

OCCUPANCY AGREEMENT – SPECIALIST DISABILITY ACCOMMODATION

PARTIES

Name

Address

Short name

Occupant

Name

Address

ACN/ ABN

Short name

Grantor

PROPERTY

Room

Property Address

Plan attached
identifying Room

Furniture in Room

Owned by Occupant

Owned by Grantor

Items owned by each party (as per list at **Schedule 1**)

Shared Areas available for
use by Occupant

Kitchen

Laundry

Dining room

Corridors and walkways

Bathroom

Lounge room

Garage

Outdoor area

Other _____

AGREEMENT DETAILS

Item 1. Start Date

Item 2. Occupancy Fee

The Occupancy Fee is the amount to be contributed by the Occupant. The Grantor must separately seek the Specialist Disability Accommodation Payment from the NDIA (see **clause 7**).

The Occupancy Fee is set out in the table below.

[NOTE: The NDIA Terms of Business for Registered Providers provide that the Occupancy Fee must not exceed the sum of the Reasonable Rent Contribution and Commonwealth Rent Assistance (calculated in accordance with the notes below).]

Reasonable Rent Contribution	per [NOTE: This must not exceed an amount that is equal to the sum of: 1. 25% of the basic rate of the Disability Support Pension; 2. Plus: if the Occupant receives a pension supplement, 25% of the Pension Supplement received; and 3. Plus: if the Occupant receives a Youth Disability Supplement, 25% of the Youth Disability Supplement received. The basic rate of the Disability Support Pension is the amount under the Social Security Act 1991 that is the maximum basic rate for a person who is not under 21 and not a member of a couple.]
Commonwealth Rent Assistance	per [NOTE: If the Occupant receives Commonwealth Rent Assistance, 100% of the amount received.]
Occupancy Fee	

To be paid _____ in advance by:
cheque
cash
electronic transfer to bank account below:

BSB: _____

Account number: _____

Account name: _____

Item 3. Bond

Item 4. Occupancy Fee Review Date and Method

The Occupancy Fee may be increased on

The Occupancy Fee will be increased by

Item 5. Board Payment

The Board Payment is _____ per

To be paid _____ in advance by:
cheque
cash
electronic transfer to bank account below:

BSB: _____

Account number: _____

Account name: _____

[NOTE: The maximum amount payable by the Occupant for the Board Payment must not exceed the sum of:

1. 50% of the basic rate of the Disability Support Pension; and
2. 100% of any energy supplement received by the Occupant under the Social Security Act 1991.

Where the maximum Board Payment is charged, the Board Inclusions must include at least:

1. meals and consumables;
2. utilities;
3. access to whitegoods and laundry facilities; and
4. furniture and furnishings in the Shared Areas.]

Item 6. Board Inclusions

The following are included in consideration for the Board Payment:
[AMEND as relevant]

- Utility consumption charges including electricity, gas and water
- Cleaning of Shared Area
- Cleaning of Room
- Waste removal
- Fixed telephone line usage charge
- Internet usage
- Shared Area furniture including lounge suite, dining setting, television
- Maintenance of Shared Areas
- Meals and consumables
- Shared Area furniture including lounge suite, dining setting, television
- White goods
- Window coverings
- Cookware and kitchen utensils
- Washing machine
- Any furniture in Room owned by Grantor
- Other _____

Item 7. Repairs and maintenance contact person/process

Name:

Telephone:

Email:

Item 8. Notices

Occupant:

Physical address:

Postal address:

Telephone:

Email:

Grantor:

For general notices:

Physical address:

Postal address:

Telephone:

Email:

For feedback/ complaints:

Postal address:

Telephone:

Email:

Item 9. Grantor's affiliation with Independent Living Services provider (ILS provider)	Not applicable (no ILS provider)
	No relationship
	Grantor and ILS provider are the same
	Grantor and ILS provider have same management
	Grantor and ILS provider are part of a joint venture
	Other _____

BACKGROUND

- A. The Grantor owns the Property or otherwise has the necessary rights to permit the Occupant to reside at the Property in accordance with this Occupancy Agreement.
- B. The Occupant has an approved plan under the NDIS Act which includes Specialist Disability Accommodation.
- C. The Grantor is a Registered NDIS Provider and the Property is an Enrolled NDIS Dwelling.
- D. The ACT Public Trustee and Guardian has been appointed as the guardian for the Occupant and has the power to make accommodation decisions for the Occupant.
- E. The Grantor agrees for the Occupant to occupy the Room and use the Shared Areas in accordance with the terms and conditions of this Agreement.

AGREED TERMS

1. Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement	means this agreement between the Grantor and Occupant and includes the Agreement Details and all Schedules and attachments.
Agreement Details	means the matters listed under the heading 'Agreement Details' commencing on page 1 of this Agreement.

Australian Privacy Principles	means the Australian Privacy Principles set out in Schedule 1 of the <i>Privacy Act 1988 (Cth)</i> .
Board Inclusions	means the items or services specified at Item 6 of the Agreement Details .
Board Payment	means the amount specified in or calculated in accordance with Item 5 of the Agreement Details in relation to the Board Inclusions.
Bond	means the amount specified at Item 3 of the Agreement Details .
Business Day	means a day that is not: <ul style="list-style-type: none"> (1) a Saturday or Sunday; or (2) a public holiday for the Australian Capital Territory pursuant to the <i>Holidays Act 1958 (ACT)</i>.
Enrolled NDIS Dwelling	means a property which is enrolled pursuant to the NDIS Act for the purpose of providing specialist disability accommodation.
Guardian	means: <ul style="list-style-type: none"> (1) the ACT Public Trustee and Guardian or his or her delegate; or (2) where the ACT Public Trustee and Guardian's appointment as the Participant's guardian ceases, the person appointed as the Participant's guardian pursuant to the <i>Guardianship and Management of Property Act 1991 (ACT)</i>.
Guardianship Legislation	means the <i>Public Trustee and Guardian Act 1985 (ACT)</i> and the <i>Guardianship and Management of Property Act 1991 (ACT)</i> .
House Rules	means the rules at Schedule 2 as amended from time to time in accordance with this Agreement.
NDIA	means the National Disability Insurance Agency.
NDIS Act	means the <i>National Disability Insurance Scheme Act 2013 (Cth)</i> and includes any rules and legislative instruments made pursuant to this Act and the NDIS Terms of Business for Registered Providers.
Occupancy Fee	means the amount specified in or calculated in accordance with Item 2 of the Agreement Details .
Occupancy Fee Review Date	means the dates specified at Item 4 of the Agreement Details .
Personal Information	has the same meaning as in the <i>Privacy Act 1988 (Cth)</i> .
Prescribed Insurer	means an insurer that is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia and rated at AA or better by Standard & Poor's.
Property	means the property described on page 1 of this Agreement and includes all fixtures, fittings and furnishings belonging to the Grantor.
Registered NDIS Provider	means a provider registered pursuant to the NDIS Act for the purpose of providing specialist disability accommodation.
SDA Payment	means the amount payable by the NDIA to the Grantor for the provision of specialist disability accommodation to the Occupant pursuant to the NDIS Act.
Start Date	means the date specified at Item 1 of the Agreement Details .
Term	means the term of this Agreement as determined under clause 2 .

1.2 General

In this Agreement, unless a contrary intention is expressed:

- (1) references to the Grantor include any employees, agents or subcontractors of the Grantor;
- (2) the word "include" and its derivations are not to be construed as words of limitation;
- (3) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any determinations, notifiable instruments or other subordinate legislation issued under that legislation or legislative provision; and
- (4) a reference to any party to this Agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns.

2. Acknowledgements

- (1) The parties acknowledge and agree:
 - (a) the Guardian signs this Agreement on behalf of the Occupant pursuant to powers vested in the Guardian in accordance with the Guardianship Legislation;
 - (b) the Guardian may exercise rights and powers on behalf of the Occupant in accordance with the Guardianship Legislation;
 - (c) the rights, duties and responsibilities of the Guardian as they relate to the ACT Public Trustee and Guardian cease upon the cessation of the ACT Public Trustee and Guardian's appointment as Guardian; and
 - (d) this Agreement is otherwise unaffected by the cessation of the ACT Public Trustee and Guardian's appointment as Guardian.
- (2) The Grantor warrants that:
 - (a) it is a Registered NDIS Provider as at the date of this Agreement and will maintain this registration for the Term; and
 - (b) the Property is an Enrolled NDIS Dwelling.
- (3) The Grantor must notify the Occupant and the Guardian immediately upon becoming aware that any of the registrations referred to in clause 2(2) have ceased or been revoked.

3. Term

This Agreement commences on the Start Date and ends on the date it is terminated pursuant to this Agreement.

4. Right to occupy Room and use Shared Areas

- (1) The Grantor grants to the Occupant for:
 - (a) an exclusive right to occupy the Room;
 - (b) the exclusive right to use the fixtures, fittings and furnishings in the Room;
 - (c) a non-exclusive right to use the Shared Areas; and

- (d) a non-exclusive right to use the Board Inclusions (where relevant).
- (2) The Occupant acknowledges that he or she will not acquire an estate or any other proprietary interest in the Room or the Property.
- (3) The Occupant agrees that the Grantor will not be liable for any loss or damage to the Occupant's personal items, furniture, property or other goods the Occupant brings into the Room or the Property.

5. Responsibilities of Grantor

The Grantor must:

- (1) ensure the Property is clean, in a good state of repair and reasonably secure at the Start Date;
- (2) maintain the Property in a good state of repair for the Term and respond to requests by the Occupant for repairs and maintenance in a timely manner and having regard to the safety, security and privacy of the Occupant;
- (3) ensure the Property is fitted with adequate locks and security features in order for the Property to be kept reasonable secure throughout the Term;
- (4) take all reasonable steps to enable the Occupant to have quiet enjoyment of the Room;
- (5) treat the Occupant in a courteous and respectful manner;
- (6) provide the Board Inclusions (if any);
- (7) allow third party service providers providing the Occupant with independent living services to have access to the Property at all times for the purpose of providing the services to the Occupant;
- (8) not do anything which would prevent or unreasonably restrict the provision of supports to the Occupant at the Property by third party service providers;
- (9) listen to the Occupant's and Guardian's feedback and work with them to resolve problems quickly;
- (10) promptly notify the Occupant if any of the contact details of the Grantor change;
- (11) provide the Occupant with a written receipt within 10 Business Days of any payment made by the Occupant pursuant to this Agreement;
- (12) ensure the Property complies with all relevant building codes and all relevant laws; and
- (13) undertake its responsibilities under this Agreement in accordance with all relevant laws including the NDIS Act and the Australian Consumer Law.

6. Responsibilities of Occupant

The Occupant agrees to:

- (1) use the Room for residential purposes only;
- (2) take reasonable care to avoid damaging the Room, Shared Areas or any part of the Property;
- (3) keep the Room reasonably clean and tidy;

- (4) respect the other occupants of the Property and their right to quiet enjoyment of their rooms;
- (5) be courteous and respectful towards the Grantor and its personnel at all times;
- (6) notify the Grantor of any maintenance or repair work that needs to be undertaken in the Room by way of the contact person or other process set out at **Item 7** of the **Agreement Details**;
- (7) notify the Grantor of any third party services providers who will access the Property for the purposes of providing supports to the Occupant, including any providers of independent living services;
- (8) notify the Grantor of any planned long term absence from the Property; and
- (9) upon the termination of this Agreement, remove their furniture and belongings from the Property and leave the Room in the condition it was at the Start Date except for fair wear and tear.

7. Occupancy Fee

- (1) The Occupant will pay the Occupancy Fee to the Grantor at the frequency and in the manner set out in **Item 2** of the Contract Details.
- (2) The Grantor will seek the SDA Payment directly from the NDIA.

8. Board Payment

- (1) The Occupant will pay the Board Payment to the Grantor at the frequency and in the manner set out in **Item 5** of the Contract Details.
- (2) Subject to **clause 8(3)**, the Grantor may increase the Board Payment upon providing the Occupant and the Guardian with at least 60 days written notice.
- (3) The Board Payment must not exceed the maximum amount payable by the Occupant pursuant to the NDIS Act and the Board Inclusions must be in accordance with any requirements of the NDIS Act.

9. Increase to Occupancy Fee

- (1) Subject to **clause 9(2)** and upon providing the Occupant and the Guardian with at least 60 days written notice, the Grantor may increase the Occupancy Fee on each Occupancy Fee Review Date in accordance with the agreed method set out in **Item 4** of the **Agreement Details**.
- (2) The Occupancy Fee payable each fortnight must not exceed the maximum amount payable by the Occupant pursuant to the NDIS Act.

10. Bond

- (1) If applicable, the Occupant must pay the Bond to the Grantor on or before the Start Date.
- (2) The Grantor will hold the Bond on behalf of the Occupant during the Term and will return the Bond to the Occupant, less any amount the Grantor is entitled to deduct from the Bond pursuant to **clause 10(3)**, within 30 days of the expiry or termination of this Agreement.
- (3) The Grantor may deduct from the Bond:
 - (a) any amount owing and payable to the Grantor pursuant to this Agreement at the time of the termination or expiry of the Agreement; and

- (b) an amount reasonably necessary to repair any damage to the Room and otherwise return it to the condition it was at the Start Date except for any fair wear and tear.

11. Other occupants at Property

- (1) The Grantor warrants that prior to entering into this Agreement it has disclosed to the Occupant and the Guardian the number of other occupants currently residing at the Property and, except where restricted by law, any reasonable details of these occupants requested by the Occupant or Guardian.
- (2) The Grantor must notify the Occupant of any processes or policies, or any changes to processes or policies, in relation to its acceptance of new occupants at the Property.
- (3) The Grantor must notify the Guardian and seek the Occupant's consent prior to permitting any person other than those disclosed to the Occupant and Guardian pursuant to **clause 11(1)** to reside at the Property.
- (4) The Occupant must not unreasonably withhold his or her consent under **clause 11(3)**.
- (5) It will not be unreasonable for the Occupant to withhold his or her consent under **clause 11(3)** on the basis that the Occupant reasonably believes that the person who the Grantor proposes to grant a right of occupancy at the Property will pose a risk to the health, safety or wellbeing of the Occupant if they were to reside at the Property.

12. House Rules

- (1) The Occupant must comply with the House Rules (if any).
- (2) The Grantor must notify the Occupant of:
 - (a) the process by which the House Rules are amended; and
 - (b) any amendments made to the House Rules from time to time.
- (3) Notwithstanding the process in **clause 12(2)**, prior to the introduction of any House Rules or change to the existing House Rules, the Grantor must consult in good faith with the Occupant and Guardian in relation to the proposed House Rules or proposed change to the House Rules.

13. Alterations to the Property

The Occupant must not make any alterations, additions or improvements to the Property including the Room without the Grantor's prior consent.

14. Inspections and Access

- (1) The Grantor, its agents and subcontractors may access the Room from time to time for the reasons set out in the table below provided the Grantor provides the Occupant with the corresponding notice.

Reason access required	Required notice
In an emergency or to carry out or inspect emergency repairs	No notice
To carry out general repairs and maintenance	24 hours
To carry out any works including structural works or property upgrades	48 hours

To show the Room to a prospective occupant after notice to terminate has been given	48 hours
To carry out inspections	48 hours

- (2) The Grantor may access the Shared Areas at any reasonable time for the purpose of:
- (a) carrying out repairs, maintenance and upgrades;
 - (b) providing any of the services at **Item 6** of the **Agreement Details**; and
 - (c) carrying out inspections,
- without providing notice to the Occupant.

15. Statutory Outgoings and connection charges

The Grantor is responsible for the payment of all statutory outgoings including general rates, water and sewerage rates, land tax and connection charges for any Board Inclusions.

16. Privacy

The Grantor must:

- (1) comply with the Australian Privacy Principles in its collection, use, disclosure and handling of any Personal Information of the Occupant;
- (2) promptly notify the Occupant and Guardian in writing of any actual or suspected breach of its obligations its obligations under **clause 16(1)**.

17. Insurance

The Grantor must effect and maintain with a Prescribed Insurer during the Term all insurance which a prudent owner and operator would maintain when providing accommodation of a similar nature to the Room including:

- (1) home and contents insurance for the full replacement value of the Property; and
- (2) public liability insurance where this is not included in the home and contents insurance.

18. Complaints and Dispute Resolution

- (1) The Grantor must inform the Occupant of its complaints and dispute handling processes at the time of entering into this Agreement.
- (2) If the Occupant wishes to provide feedback or make a complaint in relation to the Room, another occupant or any matter concerning the Property generally, the Occupant may contact the person identified in **Item 8** of the **Agreement Details**.
- (3) Where the Occupant is not satisfied or does not want to talk to the person identified in **Item 8** of the **Agreement Details**, the Occupant may contact the NDIA by phoning 1800 800 110, visiting one of their offices in person or visiting ndis.gov.au for further information.

19. Termination

19.1 Termination for any reason

- (1) The Occupant may terminate this Agreement at any time without cause and without needing to provide reasons by giving the Grantor 60 days' written notice.
- (2) The Grantor may terminate this Agreement at any time without cause by giving the Occupant and the Guardian 90 days' written notice.

19.2 Termination for Default

A party may terminate this Agreement by providing written notice to the other party where the other party (**'Defaulting Party'**) is in breach of a provision of this Agreement, where that breach:

- (1) if capable of being remedied, is not remedied within 30 days of the Defaulting Party being provided with notice to do so (**'Remedy Period'**), and in such event, termination will take effect on the day after the last day of the Remedy Period; or
- (2) is not capable of being remedied and in such event, the termination will take effect immediately upon provision of the notice to the Defaulting Party.

19.3 Grantor to confirm termination with Guardian

Where the Grantor has received a notice to terminate from the Occupant, the Grantor must contact the Guardian to ensure that the Guardian is aware of the purported termination.

20. General

20.1 Variation

This Agreement may only be varied by the written agreement of the parties prior to the expiration of the Term.

20.2 Conflict of interest

The Grantor agrees that prior to the date of this Agreement, it disclosed to the Occupant and Guardian any actual and potential conflicts of interest in relation to other services provided to the Occupant. In particular, the parties acknowledge that the Grantor has the affiliation described in **Item 9** of the **Agreement Details** with the provider (if any) of independent living services at the Property.

20.3 Entire agreement

This Agreement comprises the entire agreement between the parties in relation to its subject matter and supersedes any prior representations, negotiations, writings, memoranda and agreements between the parties on that subject matter.

20.4 Notices

- (1) Any notice, including any other communication, required to be given or sent to either party under this Agreement must be in writing and delivered or sent (as applicable) to the relevant address for the party as specified in **Item 8** of the **Agreement Details**. A notice will be deemed to have been given:
 - (a) if delivered by hand, on delivery;
 - (b) if sent by prepaid mail, on the expiration of three days after the date on which it was sent; or
 - (c) if sent by electronic mail, on the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address,and if given in two or more ways, on the first of paragraphs (1) to (3) occurring.
- (2) The Grantor must notify the Occupant and Guardian within 5 Business Days of any change to any of the contact details for the Grantor in **Items 7** or **8** of the **Agreement Details**.

20.5 Survival of clauses

Clauses 10 and **16** will survive the expiration or earlier termination of this Agreement.

SCHEDULE 1

Ownership of furniture in room

Owned by Occupant	Owned by Grantor

SCHEDULE 2

House Rules

DATE OF THIS AGREEMENT

Must be dated on the date the last party signs the Agreement or, if signed counterparts of the Agreement are exchanged, the date of exchange.

SIGNED for and on behalf of the)
OCCUPANT by a delegate of the)
PUBLIC TRUSTEE AND GUARDIAN:)

.....
Signature of Guardian

.....
Print name

Date

SIGNED by or for and on behalf of)
)
)

.....
Signature of director/ authorised officer/ individual*
*DELETE whichever is not applicable
(see note below)

.....
Signature of second authorised officer*
*only use if Incorporated Association
(see note below)

.....
Print name

.....
Print name

Date:

Date:

Note:

Date: Must be dated on the date the last party signs the Agreement or, if signed counterparts of the Agreement are exchanged, the date of exchange.

Company: Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Contractor's constitution.

Individual: Must be signed by the individual Support Coordinator and witnessed.

Incorporated Association: Must be signed in accordance with the Support Coordinator's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.