

Contract for Australian Broadband Guarantee 2009/2010 customers as at July 1 2009

This document's objective is to ensure you are aware of your rights and obligations as a User of Program Services under this Contract and of Ocean Broadband Ltd's (Ocean Broadband) rights and obligations as a Supplier of Program Services. It is the Standard Customer Relationship Agreement between the Customer/Applicant and Ocean Broadband for the Supply of Broadband Internet Program Services as specified by the Application Form.

1. Application and Variation of the Contract

- 1.1 This Contract supersedes any previous Contracts provided by Ocean Broadband. It sets out the terms on which Ocean Broadband delivers the Program Service to you and its terms may not be altered without prior written approval from the Department and the Customer.
- 1.2 If and when any changes are approved by The Department and the Customer, notification will be given to the Customer via their nominated E-mail Address at least one month prior to the changes taking effect and will also be posted on the front page of Ocean Broadband's website.

2. Program Service plans

- 2.1 Ocean Broadband will supply you with a broadband internet service as requested by you, the details of which are specified in one of the following Australian Broadband Guarantee approved service plans listed below

2.1.1 "ABG09 Starter" – \$29.95/month (inc. GST)

This is Ocean Broadband's entry-level "flat-rate" residential broadband service. The service includes:

- A flat-rate, monthly charge for this service with no excess usage charges.
- "Always-on" access to the Internet – no dial-up required.
- The peak data speeds of the service are 256Kbps for downloading and 64Kbps for uploading.
- Average upload and download speeds are at least 60% of the peak data speeds at least 75% of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule.
- This service has a monthly usage quota of 1 gigabyte (1GB) for uploads and downloads. The quota is reset on the monthly anniversary of your Connection Date. If you exceed either quota prior to the end of the month, Ocean Broadband may throttle back your service to 64 Kbps (download only) for the remainder of that calendar month during the respective peak or off-peak period.
- The service will be available at least 99% of the time, averaged over a quarterly period. However, Ocean Broadband cannot guarantee connection to any particular Internet site.
- Free 24 hour fault reporting, using support@oceanbroadband.net
- Staffed helpdesk during business hours: 9am to 5pm

- Customer usage information updated at least once per day
- The ability for the customer to query Ocean Broadband to be informed on their current usage level
- A one-off installation fee of up to \$150 (inc. GST)
- A one-off hardware cost of up to \$150 (inc. GST)

2.1.3 “ABG09 Standard” – \$39.95/month (inc. GST)

This is Ocean Broadband’s entry “512K flat-rate” residential broadband service. The service includes:

- A flat-rate, monthly charge for this service with no excess usage charges.
- “Always-on” access to the Internet – no dial-up required.
- The peak data speeds of the service are 512Kbps to 1,536 Kbps for downloading and 128Kbps for uploading.
- Average upload and download speeds are at least 60% of the 512Kbps data speeds at least 75% of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule.
- This service has a monthly usage quota of 2 gigabyte (2GB) for uploads and downloads during peak usage hours (from 7am to 12 midnight), along with a further 3GB quota during off-peak hours (from 12 midnight to 7am). The quota is reset on the monthly anniversary of your Connection Date. If you exceed either quota prior to the end of the month, Ocean Broadband may throttle back your service to 64 Kbps (upload and download) for the remainder of that calendar month during the respective peak or off-peak period.
- The service will be available at least 99% of the time, averaged over a quarterly period. However, Ocean Broadband cannot guarantee connection to any particular Internet site.
- Free 24 hour fault reporting, using support@oceanbroadband.net
- Staffed helpdesk during business hours: 9am to 5pm
- Customer usage information updated at least once per day
- The ability for the customer to query Ocean Broadband to be informed on their current usage level
- A one-off installation fee of up to \$150 (inc. GST)
- A one-off hardware cost of up to \$150 (inc. GST)

2.1.4 “ABG09 Deluxe – \$49.95/month (inc. GST)

This is Ocean Broadband’s intermediate entry-level “flat-rate” residential broadband service. The service includes:

- A flat-rate, monthly charge for this service with no excess usage charges.
- “Always-on” access to the Internet – no dial-up required.
- The peak data speeds of the service are 512Kbps to 1,536 Kbps for downloading and 128Kbps for uploading.
- Average upload and download speeds are at least 60% of the peak data speeds at least 75% of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule.

- This service has a monthly usage quota of 5 gigabytes (5GB) for uploads and downloads during peak usage hours (from 7am to 12 midnight), along with a further 7GB quota during off-peak hours (from 12 midnight to 7am). The quota is reset on the monthly anniversary of your Connection Date. If you exceed either quota prior to the end of the month, Ocean Broadband may throttle back your service to 64 Kbps (download only) for the remainder of that calendar month during the respective peak or off-peak period.
- The service will be available at least 99% of the time, averaged over a quarterly period. However, Ocean Broadband cannot guarantee connection to any particular Internet site.
- Free 24 hour fault reporting, using support@oceanbroadband.net
- Staffed helpdesk during business hours: 9am to 5pm
- Customer usage information updated at least once per day
- The ability for the customer to query Ocean Broadband to be informed on their current usage level
- A one-off installation fee of up to \$150 (inc. GST)
- A one-off hardware cost of up to \$150 (inc. GST)

2.1.5 “ABG09 Premium” – \$59.95/month (inc. GST)

This is Ocean Broadband’s upper-intermediate-level “flat-rate” residential broadband service. The service includes:

- A flat-rate, monthly charge for this service with no excess usage charges.
- “Always-on” access to the Internet – no dial-up required.
- The peak data speeds of the service are 512Kbps to 1,536 Kbps for downloading and 128Kbps for uploading.
- Average upload and download speeds are at least 60% of the peak data speeds at least 75% of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule.
- This service has a monthly usage quota of 6 gigabytes (6GB) for uploads and downloads during peak usage hours (from 7am to 12 midnight), along with a further 9GB quota during off-peak hours (from 12 midnight to 7am). The quota is reset on the monthly anniversary of your Connection Date. If you exceed either quota prior to the end of the month, Ocean Broadband may throttle back your service to 64 Kbps (download only) for the remainder of that calendar month during the respective peak or off-peak period.
- The service will be available at least 99% of the time, averaged over a quarterly period. However, Ocean Broadband cannot guarantee connection to any particular Internet site.
- Free 24 hour fault reporting, using support@oceanbroadband.net
- Staffed helpdesk during business hours: 9am to 5pm
- Customer usage information updated at least once per day
- The ability for the customer to query Ocean Broadband to be informed on their current usage level
- A one-off installation fee of up to \$150 (inc. GST)
- A one-off hardware cost of up to \$150 (inc. GST)

2.1.6 “ABG09 Turbo” – \$79.95/month (inc. GST)

This is Ocean Broadband's entry level value-added residential service. The service includes:

- A flat-rate, monthly charge for this service with no excess usage charges.
- "Always-on" access to the Internet – no dial-up required.
- The peak data speeds of the service are 1536Kbps for downloading and 256Kbps for uploading.
- Average upload and download speeds are at least 60% of the peak data speeds at least 75% of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule.
- This service has a monthly usage quota of 10 gigabytes (10 GB) for uploads and downloads during peak usage hours (from 7am to 12 midnight), along with a further 15GB quota during off-peak hours (from 12 midnight to 7am). The quota is reset on the monthly anniversary of your Connection Date. If you exceed either quota prior to the end of the month, Ocean Broadband may throttle back your service to 64 Kbps (upload and download) for the remainder of that calendar month during the respective peak or off-peak period.
- The service will be available at least 99% of the time, averaged over a quarterly period. However, Ocean Broadband cannot guarantee connection to any particular Internet site.
- Free 24 hour fault reporting, using support@oceanbroadband.net
- Staffed helpdesk during business hours: 9am to 5pm
- Customer usage information updated at least once per day
- The ability for the customer to query Ocean Broadband to be informed on their current usage level
- A one-off installation fee of up to \$150 (inc. GST)
- A one-off hardware cost of up to \$150 (inc. GST)

2.1.7 "ABG09 Ultra" – \$99.95/month (inc. GST)

This is an Ocean Broadband intermediate level multimegabit residential service. The service includes:

- A flat, monthly charge for this service with no excess usage charges.
- "Always-on" access to the Internet – no dial-up required.
- The peak data speeds of the service are 2048Kbps for downloading and 384Kbps for uploading.
- Average upload and download speeds are at least 60% of the peak data speeds at least 75% of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule.
- This service has a monthly usage quota of 20 gigabytes (20GB) for uploads and downloads during peak usage hours (from 7am to 12 midnight), along with a further 30GB quota during off-peak hours (from 12 midnight to 7am). The quota is reset on the monthly anniversary of your Connection Date. If you exceed either quota prior to the end of the month, Ocean Broadband may throttle back your service to 64 Kbps (upload and download) for the remainder of that calendar month during the respective peak or off-peak period.
- The service will be available at least 99% of the time, averaged over a quarterly period. However, Ocean Broadband cannot guarantee connection to any particular Internet site.
- Free 24 hour fault reporting, using support@oceanbroadband.net

- Staffed helpdesk during business hours: 9am to 5pm
- Customer usage information updated at least once per day
- The ability for the customer to query Ocean Broadband to be informed on their current usage level
- A one-off installation fee of up to \$150 (inc. GST)
- A one-off hardware cost of up to \$150 (inc. GST)

2.1.8 “ABG09 1Meg Biz” – \$149.95 per month (inc. GST)

This is Ocean Broadband’s business-grade symmetric broadband service. It is not available in all areas. The service includes:

- “Always-on” access to the Internet – no dial-up required.
- The peak data speeds of the service are 1024Kbps for downloading and 1024Kbps for uploading.
- Average upload and download speeds are at least 60% of the peak data speeds at least 75% of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule.
- This Service has a monthly usage quota of 20 gigabytes (20GB) for uploads and downloads. The quota is reset on the monthly anniversary of your Connection Date.
- This Service charges excess usage at 2c per MB for usage over and above the plan’s quota.
- The service will be available at least 99% of the time, averaged over a quarterly period. However, Ocean Broadband cannot guarantee connection to any particular Internet site.
- Free 24 hour fault reporting, using support@oceanbroadband.net
- Staffed helpdesk during business hours: 9am to 5pm
- Customer usage information updated at least once per day
- The ability for the customer to query Ocean Broadband to be informed on their current usage level
- A one-off installation fee of up to \$500 (inc. GST)
- A one-off hardware cost of up to \$150 (inc. GST)

2.1.9 “ABG08 10 Plus 10” – \$79.95/month (inc. GST)

This is an Ocean Broadband advanced multimegabit residential service. It is not available in all areas. The service includes:

- “Always-on” access to the Internet – no dial-up required.
- The peak data speeds of the service are 10,240Kbps for downloading and 512Kbps for uploading.
- Average upload and download speeds are at least 60% of the peak data speeds at least 75% of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule.
- This service has a monthly usage quota of 10 gigabytes (10GB) for uploads and downloads. The quota is reset on the monthly anniversary of your Connection Date.
- This Service charges excess usage at 2c per MB for usage over and above the plan’s quota.
- However, Ocean Broadband cannot guarantee connection to any particular Internet site.

- Free 24 hour fault reporting, using support@oceanbroadband.net
- Staffed helpdesk during business hours: 9am to 5pm
- Customer usage information updated at least once per day
- The ability for the customer to query Ocean Broadband to be informed on their current usage level
- A one-off installation fee of up to \$150 (inc. GST)
- A one-off hardware cost of up to \$150 (inc. GST)

2.1.10 “ABG08 5 Plus 5” – \$59.95/month (inc. GST)

This is an Ocean Broadband advanced multimegabit residential service. It is not available in all areas. The service includes:

- “Always-on” access to the Internet – no dial-up required.
- The peak data speeds of the service are 5,120Kbps for downloading and 512Kbps for uploading.
- Average upload and download speeds are at least 60% of the peak data speeds at least 75% of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule.
- This service has a monthly usage quota of 5 gigabytes (5GB) for uploads and downloads. The quota is reset on the monthly anniversary of your Connection Date.
- This Service charges excess usage at 2c per MB for usage over and above the plan’s quota.
- The service will be available at least 99% of the time, averaged over a quarterly period. However, Ocean Broadband cannot guarantee connection to any particular Internet site.
- Free 24 hour fault reporting, using support@oceanbroadband.net
- Staffed helpdesk during business hours: 9am to 5pm
- Customer usage information updated at least once per day
- The ability for the customer to query Ocean Broadband to be informed on their current usage level
- A one-off installation fee of up to \$150 (inc. GST)
- A one-off hardware cost of up to \$150 (inc. GST)

3. Other service conditions

- 3.1 No responsibility or liability will be taken by us for any loss, damage, liability or expense resulting from the lack of continuous provision of Program Service.
- 3.2 In order to comply with legal obligations Ocean Broadband may, where it is deemed necessary, monitor data access transmitted by you when using the Program Service.
- 3.3 Under relevant state or federal legislations, industrial code of practice or under directions of regulatory authorities or court order, we may take any steps deemed necessary in order to comply with any legal obligations.
- 3.4 When requesting changes of plan levels, you must provide a written request To Upgrade your account stating your current account details and the account you wish to upgrade to.

- 3.5 You must also provide us authorisation to deduct the new amount from your nominated account if automatic payments have been arranged. You must state whether you wish to be upgraded immediately or from your next Billing Cycle.
- 3.6 Prior to the account being upgraded payment must be received for the difference between the two accounts for the remainder of your current Billing Cycle if you elect to upgrade immediately.
- 3.7 When upgrading from commencement of your next Billing Cycle, you will be invoiced prior to commencement of your next Billing Cycle reflecting the requested changes.
- 3.8 Your right to an Australian Broadband Guarantee service for the three year period, or the length of your contract, will not be affected by either the Upgrading or Downgrading of your Account.
- 3.9 You may always (having either Upgraded or Downgraded previously) elect to revert to the original plan you subscribed to at the start of your contract.
- 3.10 To Downgrade your account, you must provide written authorisation to deduct the new amount from your nominated account where automatic payments have been arranged, stating your current account details and the account you wish to downgrade to. Your new nominated downgraded account will take effect from your next Billing Cycle. You will be invoiced prior to the commencement of your next Billing Cycle reflecting these changes.
- 3.11 You may Downgrade to a lesser priced plan than the plan you were originally contracted to while under a contract, however this will require an upfront payment of \$75 (inc. GST) from you to cover the associated administration expense.
- 3.12 Ocean Broadband requires prior approval from The Department for it to amend any or all of its Australian Broadband Guarantee services. Australian Broadband Guarantee performance requirements may not be changed and the three year price cannot exceed that approved by The Department at the time of Australian Broadband Guarantee registration.
- 3.13 Subject to any other provisions of this Agreement, in the event that Ocean Broadband propose to withdraw Your service , Ocean Broadband will give you at least thirty (30) calendar days written notice of the withdrawal and,
 - (a) offer to migrate you from the withdrawn Program Service to a comparable Program Service, if such a service is available;
 - (b) or if no comparable Program Service is available, (and if applicable) offer to migrate you to Ocean Broadband's Threshold Program Service, or Added Value Program Service(s) as chosen by you; or
 - (c) give you the option of terminating the Agreement if you are not satisfied with the comparable Program Service offering
- 3.14 Subject to any other provisions of this Agreement, in the event that Ocean Broadband's registration under the Australian Broadband Guarantee is terminated (voluntarily or otherwise) you may elect to terminate the Agreement giving thirty (30) days written notice to us thereupon the only remaining fees due and payable under the Agreement will be those outstanding for the provision of the Program Service until the termination of this agreement.

4. Billing

- 4.1 GST is included in all prices quoted on our sales and promotional material.
- 4.2 We require that all accounts be paid through accepted Credit/Debit Card only. Ocean Broadband has the right to decline any other types of payment and, at its sole discretion, may elect to charge an additional processing fee of no more than \$10 (inc. GST) per month, for alternative forms of payment.
- 4.3 The initial payment is made in advance and must be cleared prior to the Account being activated for use. We reserve the right to disclose your credit/debit card details to, and obtain information from, any financial institution or credit card issuer to verify the credit/debit card details.
- 4.4 All ongoing payments are calculated on a quarterly basis and payable in advance. Any additional fees and charges that might be incurred will be payable in Arrears. Ocean Broadband will endeavour to deduct all Automatic Payments in the first week of the payment period cycle.

- 4.5 Ocean Broadband must be notified of any changes required to your Automatic Payment details at least seven (7) working days prior to your next Billing Cycle commencing.
- 4.6 Additional Charges may apply if incorrect account details have been given, insufficient funds are available or changes to account details are not passed on to Us.
- 4.7 It remains your responsibility to pay all monies owing on your Account by the due date. If payment is not received on the due date, your account will be suspended immediately and until full payment has been received.
- 4.8 If you remain suspended for an entire calendar month, you are still required to pay for the provision of the Program Service in that month. If payment for Program Services have not been received for 60 days, your account will be closed and action taken to recover any debt.
- 4.9 Any expenses, costs, or disbursements incurred by us in recovering any outstanding monies including dishonour fees, debt collection, agency fees or legal fees will be billed to your account.
- 4.10 It is your responsibility to pay all monies invoiced by the due date, even if the charges are the result of unauthorised access to your Program Service.
- 4.11 A re-installation fee of not more than \$70 (inc. GST) will apply to re-activate a suspended or closed account.

5. Customer Responsibilities

- 5.1 The Account Holder must have attained the age of 18 years.
- 5.2 If you allow a person under the age of 18 to use the Program Service then you are legally responsible for supervising that person's usage and particularly to ensure the suitability of content transmitted to and seen by that person.
- 5.3 It is your responsibility to provide us with a nominated E-mail Address that we can use to contact you.
- 5.4 It is your responsibility to ensure that your computer meets the minimum specification to connect to the Program Service, including any Software and Hardware requirements.
- 5.5 You are asked to regularly check your nominated E-mail Address for any correspondence from us about your Program Service.
- 5.6 You must not connect any unauthorised equipment to the Program Service.

6. Security

- 6.1 Ocean Broadband will allocate a fixed User ID to each Customer.
- 6.2 The Customer acknowledges that it is liable for all charges associated with the Program Service resulting from use of its password and agrees to keep its password confidential. Ocean Broadband accepts no liability for unlawful use of the Customer's password even in the event of it being lost or stolen.
- 6.3 The Customer agrees to immediately notify Ocean Broadband of loss or theft of their password. On application to Ocean Broadband the Customer may change their password at any time.
- 6.4 It is recommended that you take all necessary measures to protect your equipment and Program Service from unauthorised access. Unauthorised access of your Program Service via an unprotected connection (including wireless interception) is the sole responsibility of the Customer.
- 6.5 It is the Customers responsibility to take necessary preventative measures to protect your computer, software and data from viruses and other malicious programs. The customer acknowledges that Ocean Broadband cannot fully protect your computer, software and data.
- 6.6 The Customer acknowledges that some material on the Internet may be offensive, inappropriate or unsuitable and agrees that Ocean Broadband has no responsibility whatsoever for such material. Additionally the Customer hereby agrees that in using the Program Service the Customer must not:

- 6.6.1 Use the Program Service to undertake any illegal or unlawful or offensive activity or commit any fraud or breach any Australian legislation, codes of conduct or standards established for the Internet Program Service Provider Industry;
 - 6.6.2 Disseminate computer viruses or other malicious programs;
 - 6.6.3 Transmit, store or place on the Internet any content which is defamatory, offensive or of a menacing and/or obscene character;
 - 6.6.4 Place on the Internet, or issue invitations to give directions (including hyperlinks) to, any illegal content or potentially illegal content;
 - 6.6.5 Engage in sending unsolicited emails, spamming and advertising material;
 - 6.6.6 Engage in conduct so as to interfere with or disrupt any other Internet users or service providers;
 - 6.6.7 Engage in any unauthorised use of any material protected by patent, copyright, trademark or other intellectual property rights.
 - 6.6.8 Talk about hacking or about breaching any laws, talk of or engage in any conduct that may contravene any Ocean Broadband Policy (including but not limited to any Acceptable Use Policy that we may have and our Privacy Policy) and any other Policies or Practice to which Ocean Broadband may subscribe from time to time including Codes of the Internet Industry Association of Australia.
- 6.8 The Customer shall indemnify and hold harmless Ocean Broadband from and against any action, claim or loss that Ocean Broadband may suffer or may have brought against it as a result of the Customer breaching the Contract.
- 6.9 Where your continued use of the Program Service adversely affects the network, we reserve the right to suspend/control the Program Service being delivered to your premises.
- 6.9 You agree to provide a truthful ABG attestation to us (and hold any relevant supporting documentation) so that we can make a claim for incentive payment.
- 6.10 Any persons that use your Program Service have read and understand the Contract.
- 7. Our Responsibilities**
- 7.1 General
- 7.1.1 Network outages may occur from time-to-time that may result in the Customer suffering from Downtime. In the case of scheduled maintenance outages, all Customers who may be affected will be notified through Their Default E-mail Address no later than 7 days prior to the scheduled outage, unless the scheduled outage is for emergency maintenance where you will be notified as soon as is practically possible.
- 7.2 Connection of Program Service**
- 7.2.1 Given that we have received an application form and we have successfully processed your first payment, and all required connections are installed, completed and active, we will endeavour to connect you to the Program Service within two (2) working days.
- 7.3 Outages**
- 7.3.1 Restoration of Program Services resulting from Outages, where possible, will be kept within indicated times but may vary in the event of exceptional circumstances.
- 7.3.2 We will endeavour to restore Program Services resulting from a System-Wide Outage within 24 hours, a Community-Wide Outage within 48 hours and an Individual Outage within 72 hours of initial report.
- 7.4 If Ocean Broadband provides a Customer with a link to another web site or resource, Ocean Broadband will not be responsible for the content of those web sites or resources and Ocean Broadband makes no warranties or representations as to the accuracy of any information in or linked to its web site and assumes no liability or responsibility for any errors or omissions in content thereof.

Additionally Ocean Broadband will not be responsible for the content or form of any information or data passed into the Internet in the provisions of the Program Service including any information which is defamatory, offensive, unlawful or unsuitable for people under 18 years of age or for any one in particular. Nor will it be liable for any damage to or viruses which may infect, contaminate or act to the detriment of any computer equipment or other equipment owned or utilised by the Customer.

- 7.5 Ocean Broadband provides the Program Service in accordance with its Privacy Policy which is available on request and is published on its website.
- 7.6 The Privacy Policy describes how your personal information is collected, used and disclosed (including for marketing purposes) and your rights in relation to accessing and correcting that information. Under this Agreement You agree to the collection, use and disclosure of your personal information in accordance with the Ocean Broadband Privacy Policy. You also agree that if you are acquiring a Program Service under the Program, We may also disclose your personal information to The Department for the purposes of administering the Program, regulation and evaluation, and policy development.
- 7.7 We commit to provide the Customer with full information about the Australian Broadband Guarantee Service, as required under the Australian Broadband Guarantee Program.

8. Installation

- 8.1 All externally mounted customer premises equipment must be installed by a licensed cabling installer, nominated by Ocean Broadband.
- 8.2 Depending on the complexity of your installation and your location, there are three installation options available to you:
- **Self Install** – an indoor customer’s premises equipment (CPE) unit will be shipped to you from Ocean Broadband using surface mail to the location at which you required the service. This indoor CPE will include a power supply and an Ethernet Cable to connect to your computer. In this case the Network Access Port (NAP) will be the Ethernet port on the indoor CPE.
 - **Standard Install** – installing and cabling the externally mounted customer’s premises equipment (CPE) to a single internal wall port, the Network Access Port (NAP) for single story buildings or cable runs less than or equal to 20 metres.
 - **Gold Install** – installing and cabling per the Standard Install to a single NAP for multistory buildings or cable runs longer than 20 metres.

You will be advised which of these installation options is applicable for your premises before signing up to a service with Ocean Broadband. This may require a phone call from one of our pre-installation technicians to ascertain the requirements for your installation prior to your signing up with Ocean Broadband.

These three installation options are described in further detail below:

8.3 Your installation responsibilities for standard or gold installs:

Prior to an Ocean Broadband installer arriving at your premises, you must ensure that you have addressed the following points:

- 8.3.1 It is your responsibility to create a backup of all essential files in case of loss or corruption of data.
- 8.3.2 You must provide reasonable access to your residence to enable Ocean Broadband’s installer to carry out the installation.
- 8.3.3 Your computer must be located within two (2) metres of the NAP. If the computer is located at a further distance you must notify Ocean Broadband when booking a time with the installer so that they can prepare a longer connection lead. Non-standard connection leads will attract an additional per metre charge.
- 8.3.4 You must ensure that a 240VAC internal power outlet is located within two (2) metres of the NAP.

- 8.3.5 You should ensure that your computer meets the requirements set by Ocean Broadband including any hardware and software needed to use the Program Service. This includes a compatible 10 or 100 Mbps Ethernet network interface on your computer, along with the properly configured drivers on your computer's operating system to make use of this network interface.
- 8.4 **Self Install:** Ocean Broadband provides this installation option for a single story dwelling or where cabling to a single NAP is required with length from the Customer Premises Equipment to the NAP of 10 metres or less.
- 8.4.1 A maximum fee of up to \$150 (inc. GST) applies to a Self Install
- 8.4.2 The installation comprises shipping an indoor CPE unit to the Customer. It is the Customer's responsibility to determine the best location within the premises to obtain a signal from our service. In the event that no service can be obtained from the indoor CPE, the customer can ship the CPE back, at its own cost, to Ocean Broadband to obtain a full refund for the equipment. This will also terminate the contract with no termination charges payable. Ocean Broadband will not be held liable for any customer costs that may arise from a failure to obtain a service from an indoor CPE.
- 8.5 **Standard Install:** Ocean Broadband provides this installation option for a single story dwelling or where cabling to a single NAP is required with length from the Customer Premises Equipment to the NAP of 10 metres or less.
- 8.5.1 A maximum fee of up to \$150 (inc. GST) applies for a Standard Install, covering hardware costs.
- 8.5.2 The installation comprises:
- Fitting the externally mounted Customer Premises Equipment (CPE) to the outside of the dwelling
 - Cabling from the CPE to a single internal wall port, the Network Access Port (NAP).
- 8.6.3 Prior to an Ocean Broadband technician arriving at the premises, in addition to the clauses in 8.1-8.4 above, you must ensure that you have available all original operating system installation media.
- 8.6 **Gold Install:** Ocean Broadband provides this installation option for larger or multi-story dwellings, where cabling to a single NAP is required to span more than one floor in the dwelling or where the run of cable required is longer than 10 metres.
- 8.6.1 A maximum fee of \$300 applies for a Gold Install, covering installation and hardware costs.
- 8.6.2 The installation comprises:
- Fitting the externally mounted Customer Premises Equipment (CPE) to the outside of the dwelling
 - Cabling from the CPE to a single internal wall port, the Network Access Port (NAP).
- 8.6.3 Prior to an Ocean Broadband technician arriving at the premises, in addition to the clauses in 8.1-8.4 above, you must ensure that you have available all original operating system installation media.
- 8.7 Where we specify a time for your installation, we will try to keep to the specified time, but we cannot be liable for any loss or damage you suffer if we fail to do so.
- 8.8 Where an installation cannot be performed due to the failure of the Customer to provide the above, an additional charge may be made of not more than \$90 (inc. GST).
9. **Commencement of the Contract and the Program Service**
- 9.1 The Contract is deemed to be active from the date when both the Application Form has been signed by the customer and the Program Service has been installed at the customer's Premises.

- 9.2 The provision of Program Service is deemed to have commenced once all of the following criteria have been met:
- 9.2.1 Network infrastructure has been installed and tested satisfactorily.
 - 9.2.2 The Application Form and the ABG BSL Attestation Forms have been completed fully and accurately and has been signed by the customer.
 - 9.2.3 Payment of the initial setup costs including the cost of the Program Service over the initial Billing Period has been successfully processed.
 - 9.2.4 You have received/collected the CPE from Ocean Broadband.
 - 9.2.5 Ocean Broadband has formally activated the Customer's connection to a compliant Australian Broadband Guarantee service and registered this fact in its Customer Relationship Management system.

10. Abuse Procedures

10.1 Abuse procedures will be commenced by:

- 10.1.1 Giving an unauthorised person the Customer's account and password details;
- 10.1.2 Deliberately or recklessly disrupting Ocean Broadband's Program Service or activities, or engaging in any activity likely to disrupt the same, either deliberately or not;
- 10.1.3 Engaging in spamming;
- 10.1.4 Misusing access to the Internet in a manner identified in writing by a competent law enforcement official as unlawful;
- 10.1.5 Using access to the Internet to menace or harass others;
- 10.1.6 Behaviour that results in the disruption of other people's access to the Internet or their enjoyment thereof, including but not being limited to computer viruses, email bombardment and damage to Internet-connected resources and channel flooding;
- 10.1.7 Using access to the Internet to unlawfully obtain access to other networks.

11. Suspension or Termination of Program Service

11.1 Suspension by User:

- 11.1.1 You can terminate the account at any time, providing you provide us with Written Notification at least 7 working days prior to the next billing cycle.
- 11.1.2 If an account is closed while still in contract, termination fees will apply.
- 11.1.3 Any pre-paid fees for Program Services are non-refundable on termination.
- 11.1.4 In some cases a cooling off period is required by law. If you are covered by a cooling off period, you may terminate the Program Service without penalty if you provide Written Notification to Ocean Broadband within the timeframe allowed from the commencement of the Customer Relationship Agreement.

11.2 Suspension by Ocean Broadband:

- 11.2.1 This can be triggered by any breach of the Contract. As opposed to termination, Ocean Broadband may choose to suspend the Program Service for such period it determines.
- 11.2.2 Ocean Broadband supports the right to privacy and the laws that support privacy in all forms and it strictly prohibits the sending of unsolicited mass messages of any kind. We will terminate the account of any member who uses "spamming" techniques to solicit referrals and who does not remove a recipient upon being requested to do so by that recipient.
- 11.2.3 If Ocean Broadband suspends your Program Service for any breaches under this agreement, you shall remain liable for all charges due throughout the period of suspension. A fee may apply.

11.2.4 Upon the death of the Account holder, the account shall be deemed terminated.

11.2.5 If Ocean Broadband terminates an account whilst in contract, a termination fee may be applied if termination is resulting from the misuse of the Program Service.

11.3 If the account is terminated, you remain liable for all charges payable under the agreement in respect of the provision of services from the time of termination to the end of the Billing Cycle or Contract Period.

12. Ownership and Use of the Equipment and Facilities

12.1 The Ocean Broadband Network is an important part of our ability to provide you with the Program Service. This means that we need to make sure that the Broadband Network remains our absolute property at all times. The boundary of our Broadband Network is at the Network Access Port (NAP) within the Premises.

12.2 Internet connections can only be made to Network Access Ports (NAPs) installed by Ocean Broadband authorised installers, or to indoor CPE shipped to the Customer from Ocean Broadband.

12.3 All new indoor CPE provided by Ocean Broadband is covered by an 18 month limited warranty. The customer agrees to maintain indoor CPE in good condition and repair at all times.

12.4 Title to all indoor CPE provided by Ocean Broadband transfers to the customer once the service has been provisioned at the customer's premises.

12.5 All external, outdoor CPE is owned by Ocean Broadband and will be maintained by Ocean Broadband in good condition and repair. Ocean Broadband will, at all times, retain ownership of this equipment. Ocean Broadband may charge the Account Holder any reasonable costs incurred for replacing the equipment if lost or stolen.

13. Internet Support Facilities

13.1 We provide you with a staffed help desk support service from 9am to 5pm weekdays, year round. Support hours are liable to change at any time. If Ocean Broadband deems these changes as detrimental to you, you will be notified through your Default E-mail Address.

13.1.1 If you are experiencing any difficulty with your access, you can contact support:

13.1.1.2 By E-mail on support@oceanbroadband.net.au

13.1.1.3 By Telephone on **1300 4 OCEAN** (1300 4 62326)

13.1.1.4 By Fax on 08 9467 6217

13.1.2 We encourage you to make use of this free service for genuine service issues. As our support technicians are trained to solve broadband Internet issues, we ask that you acknowledge that:

13.1.2.1 We cannot offer support for general software issues;

13.1.2.2 We cannot offer support for general hardware issues.

14. Contract period

14.1 You will initially contract with us to provide you with an Australian Broadband Guarantee service on an 18 month basis. Once the initial contracted period ends, you will be contracted to Ocean Broadband on a quarter by quarter basis.

14.2 We are obliged to provide an Australian Broadband Guarantee eligible service to you for a minimum of three (3) years from the date of activation of your service. We must supply the service to you at or below the price registered and specified for the service in the Australian Broadband Guarantee Provider's Agreement with The Department for a minimum of three years from the date the service is first supplied to you, provided you wish to continue to receive the Program Service and renew the Contract. At the conclusion of the initial 18 month contract term, you have 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

- 14.3 Termination of an Australian Broadband Guarantee service
- 14.3.1 No restriction is placed by The Department on termination by a Customer of an Australian Broadband Guarantee service. You, the Customer are only bound by your Contract with us, your service provider, as would be the case with any other commercial arrangement.
 - 14.3.2 Standard termination fees apply in the event of a Customer-initiated termination, equal to the contracted plan level, over the remaining unpaid period of the term. Any remaining paid months that have not been used will be forfeited.
 - 14.3.3 Customers should be aware that with the exception of a Not-for-profit Organisation providing a Public Access Internet Facility; only one Australian Broadband Guarantee Program Service may be provided to an Eligible Premises at any one time for each type of Eligible Customer.
 - 14.3.4 The Department does not place restrictions on a Customer leaving one Australian Broadband Guarantee Provider for another Program Service Provider (i.e. churning), whether to an Australian Broadband Guarantee Provider or otherwise. Where a Customer does this, no Australian Broadband Guarantee Incentive Payment will be payable to the new Program Service Provider, and there is no obligation on the new provider to offer Australian Broadband Guarantee Terms and Conditions to the Customer.
 - 14.3.5 Should it prove not possible, in our view, to maintain a reliable radio connection between our network and the Customer's premises, Ocean Broadband may elect, at its sole discretion, to terminate the Program Service with immediate effect. In such an event, the Customer is released with immediate effect from the Contract with no further payments due to either party. The Customer agrees in this event to allow Ocean Broadband access at a mutually agreed time to retrieve its externally-mounted equipment from the roof of the Customer's premises.
 - 14.3.6 In circumstances where we cease to offer broadband services, including Australian Broadband Guarantee Services, you are entitled to terminate the contract without penalty and apply for a new Australian Broadband Guarantee Service.
- 14.4 Your rights under this Agreement belong to you alone. You may not transfer your rights and obligations in respect of the Program Service or this Agreement without our prior consent. Our consent will not be unreasonably withheld. We shall not assign the whole or part of the contract to another party without your prior written consent.

15. Complaints Procedure

- 15.1 If you have a complaint about our services or associated matters, you may contact us via mail, e-mail, phone or fax, or via our online complaints form.
- 15.2 You may request to have your complaint escalated to be dealt with by a manager, if you are dissatisfied with the outcome of your complaint.
- 15.3 If still dissatisfied, you can lodge a complaint through the Telecommunications Industry Ombudsman (TIO), which you can lodge online at <http://www.tio.com.au>.

16. Usage monitoring, speed test facilities and full disclosure

- 16.1 You can test the data speed of your Australian Broadband Guarantee Service at <http://bctest.com.au/speedtest.html>.
- 16.2 We will provide a means for you to check your usage on at least a daily basis, either by email or online.
- 16.3 We commit to provide you with full information about the Australian Broadband Guarantee Service, as required under the Australian Broadband Guarantee Program.

17. Force Majeure

17.1 If, as a result of Force Majeure, either Party is unable to carry out their obligations under this Agreement, they shall give the other Party prompt written notice of the occurrence and particulars of the act, event or cause constituting the Force Majeure and, in so far as known, the probable extent to which it will be unable to carry out, or be delayed in carrying out its obligations and thereupon will not be required to carry out such obligations for the period provided the Party has used all possible diligence to overcome or remedy the Force Majeure as quickly as possible.

18. Proper Law/Jurisdiction

18.1 This Agreement shall be governed by the laws in Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

Definitions

The Department

The Department of Broadband, Communications and the Digital Economy

Australian Broadband Guarantee

The Australian Government's funding Program described in the Program Guidelines issued on 1st July 2008 and available at www.dbcde.gov.au/abg. Also referred as the "The Australian Broadband Guarantee Program"

Program Service(s)

The Program Service(s) described in Section 2 of this contract.

Agreement

Your Application, and Australian Broadband Guarantee contract (if required)

Bandwidth Throttling

Where the connection speed is reduced to approximately 64 Kbps or lower.

Billing Cycle

The quarterly billing period

Australian Broadband Guarantee

A Federally funded initiative that provides funding to Australian Broadband Guarantee registered ISP's to provide Program Services to Australian Broadband Guarantee eligible areas.

Community-Wide Outage

An outage that results in downtime, affecting an Ocean Broadband community served by the same base station

CPE

Consumer Premises Equipment (e.g. Modems, Routers, Wireless Equipment, etc).

Defined Abuse

Means misuse of the Program Service and access to the Internet as per Clause 10

Direct Debit

A payment method by which you authorise us to deduct a set amount every Payment Period directly from your nominated bank account or credit or debit card

Download

Any data that is received by your computer from the Internet

Downtime

The period in which a customer cannot gain access to the Program Service due to network outages

Force Majeure

means any act, event or cause beyond the reasonable control of the party concerned including, but not limited to, acts of God, perils of the sea, war, sabotage, riot, storm and tempest, earthquake, landslide, explosion, strike and other labour difficulties (whether or not involving employees of the party concerned) or failure of the internet or world wide web.

General Traffic

All traffic that is not classified as Local or Internal Traffic

Individual Outage

An outage that results in downtime, affecting an individual premises

Internal Traffic

All traffic that does not leave the Ocean Broadband network

Kbps

kilobits per second

Mbps

Megabits per second

Ocean Broadband, Us, Our, We

Ocean Broadband – ACN 110 380 820

Registered office: Suite 7, 295 Rokeby Rd, Subiaco, WA 6008

Outage

The inability to deliver the Program Service

Premises

The physical address where the Program Service is connected

Spamming

Spamming is the unsolicited and unauthorised sending of messages of any kind to businesses and people who do not know you personally and have not agreed to receive your messages.

System-Wide Outage

An outage that results in downtime, affecting the entire Ocean Broadband Internet network

Traffic Limits

The total allowable data transferred through your account over a calendar month

Upload

Any data that is sent by your computer to the Internet

Written Notification

Acceptable forms of Written Notification is e-mail, fax or registered mail

You, Your, Customer, Applicant

The account holder as per the name given on application