



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

FUNDING AGREEMENT

BETWEEN

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

ABN 51 491 646 726

AND

[FUNDING RECIPIENT'S NAME AND ABN]

in relation to Funding for the Broadband Connect Program (Broadband
Connect)

REF NO: **Broadband Connect Service Provider 2005/06 – xx [agreement
number]**

TABLE OF CONTENTS

1	INTERPRETATION.....	4
2	TERM OF THIS AGREEMENT	13
3	OTHER COMMONWEALTH FUNDING	13
4	PAYMENT	14
5	YOUR OBLIGATIONS.....	18
6	DETERMINATIONS OF ELIGIBILITY	25
7	LIMITATIONS ON PAYMENT OF FUNDING	26
8	GUIDELINES	29
9	RECORDS	29
10	REPORTING	30
11	AUDIT REQUIREMENTS.....	32
12	EXIT STRATEGY	33
13	TAXES, DUTIES AND GOVERNMENT CHARGES	33
14	COMMONWEALTH MATERIAL	34
15	INTELLECTUAL PROPERTY	35
16	DISCLOSURE OF INFORMATION	36
17	PROTECTION OF PERSONAL INFORMATION.....	38
18	INDEMNITY	39
19	INSURANCE.....	40
20	CONFLICT OF INTEREST	41
21	ACCESS TO PREMISES AND RECORDS	41
22	DELAY	42
23	TERMINATION AND SUSPENSION	42
24	TERMINATION FOR DEFAULT	43
25	YOUR RIGHT TO TERMINATE.....	45
26	SUBCONTRACTING	45
27	ACKNOWLEDGMENT AND PUBLICITY.....	46

28	COMPLIANCE WITH LAWS AND OUR POLICIES	47
29	NEGATION OF LEGAL RELATIONSHIP OF EMPLOYMENT, PARTNERSHIP AND AGENCY	47
30	ENTIRE AGREEMENT, VARIATION AND SEVERANCE	47
31	WAIVER.....	48
32	ASSIGNMENT AND NOVATION	48
33	INCORPORATION	48
34	FUNDING PRECONDITION	49
35	DISPUTE RESOLUTION	49
36	APPLICABLE LAW AND JURISDICTION	50
37	LIAISON AND MONITORING.....	50
38	NOTICES	51
1	PROGRAM (SUBCLAUSE 1.1)	57
2	FUNDING PERIOD	57
3	BROADBAND CONNECT SERVICE	57
4	SERVICE AREA	58
5	RELEVANT BROADBAND CONNECT SERVICE AND SERVICE AREA	58
6	BROADBAND CONNECT WHOLESALER.....	58
7	BROADBAND CONNECT PROVIDER’S PROPORTION	58
8	BROADBAND CONNECT WHOLESALER’S PROPORTION	58
9	PARTIAL INCENTIVE PAYMENT FOR PRE-EXISTING CUSTOMERS	58
10	FUNDING CAP (CLAUSES 7.2, 7.10, 7.12).....	59
11	ALLOWABLE COSTS (CLAUSES 7.2, 7.5, 7.6, 7.7, 7.8, 7.9).....	59
12	DISCLOSURE OF CONFIDENTIAL INFORMATION (SUBCLAUSE 1.1, CLAUSE 16) .	61
13	INSURANCE (SUBCLAUSE 19.1)	61
14	ACKNOWLEDGMENT AND PUBLICITY (SUBCLAUSE 27).....	62
15	COMPLIANCE WITH LAWS AND POLICIES (SUBCLAUSES 28.1 AND 28.1(b)).....	62
16	NOTICES (SUBCLAUSE 38.2)	62

This Deed is made on theday of200

PARTIES

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

AND

- 1) [RECIPIENT'S NAME] {XYZ Pty Limited}, a company incorporated in the State /Territory of {*: *insert jurisdiction*}, having its registered office at {*: *insert street address*} and the Australian Business Number XX XXX XXX XXX('You' or 'Your' as the case requires)
- 2) if the recipient operates under a **business name**, insert the name and address of the company, partners or individual and add "trading as [insert business name]. ABN XX XXX XXX XXX"].

PURPOSE

- A. We are committed to implementing the Program.
- B. You are committed to helping achieve the Program, through Your conduct of the Activity.
- C. To give effect to this commitment, We have agreed to provide Funding to You and the Broadband Connect Wholesaler, if any, subject to the terms and conditions of this Agreement.
- D. We are required by law to ensure accountability for all public money, and to be accountable for all Funds administered by Us.
- E. You are required to be accountable for all Funds provided by Us to You.
- F. You agree to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Agreement.

1 INTERPRETATION

- 1.1 In this Agreement, unless the contrary intention appears:

‘**ABN**’ has the same meaning as it has in section 41 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

‘**Activity**’ means the provision of a Broadband Connect Service and other support of the Program, as described in this Agreement, and includes the provision of Activity Material;

‘**Activity Material**’ means all Material:

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

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

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

‘**Agreement**’ means this Deed and includes any schedules, annexures and any documents incorporated by reference;

‘**Allowable Costs**’ has the general meaning given in section 1.3 of the Guidelines and refers specifically to those costs (exclusive of GST) described in Schedule 1 that are incurred by You and that are directly attributable to You providing a Broadband Connect Service. For the purposes of this Agreement, actual Allowable Costs are those which the Department acting reasonably decides have been incurred by You and are directly related to Your provision of a Broadband Connect Service;

‘**Approved Auditor**’ means a person who is:

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

‘**ASIC**’ means the Australian Securities and Investment Commission;

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

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

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

‘Broadband Connect Added Value Service’ has the meaning given in section 1.3 of the Guidelines;

‘Broadband Connect Area’ has the meaning given in section 1.3 of the Guidelines;

‘Broadband Connect-compliant Pricing’ has the meaning given in section 1.3 of the Guidelines;

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

‘Broadband Connect Online’ means the portion of the Department website dealing with the Broadband Connect Program available at http://www.dcita.gov.au/tel/connect_australia/broadband_connect and the information and Program management tools provided at that site;

‘Broadband Connect Provider’ has the meaning given in section 1.3 of the Guidelines;

‘Broadband Connect Provider’s Proportion’ means the amount, or percentage of an Incentive Payment set out in Item 7 of Schedule 1, representing Your proportion of the Incentive Payment as agreed with the Broadband Connect Wholesaler;

‘Broadband Connect Service’ has the meaning given generally in section 1.3 of the Guidelines and means specifically a service You supply as set out in Item 3 of Schedule 1 being either a Broadband Connect Threshold Service or a Broadband Connect Added Value Service;

‘Broadband Connect Terms and Conditions’ means the terms and conditions on which a Broadband Connect Service is supplied by You to a Broadband Connect Customer set out in Schedule 5, including mandatory terms and conditions under the Guidelines, and referred to in clause 5.11;

‘Broadband Connect Threshold Service’ has the meaning given in section 1.3 of the Guidelines;

‘Broadband Connect Wholesaler’ has the meaning given generally in section 1.3 of the Guidelines and means specifically the person or organisation referred to in Item 6 of Schedule 1;

‘Broadband Connect Wholesaler’s Proportion’ means the amount, or percentage of an Incentive Payment set out in Item 8 of Schedule 1 representing the Broadband Connect Wholesaler’s proportion of the Incentive Payment as agreed with the Broadband Connect Provider;

‘Carrier Licence’ has the meaning given to it under section 7 of the *Telecommunications Act 1997*.

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

‘Confidential Information’ means:

- (a) the information described in Item 12 of Schedule 1; or
- (b) information that is agreed between the parties after the Date of this Agreement as constituting confidential information for the purposes of this Agreement;

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

‘Constituent Prices’ means the price charged for each element of the Broadband Connect Service which, when added together, form the total price to the Broadband Connect Customer for the Broadband Connect Service;

‘Contract Period’ means a period of 3 years commencing on the date that a Broadband Connect Service was first supplied to a Customer;

‘Customer’ has the meaning given in section 1.3 of the Guidelines;

‘Data Speed’ has the meaning given in section 1.3 of the Guidelines;

‘Date of this Agreement’ means the date written on the execution page of this Agreement, and if no date or more than one date is written there, then the date on which this Agreement is signed by the last Party to do so;

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

‘Eligible Customer’ has the meaning given in section 1.3 of the Guidelines, provided the eligibility requirements in section 3.4 of the Guidelines are satisfied, and includes an Indigenous Community Council;

‘Eligible Premises’ are those premises described in sections 1.3, 3.2 and 3.3 of the Guidelines as eligible under the Program, provided the eligibility requirements in section 3.4 of the Guidelines are satisfied;

‘Existing Material’ means all Material in existence prior to the Date of the Agreement:

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

‘Exit Strategy’ means the strategy set out in Schedule 2;

‘Financial Year’ means each period from 1 July to the following 30 June occurring during the Term of this Agreement, or any part of such a period occurring at the beginning or end of the Term of this Agreement;

‘Funding’ or **‘Funds’** means the amount or amounts comprising Incentive Payments and Travel Allowance payable under this Agreement by Us;

‘Funding Cap’ means either or both the amounts set out in Schedule 1 which represents 60% of all funding available under the Program for:

- (a) each Funding Period; and
- (b) the Period of the Program;

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

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

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

‘Guidelines’ means the Broadband Connect Program Guidelines in Schedule 6 as amended from time to time by Us by agreement of the Parties;

‘HiBIS’ means the Higher Bandwidth Incentive Scheme;

‘Higher Bandwidth Service’ has the meaning given in section 1.3 of the Guidelines;

‘Imminent Access’ has the meaning given in section 1.3 of the Guidelines;

‘Incentive Payment’ means the amounts described in clauses 4.7 to 4.11 of this Agreement;

‘Indigenous Community Council’ means:

- (a) an Aboriginal Council constituted under the *Community Services (Aborigines) Act 1984* (Qld);
- (b) an Island Council constituted under the *Community Services (Torres Strait) Act 1984* (Qld);
- (c) a community government council established under the *Local Government Act* (NT);
- (d) an incorporated association recognised as a ‘local governing body’ by the Australian Government and the Northern Territory Government in order that Australian Government funding can be made for local government type services; or
- (e) any other organisation approved by Us;

‘Intellectual Property Rights’ means all intellectual property rights including all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, circuit layouts, and all other intellectual property as defined in Article 2 of the convention establishing the World Intellectual Property Organisation 1967;

‘Interest’ means interest calculated at an interest rate equal to the general interest charge rate pursuant to section 8AAD of the *Tax Administration Act 1953* (Cth), plus 1%, on a daily compounding basis;

‘ISDN’ has the meaning given in section 1.3 of the Guidelines;

‘Item’ means an item in the Schedules;

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

‘Metro-comparable Service’ has the meaning given in section 1.3 of the Guidelines;

‘Metropolitan Exclusion Area’ has the meaning given in section 1.3 of the Guidelines;

‘New Broadband Connect Service’ has the meaning given in section 1.3 of the Guidelines;

‘Not-for-profit Organisation’ has the meaning given in sections 1.3, 3.1.4 and 3.1.6 of the Guidelines;

‘Online Management System (OMS)’ means the secure online management and claims lodgement system that includes an ISDN checking tool, customer demand register and access to claims reports, and available at http://www.dcita.gov.au/tel/connect_australia/broadband_connect;

‘Party’ means a party to this Agreement;

‘Period of the Program’ refers to the period from the start of the Program to 31 December 2008, which at Our discretion may be extended to 30 June 2009;

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

‘Pre-existing Customer’ has the meaning given in section 1.3 of the Guidelines;

‘Premises’ has the meaning given in section 1.3 of the Guidelines;

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

‘Privacy Commissioner’ means the Office of the Privacy Commissioner established under the *Privacy Act 1988* (Cth) and includes any other entity that may, from time to time, perform the functions of that Office;

‘Program’ means the Broadband Connect Program described in section 1.1 of the Guidelines;

‘Public Access Internet Facility’ has the meaning given in section 1.3 of the Guidelines;

‘Quarter’ means each period from:

- (a) 1 July to 30 September;

(b) 1 October to 31 December;

(c) 1 January to 31 March; and

(d) 1 April to 30 June,

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

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

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

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

'Report' means Activity Material that is provided to Us for reporting purposes on matters including the Allowable Costs, Travel Allowance, progress reports and evaluations of the Activity or obligations of this Agreement, as stipulated in the Schedules;

'Residential Customer' has the meaning given in sections 1.3 and 3.1.2 of the Guidelines;

'Schedule' refers to a Schedule to this Agreement;

'Service Area' means the service area to be covered by a particular Broadband Connect Service described in Schedule 1, and located within the Broadband Connect Area;

'Small Business' has the meaning given in sections 1.3 and 3.1.3 of the Guidelines;

'Standard Form of Agreement' means a standard form of agreement under section 479(2)(b) of the *Telecommunications Act 1997*;

'Start of the Program' means 1 January 2006;

'Taxable Supply' has the same meaning as it has in the GST Act;

'Term of this Agreement' refers to the period described in subclause 2.1;

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

‘Travel Allowance’ means the travel allowance payable under this Agreement (exclusive of GST) as described in clauses 4.12 to 4.16;

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

‘Working Day’ has the meaning given in section 1.3 of the Guidelines.

‘You’ and ‘Your’ means **[funding recipient’s name and ABN]** and includes, where the context admits, its officers, employees, agents and subcontractors, and its successors;

1.2 In this Agreement, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) all references to clauses are to clauses in this Agreement;
- (e) all references to dollars are to Australian dollars and this Agreement uses Australian currency;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended;
- (g) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision;
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (i) terms not defined in this Agreement but defined in the Guidelines have the meaning given to them in the Guidelines; and
- (j) this Agreement must be construed subject to the *Telecommunications Act 1997*.

1.3 The Schedules (and annexures and documents incorporated by reference, if any) form part of this Agreement. In the event of any conflict or inconsistency between any part of:

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

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

2 TERM OF THIS AGREEMENT

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

3 OTHER COMMONWEALTH FUNDING

3.1 If You receive other funding from the Commonwealth, a breach of any other arrangement (whether contractual or statutory) with the Commonwealth under which You receive Commonwealth funding may be regarded by Us as a breach of this Agreement where We reasonably consider that the breach of that arrangement will materially impact upon the performance of Your obligations under this Agreement.

3.2 On Our request, You must inform Us in writing within 20 Working Days of entering into any other arrangement (whether contractual or statutory) under which You are entitled to receive funding from the Commonwealth.

3.3 Any payments under this Agreement may be deferred or suspended by Us if You have outstanding or unacquitted moneys under any arrangement (whether contractual or statutory) with the Commonwealth, including between Us and You, under which You receive Commonwealth funding. Notwithstanding such suspension or deferral of any payments, You must continue to perform any obligations under this Agreement, unless We agree otherwise in writing.

4 PAYMENT

4.1 Subject to:

- (a) clause 7;
- (b) sufficient funds being available for the Program; and
- (c) compliance by You with this Agreement (including any invoice requirements)

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

4.2 Without limiting Our rights, where You are in breach of Your obligations under this Agreement, We may, at Our discretion, withhold or suspend any payment in whole or in part until You have rectified the breach and performed Your obligations that are required to be performed up to the date of resumption of payment under this Agreement.

4.3 We may, at Our discretion, set off or deduct from any payment under clause 4.1 any moneys that are payable to Us by You, whether in connection with this Agreement or otherwise. Moneys that are payable to Us by You include any repayment under clauses 5.34 and 5.35, whether or not a notice requiring repayment has been given in respect of that debt and whether or not the time provided under such a notice has expired.

4.4 We will pay You the Broadband Connect Provider's Proportion of the Incentive Payment for each Broadband Connect Service supplied to an Eligible Customer at Eligible Premises in the Service Area in accordance with this Agreement (once-only for each Broadband Connect Service supplied to a Broadband Connect Customer after You have commenced supplying the Broadband Connect Service) if:

- (a) the Broadband Connect Service was first supplied to a Customer during the Funding Period;
- (b) in the case where You are reselling a service using the infrastructure of a wholesale service provider, You have an agreement in place with the Broadband Connect Wholesaler in respect of:
 - (i) the supply of the Broadband Connect Service; and
 - (ii) sharing Incentive Payments which specifies the Broadband Connect Provider's Proportion and the Broadband Connect Wholesaler's Proportion of the Incentive Payments (where You have agreed with the Broadband Connect Wholesaler to share the Incentive Payment);

- (c) You have entered details of the Customer to which the Broadband Connect Service was supplied and made a claim for payment via Broadband Connect Online; and
- (d) You are not in receipt of any funding under any other arrangement with the Commonwealth, State or local government (whether contractual or statutory) in respect of that Broadband Connect Service, unless You have notified Us in writing of that funding and We have agreed to pay You the Funding in accordance with section 4.4.3.2 of the Guidelines;
- (e) if there is a Broadband Connect Wholesaler named in Item 6 of Schedule 1, You have entered into a written binding agreement with the Broadband Connect Wholesaler in regard to the provision of the Broadband Connect Services to the Service Area in accordance with this Agreement;
- (f) if there is a Broadband Connect Wholesaler named in Item 6 of Schedule 1, You and the Broadband Connect Wholesaler have agreed to share the Incentive Payment as follows:
 - (i) You will receive the Broadband Connect Provider's Proportion of the Incentive Payment;
 - (ii) the Broadband Connect Wholesaler will receive the Broadband Connect Wholesaler's Proportion of the Incentive Payment.

4.5 We will pay You Travel Allowance once You have made a claim for payment of Travel Allowance via Broadband Connect Online at the same time as making a claim for an Incentive Payment.

4.6 Payments will be made within 20 Working Days of the end of each calendar month for all claims lodged by You for that calendar month.

4.7 Before We can pay any Funds to You, You must:

- (a) comply with the reporting or other requirements that apply to the payment of the Funds under this Agreement; and
- (b) declare, in respect of Incentive Payments and Travel Allowance, that (assuming the Broadband Connect Customer's attestation is legitimate and accurate and provided You have no reason to believe the Broadband Connect Customer's attestation is not legitimate and accurate) Your claims are legitimate and accurate and that You have all necessary evidence to substantiate the claim.

Incentive Payments

- 4.8 The Incentive Payments are as follows:
- (a) Standard Incentive Payment - \$1400 (exclusive of GST);
 - (b) High Cost Incentive Payment - \$3000 (exclusive of GST); and
 - (c) partial Incentive Payment for Pre-existing Customers is the amount set out in Item 9 of Schedule 1.
- 4.9 A Standard Incentive Payment will apply where:
- (a) You supply a Broadband Connect Service in accordance with this Agreement; and
 - (b) the Premises to which the Broadband Connect Service was supplied were Premises where ISDN:
 - (i) was available at the time of supply to the particular Premises, as determined in accordance with section 4.13.6 of the Guidelines; and
 - (ii) would have been available at the start of HiBIS on 8 April 2004.
- 4.10 A High Cost Incentive Payment applies when:
- (a) You supply a Broadband Connect Service in accordance with this Agreement; and
 - (b) the Premises to which the Broadband Connect Service was supplied were Premises where ISDN:
 - (i) was not available at the start of HiBIS on 8 April 2004; or
 - (ii) became unavailable subsequent to the start of HiBIS on 8 April 2004.
- 4.11 A partial Incentive Payment, as set out in Item 9 of Schedule 1, applies when You have registered Pricing for Pre-existing Customers and transfer a Pre-existing Customer from their existing service to a service which was not a service supplied under HiBIS, with Broadband Connect-compliant Pricing and upgrade equipment if necessary as described in section 4.13.9 of the Guidelines.
- 4.12 Notwithstanding clauses 4.9 and 4.10, the process for determining whether a Standard Incentive Payment or a High Cost Incentive Payment will be made is set out in section 4.13 of the Guidelines.

- 4.13 Subject to clause 4.14, claims for Incentive Payments must be made within 45 days after a Customer has commenced receiving a Broadband Connect Service connected and supplied by You.
- 4.14 Notwithstanding clauses 4.10 and 4.11, subject to Our written approval, You may make a claim in relation to a HiBIS Service provided under an agreement between Us and You for funding for the HiBIS Service if:
- (a) that agreement was for a period immediately before the Funding Period of this Agreement;
 - (b) You first supplied the HiBIS Service in accordance with that agreement; and
 - (c) You did not make a claim for Incentive Payments, or a claim for Travel Allowance, pursuant to that agreement in respect of the HiBIS Service.

Travel Allowance

- 4.15 Travel Allowance will be paid in addition to a High Cost Incentive Payment where:
- (a) a Broadband Connect Service is being supplied to Premises in Remote Australia (as defined in section 1.3 of the Guidelines); and
 - (b) the claim for Travel Allowance is lodged via Broadband Connect Online as part of the claim for an Incentive Payment for the Broadband Connect Service.
- 4.16 Payment for Travel Allowance:
- (a) will not be paid unless the distance travelled to supply the Broadband Connect Service exceeds 100 kilometres (that is, a round trip of more than 200 kilometres);
 - (b) is paid at the rate \$1.00 (GST exclusive) per kilometre travelled beyond the 200 kilometres round trip; and
 - (c) is capped at \$1,000 (GST exclusive) per Broadband Connect Service installed by You.
- 4.17 The distance travelled is from Your depot listed in Schedule 4 from which the installer departs for the job to the point of installation at the Premises (and return).
- 4.18 Where multiple installations occur on a journey, the travel distance is deemed to be one journey only, that is the distance travelled from the depot to reach the installation site furthest from the depot. However, the cap of \$1,000 still applies per Broadband Connect Service not per journey made.

- 4.19 If You need to make more than one visit to a Customer to complete an installation, Travel Allowance may be claimed for those additional visits. However, the visits are to be treated cumulatively for the purposes of the cap on Travel Allowance. For example, if an installation requires two round trips of 600 km each, both trips can be counted, but only to the value of 1,000 km or \$1,000.

5 YOUR OBLIGATIONS

- 5.1 You agree to comply with the requirements of the Program as set out in the Guidelines except where those Guidelines are inconsistent with the clauses of this Agreement or the Schedules (excluding the Guidelines).

Activity

- 5.2 During the Funding Period, You must offer to provide the Broadband Connect Service to Eligible Customers at Eligible Premises in the Service Area.
- 5.3 In accordance with section 3.4.1 of the Guidelines:
- (a) except for Not-for-profit Organisations providing Public Access Internet Facilities, You must provide only one Broadband Connect Service per Eligible Premises for each type of Eligible Customer; and
 - (b) You must provide Eligible Customers who are Not-for-profit Organisations providing Public Access Internet Facilities with no more than 3 Broadband Connect Services per Premises, unless they have obtained Our prior written approval to a greater number of Broadband Connect Services per Premises.
- 5.4 If there is more than one Broadband Connect Service and more than one Service Area listed in Schedule 1, You must offer to provide the relevant Broadband Connect Service to the relevant Service Area set out in Item 5 of Schedule 1. You must notify Us of a proposed addition to a Service Area and provide Us at that time with an estimate of additional Allowable Costs.
- 5.5 If a Broadband Connect Customer changes from one Broadband Connect Service to another Broadband Connect Service provided by You:
- (a) You must allow the Broadband Connect Customer to return to the Broadband Connect Service the Broadband Connect Customer subscribed to on the date of the first supply of the original Broadband Connect Service; and
 - (b) You must provide that New Broadband Connect Service on the terms and conditions required for that service under this Agreement for the remainder of the term of the Contract Period of the original Broadband Connect Service.

No Funding is payable by Us in relation to a Customer accepting another Broadband Connect Service or returning to the original Broadband Connect Service in accordance with this clause. This clause only applies to Broadband Connect Services that are provided using the same technology, including Customer equipment.

- 5.6 You must, if required by a Customer, provide the Broadband Connect Service (or another Broadband Connect Service as set out in clause 5.5) to the Broadband Connect Customer for the Contract Period. The price for the Broadband Connect Service must not be more than the amount set out in Schedule 1 for that Broadband Connect Service.
- 5.7 You must carry out the Activity within the Funding Period in accordance with this Agreement, diligently, effectively and to a high professional standard.
- 5.8 Notwithstanding clause 5.2, if You are unable to offer the Broadband Connect Service to Eligible Customers because Your infrastructure is fully utilised and no further capacity is available, You:
- (a) must promptly notify Us in writing;
 - (b) are not required to comply with clause 5.2; and
 - (c) must comply with all other obligations under this Agreement, including clause 5.6 and Your obligations to Broadband Connect Customers already supplied by You with a Broadband Connect Service.

Customers

- 5.9 Before claiming an Incentive Payment in respect of the provision of a Broadband Connect Service You must:
- (a) use Your best endeavours to ensure that the Customer is an Eligible Customer and that the Premises to which the Broadband Connect Service will be provided are Eligible Premises; and
 - (b) ensure that the Customer attests to their eligibility under the Program by completing and signing the Customer application and attestation form contained in Attachment 9.2 of the Guidelines, or in another form acceptable to Us.
- 5.10 You must write (by post or email) to each Customer at the commencement of supply of the Broadband Connect Service to that Customer:
- (a) confirming the specific terms and conditions that You have included in the Broadband Connect Terms and Conditions;

- (b) providing all other comparative information set out in Attachment 9.1 of the Guidelines and not covered under clause 5.10(a) of this Agreement; and
- (c) acknowledging, in a form and manner approved by Us:
 - (i) the Program as an Australian Government initiative in accordance with clause 27; and
 - (ii) the specific aggregate amount of the Incentive Payment for which You and the Broadband Connect Wholesaler are eligible on provision of the Broadband Connect Service; and
- (d) notifying Your intended policy for Your Broadband Connect Terms and Conditions after the Contract Period expires.

5.11 You must, before supplying the Broadband Connect Service, comply with the requirements in section 3.5.5 of the Guidelines, and enter into Your Broadband Connect Terms and Conditions, including any acceptable use policy, with each Customer for each Broadband Connect Service provided to that Customer and the Broadband Connect Terms and Conditions:

- (a) without limiting clause 5.6, must give Customers the option to contract with You for the Broadband Connect Service for a period of not more than 18 months;
- (b) are to contain Your agreement to provide the Broadband Connect Service at the performance levels and price specified in this Agreement;
- (c) may be a Standard Form of Agreement (noting that it may only be amended in accordance with clause 5.11(e));
- (d) must require Customers to provide evidence to support the information in their application and attestation form referred to in clause 5.9 if requested by the Department; and
- (e) must not be varied without:
 - (i) Our written agreement; and
 - (ii) notifying all Broadband Connect Customers receiving the relevant Broadband Connect Service of the variation in a manner approved by Us.

5.12 Notwithstanding clause 5.11(a), You must offer to provide the Broadband Connect Service to the Customer for the Contract Period.

5.13 You must set out on Your website and provide in a printed format upon request from potential Customers the information set out in Attachment 9.1 of the Guidelines to enable them to compare the

Broadband Connect Service with services of other Broadband Connect Providers.

- 5.14 You may make a claim in accordance with clauses 4.3 to 4.7:
- (a) after You have connected a Broadband Connect Service; and
 - (b) within 45 days of the Broadband Connect Customer receiving a Broadband Connect Service supplied by You pursuant to Your Broadband Connect Terms and Conditions via the connection described in clause 5.14(a); and
 - (c) subject to receipt by You of the Customer's eligibility attestation in accordance with clause 5.9(b).
- 5.15 If You become aware of an error regarding a claim, You must notify Us in writing and correct the error immediately.
- 5.16 You must obtain the Broadband Connect Customer's consent for You and Us to use the Customer's Personal Information in accordance with section 3.5.4 of the Guidelines and the Privacy Act.
- 5.17 You may only supply a Broadband Connect Service to the provider of a Public Access Internet Facility to enable it to provide that facility if the service is a New Public Access Internet Facility.

Pricing

- 5.18 You must comply with the requirements in the Guidelines in respect to pricing of Broadband Connect Services, including:
- (a) making agreed pricing for each Broadband Connect Service available to all Eligible Customers within the Service Area for that Broadband Connect Service; and
 - (b) offering Pricing for Pre-existing Customers receiving a Higher Bandwidth Service, which is not a Metro-comparable Service or a Service provided under HiBIS, and offering to upgrade equipment if necessary.
- 5.19 You may change the Constituent Prices within the price of a Broadband Connect Service provided it does not change the total price for the Broadband Connect Service in Item 3 of Schedule 1. You must provide Us with 10 Working Days prior notification of any proposed change to Constituent Prices, which will apply unless We notify You to the contrary prior to the expiry of this period, as described in section 4.6.6 of the Guidelines.

Data Speed

- 5.20 You agree to:
- (a) comply with the monitoring and enforcement of the Data Speed compliance regime set out in section 4.6.2.2 of the Guidelines.

- (b) inform Your Broadband Connect Customers of the Broadband Connect Service's compliance with the average Data Speed requirements in a form approved by Us;
 - (c) investigate and deal with any complaint by a Broadband Connect Customer that You are not providing the Data Speed for the Broadband Connect Service required under this Agreement in accordance with section 4.6.2.2 of the Guidelines; and
 - (d) if appropriate, advise the Broadband Connect Customer how they may configure their computer to achieve the Data Speeds required under this Agreement.
- 5.21 The Broadband Connect Service must comply with the Data Speed requirements in section 4.6.2 of the Guidelines and You must rectify any failure to achieve the Data Speed within 15 Working Days.
- 5.22 You must inform Your Broadband Connect Customers of the online Customer Data Speed testing facility established by Us and of the fact that Broadband Connect Customers should use the facility to test their average Data Speed for the Broadband Connect Service.
- 5.23 If, after supplying the Broadband Connect Service to a Broadband Connect Customer You are unable to achieve the Data Speed for the Broadband Connect Service under this Agreement, You must notify Us in writing.
- 5.24 Following a notification under clause 5.243, You must, if requested by Us to do so:
 - (a) withdraw the Broadband Connect Service from the Broadband Connect Customer in which case:
 - (i) You must release the Broadband Connect Customer from any future obligations under Your Broadband Connect Terms and Conditions;
 - (ii) the Broadband Connect Customer will again be an Eligible Customer for the purposes of this Agreement and the Program;
 - (iii) You must repay to Us the Funding You received in relation to the supply of that Broadband Connect Service to the Broadband Connect Customer; and
 - (iv) You must notify Us of any Incentive Payment paid or payable to the Broadband Connect Wholesaler in relation to the supply of that Broadband Connect Service to the Broadband Connect Customer;

or

- (b) Continue to provide the Broadband Connect Service to the Broadband Connect Customer provided that:
 - (i) the Broadband Connect Customer has been informed of their option to cancel the Broadband Connect Service and receive a new service from another Broadband Connect Provider; and
 - (ii) the Broadband Connect Customer has agreed to continue to receive the Broadband Connect Service, in which case You are not required to repay the Funding You received in relation to the supply of that Broadband Connect Service to the Broadband Connect Customer.

Other mandatory technical characteristics

- 5.25 You agree to comply with the technical characteristics described in sections 4.6.12 and 4.7 of the Guidelines in respect to any Broadband Connect Service provided by You.

Wholesaler

- 5.26 You warrant that, where You have a wholesale arrangement in relation to the provision by You of a Broadband Connect Service but that wholesale provider is not named as a Broadband Connect Wholesaler in Item 6 of Schedule 1, You have agreed with that wholesale provider not to share the Incentive Payment with it.

Other Matters

- 5.27 You must promptly notify Us in writing:
 - (a) if You become aware of any:
 - (i) matter that affects or could affect Your ability to provide the Activity; and
 - (ii) subject to clause 5.28, failure by You to comply with this Agreement or the Broadband Connect Terms and Conditions in any way;
 - (b) if You undertake removal of a technological limitation in a Broadband Connect Area (e.g. by replacement of a PGS or RIM or increasing a transmitter's power) to provide a Metro-comparable Service to one or more Premises previously denied access because of that limitation, and provide details of the upgrade and the identified premises now able to receive a Metro-comparable Service as a result of the upgrade.

- 5.28 Notification of a breach of this Agreement or the Broadband Connect Terms and Conditions including any acceptable use policy may be made by way of the quarterly Reports provided under clause 10.2 and need not be made immediately to Us unless:
- (a) the breach is a breach of a material term of this Agreement or the Broadband Connect Terms and Conditions or any acceptable use policy;
 - (b) the breach involves or resulted in an overpayment of Funding by Us to You;
 - (c) the breach is of a type of which We have requested to be immediately notified; or
 - (d) following persistent breaches by You or complaints by Broadband Connect Customers about You, We have requested that You notify all breaches to Us.
- 5.29 Subject to Our obligations in relation to Personal Information under the Privacy Act, information provided to Us under clause 5.27(b) will be made available by Us to all Broadband Connect Providers to enable Broadband Connect Providers to offer Broadband Connect Services to Eligible Customers affected under clause 5.27(b) in accordance with section 3.2.6.1 of the Guidelines.
- 5.30 Notwithstanding subclause 5.27(a) or Our rights under this Agreement, You must take whatever action is necessary to comply with Your obligations under this Agreement.
- 5.31 You agree to comply with Our reasonable requests in relation to any audit undertaken by Us in accordance with section 4.6.2.2.7 of the Guidelines.
- 5.32 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.
- 5.33 You agree to provide Us with information reasonably required by Us from time to time in relation to claims for payment made via Broadband Connect Online.

Repayment of Funds

- 5.34 If at any time during the Term of the Agreement or on earlier termination of this Agreement:
- (a) information provided by You discloses that an amount of Funding paid to You exceeds the amount that was properly payable under this Agreement;

- (b) We form the opinion based on reasonable grounds that any Funds have been claimed other than in accordance with this Agreement,

We may, by written notice to You require You to repay that part of the Funds, or to deal with that part of the Funds as otherwise directed by Us in writing. Funds which are required to be repaid pursuant to such a notice constitute a debt due and immediately payable to Us.

- 5.35 If We notify You under clause 5.34 that an amount is to be refunded to Us, and the amount is not refunded to Us within 20 Working Days of notification, Interest will accrue and be payable on the amount after the expiry of the 20 Working Days, until the amount is paid in full.
- 5.36 Any amount owed to Us under subclause 5.34, and any Interest owed under subclause 5.35, will without prejudice to any other rights available to Us, be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.
- 5.37 The operation of clauses 5.5, 5.6, 5.12, 5.18-5.21, 5.26, 5.29-5.31 and 5.34-5.36 survive the expiration or earlier termination of the Term of this Agreement.

6 DETERMINATIONS OF ELIGIBILITY

- 6.1 If it is not clear from the Guidelines or otherwise whether:
 - (a) a Customer is an Eligible Customer; or
 - (b) Premises are Residential Premises,We will, acting reasonably, make a determination and Our decision is final.
- 6.2 Subject to clause 6.1, We agree to provide You with the information and tools required to determine whether:
 - (a) the connection of a Broadband Connect Service is to an Eligible Customer at Eligible Premises; and
 - (b) a Standard Incentive Payment applies to the connection of a Broadband Connect Service; and
 - (c) a High Cost Incentive Payment applies to the connection of a Broadband Connect Service.
- 6.3 You must diligently apply any information or tool provided by Us to determine the matters referred to in clause 6.2. Where You have diligently applied any such information or tool and complied with Your obligations under clause 5.9, We will not seek to recover any Incentive Payment We have made to You on the grounds that an apparently Eligible Customer was not eligible or that apparently Eligible Premises were not eligible.

7 LIMITATIONS ON PAYMENT OF FUNDING

- 7.1 The terms of this clause 7 apply notwithstanding any other provision of this Agreement.
- 7.2 We are not obliged to pay You any Funding if:
- (a) there are no further funds available for the Funding Period for the Program;
 - (b) the Funding would exceed the Allowable Costs as set out in clauses 7.5 to 7.9;
 - (c) Item 6 of Schedule 1 is completed, You cease to have a written binding agreement with a Broadband Connect Wholesaler in regard to the provision of the Broadband Connect Service for the Funding Period;
 - (d) the Funding has reached or would exceed the Funding Cap as set out in clauses 7.10 to 7.13.

Funding for the Program

- 7.3 We will notify You in writing when Our remaining funds available for the Program for the Funding Period reach:
- (a) \$20 million;
 - (b) \$10 million; and
 - (c) \$5 million
- respectively.
- 7.4 Upon receipt of a written notice under clause 7.3(c), You are not obliged to continue to offer to provide the Broadband Connect Service in accordance with clause 5.2.

Funding exceeds the Allowable Costs

- 7.5 Subject to clause 7.7, We are not obliged to pay any further Funding to You if funds paid to You under this Agreement are equal to or exceed the estimated or actual Allowable Costs (“Payment Exceeds Allowable Costs”).
- 7.6 Without limiting clause 7.5, if the Payment Exceeds Allowable Costs, We may, acting reasonably:
- (a) withhold Funding until We are satisfied that the Allowable Costs sufficiently exceed the Funding payable to You; or
 - (b) require You to refund to Us the difference between the Funding paid to You and Your actual Allowable Costs within 20

Working Days (and clauses 5.34 to 5.36 will apply to any failure to refund within this period).

- 7.7 If We decide to withhold Funding under clauses 7.5 or 7.6(a) We will recommence payment of Funding once We are satisfied during the Term of the Agreement that estimated or actual Allowable Costs exceed the Funding payable to You.
- 7.8 Your estimated Allowable Costs for the Funding Period are contained in Schedule 3.
- 7.9 If the actual Allowable Costs for the Funding Period exceed all Funding payable to You under this Agreement, We will agree with You that the difference between these amounts be carried over if a future agreement between the Parties is agreed in accordance with section 4.13.11 of the Guidelines.

Cap on Funding

- 7.10 We are not obliged to pay You any Funding:
 - (a) in excess of the Funding Cap for the Funding Period set out in Item 10 of Schedule 1; or
 - (b) if the total funds payable to You under this Agreement and any other agreement between the Parties in relation to the Program exceeds the Funding Cap for the Period of the Program set out in Item 10 of Schedule 1;provided that We will continue to pay the Funding to You:
 - (c) until the date You receive a notice referred to in clause 7.11(b); and
 - (d) where the Broadband Connect Service to which the Incentive Payment relates was supplied to a Broadband Connect Customer before the date You receive a notice referred to in clause 7.11(b).
- 7.11 We will notify You in writing when:
 - (a) the Funding paid to You under this Agreement is an amount equal to:
 - (i) 70% of the Funding Cap;
 - (ii) 80% of the Funding Cap;
 - (iii) 90% of the Funding Cap; and

- (b) the claims submitted to Us total an amount equal to 100% of the Funding Cap. For the purpose of this clause 7.11(b), a claim is submitted to Us when:
 - (i) You have provided it to Us and it has been entered into the Online Management System;
 - (ii) You have provided it to Us, but it has not been entered into the online Management System or accepted as valid; and
- (c) The Funding Cap is deemed to have been reached when there is insufficient Funds available under the Funding Cap to pay an Incentive Payment.

7.12 We may agree with You to vary the Funding Cap in accordance with section 4.13.12.1 of the Guidelines. Any amendment to the Funding Cap must be in accordance with clause 30.2.

7.13 Once We have notified You that Funding for claims submitted to Us under this Agreement is an amount equal to 100% of the Funding Cap, You are not obliged to comply with clause 5.2 until, if applicable, You become eligible again to receive Incentive Payments.

Particular Restrictions on Funding

7.14 You are not entitled to Funding if:

- (a) the Eligible Premises had access to Metro-comparable Services either:
 - (i) at start of theHiBIS on 8 April 2004; or
 - (ii) as a result of You having completed Imminent Access to the area where the Premises are located;

and

- (b) You have withdrawn access to the Metro-comparable Services from the Eligible Premises.

7.15 You are not entitled to Funding if:

- (a) the Eligible Premises are located within an Imminent Access area identified at http://www.dcita.gov.au/tel/connect_australia/broadband_connect; and
- (b) You or any other Broadband Connect Provider have provided Metro-comparable Services to that Imminent Access area as at 31 December 2004.

7.16 Subject to the transitional periods set out in section 2.6 of the Guidelines, You are not entitled to Funding in respect of a terrestrial-

based (non-satellite) Broadband Connect Service supplied by You unless You claim the relevant Incentive Payment within 12 months of the date on which you first connected a Broadband Connect Service in the same Service Area.

7.17 The timeframe specified in clause 7.16 does not apply to claims for Allowable Costs.

8 GUIDELINES

8.1 The Parties may agree to vary the Guidelines. Any variation must be in accordance with clause 30.2.

8.2 The Parties agree that any variation to the Guidelines will not apply retrospectively.

9 RECORDS

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

- (a) the Allowable Costs to be identified in Your accounts;
- (b) the preparation of financial statements in accordance with Australian Accounting Standards; and
- (c) the audit of those Records in accordance with Australian Auditing Standards.

9.2 You must keep full and accurate Records of the conduct of the Activity including, without limitation, in relation to:

- (a) the Allowable Costs;
- (b) Your technical capability;
- (c) Your financial standing;
- (d) Your compliance with the requirements of a Broadband Connect Service;
- (e) Your marketing activities in relation to the Activity;
- (f) service performance for the Activity;
- (g) Broadband Connect Customers provided with the Broadband Connect Services;
- (h) Funding claimed and received by You under the Program;
- (i) the value of payments made to the Broadband Connect Wholesaler (if applicable); and
- (j) Broadband Connect Customer complaints.

- 9.3 Records maintained under subclause 9.1 and 9.2 must be retained by You for a period of no less than 7 years after the end of the Program.
- 9.4 The operation of this clause 9 survives the expiration or earlier termination of the Term of this Agreement.

10 REPORTING

- 10.1 If, at any time during the Term of this Agreement, Your actual Allowable Costs exceed the amounts set out in Schedule 3, You must provide Us with a revised estimate of Allowable Costs which, once agreed by Us, will replace Schedule 3. Your revised estimate must include:
- (a) details of estimated costs for each of the Allowable Costs categories;
 - (b) unit costs and unit and Customer numbers where appropriate.
- 10.2 You must provide to Us within 20 Working Days of the end of each Quarter or upon earlier termination of this Agreement a detailed Report in a form satisfactory to Us in relation to Your provision of Broadband Connect Services including:
- (a) if You fail to achieve the required Data Speed in a Data Speed Test conducted during the Term of this Agreement, a detailed explanation for the test result and the action taken by You in response;
 - (b) the availability of the Broadband Connect Service;
 - (c) complaints received from Broadband Connect Customers;
 - (d) an updated statement of estimated Allowable Costs or a statement to the effect there has been no change to Your estimate of Allowable Costs; and
 - (e) any other matter reasonably required by Us.
- 10.3 You must provide to Us within 60 Working Days of the end of each Financial Year during the Term of this Agreement or upon earlier termination of this Agreement a detailed Report in a form satisfactory to Us on all matters referred to in Attachment 9.5 of the Guidelines and as otherwise reasonably required by Us.
- 10.4 The Report referred to in subclause 10.3 must include:
- (a) an audited detailed statement of receipts in respect of the Funding, which must include a definitive statement as to whether the financial accounts are complete and accurate; and
 - (b) an audited statement of Your actual Allowable Costs, which must include a definitive statement as to whether the financial accounts are complete and accurate.

- 10.5 Your Records in relation to each claim for an Incentive Payment must include, but are not limited to, the following information:
- (a) Broadband Connect Customer application and attestation;
 - (b) signed copy of the contract between the Broadband Connect Provider and the Broadband Connect Customer;
 - (c) evidence of the Broadband Connect Customer's acceptance of the Broadband Connect Terms and Conditions;
 - (d) evidence that the Broadband Connect Terms and Conditions were communicated to the Broadband Connect Customer prior to execution of the contract;
 - (e) evidence that the Broadband Connect Customer is receiving the Broadband Connect Service; and
 - (f) evidence that You have confirmed the status of ISDN service in the area to which the claim relates, and the dates when such status was checked.
- 10.6 Without limiting Our rights under this Agreement, any deficiencies in fulfilling Your obligations shown in Reports provided by You under clauses 10.2 or 10.3, or in review of Your performance under clause 21, must be rectified by You promptly.
- 10.7 Subject to Our obligations in respect of Confidential Information under this Agreement, We will use Reports provided by You under this clause for the following purposes only:
- (a) to review, assess and report publicly on the performance of Broadband Connect Services and Broadband Connect Providers, including in relation to compliance with the terms of this Agreement;
 - (b) to prepare and publish an evaluation of the Broadband Connect program; and
 - (c) to assist in the development of other relevant Commonwealth policies and programs.
- 10.8 The audits referred to in clause 10.4 must be carried out by an Approved Auditor and must comply with the Australian Auditing Standards.
- 10.9 Within 5 Working Days of our written request, You must provide to Us Your estimate of monthly claims for the immediate 6 month period in a format approved by Us.
- 10.10 You agree to:
- (a) provide all reasonable assistance required by Us;
 - (b) respond to all Our reasonable requests; and

- (c) provide any information We reasonably require, in relation to conducting a review or evaluation of the Program.
- 10.11 Subject to clause 8, You acknowledge that the Program's design, operation, administration or any other aspect of the Program including pricing may be altered after 30 June 2006.
- 10.12 You must notify Us immediately in writing if You lodge a change in Your officeholders with ASIC and You must attach a copy of the relevant ASIC form as proof of lodgement.
- 10.13 You must notify Us immediately in writing of any change in shareholding which either:
 - (a) Effects a change in control; or
 - (b) Affects more than 20% of Your issued share capital in a single transaction.
- 10.14 The operation of this clause 10 survives the expiration or earlier termination of the Term of this Agreement.

11 AUDIT REQUIREMENTS

- 11.1 An audit of part or all of Your activities in connection with this Funding Agreement may be undertaken at any time by Us, or Our nominee. These audits may include investigation of:
 - (a) Your receipts in respect of the Funding;
 - (b) Your actual Allowable Costs;
 - (c) Your practices and procedures as they relate to this Agreement, including security procedures;
 - (d) the manner in which You perform Your obligations under this Agreement;
 - (e) the accuracy of Your Reports, invoices and financial statements in relation to the provision of the Broadband Connect Service and the calculation and payment of Funds under this Agreement;
 - (f) Your compliance with Your confidentiality, privacy, and security obligations under this Agreement;
 - (g) the requirements, if any, described in Schedule 1; and
 - (h) any other matters determined by Us to be relevant to the performance of Your obligations under this Agreement.
- 11.2 You must participate co-operatively in audits under this Agreement. Audits may be conducted at the frequency, and in relation to the matters,

specified by Us, including on an ad hoc basis, for the purpose of ensuring that this Agreement is being properly performed and administered and for ensuring accountability for payment of Funding.

- 11.3 We may appoint an independent Approved Auditor to assist in the audits.
- 11.4 Within 30 Working Days after the audit is completed, You must, at no cost to Us, promptly take corrective action to rectify any defect, error or omission identified in any audit report in the way You have:
 - (a) observed, or failed for observe, Your obligations under this Funding Agreement; or
 - (b) claimed for an Incentive Payment.
- 11.5 Nothing in clause 11.4 will limit in any way any rights We may have or may wish to exercise under this Agreement.
- 11.6 If an audit under this clause 11 reveals that You do not have the Records required to be kept under clause 10.5 to support a claim for an Incentive Payment, that claim will be deemed invalid and any Funds received by You for that claim will be repayable with Interest in accordance with clauses 5.34 to 5.36.
- 11.7 This clause 11 survives for a period of seven years after the date the Agreement expires or is terminated.

12 EXIT STRATEGY

- 12.1 You must comply with the Exit Strategy detailed in Schedule 2.
- 12.2 The operation of this clause 12 survives the expiration or earlier termination of the Term of this Agreement.

13 TAXES, DUTIES AND GOVERNMENT CHARGES

- 13.1 Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by You.
- 13.2 The provisions of this clause in respect of GST apply if You are registered or are required to be registered for GST.
- 13.3 We are registered in accordance with the GST Act and will notify You of any change in Our Australian Business Number or GST registration status immediately We are notified of any change. You must notify Us in writing of any change to Your Australian Business Number or GST registration immediately You are notified of any change. Each Party agrees to notify the other if it ceases to satisfy any of the requirements of *Goods and Services Tax Ruling 2000/10* dated 10 May 2000 that came into effect on 1 July 2000.

- 13.4 The Funds and Travel Allowance paid by Us under this Agreement exclude GST for supplies provided by You to Us in accordance with this Agreement and which are Taxable Supplies within the meaning of the GST Act.
- 13.5 If GST is imposed on a supply provided by You to Us in accordance with this Agreement, We must pay You the amount of GST imposed in addition to the consideration We are required to provide You for the supply in question.
- 13.6 In consideration of Your undertaking not to issue Tax Invoices We will issue RCTI in respect of the Taxable Supplies (including Travel Allowance).
- 13.7 We will issue the RCTI within 28 days of determining the value of the Taxable Supplies to which the RCTI relates. Adjustment Notes relating to Taxable Supplies, for which a RCTI has been issued, will be issued within 28 days of the adjustment date.
- 13.8 In consideration of Our undertaking to issue RCTI pursuant to subclause 11.5 You will not issue any Tax Invoices in respect of the Taxable Supplies, unless:
- (a) We cease to comply with the requirements of *Goods and Services Tax Ruling 2000/10*; or
 - (b) We for any reason notify You that We will not issue an RCTI in respect of the Taxable Supplies.
- 13.9 The Funding payable by Us to You under this Agreement and Allowable Costs must not include any amount which represents GST paid by You on Your own inputs and for which an input tax credit is available to You.
- 13.10 If a payment to satisfy a claim or a right to claim under or in connection with this Agreement (for example, a claim for damages for breach of the Agreement) gives rise to a liability to pay GST, the payer must also pay the amount of that GST (except any GST for which the payee is entitled to an input tax credit)
- 13.11 If a Party has a claim under or in connection with this Agreement for a cost on which that Party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that Party is entitled to an input tax credit).
- 13.12 Any refund under clauses 5.34, 7.6(b) and 24.4 must be inclusive of GST and must be accompanied by any Adjustment Note required under the GST Act relating to Taxable Supplies.

14 COMMONWEALTH MATERIAL

- 14.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for

the purposes of this Agreement and in accordance with any conditions or restrictions specified in Schedule 1.

- 14.2 Upon the expiration of the Funding Period or earlier termination of the Term of the Agreement, You may retain all Commonwealth Material remaining in Your possession, unless otherwise specified in Schedule 1.
- 14.3 You must keep safely Commonwealth Material You have been given for the purposes of this Agreement.
- 14.4 The operation of this clause 14 survives the expiration or earlier termination of the Term of this Agreement.

15 INTELLECTUAL PROPERTY

- 15.1 Subject to this clause 15, as between Us and You (but without affecting the position between You and a third party) Intellectual Property Rights in Activity Material vest immediately in You.
- 15.2 You grant to Us a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in any Report provided by You to Us for any Commonwealth purpose, subject to the following restrictions:
 - (a) We must comply with the confidentiality provisions of this Agreement in respect of any Confidential Information contained in such Reports; and
 - (b) We must not use, adapt or exploit the Reports in such a way as to make them incorrect or misleading.
- 15.3 This clause 15 does not affect the ownership of any Intellectual Property Rights in any Existing Material.
- 15.4 You:
 - (a) must, if requested by Us to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 15; and
 - (b) warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material and the Existing Material in accordance with this clause 15.
- 15.5 This clause does not apply to any Commonwealth Material incorporated in the Reports.
- 15.6 The operation of this clause 15 survives the expiration or earlier termination of this Agreement.

16 DISCLOSURE OF INFORMATION

- 16.1 Subject to subclause 16.5, You or We must not, without the prior written consent of the other, use or disclose any Confidential Information of the other.
- 16.2 In giving written consent to use or disclose its Confidential Information, a Party may impose such conditions as it thinks fit, and the other Party agrees to comply with these conditions.
- 16.3 We may at any time require You to arrange for:
- (a) Your Advisers; or
 - (b) any person with a Third Party Interest;
- to give a written undertaking in the form of a deed relating to the use and non-disclosure of Our Confidential Information.
- 16.4 If You receive a request under subclause 16.3, You must promptly use all reasonable endeavours to arrange for all such undertakings to be given provided that if no undertaking is given, You must not disclose any Confidential Information to that relevant party.
- 16.5 The obligations on You and Us under this clause 16 will not be taken to have been breached to the extent that Confidential Information:
- (a) is disclosed by You or Us to Our Advisers or employees solely in order to comply with obligations, or to exercise rights, under, or advise in relation to, this Agreement;
 - (b) is disclosed to Your or Our internal management personnel, solely to enable effective management or auditing of Agreement-related activities;
 - (c) is disclosed by Us to Our Minister;
 - (d) is disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia];
 - (e) is required to be disclosed to comply with any law, court order or binding directive of any regulatory authority or comply with the listing rules of any stock exchange on which Your securities are listed or quoted;
 - (f) is disclosed by Us and is information in a material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property Rights in relation to that material form, has vested in, or is assigned to, Us under this Agreement or otherwise, and that disclosure is permitted by that licence or otherwise; or

(g) is in the public domain otherwise than due to a breach of this clause 16.

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

(a) pursuant to paragraphs 16.5(a) or (b) the disclosing party must:

(i) notify the receiving person that the information is Confidential Information; and

(ii) not provide the information unless the receiving person agrees to keep the information confidential; or

(b) pursuant to paragraphs 16.5 (c), (d) or (e) – the disclosing party must notify the receiving party that the information is Confidential Information; and

(c) You or We must use all reasonable endeavours to ensure any person receiving the Confidential Information of the other does not disclose the information except in the circumstances permitted in clause 15.4.

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

16.8 Where You and We agree in writing after the Date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes part of this Agreement (and Schedule 1 is deemed to be varied accordingly), on the date by which both You and We have signed this documentation.

16.9 The obligations under this clause 16 continue, notwithstanding the expiry or termination of this Agreement:

(a) in relation to an item of information described in Schedule 1 – for the period set out in Schedule 1 in respect of that item; and

(b) in relation to any information which You and We agree in writing after the Date of this Agreement is to constitute Confidential Information for the purposes of this Agreement – for the period agreed by You and Us in writing in respect of that information.

16.10 Nothing in this clause 16 derogates from any obligation which You may have either under the Privacy Act, or under this Agreement, in relation to the protection of Personal Information.

17 PROTECTION OF PERSONAL INFORMATION

- 17.1 This clause applies only where You deal with Personal Information when, and for the purpose of, conducting the Activity under this Agreement.
- 17.2 You agree to be treated as a ‘contracted service provider’ within the meaning of section 6 of the Privacy Act, and agree in respect to the conduct of the Activity under this Agreement:
- (a) to use or disclose Personal Information obtained during the course of conducting the Activity under this Agreement, only for the purposes of this Agreement or as otherwise agreed with the person the subject of the Personal Information;
 - (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
 - (c) to carry out and discharge the obligations contained in the IPPs as if You were an agency under that Act;
 - (d) to notify individuals whose Personal Information You hold, that complaints about Your acts or practices may be investigated by the Privacy Commissioner who has power to award compensation against You in appropriate circumstances;
 - (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing), a National Privacy Principle (NPP) (particularly NPPs 7 to 10) or an Approved Privacy Code (APC), where that section, NPP or APC is applicable to You, unless:
 - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Agreement; or
 - (ii) in the case of an NPP or an APC - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Agreement, and the activity or practice which is authorised by this Agreement is inconsistent with the NPP or APC;
 - (f) to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an NPP or an APC binding a Party to this Agreement;
 - (g) to immediately notify Us if You become aware of a breach or possible breach of any of the obligations contained in, or

referred to in, this clause 17, whether by You or any subcontractor;

- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are not inconsistent with the requirements of this clause 17; and
- (i) to ensure that any of Your employees who are required to deal with Personal Information for the purposes of this Agreement are made aware of Your obligations set out in this clause 17.

17.3 You agree to ensure that any subcontract entered into for the purpose of fulfilling Your obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as You have under this clause, including the requirement in relation to subcontracts.

17.4 You agree to indemnify Us in respect of any loss, liability or expense suffered or incurred by Us which arises directly or indirectly from a breach of any of Your obligations under this clause 17, or a subcontractor under the subcontract provisions referred to in subclause 17.3.

17.5 In this clause 17, the terms 'agency', 'Approved Privacy Code' (APC), 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meanings as they have in section 6 of the Privacy Act, and 'subcontract' and other grammatical forms of that word has the meaning given in section 95B(4) of the Privacy Act.

17.6 The operation of this clause 17 survives the expiration or earlier termination of the Term of this Agreement in respect of Broadband Connect Customers who have contracted with You for the provision of Broadband Connect Services during the Term of this Agreement.

18 INDEMNITY

18.1 You indemnify (and keep indemnified) Us against any:

- (a) loss or liability incurred by Us;
- (b) loss of or damage to Our property; or
- (c) loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and a cost of time spent, resources used, or disbursements paid by Us;

arising from:

- (d) any claim, suit, demand, action or proceeding against Us in connection with this Agreement to the extent that the liability,

loss, damage or expense was caused or contributed to by Your fault;

- (e) the use by Us of the Reports, including any claims by third parties about the ownership or right to use Intellectual Property Rights in Reports, but only to the extent that such Reports have not been altered by anyone other than You; or
- (f) the use by Us of a Broadband Connect Customer's Personal Information in accordance with this Agreement.

18.2 The indemnity in clause 18.1(e) only applies where:

- (a) We give written notice to You of any claim or threatened or potential claim by a third party as soon as possible;
- (b) We permit You, at Your expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow; and
- (c) We provide You with all reasonable assistance at Your expense.

18.3 Your liability to indemnify Us under this clause 18 will be reduced proportionally to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability. In addition, We will take all reasonable steps to mitigate all losses, liabilities and expenses in respect of which We may claim the benefit of the indemnity under clause 18.1.

18.4 Our right to be indemnified under this clause 18 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant liability, damage, loss, or expense.

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

18.6 The operation of this clause 18 survives the expiration or earlier termination of this Agreement.

19 INSURANCE

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

19.2 All insurance under this clause 19 is to be taken out with an insurer recognised by the Australian Prudential Regulation Authority or regulated by a State/Territory Auditor-General or as otherwise agreed with Us, and whenever requested, You must provide Us, within 10 Working Days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

19.3 The operation of this clause 19 survives the expiration or earlier termination of this Agreement.

20 CONFLICT OF INTEREST

- 20.1 You must not, and must ensure that any of Your employees, agents or subcontractors do not, engage in any activity or obtain any interest during the Term of this Agreement which constitutes a Conflict.
- 20.2 If during the Term of this Agreement, a Conflict arises, You must:
- (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
 - (b) make full disclosure to Us of all relevant information relating to the Conflict; and
 - (c) take such steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.
- 20.3 If You fail to notify Us under this clause 20, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate the Term of this Agreement in accordance with clause 24 [Termination for Default].

21 ACCESS TO PREMISES AND RECORDS

- 21.1 You must give Us, the Auditor-General, the Privacy Commissioner and persons authorised by Us (referred to in this clause 21 collectively as 'those permitted') access to premises at which and equipment on which Records associated with this Agreement are stored at all reasonable times and allow those permitted to inspect and copy Records in Your possession or control, to verify Your compliance with this Agreement or review Your performance under this Agreement. You must also give those permitted reasonable access to Your employees, for the same purpose.
- 21.2 You must provide all reasonable assistance requested by those permitted when they exercise the rights under subclause 21.1.
- 21.3 The rights referred to in subclause 21.1 are subject to:
- (a) the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
 - (b) Your reasonable requirements as to security, confidentiality and health and safety procedures.
- 21.4 The requirement for access as specified in subclause 21.1 does not in any way reduce Your responsibility to perform Your obligations in accordance with this Agreement.

21.5 This clause 21 applies for the Term of this Agreement and for a period of 3 years from the date of expiration or earlier termination of the Term of this Agreement.

22 DELAY

- 22.1 You must take all reasonable steps to minimise delay in completion of the Activity.
- 22.2 If You become aware that You will be materially delayed in progressing or completing the Activity in accordance with this Agreement, You must promptly notify Us in writing of the cause and nature of the delay. You are to detail in the notice the steps You will take to contain the delay.
- 22.3 On receipt of a notice of delay, We may at Our option:
- (a) notify You in writing of a period of extension to complete the Activity and vary this Agreement accordingly;
 - (b) notify You in writing of reduction in the scope of the Activity and any adjustment to the Funds for You to complete the reduced Activity and vary this Agreement accordingly; or
 - (c) terminate this Agreement under clause 24 [Termination for Default] or take such other steps as are available under this Agreement.
- 22.4 Unless We take action under subclause 22.3, You are required to comply with the time frame for progressing and completing the Activity as set out in this Agreement.
- 22.5 If You become aware that You will be materially delayed in progressing or completing the Activity in accordance with this Agreement and do not notify Us in accordance with subclause 22.2, We may, at Our sole discretion, terminate this Agreement.

23 TERMINATION AND SUSPENSION

- 23.1 We may, at any time by written notice to You expressly referring to this clause 23, terminate the Term of this Agreement in whole or reduce the scope of this Agreement without prejudice to the rights, liabilities, or obligations of either Party accruing prior to the date of termination. If this Agreement is terminated or reduced in scope We will only be liable for:
- (a) subject to subclause 23.3, payments under the payment provisions of this Agreement; and
 - (b) subject to subclauses 23.4, 23.5 and 23.6, any reasonable costs incurred by You and directly attributable to the termination of the Term of this Agreement or reduction in scope of the Agreement.

- 23.2 Upon receipt of a notice of termination or reduction in scope You must:
- (a) cease or reduce the performance of Your obligations under this Agreement in accordance with the notice;
 - (b) take all reasonable steps to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the notice;
 - (c) if the termination or suspension is related to an overpayment of Funds to You or may otherwise result in You being required to repay any Funds to Us and We so direct, hold any such Funds in utmost good faith for use only in accordance with Our written directions, and cease all other dealings with the Funds; and
 - (d) Comply with any written directions from Us requiring the publication of a statement in relation to the reduction in scope or termination of this Agreement.
- 23.3 Where We terminate the Term of this Agreement under subclause 23.1 We will not be obliged to pay to You any amount of the Funds except to the extent that those monies relate to the supply of a Broadband Connect Service to a Broadband Connect Customer before the date notice of termination given under subclause 23.1 is deemed to be received in accordance with subclause 38.3 [Notices].
- 23.4 If there is a reduction in scope of the obligations under this Agreement, Our liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Agreement.
- 23.5 Our liability to pay any compensation under or in relation to this clause 23 is subject to:
- (a) Your strict compliance with this clause 23; and
 - (b) Your substantiation of any amount claimed under paragraph 23.1(b).
- 23.6 We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 23 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

24 TERMINATION FOR DEFAULT

- 24.1 Without limiting Our rights at law to take action in respect of any breach of this Agreement, if:
- (a) You fail to fulfil, or are in breach of any of Your material obligations under this Agreement, and do not rectify the

omission or breach within 10 Working Days of receiving a notice in writing from Us to do so;

- (b) You are unable to pay all Your debts as and when they become due and payable or You fail to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (c) proceedings are initiated with a view to obtaining an order for Your winding up or any shareholder, member or director convenes a meeting for the purpose of considering or passing of any resolution for Your winding up;
- (d) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or an order has been made for the purpose of placing You under external administration;
- (e) in relation to this Agreement, You breach any law of the Commonwealth, or of a State or Territory;
- (f) You cease to carry on business;
- (g) if Item 6 of Schedule 1 is completed, You cease to have a written binding agreement with the Broadband Connect Wholesaler during the Contract Period to enable You to supply the Broadband Connect Service in accordance with this Agreement;
- (h) We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding; or
- (i) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity;

then You must notify Us as soon as possible and We may immediately terminate the Term of this Agreement by giving written notice to You of the termination.

24.2 If:

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

- (ii) We do not consider Your response to be a satisfactory answer to the complaint,

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

- 24.3 Where We terminate the Term of this Agreement under subclauses 24.1 or 24.2 We will not be obliged to pay to You any outstanding amount of the Funds except to the extent that those monies relate to the supply of a Broadband Connect Service to a Broadband Connect Customer before the date notice of termination given under subclauses 24.1 or 24.2 is deemed to be received in accordance with subclause 38.3 [Notices].
- 24.4 Where We terminate the Term of this Agreement under subclause 24.1(a) for Your failure to comply with clause 5.6, You must refund to Us all Funding paid to You under this Agreement in respect of the particular Broadband Connect Services provided to Broadband Connect Customers which are the subject of the breach within 20 Working Days of a written notice from Us.
- 24.5 If We notify You under clause 23.5 that an amount is to be refunded to Us, and the amount is not refunded to Us within 20 Working Days of notification, Interest will accrue and be payable on the amount after the expiry of the 20 Working Days, until the amount is paid in full.
- 24.6 Any amount owed to Us under subclause 24.4, and any Interest owed under subclause 24.5, will without prejudice to any other rights available to Us, be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.
- 24.7 The operation of clauses 24.3 to 24.7 survives the expiration or earlier termination of the Term of this Agreement.

25 YOUR RIGHT TO TERMINATE

- 25.1 You may terminate this Agreement by giving 40 Working Days written notice to Us of the termination. Upon termination of this Agreement, We will not be obliged to pay to You any further Funding except where the right to payment arose prior to the date of termination.

26 SUBCONTRACTING

- 26.1 You are fully responsible for the performance of Your obligations under this Agreement, even though You may have subcontracted any of them.
- 26.2 You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Agreement.
- 26.3 You must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not

complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

27 ACKNOWLEDGMENT AND PUBLICITY

27.1 You must, in all publications, promotional materials, marketing and advertising materials, public announcements and activities by You or on Your behalf in relation to the Activity, or any products, processes or inventions developed as a result of it, acknowledge the financial and other support You have received from Us, in the manner, if not set out in Schedule 1, then to be approved by Us prior to its use.

27.2 Without limiting clause 27.1, You must in all:

- (a) publicity brochures and other printed material for a Broadband Connect Service and the Activity;
- (b) websites relating to a Broadband Connect Service and the Activity;
- (c) events involving the promotion of a Broadband Connect Service and the Activity; and
- (d) speeches relating to a Broadband Connect Service and the Activity;

by You and on Your behalf acknowledge the financial and other support You have received from Us, in the manner, if not set out in Schedule 1, then to be approved by Us prior to its use.

27.3 You must:

- (a) invite Our personnel to any publicity events that You undertake in relation to the Activity; and
- (b) support any Australian Government publicity associated with the Program as reasonably requested by Us.

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

27.5 This clause 27 applies until the end of the Program.

28 COMPLIANCE WITH LAWS AND OUR POLICIES

- 28.1 You must, in carrying out Your obligations under this Agreement:
- (a) comply with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or Local Authority, including those listed in Schedule 1. You should note that under the *Criminal Code* (Cth) section 137.1 giving false or misleading information is a serious offence;
 - (b) comply with any of Our policies copies of which have been provided by Us to You in writing, including those listed in Schedule 1;
 - (c) hold a current Carrier Licence where required under the *Telecommunications Act 1997*, and notify Us within 5 Working Days if You cease to hold a current Carrier Licence at any time during the Term of this Agreement;
 - (d) be a current member of the Telecommunications Industry Ombudsman scheme where required under the *Telecommunications Act 1997*, and notify Us within 5 Working Days if You cease to be a current member of the scheme at any time during the Term of this Agreement; and
 - (e) comply with all reasonable directions and procedures relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by Us or as might reasonably be inferred from the use to which the premises or facilities are being put.

29 NEGATION OF LEGAL RELATIONSHIP OF EMPLOYMENT, PARTNERSHIP AND AGENCY

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

30 ENTIRE AGREEMENT, VARIATION AND SEVERANCE

- 30.1 This Agreement records the entire agreement between You and Us in relation to its subject matter.
- 30.2 Except for action We are expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by You and Us.

- 30.3 If a court or tribunal says any provision of this Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.

31 WAIVER

- 31.1 If either You or We do not exercise (or delay in exercising) any of Your or Our rights, that failure or delay does not operate as a waiver of those rights.
- 31.2 A single or partial exercise by You or Us of any of Your or Our rights does not prevent the further exercise of any right.
- 31.3 Waiver of any provision of, or right under, this Agreement:
- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
 - (b) is effective only to the extent set out in the written waiver.
- 31.4 In this clause 31, 'rights' means rights or remedies provided by this Agreement or at law.

32 ASSIGNMENT AND NOVATION

- 32.1 You must not assign Your rights under this Agreement without prior written approval from Us.
- 32.2 You agree not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting Us.
- 32.3 You can only novate your rights and obligations under this Agreement;
- (a) to another registered Broadband Connect Provider; and
 - (b) having first obtained our written consent to the proposed novation.

33 INCORPORATION

- 33.1 You warrant that Your Constitution is not, and will not become, inconsistent with this Agreement.
- 33.2 You must provide a copy of Your Constitution to Us upon request.
- 33.3 You must obtain Our written approval to any amendments to Your Constitution which may affect Your eligibility for the Funding or Your capacity to comply with this Agreement. If You alter Your Constitution in breach of this clause We may terminate this Agreement in accordance with clause 24 [Termination for Default]. For the purposes of this clause 33
- 33.4 In this clause '**Constitution**' means (depending on the context):

- (a) a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution; or
- (b) in relation to any other kind of body:
 - (i) the body's charter, rules or memorandum; or
 - (ii) any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members.

34 FUNDING PRECONDITION

34.1 You agree that it is a precondition of entitlement to the Funding that You must:

- (a) have an Australian Business Number ("ABN");
- (b) immediately notify Us if You cease to be registered with an ABN;
- (c) correctly quote the ABN on all documentation to Us;
- (d) supply proof of GST status, if requested by Us; and
- (e) immediately notify Us of changes to Your GST status.

35 DISPUTE RESOLUTION

35.1 Subject to subclause 35.3, both You and We agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause has been utilised.

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

- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
- (b) the Parties will try to resolve the dispute through direct negotiation by persons to whom they have given authority to resolve the dispute;
- (c) the Parties have 10 Working Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- (d) if:
 - (i) there is no resolution of the dispute;

- (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
- (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Working Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Working Days,

then, either You or We may commence legal proceedings.

35.3 This clause 35 does not apply to the following circumstances:

- (a) either You or We commence legal proceedings for urgent interlocutory relief; or
- (b) action by Us under or purportedly under clauses 23 [Termination with Costs] or 24 [Termination for Default];
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

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

35.5 The operation of this clause 35 survives the expiration or earlier termination of the Term of this Agreement.

36 APPLICABLE LAW AND JURISDICTION

36.1 The laws of the Australian Capital Territory apply to this Agreement.

36.2 Both You and We agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Agreement.

37 LIAISON AND MONITORING

37.1 You must:

- (a) liaise with and provide information to Us as reasonably required by Us; and
- (b) comply with all Our reasonable requests, directions, or monitoring requirements,

in relation to Your obligations under this Agreement.

37.2 You may nominate, from time to time, a person who has authority to receive and sign notices and written communications for You under this Agreement and accept any request or direction in relation to the Activity.

38 NOTICES

- 38.1 A Party giving notice or notifying under this Agreement must do so in writing or by electronic mail or facsimile transmission:
- (a) directed to the recipient's address, as varied by any notice; and
 - (b) hand delivered or sent by pre-paid post or transmitted electronically to that address.
- 38.2 The parties' address details are as specified in Schedule 1.
- 38.3 A notice given in accordance with subclause 38.1 is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, 5 Working Days after the date of posting unless it has been received earlier;
 - (c) if transmitted electronically, upon actual receipt by the addressee.

Executed as a Deed on

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

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

.....

[print full name]

.....

sign here

in the presence of:

.....

.....

print name of witness

witness sign here

[For an incorporated association not using Common Seal:]

SIGNED, SEALED AND DELIVERED
for and on behalf of

[insert name of Funding Recipient]
ABN [insert] by [insert name of
Signatory] who by signing warrants that
they have the authority to bind [insert
name of Recipient used previously] in
the presence of:

Signatory

.....

sign here

Witness

.....

sign here

Name and occupation of Witness

.....

please print

[For an incorporated association using Common Seal]

The Common Seal of

[name of recipient], ABN [insert], was
affixed to this document in accordance
with its rules.

common seal

Authorised Signatory

.....

sign here

Name of Authorised Signatory

.....

please print

In the Presence of

Witness

.....

sign here

Name of Witness

.....

please print

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

[Use this if company IS using Seal]

The Common Seal of

[name of recipient], ABN [insert], was affixed to this document by authority of its Directors.

Affix common seal

Director

.....

sign here

Name of Director

.....

please print

Director/Secretary

.....

sign here

Name of Director/Secretary
please print

Use this if company is NOT using its Common Seal:

SIGNED, SEALED AND DELIVERED
for and on behalf of

[name of recipient], ABN [insert],
pursuant to section 127(1) of the
Corporations Act 2001 (Cth) by:

Director
sign here

Name of Director
please print

Director/Secretary
sign here

Name of Director/Secretary
please print

**OR OTHER MODE OF ATTESTATION REQUIRED BY COMPANY
CONSTITUTION**

Executed for and on behalf of the
partnership **[name of partnership]** [ABN]
by its authorised representative in the
presence of:

witness sign here

authorised representative sign here

please print

please print

Address of witness

SCHEDULE 1

1 PROGRAM (SUBCLAUSE 1.1)

- 1.1 The Program aims to achieve prices for Higher Bandwidth Services in regional Australia that are comparable to metropolitan services.
- 1.2 The Program is targeted at residential customers, small business and small not-for-profit organisations.

2 FUNDING PERIOD

- 2.1 The Funding Period commences on the Date of this Agreement and ends on 30 June 2006.

3 BROADBAND CONNECT SERVICE

[Description of Broadband Connect Service to be inserted including data speeds, price at which service is to be offered, mandatory functionality and features, timeframes for connection and restorations of the services. The description of a Broadband Connect Service also needs to make reference to the provisions in respect to registering Broadband Connect compliant Pricing for Pre-existing Customers in section 4.6.5 of the Guidelines.]

- 3.1 You will offer [platform] Broadband Connect service[s] on the conditions set out in items [ie 3.3 to 3.6 if applicable] and with the following specifications:

3.1.1 Service Name: **[insert name] Threshold Service**

- Peak download data speed: ?? kbps
- Peak upload data speed: ?? kbps
- Average download data speed: ?? kbps
- Average upload data speed: ?? kbps
- Monthly download limit: ?? [Mb or GB]
- Monthly access fee: \$
- Installation fee: \$
- Hardware: \$
- Excess usage: ?c/MB
- Three-year package price: \$

3.1.2 Service name: **[insert name]**

- [as 3.1.1 above]

- 3.2 You will offer [different platform to above] Broadband Connect service[s] on the conditions set out in items [ie 3.3 to 3.6 if applicable] and with the following specifications:
- 3.3 Service name: [insert name] Threshold Service
- [as under 3.1.1 above]
- 3.4 [timeframe in which customers must be connected to service]
- 3.5 [timeframe in which provider must rectify faults or restore service]
- 3.6 [helpdesk operating hours and brief description of fault reporting service outside these hours]
- 3.7 [description of technology platform and equipment to be used for customers]

4 SERVICE AREA

[Insert description of service area with sufficient specificity to enable a clear understanding of the location and whether premises fall within or outside that area. The Service Area must not include any area in a Metropolitan Exclusion Area - refer to the Guidelines for further information. The service area should only include areas in which services will be offered during the term of this Agreement].

5 RELEVANT BROADBAND CONNECT SERVICE AND SERVICE AREA

<i>Broadband Connect Service</i>	<i>Relevant Service Area</i>
----------------------------------	------------------------------

6 BROADBAND CONNECT WHOLESALER

7 BROADBAND CONNECT PROVIDER'S PROPORTION

- 7.1 The Broadband Connect Provider's Proportion is [insert amount or % of Incentive Payment].

8 BROADBAND CONNECT WHOLESALER'S PROPORTION

- 8.1 The Broadband Connect Wholesaler's Proportion is [insert amount or % of Incentive Payment].

9 PARTIAL INCENTIVE PAYMENT FOR PRE-EXISTING CUSTOMERS

- 9.1 The partial Incentive Payment for Pre-existing Customers is \$[insert amount] (exclusive of GST).

10 FUNDING CAP (CLAUSES 7.2, 7.10, 7.12)

The Funding Cap for the Funding Period is \$

The Funding Cap for the Period of the Program is \$

11 ALLOWABLE COSTS (CLAUSES 7.2, 7.5, 7.6, 7.7, 7.8, 7.9)

11.1 Allowable Costs are limited to:

- (a) costs of compliance with the Program;
- (b) costs that are incurred in advance of signing up Customers; and
- (c) costs that are incurred for each Customer signed up.

1. Costs of compliance with the Program

11.2 These are the costs of participating in and complying with the Program and performing the Activity, and include the following costs:

- (a) developing products and systems for performance testing;
- (b) developing systems to make it possible for You to comply with the reporting requirements of the Program under this Agreement; and
- (c) administrative costs of other arrangements that are specific to the Program and the Activity, and would not be incurred in the normal operation of the business.

2. Costs that are incurred in advance of signing up Customers

11.3 These include up-front costs that are incurred to enable You to sign up future Customers for a Broadband Connect Service. These would typically be 'lumpy' costs, and would include costs for:

- (a) planning approvals;
- (b) site acquisition;
- (c) building structures and enclosures to house equipment;
- (d) establishing an uninterrupted power supply;
- (e) purchasing and installing of equipment such as switching equipment, where directly related to switching a Higher Bandwidth Service, DSLAM chassis and racks etc.;

- (f) installing cabling and associated facilities for a local access network;
- (g) wireless towers, transceivers and repeaters;
- (h) replacing a blocking PGS or RIM with systems that can service more than one Customer;
- (i) terrestrial backhaul; and
- (j) satellite transponder capacity.

3. Costs that are incurred for each Customer signed up

11.4 These are costs that are incurred when connecting each new Customer to a Broadband Connect Service. Key examples of these costs are the cost of items such as:

- (a) CPE and its installation;
- (b) DSLAM line cards;
- (c) one off ULL connection fees; and
- (d) wholesale charges, as a reasonable proxy for other Allowable Costs identified in category 2 above.

11.5 Costs are only allowable if incurred to provide a Broadband Connect Service. Hence, the cost of any items, like backhaul or transponder capacity for example, that are shared between Broadband Connect Services and other services, may only be included as Allowable Costs to the extent these costs are incurred in supplying a Broadband Connect Service. You are required to justify the allocation of any portion of shared costs between the Broadband Connect Service and other services provided by You for the purpose of allocating Allowable Costs.

11.6 Costs that are excluded from Allowable Costs are the following:

- (a) general administrative costs of operating the business, including staff costs, and corporate and business overheads, such as office rental, power, computing, insurance and travel;
- (b) general marketing costs unless particular marketing costs can be demonstrated to be additional to normal requirements, and relate to the special requirements of the Agreement;
- (c) network and technical costs that are of a general nature and cannot be specifically or sufficiently identified and apportioned to the cost of providing a Broadband Connect Services; and
- (d) costs incurred before the Start of the Program.

12 DISCLOSURE OF CONFIDENTIAL INFORMATION (SUBCLAUSE 1.1, CLAUSE 16)

OUR CONFIDENTIAL INFORMATION

AGREEMENT PROVISIONS/SCHEDULE/ANNEXURES

Item	Period of Confidentiality

AGREEMENT-RELATED MATERIAL

Item	Period of Confidentiality

YOUR CONFIDENTIAL INFORMATION

AGREEMENT PROVISIONS/SCHEDULE/ANNEXURES

Item	Period of Confidentiality

AGREEMENT-RELATED MATERIAL

Item	Period of Confidentiality

13 INSURANCE (SUBCLAUSE 19.1)

13.1 You must maintain:

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

these are linked or occur in connection with one another from one original cause, as the case may be.

14 ACKNOWLEDGMENT AND PUBLICITY (SUBCLAUSE 27)

14.1 You must acknowledge Our Funding in the manner advised to You by DCITA from time to time.

15 COMPLIANCE WITH LAWS AND POLICIES (SUBCLAUSES 28.1 AND 28.1(B))

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

- (a) *Equal Opportunity for Women in the Workplace Act 1999;*
- (b) *Racial Discrimination Act 1975;*
- (c) *Sex Discrimination Act 1984;*
- (d) *Disability Discrimination Act 1992;*
- (e) *Crimes Act 1914;*
- (f) *Criminal Code Act 1995.*

16 NOTICES (SUBCLAUSE 38.2)

16.1 Our details are as follows:

Name: Susan Strickland

Position: Manager, Regional Broadband Operations Section

Address: Department of Communications, Information Technology and the Arts

GPO Box 2154

Canberra ACT 2601

Telephone: 02 6271-1565

Facsimile: 02 6271-1886

E-mail: broadbandconnect@dcita.gov.au

16.2 Your details are as follows:

Name:

Position:

Address:

Telephone:

Facsimile:

E-mail:

SCHEDULE 2 EXIT STRATEGY

SCHEDULE 3 YOUR ESTIMATE OF ALLOWABLE COSTS

[NB - to be quoted GST exclusive]

SCHEDULE 4 Your Depots

**SCHEDULE 5 Broadband Connect Terms and Conditions for
each Broadband Connect Service**

SCHEDULE 6 Broadband Connect Guidelines