



**Australian Government**  

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**Australian Broadband Guarantee**

# **Australian Broadband Guarantee**

## **Program Guidelines**

**2007–2008**

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# 1. Introduction

## 1.1 Objectives of the Australian Broadband Guarantee

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

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

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

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

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

To assist in achieving the Program objectives described in section 1.1, the Department of Communications, Information Technology and the Arts (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's constitution, procedures and policies, and the Australian Communications Alliance Ltd's Complaint Handling Code and applicable industry codes;
- fair Terms and Conditions consistent with the Guidelines, *Telecommunications Act 1997* and related legislation, *Trade Practices Act 1974*, and other consumer legislation, and other applicable industry codes ;

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

In participating in the Program, all Providers must:

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

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

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

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

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

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

All requests for clarification or determination of the meaning of provisions in these Guidelines should be referred to 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.

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

#### **1.4 Program Funding**

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

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

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

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

##### **A**

‘**ACCC**’ means the Australian Competition and Consumer Commission.

‘**ACMA**’ means the Australian Communications and Media Authority.

‘**Added Value Service**’ means the Service described at section 2.3.3.

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

‘**Applicant**’, according to the context, means:

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

‘**ASIC**’ means the Australian Securities and Investments Commission.

‘**Assessment Panel**’ means the panel convened by DCITA to make decisions on the registration of Applicants, Service Plans and Service Areas under the Program.

‘**ASX**’ means the Australian Stock Exchange.

‘**ATO**’ means the Australian Taxation Office.

‘**Attestation Form**’ or ‘**Customer Attestation Form**’ means the form contained in section 5 of the Guidelines or in another form as approved by DCITA for this purpose’.

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

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

## **B**

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

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

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

**‘Broadband Service Locator’** means the form available on the DCITA website at <http://bcoms.dcita.gov.au/CAOSL> 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 Eligible Customer has a broadband connection at their premises, and they are actively receiving a Program Service from this connection. At a minimum, a Customer will be considered by 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 CPE by the Provider; and
- the Customer has entered into a contract with the Provider for the provision of the Service. See section 4.3.3 for further discussion.

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

**‘Customer’** according to the context, means:

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

**‘Customer Attestation Form’ or ‘Attestation Form’** means the mandatory form 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 ISP, in addition to any other attestations relevant to their circumstances.

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

## **D**

**‘Data Speed’** means the speed at which data bits, comprising both protocol headers and data payload, are carried by a service. This contrasts with throughput, which refers to the delivery of actual payload data bits (i.e. the content useable 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’** 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.

## **E**

**‘Eligible Customer’** means, subject to these Guidelines:

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

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

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

that did not have access to a Metro-comparable Service when an application for a Service at the premises was submitted to a Provider. 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 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 \$97.446 million (excluding GST) which is allocated for the Program in the financial year 2007–2008.

## **G**

**‘Guidelines’** means these Australian Broadband Guarantee Guidelines, as issued by 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 4.5.2.2.

## **I**

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

## **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 (with no restrictions on usage time);
- (b) a price to the Customer over three years of no more than \$2500 (GST inclusive) including equipment, installation, connection, account establishment, travel costs and ongoing provision of the service. Providers can seek to claim travel costs where relevant (refer section 4.5.2.3); and
- (c) the Provider or commercial ISP offering the broadband service can install the service within a reasonable period of time. [Note, a reasonable period of time in this context will ordinarily be within thirty (30) calendar days of the service order being processed or any other longer period of time determined by DCITA to be reasonable.]

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

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

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

## **O**

**‘OPEL Networks’** means the OPEL Networks roll-out of broadband services as provided through the Australia Connected Package announced on 18 June 2007.

## **P**

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

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

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

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

**‘Program Service Plan’** or **‘Service Plan’** means a plan or plans (detailing the prices charged for providing the Service) Registered with 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 (ISP) Registered 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 Australian Government (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 current Funding Deed.

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

**‘Remote Australia’** means the areas defined as being within a Telstra Extended Zone, as identified by DCITA at [www.dcita.gov.au/communications\\_for\\_business/funding\\_programs\\_\\_and\\_\\_support/](http://www.dcita.gov.au/communications_for_business/funding_programs__and__support/)

*broadband\_guarantee*, and offshore islands and territories where those islands and territories are more than 100km from a state or mainland territory capital city (measured in a straight line from the GPO of that city) and not connected to the mainland via a fixed road transport link.

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

## **S**

**‘Satellite Broadband Service’** means a Service Solution delivered by a two-way satellite service, or other service determined by DCITA 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 DCITA (as outlined in section 3.5.4) that have been included in a Provider’s Funding Deed as the areas to which it will offer a particular Service.

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

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

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

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

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

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

## **T**

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

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

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

**‘TIO’** means the Telecommunications Industry Ombudsman.

**‘Travel Distance’** means the distance travelled from the depot from which the installer departs for the job to the point of installation (and return) for the purpose of installing a Program Service. Where multiple installations occur on a journey, the travel distance is deemed to be one journey only—that is, the distance travelled from the depot to reach the installation site furthest from the depot.

## ***U***

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

## ***W***

**‘Working Day’** means a day other than:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **2.1.2 Small Business**

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

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

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

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

#### **2.1.2.1 What is Excluded as a Small Business Premises**

The following premises are excluded under the Australian Broadband Guarantee:

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

### **2.1.2.2 Education Facilities Excluded from the Program**

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

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

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

#### **2.1.3.1 ICCs situated in Queensland**

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

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

#### **2.1.3.2 ICCs situated in the Northern Territory**

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

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

An Indigenous Community Council must be able to substantiate its legal status to a Provider and, if requested, to 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 Provider, that Customer could not access a Metro-comparable Service (as defined), through an ISP other than a Registered Provider.

For the purposes of the Program, a Customer is not considered to have access to a Metro-comparable Service, if the commercial ISP charges any fees in any manner that would cause the cost of the Metro-comparable Service to be increased above \$2500 (GST inclusive) over three years. For example, if the Customer is required to pay installation costs in instalments that would result in the total cost of the service to the customer exceeding \$2500, that service not be regarded as a Metro-comparable Service.

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 2.4.1 below for further details).

### **2.2.1 Other Ineligible Premises**

Where a Customer is receiving a broadband service which has a peak download Data Speed of between 256kbps and 512kbps 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 reasonably be upgraded to a Metro-comparable Service by their provider on a commercial basis. In these circumstances an Incentive Payment will not be paid to an Australian Broadband Guarantee Provider to upgrade the Customer to a Metro-comparable Service.

Customers are not eligible to receive an Australian Broadband Guarantee Service at their premises, if their premises have previously been connected to a broadband service under HiBIS, the Broadband Connect Incentive Program, or Metro Broadband Connect as above. The only exception to this is where a Customer has lost that service for reasons beyond their control (further details regarding this exceptional case is provided at section 2.6).

Only one Program Service may be provided to an Eligible Premises at any one time.

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

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

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

- (a) access to the Internet at a peak upload/download Data Speed of at least 512/128 kbps and 1000 MB per month usage allowance (with no restrictions on usage time). Providers may offer a Threshold Service with a higher peak Data Speed or higher data usage, provided all other provisions of this section are met;
- (b) a price to the Customer over three years of no more than \$2500 (GST inclusive) including equipment, installation, connection, account establishment and ongoing provision of the service. This amount excludes the cost of installing a fixed line telephone service to premises where such a service is available but not connected;
- (c) availability 99 per cent of the time (averaged over a quarterly period) with average data download and upload speeds of at least 60 per cent of these peak speeds at least 75 per cent of the time as measured according to the prescribed Australian Broadband Guarantee testing schedule for test computers located in different geographic regions;
- (d) either ownership of the CPE passes to the Customer within the three year period over which Program pricing is to apply or the ownership of the CPE resides with the Provider. Where the CPE remains the property of the Provider, the Provider is

to ensure that appropriate arrangements are in place to maintain the CPE during the term of the contract, and where necessary, to repair or replace it within the overall pricing package being offered;

- (e) free helpdesk support for common Customer connection problems and service faults as agreed between 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 for each Service Solution registered.

### **2.3.2 Entry Level Services**

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

- (a) access to the Internet at a peak upload/download Data Speed of at least 256/64 kbps and a minimum 500 MB per month usage allowance. Providers may offer an Entry Level Service with a higher peak Data Speed or higher data usage, provided all other provisions of this section are met;
- (b) a price to the Customer over three years of no more than \$2500 (GST inclusive) including equipment, installation, connection, account establishment and ongoing provision of the service. This amount excludes the cost of installing a fixed line telephone service to premises where such a service is available but not connected; and
- (c) all other service provisions that apply to a Threshold Service (see section 2.3.1).

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

### **2.3.3 Added Value Services**

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

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

- it is appropriately taking account of the Incentive Payment in setting the price for that Service; and
- the price of the Added Value Service is reasonable (commensurate with the additional features) relative to the price of the Provider's Threshold Service using the same Service Solution.

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

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

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

### **2.3.4 Other Matters**

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

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

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

## **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 authorised on the Customer's behalf, must check DCITA's Broadband Service Locator at <http://bcoms.dcita.gov.au/CAOSL> to determine whether a Metro-comparable Service is available at the relevant premises, other than through an Australian Broadband Guarantee Service. A list of the details that are required to be lodged in the Broadband Service Locator is outlined at section 4.2.1. If the search reveals that no Metro-comparable Service from a commercial ISP is available, the Customer can apply for an Australian Broadband Guarantee Service.

If an Australian Broadband Guarantee Service is available at an Eligible Premises through a Terrestrial Broadband Service from one or more Program Providers, 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 and may register their detail on the Customer Register (this is discretionary for the Customer).

The identification number produced by the Broadband Service Locator at the time of registration by the Customer must be noted on the Attestation Form that a Customer must complete under section 2.4.2. The Customer or a Provider acting on behalf of a Customer must also include the full address of the premises and either a landline

number, or if no landline is available, the mobile phone number or other number at which the Customer may be contacted.

Where a Provider completes this search on behalf (and with the consent) 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 4.2 for further details.

Where the search reveals that there may be a Metro-comparable Service available from a commercial ISP(s), the Customer (or the Provider authorised on the Customer's behalf) is required to contact the listed ISP(s) in order to verify whether a Metro-comparable Service is available at the relevant premises. However, in the case where there is more than one commercial ISP offering ADSL services, the Customer is only required to contact one of the commercial ISPs offering ADSL services in their area from those listed on the Broadband Service Locator.

Where a Customer or a Provider on behalf of a Customer contacts a another Provider or commercial ISP to determine access to a Metro-comparable Service by telephone, contact must be made only between the hours of 9.00am and 5.30pm Monday to Friday (excluding Public Holidays) in the time zone in which the Provider or commercial ISP operates.

In situations where a commercial ISP 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 ISP that they cannot provide such a service, the Customer does not need to make contact with that ISP again, provided the previous contact was made within thirty (30) calendar 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 commercial ISP, the Customer is not eligible to receive an Australian Broadband Guarantee Service.

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 commercial ISPs/Providers within the past month, and the commercial ISPs/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 whether the Metro-comparable Service can be offered within five (5) Working Days), the Customer may approach a Provider offering a Satellite Broadband Service.

DCITA is currently investigating ways to fully automate the Broadband Service Locator process in the interests of both Providers and Customers, and will revise these

Guidelines as appropriate to reflect any new procedures. All Registered Providers will be notified of any changes in accordance with section 4.6.6 below.

### **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 *Criminal Code Act 1995* (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.

Attestation Forms must be completed by a Customer before a Service is Connected and Supplied.

DCITA is currently investigating ways to fully automate the attestation process in the interests of both providers and Customers and will revise these Guidelines to reflect any new process. All Registered Providers will be notified of any changes in accordance with section 4.6.6 below.

### **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, in addition to any other obligations it may have. 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 the requirements regarding proof that a Service has been Connected and Supplied at the Customer's premises or alternatively some other form that demonstrates this.

## **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. Providers are required to also adhere to the requirements under the Privacy Act in respect of Customer's personal information.

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

Guidelines or with the permission of the individual to whom it relates, or where otherwise permitted by the Privacy Act.

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

There are a range of circumstances where a Customer may lose access to an Australian Broadband Guarantee, Broadband Connect Incentive Payment, Metro Broadband Connect, HiBIS Service, or any other Metro-comparable Service, and in some of these circumstances they may be eligible to access an additional Service. The following rules apply. Please note, where a Provider is uncertain about the application of the Guidelines to a particular circumstance, the Provider should seek written advice from DCITA about the application of the Guidelines to those circumstances.

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

Where a Customer has received from their current premises:

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

and where, in circumstances beyond the control of the Customer (for example, loss of 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 Customer's terms and conditions), that service is no longer offered to the Customer or is not offered on at least the same terms and conditions as originally offered, the Customer may be eligible for an Australian Broadband Guarantee Service, subject to satisfying all other eligibility requirements as described in these Guidelines.

#### **2.6.1.1 Loss of CPE**

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

However, where the Customer loses the Service due to exceptional circumstances, they may be eligible to receive a new Service. In such cases, when seeking another Program Service the Customer must attest (on the Customer Attestation Form) to

losing the service and detail fully the reasons for the loss of that service (including any accompanying documentation to support assertions). DCITA will assess each claim on a case-by-case basis and any decision taken is final.

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

The loss of the Service may amount to the Provider breaching an obligation under the Funding Deed. In such cases, the Provider may be required to repay the Incentive Payment it had received for provision of that Service, and 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 level of service is not maintained at the former level (in terms of price and functionality) by the ISP/Provider, the Customer may be eligible for a new Service by a different Provider under the Australian Broadband Guarantee (where appropriate). However, where the Customer is seeking to upgrade to a higher level Service and the existing service is being maintained by the ISP/Provider, the Customer will not be eligible to receive an Australian Broadband Guarantee Service.

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

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

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

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

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

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

Generally, where a Customer moves to a premises that had been previously supplied with a HiBIS, Broadband Connect Incentive Program, Metro Broadband Connect,

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

However, where a Customer moves to premises previously supplied with a HiBIS, Broadband Connect Incentive Program, Metro Broadband Connect, Australian Broadband Guarantee (transitional period) or Australian Broadband Guarantee Service and such a Service is no longer available (for example, due to removal of significant infrastructure either by the previous occupant or their Provider) the premises may be eligible to receive a new Program Service. Where the Service is no longer available due to actions of the former Provider (for example, where a Provider has withdrawn a service or substantially increased the price of a service) that Provider is not eligible to receive another incentive payment for the provision of a new Service to those premises.

Where a Provider is not certain as to whether a Customer is eligible to receive an Australian Broadband Guarantee Service at their new premises, they must seek written advice from 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 encouraged (but not obliged) to offer Customers a range of Service Plans under the Program. Service Solutions should be scaleable in speed and data levels from Threshold levels to enable Customers to upgrade and improve the quality of their Service.

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

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

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

#### **2.6.5 Exit Strategy**

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

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

The Exit Strategy must contain the following key elements:

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

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

The minimum requirements are detailed in section 5.3 and in the application form. An Applicant who does not provide an Exit Strategy or whose proposed Exit Strategy is less than the minimum, as specified in the application form, may be declined for registration.

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

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

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

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

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

### **3.1 Introduction**

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

All Applicants are required to register:

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

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

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

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

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

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

## **3.2 When Applications can be Made**

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.

Complete applications for the first Registration Round must be submitted by, or postmarked by, 5.00pm AEST on 13 July 2007.

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.

### **3.2.1 Future Registration Rounds**

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

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 part of the approved application form, and will be assessed according to the relevant assessment criteria, as set out in these Guidelines. DCITA will notify Providers of any subsequent Registration Round and provide application forms to be used by prospective applicants.

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

## **3.3 Overview of Assessment Process**

### **3.3.1 Three-Stage Assessment Process**

Applications are subject to a three-stage assessment process.

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

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

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

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

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

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

### **3.3.2 Further Details on the Assessment Process**

Applications must be submitted by the closing date for Registration Rounds specified at section 3.2 and/or notified on DCITA's website (in the case where a general extension to the closing date is announced). 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 applications. Where an Applicant does not provide clarification responses within a specified timeframe, the application may be declined.

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

DCITA reserves the right:

- not to register Applicants under the Program; and
- to vary, amend or terminate a 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 execution of the related Funding Deed or any other required documentation in respect of registration under the Program.

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

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

### **3.4 Stage One: Screening of Applications**

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

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

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

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

#### **3.4.1 Screening Process for Terrestrial Broadband Service Areas**

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

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

### **3.5 Stage Two: Assessment**

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

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

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

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

### **3.5.1 Criterion 1: Financial Viability and Operational Sustainability**

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

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

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

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

### **Information required**

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

- Audited financial accounts (or at minimum audited profit & loss statement, balance sheets and cashflow statements) for the past three (3) financial years.
  - Where the Applicant cannot supply audited financial accounts for the past three financial years, a shorter period may be considered if the Applicant can satisfactorily demonstrate current and ongoing financial viability;
  - Where the Applicant is a majority owned subsidiary of another company and is being financially supported by that company, the above financial information of the parent company (or relevant controlling business) is to be supplied in addition to their own information;
  - Where the Applicant has obligations under the *Corporations Act 2001* to prepare an annual report with audited financial statements, that information may be used. If an audit opinion is qualified, the Applicant should provide a copy of the management letter accompanying the adverse audit opinion;
- A statutory declaration from the Applicant's CEO, Principal, Partner, or other appropriate authorised officer (as the case may be) stating that no material events have occurred since the date of the audit report that would affect the overall validity of the audit report;
- A copy of the company's business plan, financial plan and risk management plan (or equivalent material covering financial, technical and operational matters) that identify such matters as financial viability on an ongoing basis, access to funds and demonstrated ability to continue to provide a Service under the Program, and if necessary without Australian Government funding support. This information may be contained in a single document. Such documents supplied to DCITA will be treated as "commercial-in-confidence" in line with the provisions in section 3.7.2 of the Guidelines;
- Copies of any unconditional bank guarantees or other instruments (for example, a parent company guarantee and indemnity in favour of the Applicant, where applicable) upon which the Applicant seeks to rely upon to demonstrate its financial standing. Where the Applicant is a majority-owned subsidiary of another company and the Applicant cannot supply three years' audited accounts, the Applicant is required to submit the parent company's (or controlling business') audited financial accounts (or at minimum audited profit & loss statement, balance sheets and cashflow statements) for the past three (3) financial years;
- Certified copies of National Police Certificates across all Australian police jurisdictions for each director and executive manager from the police in the state or territory where the company/entity is registered, or advice that commensurate material was lodged in accordance with ASX or ASIC requirements for directors and executive management (in the case of applicants who are public companies);

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

### **3.5.2 Criterion 2: Regulatory and Other Compliance Issues**

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

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

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

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

- The Applicant must provide a statutory declaration made by a duly authorised officer stating that the Applicant is up to date with lodgements and other statutory requirements with ASIC, ATO, ASX, ACMA, ACCC and TIO and a statement identifying and giving the details of any alleged breaches of law being pursued by ASIC, the ATO, ACMA or ACCC at the time of registration (if any).
- The Applicant must provide details of any other funding the Applicant receives from the Australian Government, and state or territory governments, details of the funding and whether these programs have a similar objective to the Australian Broadband Guarantee.
- The Applicant must provide a statutory declaration made by a duly authorised officer stating that the Applicant is up to date with its compliance and reporting requirements for all funding programs in which the applicant is participating.
- The Applicant must identify any significant compliance issues arising under previous Australian (or state/territory) Government broadband programs,

including adverse audit findings, formal consumer complaints, TIO investigations, and any existing audit investigations that may be proposed, currently underway and not yet be completed. The Applicant must identify any significant non-compliance or Customer service issues identified as a result of any past events, and set out what (if any) actions have been taken to resolve the identified issues.

### **3.5.3 Criterion 3: Service Solutions and Service Plans**

This criterion must be responded to by:

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

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

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

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

#### ***Service Solutions***

- **Material Investment:** The extent to which the proposed Service Solution amounts to “material investment” (see guidance below) in new infrastructure, rather than modification of existing infrastructure at minor cost. Applicants will be asked to detail the value of their investment in the infrastructure. Proposed new service coverage that results from modification of existing infrastructure, and that does not result in material new investment, will not be approved for registration as a Service Solution. Examples of investments DCITA would not consider material include:
  - software upgrades;
  - minor technical improvements to existing infrastructure, such as upgrading components, replacement of network cards, etc.;
  - the realignment of existing infrastructure;
  - replacement and/or upgrade of CPE, where brought about by improvements in the network or not; and
  - realignment of satellite dishes.
- **Robustness and reliability of technology platform:** If the proposed technology platform is not already proven or deployed elsewhere on a wide scale, the Applicant must demonstrate the robustness of any new technological platform on which the service is to be supplied.

- Scalability of Service Solution: The ability of the Service Solution to be further developed and improved, enabling Customers to receive a higher level of Service.
- Technical Capability of Key Operations Officer(s): Details of the technical capability and experience of the Applicant's Chief Technology Officer and/or Chief Operations Officer.
- Adequate Technology support: The Applicant has adequate systems to support the technology platform on which the service is to be supplied.
- Use of agents (see section 4.1 for further details): If the Applicant is using an agent to sell its Services, the arrangements must ensure that:
  - the Applicant has full responsibility for the provision of the proposed Service; and
  - the Applicant has in place appropriate control mechanisms and procedures governing the conduct of the agent.

#### *Service Plans*

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

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

- Details of the Service Solution(s) proposed by the Applicant to supply Australian Broadband Guarantee Services (for example, ADSL, cable, wireless, two-way satellite, etc.), including the brand of equipment to be used, information on testing results, details of proposed operational deployment, details of compliance with applicable technical standards;
- Information that demonstrates that the proposed Service Solution amounts to material new infrastructure, and that significant cost would be incurred in implementing the new Service Solution;

- Details of architecture of the Applicant’s broadband network (at least back to the point of interconnection with upstream connecting networks), including details of proposed hardware, CPE, technical standards and protocols, spectrum use (where relevant), and network peering. Schematic diagrams should be attached to the application;
- The extent to which the technology has been successfully deployed commercially elsewhere in Australian and/or overseas;
- The names of Chief Technology Officer (CTO and/or Chief Operating Officer (COO), summary information of the CTO and/or COO’s qualifications and experience (minimum two (2) years), including recent relevant major projects, tertiary qualifications in IT, Communications Engineering or other relevant discipline; or technical competence otherwise demonstrated, and statement as to whether the CTO/COO are on contract and, if so, the date the contract expires;
- Details of the operational support systems (both in-house and outsourced) to support the level of Service to Customers;
- Information on the key technical risks for the Service Solution and the strategies to mitigate those risks;
- (where appropriate) How each Service Solution interacts with other Service Solutions deployed by the Applicant (for example, if the Applicant offers a wireless service and a satellite service);
- Whether the Service Solution has a viable upgrade path that will enable supply of higher quality services over time;
- The extent to which the proposed Service Solution could be scaled to provide broadband Internet access services to additional Customers or offer a greater range of services to Customers (for example, a range of Data Speeds and usage levels);
- Details of the billing system to be operated;
- If the Applicant is using an agent(s) (see section 4.1 for further details) to sell services on its behalf, details of the relationship with each agent(s), including:
  - names and addresses of each agent;
  - what Service Solutions and Service Plans are proposed to be offered by the agent;
  - provide full details about any contractual arrangements between the Applicant and the agent(s). This should include any documents supporting the arrangement, and where possible, a copy of any contract. If no agreement exists, DCITA will assume that common law principles govern the relationship. [Note: It is a matter for each Applicant to determine the commercial terms and conditions governing such arrangements. It is also the Applicant’s responsibility to determine if it requires legal advice about such matters];
  - a statutory declaration that the Applicant will be the legal party contracting with a Customer to provide the Service. Where an agency relationship exists, Customer contracts will be between the Provider (as principal) and the Customer, not the agent and the Customer. It is not permitted under the

Program for a Provider to allow other parties to offer their Program Services except where the other party is a genuine agent of the Provider; and

- a statutory declaration that the Applicant will be responsible for the conduct of the agent in relation to Program activities undertaken by the agent on the Applicant's behalf.
- The price (including GST) and functionality of Applicant's Threshold Service(s) and of any Entry Level Services or Added Value Services, detailed in the following terms:

hardware charges

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

- Details of any other charges, such as late fees, credit card charges and other such fees. Any such charges must be contained in the terms and conditions and be approved by DCITA;
- Details of the Data Speed and data usage to apply to each Service Plan, and how excess usage will be treated (i.e. through additional charges and/or shaping);
- Copy of the proposed Terms and Conditions;
- Copy of Exit Strategy or confirmation that the Applicant will adopt DCITA's standard Exit Strategy; and
- Where required to under the *Telecommunications Act 1997*, evidence that the Applicant holds a carrier licence or has in force a nominated carrier declaration.

#### **3.5.4 Criterion 4: Service Areas**

This criterion must be responded to by:

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

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

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

- The Applicant can demonstrate they will provide their proposed Service(s) to the vast majority of premises within the Service Area.
- The proposed Service Area fits efficiently with the Applicant's existing broadband network.

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

### ***Important Points for Applicants in Determining their Proposed Service Areas***

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

#### **Service Areas for proposed terrestrial-based Service**

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

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

1. The proposed Service Area or whole of region network is supported under state/territory and/or local government programs for the expansion of broadband infrastructure; and
2. The whole of region network has community support; and
3. The network is sustainable, scaleable and can provide a quality broadband service beyond the life of the Program; and
4. There were special circumstances applying that prevented the Applicant from claiming the planned amount of incentive payments under previous programs; and
5. Further incentive payments are required to make the network sustainable into the future.

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

1. The Service Area will be serviced with a new or non-standard service solution, being special equipment (such as a high gain antenna at the Customer premises) required to extend the existing service to premises within the Service Area not capable of being provided with a Metro-comparable Service using the standard equipment;

2. The Applicant can demonstrate that the new or non-standard service solution, rather than its existing service solution, is necessary to provide Metro-comparable Services to under-served premises within the Service Area;
3. The new service solution will incur material additional costs; and
4. The Applicant can demonstrate that a partial payment is necessary to enable Metro-comparable Service delivery to the premises.

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

### ***Information required***

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

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

- The Applicant must demonstrate how the new proposed Service Areas fit with the Applicant's existing network;
- The Applicant should provide details of the level of investment in significant new infrastructure to service each proposed Service Area;
- The Applicant should provide any information that would substantiate that the proposed new service area is inadequately served by existing commercial ISPs/Providers, and is likely to contain significant numbers of Under-served Premises;
- The Applicant should provide information of any community or other government support for the applicant's roll-out of broadband services into the proposed new Service Area. Applicants should also indicate any future ongoing plans for

consultation with relevant organisations/communities and the proposed objectives of such consultation;

- (for Terrestrial Broadband Services) A description of the Service Area, including copies of maps (preferably in MapInfo.tab file format) showing the Service Area and any major parts of the Service Area where coverage may not be achieved (for example, mountainous terrain). Applicants should contact 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) A description of the proposed Service Area: Service Areas may be immediately Registered (subject to the Applicant meeting all selection criteria as defined in these Guidelines) in any part of the Program Area (including the whole Program Area) where Providers can demonstrate an ability to provide Services to Customers who cannot access a Metro-comparable Service (as set out in section 2.2); and
- The Applicant must provide information on the proposed Service Solution to be used in the proposed Service Area (this is also covered in criterion 3).

### **3.6 Stage Three: Comparative Assessment of Service Areas**

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

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

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

DCITA will assess each application and a final comparative assessment will be undertaken to determine which proposal best satisfies assessment criterion 4 (and where appropriate criterion 3). All proposals will be ranked against each other as a result of the comparative assessment. The Applicant that is ranked the highest will be granted registration of that particular Service Area. Applications that are clearly uncompetitive with other similar applications will be excluded from further consideration and not allocated a ranking.

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

### ***Basis of Assessment***

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

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

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

### ***3.7 Other Matters***

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

The assessment of Applicants by 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 Applicant/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 the assessment for any other purpose.

#### **3.7.2 Confidentiality of Applicant Information**

For the purpose of assessing applications, some or all of the information provided in the applications may be disclosed to officers of 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.

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/procurement/confidentiality\\_contractors\\_info.html](http://www.finance.gov.au/procurement/confidentiality_contractors_info.html).

DCITA is accountable to the Australian Parliament and to the public in respect of all aspects of the Program. 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.

#### **3.7.2.1 Personal privacy**

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

## **4. Provider Operation under the Australian Broadband Guarantee**

Providers can access general information on the Australian Broadband Guarantee at [www.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 Provider-Agent Relations**

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

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

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

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

#### **4.1.1 Disputes Between a Provider and an Agent**

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

### **4.2 Broadband Service Locator**

#### **4.2.1 For Customers**

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

- unit/street number;

- street name;
- suburb or town or locality only (no other name, such as an electorate name or local government area name can be accepted);
- state/territory; and
- postcode.

The Broadband Service Locator will list all the providers, both Program Providers and other commercial ISPs 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 ISP, or in the case of ADSL services, at least one commercial ISP from those listed, directly to determine if a Metro-comparable Service can be offered at the Customer premises.

Where a Customer or a Provider on behalf of a Customer contacts a another Provider or commercial ISP to determine access to a Metro-comparable Service by telephone, contact must be made only between the hours of 9.00am and 5.30pm Monday to Friday (excluding Public Holidays) in the time zone in which the Provider or commercial ISP operates.

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 commercial ISPs/Providers within the past month, and the commercial ISPs/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 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 retain 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.

Connection and Supply of a Service must occur within forty-five (45) calendar days of the date that the Customer (or the Provider on behalf of the Customer) has registered on the Customer Register and obtained an identification number for use on the Attestation Form (unless otherwise approved by DCITA).

DCITA will not accept claims lodged where an Attestation was performed and a review of the claim finds the Customer could have accessed a Metro-comparable Service commercially according to the Broadband Service Locator. DCITA may take action against a Provider that has used the Broadband Service Locator incorrectly.

DCITA is currently investigating ways to fully automate the Broadband Service Locator and Attestation processes in the interests of both Providers and Customers, and will revise the Guidelines to reflect any new procedures. All Registered Providers will be notified of any changes in accordance with section 4.6.6 of the Guidelines.

## **4.2.2 Use of the Broadband Service Locator by Providers and Commercial ISPs**

Customers (or Providers on behalf of Customers) use the Broadband Service Locator to identify whether a Metro-comparable Service may be provided by a commercial ISP or an Australian Broadband Guarantee Provider.

### **4.2.2.1 Information Requirements for Participants**

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

Providers and commercial ISPs listed on the Broadband Service Locator are to supply the following information:

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

Providers and commercial ISPs listed on the Broadband Service Locator are responsible for ensuring that the information supplied to DCITA about their Metro-comparable Service offerings (as noted above) is accurate and advising DCITA promptly of any changes.

### **4.2.2.2 Conduct Requirements for Participants**

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

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

- Providers seeking information from another Provider or commercial ISP must identify themselves and the Customer for whom they are seeking information;
- Providers or a commercial ISPs receiving a request for information from a Customer or Provider must provide full and correct information about their ability to provide a Metro-comparable Service to the Customer within five (5) working days, as outlined in section 4.2.1;

- Providers contacting another Provider or commercial ISP by telephone must make contact between 9.00am and 5.30pm on Monday to Friday in the time zone in which the Provider or commercial ISP is operating;
- Providers and commercial ISPs must not refuse to respond or properly cooperate with requests for information from a Customer or Provider. A Provider or commercial ISP has the right to respond either over the telephone or in writing (for example, by e-mail or fax);
- where a Metro-comparable Service can be provided by a commercial ISP or a Registered Provider of Terrestrial Broadband Services, a Provider must advise the Customer that these alternatives are available; and
- Providers and commercial ISPs should not charge fees for providing any information or for conducting service checks.

#### **4.2.2.3 Failure to Follow Obligations Relating to the Broadband Service Locator**

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. DCITA also invites all participants to report any instances of alleged failure of other Providers to follow obligations relating to the Broadband Service Locator.

##### **(a) Providers**

If DCITA determines that a Provider has failed to conduct themselves in a manner consistent with the obligations outlined in section 4.2.2.1 and 4.2.2.2 above, DCITA may undertake the following actions:

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

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

##### **(b) Commercial ISPs**

If DCITA determines that a commercial ISP has failed to conduct themselves in a manner consistent with the obligations outlined in section 4.2.2.1 and 4.2.2.2 above, DCITA may ask the commercial ISP to show cause as to why their details should not be modified or removed from the Broadband Service Locator. Should DCITA not be satisfied with a response to a show cause notification (including no receipt of a response within an advised timeframe), DCITA will remove or modify information at its discretion.

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

### 4.3 Promotion of Services

Any public marketing or media-related material used by Providers or by entities acting on behalf of Providers in relation to the Australian Broadband Guarantee must be approved by 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. Providers are obliged to seek clearance by DCITA of all acknowledgements proposed for publicity before dissemination.

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

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

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

### 4.3.1 Service Plan Special Offerings

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

### 4.3.2 Initial Offer to Customers

Providers must write (by post or email) to each 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 Program specific components of 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 may be eligible to receive on provision of the Service;
- (c) the details of Service being provided to the Customer;
- (d) the Data Speed Testing requirements for the Service being provided to the Customer and the address of the 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.

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

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

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

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

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

- (a) **Maximum Terms**—Providers must offer their Customers the option to have a maximum contract period of no longer than 18 months. The Provider may also offer longer contract periods (for example, 24 months and 36 months), to Customers in addition to a maximum 18 month contract. Providers can offer Customers the option to have contracts with no minimum term, or a very short term with automatic renewal (for example, month by month) provided such arrangements do not result in loss by the Customer of access to Program approved Terms and Conditions and Program pricing during the three year period.
- (b) **Customer compliance**—Providers can include conditions that allow them to discontinue or change a service where it is demonstrated that the Customer has breached the contract in relation to payment for Services, care of CPE or other reasonable conditions. However, Customers must be provided with adequate notice of any claimed breach of the contract, and with the opportunity to rectify any problems.
- (c) **Acceptable Use Policy**—Where a contract makes provision for the use or introduction of an Acceptable Use Policy (AUP), the AUP must be reviewed by 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. Providers are responsible for seeking their own legal advice that their contracts comply with legislative requirements.
- (e) **Consistency with Australian Broadband Guarantee Guidelines**—The contract should not be inconsistent with the specific objectives and requirements of the Australian Broadband Guarantee (for example, service performance and data testing).
- (f) **Where the Australian Broadband Guarantee-specific terms form part of a general terms**—that the Australian Broadband Guarantee specific terms override the general terms, in the case of inconsistency.

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

As outlined in section 2.6.5 of the Guidelines, the Provider may wish to further specify Exit Strategy commitments. For example, a Provider may wish to, but is not obliged to, include a provision relating to offering the Customer a negotiated arrangement with an incoming Registered Provider. DCITA will assess any other further proposals. A full copy of the standard Exit Strategy is provided at section 5.3.

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

## **4.4 Claims Management**

### **4.4.1 Funding Allocation**

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

Advice will be provided to all Providers when available funds allocated to the Program (determined by value of claims accepted by 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.

### **4.4.2 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, Providers will be notified and a notice will also be published on the DCITA website. In the event of extended operational issues, DCITA will institute alternative claims lodgement arrangements.

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).

### **4.4.3 Lodgement of Claims**

#### **4.4.3.1 When Claims May be Lodged**

##### **(a) General**

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

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

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

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

DCITA, at its discretion, may consider acceptance of claims where:

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

Providers should submit full details in writing for consideration by DCITA.

#### **4.4.3.2 Lodgement Period for Individual Claims**

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

#### **4.4.3.3 Validity of Individual Claims**

Claims will be rejected where the date on which the Service was Connected and Supplied occurs before the Customer Attestation Form was signed (refer section 2.4.2).

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.

Where the time elapsed between the date the Customer's details were registered on the Customer Register and the Connection and Supply of a Service to the relevant Customer is more than forty-five (45) calendar days, the claim will be rejected (unless the date for connection has been approved by DCITA).

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

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

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

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

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

Payments made by DCITA to Providers may be subject to audit, and any monies found to be wrongly paid or not to be legitimately payable to the Provider under its Funding Deed are required to be repaid. To ensure the accuracy of Provider claims 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 financial management obligations under the *Financial Management and Accountability Act 1997*.

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

#### **4.4.3.4 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. The date on which the Attestation Form is signed must be before the date the Service is Connected and Supplied; 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.

Where the Attestation Form is made in another format approved by DCITA, the Customer's consent to the content of the Attestation Form and the Terms and Conditions, must have been obtained and evidence of this consent must be held and stored in the approved format.

As stated in section 4.4.3.2, Attestation Forms for Customers claimed through BCOMS must be lodged with DCITA before a claim for an Incentive Payment for a Customer can be assessed.

DCITA is currently investigating ways to fully automate the attestation process and will revise the Guidelines to reflect any new procedures. All Registered Providers will be notified of any changes in accordance with section 4.6.6 of the Guidelines.

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

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

Claims will not be processed by DCITA unless the address for the premises to which the Service was supplied includes (where it exists):

- 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 details 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 Australian Broadband Guarantee (transitional period)***

Providers who were registered under the Australian Broadband Guarantee (transitional period) who hold outstanding Attestation Forms from the Australian Broadband Guarantee (transitional period) in respect of current applications for the supply of broadband services (and for which no service has yet been connected 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 for that Provider under the Australian Broadband Guarantee. Providers should contact DCITA for further information. DCITA's decision in relation to such matters will be final.

All Providers are expected to transition to the new Attestation Forms (as outlined in Section 5) as soon as possible.

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

Providers who were registered under the Broadband Connect Incentive Program or the Metro Broadband Connect Program who hold outstanding applications for the

supply of broadband services (**and for which no service has yet been connected to the Customer's premises**), and provided that the Customer remains eligible for a Service and is in an approved Service Area for that Provider under the Program, are required to have their Customers complete a new Application/Attestation Form in the form outlined at section 5, or another form approved by DCITA.

## **4.5 Assessments of Claims and Payments**

### **4.5.1 Process for Assessment of Claims**

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

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

Providers must report to 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 and take over action under the Funding Deed with the Provider.

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

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

#### **4.5.2.1 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 through OPEL Networks, as indicated on the Broadband Service Locator; and
3. where any Terrestrial Broadband Service is Connected and Supplied in a Metropolitan Area.

#### **4.5.2.2 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;
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 through OPEL Networks, as indicated on the Broadband Service Locator; and
3. DCITA may, at its discretion, consider whether this payment (or part thereof) may be available for the deployment of other Service Solutions that may incur significant establishment costs.

#### **4.5.2.3 Claims for Travel Costs**

Providers are permitted to charge Customers costs for travel or freight to deliver CPE as part of the total offering for a Metro-comparable Service. Any such charges will be included in assessment of whether the price of the service is metro-comparable. Travel or freight charges must be charged at a standard rate, must be set out in the Service Plan, and must be at a level that does not lead to the overall price of the Service being not metro-comparable.

Providers can also seek to claim travel costs where eligible. DCITA may, at its discretion, approve the payment of travel costs where the Customer is located in Remote Australia (see definition under section 1.5).

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

The following provisions apply to travel allowances:

- (a) Travel Distances must exceed 100 kilometres each way (that is, a round trip of more than 200 kilometres);
- (b) Customer's premises must be in Remote Australia;
- (c) payment is made on the basis of \$1.10 per kilometre travelled beyond the 200 kilometres round trip; and
- (d) the travel allowance payment is capped at \$1100 per service installed (GST included).

If a Provider needs to make more than one visit to a Customer to complete an installation, travel costs may be claimed for those additional visits. However, the

visits are to be treated cumulatively for the purposes of the cap on travel allowance. For example, if an installation requires two round trips of 600 kilometres each, both trips can be counted, but only to the value of 1000 kilometres or \$1100.

Where travel costs have been approved by DCITA, claims for travel costs must be submitted with the claim(s) for Connection and Supply of Services to which it/they relate. Unless directed otherwise by DCITA, this would be entered into the appropriate entry field in BCOMS.

#### **4.5.2.4 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 ten (10) Working Days to provide a response or to request further time to complete an investigation of the issues, unless a longer timeframe is specified by DCITA. Where a response is not provided to DCITA within the appropriate timeframe, DCITA reserves the right to decline the relevant claim(s).

#### **4.5.2.5 Taxation Status of Claims**

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

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

### **4.6 Compliance and Audit Issues**

#### **4.6.1 Ongoing Compliance**

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

- (a) Notifications of changes in company structure or financial situation—Providers must advise 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 DCITA, including reduction in scope or termination of a Deed.
- (b) Complaint Handling—Providers should have in place appropriate complaint handling mechanisms as specified in an applicable industry code or under the Telecommunication Industry Ombudsman’s complaint handling process ([www.tio.com.au/policies/index.htm](http://www.tio.com.au/policies/index.htm)). Where a complaint cannot be satisfactorily resolved, the Customer may lodge a complaint with the TIO. Details may be obtained from ([www.tio.com.au/make\\_a\\_complaint.htm](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 4.6.4, all Providers must:
  - (i) supply their Customers with information about the DCITA Data Speed test facility (see section 4.6.4) and satisfactorily respond to complaints from Customers who have used this facility to test data speed;

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

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

At the end of the 2007/2008 financial year or when all funds are expended (whichever occurs first) each Provider must report to 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 repayment of money received as a result of invalid claims) and, in the event of continued or serious breaches, their Deed may be terminated.

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

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

#### **4.6.2 Changes in Circumstance**

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

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

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

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

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

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

#### **4.6.3 Roll-out of Service Areas**

If a Provider fails to offer and supply its Services in the applicable Service Area(s) within the submitted timeframe approved by DCITA (as set out in section 3.5.4 and as

defined as part of a Metro-comparable Service), DCITA will notify the Provider to show cause why the Service Area should not be withdrawn from registration under the Program due to non-compliance.

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

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

##### **4.6.4.1 Obligation of Providers to Participate**

Australian Broadband Guarantee Providers are required to:

- (a) maintain test computers (configured like a computer that would be installed in a Customer's Premises);
- (b) fully participate in the 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.

##### **4.6.4.2 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 contact DCITA immediately. As a consequence, 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, or other action considered to be appropriate by DCITA.

### ***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. Subject to the Customer and the premises remaining eligible, the affected Customer would then be able to receive another Program Service from another Provider.

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

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

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

The Data Speed testing facility established by 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.

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 of the date on which it receives a notification from DCITA stating that the Provider has failed a Data Speed test; 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 and/or any other action considered appropriate.

### ***(c) Tier 3—Ad-Hoc Auditing***

In addition to the above requirements, average Data Speeds for Program Services are subject to audits. This may involve 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 obliged 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.

## **4.6.5 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).

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

## **4.6.6 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 will notify by email and via the website 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.

#### **4.7. 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*

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 Applicant:

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:

## **Section 2: Address details**

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

Address Line 1:

Address Line 2:

Locality / Suburb: State: Postcode:

**Telephone number** of the premises:

**Postal Address** of the premises: (insert “As Above”, if same as the premises’ address)

Address Line 1:

Address Line 2:

Locality / Suburb: State: Postcode:

**Physical Address:** (where you reside/address of your organisation, insert “As Above”, if same as the premises’ address)

Address Line 1:

Address Line 2:

Locality / Suburb: State: Postcode:

### **ATTESTATION**

Checking whether you are eligible

To be eligible to receive a subsidised Australian Broadband Guarantee 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 (as defined) 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 at the time of application, you are not eligible to receive a subsidised Australian Broadband Guarantee Service.

**Q1. Are the premises to which you are seeking an Australian Broadband Guarantee Service:**

Your principal place of residence? YES/NO

A Small Business (as defined) which you are authorised to represent? YES/NO

An Indigenous Community Council which 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 that are eligible as outlined in Question 3]

I am able to provide on request evidence to support my response to these questions. YES/NO [If you answered No to all parts of this question, you cannot proceed further with this Attestation]

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

Note: The Broadband Service Locator provides indicative information about the service offerings of commercial ISPs and Australian Broadband Guarantee Providers.

Answer: YES/NO

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 NO, you or your authorised representative must check DCITA’s Broadband Service Locator to determine whether a Metro-comparable Service is available at the relevant premises, other than through an Australian Broadband Guarantee Service. The Locator will identify three categories of ISPs that are servicing the particular area in which the premises are located.

If Category (A)—commercial ISPs appears, you must contact these ISPs first to see if they can connect a Metro-comparable Service to your premises. If they cannot, you are eligible to receive a subsidised Service.

If Category (B)—registered terrestrial Australian Broadband Guarantee Providers appears, it means you can get a subsidised service from these Providers if no commercial ISP (i.e. Category A) is listed who can connect your premises. Note: where a Category (B) Provider is not able to offer a terrestrial Australian Broadband Service at the premises, a number of competing satellite services are available from registered Australian Broadband Guarantee Providers. See Category C below.

Category (C)—registered satellite Australian Broadband Guarantee Providers. You can only get a subsidised service from a Category (C) provider if no Category A or B providers listed can connect you.

*(Please record time of the Broadband Service Locator Check and identification number, or attach a copy of the test results (with the identification number)*

.....  
.....

*(Please record the details (e.g. dates and times) of all the Category (A)—commercial providers listed that you have contacted and the outcomes of the inquiry.) Note, you must contact all listed Category (A) providers.*

.....  
.....

Complete the following only where you are eligible to receive a Broadband subsidised Australian Broadband Service.

Question: Did any of the listed Category (B)—registered terrestrial Australian Broadband Guarantee Providers offering Terrestrial Broadband Services to your premises advise that they could offer you a service?

Answer; YES / NO

If Yes, please record the details of the Providers you contacted and the outcome of the inquiry.

.....  
.....

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

**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 (see section 2.6 of the Guidelines). If so please explain these circumstances.

.....

If you still receive the service, you are entitled to an additional Service at your address only if the Service being provided to separate premises at the address is for a purpose (i.e. residential or small business) other than the purpose for which the current service is used. Is this the case (see section 2.1 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 contact officer representing the provider which 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 Australian Broadband Guarantee; 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 *Criminal Code Act 1995* (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: .....

.....

**Section 3: Office Use Only**

Name of service:

Incentive Rate:

Telephone of Premises:

Reason why Customer eligible:

Date service requested:

Date of connection:

Date of claim:

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.

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

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

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

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

**Table 1: Australian Broadband Guarantee Half-year Compliance Report**

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

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

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

category

Number of Australian Broadband Guarantee Customers—by Customer type, service type, Customer postcode, level of incentive payment claimed

Incentive payments received

Provider comments on the Australian Broadband Guarantee program

### **5.3 Standard Exit Strategy**

2.1 In the event of Your registration as a Provider being terminated voluntarily or otherwise, You will:

- (a) honour Your contract with Your Customers;
- (b) if any of Your Customers elect to migrate to a comparable service offered by another Provider (if such a service is available), You will make arrangements for a seamless transition of Your Customers to the other Provider chosen by the Customer; and
- (c) where title to the Customer's CPE continues to reside with You, either
  - (i) remove the Customer's CPE only after the Customer has been transitioned to another Provider, at no cost to the Customer; or
  - (ii) offer to sell the Customer's CPE to the other Provider referred to in Item 2.1(b) above if the same technology is used by that provider.

2.2 In the event that You propose to withdraw a Service but continue Your registration as a Provider, and this proposal to withdraw the Services has been agreed in writing and signed by Us and You (as required under subclause 29.2 of this Deed), You will:

- (a) give Your Customers at least 30 days written notice of the withdrawal;
- (b) offer to migrate the relevant Customers from the withdrawn Service to a comparable Service, if such a service is available; and
- (c) if no comparable Service is available, You will offer to migrate the relevant Customer to any one of Your Threshold Service(s), or Added Value Service(s) as chosen by the Customer.

2.3 If the Customer nominates to migrate to any one of Your Threshold Service(s) or Added Value Service(s), as applicable, You will give effect to the migration without any additional charge to the Customer.

2.4 In the event the Customer does not elect to migrate to any one of Your Threshold Service(s) or Added Value Service(s), as applicable, You will:

- (a) provide to the Customer the contact details of all registered Providers that may be able to offer a comparable service to the Customer or details as to how they can ascertain such information; and
- (b) provide reasonable assistance to the Customer in transferring to a new comparable service, with another Provider (if such a service is available) as chosen by the Customer;
- (c) where title to the Customer's CPE continues to reside with You, either
  - (i) remove the Customer's CPE only after the Customer has been transitioned to another Provider, at no cost to the Customer; or
  - (ii) offer to sell the Customer's CPE to the other Provider referred to in Item 2.4(b) above if the same technology is used by that Provider.