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**Australian Government**

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

## **Australian Broadband Guarantee**

### **Program Guidelines**

**Effective 1 July 2007 to 30 June 2008**

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## 1. Introduction

### 1.1 Objectives of the Australian Broadband Guarantee

The Australian Broadband Guarantee aims to provide access to affordable metro-comparable broadband services for all Australians. It complements the Australian Government's Broadband Connect Infrastructure Program in addressing premises not served by that program or by commercial developments. It also replaces both the Broadband Connect Incentive program and the Metro Broadband Connect program.

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

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

ISPs considering applying to participate in the Australian Broadband Guarantee Program should therefore consider whether their financial position, and business and operational plans would enable them to maintain sustainable businesses without Australian Government financial assistance.

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

In order to assist in achieving the Program objectives described in section 1.1, DCITA expects all Registered Providers under the Australia Broadband Guarantee to adhere to the following key requirements in offering Services to Customers.

All Providers must provide customers with:

- reliable service offerings that are metro-comparable in terms of speed, data usage and price;
- quality customer service (including expeditious follow up where problems arise with the Service);
- proper complaint handling procedures that are consistent with the TIO Code of Practice and ACIF Code of Practice;
- fair Terms and Conditions consistent with the Guidelines, *Telecommunications Act 1997* and related legislation, *Trade Practices Act 1974*, and other consumer legislation, and codes issued by the Communications Alliance (formerly Australian Communications Industry Forum) and the TIO;
- accurate and truthful advertising of Services which complies with State/Territory and Commonwealth laws, including acknowledging the Australian Broadband Guarantee, consistent with the requirements of these Guidelines; and

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- scalable and improved services into the future/; that is, the Provider needs to offer a range of Service Plans now and have capacity to upgrade the speed and functionality of those Services in the future.

In participating in the program, all Providers must:

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

DCITA seeks to work co-operatively with all Providers and the conduct of its officers is regulated by Commonwealth legislation, including the *Public Service Act 1999*, the *Financial Management and Accountability Act 1997*, the Australian Public Service Values and Code of Conduct and DCITA's Client Service Charter.

### **1.3 Overview of the Operation of the Australian Broadband Guarantee Guidelines**

These Guidelines describe the key elements of the operation of the Australian Broadband Guarantee for the duration of the Program (from 1 July 2007 to 30 June 2008, unless funds are expended sooner).

Legal enforcement of the operational rules set out in these Guidelines will be through the Funding Deed between each Registered Provider and the Australian Government (as represented by DCITA). In the event of any inconsistency between the Funding Deed and the Guidelines, the Funding Deed will prevail.

All requests for clarification or determination of the meaning of provisions in these Guidelines should be referred to DCITA in writing. If a Provider under this Program applies to DCITA for clarification of a provision in the Guidelines or a determination on a particular issue, DCITA's written decision on the matter is final.

The period described by these Guidelines will commence on 1 July 2007 and end either on 30 June 2008 or an earlier time if the funding allocated to the Program is fully expended prior to 30 June 2008.

DCITA reserves the right to vary these Guidelines (including any assessment process), including without limitation in light of changes to Australian Government policy. The Australian Government will notify all potential applicants (by means of a media release and an appropriate notice on the DCITA website), or all Applicants where the time for submission of applications has closed, of any changes to these Guidelines.

### **1.4 Program Funding**

An amount of \$112.456 million (excluding GST) of the total funding of \$162.5 million (excluding GST) has been allocated for the Australian Broadband Guarantee for the Funding Period (1 July 2007 to 30 June 2008). When the remaining funding allocation has reached \$20 million and Providers duly notified, the obligation of

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Providers to offer new Services under the Australian Broadband Guarantee will cease. Other notifications will be provided in line with section 4.3.1 of the Guidelines.

### **1.5 Key concepts and terminology**

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

#### **A**

ACCC means the Australian Competition and Consumer Commission.

ACMA means the Australian Communications and Media Authority.

Added Value Service means the Service described at section 2.3.

ADSL means Asymmetric Digital Subscriber Line. This is a technology for the delivery of digital data over existing twisted pair copper subscriber lines. The analogue telephone service shares the copper lines with the ADSL signals.

Applicant, where the context permits, means an ISP that is applying to become a Registered Provider under the Australian Broadband Guarantee Program, or is a Provider that is applying for approval to register Service Solutions, Service Plans and/or Service Areas (as defined).

ASIC means the Australian Securities and Investments Commission.

ASX means the Australian Stock Exchange.

ATO means the Australian Taxation Office.

Australian Broadband Guarantee means the Australian Government funding program described in these Guidelines.

Australian Broadband Guarantee (transitional period) means the Australian Broadband Guarantee (transitional period) program that operated from 2 April 2007 to 30 June 2007.

#### **B**

Blackspot means Under-served Premises unable to obtain either a Metro-comparable Service or a service under the Broadband Connect Infrastructure Program.

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

Broadband Connect Infrastructure Program means the Broadband Connect Infrastructure Program announced on 21 September 2006.

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

Broadband Service Locator means the form available on the DCITA website at <http://bcoms.dcita.gov.au/CAOSL/Welcome.do> to enable potential Customers to determine whether their premises may be eligible for a Service under the Australian Broadband Guarantee Program.

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

**C**

Connected and Supplied means that the customer has a broadband connection available at their premises, and they are actively receiving a Program Service from this connection.

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

Customer Attestation Form or Attestation Form means the mandatory form that must be completed by Customers in order to receive a subsidised broadband service under the Australian Broadband Guarantee from a Registered Provider. In completing the form, the Customer is required to attest (at a minimum) that they cannot receive a Metro-comparable Service to their premises from a commercial provider.

**D**

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

DCITA or the Department means the Department of Communications, Information Technology and the Arts or such other agency of the Australian Government as may, from time to time, have responsibility for administering the Australian Broadband Guarantee Program.

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

Demand Register means the demand register available at the DCITA website that allows Eligible Customers to register their interest in being supplied with a Service.

**E**

Eligible Customer or Customer means, subject to these Guidelines:

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

Eligible Premises means, subject to these Guidelines, any premises in the Program Area, being a Small Business' premises, the premises of an Indigenous Community Council, or the principal place of residence of a Residential Customer that did not have access to a Metro-comparable Service when an application for a Service at the premises was submitted to a Provider. DCITA is the final arbiter of whether any particular premise is considered to be an Eligible Premises.

Entry Level Service means the Service described at section 2.3.2.

Exit Strategy means the arrangements by which a Provider manages its Program Customer base if and when it ceases to provide Services. In particular, it refers to

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actions to be taken by the Provider to ensure that there is minimal negative impact on its Program Customers when it ceases to provide Services.

### **F**

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

Funding Allocation means the amount of funding, being \$112.456 million (excluding GST), which the Australian Government has allocated for the Program in the financial year 2007-2008.

### **G**

Guidelines means these Australian Broadband Guarantee Guidelines, as issued by DCITA and as amended from time to time.

### **H**

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

High Cost Incentive Payment has the meaning given to it in section 4.4.2.1.

### **I**

Incentive Payment means either a Standard or a High Cost payment as defined in sections 4.4.2.1 and 4.4.2.2, to be paid, subject to funding being available, after the Provider has Connected and Supplied a Service to an Eligible Customer at Eligible Premises, and upon receipt by DCITA of a properly submitted and supported claim accepted by DCITA.

ISP means an Internet Service Provider offering Internet services.

### **K**

kbps means kilobits per second.

Kilobyte means 1000 bytes.

### **L**

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

### **M**

MB means megabyte, which equals 1000 Kilobytes.

Metro Broadband Connect means the Metropolitan Broadband Connect program that commenced on 8 March 2006.

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

- (a) access to the Internet at a peak Data Speed of at least 512/128 kbps and 1000 MB per month usage allowance;

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- (b) a price to the customer over three years of no more than \$2500 (GST inclusive) including equipment, installation, connection, account establishment and ongoing provision of the service; and
- (c) the provider offering the internet access service can install the service in a reasonable period of time. In normal circumstances, a reasonable period of time is within 30 calendar days of the order for a service being lodged.

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

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

the boundaries of which are defined by the relevant Urban Centre/Locality boundaries published by the Australian Bureau of Statistics as at 30 September 2002 in 2909.0 – Statistical Geography: Volume 3 – Australian Standard Geographical Classification (ASGC) Urban Centres/Localities (Issue 2001 released 30 September 2002; ISBN 0 642 47821 X) and described in section 3.2.1.

### **P**

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

Program Area means the areas within Australia as defined under the Acts *Interpretation Act 1901* (including Christmas Island and Cocos (Keeling) Islands) where Under-served Premises are located. Norfolk Island and the other external territories are excluded from the Program.

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

Program Service Plan or Service Plan means a plan or plans (detailing costs for receiving the Service) Registered with DCITA which Providers will offer to Customers under the Australian Broadband Guarantee. Service Plans can be registered for an Added Value Service, an Entry Level Service and a Threshold Service.

Provider means an Internet Service Provider Registered under the Australian Broadband Guarantee and with whom DCITA has entered into a Funding Deed for the Program activities under which the Provider must, among other things, offer to provide Services to Eligible Customers in its Service Area under the Australian Broadband Guarantee.

### **R**

Registered in relation to a Provider or a Program Service means approved by DCITA and where the Provider and the Commonwealth of Australia (as represented by DCITA) have executed a Funding Deed under the Australian Broadband Guarantee Program and, in relation to a Program Service, means an Australian Broadband Guarantee Service detailed in the Provider's respective Funding Deed (as varied).

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Registration Round means the times DCITA will accept registrations from ISPs seeking to join the Program, as detailed in Section 3.

Residential Customer is a customer who requests a Program Service be provided at premises that are their principal place of residence, primarily for private and personal use. Premises of a Residential Customer include those places of residence described at section 2.1.

### **S**

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

Service—see definition of Program Service.

Service Area means the geographical location(s), provided in a format acceptable to the Department (as outlined in section 3.4.4) that have been included in the Funding Deed of a Provider as the areas to which it will offer a particular Service.

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

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

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

Small Business means a Business with 20 or fewer FTEs Australia-wide.

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

Standard Incentive Payment has the meaning given to it in section 4.4.2.2.

### **T**

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

Terrestrial Broadband Service means a Service Solution delivered by ground based networks, including ADSL (and variants), cable type services, wireless services, or any other service approved for use in Australia by ACMA and determined by DCITA to be terrestrially based.

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Threshold Service means the Service described at section 2.3.

TIO means the Telecommunications Industry Ombudsman.

### ***U***

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

### ***W***

Working Day means a day other than:

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

## **2. Customer Participation in the Australian Broadband Guarantee**

### **2.1 Eligible Customers and Eligible Premises**

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

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

#### **2.1.1 Residential Customer—Principal Place of Residence**

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

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

##### **2.1.1.1 What is Excluded as a Residential Premises**

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

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

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

A Residential Customer is not precluded from being supplied with a Service in its capacity as a Small Business Customer, subject to meeting eligibility requirements described in section 2.1.2.

### **2.1.2 Small Business**

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

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

Each Small Business is eligible to receive one Program Service at each of its places of Business that is an Eligible Premises, subject to all other eligibility requirements (as outlined in these Guidelines) being met. A site established for re-transmission of broadband services is not a place of Business.

### **2.1.3 Indigenous Community Council (ICCs)**

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

ICCs situated in Queensland

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

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

ICCs situated in the Northern Territory

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

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

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

## **2.2 No Access to a Metro-comparable Service**

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

A customer without a fixed line telephone service at their premises is not automatically eligible for a Program Service. If a fixed line service is available and can readily be connected to the premises, and as a result a Metro-comparable Service would then be commercially available over that fixed line, then the premises would not be eligible for a Program Service. Where this circumstance exists, the price of connecting the fixed line service is not included in the assessment of the cost of the broadband service, for the purposes of assessing whether the service is a Metro-comparable Service.

DCITA provides an online tool, the Broadband Service Locator, to assist customers and Providers in assessing whether a Metro-comparable Service is available to the customer premises (see Section 2.4 below for further details).

### **2.2.1 Other Ineligible Premises**

Where a customer is receiving a 256 kbps broadband service as a result of support under the HiBIS, Broadband Connect Incentive Program or Metro Broadband Connect, the customer will generally not be eligible to receive an Australian Broadband Guarantee Service, provided their service can be upgraded to a Metro-comparable Service by their provider on a commercial basis. In these circumstances an Incentive Payment will not be paid to an Australian Broadband Guarantee Provider to upgrade the customer to a Metro-comparable Service.

Customers are not eligible to receive an Australian Broadband Guarantee Service at their premises, if they have previously been connected to a broadband service under HiBIS, the Broadband Connect Incentive Program, or Metro Broadband Connect, and have not lost that service for reasons beyond the control of the Customer (see section 2.6).

Only one Program Service may be provided to an Eligible Premises at any one time for each type of Eligible Customer.

## **2.3 Minimum Requirements of Registered Australian Broadband Guarantee Services**

### **2.3.1 Requirements for Threshold Services**

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

- (a) access to the Internet at a peak Data Speed of at least 512/128 kbps and 1000 MB per month usage allowance. Providers may offer a Threshold Service with a higher peak Data Speed or higher data usage, so long as all other provisions of this section are met;
- (b) a price to the Customer over three years of up to \$2500 (GST inclusive) including equipment, installation, connection, account establishment and ongoing provision of the service. This amount excludes the cost of installing a fixed line telephone service to premises where such a service is available but not connected;

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- (c) availability 99 per cent of the time (averaged over a quarterly period) with average data download and upload speeds of at least 60 per cent of these peak speeds at least 75 per cent of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule for test computers located in different geographic regions;
- (d) ownership of the CPE passes to the Customer within the three year period over which Program pricing is to apply or where the CPE remains the property of the Provider, appropriate arrangements are in place to maintain the CPE during the term of the contract, and where necessary, to repair or replace it within the overall pricing package being offered;
- (e) free helpdesk support for common customer connection problems and service faults as agreed between DCITA and the Provider; and
- (f) the ability for the Customer to be informed within 24 hours of current usage and any associated costs.

As a requirement of registration, Providers must offer at least one Threshold Service.

### **2.3.2 Entry Level Services**

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

- (a) access to the Internet at a peak Data Speed of at least 256/64 kbps and 500 MB per month usage allowance. Providers may offer an Entry Level Service with a higher peak Data Speed or higher data usage, so long as all other provisions of this section are met;
- (b) a price to the Customer over three years below \$2500 (GST inclusive) including equipment, installation, connection, account establishment and ongoing provision of the service. This amount excludes the cost of installing a fixed line telephone service to premises where such a service is available but not connected; and
- (c) all other service provisions that apply to a Threshold Service (see section 2.3.1).

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

### **2.3.3 Added Value Services**

Providers are also encouraged to apply to register under this Program Service Plans with greater functionality including higher Data Speeds and other usage allowances beyond that applying to a Threshold Service. The Data Speeds/usage must equal or exceed that applying to a Threshold Service to be recognised as an Added Value Service. For the purposes of Data Speed Testing outlined in section 4.5.3, Providers must nominate a peak Data Speed and either an average (at least 60 per cent of peak data speed) or minimum Data Speed (for a high speed broadband service) that is greater than the Data Speed applying to a Threshold Service.

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

Any Service, apart from a Provider's Threshold Service, that meets or exceeds all of the requirements for a Threshold Service will be deemed an Added Value Service.

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Providers can have multiple Added Value Services, provided they are also offering a Threshold Service.

### **2.3.4 Other Matters**

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

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

Providers should note that bundling conduct is subject to compliance with all relevant Commonwealth and State/Territory laws, including trade practices law.

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

In order for a Customer to receive an Australian Broadband Guarantee Service and for a Provider to be eligible to lodge a claim for an Incentive Payment for Connecting and Supplying that Service, the following steps must be completed:

### **2.4.1 Broadband Service Locator**

The Customer, or the Provider on the Customer's behalf, must check DCITA's Broadband Service Locator at <http://bcoms.dcita.gov.au/CAOSL/Welcome.do> to determine whether a Metro-comparable Service is available at the relevant premises, other than through an Australian Broadband Guarantee Service. If the search reveals that no Metro-comparable Service from a non-Program provider is available, the Customer can apply for an Australian Broadband Guarantee Service.

If an Australian Broadband Guarantee Service is available at the Premises through a Terrestrial Broadband Service, the Customer must seek to obtain that Service in the first instance. If no Terrestrial Broadband Service is available at the Premises the Customer may seek to obtain a Satellite Broadband Service from the Provider of their choice.

The identification number produced by the Broadband Service Locator at the time of the inquiry must be noted on the Attestation Form that a Customer must complete under section 2.4.2.

Where a Provider completes this search on behalf of a Customer and the Customer attests to this on the Attestation Form, the Provider must either record the identification number produced by the Broadband Service Locator or hold a copy of the search results (including the identification number), as part of the Customer's records. See section 4.1 for further details.

Where the search reveals that there may be a Metro-comparable Service available from a non-Program ISP(s), the Customer is required to contact the listed Internet

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Service Provider(s) in order to verify whether a Metro-comparable Service is available at the relevant premises.

However, in situations where a Provider is listed on the Broadband Service locator as offering a Metro-comparable Service to a Customer, but the Customer has been previously advised by that Provider that they cannot provide such a service, the Customer does not need to make contact with that provider again, provided the previous contact was made within 30 days prior to applying for an Australian Broadband Guarantee Service. The Customer must include on the Customer Attestation Form the details of the previous contacts and related outcomes.

If a Customer is able to receive a Metro-comparable Service from any listed non-Program Provider, the customer is not eligible to receive an Australian Broadband Guarantee Service.

### **2.4.2 Customer Attestation Form**

The Customer must complete a Customer Attestation Form confirming their eligibility under the Program, and including any other matters that are relevant to their particular application, as specified on the Attestation Form. Customers should attach any relevant supporting documentation to their Attestation Form. Customers should note that it is a criminal offence under the *Crimes Act 1914* (Cth) to make a statement in the Attestation Form that is deliberately false or misleading, with penalties potentially including imprisonment.

Providers must supply Customers with a standard Customer Attestation Form, in the form set out in section 5, unless otherwise approved by DCITA, prior to the Customer applying for an Australian Broadband Guarantee Service.

### **2.4.3 Records to Support Claim for Incentive Payment**

Following the Connection and Supply of the Service, and submission of a claim for Incentive Payment by the Provider through BCOMS, a Provider must be able to produce relevant proof to support the information in their claim if requested by DCITA. This may include proof that a Service has been Connected and Supplied (as defined) and that the Customer/Premises are eligible to receive the Service. Wherever possible and appropriate, the Customer Attestation Form should have appended to it relevant supporting documentation. Providers may wish to use the form at section 5.1 to assist Customers in meeting this requirement or alternatively some other form of documentation that demonstrates the Service has been Connected and Supplied at the Customer's premises.

## **2.5 Use of Customer Information by DCITA**

DCITA requires that Providers ensure that under their Terms and Conditions, Customers agree, for the purposes of the *Privacy Act 1988* (the 'Privacy Act'), to their Customer details being provided by Providers to DCITA and potentially other appropriate agencies for the purposes of Program administration, regulation and evaluation, and policy development.

Customers' personal information (which may include information relating to their identity, contact details, the Services they are having supplied and the details of their Premises) is handled in accordance with the provisions of the *Privacy Act*, which sets standards for the collection, storage, use and disclosure of personal information.

Personal information is disclosed only as provided for in these Guidelines or with the permission of the individual to whom it relates, or where the *Privacy Act* allows.

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

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

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

Where a Customer has received from their current premises:

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

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

In respect of the possible loss of CPE, Customers and Providers should ensure that whoever owns the CPE has appropriate arrangements in place to cover damage to equipment caused by accident, natural disaster, vandalism and theft. This could include insurance (in the case where the Customer owns the CPE) or an appropriate arrangement to repair/replace equipment (in the case of Provider ownership).

In such cases, when seeking another Program Service the Customer must attest (on the Customer Attestation Form) to losing the service and detail fully the reasons for the loss of that service (including any accompanying documentation to support assertions).

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

The loss of the Service may amount to the Provider breaching an obligation under the Funding Deed. In such cases, the Provider may be required to repay the Incentive

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Payment it had received for provision of that Service, and DCITA may take any other action (as considered appropriate) under the terms of the Funding Deed.

Where a customer has come to the end of the three year contract period for a HiBIS Service, a Broadband Connect Incentive Program Service or a Metro Broadband Connect Service, and the provider either changes the Service Terms and Conditions to the customer's detriment or the level of service is not maintained at the former level by the provider, the customer may be eligible for a new Service under the Australian Broadband Guarantee. However, where the Customer is seeking to upgrade to a higher level Service and the existing service is being maintained by the provider, the Customer will not be eligible to receive an Australian Broadband Guarantee Service.

Where the Provider who has changed the Terms and Conditions or the level of the service, is an Australian Broadband Guarantee Provider, that Provider will not be eligible to receive an Incentive Payment for provision of an Australian Broadband Guarantee Service to that Customer at the Customer's Premises.

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

DCITA does not place any restrictions on termination by a Customer of an Australian Broadband Guarantee Service. The Customer is only bound by their contract with the Provider in this regard, as would be the case with any other commercial arrangement. Termination of the supply of a Program Service by a Customer does not affect the Incentive Payment that has been paid to the Provider. The only exception is where the termination arises as a result of the Provider being unable to continue to provide the Service to the Customer during the period of the Program. In these cases, the Incentive Payment must be refunded.

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

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

### **2.6.3 Customers who Move to New Premises**

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

However, where a Customer is moving to premises previously provided with a HiBIS, Broadband Connect Incentive Program, Metro Broadband Connect or Australian Broadband Guarantee (transitional period) or Australian Broadband Guarantee Service, and where that Service remains available to the Customer, then the Customer is generally not eligible to receive a Program Service at those premises.

If a Provider is not certain as to whether a Customer is eligible to receive an Australian Broadband Guarantee Service at their new premises, they must seek advice from DCITA. When a request is made, DCITA will consider particular circumstances

of each case on a case-by-case basis, and will make a determination on eligibility which is final.

#### **2.6.4 Customer who Moves to an Upgraded Service Plan**

Providers are expected to offer Customers a range of Service Plans under the Program. Service Solutions should be scalable in speed and data levels from Threshold levels to enable Customers to upgrade and to accommodate future standards.

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

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

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

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

Providers Registered under the Australian Broadband Guarantee that had been registered under the Australian Broadband Guarantee (transitional period), Broadband Connect Incentive Program, Metro Broadband Connect and HiBIS, are reminded that they have continued legal obligations in respect of the provision of services to customers registered under those programs.

Providers who have offered services under the Australian Broadband Guarantee (transitional period), Broadband Connect Incentive Program, Metro Broadband Connect and HiBIS are encouraged to offer to transfer current Customers to the Provider's Australian Broadband Guarantee Service of the Customer's choice (where relevant and appropriate) within a reasonable period of time after the Program Services become available.

## **3. Provider Registration under the Australian Broadband Guarantee**

### **3.1 Introduction**

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

All Applicants are required to register:

- (a) themselves (noting the requirements outlined in this chapter);
- (b) the Service Solution(s) proposed to be deployed;
- (c) the Service Plans proposed to be offered (refer section 3.4.3). Each Provider is required to register at least one Threshold Service and has the option of registering one or more Threshold, Entry-Level or Added Value Services; and
- (d) each Service Area in which the Applicant intends to offer a Service (refer section 3.4.4).

A condition of Australian Government Funding and Registration for successful Applicants who are approved for registration under the Australian Broadband Guarantee is the execution of a legally binding Funding Deed

DCITA may also impose conditions for Registration and entry into a Funding Deed, such as requiring the provider to provide unconditional bank undertakings (or performance bonds) in favour of the Commonwealth to secure their performance; or a parent company guarantee and indemnity. The need for and extent of such conditions will be assessed on a case-by-case basis and will, in all cases where they are imposed, be additional to the requirements of the agreement itself.

The Australian Government will not make any payment for any Services supplied by a provider prior to the commencement date of the Funding Deed.

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

### **3.2 Overview of Assessment process**

Applications are subject to a three-stage assessment process. Stage one will involve an initial screening. All applications will be screened to ensure that they are compliant with the requirements set out in these Guidelines and associated documentation, and provide sufficient information to be effectively assessed. The Department may exclude from further consideration Applications which do not meet the minimum eligibility requirements, or do not substantively address the assessment criteria.

The Department will then assess the remaining applications in detail against the Selection Criteria described at sections 3.4-3.4.3 (i.e. these will be all the selection criteria except for Service Areas). Applications that do not satisfy these criteria will be excluded from further consideration at this point.

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During the final stage, remaining applications from Applicants proposing terrestrial-based Internet services will be assessed, including where relevant comparatively assessed. Section 3.4.4 sets out the criteria that will be used for the comparative assessment, which will be undertaken if proposed terrestrial Service Areas completely or substantially overlap. Service Areas for Satellite Broadband Services will not be comparatively assessed.

During the assessment, DCITA may seek and take into account comments on applications from technical, probity or legal advisers.

A decision as to which Applications are successful will be made by the Assessment Panel. All Applicants will be advised in writing of the Program assessment outcomes.

Applications must be submitted by the closing date for the Registration Round specified at section 3.3 and/or notified on DCITA's website. Applicants should note that DCITA will assess applications on the material submitted, and revisions to applications after the Registration Round closing date will not be accepted. However, DCITA may, at its discretion, ask Applicants to clarify information provided in their application. Where the Applicant does not provide clarification responses within a specified timeframe, the application may be declined.

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

DCITA reserves the right:

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

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

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

### **3.3 When Applications can be Made**

For the first Registration Round, all Applicants must complete the application form available from [www.dcita.gov.au/communications\\_for\\_business/funding\\_programs\\_and\\_support/broadband\\_guarantee](http://www.dcita.gov.au/communications_for_business/funding_programs_and_support/broadband_guarantee) and submit it together with all accompanying documentation to DCITA by, or postmarked by, 5.00pm AEST on 8 June 2007.

DCITA intends to conduct a second Registration Round in late 2007. Details including the date for receipt of applications will be notified on the DCITA website. DCITA reserves the right to announce additional Registration Rounds (including Registration Rounds specifically relating to Service Areas), at its discretion, at any

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other time during the operation of the Program. Any such additional Registration Round will be announced on the DCITA website.

Applications must be submitted in both hard copy and electronic format on CD-ROM or DVD-ROM. Electronic documents must be provided in a Microsoft compatible format or be accessible using Microsoft tools. Geo-spatial information such as maps should be provided in MapInfo TAB file format. The original hard copy application must be signed and dated and must be accompanied by one complete electronic copy.

### **3.3.1 Registration of new service areas and new service solutions by registered providers**

For the any subsequent Registration Rounds (if and when announced), existing Registered Providers may submit applications for new Service Plans, Service Solutions and/or new Service Areas. Such Applications must be on the relevant Section of the approved Application Form, and will be assessed according to the relevant selection criteria as set out in these Guidelines.

### **3.3.2 Who can Apply to Register**

Subject to the exclusions at section 3.3.1 below, application for registration under the Program is open to all entities carrying on business as an Internet Service Provider. All Applicants must:

- (a) be a current member of the TIO scheme where required under the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and
- (b) where required to under the *Telecommunications Act 1997*, hold:
  - (i) a current carrier licence; or
  - (ii) have in force a nominated carrier declaration.

### **3.3.3 Who is excluded from Registration**

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

1. ISPs who propose to offer only wholesale broadband services;
2. ISPs who propose to resell an end-to-end wholesale terrestrial broadband internet service provided by a wholesale provider;
3. ISPs unable to demonstrate a continuous three-year Internet service business trading history;
4. ISPs who had been registered under previous incentive payment programs (HiBIS, Broadband Connect Incentive Program, Metro Broadband Connect or the Australian Broadband Guarantee (transitional period) who have been found to have significantly and/or substantially breached their obligations in respect of HiBIS, Broadband Connect Incentive Program, Metro Broadband Connect or the Australian Broadband Guarantee (transitional period); and
5. providers who cannot offer a Service, as specified in section 2.3.1, within 60 days from commencement of their Funding Deed.

Applications may also be rejected on the basis of business and/or financial risk, quality of service offerings, proposed service areas, and/or other matters set out in the assessment criteria within these Guidelines.

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

### **3.4 Assessment of Applications and Information Requirements**

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

- Criterion 1: the Applicant's financial viability and operational sustainability;
- Criterion 2: past performance of the Applicant (where applicable) in relation to its compliance with other government funding programs;
- Criterion 3: the Service Solutions and Service Plans the Applicant proposes to offer; and
- Criterion 4: the Service Areas the Applicant proposes to serve.

It is noted that each of the assessment criteria 1, 2, and 3 must be fully satisfied before an assessment of the Applicant's Service Areas (i.e. assessment Criterion 4) will be undertaken. Applications that do not provide sufficient relevant information to enable an assessment under assessment criteria 1-3 will be declined.

#### **3.4.1 Assessment Criterion: Financial Viability and Operational Sustainability**

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

##### ***Basis of assessment***

- Solvency: The Applicant is financially solvent at the time of Application.
- Audit status: There is no qualified audit report of financial position of the Applicant. The Applicant is to provide a copy of the audit report for the last annual financial statement.
- Ongoing ability to fund Program commitments: There are no material commitments that would call into question the Applicant's ability to sustain its proposed Program operations.
- Applicant has access to adequate funds: The Applicant has access to sufficient funds to operate its business while participating in the Program.
- Financial performance: The Applicant's past financial performance and projected financial performance demonstrates that the Applicant is profitable and has positive net assets (current and fixed); and is projected to be profitable. This should be reflected in the Applicant's financial accounts (historical and projected) and business plan.
- Managerial integrity: Key Managerial staff have no criminal conviction, charges pending or other serious breaches as at the time of application. This is determined

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by State Name Check Certificate listing the criminal history (if any) across police jurisdictions of each member of the Board and key managers.

- **Board experience (if applicable):** Where an applicant is a corporate organisation, its Board as a whole should have six (6) years minimum combined industry experience at Board or senior executive level and at least two Board members with at least three (3) years industry experience each at Board or senior executive level. Where an applicant is a partnership, its partners should have at least six (6) years combined industry experience.
- **Senior Management experience:** The Applicant's management team should have at least 6 years minimum, combined industry experience at senior management level and at least two managers with at least 3 years industry experience each at senior management level.
- **Sustainable business plan:** the Applicant can demonstrate that its broadband Internet business is viable on an ongoing basis, including if necessary without the support of government funding. The business plan should assume that broadband services would continue to be offered on a metro-comparable basis into the future, in order to remain competitive with other available broadband services.
- **Risk Management:** Applicants must demonstrate awareness of key technical and operational risks associated with their operations and have effective strategies to address them, particularly in the context of the Australian Broadband Guarantee.

### ***Information required***

In order for an Applicant to address the above selection criteria, the Applicant must submit the following material with its application:

- audited financial accounts (at minimum audited profit & loss statement, balance sheets and cashflow statements ) for the past three (3) financial years. Where the Applicant has ASIC or ASX obligations to prepare an annual report, that detail may be used. If an audit opinion is qualified, the Applicant should provide a copy of the management letter accompanying the adverse audit opinion;
- a statutory declaration from the Applicant's CEO or Principal Partner (as the case may be) stating that no material events have occurred since the date of the audit report that would affect the overall validity of the audit report;
- a copy of the company's business plan, financial plan and risk management plan (covering financial, technical and operational matters) that identify such matters as financial viability on an ongoing basis, access to funds and demonstrated ability to continue to provide a Service under the Program, or if necessary without Australian Government funding support. This information may be contained in a single document;
- copies of any unconditional bank guarantees or such instruments (for example, a parent company guarantee and indemnity, where applicable) upon which the Applicant seeks to rely upon to provide its financial standing;
- certified copies of certificates for each director and senior manager from the police in the State or Territory where the company/entity is registered;

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- details of Board members and their relevant experience, and if applicable, a copy of a current ASIC Current and Historical company extract, including notification of directors' appointments; and
- details of its organisational structure and details of senior managers including their roles, qualifications and relevant industry experience.

### **3.4.2 Assessment Criterion: Regulatory and Other Compliance Issues**

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

#### ***Basis of assessment***

- Regulatory status: Applicants must be able to demonstrate that it is up to date with lodgements and other statutory requirements with: ASIC, ATO, ASX, ACMA, ACCC and TIO.
- Compliance with requirements of other funding programs: Applicants must demonstrate, if they are receiving funding from other government programs (Australian, state/territory and local government), that the Applicant is complying with the requirements for those program(s).
- Compliance with past Australian Government broadband programs: where applicable, Applicants must demonstrate satisfactory compliance with past Australian Government broadband funding programs, including (but not limited to) the Higher Bandwidth Incentive Scheme (HiBIS), Broadband Connect, the Australian Broadband Guarantee (transitional period), and the Coordinated Communications Infrastructure Fund (CCIF).

#### ***Information required***

- The Applicant must provide a statutory declaration made by a duly authorised officer stating that the Applicant is up to date with lodgements and other statutory requirements with ASIC, ATO, ASX, ACMA, ACCC and TIO and a statement identifying and giving the details of any alleged breaches of law being pursued by ASIC, the ATO, ACMA or ACCC at the time of registration (if any).
- The Applicant must provide a statutory declaration made by a duly authorised officer stating that the Applicant is up to date with its compliance and reporting requirements for all funding programs in which the applicant is participating.
- The Applicant must provide details of any other funding the Applicant receives from the Australian Government, state or territory governments, details of the funding and whether the programs have a similar objective to the Australian Broadband Guarantee.
- The Applicant must identify any compliance issues arising under previous Australian (or state/territory) Government broadband programs, including adverse audit findings, formal consumer complaints, TIO investigations, and any existing audit investigations that may not yet be completed. The Applicant must identify any non-compliance or customer service issues identified as a result of any past events, and set out what (if any) actions were taken to resolve the identified issues.

### **3.4.3 Assessment Criterion: Service Solutions and Service Plans**

This criterion must be responded to by:

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

If an Applicant proposes to offer more than one Service Solution (e.g. satellite and wireless), the Applicant must detail each Service Solution and the related Service Plans on a separate application form.

#### ***Basis of assessment***

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

- **Material Investment:** the extent to which the proposed Service Solution amounts to material investment in new infrastructure, rather than modification of existing infrastructure at minor cost. Applicants will be asked to detail the value of their investment in the infrastructure. Proposed new service coverage that results from modification of existing infrastructure, and that does not result in material new investment cost, will not be approved for registration as a Service Solution;
- **Robustness and reliability of technology platform:** If the proposed technology platform is not already proven or deployed elsewhere on a wide scale, the Applicant must demonstrate the robustness of any new technological platform on which the service is to be supplied.
- **Scalability of Service Solution:** the ability of the Service Solution to be further developed and improved, enabling Customers to receive a higher level of Service;
- **Technical Capability of Key Operations Officer(s):** details of the technical capability and experience of the Applicants' Chief Technology Officer and/or Chief Operations Officer;
- **Adequate Technology support:** the Applicant has adequate systems to support the technology platform on which the service is to be supplied;
- **Threshold Service(s):** whether the proposed services comply with the requirements for metro-comparability, as set out in these Guidelines;
- **Entry Level Service(s):** consistent with the definition in section 2.3, the extent to which the price is reduced below the threshold service level, and the extent to which the proposed service offers a cost-effective outcome for consumers;
- **Added Value Services(s):** consistent with the definition in section 2.3, the extent to which the proposed service offers a cost-effective outcome for consumers, and adequately takes into account the subsidy being paid;
- **Non-price terms and conditions:** whether the non-price terms and conditions are compliant with and exceed the requirements of the Australian Broadband Guarantee;

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- Future terms and conditions: the extent to which the services would be offered on at least as favourable terms and conditions (including price) to existing customers once the mandatory three year term has expired; and
- Commercial terms and conditions: the extent to which the services would be offered to new customers on the same terms and conditions (including price) if Australian Broadband Guarantee subsidies were no longer available.
- Readiness: The Applicant's ability to offer and supply the proposed Services within a reasonable timeframe (no longer than 60 days from commencement of their Registration).

### ***Information required***

- details of the Service Solution(s) proposed by the Applicant to supply Australian Broadband Guarantee Services (for example, ADSL, cable, wireless, two-way satellite, etc.), including the brand of equipment to be used, information on testing results, details of proposed operational deployment, details of relevant standards and where relevant ACMA approvals;
- information that demonstrates that the proposed Service Solution amounts to material new infrastructure, and that significant cost would be incurred in implementing the new Service Solution;
- details on architecture of the Applicant's broadband network (at least back to the point of interconnection with upstream connecting networks), including details of proposed hardware, CPE, technical standards and protocols, spectrum use (where relevant), and network peering. Schematic diagrams should be attached to the application;
- the extent to which the technology has been successfully deployed commercially elsewhere in Australian and/or overseas;
- the names of Chief Technology Officer (CTO and/or Chief Operating Officer (COO), summary information of the CTO and/or COO's qualifications and experience (minimum two (2) years), including recent relevant major projects, the tertiary qualifications in IT, Communications Engineering or other relevant discipline; or technical competence, otherwise demonstrated and statement as to whether the CTO/COO are on contract and, if so, date contract expires;
- details of the operational support systems (both in-house and outsourced) to support the level of Service to Customers;
- information on the key technical risks for the Service Solution and the strategies to mitigate those risks;
- (where appropriate) how each Service Solution interacts with other Service Solutions deployed by the Applicant (for example, if the Applicant offers a wireless service and a satellite service);
- whether the Service Solution has a viable upgrade path that will enable supply of higher quality services over time;
- the immediate extent to which the proposed Service Solution could be scaled up to offer higher quality broadband Internet access services (such as higher data speeds, increased data usage, symmetrical services and lower latency);

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- the extent to which the proposed Service Solution could be scaled to provide broadband Internet access services to additional customers or offer a greater range of services to customers (for example, a range of Data Speeds and usage levels);
- the price (including GST) and functionality of Applicant's Threshold Service and of any Entry Level Service or Added Value Service, detailed in the following terms:

hardware charges

- + installation (excluding travel charges)
  - + connection (if applicable)
  - + account establishment (if applicable)
  - + monthly (usage) charges (x 36 months)
  - + any other relevant charges (x number required in the period)
  - = total package price
- details of any other charges, such as late fees, credit card charges and other such fees. Any such charges must be contained in the terms and conditions and be approved by the Department;
  - details of the Data Speed and data usage to apply to each Service Plan, and how excess usage will be treated (i.e. through additional charges and/or shaping); and
  - copy of the proposed Terms and Conditions.

### 3.4.4 Assessment Criterion: Service Areas

This criterion must be responded to by:

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

#### 3.4.4.1 *Satellite Broadband Services*

For Satellite Broadband Services, the whole Program area or any area within the Program Area (for example, a single State or Territory) may be registered as a Service Area, subject to the Applicant successfully meeting all other assessment criteria.

#### 3.4.4.2 *Treatment of Terrestrial Broadband Services Registered Under Previous Funding Programs*

##### **General Rule**

Other than for the special exceptions described below, for Terrestrial Broadband Services, a Service Area that was registered under HiBIS or Broadband Connect Incentive Program and where at least one incentive payment was claimed under either of those programs (in the Service Area) is not eligible for registration as a Service Area under the Australian Broadband Guarantee.

In accordance with section 2.2, DCITA will not register a Service Area, where at least one customer has already been connected and supplied commercially to a Metro-comparable Service in that Service Area. Further, the Service Area will be lodged in

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Broadband Service Locator as an area where a commercial service is available (provided it otherwise meets the requirements of a Metro-comparable Service). If the provider subsequently discontinues provision of a Metro-comparable Service, DCITA will not register the area as a Service Area to that provider but may allow other Applicants to apply to provide Services in that Service Area in accordance with the Guidelines.

### ***Special Exceptions***

A Service Area that was registered under HiBIS or Broadband Connect Incentive Program, but where no incentive payment was claimed under those programs is eligible for consideration for registration under the Australian Broadband Guarantee, subject to the Applicant successfully meeting all other assessment criteria including comparative assessment against any other Provider seeking to register the same Service Area.

A Service Area that was registered under the Metro Broadband Connect program is eligible for consideration for registration under the Australian Broadband Guarantee, even if incentive payments had been claimed in that service area under Metro Broadband Connect, subject to the Applicant successfully meeting all other assessment criteria including comparative assessment against any other Provider seeking to register the same Service Area.

If two or more Applicants propose overlapping Service Areas in the same Registration Round, the Department will approve the Application that best meets the Assessment Criteria as set out in these Guidelines.

Applicants should note that a degree of overlap of Service Areas may be allowed, where such overlap can be reasonably justified, is in the best interests of consumers, and does not amount to substantial or complete duplication of service coverage.

### ***Basis of assessment***

- Efficient fit with current network: the extent to which the proposed new Service Area fits in with the Applicant's current broadband network, and could thus be implemented quickly and efficiently;
- Exclusiveness: the extent to which the proposed new service area is not covered by other Australian Broadband Guarantee providers. Applicants should note that some overlap of service areas between different Australian Broadband Guarantee Providers is allowed if considered to be reasonable and in the interests of consumers, but that complete or substantial overlap of service areas will not be approved;]
- Coverage: the extent to which the proposed new service area contains significant number of under-served premises that could be claimed under the Australian Broadband Guarantee;
- Broadband Connect Infrastructure Program: The extent to which the proposed new service area would not be covered by projects under the Broadband Connect Infrastructure Program, and if covered by such projects, the extent to which there would be a reasonable period for the Applicant to claim payments in the proposed service area;
- Support: the extent to which the Applicant is supported, either financially or in other ways, by local stakeholders or other tiers of government to cover the

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proposed new service area, noting that new service areas will not be accepted if sufficiently financially supported by other parties to enable the provision of metro-comparable services;

- Quality of services: the extent to which cost-effective, high quality, scalable services will be offered in the proposed Service Area.

### ***Information required***

- the Applicant must demonstrate that the proposed Service Area is an eligible area;
- the Applicant must indicate when it could commence providing the service in the proposed new service area. The Provider must be able to Connect and Supply the first Customer within sixty (60) days of the Service Area being registered to the Provider, and the service area may be de-registered if this is not achieved;
- the Applicant must demonstrate how the new Service Areas fit with the Applicant's existing network;
- the Applicant should provide any information that would substantiate that the proposed new service area is inadequately served by existing providers, and is likely to contain significant numbers of under-served premises;
- the Applicant should provide information of any community or other government support for the applicant's roll-out of broadband services into the proposed new Service Area. Applicants should also indicate their ongoing plans for consultation with relevant organisations/communities and the proposed objectives of such consultation;
- (for Terrestrial Broadband Services) a description of the Service Area, including copies of maps (preferably in MapInfo.tab file format) showing the Service Area and any major parts of the Service Area where coverage may not be achieved (for example, mountainous terrain). Applicants should contact DCITA if they wish to use another mapping format. Service Area applications may be rejected if there is insufficient information provided;
- (for Satellite Broadband Services) Service Areas may be Registered in any part of the Program Area (including the whole Program Area) where Providers can demonstrate an ability to provide Services to Customers who cannot access a Metro-comparable Service through a commercial provider (as set out in section 2.2); and
- the Applicant must provide information on the Service Solution to be used in the proposed Service Area.

If a Service Area is approved for an Applicant and the Applicant cannot proceed, DCITA may allocate the Service Area to another Applicant for that Service Area.

### **3.4.5 Exit Strategy**

Applicants are required to submit a proposed Exit Strategy setting out the Applicant's proposed plans in respect of the migration of customers to other service plans, or Providers if they:

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

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The Exit Strategy must contain the following key elements:

- a minimum 20 Working Days notice to both DCITA and affected customers;
- details of arrangements to transfer customers to different service plans or (in the event of de-registration) Providers;
- information about the treatment of CPE where ownership is retained by the Applicant; and
- in the case of a withdrawal of a Services, but continuation of registration, they must offer to migrate impacted customers of the withdrawn Service to a comparable Australian Broadband Guarantee Service being offered, if such a service is available.

The minimum requirements are detailed in the Application form. An Applicant who does not provide an Exit Strategy or whose Exit Strategy is less than that required in the Application form may be declined for registration.

### **3.5 Other Matters**

#### **3.5.1 Process for Assessing Applications**

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

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

#### **3.5.2 Assessment of Applicants is for Australian Broadband Guarantee Purposes Only**

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

#### **3.5.3 Confidentiality of Applicant Information**

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

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

- commercial secrets;
- proprietary information, for example information about how a particular technical or business solution is to be provided;
- an Applicant's internal costing information or information about its profit margins;
- pricing structures (where this information would reveal whether an applicant was making a profit or loss on the supply of a particular good or service) which excludes publicly available pricing structures; and
- intellectual property matters where these relate to an Applicant's competitive position.

Further information in respect of confidentiality can be found on the Department of Finance and Administration website at [www.finance.gov.au/ctc/confidentiality\\_of\\_contractors.html](http://www.finance.gov.au/ctc/confidentiality_of_contractors.html)

DCITA is accountable to the Australian Parliament and to the public in respect of all aspects of the Program. The treatment of applications is subject to obligations placed on Australian Public Service employees by the *Privacy Act 1988*, the *Crimes Act 1914* and the *Public Service Act 1999*, which govern the use of the information provided. DCITA may need to disclose details of applications to the responsible Minister, Parliamentary Committees, the Auditor-General, and as required by law.

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

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

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

### **Personal privacy**

Documents containing personal information are handled and protected in accordance with the provisions of the *Privacy Act*, which sets standards for the collection, storage,

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use and disclosure of personal information and section 2.5 of the Guidelines. Personal information is disclosed only as provided for in these Guidelines or with the permission of the individual to whom it relates, or where the *Privacy Act* allows.

## 4. Provider Operation under the Australian Broadband Guarantee

Providers can access general information on the Australian Broadband Guarantee at [www.dcita.gov.au/communications\\_for\\_business/funding\\_programs\\_and\\_support/broadband\\_guarantee](http://www.dcita.gov.au/communications_for_business/funding_programs_and_support/broadband_guarantee).

This includes Program Guidelines, related administrative and policy information.

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

### 4.1 Broadband Service Locator

#### 4.1.1 For Customers

To assist Providers and/or Customers determine whether a Metro-comparable Service or a Program Service is available at the Customer premises, the Department has established the Broadband Service Locator, accessible at <http://bcoms.dcita.gov.au/CAOSL/Welcome.do>. The following Customer details must be entered relating to their particular premises:

- unit/street number;
- street name;
- suburb or town;
- state/territory; and
- postcode.

The Broadband Service Locator will list all the providers, both Australian Broadband Guarantee Providers and other commercial non-Program providers that are likely to be able to offer a Metro-comparable Service to the Customer's premises. Customers, or the Provider on behalf of the Customer, must contact each relevant commercial provider directly to determine if a Metro-comparable Service can be offered at the Customer premises.

If no commercial ISP can offer a Metro-comparable Service, or the commercial ISP does not provide the Customer with advice on whether the Metro-comparable Service can be offered within five (5) Working Days of the date of the initial inquiry by the Customer, the Customer must then contact any Australian Broadband Guarantee Terrestrial Service Provider listed on the Broadband Service Locator as offering a Service to their premises to determine whether a Terrestrial Broadband Service is available from such Providers.

Customers are able to attest that a Metro-comparable Service or a registered Terrestrial Broadband Service is not available, if a check has been undertaken with the relevant providers within the past month, and the providers have been unable to offer a service.

If no Terrestrial Broadband Service is available from an Australian Broadband Guarantee Provider (or the Provider does not provide the Customer with advice on

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whether the Metro-comparable Service can be offered within five (5) Working Days), the Customer may approach a Provider offering a Satellite Broadband Service.

Customers checking the Broadband Service Locator must record a copy of the identification number produced by the Broadband Service Locator on their Customer Attestation Form in order to support a claim by a Provider for an Incentive Payment. Alternatively, Customers may wish to attach a copy of the search results (including the identification number) to the Attestation Form.

### **4.1.2 Maintaining the Broadband Service Locator**

The Broadband Service Locator is intended to assist Customers with determining which non-Program providers and registered Providers can provide services to their premises.

Information contained in the applications of Providers will be uploaded to the Broadband Service Locator.

Non-Program Providers are requested to contribute to the Broadband Service Locator, in order to ensure that the Australian Government does not subsidise Australian Broadband Guarantee Providers to compete with their Metro-comparable Services. Non-Program Providers should be aware that providing information for use on the Broadband Service Locator is not connected in any way with registration under the Australian Broadband Guarantee.

Participating non-Program Providers need to ensure that they:

- provide detail of the technology platform (for example, ADSL, satellite, wireless or other options) being used;
- confirm that they are offering a service that fits the requirement for a Metro-comparable Service, and provide accurate mapping information (including latitude and longitude of equipment); and
- provide information to customers as to when a service would normally be able to be supplied to a customer.

DCITA will monitor the information that is placed on the Broadband Service Locator and reserves the right to amend any information that has been provided. Information about the services of non-Program providers may be removed from the Broadband Service Locator, either in particular areas or more generally, if that information is shown to be unreliable or misleading.

## **4.2 Promotion of Services**

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

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

The exact words of acknowledgment required to be used are as advised and agreed by DCITA, and may change from time to time depending on Australian Government policy.

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

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

#### **4.2.1 Initial Offer to Customers**

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

The text of the letter or email is required to be approved by DCITA, and must include the following information:

- (a) acknowledgment of the Australian Broadband Guarantee as an Australian Government Program;
- (b) the specific amount of the Incentive Payment for which the Provider is eligible on provision of the Service;
- (c) the details of Service being provided to the Customer;
- (d) the Data Speed Testing requirements for the Service being provided to the Customer and the address of the DCITA Data Speed testing service;
- (e) contact details for the Provider and DCITA;
- (f) a summary of the process for registering Customer complaints about their Service consistent with the TIO's Guide to Complaint Handling ([www.tio.com.au/members/MemberPublications/TIO%20Complaint%20Handling%20Guide%202002.pdf](http://www.tio.com.au/members/MemberPublications/TIO%20Complaint%20Handling%20Guide%202002.pdf));
- (g) acknowledgment of the Australian Broadband Guarantee requirement for the Customer to experience network availability 99 per cent of the time;
- (h) the timeframes for Service connection and restoration;
- (i) the Provider's approved Exit Strategy, including its strategy for withdrawal of Service; and
- (j) the requirement for the Provider to continue to offer the Customer the same Service at or below its registered price for a minimum of three years from the date the Service is first Connected and Supplied to the Customer.

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

#### **4.2.2 Customer Contracts—Customer Terms and Conditions**

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

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

Standard Forms of Agreement are not able to be used for this purpose.

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

- (a) **Maximum Terms**—Providers must offer their Customers the option to have a maximum contract period of no longer than 18 months. The Provider may also offer longer contract periods (for example, 24 months and 36 months), to Customers in addition to a maximum 18 month contract. Providers can offer Customers the option to have contracts with no minimum term, or a very short term with automatic renewal (for example, month by month) provided such arrangements do not result in loss by the Customer of access to Program approved Terms and Conditions and Program pricing during the three year period.
- (b) **Customer compliance**—Providers can include conditions that allow them to discontinue or change a service where it is demonstrated that the Customer has breached the contract in relation to payment for Services, care of CPE or other reasonable conditions. However, Customers must be provided with adequate notice of any claimed breach of the contract, and with the opportunity to rectify any problems.
- (c) **Acceptable Use Policy**—Where a contract makes provision for the use or introduction of an Acceptable Use Policy (AUP), the AUP must be reviewed by DCITA to ensure that it is consistent with these Guidelines prior to its use. There is no requirement on a Provider to place an AUP in their Deed, unless it forms part of the text of Terms and Conditions as a whole.
- (d) **Compliance with Government Legislation**—Contracts must comply with all relevant Commonwealth, state, territory and local Government legislative requirements.
- (e) **Consistency with Australian Broadband Guarantee Guidelines**—The contract should not be inconsistent with the specific objectives and requirements of the Australian Broadband Guarantee.
- (f) **Where the Australian Broadband Guarantee-specific terms form part of a general terms**—that the Australian Broadband Guarantee specific terms override the general terms, in the case of inconsistency.
- (g) **Personal information**—DCITA requires Customers to agree, for the purposes of the *Privacy Act 1988* (the ‘Privacy Act’), to their Customer details being provided by Broadband Connect Providers to DCITA, and potentially other appropriate agencies for the purposes of program administration, regulation and evaluation, and policy development.

Any changes to Customer Terms and Conditions during its operation must be approved by DCITA.

### **4.3 Claims Management**

#### **4.3.1 Funding Allocation**

The Australian Government has allocated \$112.456 million (excluding GST) for the Australian Broadband Guarantee during 2007/2008. DCITA will pay claims up to the extent of the Funding Allocation until 30 June 2008, or until an earlier time should the allocation be fully expended prior to 30 June 2008.

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

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

### **4.3.2 Broadband Customer Online Management System (BCOMS)**

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

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

In the event that BCOMS is not operational for more than 24 hours at any time during the Program's operation, DCITA will institute alternative management arrangements. Providers will be notified of these details and a notice will also be published on the DCITA website.

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

### **4.3.3 Lodgement of Claims**

#### **4.3.3.1 Lodgement Period**

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

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

Providers are only able to lodge one Incentive Payment claim for each Service supplied and the Incentive Payment can only be claimed after the Service has been Connected and Supplied to a Customer.

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

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

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

Claims will not be considered valid where the supply of service is made to a premises or site for the purpose of re-transmitting the service to other premises and customers. Such premises are not considered to be eligible premises under the program. For certainty, this includes the establishment of wi-fi hotspot sites.

In claiming Incentive Payments, Providers are required to declare that the claims are legitimate and accurate and that the Provider holds and can produce on demand, evidence to substantiate the claim and where specified, lodged copies of the attestation, with the Department on a monthly basis. Providers must make all reasonable steps to ensure that claims are valid, including in regard to the Connect and Supply of Services and the eligibility of both Customers and Premises.

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

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

### **4.3.3.2 Data Required to Lodge a Claim**

#### **(a) Material to be completed before lodging a Claim**

Once the Customer has been Connected and Supplied with a Program Service the following must be completed before a claim for an Incentive Payment is submitted to DCITA:

- the Customer Attestation Form has been completed and signed by the Customer; and
- the Customer Terms and Conditions have been duly completed and signed by the Customer and the Provider. The Provider should ensure a copy of the signed Terms and Conditions are kept with the Customer's records.

Customer Attestation Forms must be in a written format or in another format approved by DCITA. DCITA can advise which formats are acceptable, and Providers must seek approval from DCITA before using a format other than written.

An electronic copy of each Customer Attestation Form must be submitted to the Department on a monthly basis. Electronic forms must be provided to DCITA in a form approved by DCITA. Where forms are saved individually, they should be clearly named. Where forms are collated, they should include an index for reference.

#### **(b) Information to be inputted into BCOMS**

All Provider claims for Incentive Payments must be lodged via BCOMS within 45 Working Days of the Connection and Supply of the Service to the Customer.

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Claims will not be processed by DCITA unless the address for the premises to which the Service was supplied includes:

- street number or Lot/Block/Section number (if relevant);
- street name;
- locality;
- postcode; and
- state or territory.

Where a street name, street number or Lot/Block/Section number does not exist, longitude and latitude should be supplied in addition to all other criteria listed above. Property names cannot be used by themselves, and need to be accompanied by the minimum information outlined above. PO Boxes and RMBs are not valid premises addresses and the number '0' is not considered a valid street number.

The successful lodgement of claims via BCOMS does not mean that the claim has been accepted by DCITA for payment.

### ***(c) Responsibility for Lodgement of Claims***

Responsibility for lodgement of claims for Incentive Payments rests solely with the Provider. DCITA staff will provide advice where Providers are having difficulties with lodgement of claims. DCITA staff are not authorised to lodge claims on behalf of Providers.

### ***(d) Providers with Outstanding Customer Attestation Forms under the Broadband Connect Incentive Program, Metro Broadband Connect Program and Australian Broadband Guarantee (transitional period)***

Providers under the Australian Broadband Guarantee (transitional period) who hold outstanding Attestation Forms from the Australian Broadband Guarantee (transitional period) in respect of current applications for the supply of broadband services (and for which no service has yet been connected to the Customer's premises) may carry these across to the Program, provided the Customer remains eligible for a Service and is in an approved Service Area under the Australian Broadband Guarantee. Providers should contact DCITA for further information. DCITA's decision in relation to such matters will be Final.

Providers who have outstanding Attestation Forms from the Broadband Connect Incentive Program or the Metro Broadband Connect Program in respect of a current application for the supply of broadband services (and for which no service has yet been connected to the Customer's premises), are required to have their customers complete a new Application/Attestation form.

## **4.4 Assessments of Claims and Payments**

### **4.4.1 Process for Assessment of Claims**

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

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

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

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

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

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

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

When, as part of an audit of the Provider's compliance with the Australian Broadband Guarantee, DCITA or its auditor identifies claims incorrectly paid during the life of the Australian Broadband Guarantee, DCITA reserves the right to seek repayment of such monies.

The scope of a Deed may be reduced or the Deed terminated in the case of serious irregularities being identified in relation to claims for incentive payments.

### **4.4.2 Determination of Rates for Payment of Claims**

#### **4.4.2.1 Standard Incentive Payment—\$1100**

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

1. where an ADSL, ADSL2, ADSL2+ or cable service is Connected and Supplied; or
2. where a wireless Terrestrial Broadband Service is Connected and Supplied to a premises in an area which is to be covered by a broadband service under the Broadband Connect Infrastructure Program; and
3. where any Terrestrial Broadband Service is Connected and Supplied in a Metropolitan Area.

#### **4.4.2.2 High Cost Incentive Payment—\$2750**

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

1. Where a Satellite Broadband Services is Connected and Supplied to an Eligible Premises and that Premises was not able to receive a Metro-comparable Service or Terrestrial Broadband Service at the time of application; and

2. Where a wireless Terrestrial Broadband Service is Connected and Supplied to an Eligible Premises in an area (other than a Metropolitan Area) that will not be covered by a broadband service under the Broadband Connect Infrastructure program, as indicated on the Broadband Service Locator. The Department may, at its discretion, consider whether this payment may be available for the deployment of other Service Solutions that may incur significant establishment costs.

#### **4.4.2.3 Processing of Claims and Request for Information**

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

Where a Provider is asked by DCITA to provide further information about claims lodged on BCOMS, the Provider has 10 Working Days to provide a response or to request further time to complete an investigation of the issues, unless another timeframe is specified by DCITA.

#### **4.4.2.4 Taxation Status of Claims**

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

### **4.5 Compliance and Audit Issues**

#### **4.5.1 Ongoing Compliance**

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

- (a) Notifications of changes in company structure or financial situation—Providers must advise DCITA if they become aware of any material change in their corporate standing (trading, management, entity structure or ownership) which could affect their ongoing ability to meet their obligations under the Australian Broadband Guarantee. Failure to notify DCITA of any such change may lead to action being taken by the Department, including reduction in scope or termination of a Deed.
- (b) Complaint Handling—Providers should have in place appropriate complaint handling mechanisms as specified under a Communications Alliance Limited (formerly Australian Communications Industry Forum (ACIF)) Code ([www.acif.org.au](http://www.acif.org.au)) or under the Telecommunication Industry Ombudsman's complaint handling process ([www.tio.com.au/policies/index.htm](http://www.tio.com.au/policies/index.htm)). Where a complaint cannot be satisfactorily resolved, the Customer may raise the complaint with the TIO for action. Details may be obtained from ([www.tio.com.au/make\\_a\\_complaint.htm](http://www.tio.com.au/make_a_complaint.htm)).
- (c) Data Speed testing—To ensure Data Speed complies with the Data Speed requirements under section 4.5.3, all Providers must:
  - (i) supply their Customers with information about the DCITA Data Speed test facility (see section 4.5.3) and satisfactorily respond to complaints from customers who have used this facility to test data speed;

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- (ii) fully participate in DCITA's data testing regime (see section 4.5.3)
- (iii) ensure that all Customer modems provide user data access via an industry standard data port (for example, 10/100 Ethernet, USB, IEEE-1394 or PCMCIA).
- (d) Maintenance of CPE—While CPE ownership remains with the Provider, the Provider must ensure that CPE is repaired or replaced in the event of technical or mechanical faults, even if the CPE is no longer covered by the manufacturer's warranty.
- (e) Record Keeping—Appropriate and adequate records in all formats (electronic and print) must be maintained to enable a Provider to satisfy all Program claims, auditing, compliance reporting, and review and evaluation requirements. Where a Registered Provider is a company registered under the *Corporations Act 2001*, all record keeping must comply with the requirements of the Act. A Provider must retain records, as identified above, for no less than three years after the end of the Australian Broadband Guarantee. Records in relation to each claim for an Incentive Payment must include, but are not limited to, the following information:
  - (i) Customer application and Customer Attestation Form;
  - (ii) signed and dated copy of the contract between the Provider and the Customer (or other evidence as approved by the Department);
  - (iii) evidence of the Customer's acceptance of the contract Terms and Conditions;
  - (iv) evidence that the Contract terms were communicated to the Customer prior to execution of the Contract;
  - (v) evidence that a Program Service has been Connected and Supplied; and
  - (vi) where the Provider has checked the Broadband Service Locator on behalf of the Customer, evidence of the output of the Broadband Service Locator.

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

At the end of the 2007/2008 financial year or when all funds are spent (whichever occurs first) each Provider must report to DCITA within the timeframe outlined in the Provider's funding Deed, on its compliance with its obligations under the Australian Broadband Guarantee, particularly the obligation to provide Services at the performance and price levels set out in its Deed. Providers must also provide a financial report to DCITA at the end of the financial year. A summary of compliance reporting obligations common to all Providers is at section 5.2.

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

Providers who are found to be in breach of their obligations (including failure to supply reports or other material requested within the timeframe provided in the Funding Deed and the Guidelines) will be required to take remedial action (including

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repayment of money received as a result of claims) and, in the event of continued or serious breaches, their Deed may be terminated.

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

### **4.5.2 Changes in Circumstance**

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

A Provider must notify DCITA of any significant changes proposed to its:

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

DCITA must be notified of such developments as soon as possible after such decisions are taken. Where there is a change or proposal to change management, entity structure and/or ownership, DCITA may conduct a financial or other assessments (according to the terms outlined in Section 3) to confirm the new provider's ongoing viability to offer Services as a result of these changes, before executing a new Funding Deed or Deed of Novation (whichever is appropriate).

If a Provider is subject to a takeover by a non-Program provider, the scope of the Provider's Deed may be reduced or terminated, as deemed appropriate by DCITA, unless the non-Program provider is approved to register with the Program.

### **4.5.3 DCITA's Data Testing Regime**

#### **4.5.3.1 *Obligation of Providers to Participate***

Australian Broadband Guarantee Providers are required to:

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

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

#### **4.5.3.2 *Testing Regime***

DCITA conducts a three tiered data testing regime.

***(a) Tier 1—Customer Testing***

DCITA has established an online facility at which Program Customers are able to test their average Data Speeds. This facility is at [www.bctest.com.au/speedtest.html](http://www.bctest.com.au/speedtest.html)

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

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

If the Customer is not satisfied by the Provider's explanation, the Customer should take the matter to DCITA. DCITA may require Providers to undergo an examination of Service performance. In some circumstances, DCITA may also refer the Customer to the TIO for further action.

Where complaint data indicates possible systemic non-compliance by a Provider with its average Data Speed obligations, DCITA may require further formal testing, and, if necessary, rectification of the situation.

***Special Circumstances***

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

A Provider may continue to provide a Service that is not achieving the required average Data Speed, provided that the Customer has been informed of their right to another Program Service as described above, and elects to continue to receive the existing Service. In this circumstance the Incentive Payment would not be repayable by the Provider to DCITA. Once the decision is taken by the Customer, the premises will no longer be eligible for a new Program Service.

This provision will also apply in circumstances where a Provider is able to provide a Metro-comparable Service to the customer, but is not able to provide any higher speed services to that Customer based on the current network configuration.

***(b) Tier 2—Ongoing Monitoring and Reporting***

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

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

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

- The Provider will be required to provide an explanation to DCITA within two working days; and
- DCITA may require the Provider to enter into a program of daily Phase 2 testing. This means that for a period of three successive days the testing schedule as described above will be carried out. In certain circumstances, (for example, technical problems limiting access to a Provider's test computer) it may not be possible for this testing to occur over three consecutive days.

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

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

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

### ***(c) Tier 3—Ad-Hoc Auditing***

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

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

### ***(d) Publication of Data Speeds***

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

## **4.5.4 Action DCITA can take in respect of a Provider's failure to comply with the Guidelines or a Deed**

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

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

### **4.5.5 DCITA's Right to Vary the Guidelines**

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

Prior to any significant variation in these Guidelines, DCITA's general policy would be to consult with Providers and the wider community where appropriate and possible. DCITA may consider any comments/objections raised by Providers to a variation of these Guidelines prior to implementation. DCITA seeks to provide responses to objections on significant matters on a "best endeavours" basis prior to implementation.

DCITA will notify by email or via the Web site if the Guidelines are varied. Providers should regularly check the DCITA website to ensure they are up to date with the Australian Broadband Guarantee Guidelines and any other news relating to the Australian Broadband Guarantee.

### **4.6. DCITA Contact Details**

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

Manager

Australian Broadband Guarantee Provider Management  
Broadband Infrastructure Branch

Department of Communications, Information Technology and the Arts

Post: GPO Box 2154, Canberra, ACT 2601

Courier: 38 Sydney Avenue, Forrest, ACT

Email: [abgproviders@dcita.gov.au](mailto:abgproviders@dcita.gov.au)

Phone: 1800 883 488

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

## **5. Standard Program Customer Application and Attestation Form**

### ***Section 1: Applicant details***

Type of Application:

Residential (See Point A)

Small Business/Indigenous Community Council (See Point B)

A. Residential applicant:

Title:            Given names:

Surname:

Telephone (b/h):

Telephone (a/h):

Mobile:

Fax:

Email:

(Go to section 2)

B. Small Business/Indigenous Community Council

Small Business

Number of full time employees:

Number of public access points:

Indigenous Community Council

Organisation Name:

ABN:

ACN:

GST exempt: YES/NO

Contact details

Title:            Given names:

Surname:

Position:

Telephone (b/h):

Telephone (a/h):

Mobile:

Fax:

Email:

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### **Section 2: Address details**

Program Service Address: (where the Australian Broadband Guarantee Program Service will be connected—must be a physical address i.e. cannot be a postal address)

Telephone number of Service Address:

Address Line 1:

Address Line 2:

Locality / Suburb: State: Postcode:

Postal Address: (As Above, if same as Service Address)

Address Line 1:

Address Line 2:

Locality / Suburb: State: Postcode:

Physical Address: (where you reside / address of your organisation—As Above, if same as Service Address)

Address Line 1:

Address Line 2:

Locality / Suburb: State: Postcode:

### **ATTESTATION**

Checking whether you are eligible

To be eligible for a Program Service, you must:

- be an ‘Eligible Customer’ (as defined under the Australian Broadband Guarantee Guidelines);and
- applying for a Program Service at Eligible Premises (as defined) in a Program Service Area; and
- not have been able to receive a broadband Internet service that was a Metro-comparable Service in terms of price and functionality at those premises at the time of applying for a service, other than through an Australian Broadband Guarantee Service.

If the premises have access to a Metro-comparable Service (as defined in the Guidelines) at the time of application, you are not eligible to receive a Program Service.

**Q1. Is the Australian Broadband Guarantee you are seeking to be supplied to**

Your principal place of Residence?

YES/NO

A small business you are authorised to represent?

YES/NO

{please note: you must answer Yes to at least one of these questions, and may answer Yes to both if you are claiming two broadband services}

**Q2. Have you (or a Provider on your behalf) used the Broadband Service Locator available at <http://bcms.dcita.gov.au/CAOSL/Welcome.do> to check whether you can receive a terrestrial Metro-Comparable Broadband Service?**

YES, I have – Please record time of check and identification number, or attach a copy of the test results (with the identification number): .....

YES, My Provider has—Name of Provider: ..... (Provider to record identification number)

NO

If Yes, did any commercial ISPs on the list advise that a terrestrial Metro-comparable Service could be provided at the Premises?

YES / NO

If No, did any Australian Broadband Guarantee Providers offering Terrestrial Broadband Services to your premises advise that they could offer you a service?

YES/NO

If No, you are eligible for a Satellite Broadband Service from an Australian Broadband Guarantee Provider.

The Broadband Service Locator provides indicative information about the premises commercial ISPs and Australian Broadband Guarantee Providers are serving. Customers need to check with their preferred Provider about the availability of Services to their particular premises. Where a list of potential providers include providers the Customer has contacted in the last month and the Customer was advised no service was available, the Customer does not need to make contact with that provider again, and should note this on this Attestation form below.

**Q3. Have you or your organisation previously received a HiBIS, Broadband Connect, Metro Broadband Connect or Program Service at the 'Program Service Address' nominated above?**

Answer: YES / NO

If you have received such a service, do you still receive the service?

Answer: YES/NO

If you no longer receive the Service you are only eligible to receive an Australian Broadband Guarantee Service to replace that service if you have lost the service due to circumstances beyond your control. If so please explain these circumstances.

.....  
If you still receive the service, you are entitled to an additional Service if your Premises is used as both residential and small business premises. Is this the case (See sections 2.1.1.2 and 2.6 of the Program Guidelines on eligibility in relation to claiming a second service)?

YES/NO

If you have received such a service, please provide the name of the previous Provider:

.....

**Q4. Please indicate the Registered Australian Broadband Guarantee Provider you have chosen to supply an Australian Broadband Guarantee Service to your premises.**

Company Name:.....

Primary Company contact you have dealt with:.....

Expected date of connection:.....

I attest that, to the best of my knowledge:

- the personal information I have provided is true and accurate; and
- I, and the premises at which I require the Australian Broadband Guarantee Service, are eligible under the Australian Broadband Guarantee and I have made such inquiries as outlined above and as are reasonable to confirm this; and
- I have been properly informed by the Provider as to my rights and obligations under the Australian Broadband Guarantee.

I agree to:

- DCITA making inquiries as necessary with any organisation or individual to verify any information I have provided;
- my service provider making available to DCITA any information concerning my application and participation in the Transition Program ; and
- DCITA, as well as other government agencies and/or my service provider using my personal information for the purposes of Program administration, evaluation, related policy development and other related functions.

I understand that:

- In addition to any documents attached to this attestation, I may be required to provide further documents to substantiate my attestation;
- I may be asked to participate in Program evaluation activities; and
- it is a criminal offence under the *Crimes Act 1914* (Cth) to deliberately make false or misleading statements, with penalties potentially including imprisonment.

Signed by the customer: ..... Date: ..../..../....

Printed full name: .....

List of relevant Attachments: .....

.....

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***Section 3: Office Use Only***

Name of service:

Incentive Rate:

Reason why customer eligible:

Date service requested:

Date of claim:

Telephone of Premises:

Date of connection:

Program Customer ID number:

### **5.1 Optional Installation sign off form**

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

<p>AUSTRALIAN BROADBAND GUARANTEE</p> <p>CERTIFICATE OF CONNECTION AND SUPPLY OF SERVICE</p> <p>Customer Name:</p> <p>Business/Indigenous Community Council Name:</p> <p>Installation Address:</p> <p>Contact Number:</p> <p>Declaration: I declare that my Provider has Connected and Supplied (as defined in the Australian Broadband Guarantee Guidelines) a Service under the Australian Broadband Guarantee and that the connection is operating.</p> <p>Signature:</p> <p>Print Name:</p> <p>Date:</p>
--

A copy of the certificate, or other evidence demonstrating that the Service has been Connected and Supplied, should be provided to the Customer and the original scanned retained by the Provider (as a record), in the event of a dispute.

## ***5.2 Matters to be Covered in Reports***

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

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

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

‘Actual’ means actual documents or performance data that are to be provided as part of the compliance report in relation to a requirement. This is in contrast to ‘confirmation’ and/or ‘description’, which do not require actual performance data.

Where DCITA has not specified a measurement or monitoring methodology, the report should briefly describe the methodology used by the provider. Data are subject to standardisation by DCITA.

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