

Occupier Terms and Conditions

1. CONTRACT

- 1.1. The **Contract** will consist of the following documents:
- (a) These Terms and Conditions;
 - (b) The Terms and Conditions contained within the Website;
 - (c) Application Form on the Website; and
 - (d) The Job Order Form
- 1.2. If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 1.1.

2. TERM

- 2.1. Subject to termination in accordance with clause 11:
- (a) The Initial Term shall commence on the Commencement Date.
 - (b) Unless either party notifies the other party in writing no later than 30 days prior to the expiration of the Initial Term, this Contract continues until the Contracted Services are completed.

3. CHARGES AND PAYMENT

Invoiced Charges

- 3.1. The Occupier understands that all payment for Contracted Services will be made pursuant to invoices issued by the Contractor direct and the Occupier will be bound by such terms and conditions of the invoices issued by the Contractor.
- 3.2. The Occupier understands that Adelaide Home Services will not issue any invoices to the Occupier direct as Adelaide Home Services do not charge any fees or charges to the Occupier for the service Adelaide Home Services provides to the Occupier.

Commission or referral fees

- 3.3. The Occupier acknowledges that Adelaide Home Services will be paid commissions or referral fees from the Contractor.

4. PROVISIONS APPLICABLE TO THE CONTRACTED SERVICES

Provision of Service

- 4.1. Subject to the Occupier's compliance with the Contract, Adelaide Home Services will use its best endeavours to provide the Service in accordance with the Contract and the requests of the Occupier as outlined in the Application Form on the Website.

Scheduled Contracted Works.

- 4.2. Adelaide Home Services will advise the Contractor of the scheduled Commencement Date for service having regard to the Contracted Services Estimated Time Frame in the Application Form on the Website and Job Order Form, however any arrangements made for Contracted Services will be between the Contractor and the Occupier direct.
- 4.3. Adelaide Home Services shall not be liable for any Liability incurred by the Occupier due to a failure of the Contractor to commence the Contracted Services on the Commencement Date or complete the Contracted Services within the Estimated Time Frame.

Co-operation with Adelaide Home Services

- 4.4. The Occupier must cooperate with Adelaide Home Services and comply with any of its reasonable requests to allow Adelaide Home Services to supply The Service to the Occupier safely and efficiently. This includes meeting Adelaide Home Services' reasonable requests, at no further cost to Adelaide Home Services, to:

- (a) provide any necessary forecasts and information to Adelaide Home Services, on which Adelaide Home Services will rely in establishing and supplying the Service to the Occupier;
- (b) agree to provide safe and prompt access of the Premises, as well as access to required utility services, to the Contractor, and the Occupier's personnel, equipment, data and information for the purpose of inspection, repair, maintenance or adjustment of the Contracted Service and to inspect and audit all equipment and devices connected to the Contracted Service;
- (c) agree to provide all assistance and take all safety precautions as may be reasonably necessary or otherwise requested by Adelaide Home Services to ensure safe and proper performance by Contractors of all work at the Premises.

Occupier's Obligations:

- 4.5. The Occupier must not use, or attempt to use, the Service:
- (a) To breach any term of the Contract;
 - (b) For any improper or unlawful purpose or allow others to do so;
 - (c) In breach of any applicable Government Agency requirements, legislation and laws including but not limited to any privacy laws; copyright laws and telecommunications laws;
 - (d) To expose Adelaide Home Services to any Liability;
 - (e) In any way which damages, interferes with or Interrupts the Service;
 - (f) In any way which may damage any property or injure or kill any person; or
 - (g) To transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted.

5. DISPUTES PROCEDURE

- 5.1. The parties shall co-operate to investigate promptly and resolve any dispute concerning any issue arising pursuant to the Contract.

Compulsory

- 5.2. If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

Notice

- 5.3. A party to the Terms claiming a dispute ('Dispute') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

Resolution

- 5.4. On receipt of that notice ('Notice') by that other party, the parties to the Terms ('Parties') must:

1. Within 14 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
2. If for any reason whatsoever, 14 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed.
3. The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
4. If the dispute remains unresolved, either party may, on giving written notice to the other party to such effect, commence legal proceedings in an appropriate court to resolve the matter.

5.5 During the existence of any dispute, the parties must continue to perform all of their obligations under the Contract, without prejudice to their position in respect of the dispute unless the parties agree otherwise.

5.6 Nothing in this clause prevents a party from seeking urgent interlocutory relief required in relation to the Contract.

Confidential

5.7 All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential.

Venue and Jurisdiction

5.8 The Services offered by Adelaide Home Services is intended to be provided to the residents of Australia. In the event of any dispute arising out of or in relation to the Contract, the parties agree that the exclusive venue for resolving any dispute shall be in the courts of South Australia, Australia.

6 COMPLIANCE WITH GOVERNMENT AGENCY REQUIREMENTS

6.1 In the event that Adelaide Home Services is unable to provide the Service substantially in the form and of the type contemplated under the Contract due to any direction of a Government Agency, law, rule, regulation, statute or ordinance then Adelaide Home Services shall provide notice to the Occupier of that fact as expeditiously as possible and shall not be liable for any Liability incurred by the Occupier as a result of Adelaide Home Service's failure to provide the Service as contemplated pursuant to this clause 6.

6.2 Upon receipt by the Occupier of a notice under clause 6.1, the Occupier shall be at liberty to terminate the Service without penalty by notice to Adelaide Home Services within 14 days of receipt of the clause 14.1 Notice. If the Occupier provides this notice to Adelaide Home Service within the said 14 days the Service shall be deemed to be terminated by the Occupier.

7 NATURE OF THE CONDUCT

7.1 The Contract contains the entire agreement between Adelaide Home Services and the Occupier and supersedes all prior communications and negotiations between the parties.

7.2 Unless otherwise specified in the Contract, no amendments or variation of the Contract is valid or binding on a party unless made in writing and signed by the Occupier and Adelaide Home Services.

8 INDEMNITY

8.1 The Occupier shall indemnify Adelaide Home Services from and against any Liability which may be incurred or suffered by Adelaide Home Services arising from any one or more of the following:

- (a) the breach by the Occupier of a material term or any of the Occupier's obligations under the Contract;
- (b) any negligent act or omission or wilful misconduct by the Occupier arising from the use of the Service, or otherwise arising out of the Occupier's obligations under the Contract;
- (c) Any direct or indirect consequence of you accessing, using or transacting on the Website or attempts to do so;
- (d) Any breach of the terms;
- (e) the use or provisioning of the Service; and
- (f) any claims or demands made upon Adelaide Home Services by reason of any loss, injury or damage which may be suffered by any person from the provisioning or use of the Service.

9 DISCLAIMER

9.1 The Occupier understands and acknowledges that Adelaide Home Services is a referral service and will refer contractors who have been screened, consistent with Adelaide Home Services program to be considered by the Occupier to accomplish a job that is described by the Occupier to a representative of Adelaide Home Services.

9.2 Any arrangements made, or contracts negotiated are strictly between the Occupier and the contractor.

9.3 The Occupier understands that the contractors referred are independent of Adelaide Home Services.

9.4 Adelaide Home Services has not made any representation to the Occupier as to the work to be performed or the nature or quality of the work anticipated to be accomplished.

9.5 The Occupier agrees to satisfy themselves that the Contractor meets the standards of work that the Occupier requires.

9.6 The Occupier hereby holds Adelaide Home Services harmless from any defect in workmanship, default, damage, injury, or expense arising out of the work performed by a contractor referred and hired by the Occupier.

9.7 The provisions of this clause 9 survive the termination of the Service.

10 LIABILITY AND WARRANTIES

10.1 The Occupier acknowledges it has not relied on any representation or warranty made by Adelaide Home Services which has not been stated expressly in the Contract.

10.2 Except as required by law or regulations or set out in this Contract, Adelaide Home Services expressly excludes all Liability for all warranties, conditions, non-fraudulent representations express or implied concerning the Service, including but not limited to those relating to the availability, performance quality or fitness for purpose of the Service.

10.3 To the extent permitted by law Adelaide Home Services will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the

late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

- 10.4 Under no circumstances will Adelaide Home Services be liable to the Occupier for loss of profit, loss of contracts, loss of use of the Service or for any indirect economic or consequential loss whatsoever, whether arising from negligence, breach of contract, failure of the Service or otherwise. This shall include but is not limited to loss caused by the following:
- 10.4.1 1. You have breached any provision of the Terms or intend to breach any provision;
- 10.4.2 Adelaide Home Services is required to terminate the contract by law or;
- 10.4.3 The provision of the Services to you by Adelaide Home Services is, in the opinion of Adelaide Home Services, no longer commercially viable.

10.5 Use of the Website and the Services is at the Occupier's own risk. Everything on the Website and the Services is provided to the Occupier "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of Adelaide Home Services make any express or implied representation or warranty about the Services or any products or Services (including the products or Services of Adelaide Home Services) referred to on the Website. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:

1. Failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
2. The accuracy, suitability or currency of any information on the Website, the Services, or any of its Services related products (including third party material and advertisements on the Website);
3. Costs incurred as a result of you using the Website, the Services or any of the products of Adelaide Home Services; and
4. The Services or operation in respect to links which are provided for your convenience.

10.6 The provisions of this clause 10 survive the termination of the Service.

11 TERMINATION AND SUSPENSION

Termination by Adelaide Home Services

- 11.1 Adelaide Home Services may, without liability, terminate the Contract or provisioning of the Service at any time prior to the Commencement Date, if Adelaide Home Services reasonably determines that it is not technically or operatively feasible or commercially viable to supply the Service to the Occupier.
- 11.2 Subject to local applicable laws, Adelaide Home Services reserves the right to terminate this contract at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Services without notice if you breach any provision of the terms of the Contract or any applicable law or if your conduct impacts Adelaide Home Services' name or reputation or violates the rights of those of another party.
- 11.3 Adelaide Home Services may, without liability, at its option either terminate or suspend the Contract by giving notice to the Occupier if:
- (a) if the Occupier is not able to supply the Premises to the supply of the service;
 - (b) The Occupier suffers an Insolvency Event; or

- (c) Adelaide Home Services is required to do so under any law or to comply with an order, instruction or request of a Government Agency, an emergency services organisation or any other competent authority.

Termination by Occupier

- 11.4 The Occupier may after the Commencement Date, terminate the Contract if:
- (a) it does pursuant clause 6.2;
 - (b) if the Service has been suspended for more than 14 consecutive days through no fault of the Occupier other than in case of a force majeure event;
 - (c) Adelaide Home Services commits a serious breach of the Contract, and has not remedied that breach within 30 days of becoming aware of that breach.

Termination By Either Party

- 11.5 Either party ("**Affected Party**") may, without liability, terminate the Contract with immediate effect from the date of service of a notice (or with effect from a later date as the Affected Party may nominate in a notice) if any Force Majeure Event prevents the supply of the Service for more than 30 consecutive day.

Following Termination

- 11.6 On termination of the Contract for any reason:
- (a) each party must, on request by the other party, immediately return or destroy the other party's Confidential Information, except to the extent that it is required by law to retain the other party's Confidential Information;
 - (b) Adelaide Home Services may immediately stop supplying to the Occupier the Service;
 - (c) unless the Contract expressly states otherwise, each persons' accrued rights and obligations are not affected; and
 - (d) the clauses of the Contract which are by their nature intended to survive cancellation of the Service will do so, which for the purposes of these General Conditions, include clauses 8, 9, 10, 13, and 16.

12 INTELLECTUAL PROPERTY

- 12.1 Adelaide Home Services owns all material (including the Intellectual Property Rights) developed by it, or its personnel, or at its or their discretion.
- 12.2 Adelaide Home Services may permit the Occupier to use this material, or other material licenced by Adelaide Home Services, as part of the Service. This permission is subject to any conditions which Adelaide Home Services may impose from time to time and will cease when the Service is cancelled.

13 CONFIDENTIALITY

- 13.1 Adelaide Home Services and the Occupier each agree to keep confidential the other's Confidential Information and to not use the Confidential Information for any purpose other than that for which it was disclosed or which may cause the Provider loss.
- 13.2 The provider retains all property rights in the Confidential Information.
- 13.3 The Recipient may disclose Confidential Information (to the extent reasonably necessary) to its Representatives for the sole purpose of assisting the Recipient for purposes related to the supply of the Service (or for the purposes which would be reasonably expected) including billing and account management, business planning and product development.

- 13.4 The obligations of confidentiality in this clause 13 do not apply to the extent disclosure is required by law or the rules of a stock exchange, a direction by Government Agency, or disclosure to professional advisors in connection with the supply of the Service.
- 13.5 The Recipient acknowledges that a breach of this clause 13 may cause the Provider irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, the Provider may seek injunctive relief against such a breach or threatened or suspended breach.
- 13.6 The Recipient's obligation with respect to the Confidential Information survive termination and bind the Recipient until the relevant Confidential Information has become part of the public domain other than in breach of an obligation of confidentiality.

14 NOTICES

- 14.1 Notices for the purpose of the Contract shall be in writing. A notice given to a party at that party's address set out on the face or at such other address as may be substituted by written notice from such party to the other shall:
- in the case of prepaid post, be presumed to be given 5 days after the date of posting;
 - be presumed to be delivered at the time of delivery if delivered during normal business hours;
 - be presumed to be given upon receipt by the sender of a satisfactory transmission confirmation report indicating due transmission without error
 - in the case of facsimile transmission.
 - be presumed to be given upon the sender's computer system indicating transmission in the case of an email transmission.

15 WAIVERS

- 15.1 No waiver or indigence by any party to the Contract shall be binding upon the parties unless in writing.

16 GOVERNING LAW

- 16.1 This Contract shall be governed by law Of South Australia and the parties agree to submit to the jurisdiction of the Courts of South Australia.

17 COUNTERPARTS

- 17.1 This Contract may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each part who has executed and delivered that counterpart.

18 DEFINITIONS

Adelaide Home Services means Adelaide Home Services (ABN 92 966 523 834)

Contracted Services means the services and works that the Occupier has engaged the contractor to complete.

Application Form - means the Adelaide Home Services Application Form as set out in the Website.

Business Day - means a business day in the city where the Service is provided.

Commencement Date - means, unless otherwise agreed, the day that the Contractor is to commence the Contracted Works, the date by which will be requested in the Application Form on the Website.

Confidential Information - of a party means all information of a confidential nature relating to that party including anything which is indicated to be subject to an obligation of confidence which is disclosed by that party to the other party in relation to this Contract to supply service or comes to the knowledge or into the possession of the other party in connection with this Contract but does not include information:

- the party creates (whether jointly or alone) independently of the other party's Confidential Information;
- that is public knowledge (other than as a result of a breach of confidentiality by the party or any person to whom the party has disclosed the information); or
- obtained without restriction as to the further disclosure from a source other than the other party through no breach of confidentiality by that source.

Contractor means the Contracted described in the Referral Application Form and any of its employees, sub-contractors, agents and representatives.

Day or day - means any day not limited to a Business Day

Estimated Time Frame means unless otherwise agreed, the time frame by which the Contractor is to complete the Contracted Works within, the estimated time frame by which will be requested in the Application Form on the Website.

Excluded Event – means:

- a breach of the Contract by the Occupier;
- a Force Majeure Event;
- a negligent or fraudulent act or omission of the Occupier's personnel; or
- a failure of any of the Occupier's Equipment.

Fault – means any circumstance physically related to the Service which renders the Service unusable or significantly impaired.

Force Majeure Event – means:

- any act of god or act of nature, fire, flood, storm, explosion, sabotage, riot, act of war whether declared or not, requirement or restriction of governmental authorities, inability or delay in the grant of governmental or other approvals, consent, permits, licences or authorities or any other like event; or
- any strike, lockout, work stoppage or other industrial dispute of any kind; or
- any act or omission of a third party which affects the provisions of the Services, including a failure to provide goods and services or access to premises; or
- any other similar circumstances beyond the reasonable control of the affected party.

General Terms and Conditions – means the general term and conditions contained in this document.

Government Agency – means any government or governmental, semi-governmental, administrative, municipal, fiscal, or judicial body, department, commission, authority, tribunal, agency, or other statutory entity including but not limited to the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry Forum Limited, the Telecommunications Industry Ombudsman and any other government or statutory body or authority.

Initial Terms – means the term and specified in the Application Form.

Insolvency Event – means:

- (a) bankruptcy proceedings are commenced against the Occupier, or the Occupier is declared bankrupt;
- (b) any step that is taken to enter into any scheme or arrangement between the Occupier and its creditors;
- (c) any step is taken by a mortgage to enter into possession or dispose of the whole or any part of the Occupier's assets or business;
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to the Occupier or to the whole or any part of the Occupier's assets or business;
- (e) the Occupier suspends payment of its debts generally; or
- (f) the Occupier is or becomes unable to pay its debts when they are due or it is or is presumed to be insolvent for the purposes of any provision of the *Corporation Act 2001* (Cth).

Intellectual Property Rights - means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright) and includes the right to have Confidential Information kept confidential.

Interruption – In the supply of goods or a service (including the Service) means a delay in supply, a failure to supply or an error, defect in the supply of, those goods or that service and **Interrupts** has a corresponding meaning.

Job Order Form means the form that is signed by the Occupier prior to the commencement of the Contracted Works.

Liability - means any direct or consequential liabilities, claims, losses, cost, charges, damages, injury or expenses of any nature.

Occupier – means the home owner, agent or occupier described in the Application Form and Job Order Form and any of its employees, sub-contractors, agents and representatives.

Premises - means locations at which Adelaide Home Services provides the Service.

Provider - means a party that discloses its Confidential Information to another party.

Recipient - means a party that receives or obtains Confidential Information of another party.

Referral Application Form means the Adelaide Home Services referral Application Form as set out in the Website for the purpose of referring a contractor.

Related Body Corporate has the meaning given to that expression in the Corporation Act 2001 (Cth).

Representative – means a director, officer employee or agent

Requested Delivery Date - means the Occupier's preferred date for commencement of the Service as specified in the Application Form.

Service – means the service carried out by Adelaide Home Services of connecting the Occupier with the Contractor that to carry out the professional works in the field required by the Occupier to suit the Occupier's needs with options and features requested in the Application Form on the Website and the Job Order Form and as specified in the Contract.

Term - has the meaning given in clause 2.

Website means www.adelaidehomeservices.com.au