



Australian Government

Australian Broadband Guarantee

Australian Broadband Guarantee

Program Guidelines 2010-11

July 2010

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1. Introduction

1.1 Objectives of the Australian Broadband Guarantee

The Australian Broadband Guarantee provides eligible Australian residential and small business premises with access to high quality, reasonably priced broadband services by offering financial assistance (in the form of Incentive Payments) to Registered Providers to supply Program Services to Eligible Premises.

The Australian Broadband Guarantee 2010-11 aims to provide a measured and seamless transition to the high speed broadband services that will be made available under the Australian Government's National Broadband Network (NBN) by providing access to subsidised Program Services while the NBN is being rolled out.

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

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

The rules of the Program target support to Eligible Premises. Providers must exert all due diligence to ensure they only claim Incentive Payments for Eligible Premises.

1.2 Overview of the operation of the Australian Broadband Guarantee Guidelines

These Guidelines describe the operation of the Australian Broadband Guarantee from 1 July 2010 to 30 June 2011, subject to any review and amendment that may occur over that time.

Core concepts and definitions relevant to the operation of the Australian Broadband Guarantee are capitalised and defined at Attachment B.

Operational rules set out in these Guidelines are given legal effect through a Funding Deed between each Registered Provider and the Australian Government (as represented by the Department). In the event of any inconsistency between the Funding Deed and the Guidelines, the Funding Deed will prevail.

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

The Department reserves the right to vary these Guidelines (including any assessment process) at its discretion for any reason, including but not limited to a change in Australian Government policy. Retrospective changes will not be made and prior to any significant variation of the Guidelines the Department will consult with Providers and the wider community. The Department will consider comments submitted as part

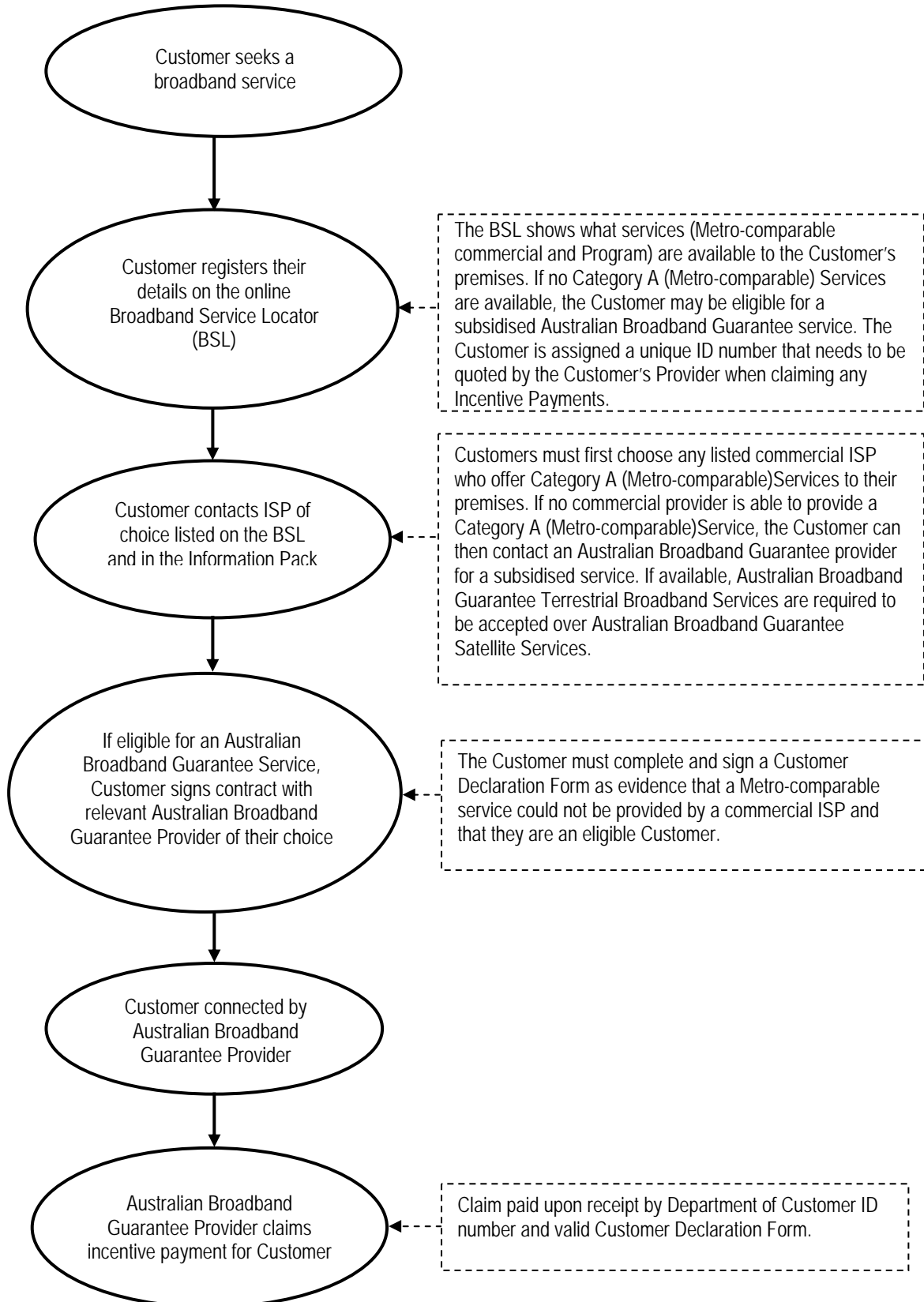
of any consultation process prior to implementing changes. The Department will notify Providers by email and via the Department's website of changes to the Guidelines. Providers should regularly check the website for updates about the Australian Broadband Guarantee.

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

- Rules for Eligible Premises: Section 2.1-2.2
- Required Service levels for Program Services: Section 2.3
- Steps required to be undertaken by Customers: Section 2.4
- Application process and assessment criteria: Section 3
- Fast-track assessment of existing Providers: Section 3.7
- Approach to registering Service Areas: Sections 3.5.4 and 3.6
- Incentive Payment levels: Section 4.5.5.

Overview of Program operation

The chart below provides an overview of the key steps involved in Customers applying for and receiving an Australian Broadband Guarantee Service. This flow chart does not represent the full detail of required processes under the Program.



1.3 Funding Allocation for Program

The Australian Government has allocated \$38 million (excluding GST) for the Australian Broadband Guarantee during the 2010-11 financial year.

Advice will be given to all Providers when the balance of the Funding Allocation (determined by value of claims accepted by the Department for payment) reaches \$10 million, \$5 million and \$0 (fully expended), and may advise Providers when other funding thresholds have been reached.

When the remaining Funding Allocation reaches \$5 million and Providers have been notified, each Provider's obligation under its Funding Deed to offer Services to new Customers under the Australian Broadband Guarantee will be suspended for the remainder of the period of the Funding Allocation.

The Department has the delegated authority to administer the Program and the Funding Allocation.

1.4 The Department's contact details

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

Manager

Australian Broadband Guarantee

Department of Broadband, Communications and the Digital Economy

Post: GPO Box 2154, Canberra, ACT 2601

Courier: 38 Sydney Avenue, Forrest, ACT

Email: *abproviders@dbcde.gov.au* (Both for Providers of Category B and D Services and for ISPs who provide listed Category A and C Services and who are not Registered Providers)

abg@dbcde.gov.au (For consumers)

Customer phone: 1800 883 488

Provider phone: (02) 6271 1000

2. Customer participation in the Australian Broadband Guarantee

The following section outlines the requirements and processes involved in Customers applying to receive an Australian Broadband Guarantee Service.

2.1 Eligible Customers and Eligible Premises

Customers are eligible to apply for an Australian Broadband Guarantee Service from a Registered Provider if:

- a) they are a Residential Customer (as defined in Section 2.1.1), a Small Business Customer (as defined in Section 2.1.2) or Aboriginal or Torres Strait Islander Community Council (as defined in Section 2.1.3); and
- b) their premises meet the eligibility requirements outlined in Sections 2.1.1—2.1.3 inclusive and they do not have access to a Category A Service at their principal place of residence or Small Business premises.

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

2.1.1 Residential Customer—principal place of residence

A principal place of residence is defined to be, or intended to be, a Customer's sole or principal place of residence for at least 12 consecutive months, during which the residence is exclusively available to the Customer, and which 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 staff member(s)
 - a. for Customers who are staff members of a property owner, the Department may require copies of employment contracts to be provided
- 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 particular location (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
- g) self-contained and distinct places of permanent residence (for at least 12 consecutive months) as determined by the Department in its absolute discretion.

2.1.1.1 What is excluded as 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 12 consecutive months—these include hotel rooms, holiday apartments, serviced apartments, boarders’ rooms, dormitories and self-contained rooms that are used by more than one occupant on a rotating basis (or other similar arrangement)
- b) barracks (both military and civilian)
- c) any mobile premises (for example, boat, caravan or bus) or a demountable or other temporary building that is not permanently located in a particular location
- 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 as a Small Business Customer, provided that the Service being Connected and Supplied to the Small Business Customer is at separate Eligible Premises and meets eligibility requirements described in Section 2.1.2. Home offices established in Customers’ residential premises are not Eligible Premises for the purposes of receiving a Service as a Small Business if there is already a Service that has been supplied to those premises to the Customer as a ‘Residential Customer’.

2.1.2 Small Business

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

- a) a total employment of 20 or fewer FTEs across Australia (including in any subsidiary offices such as branches or direct-employed agents). This includes franchises providing the franchisee 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 franchisee; and
- b) a unique Australian Business Number; 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.

Not-for-profit organisations that meet these requirements are considered Eligible Customers.

A Small Business is eligible to receive one Program Service at each of its places of Business that are Eligible Premises, subject to all other eligibility requirements being met. The place(s) of Business must be set up in a manner that represents a distinct place of operation for the Business (for example, an office). The site of Business may be co-located in a separate building (for example, a shed) subject to the exclusions under Section 2.1.2.1.

2.1.2.1 What is excluded as Small Business Premises

The following premises are excluded under the Australian Broadband Guarantee:

- a) vacant land
- b) a temporary or other demountable building that is not permanently located at a particular location

- c) buildings such as sheds, barns or outbuildings that have been erected for the purposes of housing livestock, machinery or other equipment associated with the operation of the Business but are not the Small Business' primary place of operation. However, if that building is the residence of an Eligible Customer (for example, a farm worker) it may be Eligible Premises for a residential service subject to satisfying the requirements under Section 2.1.1
- d) a site established for re-transmission of broadband services.

2.1.2.2 Education facilities excluded from the Program

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

2.1.2.3 Government organisations excluded from the Program

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

2.1.3 Aboriginal or Torres Strait Islander Community Council

An Aboriginal or Torres Strait Islander Community Council constituted under state, territory or Australian Government legislation is eligible under the Program. The Department in its discretion may allow other Aboriginal or Torres Strait Islander community organisations to be eligible under the Program.

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

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

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

Under the Program, an Aboriginal or Torres Strait Islander Community Council may be eligible to apply as:

- a) a business using broadband services for their own business purposes; and/or
- b) subject to the Department's prior approval, on behalf of residential customers within their community.

The Eligible Premises requirements for each type of application are described below, and are not subject to the Eligible Premises requirements for Small Business Customers and Residential Customers set out in sections 2.1.1 and 2.1.2 of these Guidelines.

2.1.3.1 Aboriginal and Torres Strait Islander Communities applying as a business

An Aboriginal or Torres Strait Islander Community Council is eligible to receive one Program Service for its own business purposes at each of its places of business that are Eligible Premises. The place(s) of business must be set up in a manner that represents a distinct place of operation for the business (for example, an office).

2.1.3.2 Aboriginal and Torres Strait Islander Community Councils acting on behalf of residential Customers

Subject to the Department's prior written approval, Aboriginal or Torres Strait Islander Community Councils may apply for Services on behalf of residential Customers within their community.

In these circumstances, the Councils are required to demonstrate that the premises are, or intended to be, a place of residence for 12 consecutive months. There is no obligation to demonstrate that the residence would be exclusively available to the same resident for the duration of those 12 months.

In these circumstances, the Service must be registered in the name of the Aboriginal or Torres Strait Islander Community Council which is or will be responsible for all Customer obligations in relation to the Service.

2.2 No access to a Category A Service

The Department provides the Broadband Service Locator to assist Customers with assessing which broadband services are available to the Customer's premises (see Section 2.4 below for further details).

If a Customer's premises have access to a Category A Service identified on the Broadband Service Locator, those premises are not eligible for a Program Service.

However, a Customer is not considered to have access to a Category A Service if the ISP who offers the Service charges fees that would result in the cost exceeding \$2500 over a three-year period. Examples where a Service would not be regarded as a Category A Service include:

- where the Customer is required to pay installation costs in instalments that would result in the total cost of the service exceeding \$2500 over a three-year period
- where the Customer is required to pay travel and/or freight costs to have the service Connected and Supplied that would result in the total cost exceeding \$2500 over a three-year period.

Reasonable fees for maintenance and repair of CPE are not to be considered in determining whether the service is a Category A Service (see Section 4.4).

2.2.1 Cost of connection

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 could readily be connected to the premises, and as a result a Category A Service would become available over that fixed line, the premises would not be eligible for a Program Service. Where this circumstance exists, the price of connecting the fixed line service is not to be included in the assessment of the cost of the broadband service for the purposes of assessing whether the service is a Category A Service.

2.2.2 Premises receiving a Service supplied under a Past Program

Customers who are interested in upgrading services provided under a Past Program should approach their Provider in the first instance. Customers may also contact the Department to investigate what options are available to them and how to proceed with obtaining an Upgrade Service Solution.

2.2.2.1 Upgrading Customers with a Past Program Service whose three year Service Plan period has not expired and where the Provider is a Registered Provider for the 2010-11 Program

Where:

- (a) a Customer's premises are receiving a broadband service supplied under a Past Program; and
- (b) the Customer's Past Program provider is a Registered Provider under the 2010-11 Australian Broadband Guarantee Program; and
- (c) the Customer's three year Service Plan period has not expired,

the following Program requirements apply:

All Providers are required to offer to provide the Customer with a 2010-11 Program Service, as described in sections 2.3.1, 2.3.2 and 2.3.3 of these Guidelines, for the remainder of the three year Service Plan period.

In most circumstances, Providers will be able to upgrade these Customers without further assistance from the Program. However, where the Department has determined at its sole discretion that a Provider cannot upgrade these Customers to a 2010-11 Program Service without further support from the Australian Broadband Guarantee, the Provider must have an Upgrade Service Solution registered in accordance with section 3.5.3.1 of these Guidelines. An Incentive Payment for an Upgrade Service Solution will only be paid where the Customer is upgrading to a Threshold or Added Value Service (or an Entry Level Service with a Data Speed that equals or exceeds that applying to a Threshold Service) registered under the 2010-11 Program. The Provider must seek the Department's approval prior to upgrading the Customer to an Upgrade Service Solution. A new three-year Service Plan period will apply for Customers upgraded by means of an Upgrade Service Solution.

2.2.2.2 Customers with a Past Program Service whose three year Service Plan period has expired and where the Provider is a Registered Provider for the 2010-11 Program

Where:

- (a) a Customer's premises are receiving a broadband service supplied under a Past Program; and
- (b) the Customer's Past Program provider is a Registered Provider under the 2010-11 Australian Broadband Guarantee Program; and
- (c) the Customer's three year Service Plan period has expired,

the following Program requirements apply:

The Provider must offer to the Past Program Customer services that are equivalent in speed and data allowance to all 2010-11 Program Services at the same price as for a

new Customer. However, the Provider is not otherwise obliged to offer the Customer the terms and conditions required for a Customer Contract under the Program.

In most circumstances, Providers will be able to upgrade these Customers without further assistance from the Program. However, where the Department has determined at its sole discretion that a Provider cannot upgrade these Customers to a 2010-11 Program Service without further support from the Australian Broadband Guarantee, the Provider must have an Upgrade Service Solution registered in accordance with section 3.5.3.1 of these Guidelines.

In these circumstances, Customers seeking to upgrade their services should enter their details on the Broadband Service Locator. The following three circumstances apply:

1. if the Customer is able to access a Metro-comparable Broadband Service commercially at this time, including from their current Provider, then the Customer is not eligible to receive either a Program Service or an Upgrade Service Solution under the Australian Broadband Guarantee;
2. the Customer's current Provider can upgrade the Customer to a 2010-11 Program Service if they have registered an Upgrade Service Solution. A new three-year Service Plan period will apply for Customers upgraded to 2010-11 Program Services by means of an Upgrade Service Solution and the Service provided will be considered a new Program Service for the purposes of the Australian Broadband Guarantee;
3. Customers in Service Areas with more than one Provider are eligible to apply for a new Service from a different Provider even if their current Provider is able to upgrade the service to a 2010-11 Program Service using a registered Upgrade Service Solution.

2.2.2.3 Customers with a Past Program Service where the Provider is not a Registered Provider for the 2010-11 Program

Customers receiving a Service supplied under a Past Program:

- whose Past Program three year Service Period has expired; and
- whose Past Program Provider is not registered under the 2010-11 Program,

may, so long as they do not have access to a Category A Service, be eligible for a new Program Service with another Registered Provider.

All applications for this Service will be considered on a case-by-case basis. Further detail on eligibility is provided at section 2.2.4.

2.2.3 Customers who are refused a Category A Service

A Customer is not eligible to receive a Program Service if the Customer's premises are able to be supplied with a Category A Service from an ISP who offers Category A Services but the ISP refuses to do so for legitimate reasons relating to the Customer's behaviour (for example, the Customer's poor credit history). Providers and ISPs providing listed Category A Services must not withhold a service or otherwise discriminate against individual Customers unlawfully.

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

2.2.4 Other circumstances where a Customer's Premises may be eligible

2.2.4.1 Loss of a Past Program Service

There are a range of circumstances where a Customer may lose access at their Premises to a Service provided under a Past Program, and in some of these circumstances they may be eligible to receive a new Australian Broadband Guarantee Service. This Section outlines the conditions under which Customers may be eligible to receive such a service. Where a Provider or Customer is uncertain about the application of the Guidelines to a particular circumstance, they should seek advice from the Department (either written or via Freecall 1800 883 488) about the application of the Guidelines to those circumstances.

2.2.4.2 Customers who lose access to an Australian Broadband Guarantee Service or a Category A Service through circumstances beyond their control

Where a Customer loses access to either a Category A Service or a Service provided under a Past Program through no fault of their own they may enter their details into the Broadband Service Locator to determine the availability of Program Services. The Customer must complete a Declaration Form declaring that they are no longer able to access either a Category A Service or another service listed on the Broadband Service Locator (Category B or C) through their Provider and provide further evidence as required by the Department.

A Customer would generally not be eligible where they unilaterally terminated their contract with a Provider. However, Section 2.2.4.3 sets out conditions under which the Department may consider approving the premises for a new Service in certain circumstances where the Customer terminates an existing contract.

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

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

2.2.4.2.1 Customers who lose Customer Premises Equipment (CPE)

Where the CPE is owned by the Customer and the Customer loses the CPE due to exceptional circumstances and is not able to replace it, the Customer may be eligible to receive a new Service. In such cases, when applying for a new Program Service the Customer must declare (on the Customer Declaration Form) to losing the service and detail fully the reasons for the loss of that service (attaching any documentation). The Department will assess each claim on a case-by-case basis and any decision taken is

final. Failure to take out insurance for CPE where required under the contract with the Provider may mean that the Customer will not be supported for a new Service.

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

Where a Customer terminates their current Program Service or a Service provided under a Past Program of their own accord, that Customer is not eligible to receive another Australian Broadband Guarantee Service from any Registered Provider unless the Customer is able to demonstrate at the time of terminating the Service that it was not a Metro-Comparable Broadband Service. The Customer must contact the Department in these circumstances and provide supporting evidence as required by the Department.

The Department will not prevent the Customer from terminating a Program Service, although, as noted above, the Customer would generally not be eligible for a Program Service in this circumstance. It is a contractual matter between the Customer and their Provider whether a party elects to terminate their agreement.

In general, termination by a Customer of the supply of a Program Service by a Customer does not affect the Incentive Payment that has been paid to the Provider. The exceptions are

- (a) where the termination arises as a result of the Provider being unable to continue to provide the Service to the Customer according to the requirements of their Funding Deed or in cases where an Incentive Payment has been incorrectly or improperly paid
- (b) in circumstances described in section 4.1.1 relating to special offers
- (c) a compliance breach by the Provider in relation to the Service has been identified.

Similarly, the Australian Broadband Guarantee does not place restrictions on a Customer leaving one Provider for another ISP. Where a Customer churns to another Provider, a further Incentive Payment will not be payable unless allowed under the terms and conditions of the Funding Deed as well as the Guidelines. Providers must not charge Customers churn fees in relation to Services Connected and Supplied under the Australian Broadband Guarantee (2010-11).

Subject to section 2.5.1, Customers seeking to change Providers solely for the purpose of obtaining a lower price for a service are not entitled to a new Service under the Australian Broadband Guarantee.

2.2.4.4 Customers who move to non-Program services

If a Customer terminates their Australian Broadband Guarantee Service at any time during the three-year Service Plan period and is supplied with an alternative non-Program service offered by the same Provider or an associated entity, and the alternative service does not satisfy all of the minimum service levels of a Program Service, as described in Section 2.3, the Provider may be required to repay all or part of the Incentive Payment paid to it in respect of the original Service supplied to the Customer.

Repayment of the Incentive Payment (or a part thereof) will only be required where the Department forms the view, based on reasonable grounds, that the Provider (or an associated entity) has been able to offer the alternative service to the Customer primarily because of funding received, or expected to be received, in respect of that Customer being supplied with an Australian Broadband Guarantee Service under the

Program. In such cases, the Provider will be required to repay the Incentive Payment according to the following table:

Duration of Connection to the Service*	Percentage of Incentive Payment to be repaid
less than 12 months	Up to 100 per cent of the Incentive Payment
between 12 months and less than two years	Up to 67 per cent of the Incentive Payment
Between two years and three years	Up to 33 per cent of the Incentive Payment

*Note that the above time frames are calculated based on the date of initial connection to the Service and the date on which the Service was terminated.

In circumstances where a Provider withdraws the alternative service to a Customer as a result of the Department recovering the Incentive Payment (or a part thereof), as described in this Section, and a Metro-comparable Broadband Service is not available to that Customer's premises on commercial terms, that Customer may be eligible to apply for a new Service from another Provider.

2.2.4.5 Customers who move to new premises

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

Generally, where a Customer moves to premises that had been previously supplied with a Service under this or a Past Program and where access to that Service remains available to the Customer as a Metro-comparable Broadband Service from the previous occupant's Provider, then the Customer is not eligible to receive a Program Service at those premises.

However, where a Customer moves to premises previously supplied with a Service under this or a Past Program and such a Service is no longer available (for example, due to removal of significant infrastructure either by the previous occupant or their Provider), the premises may be eligible to receive a new Program Service, including a Service provided using an Upgrade Service Solution.

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

2.3 Minimum guaranteed service levels for Australian Broadband Guarantee Customers

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

- a Threshold Service
- an Entry Level Service

- an Added Value Service.

The requirements of these services are described below. Providers must offer at least one Threshold Service and at least one Added Value Service, as outlined in Sections 2.3.1 and 2.3.3. Providers must inform Customers of the full range of their approved Service Plans.

Where Providers seek to register Service Plans with peak or off-peak periods of less than 10 hours per day, they may be required to offer larger peak or off-peak data allowances to ensure that Customers have reasonable access to the prescribed data allowance. In these circumstances, the revised prescribed data allowances, if any, will be at the discretion of the Department. For the purposes of calculating monthly data allowances, Providers may include both downloads and uploads.

The total three-year cost to the Customer for any Service Plan must include equipment installation, connection, establishment of an account, ongoing provision of service and a minimum three year warranty for the CPE, with the exception of reasonable maintenance and repair costs (see Section 4.4).

The Department also requires Providers to provide ongoing maintenance of Services as outlined in Section 4.4.

2.3.1 Requirements for Threshold Services

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

- a) Access to the Internet at a peak download/upload Data Speed of at least 1024/256 kbps and at least 6GB per month data allowance (of which, at least 3GB must be offered during peak periods and at least 3GB during off-peak periods).
- b) A price to the Customer over three years of no more than \$2500 (GST inclusive) including equipment, installation, connection, account establishment and ongoing provision of service. This amount excludes the cost of installing a fixed line telephone service to premises where such a service is available but not connected. No additional costs are to be charged to a Customer for non-standard installations. A non-standard installation may include installation of larger satellite dishes, cyclone-proofing of equipment, higher gain antennas and separate mountings where necessary. The Service must not be conditional on other services being purchased (such as bundling, as outlined in Section 2.3.4.1).
- c) Network Availability 99 per cent of the time (averaged over a quarterly period) with average data download and upload Data Speeds of at least 60 per cent of the specified peak Data Speeds at least 85 per cent of the time as measured in accordance with the Department's Provider performance testing regime, as described in Section 4.6 and set out in detail on the Department's website at www.dbcde.gov.au/abg
- d) Ownership of the CPE is to be transferred to the Customer, at the Department's discretion:
 - a. at the commencement of the supply of the Service; or
 - b. within the first twelve months of the Customer's Service Plan.

The Department may, in its absolute discretion, approve other arrangements relating to ownership of CPE as appropriate.

- e) Free helpdesk support for Customer connection problems and service faults.

- f) The ability for the Customer to be informed within 24 hours of current data usage and any associated costs.
- g) Shaping of data to no less than 64 kbps at no cost or excess data charges of no more than five cents per megabyte with no shaping for any data used above the specified monthly Data Usage Allowance (which may include advance purchase of blocks of data).

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 download/upload Data Speed of at least 256/64 kbps and at least 500 MB per month usage allowance.
- b) A price to the Customer over three years, including equipment, installation, connection, account establishment and ongoing provision of service, that is appropriately discounted below the threshold price cap, and that appropriately takes into account the speed and functionality of the Service and the Incentive Payment applying to the Service.

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

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

- c) The Service complies with the requirements at Section 2.3.1 (c)-(g).

Providers may seek to register multiple Entry Level Services, provided they are also offering a Threshold Service and at least one Added Value Service as set out in Section 2.3.3.

2.3.3 Added Value Services

A condition of registration is that Providers must have registered at least one Added Value Service with at least 5GB per month usage allowance (with no restrictions within these limits on downloads or uploads or usage time or peak/off peak limitations), for each Service Solution registered. Providers are also encouraged to register additional Added Value Service Plans with greater functionality including higher Data Speeds and/or data usage allowances.

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

- the price for that Service appropriately takes the Incentive Payment into account

- the price of the Added Value Service is reasonable (commensurate with the additional features) relative to the price of the Provider's Threshold Service using the same Service Solution
- the Service complies with the requirements at Section 2.3.1(c)-(g).

The Data Speeds and usage allowance must equal or exceed that applying to the Provider's Threshold Service to be recognised as an Added Value Service. For the purposes of Data Speed Testing outlined in Section 4.6, Providers must nominate a peak Data Speed for each of their Services. The Service must achieve 60 per cent of nominated peak speeds at least 85 per cent of the time.

2.3.4 Other matters

The Australian Broadband Guarantee does not preclude Providers offering special discounts on Services to groups of Eligible Customers (including all Eligible Customers) on a commercial basis, subject to compliance with all relevant laws. Providers must seek approval from the Department for all intended offerings, in line with Section 4.1.1. Special offers are not permitted to be offered for a duration of longer than six consecutive months. Providers seeking to make a discount a permanent feature of the Service Plan must apply to the Department to have that change reflected as a new (or varied) Service Plan under their Funding Deed.

2.3.4.1 Bundling

The Department will not approve for registration under this Program any constructed service bundle (including VOIP and pay TV) as a Threshold Service. Providers are able to offer a service bundle for proposed Added Value Services or Entry Level Services, provided that a Threshold Service is also offered separately as a stand-alone 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*.

2.3.5 Payments for Service Plans

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

Pre-paid cards may only be used as a payment mechanism for Services with the Department's prior written approval.

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

In order to receive a Program Service the Customer must be eligible and must be registered on the Department's Broadband Service Locator (BSL) at <http://bcoms.dbcde.gov.au/BSL>. This site provides full details of the processes that must be undertaken by Customers to register for a Service. Registration is undertaken by the Customer or a person authorised to act on behalf of the Customer. Any person acting on behalf of the Customer must declare at the time of registration on the BSL, and provide supporting evidence if required by the Department, that they have authority from the Customer to do so.

Providers that are authorised to act on behalf of a Customer are required to exercise due diligence to ensure that the Customer's details are entered accurately on the BSL and that the location of the Customer's Premises is mapped correctly on the BSL. Providers who register on behalf of Customers must declare this on the BSL. Agents are not permitted under any circumstances to register Customer's details on the BSL.

Once registered on the BSL, there is no obligation for a Customer to sign up to a Service offered by an ISP.

Where the BSL indicates that a category of Service is available at a Customer's premises, but subsequent checking by the Customer determines that this category of Service is not actually available, the Customer may then advise the Department of this in order to progress to the next category of Services. Customers may do this either through calling the freecall helpline on 1800 883 488 or by visiting the online customer confirmation page on the BSL. To access the online customer confirmation page, Customers need to quote their unique customer identification number supplied in the customer information pack.

Customers are required to provide reasonable evidence that any category of Service that was identified as being available to their premises was in fact not available, or that they were not able to find out the availability of the category of Service after having made reasonable enquiry. Customers should also provide evidence in their Customer Declaration Form explaining why the Service is unavailable to them. The Department provides Frequently Asked Questions on its website to assist Customers on the evidence required.

2.4.1 Information Pack and Customer Declaration Forms

Once a Customer has been successfully registered on the BSL, an Information Pack is sent to their premises containing an introductory letter from the Department and a list of ISPs that can potentially provide a Category A Service or a Program Service to the Customer. Receipt of an Information Pack from the Department is not in and of itself confirmation of customer eligibility for an Australian Broadband Guarantee Service.

Where applicable, the Information Pack also includes a Declaration Form that requires a Customer applying to a registered Provider for an Australian Broadband Guarantee Service to declare that they are an Eligible Customer living or carrying on business at Eligible Premises.

Changes to Declaration Forms

Where the application for a service on the Broadband Service Locator was made by a Residential Customer, the Declaration Form can be completed only by that Residential Customer. In certain circumstances, the Department may approve, at its absolute discretion, the Declaration Form being completed by a recognised agent of the Residential Customer.

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

All other material alterations to the Declaration Form will be declined by the Department. Customers, or Providers acting on the Customer's behalf, should contact the Department with any requests for significant alteration of a Declaration Form. This will be assessed by the Department and either changed manually by the Department, or the Customer may be asked to re-enter their details for a new Broadband Service Locator search. The reason for this approach is that integrity of data is essential in the use of the Broadband Service Locator, and significant changes may change eligibility status. For example, a number change to an address may locate the Customer in an ineligible area. All enquiries by Customers should be to Freecall 1800 883 488.

2.4.2 Category A Services (commercially provided services)

2.4.2.1 When a Category A Service is available

Where the Customer is provided with a list of Category A Services, as a general rule the Customer must contact each listed ISP to determine whether the ISP can in fact provide a Category A Service at the Customer's premises. An exception is where listed ISPs are offering ADSL or ADSL2+ services using Telstra copper wire Last Mile Infrastructure, in which case the Customer must contact at least two of these providers.

Where a Customer is informed that a Category A Service is available, the Customer is not eligible to receive a Program Service unless exceptional circumstances apply or the Customer's status is changed, as outlined in Section 2.4.2.2 below.

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

2.4.2.2 When a Category A Service is not available

If all of the ISPs required to be contacted inform the Customer that they cannot offer a Category A Service to the premises, the Customer may apply for a Program Service and will be advised of the relevant Providers for their area. The application will be progressed to a Category B or Category D Service status. This is done either through an online facility available on the Department's website (www.dbcde.gov.au/abg) or by the Customer contacting the Department via Freecall 1800 883 488.

This includes circumstances where the Customer is originally advised by an ISP listed as offering Category A Services that a Category A Service can be provided, but a subsequent site survey or other check reveals that a service cannot in fact be provided to the Customer's location.

The Customer will be sent a new Information Pack containing a list of Providers able to supply a Program Service, and a Declaration Form.

The Customer must complete the Declaration Form, detailing the ISPs contacted and the advice provided as to why a Category A Service was not available. The Customer must retain evidence to support their declaration (for example, correspondence from the ISP stating that the service cannot be offered).

The Department may contact the ISPs or Providers specified in a Declaration Form to verify the Customer's statements. As noted above, penalties may apply under the law in respect of false or misleading information supplied to the Department.

2.4.2.3 Where no Category A Services are listed

If no ISPs are listed as offering Category A Services, then the Customer may approach a Provider identified in the Information Pack to apply for a Program Service. Where there are no Category A Services listed, the Customer will automatically be provided with a list of registered Providers eligible to provide Services in their area, in accordance with the provisions set out below.

2.4.3 Providers of Category B Services (certain Terrestrial Broadband Service Providers)

Where no Category A Service is available to the Customer, the Customer may seek a Program Service listed in the Information Pack sent by the Department.

This may be a Category B Service. Where no Category B Service identified on the BSL is available to the Customer, the Customer may then be referred by the BSL to a Category C Service, if it is available.

If no Category B Services are available, and the Customer is not referred to a Category C Service by the BSL, the Customer may then seek a Category D Service.

The Customer is not eligible for a Category D Service if a Category B Service is available. The Customer must therefore contact all listed Providers of Category B Services as necessary to determine if a Category B Service can be provided.

The Declaration Form sent to the Customer must be signed by the Customer and submitted to the Provider that the Customer selects for the supply of the Service. Providers who enter into a contract with a Customer prior to confirming the Customer's eligibility through the Broadband Service Locator eligibility process, including holding duly completed and executed Customer Declaration Forms, do so at their own risk (see Section 4.2.1).

2.4.4 Providers of Category C Services

Category C Services are commercial broadband services that are located in the Category B Service Areas registered under the Australian Broadband Guarantee (2008-10), that were not recognised as Metro-comparable Broadband Services under that program, but that are considered to be Metro-comparable under the Australian Broadband Guarantee (2010-11).

In circumstances where listed Category B Services are confirmed to be unavailable, the Customer is not eligible for a Category D Service if they have been referred to a Category C Service and a Category C Service is Available. The Customer will receive an Information Pack including a list of providers of Category C Services when their status on the BSL is changed either by the Customer or the Department.

2.4.5 Providers of Category D Services (Satellite Broadband Service Providers)

Where the premises are unable to be supplied with a listed Category A, Category B or Category C Service, the Customer may seek a Program Service from a registered Provider of Category D Services.

The Customer receives an Information Pack including a list of Providers of Category D Services and a Declaration Form that can be provided to the Customer's selected Provider of Category D Services on completion by the Customer.

2.5 Customer's ongoing rights and obligations

Customer Rights

Under the Australian Broadband Guarantee, Program Customers have the right to:

- a Program Service as defined in these Guidelines
- be informed of the Customer Contract terms and conditions that apply to their Program Service Plan
- ongoing provision of services in accordance with the Customer Contract terms and conditions of their Program Service Plan
- quality customer service (including expeditious follow up where problems arise with the Service)
- in relation to Customer Premises Equipment (CPE):
 - CPE that is fit for purpose and does not substantially reduce the amenity of the Customer's Premises
 - timely and appropriate servicing at no cost, during the three year Service Plan period, unless the failure of the CPE could reasonably have been prevented by the Customer
 - the provision of a warranty for the CPE of at least three years. Providers are required to provide this warranty within the price cap of the Threshold Service and to provide it at a price that is consistent across all their registered Program Services.

Customer responsibilities

Customers are obliged to abide by their contract with their Provider. As with any commercial arrangement, Providers may restrict or discontinue or change a service if the Customer has breached the contract.

Feedback and complaints

A Customer who has a complaint about their Service should seek resolution through their Provider in the first instance. In the event that the Provider fails to resolve a Customer's complaint, and the complaint relates to the Provider's compliance with these Guidelines, the Customer may contact the Department (Freecall 1800 883 488).

The Department has developed processes for resolving customer complaints under the Australian Broadband Guarantee, in the first instance, by attempting to resolve the issue by liaising with the Provider and the Customer. The Department assesses Customer complaints against the relevant clauses in the Provider's Funding Deed. As a result of these considerations, the Department may determine that a Customer is eligible for a new subsidised Service, and may provide information to the Customer on how to apply for such a service. The Department may also determine in accordance with the terms and conditions of the Funding Deed that a Provider should repay the Incentive Payment received for Connecting and Supplying a Service to that Customer.

Where the complaint relates to other matters, including fair trading issues, customer service or the Provider's complaint handling, the Customer may lodge a complaint with the Telecommunications Industry Ombudsman (Freecall 1800 062 058).

2.5.1 Customers who move to other Service Plans

A Customer may move to a different Service Plan offered by their Provider (for example, a Service Plan with greater Data Usage or Data Speed), subject to the Customer Contract terms and conditions offered by the Provider, and subject to paying any additional charges required by the Provider. No further Incentive Payment is payable to the Provider if a Customer moves to a different Service Plan.

In these circumstances, the Provider is required to provide the Service on the applicable Program Service Customer Contract terms and conditions for a period of three years from the time that the first Program Service was provided to the Customer.

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

Except in circumstances where an ABG Provider has been required to repay all or part of the Incentive Payment, as described in Section 2.2.4.4, Customers who move to a commercial service plan offered by their existing Australian Broadband Guarantee Provider retain the right to move back to any registered Service Plan offered by that Provider within three years from when the original Australian Broadband Guarantee Service was supplied. The Provider may charge the Customer a reasonable fee for allowing the Customer to transfer back to a registered Australian Broadband Guarantee Service Plan.

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

In the event that the Customer's Service Plan is withdrawn, the Provider will give the Customers at least thirty calendar days written notice of the withdrawal and offer to migrate the Customer from the withdrawn Service Plan to a comparable Service Plan, if such a Service Plan is available. If no comparable Service Plan is available, as determined by the Department, the Customer has the option of terminating the contract and applying for a new Service.

2.6 Use of Customer information by the Department

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

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

3. Registering Providers and their Services

3.1 Introduction

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

ISPs interested in participating in the Program, including ISPs previously registered under a Past Program, are required to complete and lodge an Australian Broadband Guarantee Application Form (available on the Australian Broadband Guarantee webpage at www.dbcde.gov.au/abg during Registration Rounds) which addresses the criteria set out in these Guidelines. As part of its application, an Applicant must provide statutory declarations concerning a range of matters.

Other information that should be read by ISP Applicants seeking registration under the Program is provided on the Australian Broadband Guarantee webpage at www.dbcde.gov.au/abg. This includes these Australian Broadband Guarantee Program Guidelines. The Australian Broadband Guarantee Application Form contains a requirement for Applicants to confirm that they have read these Guidelines in full.

3.1.1 Fast track

The Department, at its discretion, may offer a fast track application process to Providers previously registered under the 2008-10 Australian Broadband Guarantee. The fast track application process is described at section 3.7 of the Guidelines.

3.1.2 Special arrangements for previously registered providers of wireless services

Providers of wireless services who were registered to provide wireless services under the 2008-10 Australian Broadband Guarantee and are approved for registration under the 2010-11 Australian Broadband Guarantee will be able to maintain the Service Areas registered under the 2008-10 Program for the duration of the 2010-11 Program and to continue to have access to Eligible Premises in these Service Areas as defined under the 2008-10 Program.

3.1.3 Key requirements

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

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

Applications are assessed by a Departmental Assessment Panel, drawing on expert advice from external consultants as appropriate. The Department may also draw on

the expertise of other departments and agencies of the Australian Government (for example ACMA, the ACCC).

If the application for registration is approved by the Department, and all preconditions have been satisfied, the Department will notify the Applicant and forward a Funding Deed (either by email, courier or post) for signature and return to the Department. Once the Funding Deed has been executed by the Department, the Applicant's Registration as a Provider under the Australian Broadband Guarantee becomes effective from the date of commencement nominated in the Deed. The Provider's registration status and public contact details are posted on the Department's website.

Each Applicant is advised in writing of the Department's decision.

No funding is payable for any services connected and supplied by an Applicant before they are registered under the Program.

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

Applicants should note that the Department makes no representations that it will enter into any agreement in exactly the terms of the standard Funding Deed.

Funding Deeds offered to Providers will expire on 30 June 2011, although a number of obligations and terms survive the expiry date.

3.1.4 Requirement for a Performance Bond

The Department considers it important that Providers comply with the requirements of these Guidelines and the Funding Deed they execute to reflect their participation in the Program. For this purpose, Providers will be required to provide a Performance Bond upon submitting a signed Funding Deed to be executed by the Department.

The requirement to enter into a Performance Bond is considered a reasonable measure to ensure the Department can protect the interests of the Commonwealth and the interests of Customers and is a reasonable component of the obligations Providers will be required to accept in return for participation in the Program.

Providers will be required in the Funding Deed to acknowledge that the Performance Bond is necessary to provide the Department with assurance that Program funds are properly spent and that Providers will comply with these Guidelines and the Funding Deed. The Department is concerned to ensure, for example, that Providers comply with the Funding Deed in respect of their dealings with Customers and their claims for Incentive Payments.

3.1.4.1 Form of Performance Bond

The Performance Bond will take the form of an unconditional undertaking executed by an approved bank or financial institution in favour of the Commonwealth, for a specified amount of money.

3.1.4.2 Term of the Performance Bond

The Performance Bond must be in place for a minimum period of three years. However, the Department may, in its absolute discretion, elect to return the Performance Bond to the Provider after 12 months or reduce the amount of the Performance Bond required, if it determines that, due to the Provider's service record

and compliance performance, the Performance Bond is either no longer required or can be reduced.

3.1.4.3 Amount of Performance Bond

For each Provider, the amount of the Performance Bond will be determined by the Department at its sole discretion, as follows:

1. The amount of the Performance Bond will be an amount between \$20 000 and \$200 000;
2. In determining the amount of the Performance Bond required for a particular Provider, the Department will have regard to:
 - a) compliance with Past Programs;
 - b) financial and operational sustainability; and
 - c) the size of the Provider's customer base.

3.1.4.4 Claims under the Performance Bond

The Department may make a claim against the amount secured by the Performance Bond in the event that it decides, in its absolute discretion, that the Provider has failed to comply with its obligations under the Funding Deed (including these Guidelines). Such a failure to comply may include, but is not limited to:

- failure to adhere to any directions of the Department made under the Guidelines, for example, in relation to a Provider's obligations relating to the Broadband Service Locator;
- failure to provide reliable service offerings that meet the requirements of the Guidelines in terms of speed, Data Usage and price;
- failure to ensure that all claims submitted for payment (including Declaration Forms) are valid and accurate; and
- failure to offer and provide the Program Services for a period of three years from the date of Connection and Supply of a Program Service to a Customer.

Before making a decision to exercise its right under the Funding Deed in relation to the Performance Bond the Department will notify the Provider of its intention to do so. The Provider will be invited to participate in discussions with the Department and to provide a submission in response to any issues outlined by the Department. The Department will have regard to the Provider's comments, but will retain the right to make a determination regarding the Provider's compliance and whether to make a claim against the Performance Bond.

The Provider will be required to accept the Department's ability to make a determination regarding a Provider's compliance with the Funding Deed and these Guidelines.

3.1.4.5 Right to claim payment against Performance Bond

In the event that the Department makes a claim for payment against the Performance Bond, the amount that the Department may claim will be limited to the aggregate of (although the Department may not always claim all permitted amounts):

- the amount of any Incentive Payments paid to the Provider that relate to the Provider's failure to comply with the Funding Deed less any amount already repaid by the Provider;
- a maximum of 10 per cent of the amount of any Incentive Payments paid to the Provider that relate to the Provider's failure to comply with the Funding Deed where this percentage represents the Department's administration costs in relation to the Provider's failure to comply with the Funding Deed; and
- any costs incurred by the Department in relation to the Provider's failure to comply with the Funding Deed including, but not limited to, audit fees, investigation fees and legal costs.

3.2 When Applications can be made

The Department may conduct Registration Rounds at any time during the operation of the Program, to enable ISPs to apply for registration to become a Provider. Applicants must apply to register Service Solutions, Service Plans and Service Areas at this time. Details of any future Registration Rounds (if and when announced), including the date for receipt of applications under the Registration Round, will be notified on the Department's website.

Once registered, a Provider may apply to register a new Service Solution, a new Service Plan or a new Service Area at any time during the term of its Funding Deed. Where an application is received to register a new Service Area, the Department reserves the right to invite applications from other Providers for that Service Area, either in whole or part.

Applications must be submitted using the approved application form available from the Department, and will be assessed according to the assessment criteria set out in these Guidelines.

Service Areas registered and set out in a Provider's Funding Deed will remain registered with the Provider, subject to the terms of the Provider's Funding Deed and these Guidelines. That is, a Provider will not lose a registered Service Area as the result of a subsequent application for that Service Area.

3.3 Overview of the full assessment process

3.3.1 Three-stage assessment process

Applications are subject to a three-stage assessment process.

Stage One

Stage One involves an initial screening. During this stage, each application is screened to determine if the application is complete and accompanied by sufficient information to be effectively assessed, including whether the Applicant has satisfactorily addressed the relevant screening criteria.

NOTE: Applications which do not meet any or all of the screening requirements at Stage One are declined without further assessment.

Stage Two

Stage Two involves benchmarking the remaining applications in detail against the selection criteria described at Sections 3.5–3.5.4. Applications that are assessed not to

satisfy the criteria are excluded from further consideration at this point and are declined.

Stage Three

Stage Three involves the comparative assessment of applications for terrestrial-based Service Areas. Section 3.5.4 sets out the criteria that will be used for the comparative assessment and Section 3.6 sets out the ranking criteria that will be applied if proposed Service Areas overlap to any material extent. The objective of the Program is to avoid overlap of Category B Service Areas for terrestrial-based Services in areas where the business case for infrastructure deployment is marginal, although some minor overlap may be unavoidable in some of these areas.

The Department reserves the right to decline applications for Category B terrestrial-based Service Areas which completely or substantially overlap with terrestrial-based Service Areas already approved.

Each Applicant will be advised in writing of the Department's decision in relation to the outcome of the assessment of their application.

3.3.2 Further details on the Assessment Process

Applications must be submitted by the closing time for the Registration Round as notified on the Department's website. The Department assesses applications on the material submitted, and revisions to applications after the Registration Round closing date are not accepted. However, the Department may, at its discretion, ask Applicants to clarify information provided in their applications. Where an Applicant does not provide clarification responses within a specified time frame, the application may be declined.

In relation to Applications to provide Services using an Upgrade Service Solution, the Department may approve the application but determine a different Incentive Payment for the Service using the Upgrade Service Solution from that which the Applicant has proposed.

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

The Department reserves the right to vary or terminate a Registration Round at any time.

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

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

The Department reserves the right to defer the processing of an application submitted by an Applicant who is currently the subject of a planned or current compliance audit of its activities under a Past Program, pending the outcomes of the audit.

3.4 Stage One: Screening of applications

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

The following Applicants are not 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 service provided by a wholesale provider
- Applicants who propose to resell another ISP's end-to-end wholesale satellite broadband service
- Applicants with no experience in deploying broadband infrastructure.

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

Where an Applicant is able to satisfy the provisions of Stage One, but all of the Applicant's proposed Service Areas are found to be ineligible for registration, the Applicant will continue to be assessed under Stage Two against criteria 1–3. If the Applicant fully satisfies criteria 1–3, the Applicant will be provisionally registered and would then be able to submit an application for other Service Areas.

3.5 Stage Two: Assessment

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

- Criterion 1: the Applicant's financial viability and operational sustainability
- Criterion 2: the Applicant's compliance with other government funding programs, where applicable
- Criterion 3: the Service Solutions and Service Plans the Applicant proposes to offer
- Criterion 4: the Service Areas the Applicant proposes to serve.

Noting the exception relating to Service Areas referred to in Section 3.4, each of the assessment criteria must be addressed to the Department's satisfaction. The Department reserves the right to decline further assessment of an application if one or more criteria are not addressed to the Department's satisfaction.

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

3.5.1 Criterion 1: Financial viability and operational sustainability

An Applicant's financial viability and operational sustainability is assessed against the following sub-criteria.

Primary assessment criteria

- In the consideration of financial performance and financial viability, Applicants are required to demonstrate acceptable financial ratios. Achievement of the following ratios will be viewed as positive indicators of financial performance and financial viability:
 - current ratio (current assets/current liabilities) of greater than one
 - quick ratio (current assets less inventory less debtors/current liabilities) of greater than one
 - debt to equity ratio (interest bearing debt/equity) of less than two
 - times interest cover (profit less interest and tax/interest expense) of greater than three
 - positive profit ratios (net profit/revenue and net profit/total assets) that do not indicate declining profitability.

If an Applicant is not able to adequately meet the ratios outlined above, or demonstrate (through supporting materials) alternative and ongoing sources of financial support (as outlined below) the application may be declined at this point without further assessment against other criteria.

Supporting assessment criteria

- Solvency: The Applicant is financially solvent at the date of application.
- Audit status: The Applicant has submitted audited accounts that include the Auditor's report. The Auditor's report should detail whether the Auditor has any qualifications or concerns about the financial position of the Applicant. This includes any concern or emphasis of matter in respect of the Applicant as a going concern.
- Ongoing ability to fund Program commitments: There are no material commitments that would call into question the Applicant's ability to sustain its proposed Program operations.
- Access to adequate funds: The Applicant has access to sufficient funds (excluding any Program funding) to operate its business on a financially viable basis while participating in the Program.
- Financial performance: The Applicant's financial performance (past and projected) demonstrates that the Applicant is profitable, has positive net assets (current and fixed) and is projected to remain profitable. This should be reflected in the Applicant's financial accounts (including historical accounts to the extent required) and business plan.
- Applicant integrity: Whether the Applicant has ever made an incorrect, false, incomplete or misleading statement (Incorrect Statement) in respect to an application for registration for a Past Program or any other Commonwealth funding program or in respect to any arrangement under which the Applicant has received Commonwealth funding. If they have made such an Incorrect Statement,

the Applicant should explain that statement to the Department's satisfaction. A statutory declaration to this effect is required to be lodged.

- **Board experience and integrity:** Where an Applicant is a corporation, its Board as a whole should have at least six years cumulative industry experience. Where an Applicant is a partnership, its partners should have at least six years cumulative industry experience. Board members and partners should be fit and proper persons.
- **Senior management experience and integrity:** The Applicant's management team should have at least six years cumulative industry experience. Key managerial staff should be fit and proper persons.
- **Sustainable business plan:** The Applicant can demonstrate that its broadband Internet business is viable on an ongoing basis, without the support of government funding.
- **Risk management:** The Applicant can demonstrate awareness of key operational risks associated with its operations and has 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 at least the following material with its application:

Financial statements

- Audited financial statements (including profit and loss statement, balance sheet and cashflow statement) for the last complete financial year. Where the Applicant has obligations under the *Corporations Act 2001* to prepare an annual report with audited financial statements, that information may be used. Where the Applicant claims to be exempt from the requirement to submit audited accounts under the *Corporations Act 2001*, the Applicant must provide either audited financial statements or financial statements that have been reviewed by an appropriately qualified auditor under Auditing Standard Australia ASRE 2400 *Reviews of Financial Reports Performed by an Assurance Practitioner who is not the Auditor of the Entity* (further details at www.auasb.gov.au).
- If an audit opinion is qualified, the Applicant should provide a copy of the management letter accompanying the adverse audit opinion.
- Financial statements, whether or not audited or reviewed under ASRE 2400, for the two financial years prior to the last complete financial year.
- Where the Applicant is a majority-owned subsidiary of another company (i.e. the parent company), the above financial information must be supplied for the parent company (or relevant controlling business) in addition to the Applicant's own financial information.

- Year-to-date financial statements prepared as at the date of the end of the most current quarter (i.e. 30 September, 31 December or 31 March).

Demonstration of financial viability

- The Applicant must be able to demonstrate its financial viability. Key information required to demonstrate financial viability include:
 - demonstration that the Applicant is currently solvent. A statutory declaration as to solvency is required.
 - demonstration of a history of profitability or the ability for the Applicant to have absorbed losses.
 - financial forecasts indicating the future profitability of the Applicant. These forecasts must be prepared by the Applicant on a reasonable basis in light of its historical operations and its future plans. Forecasts must demonstrate that the Applicant is not reliant on Program funds for its viability.
 - where the Applicant is relying (or may need to rely) on ongoing future financial support from another party (e.g. bank, director, shareholder, related company), a commitment from that other party that they will provide financial support to the Applicant for the duration of the Program. This commitment may be provided by means of a letter from a bank or related corporate entity, or by such other means as is prescribed by the Department.
 - where another party has committed to provide financial support to the Applicant, it needs to be demonstrated by the Applicant that this party has the necessary financial capacity and is prepared to provide the proposed support. Evidence in support of financial capacity may include current bank statements, current financial statements, details of assets and liabilities held by individuals or other documentation. Where possible the information should be independently verified by an appropriately qualified professional (for example an auditor or valuation expert).
 - an instrument (for example, a parent company guarantee and indemnity in favour of the Applicant, where applicable), upon which the Applicant seeks to rely to demonstrate its financial standing.

Risk Management Plan

- A copy of the Applicant's risk management plan, which will be treated as 'commercial-in-confidence' in line with the provisions in section 3.8.2 of the Guidelines.

Corporate information

- Details of the Applicant's corporate structure (if applicable), including detailed information on the relationships between the Applicant and financially related entities (including Related Bodies Corporate).
- Certified copies of National Police Certificates for each Board member, partner and senior executive or advice that material was lodged in accordance with ASX or ASIC requirements, in the case of Applicants who are public companies. Details of any criminal convictions or charges pending for Board members, partners or senior executives must be provided to the Department.

- For corporate applicants, details of Board members and their relevant experience, and if applicable, a copy of a current ASIC Current and Historical company extract, including notification of directors' appointments.
- Details of the organisational structure. This should be presented as a diagram and include names of senior staff as well as their positions.
- Curriculum vitae for each Board member, partner and senior manager (as the case may be) that details relevant qualifications, roles and relevant industry experience.

3.5.2 Criterion 2: Regulatory and other compliance issues

The Applicant's compliance with regulatory obligations, including obligations imposed by bodies such as ASIC, the ATO, the ASX, ACMA, the ACCC and the TIO, and obligations under former government broadband programs is assessed against the following sub-criteria:

Assessment criteria

- **Regulatory status:** Applicants must demonstrate that they have complied with any obligations to lodge documents with, and other statutory requirements of, ASIC, the ATO, the ASX, ACMA, the ACCC and the TIO.
- **Compliance with past or present broadband programs:** where applicable, Applicants must identify the extent of compliance with Past Programs. Applicants should demonstrate, if they have received funding from state/territory or local governments for broadband services, satisfactory compliance with the requirements of those programs. The Department may consult with relevant Commonwealth authorities or state/territory/local governments on relevant compliance matters.
- **Compliance with other funding programs:** Applicants should demonstrate satisfactory compliance with other funding programs.
- **Integrity regarding funding programs:** The Department must be satisfied that at no time has the Applicant made an incorrect, false, incomplete or misleading statement (Incorrect Statement) in respect to an application for registration for a Past Program or any other Commonwealth funding program or in respect to any arrangement under which the Applicant has received Commonwealth funding, or if they have made such an Incorrect Statement, the Applicant has explained the statement to the Department's satisfaction. A statutory declaration to this effect will be required.
- **Where the Applicant has received adverse compliance findings under Past Programs or an issue has been raised in respect to an Applicant's integrity regarding funding programs,** the Applicant must demonstrate how it has addressed the issues and any concerns raised in those findings to the satisfaction of the Department.

If an Applicant does not disclose, or does not demonstrate to the satisfaction of the Department that it has addressed past compliance issues or issues in respect to an Applicant's integrity regarding funding programs, the application may be declined at this point, without further assessment against other criteria.

- Where the Applicant has received adverse compliance findings under Past Programs, the Applicant must demonstrate how it has addressed the issues and concerns raised in those compliance findings to the satisfaction of the Department.

If an Applicant does not disclose, or does not demonstrate that it has addressed past compliance issues, its application may be declined at this point, without further assessment against other criteria.

Information required

- Where required under the *Telecommunications Act 1997*, evidence that the Applicant holds a carrier licence or has in force a nominated carrier declaration, or has applied to ACMA for a carrier licence or to have a nominated carrier declaration registered. If the Applicant does not require either a carrier licence or a nominated carrier declaration to provide the service, it should provide legal advice or other documentation demonstrating that neither is required.
- The Applicant must provide details of any other funding the Applicant has received from the Australian Government, or state/territory/local governments, whether these programs have similar objectives to the Australian Broadband Guarantee, and any compliance information in relation to participation in those programs (for example, demonstration of full compliance).
- The Applicant must identify any significant non-compliance issues arising under their participation in other past or present Government (Commonwealth /state/territory) broadband or other funding programs. This may include adverse audit findings or significant consumer complaints about the Applicant's services. The Department may consult with relevant Commonwealth/state/ territory authorities on significant non-compliance issues identified by Applicants and seek to verify claims by Applicants of past compliance with other programs.
- In the case of significant non-compliance with any Past Program, the Applicant must provide details to demonstrate what action it has undertaken to ensure the non-compliance has been adequately addressed.
- In the case of an Applicant having provided an incorrect, false, incomplete or misleading statement, the Applicant must identify the statement and provide a detailed explanation as to the reasons for the statement.

3.5.3 Criterion 3: Service Solutions and Service Plans

This criterion must be responded to by:

- All Applicants seeking to register under the Australian Broadband Guarantee.
- Registered Providers seeking to offer additional Service Solutions or to change their Service Plans under the Australian Broadband Guarantee.

If an Applicant proposes to offer more than one Service Solution (including 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.

3.5.3.1 Upgrade Service Solution

Applicants or Providers may apply to register Upgrade Service Solutions in the following circumstances:

- (a) Upgrading a commercial service to a Program Service: Upgrade Service Solutions for existing commercially deployed infrastructure may apply generally across all or part of a commercial network (subject to the Program eligibility criteria) or may be limited to particular premises in certain exceptional circumstances for commercial networks which are otherwise capable of providing the Threshold Services (such as the need for a high gain antenna or a new modem in certain circumstances); or
- (b) Upgrading a Program Service that was Connected and Supplied within the last three years to enable receipt of a Threshold or Added Value Service, as described in section 2.3.1 and 2.3.3 of these Program Guidelines.
- (c) Upgrading the service of an Eligible Customer exiting a Past Program Service to enable receipt of a Program Service, as described in section 2.3.1 and 2.3.3 of these Program Guidelines: This applies where Eligible Customers have come to the end of their three-year Service Plan under a Past Program and the Past Program Provider's Service Solution does not support a Threshold Service under this Program. The Upgrade Service Solution would enable receipt of a Program Service.

To be eligible to claim Level 1 Incentive Payments for Upgrade Service Solutions, the Applicant must register the proposed Service Solution in its own right, and must have a Service Plan in place for the relevant Services.

3.5.3.2 Assessment criteria

Criteria used by the Department in assessing proposed Service Solutions and Service Plans are set out below.

Primary assessment criteria

Applicants are required to demonstrate significant experience and expertise in operating broadband networks and delivering broadband services.

If an Applicant fails to demonstrate such operational experience as a broadband service provider, the application may be declined at this point, without further assessment against other criteria.

Other assessment criteria

The following matters are taken into account in assessing the suitability of proposed Service Solutions and Service Plans, where appropriate.

Service Solutions

- For Service Solutions other than Upgrade Service Solutions, material new investment and the extent to which the proposed Service Solution amounts to material new investment in new infrastructure, rather than modification of existing infrastructure at minor cost. Applicants must detail the value of their proposed investment in the infrastructure. Networks that have been announced publicly to be rolled out on a commercial basis are considered to be existing infrastructure.

- For Upgrade Service Solutions, efficiency and cost effectiveness: the extent to which the proposed upgrade of the Service Solution constitutes an efficient and cost-effective means of providing Customers with access to Program Services.
- Robustness and reliability of technology platform: if the proposed technology platform is not already proven or deployed elsewhere on a wide scale, the Applicant must demonstrate the robustness of any new technological platform on which the service is to be supplied.
- Scalability of Service Solution: the ability of the Service Solution to be further developed and improved, enabling Customers to receive a higher level of Service to keep pace with service levels into the future.
- Compliance with relevant regulations: Providers must ensure that all Service Solutions comply with relevant Government legislation and regulations. This includes necessary local government approvals, third party insurance and health and safety requirements. Applicants should have particular regard to ACIF Industry Code C564:2004 *Deployment of Mobile Phone Network Infrastructure* for any wireless infrastructure deployments.
- Ecological sustainability of Service Solution: the Department encourages installation and use of ecologically sustainable infrastructure (for example, solar powered transmission towers or other appropriate technology). While desirable, this is not a mandatory requirement. However, ecological sustainability of the Service Solution may be considered in any comparative assessment under Section 3.6.
- Technical Capability of key operational personnel: details of the technical capability, qualifications and experience of the Applicant's Chief Technology Officer and/or Chief Operations Officer.
- Adequate Technology support: the Applicant has adequate systems to support the technology platform on which the service is to be supplied.
- Elements of Service delivery: the Applicant must demonstrate that it has full control of the various elements of Service delivery to Customers.
- Control of infrastructure: the Applications must demonstrate that it has appropriate control of the infrastructure to be used to provide the Service.

Service Plans

- Threshold Services: Whether the proposed Services comply with the requirements set out in Section 2.3.1.
- Entry Level Services: Whether the proposed Services comply with the requirements set out in Section 2.3.2.
- Added Value Services: Whether the proposed services comply with the requirements set out in Section 2.3.3.
- For Upgrade Service Solutions, efficiency and cost effectiveness: the extent to which the proposed upgraded Service Plan constitutes an efficient and cost-effective means of providing Customers with access to Program Services.
- Terms and Conditions: Whether the proposed price and non-price Customer Contract terms and conditions comply with the requirements of the Australian

Broadband Guarantee, set out in Section 4.3 and Attachment A to these Guidelines.

- Future commitments to service: the extent to which the Applicant can offer to continue providing the Service on at least as favourable arrangements (including price) to existing Customers once the mandatory three year term has expired.
- Readiness: The Applicant's ability to promptly offer and supply the proposed Services, subject to a reasonable period for the planning and roll-out of new infrastructure.
- Use of Agents: If the Applicant proposes to use Agents to market its Services, the arrangements must ensure that the Applicant will have full responsibility for the provision of the proposed Service, including entering into direct contractual relations with proposed Customers. The Applicant must have in place appropriate control mechanisms and procedures governing the conduct of the Agent.

Information required

Service Solutions

- Details of the Service Solutions proposed by the Applicant to supply Australian Broadband Guarantee Services (for example, ADSL, cable, wireless, two-way satellite, etc.), including the brand of equipment to be used, information on testing results, details of proposed operational deployment, including roll-out schedule, details of compliance with applicable technical standards.
- For Service Solutions other than Upgrade Service Solutions, 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.
- For Upgrade Service Solutions, information to demonstrate that the proposed upgraded Service Solution constitutes an efficient and cost-effective means of providing Customers with access to Program Services.
- For Upgrade Service Solutions, details of:
 - the enhancements (if any) required to the Applicant's network and the nature of CPE proposed to be used to provide access to Program Services via that network
 - any funding received under a Past Program to operate that existing broadband network. Where funding has previously been received, Applicants are required to demonstrate why additional subsidies are justified.
- Details of the architecture of the Applicant's broadband network (at least back to the point of interconnection with upstream connecting networks), including details of hardware, CPE, technical standards and protocols, spectrum use (where relevant), and network peering. Schematic diagrams should be attached to the application.
- Evidence of ownership and/or control of broadband infrastructure (as applicable). This may include:
 - relevant ownership or leasing arrangements for towers
 - copies of valid site licences and relevant certificates of currency

- any Memorandum of Understanding or agreements to enter transmission sites or share site facilities
- appropriate public liability insurance for infrastructure
- Service agreements with backhaul suppliers
- equipment purchase agreements
- documents relating to support and maintenance arrangements for infrastructure
- Information on the extent to which the proposed technology has been successfully deployed commercially elsewhere in Australia and/or overseas.
- The names of Chief Technology Officer (CTO) and/or Chief Operating Officer (COO), detailed information on the CTO's and/or COO's qualifications and experience.
- 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.
- Information on the proposed upgrade path for the Service Solution to enable supply of higher quality services over time.
- Information on how and 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 Data Usage Allowances).
- Information on how the Applicant will address the following five elements of service delivery to Customers:
 - Installation
 - customer service
 - billing system
 - maintenance
 - sales and marketing
- Details of the billing system must include information on the capacity of the billing system to accommodate the number of projected Customers.
- If the Applicant uses Agents (see Section 4.1.3 for further details) to market services on its behalf, details of the relationship with each Agent, including:
 - name and address of each Agent
 - the proposed role of each Agent or group of Agents in delivering the Service
 - contractual arrangements between the Applicant and the Agent and copies of any written agreement governing the terms of the agency arrangement—if no written agreement exists, the Department will assume that common law principles govern the relationship

- clear evidence that the Applicant will be the legal party contracting with a Customer to provide the Service—where an agency relationship exists, Customer Contracts will be between the Provider (as principal) and the Customer, not the Agent and the Customer
- clear evidence that the Applicant will be responsible for the conduct of the Agent in relation to Program activities undertaken by the Agent on the Applicant’s behalf.

Service Plans

- The total price (including GST) of the Applicant’s proposed Threshold Services, Entry Level Services or Added Value Services, comprising charges for:
 - installation and connection of hardware (if applicable)
 - account establishment (if applicable)
 - monthly usage
- Details of any other charges, such as late fees and credit card charges. Any such charges must be detailed in the terms and conditions and be approved by the Department.
- Details of the Data Speed and maximum Data Usage to apply to each Service Plan, and how excess usage will be treated (i.e. through additional charges and/or shaping, in accordance with Section 2.3.1).
- Details of the proposed terms and conditions, ensuring that the Core Provisions (as set out in Attachment A to these Guidelines) are included (or included in substantially similar terms to the model provisions).
- For Upgrade Service Solutions, information to demonstrate that the proposed Service Plans provided over the Upgrade Service Solution constitute an efficient and cost-effective means of providing Customers with access to Program Services.

3.5.4 Criterion 4: Service Areas

This criterion must be responded to by:

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

Applicants are required to register Service Solution(s) for all proposed Service Areas. A Provider may be registered to provide different Service Solutions in different Service Areas. Where there is more than one applicant for Service Areas in an area where the business case for infrastructure deployment is considered marginal by the Department, the Department will compare proposals to determine which best satisfy criterion 4 (and where appropriate criterion 3). The Applicant that is ranked highest will be granted registration of that Service Area. This Service Area restriction does not apply for Service Area applications for Upgrade Service Solutions.

Where an Applicant is able to satisfy Criteria 1 to 3 (above), but no Service Areas are accepted for Registration, the Applicant may apply for new Service Areas.

Priority Service Areas

In proposing Service Solutions and Service Areas for network deployment, Applicants are encouraged to target areas containing high proportions of Under-served Premises. Applicants are also encouraged to involve local communities in strategic planning for their proposed networks. The extent of community support for Applicants is a factor in assessment of proposed Service Areas.

Incentive Payments may in part be paid up-front for Services supplied to these priority areas, where approved by the Department (see Section 4.5.2).

All terrestrial Service Areas registered in 2008–10 will be carried forward into future years of the Program, subject to:

- the Provider obtaining registration under the Program and continued compliance with the Funding Deed
- the Department remaining satisfied that the Provider is able to serve Eligible Premises in the Service Area
- the Department retaining the right to amend the Guidelines as a result of a change in Government policy (refer Section 1.2).

Basis of full assessment

Service Areas for proposed terrestrial-based Service

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

- The proposed Service Area provides coverage to a significant number of under-served premises as identified by the Department at www.dbcde.gov.au/abg or as otherwise substantiated by the Applicant.
- Proposed coverage of the network as described by the Applicant is reasonably accurate. While evidence based on field signal-strength testing is preferred by the Department, it is recognised that this may be a costly process. Line-of-sight predictive coverage is considered sufficiently accurate for a proposed wireless network.
- The Service Areas can be activated in a timely manner. This would normally be within 60 calendar days from the time of registration, unless the Applicant can demonstrate that a longer period is reasonably required. It is acknowledged that longer roll-out time frames may apply where whole-of-region networks are proposed, particularly in more remote areas. Where a roll-out schedule has been agreed by the Department, then the Service Area must be activated within 30 calendar days of the date nominated by the Applicant/Provider and approved by the Department as the activation date (unless an extension of time is approved).

Service Areas for proposed satellite-based Service

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

- The proposed Service Area provides coverage to a significant number of under-served premises as identified by the Department at www.dbcde.gov.au/abg or as otherwise substantiated by the Applicant. Proposed satellite-based Service Areas are encouraged to be broadly based geographically, with whole-of-Australia

coverage considered desirable. Noting the arrangements for paying Level 5 incentive payments for difficult installations, Applicants proposing satellite-based Service Areas must indicate the extent to which their proposed Service Area coverage will provide ubiquitous access to Services for Under-served Premises.

- The Service can be activated in a timely manner. This would normally be within 60 calendar days from the time of registration, unless the Applicant can demonstrate that a longer period is reasonably required. It is acknowledged that longer roll-out time frames may apply in more remote areas. Where a roll-out schedule has been agreed by the Department, then the Service Area must be activated within 30 calendar days of the date nominated by the Applicant/Provider and approved by the Department as the activation date (unless an extension of time is approved).

Information required

- A description of the Service Area, including copies of maps (preferably in MapInfo.tab file format) showing the Service Area and any major parts of the Service Area where coverage may not be capable of being achieved (for example, mountainous terrain). At a minimum, Applicants must provide, as relevant:
 - tower locations in latitudes and longitudes (in decimal degrees, heights, radius of reach, and any directionality of signal strength)
 - anticipated ADSL reach
 - extent of cable networks by streets or roads being cabled.
- Applicants must have the Department's agreement if they wish to use another mapping format. Service Area applications may be rejected if there is insufficient information provided.
- The Applicant must indicate the date by which it could commence providing the service in the proposed new Service Areas. The Provider must be able to Connect and Supply Customers:
 - within 60 calendar days from the time of registration of the Service Area, or such other similar period as can be demonstrated to be required to implement the required infrastructure
 - within 30 calendar days of the date on which the Applicant has indicated on the submitted agreed schedule that the Service Area will become operational. Applicants should submit a roll-out schedule detailing the areas in which they will offer services.

A Provider may forfeit a Service Area if it fails to meet the agreed commencement date for the Service offerings (including any approved extensions of time).

In these circumstances, the Department reserves the right to offer registration of the Service Area to the next ranked Provider in the relevant Registration Round (if any).

- The Applicant must demonstrate how the new proposed Service Areas will fit with the Applicant's existing network.

- The Applicant should provide information of any community or other government support for the Applicant's roll-out of broadband services into the proposed new Service Area.
- 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).
- The Applicant must indicate the proposed Service Solution to be used in the proposed Service Area.
- For Terrestrial Broadband Services in whole of region Service Areas, details of any Up-front Payments sought and an infrastructure deployment schedule, providing milestones against which Up-front Payments would be made.

3.6 Stage Three: Comparative assessment of Service Areas

Generally, only one Provider of Category B Services will be approved for registration in any Service Area where the business case for infrastructure deployment is considered by the Department to be marginal, i.e. outside of Metropolitan Areas and more densely populated regional areas. In areas where the Department considers only one Provider of Category B Services should be registered, a limited degree of overlap between Service Areas may be allowed, in the following circumstances:

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

If there are two or more Applicants to register Terrestrial Service Solutions in areas where the Department considers that only one Provider should be registered, the Department will approve the Service Area application that best meets assessment criterion 4 and (where appropriate) criterion 3 of the application process. Proposals will be ranked in this regard.

3.7 Fast track application process

Providers registered under the Australian Broadband Guarantee (2008-10) may undertake a fast track application process. However, the Department reserves the right to require any of these Providers to complete the full application process.

The fast track application process is a reduced version of the full application process as described in this chapter. Unless advised by Providers, Service Areas and Service Solutions will be as applied in the Australian Broadband Guarantee (2008-10). If new Service Areas or Service Solutions are proposed, they will be assessed as described in this chapter.

3.7.1 Criterion 1: Financial and operational sustainability

Information required

For an Applicant under the fast track process to address criterion 1, they must submit the following material with its application:

- Audited or (where not available) reviewed year to date financial statements (including profit and loss statement, balance sheet and cashflow statement) as at 31 March 2010. Where the Applicant has obligations under the *Corporations Act 2001* to prepare an annual report with audited financial statements, that information may be used. Where the Applicant claims to be exempt from the requirement to submit audited accounts under the *Corporations Act 2001*, the Applicant must provide either audited financial statements or financial statements that have been reviewed by an appropriately qualified auditor under Auditing Standard Australia ASRE 2400 *Reviews of Financial Reports Performed by an Assurance Practitioner who is not the Auditor of the Entity* (further details at www.auasb.gov.au).
- Details of any material changes to the organisation since submission of the Half-yearly Compliance Report to the Department (due 19 March 2010)
- Details of changes to ownership of the company of the Board of Directors since submission of the Half-yearly Compliance Report to the Department (due 19 March 2010)
- Details of any changes to the company's Chief Technology Officer and/or Chief Operating Officer since submission of the Half-yearly Compliance Report to the Department (due 19 March 2010)
- Details of any proposed changes to the company's registered outsourcing arrangements.

3.7.2 Criterion 2: Regulatory and other compliance issues

Information required

For an Applicant under the fast track process to address criterion 2, they must submit the following material with its application:

- Details of any previous or outstanding compliance issues (including reporting requirements) and details of actions taken or systems used to address issues.
- Details of the internal governance and compliance systems the company has in place to comply with the Australian Broadband Guarantee Guidelines
- Details of the number of complaints registered with the Telecommunications Industry Ombudsman and the measures taken to resolve the critical issues
- If applicable, details of any alleged breaches of law and/or material disputes being pursued by ASIC, the ATO, the ACMA, the TIO or the ACCC at the time of registration.
- If the Applicant has ever made an incorrect, false, incomplete or misleading statement (Incorrect Statement) in respect to an application for registration for a Past Program or any other Commonwealth funding program or in respect to any arrangement under which the Applicant has received Commonwealth funding and, if they have made such an Incorrect Statement, the Applicant should explain that statement to the Department's satisfaction. A statutory declaration to this effect is required to be lodged.

3.7.3 Criterion 3: Service Solutions and Service Plans

For an Applicant under the fast track process to address criterion 3, they must submit the following material with its application:

Service Solution (including existing Service Solutions)

If an Applicant proposes to offer more than one Service Solution (including 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.

- Identification of the Service Solution proposed for this Australian Broadband Guarantee Application, including brand and product details
- Detailed description of the capability of the Service Solution to deliver the Program Services as defined in these Guidelines
- Evidence (including contracts) of arrangements for the purchase of bandwidth and, where applicable, transponder capacity
- Whether upgrades to the Service Solution are required in order to deliver Program Services as defined in these Guidelines
- The provisioning strategy to achieve Program Service standards and comply with the provider performance testing regime
- Confirmation of ability to upgrade existing Customers to the new Threshold Service benchmark
- Details of ownership of CPE

Service Plans

- Details of all proposed Australian Broadband Guarantee Service Plans
- Details of any additional charges and fees (e.g. excess data, late fee) to be applied as part of Program Services

3.8 Other matters

3.8.1 Assessment of Applicants is for Australian Broadband Guarantee purposes only

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

3.8.2 Confidentiality of Applicant information

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

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

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

Further information in respect of confidentiality can be found on the Department of Finance and Deregulation website at www.finance.gov.au/publications/fmg-series/03-guidance-on-confidentiality-in-procurement.html.

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

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

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

- that disclosure is required by law
- disclosure is required to meet the reporting or accountability requirements of the Department or its Minister as required by relevant legislation (including the *Financial Management and Accountability Act 1997* and the *Freedom of Information Act 1982*), the Australian National Audit Office or any other auditor, the Commonwealth Parliament and its committees, and the Commonwealth Ombudsman
- the information is, or becomes, public knowledge, other than by breach of confidentiality by the Australian Government or other unlawful means by the Australian Government

or

- disclosure is to any of the Australian Government's officers, employees, contractors, consultants, advisers or agents and, if the information is confidential, those persons are under an obligation of confidentiality.

3.8.3 Personal privacy

Documents containing personal information are handled and protected in accordance with the provisions of the Privacy Act, which sets standards for the collection, storage, use and disclosure of personal information and Section 2.6 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

While Section 3 sets out the rules and requirements in relation to registration of ISPs as Providers and registration of Service Solutions, Service Plans and Service Areas, the following section sets out the rules and requirements applying to Providers operating under the Program.

If a Provider has received an approval to undertake a specific activity under Past Programs, that approval does not apply under the Australian Broadband Guarantee during 2010–2011, unless it is separately provided for under these Program Guidelines.

Overview of key requirements for Providers offering an Australian Broadband Guarantee Service

The Department expects all Registered Providers under the Australia Broadband Guarantee to adhere to the following key requirements in offering Services to Customers.

All Providers must provide Customers with:

- Program Services for a period of three years from the date of the Connection and Supply of a Program Service to a Customer
- confirmation that they are able to provide a Service, based on a reasonable assessment that the Service can be provided for three years, taking into account factors such as reasonably foreseeable changes in vegetation and urban development
- reliable service offerings that meet the requirements of these Guidelines in terms of speed, Data Usage and price (as defined in these guidelines and in Funding Deeds), and that are offered and marketed in a manner that is consistent with the policy objectives of the Australian Broadband Guarantee (as set out in these Guidelines)
- quality customer service (including expeditious follow up where problems arise with the Service)
- proper complaint handling procedures that are consistent with the constitution, procedures and policies of the Telecommunications Industry Ombudsman (TIO) and Chapter 9 of the Communications Alliance Ltd's *Telecommunications Consumer Protections Code C628:2007* and any other applicable industry code
- fair Customer Contract terms and conditions consistent with the Guidelines, *Telecommunications Act 1997* and related legislation, *Trade Practices Act 1974*, and other consumer legislation, Chapter 5 of the Communications Alliance Ltd's *Telecommunications Consumer Protections Code C628:2007* and any other applicable industry code
- accurate and truthful advertising of services which complies with applicable Commonwealth and state/territory laws, and which acknowledges the financial support received from the Australian Government under the Australian Broadband Guarantee, consistent with the requirements of these Guidelines

- scalable and enhanced services into the future—the Provider should offer a range of Service Plans now and have capacity to upgrade the speed and functionality of those services in the future.

In participating in the Program, all Providers must:

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

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

4.1 Promotion of Services

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

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

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

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

The Australian Broadband Guarantee logo must adhere to Australian Government branding guidelines available at www.dbcde.gov.au/logo.

As the Australian Broadband Guarantee logo includes the Commonwealth Coat of Arms (the formal symbol of the Commonwealth of Australia that signifies Commonwealth authority and ownership), it must be used appropriately as deemed by the Department.

Current requirements are set out in Table 1 below.

Table 1: Acknowledgement requirements for promotional activities

Promotional activity	Acknowledgement required
Radio and TV advertising, including live reads	<p>Providers must use the Australian Broadband Guarantee logo on TV publicity material, maintaining all requirements of Australian Government branding.</p> <p>Guidelines on the use of Australian Government logos are available from www.dbcde.gov.au/logo or on request from the Department's Corporate Communications Section.</p> <p>Note that the crest must be no smaller than 2cm across and no other logo should be more prominent.</p> <p>Television advertising may use the brand at a size consistent with the design of the advertising.</p> <p>Radio advertising only need include acknowledgment of the funding.</p> <p>Providers must include the following words following the main advertising message:</p> <p>“This offer is made possible with support from the Australian Government's Australian Broadband Guarantee”</p>
Print advertising, flyers, brochures or other product promotional material (for example, websites)	<p>Providers must use the Australian Broadband Guarantee logo on publicity material, maintaining all requirements of Australian Government branding.</p> <p>Guidelines on the use of Australian Government logos are available from www.dbcde.gov.au/logo or on request from the Department's Corporate Communications Section.</p> <p>Note that the crest must be no smaller than 2cm across and no other logo should be more prominent.</p> <p>Acknowledgment must also be given by using the following wording:</p> <p>“This offer is made possible with support from the Australian Government's Australian Broadband Guarantee. For</p>

	information on the Australian Broadband Guarantee Program, call 1800 883 488 or visit <i>www.dbcde.gov.au/abg</i> ”
Media releases	Acknowledgment must include the following wording: “This offer is made possible with support from the Australian Government’s Australian Broadband Guarantee. For information on the Australian Broadband Guarantee Program, call 1800 883 488 or visit <i>www.dbcde.gov.au/abg</i> ”

Acknowledgement of the Australian Broadband Guarantee does not exclude acknowledgment of relevant support from other sources.

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

4.1.1 Special Promotional Offerings

All special offers relating to an Australian Broadband Guarantee Service, including discount offers as described in 2.3.4, must be submitted to the Department for approval. No ‘free trial’ offers are permitted under any circumstances.

If a Customer terminates their Service at the end of the special offer period, the Provider may be required to repay the Incentive Payment received for that Service, unless the Department determines otherwise in its absolute discretion.

4.1.2 Initial offer to Customers

Providers must endeavour to ensure that Customers properly understand any offer put to them in relation to an Australian Broadband Guarantee Service. Providers must not mislead Customers as to their eligibility status or intended eligibility status under the Program, for example, in instances where the Customer may have agreed to the Service on the basis that they were advised to be eligible prior to actually confirming eligibility through the Broadband Service Locator and Declaration Form.

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

The Department will not prevent Providers and Customers entering into a Customer Contract prior to confirming the Customer’s eligibility through the Broadband Service Locator eligibility process (see Section 2.4). However, in these circumstances the Provider will be required to provide the Customer with a service with terms and conditions that are identical to those for the Australian Broadband Guarantee Service the Provider contracted to provide, even if it is subsequently found that the Customer

is not eligible for an Australian Broadband Guarantee Service or is not eligible for the Category of Service in respect of which the terms and conditions applied. In these circumstances, an Incentive Payment is not payable.

Providers may be exempted from the requirement specified above in circumstances where a Service is technically unable to be provisioned (for example, as a result of a subsequent site survey). The Department would require documentary evidence to support exemptions in these circumstances.

4.1.3 Role of Agents

Providers are permitted to use Agents to market their Service Plans and to refer Customer orders to the Provider. Agents are not permitted under any circumstances to register Customers on behalf of Providers. Providers must perform all administrative tasks in relation to the registration of Customers and the submission of claims.

Agency arrangements must ensure that:

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

Providers must accept responsibility for the conduct of their Agents who make representations to Customers about the Provider's Services.

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

The Department must be notified of any changes to proposed agency relationships, and may review a Provider's registration (or take other appropriate action) in the event of a suspected or actual non-compliance by a Provider and/or its Agent.

4.1.3.1 Inquiries from Agents

The Department's legal relationship is with the Provider. In order to promote efficient and accountable Provider behaviour, the Department's policy is to deal only with the Provider. Consequently, the Department will not provide information to agents about matters affecting Providers (for example, providing Customer ID numbers or the operation of the Australian Broadband Guarantee).

Authorised Agents of a Provider must refer any questions or information requests relating to the operation of the Australian Broadband Guarantee to the Department through the Provider.

4.1.3.2 Notification of Agents

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

required to notify the Department of any changes or additions to the Agents it has nominated.

4.1.4 Use of Resellers by Providers of Category B Services

The Department seeks to provide smaller, localised Internet Service Providers with an opportunity to resell services of Category B Wireless Providers registered under the Program. This is in order to support Small Internet Service Providers located in regional areas, while providing Customers with protections under the ABG Program through registered Providers. Local Resellers would typically operate in a single town or location in an approved wireless service area, although the Department may approve Local Resellers with a wider scope, at its absolute discretion and upon application from a registered ABG Provider.

Category B Providers wishing to use Local Resellers, must apply to the Department to for registration of the Local Resellers. It is at the Department's absolute discretion whether or not to register a Local Reseller.

If a Provider registers a Local Reseller, the Provider:

- remains responsible for all Services provided by the Local Reseller in respect to a Customer;
- must ensure that the Local Reseller complies with these Guidelines and the terms of any Funding Deed and all other laws, regulations and policies;
- must register the Customer and the Premises;
- must install the Service;
- is responsible for maintenance of the Service and any associated repairs;
- warrants that the Local Reseller will offer the same Services as registered by the Provider with identical terms and conditions;
- warrants to provide the retail service to the reseller's customers if the reseller ceases providing services during the three year Service Plan period.

The Local Reseller may, subject to the above requirements:

- market the Service to Customers in their local area (as marked up on the BSL) and as specified by the Department;
- contract with the Customer to provide a retail service.

The Provider must submit all Local Reseller marketing materials to the Department for approval. The Provider is responsible for any misleading or false statements made in the marketing material.

4.2 Broadband Service Locator—Provider participation

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

4.2.1 Special Arrangements for Category B and Category C listings

Special arrangements apply for Providers who have registered to offer Terrestrial Broadband Services under the Australian Broadband Guarantee (2008-10) and who

are also registered to offer Services under the Australian Broadband Guarantee (2010-11).

For these registered Providers, the Service Areas approved in the Australian Broadband Guarantee (2008-10) and the Eligible Premises which applied in those Service Areas under the Australian Broadband Guarantee (2008-10), as determined by the Department, will apply to the Australian Broadband Guarantee (2010-11) as Category B Services and be incorporated into the relevant Funding Deeds.

These special arrangements for Eligible Premises only apply in the Service Areas that were registered under the Australian Broadband Guarantee (2008-10). Where these Providers register new Service Areas under the Australian Broadband Guarantee (2010-11), these special arrangements will not apply.

For all other Providers, Eligible Premises are those determined as at 1 July 2010 to be Category B or C Services. Eligible Premises identified on 1 July 2010 remain Eligible Premises until 30 June 2011, unless Connected and Supplied with a Program Service.

4.2.2 Provider obligations in using the Broadband Service Locator

Providers can generally rely on the Broadband Service Locator to identify which broadband services are available to particular premises. However, there are other determinants of eligibility, such as whether the premises have previously received a Program Service under Past Programs, which must also be considered. Therefore, Providers are strongly encouraged to exercise due diligence in checking the eligibility of the Customer and their premises to receive an Australian Broadband Guarantee Service (as per Section 2 of the Guidelines) prior to the installation and supply of a Service at the relevant Customer's premises.

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

The initial Connection and Supply of a Service must occur within 30 calendar days of the date when the Customer entered into the Customer Contract with a Provider as described at section 4.3, unless a longer time frame has been approved by the Department. Such requests must be received before the expiry of the 30-day period.

The Department may decline a request for extension where:

- a) it is unreasonable (as determined by the Department)
- b) inadequate evidence or explanation to support the request for extension has been provided

or

- c) the form was received by the Department after the 30-day period.

4.2.3 Misuse of the Broadband Service Locator

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

4.2.4 Records to Support Claim for Incentive Payment

Following the Connection and Supply of the Service, and submission of a claim for Incentive Payment by the Provider through BCOMS, a Provider must be able to produce relevant proof to support the information in their claim if requested by the Department, in addition to any other obligations they may have (see Section 4.5.4 for further details).

4.2.5 Information requirements for Broadband Service Locator Participants

Category A listings

Internet Service Providers who offer services that meet the definition of Metro-comparable Broadband Services, are invited to contact the Department and to provide information for possible inclusion on the Broadband Service Locator.

Internet Service Providers should advise the Department promptly of any proposed changes to the services that are described on the BSL.

Category B and D Service Provider listings

Providers will have relevant information about their Services uploaded by the Department to the BSL under Categories B and D, as relevant.

4.2.6 BSL referral of Customers to Category A Services

ISPs offering Category A Services listed on the BSL who have signed the BSL Listing Form ('participating ISPs') are sent a regular email that provides a link to information about Customers ('Customer records') who are potentially able to be provided with a Category A Service by that ISP. Participating ISPs can indicate if they are able to provide a Category A Service to the Customer.

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

Where one or more ISPs offering Category A Services indicate that they are likely to be able to supply a Category A Service to the location or to the phone number, the Customer is mailed a list of the ISPs.

4.2.7 Conduct requirements for Participants

The Department requires ISPs and Providers to act professionally when using the BSL.

Providers and ISPs offering Category A Services listed on the BSL should conduct themselves in a professional and courteous manner in all dealings with Customers and other ISPs.

Providers must, and ISPs offering Category A Services listed on the BSL are expected to:

- when receiving a request for information from a Customer, provide full and correct information about their ability to provide a Category A Service to the Customer within seven calendar days, as set out in Section 4.2.5

- not unreasonably refuse to respond or properly cooperate with requests for information from a Customer. A response may be by telephone or in writing
- not charge fees for providing any information or for conducting service checks, such as site surveys, to determine the technical feasibility of a Service/service to particular Eligible Premises
- comply with applicable Commonwealth and state/territory laws, particularly fair trading laws.

4.2.8 Failure to follow obligations relating to the BSL

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

If the Department determines that a Provider or an ISP offering Category A Services has failed to behave in a manner consistent with the obligations outlined in Section 4.2.6 above, the Department may ask the Provider or ISP to explain its actions and the Department may remove or modify material on the BSL if not satisfied with the explanation.

Where a Customer's new service connection by an ISP who offers Category A Services has been subject to unreasonable delays (for example, through failure to respond to a request for service within 30 calendar days), the Customer may apply to have their eligibility status changed in the BSL as outlined in Section 2.4. Eligibility in these circumstances will be determined by the Department on a case-by-case basis.

4.3 Customer Contracts—terms and conditions

Before making a claim for an Incentive Payment, a Provider must enter into a Customer Contract with the Customer setting out the terms and conditions governing the supply of the particular Program Service. Providers must ensure that each Customer is given a copy of the Customer Contract and that the Customer Contract is agreed to by the Provider and Customer in a legally acceptable format.

The Customer Contract must contain the core provisions in the same or substantially similar terms to those set out in Attachment A to these Guidelines. It is a matter for each Provider to determine what additional commercial terms and conditions are contained in their Customer Contract, provided they are consistent with the Guidelines and comply with all relevant Commonwealth, state, territory and local government legislative requirements, as well as applicable industry codes, such as the Communications Alliance Ltd's *Telecommunications Consumer Protections Code C628:2007*.

In addition to the core provisions set out in Attachment A, Providers key commercial terms and conditions may include:

- a) Customer compliance—Providers may 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 given the opportunity to rectify any problems.

- b) Acceptable Use Policy—Where terms and conditions make provision for the use or introduction of an Acceptable Use Policy (AUP), the AUP must be provided to the Department for assessment to ensure that it is consistent with these Guidelines prior to its use. There is no requirement on a Provider to include an AUP in their Funding Deed, unless it forms part of the text of the terms and conditions.

Where the Australian Broadband Guarantee-specific terms and conditions form part of general terms and conditions, the former override the latter in the event of any inconsistency between the two.

Any change to the Customer Contract must be approved by the Department before being implemented.

Standard Forms of Agreement not permitted

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

4.4 Provision of Customer Premises Equipment

Providers must fulfil the following requirements in the provision of CPE to the Customer.

4.4.1 Nature of CPE

Providers must ensure that the CPE they provide and install at the Customer's premises is fit for purpose, within the meaning of section 74B of the *Trade Practices Act 1974* (Cth).

Providers must also ensure that the CPE (including external mountings and other equipment installed at a Customer's premises) does not substantively reduce the amenity of the Customer's premises due to its size or shape unless this is agreed by the Customer. Providers must inform Customers applying for a Service of the nature of the CPE they propose to install for the Service before entering into terms and conditions with the Customer.

4.4.2 Maintenance and repairs of CPE

Where ownership of the CPE resides with the Customer, Providers are required to provide a warranty of at least three years within the three year Service Plan pricing cap. During the warranty period, Providers must provide timely and appropriate servicing of the CPE and must not charge call out fees or repair and maintenance fees (and any associated labour charges), and if necessary, must replace failed equipment unless the failure of the CPE could reasonably have been prevented by the Customer.

Where ownership of the CPE resides with the Provider, the Provider is required to undertake all necessary repairs and maintenance of CPE at no cost (including no charge call out fees) to the Customer, unless the failure of the CPE could have reasonably been prevented by the Customer.

The Department bears no responsibility for the replacement or repair of CPE. The Department will determine on a case-by-case basis, at its absolute discretion, whether the failure of the CPE could have been reasonably prevented by the Customer.

Where a Provider receives a Level 1 incentive payment for upgrading a Customer's CPE, the new CPE must be provided with a three year warranty. The warranty will apply in the same terms as mentioned in this section.

4.4.2.1 Maintenance and Repairs in remote locations – special exception

Where a Provider:

1. has connected and supplied a Service in a remote area; and
2. received a Level 5 allowance for that installation;

the Provider may charge the Customer for reasonable travel costs, as approved by the Department, to the installation site to perform warranty repairs and maintenance as required, in years two and three of their Program Service.

Prior to connection of the Customer's service, the Provider must inform the Customer that reasonable travel costs may apply and the Provider must insert a clause to that effect in the Provider's Terms and Conditions.

4.4.3 Loss of CPE

Where the CPE is owned by the Customer and the CPE is damaged beyond repair or stolen or is otherwise made unavailable to the Customer due to exceptional circumstances and the Customer is unable to replace it, the Customer may be eligible to receive a new Service. Section 2.2.4.1 provides further details.

4.5 Lodgement of claims and Incentive Payments

The Department may pay accepted claims by either one or a combination of the following two methods:

- a) payments are made following acceptance of lodged claims; or
- b) agreed funds are paid to the Provider at the commencement of one or more years of the Funding Deed, and accepted claims are debited against these paid funds.

4.5.1 Payment following acceptance of lodged claims

Claims are lodged with the Department in BCOMS (notified in BCOMS as 'lodged claims') and paid if considered valid. Once lodged in BCOMS, claims may be classified in the following four ways:

- 'queried claims': these claims are subject to further clarification and may be subsequently accepted or rejected, depending on the information provided by a Provider in support of that claim
- 'processing claims': these are claims that the Department is continuing to assess
- 'declined claims': these are claims that the Department does not agree to pay to the Provider
- 'paid claims': these are claims that the Department has paid to the Provider.

Providers should be aware that lodgment of a claim for payment within BCOMS does not represent approval for payment by the Department of that claim.

4.5.1.1 Provider projections

Providers are required to provide the Department with quarterly forecasts of expected claims, in order to assist the Department to administer the Program and its budget. The Department may advise Providers on appropriate methods of forecasting for this purpose.

4.5.2 Up-front Payments in special circumstances

Up-front Payments are made at the absolute discretion of the Department and are only available for Service Areas that contain a significant proportion of Under-served Premises, where the Applicant or Provider demonstrates that:

- a) up-front payments are required to cover the cost of material new infrastructure and the costs cannot reasonably be met by other means
- b) there will be a substantial period between commencement of deployment of infrastructure and connection of sufficient Services to obtain a normal return on investment and
- c) the Applicant has involved or will involve the local community in strategic planning for the network.

Other factors that will be considered by the Department in determining whether Up-front Payments will be made and the amount of funds to be made available to the Applicant on an up-front basis include:

- a) the financial position of the Applicant
- b) the Applicant's estimates of the number of Services it will supply during the funding period
- c) the Applicant's intended commercial investment
- d) available funds (including the operation of the funding caps specified below)
- e) any other matter that the Department considers relevant.

The amount of funding made available through this method of payment is limited by the operation of two caps:

- a) the total amount of funds that can be made available on an up-front basis to all Providers will not exceed 50 per cent of the Funding Allocation
- b) the total amount of funds that can be made available on an up-front basis to any one Provider will not exceed 50 per cent of the funding that the Provider expects to receive for supplying Services during the funding period (as agreed by the Department).

Providers seeking Up-front Payment must provide the Department with forecasts of Customers expected to be Connected and Supplied over the course of the financial year.

The Department, at its discretion, may require specified infrastructure rollout milestones or other conditions to be met for Up-front Payment.

Providers that are approved for this method of payment by the Department are required to lodge all claims for payment for assessment by the Department as set out in Section 4.5.3. The claims that are accepted by the Department are then debited against the funds provided up-front to the Provider.

Once the funds provided up-front to the Provider have been fully expended, the Provider may make claims for Incentive Payments in accordance with Section 4.5.3.

If funds provided to a Provider are not fully expended at the completion of the funding period, then the Department will determine whether the balance of the funds, as calculated by the Department, are required to be returned, in full or part, to the Department. Where funds are required to be returned, the refund must be made within 30 calendar days of the Department giving notice to the Provider of the amount. Alternatively, remaining funds may be carried over into the Provider's next Funding Deed. It will be at the Department's discretion as to which method will be adopted. Failure by the Provider to comply with the Department's determination may result in deregistration.

If the Funding Allocation has reached \$10 million or less and it is unlikely, based on a comparison of actual and forecast Customers for a Provider who has received Up-front Payments, that Up-front Payments to the Provider will be fully expended at the completion of the funding period, then the Department, at its discretion, has the right to require the balance, or part thereof, of funds paid up-front to the Provider to be returned to it within 30 calendar days.

Irrespective of the payment method, the Incentive Payments paid to Providers are subject to repayment if a claim is found to have been wrongly made or paid, regardless of the party at fault.

4.5.3 Lodgment of claims

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

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

In the event that BCOMS is not operational for more than 24 hours at any time during the Program's operation, Providers will be notified and a notice will also be published on the Department website. In the event that BCOMS is not available for an extended period, the Department will institute alternative arrangements for Providers to lodge claims.

Responsibility for lodgment of claims for Incentive Payments rests absolutely with the Provider. The Department does not lodge claims on behalf of any Provider under any circumstance.

4.5.3.1 Provider/Service Area must be registered before claims are lodged

Services may only be Connected and Supplied and claims lodged once the Provider is registered. Registration of a Provider, Service Areas and related Services is effective from the date of commencement of the Funding Deed or a variation to the Deed, following execution by both the Provider and the Commonwealth.

4.5.3.2 When Claims may be lodged

Subject to funding being available, Incentive Payments become payable by the Department after a Provider has Connected and Supplied a Service to an Eligible Customer at Eligible Premises in its Service Area, submitted a valid claim for

payment via BCOMS and the claims have been accepted for payment by the Department.

A claim for payment must be made within 45 calendar days after the Provider has Connected and Supplied the Service to the Customer. A Provider must not disconnect and reconnect an Eligible Customer at Eligible Premises where the disconnection and reconnection is considered by the Department to have been carried out only in order to meet the 45 calendar day lodgment time frame. Any such claims will be rejected.

Claims may be lodged for Services Connected and Supplied in Service Areas registered under the Program until notified that funds are expended or until the expiry of the period allowed for submission of claims under the Provider's Funding Deed. Claims may be made after the expiry of the Funding Deed, subject to compliance with the 45 calendar day lodgment period.

4.5.3.3 Information and data required to lodge a claim

When a Provider enters the BSL Customer ID into the relevant BCOMS form, this will populate form fields with relevant customer information data. The Provider must then populate the remaining fields:

- Service Plan name
- the date the Customer requested the Service from the Provider
- The date of Connection and Supply of the Service.

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

Providers are also required to submit a PDF copy of the Declaration Form, signed by the Customer under Sections 2.4.3, 2.4.4 or 2.4.5 of the Guidelines, prior to having a claim considered for payment.

4.5.3.4 Record keeping in relation to Claims

Providers must keep records in relation to their activities including, but not limited to, the following records:

- signed Declaration Forms (either original, fax or scanned) from Customers
- the date of the request by a Customer to Connect and Supply a Service that has been approved for payment under the Australian Broadband Guarantee, as well as evidence of this request being received
- copies of correspondence (electronic and/or hard copy) between the Provider and Customers
- full and accurate records of any checks undertaken by the Provider to test whether the Service can be provided
- evidence that an Australian Broadband Guarantee Service has been Connected and Supplied, including the date of Connection and Supply.

The Department may request additional information when necessary.

Providers that fail to keep adequate records are in breach of their Funding Deed.

The Department encourages commercial ISPs with listed Category A Services who are not Providers to retain similar records.

4.5.4 Assessment of claims

Claims are processed on a regular and timely basis by the Department, with the order of processing dependent on the time of lodgment of claims in BCOMS.

The Department reserves its right to defer the processing of any claim lodged in BCOMS (for example, where it is necessary to seek further information).

Providers should not rely on precedent for the processing of claims. For example, if claims have been paid fortnightly for a period of time, the Department may change that practice without notice if required for operational reasons. Processing will continue to be undertaken as soon as practicable.

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

The total of claims lodged by a Provider and approved by the Department 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 validity of their claims.

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

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

Where a Provider is required to repay an Incentive Payment in relation to Connecting and Supplying a Service, they may be required to continue offering that Service for the remaining three year Service Plan period on the same terms and conditions.

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

Where a Provider is asked by the Department to provide further information about claims lodged on BCOMS, the Provider has 10 Working Days to provide a response or to request further time to complete an investigation of the issues, unless a longer time frame is specified by the Department. Where a response is not provided to the Department within the relevant time frame (without reasonable explanation) the Department reserves the right to decline the relevant claim(s).

4.5.4.1 Validity of claims

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

Claims may be rejected where:

- more than 30 calendar days (or other agreed time frame approved by the Department under Section 4.2.2) have elapsed between the date the Customer

Contract was entered into, as taken by the date a Customer signs an application or Customer Contract agreeing to the Provider’s terms and conditions, and the date the Service was Connected and Supplied

or

- more than 45 calendar days have elapsed between the date the Service was Connected and Supplied and the date the claim was submitted via BCOMS

unless otherwise approved by the Department.

Any further eligibility or credit checks should be made within the 30 day period and an extension of time should be sought if the Provider is not able to connect a Customer within the required time frame.

Claims are not considered valid where:

- a) a Provider lodges a claim for the Connection and Supply of a Service to a Customer who has not been contracted under the Provider’s approved terms and conditions;
- b) the claims are for premises located outside the Provider’s Registered Service Areas; and
- c) any other applicable requirements, as set out in the Provider’s Funding Deed and these Guidelines, have not been met.

In claiming Incentive Payments, Providers are required to declare that the claims are legitimate and accurate and that the Provider holds and can produce on demand evidence to substantiate the claim. Providers must lodge duly completed Customer Declaration Forms for each claim submitted into BCOMS before the claim will be assessed.

To ensure the accuracy of claims, the Department pursues a number of strategies, which may include data matching, contact with Customers and ad hoc audits of Providers. The Department’s audit and compliance program is consistent with its financial management obligations under the *Financial Management and Accountability Act 1997*.

4.5.5 Levels of Incentive Payments

Incentive Payments are made for Premises Connected and Supplied with a Service and according to the following table:

Table 2: Levels of Incentive Payments

<p>Level 1 (upgrade option)</p>	<p>A Payment of up to \$2500, or up to \$2000 in Metropolitan areas, as determined by the Department, applies for:</p> <ol style="list-style-type: none"> a) a Program Service made available through upgrading a Service Solution provided under a Past Program; or b) a Program Service based on upgrading an existing commercial network. <p>Further details on Level 1 payments are provided below.</p>
<p>Level 2</p>	<p>A Payment of \$1000 applies for a Program Service where the connection to the Premises is based on a fixed line Service Solution (e.g. ADSL).</p>

Level 3	A Payment of \$2000 applies for a Program Service where the connection to the Premises is based on a terrestrial wireless Service Solution in a Metropolitan Area.
Level 4	A Payment of \$2500 applies for a Program Service where the connection to the Premises is based on a satellite Service Solution, or on a terrestrial wireless Service Solution in an area other than a Metropolitan Area.
Level 5	A Payment of more than \$2500 and up to \$6000 applies for a Program Service where the connection to the Premises is based on a Service Solution in any Service Area with identified difficult and costly installation requirements (for example, infrastructure suitable to withstand cyclone conditions).

4.5.5.1 Level 1 Payments

Level 1 Incentive Payments will only be paid for:

- a) Service Solutions based on upgrading a commercial network to a Program Service
- b) Service Solutions based on upgrading a Past Program Service Solution to allow provision of a Program Service

For clarity, Level 1 Payments apply only where an Upgrade Service Solution has been registered (see Section 3.5.3).

4.5.5.2 Level 2, Level 3 and Level 4 Payments

These payments are determined by the Department at the time of registration of the Service Solution and will apply for Service Areas for the period of time that those Service Areas are registered.

4.5.5.3 Level 5 Payments

Providers are able to apply for Level 5 Incentive Payments in exceptional circumstances where significant additional costs are required to Connect and Supply a Service and where these costs cannot reasonably be absorbed by the Provider (for example, travel to very remote areas or costly non-standard installations). Level 5 Incentive Payments can be sought for any Service Solution and Service Area. The rate of Payment for particular circumstances will be standardised to the maximum extent possible and benchmarked by the Department against efficient provision. To assist Providers, the Department will maintain an online register of Level 5 Payment rates that will apply to different circumstances.

Providers are required to seek pre-approval from the Department for any Level 5 Payment before Connecting and Supplying a Service. This is done through an online facility available on the Department's website (www.dbcde.gov.au/abg). Providers will be required to demonstrate the need for the Payment to the Department's satisfaction noting that approval will not be given where costs could reasonably be absorbed through a standard Incentive Payment (Levels 1-4).

4.5.6 Taxation status of claims

The Incentive Payments are exclusive of GST.

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

4.6 Provider performance testing requirements

Providers must ensure that their Services comply with the Data Speed and Network Availability requirements that apply to Threshold, Entry Level and Added Value Services, and are set out in Sections 2.3.1, 2.3.2 and 2.3.3.

Providers must ensure that their networks, including backhaul, are adequately provisioned to cope with Data Speed requirements during peak times.

The Department may request specific reports from Providers regarding their provisioning strategies and if reports indicate that there are systemic problems with the provision of service levels at peak times, the Department may, in consultation with the Provider, prescribe specific remedial action, including augmenting network dimensioning.

Providers must ensure that they inform each Customer of the Data Speed testing facility operated by the Department, including the URL, when the Service is Connected and Supplied.

Providers must also co-operate fully with the Department in its conduct of Provider performance testing. This may include maintaining test computers and undertaking remedial action where required by the Department to address non-compliant Data Speeds or Network Availability. Where testing results indicate a systemic failure by a Program Provider to meet these requirements, the Department may issue a notice in writing that the breach should be rectified. If the Provider fails to rectify the breach, the Department may terminate its Funding Deed with that Provider, or take other action (as appropriate) available to it under the Deed, such as suspension of funding or the repayment of Incentive Payments.

The Department is deploying eMetric performance testing devices to enable assessment of Provider's compliance Data Speed and Network Availability requirements. The Department also intends to deploy these devices to a representative sample of each Provider's Customers, subject to the Customer's agreement.

The Department will pay the cost of purchase and deployment of eMetric devices.

The Department requires Providers to cover the cost of data used in testing Services using the eMetric devices.

Details of the Department's Data Speed testing regime may be found on the Australian Broadband Guarantee website. It is the Provider's responsibility to ensure that it is fully aware of its obligations in this respect.

In summary, Providers are required to achieve 60 per cent of their nominated peak data speed and 99 per cent Network Availability for each Service in at least 85 per cent of the Department's independently run tests.

4.7 Compliance and reporting

4.7.1 Ongoing compliance

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

- a) Substantiating eligibility of Customers—Providers must take reasonable steps to ensure eligibility of the Customer and Customer’s premises for a Service.
- b) Verification of Connection and Supply before claim lodgement—Providers must ensure that a Service has been Connected and Supplied before lodging a claim for Incentive Payment.
- c) The Department must be notified of changes in company structure, financial situation or any other matter that could adversely impact on the Provider’s Australian Broadband Guarantee activities and compliance obligations.
- d) Complaint Handling—Providers must have in place appropriate complaint handling mechanisms as specified in an applicable industry code or under the Telecommunications Industry Ombudsman scheme.
- e) Data Speed—Providers must:
 - supply their Customers with information about the Department’s Data Speed test facility (see Section 4.6)
 - participate as required in the Department’s Data Speed testing regime (see Section 4.6).
- f) Where CPE is owned by the Provider—maintain the CPE (including repair or replacement in the event of technical or mechanical faults (refer Section 4.4).
- g) Record Keeping—hold and maintain (for three years after the end of the Program) appropriate and adequate records to enable a Provider to satisfy all Program claims, auditing, compliance reporting, and review and evaluation requirements. This includes, but is not limited to, the following information:
 - Customer Declaration Form
 - evidence of the Customer’s acceptance of the contract terms and conditions
 - evidence that the terms and conditions were communicated to the Customer prior to execution of the contract
 - evidence that a Program Service has been Connected and Supplied
 - where the Provider has checked the BSL on behalf of the Customer, evidence of the output of the BSL
- h) Providers must comply with any legislative or regulatory requirements relevant to their operations.
- i) Providers must not undertake any conduct (either directly or indirectly) that misrepresents the status or actions of the Provider or any affiliated or subsidiary entity.
- j) Providers must not provide an incorrect, false, incomplete or misleading statement to the Department under this Program and Providers must not

undertake any actions that would be likely to affect the reputation of the Program or the Department.

- k) Providers must comply with their reporting obligations, as set out in Section 4.7.2.

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

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

4.7.2 Reporting obligations

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

- half-yearly compliance reports, due by end February
- annual compliance reports, due by end September
- the final report, due within 92 calendar days of the end of the term of the Deed or within 20 calendar days of the earlier termination of this Deed.

Providers must also report on other matters they consider material to their participation under the Program. The extent to which Providers voluntarily and proactively report on such matters will be positively taken into account by the Department.

Guidance documents are made available by Department on the Australian Broadband Guarantee webpage at www.dbcde.gov.au/abg to assist with the completion of half-year and annual compliance reports. Providers are required to report on a number of issues in relation to their interactions with the Australian Broadband Guarantee and on the state of their businesses, including:

- continued solvency of the business
- any material changes (financial, operational) to the business
- performance of the company against business plans
- details of changes in operations
- reports on Customer Service issues (for example complaints to the Provider and the TIO)
- any issues associated with the roll out of Services.

Providers seeking extensions to the time for submission of reports should contact the Department well in advance of the due date.

4.7.3 Changes in Provider structure, management, ownership or circumstance

A Provider must notify the Department as soon as possible of any significant changes proposed to its management, structure or ownership.

In instances where there is no change in legal entity, but a substantive change to senior management and/or ownership, a new Funding Deed will not be required. However, at the Department's request, the Provider may be required to undergo a

financial or other assessment (according to the terms outlined in Section 3 for registration of ISPs seeking to enter the Program) to confirm its registration, including its ongoing viability to offer and provide Services. A Provider's Registration may be suspended until the assessment is completed and the new arrangements are approved. The Department reserves the right to terminate the Deed if, in its opinion, the Provider is unable to satisfy a financial or other assessment.

Where a Provider proposes to cease to trade as an ISP and/or its broadband business assets, including customer listings and network infrastructure, are proposed to be sold to another entity, the Provider's Registration will be terminated.

4.7.3.1 Customer support in the event of a Provider deciding to cease offering broadband services

In the event that a Provider decides to cease offering broadband services, the Department requires the Provider to support its Customers in the following ways:

- bearing in mind the legal obligations to offer Customers three year Service Plans, the Department would expect the Provider to novate its Customer Contracts to a reputable ISP to the extent feasible
- novation should be aimed at continuing existing Service standards and Customer protection to the greatest extent possible
- under the core contract provisions, Customers are given the option of terminating their Customer Contract without penalty.
- Customers should be given adequate notice of the Provider's proposed actions.

Attachment A —Core Contract Provisions

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

- Definition of Department in definitions and in text—'Department means the Department of Broadband, Communications and the Digital Economy'. All other references in the Customer Contract terms and conditions to the Department must state 'the Department'.
- Definition of the Australian Broadband Guarantee (Australian Broadband Guarantee) in definitions—'Australian Broadband Guarantee' or 'Australian Broadband Guarantee Program' means the Australian Government's funding Program described in the Program Guidelines issued on [insert date] and available at www.dbcde.gov.au/abg
- Definition of 'Program Service' or 'Australian Broadband Guarantee Program Service' definitions and in text.
- Definition of 'Threshold Service' in accordance with section 2.3.1 of the ABG Guidelines.
- Definition of 'Added Value Service' in accordance with section 2.3.3 of the ABG Guidelines.
- Definition of 'Entry Level Service' in accordance with section 2.3.2 of the ABG Guidelines.
- Details of the Applicant's Service Plans (price, functionality and technical features). Alternatively, Providers may refer to a web reference that links to the Provider's Service Plans.
- Any change to the contract is subject to prior Departmental approval, and the Provider is required to inform customers in writing by post or email of any approved change—insert clause 'The Provider must not change Customer Contract terms and conditions of an Australian Broadband Guarantee Program Service without first obtaining approval from the Department of Broadband, Communications and the Digital Economy. The Provider will give the Customer at least [insert a minimum time frame of no less than 14 days] notice of the proposed change before the change takes effect.'
- The service is offered for three years—insert clause 'At the conclusion of the initial x month/year contract term, the Customer has the right to renew for a negotiated period at a monthly price no greater than the original contracted Price. The maximum contract term of the Service may not exceed 36 months from initial Australian Broadband Guarantee Service commencement.'
- Customers may migrate between Program Services offered by the Provider within the relevant Service Solution at a reasonable cost, based on the administrative cost involved, and are always entitled to return to the original service—insert clause 'The Customer may migrate between the Provider's Australian Broadband Guarantee Services within the relevant Service Solution at a cost of X that reflects the administrative cost to the Provider of the migration, and is always entitled to return to the original Australian Broadband Guarantee Service.'

- Where the Provider offers contract terms greater than 18 months, Customers have a right to a fixed-term contract period of no more than 18 months, although Providers have the option of also offering fixed-term with a duration of less than 18 months—insert clause ‘The Customer is entitled to enter into a fixed-term contract for the supply of the Program Service for [insert time period, [this must be no more than 18 months, but may be a lesser period] from the date of the commencement of the contract.’
- Where the Provider decides to cease to offer broadband services—insert clause ‘In circumstances where the Provider ceases to offer broadband services, including Australian Broadband Guarantee Services, the Customer is entitled to terminate the contract without penalty. The Customer understands that they are not eligible for a new Australian Broadband Guarantee Service if their premises had access to, and they declined, a Threshold Service at the time of terminating the contract.’
- The overall price of the service provided will not be increased for three years from the commencement of the provision of the service—insert clause ‘The overall price of the Australian Broadband Guarantee Service provided will not be increased for three years from the commencement of the contract for the Australian Broadband Guarantee Service.’
- The Provider commits to free-of-charge 24/7 fault reporting, and help desk facilities as set out in its agreement with the Department—insert clause ‘The Provider will provide a free-of-charge 24/7 fault reporting, and a help desk facility which operates from [insert days and times, but must be a minimum of business hours at the Provider’s location].’
- Statement that the Provider agrees to abide by performance requirements in regard to data speed and service availability—insert clause ‘The Provider will provide the Australian Broadband Guarantee Service with:
 - average data download and upload Data Speeds of at least 60 per cent of the Service’s nominated peak data speeds
 and
 - the Provider will supply the Service at the minimum or average data speed as registered under the Program at least 85 per cent of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule. The Provider commits to the Australian Broadband Guarantee Service being available at least 99 per cent of the time, averaged over a quarterly period.’
- Usage testing is available for the customer where relevant, and—insert clause ‘The Customer can test the data speed of their Australian Broadband Guarantee Service at www.abgtest.com.au.
- Usage information is available from the provider—insert clause ‘The Provider will provide a means for Customers to check their usage on at least a daily basis, either by email or online.’
- A commitment to provide the customer with complete information about the service—insert clause ‘The Provider commits to provide the Customer with full information about the Australian Broadband Guarantee Service, as required under the Australian Broadband Guarantee Program.’

- The Customer agrees to make necessary information available and provide a truthful declaration so that the Provider can make a claim—insert clause ‘The Customer agrees to provide a truthful declaration to the Provider (and hold any relevant supporting documentation) so that the Provider can make a claim for incentive payment.’
- The Provider commits to stated installation and repair time frames as per Deed—insert clause ‘The Provider commits to the connection of a new Australian Broadband Guarantee Service within X days [not greater than 30 calendar days, unless otherwise approved by the Department] of the Customer signing this contract, unless otherwise approved by the Department. In the event of a Service outage or fault for which the Provider is responsible, the Provider commits to restoration of the Service within X days.’
- The Provider commits to stated repair time frames as per the Funding Deed—insert clause ‘In the event of a Service outage or fault for which the Provider is responsible, the Provider commits to restoration of the Service within X days [provider to list requirements] and in accordance with the maintenance provisions of the Australian Broadband Guarantee Guidelines.’
- Personal information:

‘The Customer consents to their details being provided by the Provider to the Department, and potentially other appropriate agencies for the purposes of the Australian Broadband Guarantee Program administration, regulation and evaluation, and policy development.’
- No assignment without consent—’The Provider shall not assign the whole or part of this contract/agreement to another party without the prior written consent of the Customer.’
- Maintenance and repair of CPE owned by Customer —insert clause ‘The Provider will provide a three-year warranty for [insert details of CPE] during which time the Provider will provide timely repairs and maintenance to the CPE at no cost to the Customer (including no call charge out fees) [insert details if the remote exception applies] and the Customer is required to [or may] [insert any relevant obligations of the Customer].’
- Maintenance and repair of CPE owned by Provider – insert clause ‘The Provider will undertake all necessary repairs and maintenance to all CPE owned by the Provider [insert details of CPE] at no cost to the Customer unless the failure of the CPE could have been reasonably prevented by the Customer.’

Attachment B—Definitions

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

A

Aboriginal or Torres Strait Islander Community Council means an incorporated organisation constituted under state, territory or Australian Government legislation acting on behalf of its discrete remote Aboriginal and/or Torres Strait Islander community or administering an activity on behalf of another discrete remote Aboriginal and/or Torres Strait Islander community on a not-for-profit basis. This category of Eligible Customers was known as an Indigenous Community Council under Past Programs.

ACCC means the Australian Competition and Consumer Commission.

ACMA means the Australian Communications and Media Authority.

Added Value Service means the Service described at Section 2.3.3.

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

Agent means, for the purposes of these Guidelines, any individual or entity that markets Services on behalf of a Provider, or refers potential Customers to a Provider in return for a financial consideration, regardless of whether these Services are supplied on the basis of an agency agreement. It includes authorised dealers or sale representatives (including a franchisee acting in an agency capacity).

Applicant, according to the context, means:

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

or

b) a Provider (i.e. an ISP registered under the Program) seeking approval to register Service Solutions, Service Plans and/or Service Areas.

ASIC means the Australian Securities and Investments Commission.

Assessment Panel means the panel convened by the Department to make recommendations to the Department 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.

Auditor means a person who is:

a) registered as a company auditor under the Corporations Act 2001 (Cth), or a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants

b) not a principal, member, shareholder, officer or employee of a Provider or of a Related Body Corporate (as defined under section 9 of the Corporations Act 2001 (Cth)).

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

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

Australian Broadband Guarantee (2007-08) means the Australian Broadband Guarantee Program that operated from 14 August 2007 to 3 August 2008.

Australian Broadband Guarantee (2008-10) means the Australian Broadband Guarantee Program that operated from 4 August 2008 to 30 June 2010

B

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

Broadband Customer Online Management System or **BCOMS** means the primary program management system which Registered Providers are required to use to lodge and review claims for Incentive Payments under the Australian Broadband Guarantee.

Broadband Service Locator or **BSL** means the online application available on the Australian Broadband Guarantee webpage to enable potential Customers to determine whether their premises may be able to receive a Metro-comparable Broadband Service on a commercial basis, or be eligible for a Service under the Australian Broadband Guarantee.

BSL Listing Form means the form that commercial ISPs may submit to the Department in order to participate (on a wholly voluntary basis) in the Broadband Service Locator listing and notification process. The form is made available online on the Australian Broadband Guarantee webpage.

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

C

Category A Service means a Metro-comparable Broadband Service that, according to the Broadband Service Locator, may be supplied on a commercial basis to a Customer's premises, without the financial support of the Australian Broadband Guarantee.

Category B Service means a Terrestrial Broadband Service that is registered under the Program to be supplied to Eligible Customers in nominated Service Areas through investing in material new infrastructure or through an Upgrade Service Solution. Customers unable to obtain a Category A Service are eligible for a Category B Service.

Category C Services mean Metro-comparable Broadband Services that are identified to Customers through the Broadband Service Locator in the Customer's applicable Service Areas. Customers unable to obtain a Category A or B Service are eligible for a Category C Service.

Category D Service means a Satellite Broadband Service that is registered under the Program to be supplied to Eligible Customers in nominated Service Areas through investing in material new infrastructure or through an Upgrade Service Solution. Customers unable to obtain a Category A, Category B or Category C Service are eligible for a Category D Service.

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

Connected and Supplied means that the Eligible Customer has a broadband connection at their premises, and they are actively receiving a Program Service from this connection. At a minimum, a Customer will be considered by the Department to be actively receiving a relevant Service where it can be shown that:

- the Customer is able to connect a computer (or other relevant device) at their Eligible Premises to the respective Service without requiring any further deployment of infrastructure, cabling or CPE by the Provider
- the Customer has entered into a contract with the Provider for the provision of the Service. See Sections 4.3 and 4.5.3.2 for further details
- the connection has been tested to ensure that the Service is fully operational.

CPE means customer premises equipment that enables Customers to access broadband services. Examples include modems, satellite dishes, antennae for wireless services, and related cabling or any other equipment installed to enable the supply of the broadband service.

Customer according to the context, means:

- a) a person who is seeking a broadband service or has been approached about receiving a Service under the Program by a Provider
- b) a prospective recipient of a Program Service who has expressed an interest in receiving a Service from a Provider
- c) if applicable, a person who has declared that they cannot receive a Category B or Category C Service from a Provider

or

- d) a person eligible to receive a Service with whom a Provider has a contract to Connect and Supply a Service.

Customer Contract means the legal agreement between the Customer and the Provider governing the provision of a Service. The Customer Contract includes the core contract provisions in Attachment A to these Guidelines and any other terms and conditions that the Department has approved for use.

Customer Declaration Form or **Declaration Form** means the form sent by the Department to a Customer that must be completed by a Customer in order to receive a Service under the Australian Broadband Guarantee. In completing the form, the Customer is required to declare (at a minimum):

- a) to their eligibility (customer-type) and eligibility of their premises (in accordance with Section 2.1)
- b) that they cannot receive a Category A Service at their premises from a commercial ISP
- c) if applicable, any other matters relevant to their circumstances.

D

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

Data Usage means the amount of data that a Customer has downloaded.

Data Usage Allowance means the maximum amount of Data Usage that a Customer may use, as set out in the Program Service Plan. Data Usage Allowance may include advance purchase of blocks of data.

Declaration Form—see ‘Customer Declaration Form’

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

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

E

Eligible Customer means the Customers described in Section 2.1.

Eligible Premises or **Premises** means the premises described on Section 2.1.

eMetric means the device supplied by the Department used for Data Speed and Network Availability testing.

Entry Level Service means the Service described at Section 2.3.2.

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

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 \$38 million (excluding GST) which is allocated for the Program during the 2010-11 financial year.

G

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

H

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

I

Incentive Payment means the amount of funding paid to a Provider for the provision of a Program Service. The level of payment which may apply varies depending on a

number of factors (for example, the type of Service Solution used). See Section 4.5.5 for further details about the five different levels of payment.

Information Pack means a pack prepared by the Department that comprises: a letter from the Department to the Customer who has registered on the BSL or has contacted the Department to seek to progress their application for a Program Service after being unable to obtain a service listed on the BSL and in the Information Pack; a list of ISPs or Providers registered as being able to provide Metro-comparable Broadband Services to the Customer's location; and, where relevant, a Declaration Form that may be used when applying for a Program Service.

ISP means an Internet service provider offering Internet services.

K

kbps means kilobits per second.

Kilobyte means 1024 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.

Local Reseller means a Small Business Internet Service Provider that is registered with the Department and markets and contracts with Customers in respect of Category B Service provided by a registered Provider.

MB means megabyte, which equals 1024 kilobytes.

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

Metro-comparable Broadband Service means, for the purposes of this Program, a commercially provided broadband service with the following features:

- a) access to the Internet at a peak Data Speed of at least 512/128 kbps and 3GB per month usage allowance (with no restrictions within these limits on downloads or uploads or usage time)
- b) a price to the Customer over three years of no more than \$2500 including equipment, installation, connection, account establishment, travel costs and ongoing provision of the service
- c) the Provider or Commercial ISP offering the broadband service can install the service within a reasonable period of time.

From time to time, the Department may assess the performance of Metro-comparable Broadband Services provided commercially. In assessing the data speed of these services, the Department will use a methodology consistent with the data speed testing methodology it uses for Program Providers.

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

- a) the capital cities of Canberra, Sydney, Melbourne, Brisbane, Adelaide, Perth, Hobart and Darwin

- b) the adjacent high population centres of Wollongong (NSW), the Central Coast of NSW, Newcastle (NSW), Geelong (Vic), Palmerston (NT) and the Gold Coast (Qld) including Tweed Heads (NSW), the boundaries of which are defined by the relevant Urban Centre/Locality boundaries published by the Australian Bureau of Statistics as at 21 August 2007 in publication 1259.0.30.003 – Australian Standard Geographical Classification (ASGC) Urban Centres and Localities (UC/L) Digital Boundaries, Australia, 2006.

N

National Broadband Network refers to the Government’s commitment to establish a new company to build and operate a national broadband network delivering super fast broadband to Australian homes and workplaces.

Network Availability means availability of the Service to the point of connection with the CPE.

P

Past Programs refers to the following Government broadband subsidy programs: Higher Bandwidth Incentive Scheme, Broadband Connect, Metro Broadband Connect, Australian Broadband Guarantee (transitional period), Australian Broadband Guarantee (2007–08), Australian Broadband Guarantee (2008-10) or any other Government programs providing access to a Metro-comparable Broadband Service.

Performance Bond is the unconditional undertaking described in section 3.1.4.

Program refers to the Australian Broadband Guarantee.

Program Area means the areas within Australia where Under-served Premises are located as defined under the *Telecommunications Act 1997*. This includes Christmas Island and Cocos (Keeling) Islands. Norfolk Island and the other external territories including Macquarie Island, Herd Island and the Australian Antarctic Territories are excluded from the Program.

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

Provider or **Registered Provider** means an ISP registered under the Australian Broadband Guarantee.

R

Registered, according to the context, means a Provider, a Program Service, a Service Solution or Service Area and included in an executed Funding Deed.

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

Remote Australia means those areas classified by the Department as ‘remote’ or ‘very remote’, based on classification by the Australian Bureau of Statistics.

Residential Customer is a Customer who requests that a Program Service be provided at Premises that are their principal place of residence, primarily for private

and personal use. Premises of a Residential Customer include those places of residence described at Section 2.1.1.

S

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

Service see definition of Program Service.

Service Area means the geographical location(s), provided in a format acceptable to the Department (as described in the Guide for Australian Broadband Guarantee Applicants) that have been included in a Provider's Funding Deed as the areas to which it will offer a particular Service.

Service Plan or **Program Service Plan** means a plan or plans (detailing the prices charged for providing the Service) Registered with the Department which Providers will offer to Customers under the Australian Broadband Guarantee and in accordance with these Guidelines.

Service Solution means the particular technical solution to extend an existing technology platform or to deploy a new technology platform to supply a Service. Providers must identify the types of Service Solutions they are using as part of registering a Service.

Shaping means the practice of slowing data speed once the monthly data usage limit, as specified in a Service Plan, is reached. Where shaping is used by a Provider, the reduced shaped speed must be in accordance with Section 2.3 and be specified in all Service Plans.

Small Business has the meaning given at Section 2.1.2.

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

T

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

Threshold Service means the Service described at Section 2.3.1.

TIO means the Telecommunications Industry Ombudsman.

U

Under-served Premises means those premises located within the Program Area that do not have access to a Metro-comparable Broadband Service on commercial terms as determined by the Department at the commencement of the 2010-11 ABG Program. Information about Under-served Premises will be made available on the Australian Broadband Guarantee webpage (www.dbcde.gov.au/abg).

Up-front Payment means funds to be made available to Providers at the start of one or more years of the Funding Deed, with claims debited against these funds. See Section 4.5.2 for greater detail on Up-front Payments.

Upgrade Service Solution (as described in Section 3.5.3.1) means a registered Service Solution that involves:

a) upgrading a Service Solution provided under a Past Program to a Threshold Service

or

b) upgrading an existing commercial network to allow provision of Program Services

An Upgrade Service Solution is eligible for a Level 1 Incentive Payment.

V

VOIP means voice over Internet protocol.

W

Working Day means a day other than:

a) a Saturday or a Sunday

or

b) a day that is a gazetted public holiday in the relevant location.