least six years minimum, combined industry experience at senior management level. At least two managers should have at least three years industry experience each at senior management level. Key managerial staff should have no criminal conviction or criminal charges pending or other serious breaches (as determined by the Department) as at the time of application.

- Sustainable business plan: The Applicant can demonstrate that its broadband Internet business is viable on an ongoing basis, 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 statements (including profit and loss statement, balance sheets and cashflow statements) for the last three financial years.
- Where the Applicant cannot supply audited financial statements for the past three financial years, the Applicant must provide statements that have been reviewed by an appropriately qualified auditor in line with Auditing Standard Australia AUS 902 *Review of Financial Reports* (further details at www.auasb.gov.au).
- Where the Applicant claims to be exempt from the requirement to submit audited accounts under the *Corporations Act 2001*, the Applicant is nevertheless required to provide either audited financial statements (preferred) or financial statements that have been reviewed under AUS902.
- Where the Applicant is a majority-owned subsidiary of another company (i.e. the parent company) and is being financially supported by that parent company, the above financial information of the parent company (or relevant controlling business) is to be supplied in addition to the Applicant's own financial information.
- Where the Applicant is a majority-owned subsidiary of another company and the Applicant itself cannot supply three years' audited financial statements, the Applicant is required to submit the parent company's (or controlling business') audited financial statements (including profit and loss statements, balance sheets and cashflow statement) for the past three financial years.
- Where the Applicant proposes to outsource significant elements of this Service delivery (as outlined in Section 3.5.3) the Applicant should provide all relevant financial and operational details for the outsourced company, including any contractual arrangements to ensure that Program standards for service delivery are met. The Department reserves the right to decline applications that do not provide sufficient information about such arrangements or where appropriate controls are not demonstrated.
- 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.

- Year-to-date financial statements prepared as at the date of the end of the most current quarter (e.g. 30 September, 31 December or 31 March).
- The Applicant must be able to demonstrate their financial viability. Key indicators of financial viability include:
 - demonstration that the Applicant is currently solvent
 - demonstration of a history of profitability or the ability for the Applicant to have absorbed losses
 - financial forecasts indicating the future profitability of the Applicant. These forecasts must be prepared by the Applicant on a reasonable basis in light of its historical operations and its future plans. Reliance on funding received under this program is not sufficient to demonstrate financial viability
 - where the Applicant is relying (or may need to rely) on ongoing future financial support from another party (e.g. bank, Director, shareholder, related company) a commitment from that other party that they will provide financial support to the Applicant for the duration of the Program. This commitment should be provided by way of a letter from a bank or corporate entity, or by way of a statutory declaration from an individual. The commitment should be included in the information submitted to the Department by the Applicant
 - where another party has committed to provide financial support to the Applicant it needs to be demonstrated by the Applicant that this party has the financial capacity to provide the proposed support. Information supporting the party's financial capacity should be provided by the Applicant. This may include current bank statements, current financial statements, details of assets and liabilities held by individuals or any other documentation to demonstrate financial capacity. Where possible the information should be independently verified by an appropriately qualified professional (for example an auditor or valuation expert).
- A statutory declaration from the Applicant's CEO, Principal, Partner, or other appropriate authorised officer (as the case may be) stating that the applicant's company is solvent (and can therefore meet its debts as and when they fall due) at the time of providing DBCDE with its the application. Note, the *Corporations Act 2001* (Cth) identifies that an organisation will be considered as solvent if, and only if, it is able to pay all of its debts, as and when they become due and payable.
- 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 or of the solvency or financial viability of the applicant.
- 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 to support the financial viability of the applicant, and demonstrated ability to continue to provide a Service under the Program 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 3.8.2 of the Guidelines.

- Details of the Applicant's corporate structure (if applicable), including detailed information on the relationships between the Applicant and financially related entities (including Related Body Corporate).
- 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 and loss statement, balance sheets and cashflow statements) for the past three 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. This should be presented as a diagram and include names of senior staff as well as their positions.
- Curriculum vitae for each Partner, principal, or Management Board (as the case may be) and senior managers that details relevant qualifications, roles and relevant industry experience showing relevant (approximate) dates.

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 preliminary assessment (Stage one screening)

- The Applicant must identify any significant non-compliance issues arising under their participating in other past or present Government (Commonwealth /state/territory) broadband funding programs. This may include adverse audit findings, a significant number of consumer complaints and TIO investigations, and any existing audit investigations that may be planned or currently underway, and
- If an Applicant does not disclose or does not address past compliance issues, their application may be declined at Stage one.

Basis of full 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 Programs.
- 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).
- Compliance and responsiveness to Departmental requests for information or directed changes. The Department will assess the general conduct of Applicants (including their Agents and related parties) under Past Programs and in the marketplace, and their responsiveness in addressing any compliance issues.
- 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

- 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.
- 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/territory and/or local governments, details of the funding, whether these programs have a similar objective to the Australian Broadband Guarantee, and any compliance information in relation to participation in those programs (including demonstration of full compliance).
- In the case of significant past non-compliance with any Past Program, the Applicant must provide details to demonstrate what action it has undertaken to ensure the non-compliance have been adequately addressed.
- 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's willingness to be bound by the terms of the Australian Broadband Guarantee Funding Deed, if their application is successful.

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.
- 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.

If a Provider wishes to claim a Level 1 payment to upgrade existing commercial infrastructure in certain circumstances or to upgrade Customers connected under Past Programs, the Provider must upgrade the service to a registered Service Provider level. If the Provider does not have a relevant Service Plan registered, they must seek to register new Service Plans for this purpose. These Service Plans must meet all the requirements of Service Plans in regard to Threshold and Added Value Service levels, and registration of such Plans will be subject to the Provider satisfying the Department in their application that a Level 1 payment is required to upgrade the Service to a Metro-comparable level.

Basis of preliminary assessment (Stage one screening)

Applicants are required to provide evidence demonstrating:

- (a) their current operation as an infrastructure provider (for example, ownership or leasing details of towers, copies of valid site licences and relevant certificates of currency, MAC addresses and serial numbers)
- (b) that they have experience in deploying broadband infrastructure rollouts.

If an Application does not provide evidence to demonstrate current operation of infrastructure, it may be declined at Stage one.

Basis of full assessment (stage two)

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 must detail the value of their proposed investment in the infrastructure.
- Applicants are required to provide evidence of ownership and/or control of broadband infrastructure (as applicable). This may include:
 - relevant ownership or leasing arrangements for towers
 - copies of valid site licences and relevant certificates of currency

- any Memorandum of Understanding or agreements to enter transmission site or share site facilities
 - appropriate public liability insurance for infrastructure
 - Service agreements with backhaul suppliers
 - equipment purchase agreements
 - documents relating to support and maintenance arrangements for infrastructure.
- 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 to keep pace with metro-comparability into the future.
 - Sustainability of Service Solution: The Department encourages installation and use of ecologically sustainable infrastructure (for example, solar powered transmission towers or other appropriate technology). While desirable, this is not a mandatory requirement. However, sustainability of the Service Solution may be considered in any comparative assessment under section 3.6.
 - 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.
 - Elements of Service delivery: The Applicant must detail how it will address the following six elements of Service delivery to Customers:
 - installation
 - customer service
 - billing system
 - service delivery
 - maintenance
 - sales and marketing.
 - If the Applicant proposes to outsource three or more elements of its service delivery under the Program, then the Applicant is required to provide the full particulars of the arrangement. This information will be evaluated to determine whether the outsourcing arrangements are consistent with the objectives of the Program.
 - Applications for Service Solutions will be declined where:
 - the Applicant resells (or proposes to resell) the end-to-end wholesale service of another ISP

- the Applicant has no control (either through ownership or leasing) over the infrastructure or spectrum it is using for the provision of the Program Service.

Service Plans

- Threshold Service(s): Whether the proposed services comply with the requirements set out in section 2.3.1.
- Entry Level Service(s): Whether the proposed services comply with the requirements set out in section 2.3.2.
- Added Value Services(s): Whether the proposed services comply with the requirements set out in section 2.3.3.
- Non-price terms and conditions: Whether the non-price terms and conditions are compliant with or exceed the requirements of the Australian Broadband Guarantee. Refer to section 4.4.
- Each Provider must incorporate the Core Contract Inclusions (the model Terms and Conditions contained in the Australian Broadband Guarantee Program Guidelines) clauses or adopt in substantially the same terms (refer Attachment B) into their proposed Terms and Conditions for the Program. Providers' Terms and Conditions may contain their own additional clauses, but these must be consistent with the requirements of the Program and any applicable industry codes.
- Future commitments to service: A commitment of the Applicant 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 Services, subject to a reasonable period for the planning and roll-out of new infrastructure.
- Exit Strategy: Applicants proposed Exit Strategy meets the minimum requirements of the Department's standard Exit Strategy (refer section 4.4). The Applicant must also commit to notifying the Department of any proposal to implement its Exit Strategy. Full details of the implementation of the Strategy, and any applicable sale arrangements must be supplied to the Department
- Use of Agents (see section 4.1 for further details): If the Applicant proposes to use Agents to market and sell its Services, the arrangements must ensure that:
 - the Applicant will have full responsibility for the provision of the proposed Service, including entering into direct contractual relations with proposed Customers
 - the Applicant has in place appropriate control mechanisms and procedures governing the conduct of the agent.

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 including roll-out schedule, 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 (see Section 5.5 Level 1 upgrade option).
- Details of the 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 proposed 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 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 (this information may be provided as a curriculum vitae).
- 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.
- Whether the proposed 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 including the customer’s service plan (including monthly charge and data usage charge), customer actual usage (including session times and data usage), other charges where relevant, and methods for payment (including contact details). Information should also be provided on the capacity of the billing system to accommodate the number of proposed Customers.
- 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
 - the proposed role of each agent or group of agents (set out in detail) in delivering the Service
 - provide full details about any contractual arrangements between the Applicant and the agent(s) and copies of any written agreement governing the terms of the agency arrangement—if no written agreement exists, the Department will assume that common law principles govern the relationship
 - clear evidence 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

- clear evidence 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 Department does not approve Agents for the purposes of registration under the Australian Broadband Guarantee. Providers are responsible for the actions of their agents in respect of any Program activities. However, the Department reserves the right to decline to accept any Registration where an Agent is considered to be unable to meet the required Program standards for the life of the Program. The Department also needs to be notified of any changes to proposed agency relationships, and may review a Provider's registration (and take other appropriate action) in the event of a suspected or actual non-compliance by a Provider and/or its agent.
- The price (including GST) and functionality of the Applicant's proposed Threshold Service(s), Entry Level Services or Added Value Services, detailed in the following terms:
 - installation and connection of hardware (if applicable)
 - account establishment (if applicable)
 - monthly (usage) charges (x 36 months)plus
 - 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) in accordance with section 2.3.1.
- Copy of the proposed Terms and Conditions ensuring that the Core Contract Inclusions (as set out in the Australian Broadband Guarantee Program Guidelines) are included (or included in substantially similar terms to the model provisions).
- Copy of proposed Exit Strategy or confirmation that the Applicant will adopt the Department's standard Exit Strategy.

3.5.4 Criterion 4: Service Areas

This criterion must be responded to by:

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

Where an Applicant is able to satisfy all criteria under Stages one to three (above), but no Service Areas are accepted for Registration, the Applicant may apply for new Service Areas.

Priority Service Areas

The Department has identified a number of geographical areas, including discrete whole regions, that contain significant numbers of Under-served Premises. Applicants are encouraged to target these areas in proposing Service Areas, and the extent to which such areas are targeted will be considered in assessing proposed Service Areas. Details of these priority areas are published on the Department's website, (*web address to come*) and may be updated from time-to-time. These areas are considered to be priority areas for Service Areas using terrestrial broadband infrastructure.

In proposing Service Areas to address these priority areas, Applicants are encouraged to involve local communities in strategic planning for their network deployments. The extent of community support for Applicants is a factor in assessment of proposed Service Areas.

All terrestrial Service Areas registered in 2008–09 will be carried forward into any future years of the Program, subject to:

- the Provider obtaining registration under the Program
- the Department remaining satisfied that the Service Area contains material numbers of Under-served Premises
- the Department remaining satisfied that the Provider is able to serve Under-served Premises in the Service Area
- the Department retaining the right to amend the Guidelines as a result of a change in Government policy (refer Section 1.3).

Basis of full assessment

Service Areas for proposed terrestrial-based Service

Applicants seeking to register terrestrial-based Services (for example, wireless, ADSL) must be able to demonstrate that:

The proposed Service Area provides coverage to a significant number of under-served premises as identified by the Department (*web address to come*) or as otherwise substantiated by the Applicant.

- The Applicant has appropriately tested proposed network coverage to ensure that the proposed coverage is realistic and accurate (rather than indicative). This should include, where possible, field signal-strength testing, although line-of-sight predictive coverage is considered suitable for a proposed wireless network;
- The Service Areas can be activated in a timely manner. This would normally be within 60 calendar days from the time of registration, unless the Applicant can demonstrate that a longer period is reasonably required. It is acknowledged that longer roll-out timeframes may apply where whole-of-region networks are proposed, particularly in more remote areas. Where a roll-out schedule has been agreed by the Department, then the Service Area must be activated within 30 calendar days of the date nominated by the Applicant/Provider and approved by the Department as the activation date.
- Sustainability beyond the life of the program with Metro-comparable Service delivery.

- Where a proposed Service Area is to provide an upgrade to an existing Terrestrial-based Service (either a Commercial ISP service or Past Program service) to enable a Metro-comparable service, the Applicant must also address the criteria set out in section 5.5.
- Service Areas registered under the 2007–08 Australian Broadband Guarantee program are eligible to be re-registered under this Program provided a reasonable number of Under-served Premises remain in those Service Areas. If the Applicant has delayed the installation of infrastructure or the connection of Customers for an unreasonable period of time, the Department reserves the right to accept proposals from other Applicants within that Service Area.

Service Areas for Proposed Satellite-based Services

Applicants seeking to register Satellite-based Services must be able to demonstrate that:

- The proposed Service Area provides coverage to a significant number of under-served premises as identified by the Department (*web address to come*) as otherwise substantiated by the Applicant. Proposed Satellite-based Service Areas are encouraged to be broadly based geographically, with whole-of-Australia coverage considered desirable. Noting the arrangements for paying Level 5 incentive payments for difficult installations, Applicants proposing Satellite-based Service Areas must indicate the extent to which their proposed Service Area coverage will provide ubiquitous access to Services for Under-served Premises.
- The Service can be activated in a timely manner. This would normally be within 60 calendar days from the time of registration, unless the Applicant can demonstrate that a longer period is reasonably required. It is acknowledged that longer roll-out timeframes may apply in more remote areas. Where a roll-out schedule has been agreed by the Department, then the Service Area must be activated within 30 calendar days of the date nominated by the Applicant/Provider and approved by the Department as the activation date.
- Sustainability beyond the life of the program with Metro-comparable Service delivery.

Information required

- 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). As a minimum Applicants should provide:
 - tower locations in latitudes and longitudes (in decimal degrees, heights, radius of reach, and any directionality of signal strength)
 - anticipated ADSL reach
 - extent of cable networks by streets or roads being cabled.
- 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.
- The Applicant must demonstrate that the proposed Service Area is an eligible area within the Program Area, as outlined in 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 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
 - within 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 5.6.4 for more details).

- The Applicant must demonstrate how the new proposed Service Areas fit with the Applicant's existing network.
- 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 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 Broadband Service (as set out in section 2.2).
- 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.

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
- 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 Fast-track application process for Applicants that were registered under the Australian Broadband Guarantee Program in 2007–08.

Entities registered under the Australian Broadband Guarantee in 2007–08 and with no outstanding compliance issues, will be invited by the Department to register under this Program in 2008–09 through a fast-track application process. This process is intended to confirm contact details, financial status, Service Solutions, Service Plans, Service Areas, Terms and Conditions and other information required by the Department. Invitation to participate in the fast-track application process is not to be interpreted as an offer to enter into any legal relations with the Commonwealth, nor does it mean that Registration under this Program is automatically provided.

3.8 Other matters

3.8.1 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.

3.8.2 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
- 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 Deregulation 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.

3.8.3 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

The following section outlines the rules and requirements for Providers operating under the Program.

The Department conducts Australian Broadband Guarantee registration rounds as considered necessary in order to register ISPs under the Program. When rounds are called, interested ISP Applicants are invited to complete and submit an Australian Broadband Guarantee application form which will be made available at (*web address to come*). This form sets out the criteria that Applicants must satisfactorily address in order to be registered under the Program.

Detailed information for ISP Applicants seeking registration under the Program is available in the document, *Guidelines for Australian Broadband Guarantee Applicants*, at the Australian Broadband Guarantee website.

General information on the Australian Broadband Guarantee is also available at (*web address to come*). This includes the Program Guidelines, as well as related administrative and policy information.

4.1 Provider-Agent relations

Providers are permitted to use agents to market or sell their Service Plans and to refer Customer orders to the Provider. Such arrangements must ensure that:

- the Provider has overall responsibility for the provision of the Service or proposed Service, and in particular has the contractual relationship with the Customer
- the Provider has in place appropriate control mechanisms and procedures governing the conduct of the agent(s) (for example, in regard to sales, marketing and other promotional activities).

Providers must accept responsibility for the conduct of their agents who make 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.

As a general rule, the actions of a Provider's Agent will be taken to be the acts of the Provider. Any conduct by an Agent that is not compliant with or constitutes a breach of the terms of the Provider's Funding Deed and/or these Guidelines, will be taken to be a breach by the Provider. In the event of a dispute between a Customer of a Provider and the Provider's Agent, the Provider is ultimately responsible for ensuring the dispute is properly resolved.

4.1.1 Disputes between a Provider and an Agent

The Department does 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. In order to promote efficient and accountable Provider behaviour, the Department's policy is to deal only 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 must refer any questions or information requests relating to the operation of the Australian Broadband Guarantee to the Department through the Provider.

4.1.3 Notification of Agents

All Providers are required to submit full details of proposed Agents to the Department as part of the registration process, together with details on how agents and agency relationships are to be managed to ensure compliance with the Program. Providers are required to notify the Department of any changes to the Agents it has nominated.

4.2 Broadband Service Locator—Provider participation

This section outlines the requirements for Providers in relation to their use of the Broadband Service Locator.

4.2.1 Information requirements for Broadband Service Locator Participants

Category A listings

Category A ISPs, including Providers who offer a Metro-comparable Broadband Service on a commercial basis, are invited to submit information for possible inclusion on the Broadband Service Locator. In the case of commercial ISPs, they are invited to fill out a BSL Listing Form in order for their services to be listed on the Broadband Service Locator.

Category A ISPs (including Providers) listed on the Broadband Service Locator are requested 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, or wireless)
- 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 and Service Plans under the Australian Broadband Guarantee and unregistered areas where they may offer a Category A Metro-comparable ISP service
- confirmation that listed service offerings are Metro-comparable Broadband Services as defined in the Guidelines.

The Department will not list information that, in the Department's view, is incorrect or has the potential to mislead Customers.

Category B and C listings

Providers will have applicable information about their Service Plans and Registration uploaded to the Broadband Service Locator under Categories B and C as relevant.

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 Broadband Service offerings is accurate, and for advising the Department promptly of any proposed changes to their service coverage or other service details.

4.2.2 Broadband Service Locator referral of Customers to Category A ISPs

Category A ISPs listed on the BSL who have signed the BSL Listing Form ('participating ISPs') are sent a regular e-mail that provides a link to information which identifies relevant information about Customers ('Customer records') who are potentially able to be provided with a Metro-comparable Broadband Service by that ISP. Participating ISPs can indicate if they are able to provide a Metro-comparable Broadband Service on a commercial basis to the Customer.

Each Customer record will remain visible for seven 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 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 Broadband Service to the location or to the phone number, the Customer is mailed a list of the ISPs who have responded in this way.

4.2.3 Conduct requirements for Participants

The Department requires ISPs and Providers to act professionally in their use of the Broadband Service Locator.

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 must, and Category A ISPs listed on the Broadband Service Locator are expected to:

- when receiving a request for information from a Customer, provide full and correct information about their ability to provide a Metro-comparable Broadband Service to the Customer within seven calendar days, as outlined in section 4.2.2
- not unreasonably refuse to respond or properly cooperate with requests for information from a Customer. A response may be either over the telephone or in writing (for example, by email or fax)
- not charge fees for providing any information or for conducting service checks
- comply with applicable Commonwealth and state/territory laws, particularly fair trading laws.

4.2.4 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.

If the Department determines that a Provider or a Category A ISP has failed to behave in a manner consistent with the obligations outlined in section 4.2.3 above, the Department may 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 the response, it may remove or modify information at its discretion.

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

Where Customers have been subject to unreasonable delays by a Category A ISP (for example, failure to respond to request for service within 30 calendar days), the Customer may apply to have their eligibility status changed in the BSL as outlined in section 2.4. Eligibility in these circumstances will be determined by the Department on a case-by-case basis.

4.3 Promotion of Services and Special Service Plan Offerings

Any marketing or media-related material used by Providers or their Agents must be submitted by the Provider to the Department for approval 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.

Promotional activity	Acknowledgement required
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, flyers, 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

	<p>prominent.</p> <p>Acknowledgement must also be given by using the following wording:</p> <p>“This offer is made possible with support from the Australian Government’s Australian Broadband Guarantee.”</p>
Confirmation and advice to Customers	<p>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.</p> <p>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.</p>
Media releases	<p>Acknowledgement must include the following wording:</p> <p>“This offer is made possible with support from the Australian Government’s Australian Broadband Guarantee.”</p>

Providers must also ensure that their advertising does not criticise or falsely represent other ISPs or other Service Solutions. Furthermore, Providers must ensure that any advertisement or marketing activity complies with applicable laws and codes of practice. The Department’s approval is limited to the review of submitted material to ensure consistency with the Program Guidelines and Registration details and does not abrogate the Provider’s responsibility to ensure that any marketing activity is conducted in a responsible way in accordance with applicable laws and industry codes.

4.3.1 Special Service Plan Offerings

If a Provider offers Customers a ‘free trial’ period, the Provider must not lodge claims for those Customers with the Department until the Customers have signed the appropriate Terms and Conditions to receive the Provider’s full Program Service Plan. Providers’ Agents must comply with a Provider’s commitments to the Australian Broadband Guarantee Guidelines and Funding Deed. All ‘free trial’ and other special offers relating to an Australian Broadband Guarantee Service must be submitted to the Department for approval.

4.3.2 Initial offer to Customers

Providers must endeavour to ensure that Customers properly understand any offer put to them in relation to an Australian Broadband Guarantee Service. Customers must not be misled as to their eligibility status or intended eligibility status under the Program (for example, in instances where the customer may have agreed to the service on the basis that they were eligible prior to actually confirming eligibility through the Broadband Service Locator and Attestation Form). Customers should not be advised that they are automatically eligible for the Australian Broadband Guarantee or that they will automatically be eligible for a particular type of service.

As no payment will be made until a Customer is deemed by the Department to be eligible, Providers should carefully check and assess eligibility before making any offer to Customers or entering into any contractual arrangements.

The Department will not prevent Providers entering into a contract with a Customer prior to confirming the Customer's eligibility through the Broadband Service Locator eligibility process (see section 2.4). However, in these circumstances the Provider will be required to provide the Customer with a service that is identical in all respects to an Australian Broadband Guarantee Service, but will not be able to claim an Incentive Payment if the Customer:

- is not eligible to obtain a Service under the Australian Broadband Guarantee or
- has received a Category C Service but is found to be eligible only for a Category B Service.

Providers are exempted from this requirement in circumstances where a Service is technically unable to be provisioned (for example, where a subsequent site survey determines no service can be provided). In such circumstances, the Department may request documentary evidence to support such claims.

Where a Provider has contracted with a Customer following eligibility checking, but cannot provide a Service for technical reasons, the contract between the Customer and Provider will be declared null and void with no cost to the customer for any activities undertaken by the Provider during the period within which the contract existed. This includes site surveys and administrative costs.

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 Provider has included in its contract with the Customer.

The parts of the letter specific to the Australian Broadband Guarantee are 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 pertaining to the provision of the Service
- (c) the details of the Service and Service Plan 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 a Customer complaint about the Service which is 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; the timeframes for Service connection and restoration; a summary of what the

Provider will do in the event of the Service being withdrawn (consistent with the Provider's approved Exit Strategy)

- (h) 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 in advance.

4.4 Customer Contracts—Terms and Conditions

Providers are required to enter into a contract with each Customer setting out the terms and conditions governing the supply of the particular Program Service.

All Applicants seeking to register for the Australian Broadband Guarantee must submit a copy of their proposed Australian Broadband Guarantee Terms and Conditions and any Acceptable Use Policy, if applicable. Providers must ensure that the Terms and Conditions are provided to the Customer before they enter into the contract.

For the purposes of this Program, a Standard Form of Agreement (as defined in section 479(2)(b) of the *Telecommunications Act 1997*) cannot be used.

In drafting Terms and Conditions for use under the Australian Broadband Guarantee, Providers should incorporate the Core Contract Inclusions (in the same or substantially similar terms) set out in Attachment C into their customer contracts, in order to ensure that all proposed Terms and Conditions meet the requirements of these Guidelines and the Program. It is a matter for each Provider to determine what commercial terms and conditions should also be contained in their Program Terms and Conditions, provided they are consistent with the Guidelines. It is also the Provider's responsibility to obtain legal advice if necessary in relation to their Terms and Conditions.

Note that the Department's approval of any proposed Australian Broadband Guarantee Terms and Conditions are for the purposes of this Program only.

In addition to the Core Contract Inclusions set out in Attachment B, Providers must comply with the following contract provisions:

- (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 Speed testing).
- (f) Where the Australian Broadband Guarantee-specific terms form part of general terms - then the Australian Broadband Guarantee specific terms override the general terms, in the case of any inconsistency between the two.
- (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:
- (i) situations where a Provider assigns the responsibility for installation and maintenance of CPE, or the provision of help desk services to another company
 - (j) where a Customer moves from Premises where an Australian Broadband Guarantee Service has been Connected and Supplied and allows the Australian Broadband Guarantee Service and CPE to be used by the new occupant of the Premises.
- (k) 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:
- (i) 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
 - (ii) 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

- give the Customer the option of terminating the contract if they are not satisfied with the comparable service offerings
- specify which party owns the CPE (and if applicable, details when ownership of CPE transfers from the Provider to the Customer).

As stated in section 3.5.3 of the Guidelines, the Provider may wish to further specify Exit Strategy commitments. For example, a Provider should include a provision relating to offering the Customer a negotiated arrangement with an incoming Registered Provider. In the event of the Provider transferring Customers to a non-registered ISP, the outgoing Provider must make undertake reasonable endeavours to novate, with the Customer's consent, the original Australian Broadband Guarantee Terms and Conditions to the incoming ISP.

The Department will assess any other further proposals for Exit Strategies. A full copy of the standard Exit Strategy is provided in the sample Funding Deed on the Department's website.

The Provider must obtain a copy (or other format approved by the Department) of the Terms and Conditions offered to the Customer, signed by the Customer, prior to submitting a claim for incentive payment for that Customer.

Any change to the Terms and Conditions during the contract period with the Customer must be agreed with the Customer and approved by the Department before being implemented. Providers are also expected to provide Customers with written notice of the change, once effected.

5. Assessment and payment of claims

Claims will be assessed according to a four step process:

- lodgement with the Department in BCOMS (notified in BCOMS as lodged 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
- claims that the Department agrees to pay to the Provider (notified in BCOMS as processing claims) or claims that the Department does not agree to pay to the Provider (notified in BCOMS as declined claims)
- claims that the Department has paid to the Provider (notified in BCOMS as paid 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 5.4–5.5 (inclusive) of the Guidelines and the Funding Deed.

5.1 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
- 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 arrangements for Providers to lodge claims.

The Department will not lodge claims 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.).

5.1.1 Provider projections

Providers are required to provide the Department with quarterly forecasts of likely claims for the purposes of administering the Program and its budget. The Department may advise Providers on appropriate methods of forecasting for this purpose.

5.2 Lodgement of claims

5.2.1 When Claims may be lodged

Subject to eligibility requirements, claims may be lodged for Service Areas registered under the Program until funds are expended or until 30 June 2009, whichever event occurs first.

Providers should ensure that they have all documents relating to the Connection and Supply of the Service before lodging a claim with the Department through BCOMS.

5.2.2 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.

5.2.3 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, and subject to funding being available.

A claim for payment must be made within 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 45 calendar days lodgement timeframe. Any such claims will be rejected.

5.3 Information and data required to lodge a claim

5.3.1 Use of the Customer ID Number and submission of claim form

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

When a Provider enters the Customer ID into the relevant BCOMS form, this will populate form fields with relevant customer information data. The Provider is then 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)
- date of Connection and Supply of the Service.

A facility to allow the bulk upload of multiple claims is also available.

All Provider claims for Incentive Payments must be lodged via BCOMS within 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.

5.3.2 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:

- signed Attestation Forms (either original, fax or scanned) 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, as well as 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 whether the service can be provided
- 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 are in breach of their Funding Deed.

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

5.3.3 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 Departmental staff are not authorised to lodge claims on behalf of Providers.

5.4 Assessment of claims and payments

5.4.1 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 or 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 appropriate 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 is not capable of remedy.

5.4.2 Validity of individual claims and clarification of the meaning of 'Connected and Supplied'

Providers are only able to lodge one Incentive Payment claim for each Service they have Connected and Supplied, 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.

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

- more than 30 calendar days (or other agreed timeframe approved by the Department under section 2.4.5) has elapsed between the date the Terms and Conditions came into force and the Service was Connected and Supplied
or
- more than 45 calendar days has elapsed between the date the Service was Connected and Supplied and the claim was submitted via BCOMS.

Claims will not be considered valid where:

- (a) a Provider lodges a claim for the Connection and Supply of a Service to a Customer who has not been contracted under the Provider's approved Terms and Conditions, (as Registered and which form a Schedule to the Provider's Terms and Conditions).
- (b) the claim is in respect of premises or a site which is used for 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.
- (c) any other applicable pre-conditions of funding, as set out in the Funding Deed, have not been met.

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.

No claims will be paid for premises where a commercially available Metro-comparable Broadband Service is shown to have been available at the time the Service was requested by the Customer.

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 pursues 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 must ensure that all claims are for premises 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.

5.4.3 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 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 (without any reasonable explanation) the Department reserves the right to decline the relevant claim(s).

5.5 Levels of Incentive Payments

Incentive Payments are made in accordance with the Guidelines on a per-premises basis and subject to the following levels:

Level 1 (upgrade option)	A low cost Payment of \$600 (GST exclusive) applies for a Program Service that involves upgrading a Service provided under a Past Program to a Metro-comparable level, or for a Program Service based on an existing commercial service that is upgraded to a Metro-comparable level. Further details on a Level 1 payment are provided below.
Level 2	A Payment of \$1000 (GST exclusive) applies for a Program Service based on ADSL, ADSL2, ADSL2+ or a cable Service Solution.
Level 3	A Payment of \$2000 (GST exclusive) applies for a Program Service based on other terrestrial infrastructure and situated in a Metropolitan area.
Level 4	A Payment of \$2500 (GST exclusive) applies for a Program Service based on a satellite service, or on other terrestrial infrastructure situated in an area other than a Metropolitan area.
Level 5	A Payment of more than \$2500 and up to \$6000 (GST exclusive) applies for a Program Service based on satellite or other terrestrial infrastructure in an area other than a Metropolitan area with identified difficult and costly installation requirements (for example, infrastructure suitable to withstand cyclone conditions). Level 5 payments will only be made for claims where the Provider has submitted the High Cost Application Form (setting out the additional payment required to address the special circumstances) and the Department has agreed in writing before the Service has been Connected and Supplied that a Level 5 payment applies, and where the Department's written approval is supplied with the claims.

5.5.1 Level 1 Payments

Level 1 payments will only be paid for Service Plans approved by the Department and are payable in the following circumstances:

1. Providers who register a Service Plan based on upgrading a commercial service to a Metro-comparable broadband service:

If a Provider is offering an existing commercial service but the service is not considered to be Metro-comparable (either in price or performance), a Level 1 incentive payment may be paid in relation to any upgrade or cost required to allow registration of a Metro-comparable Service Plan. Such Service Plans may apply generally across a commercial network (subject to the Program eligibility criteria) or may only apply for particular premises in certain exceptional circumstances for commercial networks which are otherwise Metro-comparable (such as the need for a high gain antenna in certain circumstances).

2. Eligible Customers exiting a Past Program Service who require upgrade to enable them to achieve a Metro-comparable service:

This applies to Eligible Customers who have come to end of their three-year contract under a Past Program, and who are not offered a further service contract equivalent to the current definition of a Metro-comparable service. The provision of this up-grade incentive is only available where the Registered Provider is determined by the Department to be unable to absorb the cost involved in upgrading the Service. In these circumstances, Eligible Customers are also able to select a new Service from a different Provider as outlined in section 2.7.1.

In all cases outlined above, the upgraded Service would either be registered as a new Service Plan or fit with an existing Service Plan and be subject to all the requirements in these Guidelines and in the Provider's Funding Deed.

Providers seeking Level 1 Payments are required to seek approval from the Department via the online facility at (*web address to come*) addressing the criteria set out at that facility. The Department will then advise the Provider if the Customer would be considered eligible for an Incentive Payment. Providers are exempted from this requirement where Level 1 Service Areas are registered as part of the Provider's Funding Deed.

5.5.2 Level 2, Level 3 and Level 4 Payments.

These payments will generally be determined by the Department at the time of Registration and will apply to Registered Service Areas for the duration of the Program.

5.5.3 Level 5 Payments

Providers are able to seek Level 5 Incentive Payments in exceptional circumstances where difficult and costly infrastructure is required to provide a Service.

Providers seeking Level 5 Payments are required to seek approval from the Department via the online facility at (*web address to come*) addressing the criteria set out at that facility. The Department will then advise the Provider if the Customer would be considered eligible for an Incentive Payment and of the amount applicable. Providers are exempted from this requirement where Level 5 Service Areas are registered as part of the Provider's Funding Deed.

5.5.4 No additional charges

The range of Incentive Payments available under the Program, including additional Payments in recognition of special circumstances, allows Providers to offer Services to Customers in all situations.

Providers must offer their Services with no additional charges that would raise the overall price of the Service beyond a Metro-comparable level. If such a charge is levied on a Customer, the Incentive Payment paid in respect of the Service may be repayable.

5.5.5 Taxation status of claims

The Incentive Payments stated in these Guidelines are recorded as exclusive of GST.

Providers are responsible for managing all taxation matters associated with receipt of Incentive Payments.

5.6 Compliance and reporting

5.6.1 Ongoing compliance

Once registered, Providers must comply with the requirements of their Funding Deeds. Providers should refer to relevant parts of the Guidelines and their Funding Deed for the full details of requirements under the Australian Broadband Guarantee.

The key compliance requirements under the Program are for Providers to provide Services to Customers that are of high quality and fully compliant with the Program and their Deeds. Other compliance requirements to note are as follows:

- (a) The Department must be notified of changes in company structure, financial situation or any other matter that could adversely impact on the Provider's Australian Broadband Guarantee activities and compliance obligations.
- (b) Complaint Handling - Providers must have in place appropriate complaint handling mechanisms as specified in an applicable industry code or under the Telecommunication Industry Ombudsman.
- (c) Data Speed - Providers must:
 - (i) supply their Customers with information about the Department's Data Speed test facility (see section 5.6.5) and satisfactorily respond in a reasonable timeframe to complaints from Customers who have used this facility to test data speed
 - (ii) fully participate in the Department's Data Speed Testing regime (see section 5.6.5).
- (d) Providers must 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).
- (e) Where CPE is owned by the Provider - Maintenance of CPE obligations (including repair (maintenance) or replacement in the event of technical or mechanical faults (refer section 2.6).
- (f) Record Keeping - hold and maintain (for three years after the end of the Program) appropriate and adequate records in all formats (electronic and print) to enable a Provider to satisfy all Program claims, auditing, compliance reporting, and review

and evaluation requirements This includes 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
 - (v) where the Provider has checked the BSL on behalf of the Customer, evidence of the output of the BSL
 - (vi) relevant details of the customer's online data usage (amount of data used per month).
- (g) Providers must comply with any legislative or regulatory requirements relevant to their operations.
- (h) Providers must not undertake any conduct (either directly or indirectly) that misrepresents the status or actions of the Provider or any affiliated or subsidiary entity.

Providers who are found to be in breach of their obligations, including failure to submit reports within required timeframes, will be required to take remedial action as determined by the Department. In the event of a material breach or continuous breach, the Funding Deed may be terminated and the Provider deregistered from the Program.

The Department may refer customers complaints or issues to the TIO and/or the applicable state/territory Office of Fair Trading.

5.6.2 Reporting obligations

This section identifies the key reporting requirements that Providers must comply with under the Australian Broadband Guarantee. This includes:

- the half-year compliance report due in [insert date] 2009
- the annual compliance report due at the end of the Program [insert date].

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

Providers are provided with guidance documents to assist with the completion of half-year and annual compliance reports. The guidance documents are made available on the Department's website. Providers are required to report on a number of issues in relation to their interactions with the Australian Broadband Guarantee and on the state of their businesses, including:

- continued solvency of the business
- no material changes (financial, operational) to the business
- performance of the company against business plans
- details of changes in operations

- reports on Customer Service issues (for example complaints raised with the Provider versus complaints to the TIO)
- changes in Customer numbers and predictions of likely Customer numbers in future years
- reconciliation of Incentive Payments
- any issues associated with the roll out of Services.

The information required for the half year report relating to the six months to 31 December 2008 must be submitted by Providers no later than 25 January 2009.

The information required for the 2008–09 financial year report must be submitted by Providers by no later than 31 August 2008.

Providers seeking extensions to the time in which they must submit their reports should contact the Department well in advance of the due date.

5.6.3 Changes in entity structure, management, ownership or circumstance

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, but a substantive change to senior management and/or ownership, a new Funding Deed will not be required. However, at the Department's request, the Provider may be required to undergo a financial or other assessment (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. A 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 proposes to cease to trade as an ISP and/or its broadband business assets, including customer listings and network infrastructure, are proposed to be sold to another entity, the Provider's Registration will be terminated, and the Provider must implement its Exit Strategy. Should the purchasing entity wish to participate in the Program, it will need to submit an Application (according to the terms outlined in Section 3 for registration of ISPs seeking to enter the Program). If the new entity is approved for registration, a new Funding Deed will be issued. The Department reserves the right to decline an application (if the assessment criteria are not met) or to place conditions on any registration.

5.6.4 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), the Department may notify the Provider to show cause why the Service Area should not be withdrawn from Registration under the Program.

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

5.6.5 The Department's Data Speed Testing regime

Details of requirements for Australian Broadband Guarantee Data Speed Testing can be found in Section 2.3.1.

5.6.5.1 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
- (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.

5.6.5.2 Testing regime

The Department conducts a three-tiered Data Speed testing regime.

(a) Tier 1—Customer testing

The Department has established an online facility at which Customers are able to test their average Data Speeds. This facility is at (*web address to come*).

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. This website provides details about how the Data Speed Test operates, and the parameters in which the Data Speed for a particular service will be considered to have passed or failed.

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 or minimum Data Speed for a particular service will be considered to have passed or failed, 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, or the Provider fails to offer assistance, 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 (for example if the Provider fails to acknowledge an independently established Data Speed non-compliance).

Failure to meet required Data Speeds (i.e. average/minimum) for a Service may result in the Department undertaking appropriate action under the Funding Deed, which may include seeking repayment of Funding paid in respect of the Service where the Provider fails to promptly rectify the breach, unless a special circumstance applies (see section 5.6.5 b)ii) – paragraph below).

The Department reserves the right to undertake further investigation and/or action as applicable where against any non-compliance in relation to Data Speed Testing.

(b) *Failure to meet Data Speeds—Special circumstances where Incentive Payments are not required to be repaid*

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, with the Department's agreement, 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 5.6.5 above.

(c) *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 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
- 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 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.

(d) 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.

(e) 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 (*web address to come*).

5.6.6 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). Providers are strongly advised to take such action, and the Department will take the Provider's proactive reporting of compliance issues into account in assessing any compliance action that may be taken.

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 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.

5.6.7 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 may seek to consult with Providers and the wider community. The Department may consider comments submitted as part of any consultation process prior to implementing any changes.

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.

5.7 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

Australian Broadband Guarantee

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

Attachment A—Broadband Service Locator listing form

Internet service providers and the Department of Broadband, Communications and the Digital Economy

1. The purpose of this Form is to enable You to indicate your willingness to participate in a process by which the Department will refer Your contact details to consumers that register their interest in obtaining access to broadband services.
2. **Participation in this process by You (as a commercial ISP) does not confer any entitlement to funding under the Australian Broadband Guarantee Program.** Your involvement is purely voluntary. We reserve the right to decline Your application for participating in this arrangement.

What is the Broadband Service Locator?

3. The Broadband Service Locator is a web-based service that enables customers to identify the likely availability of broadband services to their address and the providers able to connect them. It also provides preliminary information to the customer about their eligibility for a broadband service that is supported by the Australian Broadband Guarantee (ABG). Where the customer chooses to seek assistance from the Australian Broadband Guarantee, the Broadband Service Locator records customer supplied information.
4. The Broadband Service Locator relies for its accuracy on coverage information published or provided by service providers.
5. While the primary flow of information is to the customer, aspects of this information are supplied to participating non-ABG service providers which will indicate the approximate location of customers seeking a subsidised service.

What are the benefits of participating in the Broadband Service Locator?

6. The benefit of agreeing to having your contact details listed on the Broadband Service Locator is that a prospective customer will be alerted if you are servicing their particular area.
7. As a general rule, if the results of the Broadband Service Locator indicate that the prospective customer is able to receive a commercial Metro-comparable Broadband Service (as defined in the Australian Broadband Guarantee Program Guidelines and listed in Paragraph 6 below) they will not be eligible to receive a subsidised Service under the Program from a registered Provider. You will have to opportunity to indicate your ability to connect the customer to a commercial service, and we will inform the customer of your advice.

How do you list your contact details?

8. To be eligible to have the details of your commercial broadband service offerings considered by the Department and contact details listed on the BSL, ISPs are required to offer a broadband Internet service with at least the following minimum specifications:
 - Peak download / upload data speed of at least 512 /128 kbps

- 3000 MB per month data usage allowance (with no restrictions on usage time)
- A price to the Customer over three years of no more than \$2500 (GST inclusive) including equipment, installation, connections, account establishment and ongoing provision of the service
- The ISP can install the service within a reasonable period of time (ordinarily 30 days).

[Note: the details of all the approved Australian Broadband Guarantee registered Providers are included on the Locator as part of the registration process.]

9. If you wish to participate, *please provide the details of at least one of your commercial internet broadband service plans that satisfy the above minimum requirements:*
 - Service name
 - Peak Download/Upload Speed
 - Monthly Data Allowance
 - Monthly Access fee
 - Installation/connection charge(s)
 - Hardware Costs
 - Total Cost to Customer over three years:
10. Also, you are required to provide coverage information describing or illustrating the extent of the availability of your services in geographic terms. Wherever possible, you should provide the Department with geospatial information suitable for use in a Geospatial information system. In all cases, the Department will confirm its interpretation of your coverage with you prior to its incorporation of the information into the Broadband Service Locator.
11. In order to provide customers with contact information should they be interested in your services, you will also need to supply:
 - your trading name
 - your postal address
 - a contact telephone number for new customer enquiries
 - a contact email address or a URL for an appropriate web page for new customer enquiries
 - an email address via which we can provide you with information about prospective customers
 - your company's website address.

What information will you be able to access?

12. Participation will result in your being regularly emailed a URL linking to a Service Availability Verification page which will provide information about the location of potential customers seeking to obtain a broadband Internet service. For privacy reasons, Customer location information will be limited to the latitude and

longitude of the customer's premises, the first eight digits of their PSTN telephone number, and the State or Territory in which they reside.

How do you participate?

13. If you agree to participate, you will be able to view the customer premises information and you will be able to indicate whether you can provide a Metro-comparable Broadband Service on a commercial basis to the customer. Each customer record will remain visible for seven days. You will only be shown customer details where the customer is located within the coverage area you agreed with the Department.
14. If you indicate that you are able to supply a Metro-comparable Broadband Service to the location or to the phone number, the prospective customer will be notified of your contact details by mail. The customer may then follow-up with their preferred provider.
15. There is no obligation on you to respond to the inquiry, but under the program rules if no commercial ISP responds within seven days that they are able to supply the customer on a commercial basis, the customer record will be made available to a registered terrestrial Australian Broadband Guarantee provider, and the customer will be then eligible to apply for a subsidised Australian Broadband Guarantee Service.
16. Customer information is limited in order to streamline both the flow of information to the customer and their optional participation in the Program.

We can decline to list your contact details

17. The Department reserves the right to decline to include any service provider's contact details on the Broadband Service Locator where information about the service provider's plans or their availability is determined by the Department to be misleading or incorrect. The Department does not warrant the quality, accuracy or completeness of any information listed on the Broadband Service Locator.
18. The Department monitors 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 who are granted access to BCOMS to report any instances of alleged failure of other ISPs to follow obligations relating to the Broadband Service Locator.
19. As a general rule, the Department requests ISP to show cause as to why their details should not be modified or removed from the Broadband Service Locator before doing so, except where the Department determines that it is necessary to remove or modify the information immediately.
20. If the Department agrees to your participation please ensure that you notify the Department promptly of any changes to your company contact details and/or service offerings to ensure the continued accuracy of information to potential customers and to you.
21. If your company does not offer a service which meets the combination of service levels and prices described above, the Department may consider listing your service offerings but will note them as not being Metro-comparable. If your company offers broadband services via a range of technologies, only some of

which are available at the service levels and price combination described above, your company's listings will be noted appropriately.

Please tick one box below

- . **Yes**, my company currently offers at least one service with the Metro-comparable characteristics described above and I would like to have my company's details referred to interested customers and will provide accurate information to the Department and referred Customers with regards to my company's service plans and network coverage.
- . **Yes**, I would like to have my company's details referred to interested customers and will provide accurate information to the Department and referred Customers with regards to my company's service plans and network coverage However, my company does not offer any services which meet the characteristics described above.
- . **No**, I am not interested in participating in the process.

By signing this form you acknowledge on behalf of your organisation that:

- you are responsible for all costs and expenses incurred by you in responding to any customer inquiry via the Service Availability Verification facility regarding whether a customer can be supplied with a Metro-comparable Broadband Service by you
- the Department does not warrant the quality, accuracy or completeness of any information on BCOMS
- you understand that deliberately making a false or misleading statement to the Commonwealth is a criminal offence under the *Criminal Code Act 1995*
- that if you are granted access to either the Service Availability facility or the Broadband Service Locator, you agree to use the access only for the purpose described at paragraph 12 above
- you have read, understood and accept the information and conditions contained herein.

Signed by :Date:/...../.....

Print name:

Position in company

For and on behalf of: insert ISP company/entity name and ABN:

Completed forms should be returned to:

The Manager
Broadband Systems and Support Section
Department of Broadband Communications and the Digital Economy
GPO Box 2154
CANBERRA ACT 2601

Or responses can be scanned and emailed to abgproviders@dbcde.gov.au with 'BCOMS Access' in the subject line.

Attachment B—Core Contract inclusions—Terms and Conditions

The following provision (in same or substantially similar terms) must be included in any Australian Broadband Guarantee contract Terms and Conditions:

- Definition of Department in definitions and in text—**‘Department means the Department of Broadband, Communications and the Digital Economy’**. All other references in the Terms and Conditions to the Department must state **‘the Department’**.
- Definition of the Australian Broadband Guarantee (Australian Broadband Guarantee) in definitions—**‘Australian Broadband Guarantee’ or ‘Australian Broadband Guarantee Program’** means the Australian Government’s funding Program described in the Program Guidelines issued on [insert date] an available at (*web address to come*).
- Definition of **‘Program Service’ or ‘Australian Broadband Guarantee Program Service’** definitions and in text.
- Definition of **‘Threshold Service’** in accordance with section 2.3.1 of the ABG Guidelines.
- Definition of **‘Added Value Service’** in accordance with section 2.3.3 of the ABG Guidelines.
- Definition of **‘Entry Level Service’** in accordance with section 2.3.2 of the ABG Guidelines.
- Details of the Applicant’s **Service Plans** (price, functionality and technical features).
- Any change to the contract is subject to prior Departmental approval, and the provider is required to inform customers of any approved change—**insert clause ‘The Provider must not change terms and conditions an Australian Broadband Guarantee Program Service without first obtaining approval from the Department of Broadband, Communications and the Digital Economy. The Provider will give the Customer at least [insert timeframe days/month] notice of the proposed change before the change takes effect.’**
- The service is offered for three years—**insert clause ‘At the conclusion of the initial x month/year contract term, the Customer has the right to renew for a negotiated period at a monthly price no greater than the original contracted Price. The maximum contract term of the Service may not exceed 36 months from initial Australian Broadband Guarantee Service commencement.’**
- Customers may migrate between Program Services offered by the Provider within the technology platform at no additional cost, and are always entitled to return to the original service—**insert clause ‘The Customer may migrate between the Provider’s Australian Broadband Guarantee Services within the technology platform and is always entitled to return to the original Australian Broadband Guarantee Service.’**

- Where the Provider offers contract terms greater than 18 months, Customers have a right to a fixed-term contract period of no more than 18 months , although Providers have the option of also offering fixed-term with a duration of less than 18 months—**insert clause ‘The Customer is entitled to enter into a fixed-term contract for the supply of the Program Service for [insert time period, [this must be no more than 18 months, but may be a lesser period] from the date of the commencement of the contract.’**
- The overall price of the service provided will not be increased for three years from the commencement of the provision of the service—**insert clause ‘The overall price of the Australian Broadband Guarantee Service provided will not be increased for three years from the commencement of the contract for the Australian Broadband Guarantee Service.’**
- The Provider commits to free-of-charge 24/7 fault reporting, and help desk facilities as set out in its agreement with the Department—**insert clause ‘The Provider will provide a free-of-charge 24/7 fault reporting, and a help desk facility which operates from [insert days and times, but must be a minimum of business hours at the Provider’s location].’**
- Statement that the Provider agrees to abide by performance requirements in regard to data speed and service availability—**insert clause ‘The Provider will provide the Australian Broadband Guarantee Service with either:**
 - **average data download and upload Data Speeds of at least 60 per cent of the Service’s nominated peak speeds**
 - or**
 - **the Provider will supply the Service at the minimum or average data speed as registered under the Program at least 75 per cent of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule. The Provider commits to the Australian Broadband Guarantee Service being available at least 99 per cent of the time, averaged over a quarterly period.’**
- Usage testing is available for the customer where relevant, and—**insert clause ‘The Customer can test the data speed of their Australian Broadband Guarantee Service at <http://bctest.com.au/speedtest.html>.**
- Usage information is available from the provider—**insert clause ‘The Provider will provide a means for Customers to check their usage on at least a daily basis, either by email or online.’**
- A commitment to provide the customer with complete information about the service—**insert clause ‘The Provider commits to provide the Customer with full information about the Australian Broadband Guarantee Service, as required under the Australian Broadband Guarantee Program.’**
- The Customer agrees to make necessary information available and provide a truthful attestation so that the Provider can make a claim—**insert clause ‘The Customer agrees to provide a truthful attestation to the Provider (and hold any relevant supporting documentation) so that the Provider can make a claim for incentive payment.’**

- The Provider commits to stated installation and repair timeframes as per Deed—**insert clause ‘The Provider commits to the connection of a new Australian Broadband Guarantee Service within X days [not greater than 30 calendar days, unless otherwise approved by the Department] of the Customer signing the contract. In the event of a Service outage or fault for which the Provider is responsible, the Provider commits to restoration of the Service within X.’**
- The Provider commits to stated repair timeframes as per the Funding Deed—**insert clause ‘In the event of a Service outage or fault for which the Provider is responsible, the Provider commits to restoration of the Service within X [provider to list requirements] and in accordance with the maintenance provisions of the Australian Broadband Guarantee Guidelines (section 3.5.3).’**
- Personal information:
‘The Customer consents to their details being provided by the Service to the Department, and potentially other appropriate agencies for the purposes of the Australian Broadband Guarantee Program administration, regulation and evaluation, and policy development.’
- No assignment without consent—**‘The Provider shall not assign the whole or part of this contract/agreement to another party without the prior written consent of the Customer.’**
- The Terms and Conditions must include a provision specifying that the Customer is required to insure the CPE they own against loss or damage caused by accident, natural disaster, vandalism and theft (as outlined in the Core Contract Inclusions).