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Service Agreement

We provide a range of services to clients in their homes for a fee.

This Agreement:

1. Sets out the terms and conditions regulating the relationship between you and us for the provision of the agreed Services.
2. Is made up of the following parts which constitute a legally binding agreement.

Agreement Details

This is where we include details about you and the Services you will receive.

Signing Page

This is where you and your Guarantor (if any) need to sign.

Part A Terms and Conditions

This sets out the general terms and conditions of this Agreement, including details of how Services will be provided and how we will work with you.

Part B Definitions

These are the definitions of the capitalised terms in this Agreement.

Part C Payment Guarantee

If applicable, this is the basis upon which a Guarantor agrees to make payments if you don't.

Part D Schedule of Fees

These are the current Fees for the Services which you must pay.

AGREEMENT DETAILS

Date of this Agreement

Client Details

Name (you)

Contact Details	Service Address	
	Phone	
	Email	

Date of Birth

Representative	Full Name	
	Address	
	Phone Numbers(s)	
	Email	
	Authority (e.g. EPOA)	

Client's Guarantor Details

Name

Driver's licence no.

Contact Details	Address	
	Phone	
	Email	

Company Details

Name (we/us)	The Smart Set Pty Ltd trading as Acquaint
ACN/ABN	42 658 376 535

Services

	We will work with you to identify relevant personal support services based on your needs and wants and provide agreed services.
Services	You can alter the Services by request. Any change will apply as soon as is practicable (generally we will require at least 24 hours' notice). If the Services change, the Fees you are required to pay will be adjusted accordingly.

Fees

Service Fee	As set out in the Schedule of Fees.
Cancellation Fee	Full shift amount if less than 24 hours notice.
Interest on Overdue Fees	At the interest rate prescribed from time to time under the <i>Penalty Interest Rates Act 1983</i> (Vic).

Timing of Payments and Notice Requirements

Payment Terms	2 days from date of invoice.
Payment Method	Direct debit unless another payment method is agreed.
Cancellation Notice Period	We require at least: 24 hours' prior notice to cancel a Service.

SIGNING PAGE

Acceptance of Services

This Agreement will apply, as if you had signed it, if you accept Services in accordance with this Agreement.

Opportunity to obtain independent advice

You are entitled to make informed decisions, so please let us know if you need more information about this Agreement, including translation assistance. On signing this Agreement or accepting Services, you will be taken to have acknowledged that you have had the opportunity to have this Agreement explained to you, ask questions and obtain independent advice (including legal and financial advice) and that you are satisfied with all elements of the manner in which Services will be provided.

Signed by the Client or their authorised representative

FULL NAME

SIGNATURE

REPRESENTATIVE'S AUTHORITY (EG A DULY APPOINTED
POWER OF ATTORNEY, GUARDIAN, ADMINISTRATOR,
FINANCIAL MANAGER)

DATE

In the presence of

FULL NAME

WITNESS SIGNATURE

DATE

Signed by the authorised representative of the Company

FULL NAME

SIGNATURE

DATE

Supporting Guarantee and Indemnity

Each Guarantor must sign below to acknowledge that:

- they have read, understood and agree to be bound by the Payment Guarantee in **Error! Reference source not found.**;
- they understand that:
 - as a Guarantor they may have to pay us any amounts the Client fails to pay, including any unpaid amounts at the time this Agreement ends;
 - we can require payment from the Guarantor without first seeking to recover unpaid amounts from the Client or their estate;
 - the Guarantor's obligations will continue until all amounts payable by the Client have been paid; and
 - if this Agreement is varied or terminated, the Guarantor will continue to be responsible for making any payments due to us under the Payment Guarantee;
- they have considered the Client's ability to pay us; and
- they have had sufficient time and opportunity to have the Payment Guarantee explained to them, to ask questions and to obtain independent and advice, including legal and financial advice.

Signed by the Guarantor in the presence of

GUARANTOR FULL NAME

SIGNATURE

DATE

WITNESS FULL NAME

SIGNATURE

DATE

PART A TERMS AND CONDITIONS

A1 Assessment and Service Plan

- (1) We will undertake an initial assessment and consult with you to complete a Service Plan that contains your assessed needs. Your Service Plan may include:
 - (a) input from your authorised representatives, as well as your general practitioner; and
 - (b) an evaluation prepared by others for you.
- (2) We may review your Service Plan with you.
- (3) You acknowledge that in preparing and reviewing your Service Plan we rely on you to ensure, and you are ultimately responsible for ensuring, that:
 - (a) the Services are suitable for you; and
 - (b) you consult with your general practitioner and other health professionals, including in respect of the suitability of the Services.

A2 Services we will provide

- (1) We will provide you with the Services on each agreed Service Day.
- (2) You must fully disclose to us any matter which relates to or may affect us providing Services to you. For example, if you believe that the Services may pose a risk or danger to you, you must immediately advise the attending personnel of your concerns.
- (3) We are not obliged to provide the Services if:
 - (a) we have concerns about the suitability of the Services;
 - (b) for any reason beyond our control, including an Emergency Event, we are no longer able to accommodate you on an agreed Service Day; or
 - (c) Services are suspended in accordance with this Agreement.
- (4) We are not obliged to compensate you if we cancel a Service Booking or a Service Day.

A3 Service Manager

- (1) Your Service Manager will work with you to arrange your Services.
- (2) Your Service Manager will answer any questions you have about the scope, suitability or quality of the Services you receive.

A4 Service delivery

- (1) The Services will be provided to you in a prompt and diligent manner, at a designated or agreed time, by attending personnel selected by us.

- (2) You acknowledge that from time to time, we may need to change the personnel who provide the Services and/or the times at which the Services are provided. We will provide you with as much notice as possible.
- (3) You must ensure that you are at your Home at the agreed times, unless we agree to provide Services while you are absent. If we are unable to provide Services because you are absent and you have not cancelled a Service Day in accordance with this Agreement, you must still pay the Service Fee applicable to the attendance.
- (4) You acknowledge that nothing about this arrangement entitles you to a priority or an entitlement to a funded Home Care Package.

A5 Providing a safe environment

- (1) You must assist us to ensure that attending personnel can work in a safe environment. For example, you must:
 - (a) ensure your Home is safe to enter and free of hazards;
 - (b) tell us about any hazards in your Home;
 - (c) ensure there is unobstructed access and adequate space for personnel to work in;
 - (d) not ask personnel to engage in hazardous manual tasks;
 - (e) ensure equipment in your Home is safe and well maintained and use equipment we provide to assist personnel, such as lifting equipment;
 - (f) treat personnel with dignity and respect;
 - (g) not abuse, bully or harass personnel or discriminate against them; and
 - (h) co-operate with personnel.
- (2) You must assist us to ensure that we can provide a safe working environment by way of taking steps to ensure that your relatives, friends and visitors are aware of and comply with our expectations of you.

A6 Who will provide the Services?

- (1) Services will be provided to you in full or in part by us or by a sub-contractor we consider suitable. If we engage any sub-contractors to provide Services to you, you are required to pay us for those Services.
- (2) You acknowledge that Services may be supplied by various service providers and personnel from time to time. We make no warranties or guarantee that Services will be provided by the same person or service provider.
- (3) In order to allow for efficient Services, you must not engage another service provider to provide the same or substantially similar services to you at your Home, unless we agree on a suitable service arrangement.

A7 Cancellation and suspension of Services

- (1) You can cancel an agreed Service Day of the Service Booking by way of providing us with a Cancellation Notice. If you do not provide us with a Cancellation Notice, the Cancellation Fee is payable for that Service Day.
- (2) We can suspend the Services with immediate effect for a period we determine is reasonable as notified to you if:
 - (a) an Emergency Event occurs;

- (b) your needs or circumstances change and we determine that we cannot safely provide the Services;
 - (c) we determine that your conduct or access to your Home or a person poses an unacceptable risk to the health, safety and/or the wellbeing of personnel; or
 - (d) there are unpaid Fees.
- (3) If we cancel a Service Day, we will apply a credit or refund any Fees paid in advance for the Services we do not provide on the cancelled Service Days.

A8 Equipment

- (1) If you want and are assessed as requiring aids and equipment, we may be able to supply them for an additional fee or charge or we may be able to assist you to purchase or hire these items from someone else. If someone else assesses you or provides you with aids or equipment we will not verify the assessments they make or the information you provide them, and we make no representations that we are the suppliers of these items and you indemnify us against any claims you may have or losses or damages you incur in connection with those items.
- (2) Assessments you receive may require equipment to be of a specific type or specification, based on your identified needs. This may mean that equipment that looks similar may not reflect the assessments you have obtained. On selecting equipment, you are responsible for ensuring it meets your initial and ongoing requirements. This may mean that you need to have the suitability of equipment reassessed.
- (3) You use equipment at your own risk. Accordingly, it is important you seek advice and guidance on the use of equipment. This may include trailing and reviewing equipment with your occupational therapist to ensure equipment is suitable, can be correctly used and does not present a significant risk to you. If want us to assist you with the use of equipment we will let you know if any additional fees apply and obtain your agreement to those fees before providing you with the requested assistance.
- (4) You must comply with the terms upon which a third party provides equipment and you must maintain any equipment you purchase. If the equipment is damaged (other than by attending personnel), you are responsible for the repair costs and/or replacement of the equipment (as notified), unless a third party is required to attend to do that. You must also enforce any rights you have against the supplier or manufacturer should the equipment be faulty or defective.
- (5) If we decide that you no longer need equipment provided or arranged by us or this Agreement ends you must promptly make equipment we nominate available for us to collect or return (unless you have paid for the equipment in full or you are responsible for the equipment). If you fail to do so, you must pay us any costs we are charged by a third party and the costs of replacing the equipment.

A9 Emergencies

- (1) We are not a medical service provider. If our personnel are present in the event of a medical emergency, ambulance support will be sought. You will be responsible for the costs of the ambulance and any medical treatment you are provided with.
- (2) If you require urgent care, please contact your general practitioner or dial 000.

A10 Service Fee

- (1) You must pay the Service Fees for each day or part day you receive Services in the period of the Service Booking.
- (2) The Service Fee must be paid to us in accordance with the Payment Terms.

- (3) If we cease providing you with Services, your Service Fees will be calculated up to the last date Services were provided, with any necessary adjustment to be made as soon as practicable.

A11 Costs relating to Emergency Events

- (1) You acknowledge that if an Emergency Event occurs we may charge you Emergency Event Costs.

A12 Changes to Service Fee

- (1) We will review and adjust the Fees annually with effect from 1 July each year and we will provide you with at least 7 days notice of the change.
- (2) If your Services change, we will adjust the Service Fee accordingly to account for any addition or reduction in the Services.
- (3) We may also review and adjust the Service Fee by way of providing you with at least 7 days notice of a change.

A13 How to pay your Fees

- (1) The Fees must be paid to us without deduction or set-off.
- (2) Payments to us under this Agreement must be made in accordance with the Payment Method. Non payment or late payment may result in Services being suspended and/or you incurring additional costs.

A14 Interest on late payments

- (1) Any money payable to us under this Agreement which is not paid by the due date will attract interest at the Prescribed Rate for the period for which payment is outstanding, compounding on the sooner of:
- (a) the date the relevant payment is reviewed or again charged; and
 - (b) each 7 days.
- (2) We may waive the payment of interest in writing.

A15 GST

- (1) Unless otherwise stated or prescribed by law, each amount payable by you in respect of a taxable supply is expressed as a GST free or exclusive amount.
- (2) Any GST payable on or in connection with a taxable supply under this Agreement is payable by you, in addition to the base amount, with payment to be made at the same time and in the same manner as the relevant payment (as notified).

A16 Costs on default

- (1) If you breach this Agreement, you must pay or reimburse us on demand all costs, charges and expenses we reasonably incur as a result of the breach, including any debt collection costs.

A17 When this Agreement ends

- (1) This Agreement will end on the End Date.
- (2) If you wish to receive further Services after the End Date, we may agree to continue providing such Services at our sole discretion. In that event, the terms of this Agreement will continue on the basis that a new notified End Date applies unless we require you to enter into a new agreement.
- (3) You can end this Agreement by giving us at least 7 days' written notice of your intention to permanently stop receiving the Services or any shorter period of notice we accept prior to a confirmed Service Booking or Service Day.

- (4) We can elect to end this Agreement in the following circumstances:
- (a) if you do not commence the Services on the Start Date;
 - (b) if your needs or circumstances change and we determine that we can no longer safely provide the Services;
 - (c) if we determine that your conduct or access to your Home poses an unacceptable risk to the health, safety and/or the wellbeing of personnel;
 - (d) if you have not paid any Fee due to us under this Agreement by the due date;
 - (e) if you fail to conduct yourself in accordance with the requirements of this Agreement;
 - (f) if we provide you with at least 7 days' written notice of our intention to cease providing you with the Services for any reason; or
 - (g) any other right of termination by us arises under common law.

A18 Consequences of this Agreement ending

- (1) If you end this Agreement you must pay the Service Fee for each Service Day or part Service Day under your Service Booking unless you have terminated the Agreement by way of having provided us with the prior notice specified in this Agreement.
- (2) On the termination of this Agreement, you must pay us all outstanding Fees and any other charges due and payable to us under this Agreement.
- (3) Termination of this Agreement for any reason does not affect one party's right of action against another party in respect of any breach of this Agreement before the termination.
- (4) The provisions of this Agreement dealing with payments, releases, indemnities, limitation of liability, privacy and consequences of termination survive the end of this Agreement and may be enforced after this Agreement has ended.

A19 Dealing with your representatives

- (1) We may consult with your authorised representatives. On request, you must provide us with sufficient written evidence of the authority of your representatives to deal with or manage your affairs (or they must do so on your behalf).

A20 Privacy

- (1) Personal information is managed in accordance with our privacy policy. We may provide you with other policies concerning our handling of personal information which should be read in conjunction with this Agreement.
- (2) Your personal and health information will be used by us for the purposes of providing or procuring Services, as well as to enable internal administration, training, assessments, reviews and investigations into and notification of complaints, serious incidents and reportable events and any other use permitted by law.
- (3) We may need to disclose personal and/or health information to third parties who are concerned with providing or procuring Services, including sub-contractors. Disclosures made to third parties, including health professionals, advisors and regulatory authorities. If we disclose your personal information, we will seek to ensure your information is handled appropriately.

- (4) We may need to request or access personal information about you from third parties to allow services to be provided to you, including your family, carers, representatives, general practitioner, medical specialists, allied health providers and others involved in your care. You authorise us to request and access such information.
- (5) If you fail to provide us with the personal and/or health information we ask for, this may affect the Services we provide.
- (6) You must contact us if you would like to see any of your personal and/or health information or if you have further questions about the handling of your personal and/or health information. You may also make a complaint about our handling of your personal and health information to the Office of the Australian Information Commissioner (www.oaic.gov.au).

A21 Concerns and complaints

- (1) If you have a concern or complaint concerning us, the Services we provide or our handling of personal and health information, you should contact us. Your complaint will be handled fairly and promptly.
- (2) You are also entitled to enforce your rights under the Australian Consumer Law. The contact details of the consumer protection agency in your State/Territory can be found on the Australian Competition & Consumer Commission website (www.accc.gov.au).

A22 Assignment

- (1) We may assign or novate all or part of our interest, rights and obligations under this Agreement to a third party we select, by way of giving written notice of the change to you.
- (2) If notice is given under clause A22(1), references in this Agreement to 'us' or 'we' will be taken to be references to the notified assignee, as if named in this Agreement, with the change to take effect from the date specified in the notice.

A23 Variation of this Agreement

- (1) In the event of a change under this Agreement, including to the Services and/or the Fees under this Agreement, this Agreement will be deemed to have been varied to accordingly.

A24 Release and limitation of liability

- (1) You agree to receive the Services at your own risk. You release to the full extent permitted by law us, and our agents, servants, contractors and staff, in the absence of negligence on our part, from all claims resulting from any accident, damage or injury occurring in connection with the provision of the Services.
- (2) You also indemnify us against all claims, damages and expenses arising from loss, damage or injury to property or person caused or contributed to by you, including as a result of your failure to provide a safe environment for attending personnel.
- (3) Except to the extent you are entitled to the benefit one or more of the Consumer Guarantees, we do not provide any guarantees or warranties regarding the suitability, fitness or timing of the goods and/or services provided under or in connection with this Agreement. To the extent permitted by law, our liability for a breach of a Consumer Guarantee and any other claim you may have under or in connection with this Agreement concerning inadequate or unsuitable services is limited to (at our option):
 - (a) supplying the goods or service the subject of the claim again; or
 - (b) paying the cost of having the goods or service the subject of the claim supplied again.

A25 General

- (1) No time or indulgence granted by us nor any failure on our part to take action in respect of any breach of your obligations set out in this Agreement constitutes a waiver of any of the provisions of this Agreement with respect to any subsequent or continuing breach.
- (2) If any one or more of the provisions of this Agreement are held to be illegal, void or voidable whether at your option or otherwise, such provisions must be severed from the remaining provisions, which remain binding and enforceable against you.
- (3) If there is more than one Client, each Client is jointly and severally liable and responsible for the obligations of the Client under this Agreement, including the making of payments to us.
- (4) This Agreement is governed by the laws of the State or Territory where the Services are provided.
- (5) This Agreement is the entire agreement of the parties about the subject matter of this Agreement and supersedes any prior representations, negotiations, arrangements, understandings or agreements (other than any agreements, acknowledgements or confirmations issued or entered into pursuant to this Agreement).
- (6) Any person who executes this Agreement on behalf of the Client warrants that they are authorised to bind the Client to this Agreement, and all parts of this Agreement apply to the Client, irrespective of any limitations in the authority of the representative or any disclosure made to us about the authority of the representative.
- (7) This Agreement may be executed in any number of counterparts and all the counterparts together constitute one and the same instrument. This Agreement may be executed by hand and delivered by email to the other party whereby it will be valid and binding.

PART B DEFINITIONS

In this Agreement:

- (1) **Agreement Details** means the details at the start of this Agreement;
- (2) **Agreement** means this agreement for the provision of Services and includes the cover page(s), the Agreement Details, each Part, the Service Plan and policies provided to you in accordance with this agreement and any Variation;
- (3) **Australian Consumer Law** means the law set out in in Schedule 2 of the Competition and Consumer Act 2010 (Cth);
- (4) **Cancellation Fee** means the fee payable by you if you cancel a Service Day without having provided a Cancellation Notice, as set out in the Agreement Details or the Schedule of Fees;
- (5) **Cancellation Notice** means prior notice in writing, for a period of no less than the minimum notice period specified in the Agreement Details, for cancelling a Service Day;
- (6) **Client** means the recipient of the Services, as specified in the Agreement Details and 'you' and 'yours' have a corresponding meaning;
- (7) **Company** means the organisation specified in the Agreement Details or any notified any assignee and 'we', 'us' and 'our' have a corresponding meaning;
- (8) **Consumer Guarantees** means the guarantees set out in Division 1 of Part 3.2 of the Australian Consumer Law;
- (9) **CPI** means the Consumer Price Index (All Groups, of the capital city in the State or Territory in which the Services are provided), as published by the Australian Bureau of Statistics or its successor, and includes any index published in substitution for the Consumer Price Index;
- (10) **Emergency Event** means an event, or series of events, such as an outbreak of contagious disease, fire, flood, war, strike or riot or act or event of a similar nature which may affect the Services, you or personnel who deliver all or part of the Services;
- (11) **Emergency Event Costs** means costs incurred by us as a result of an Emergency Event including but not limited to consumables to manage infection control and personal protective equipment for you and/or personnel;
- (12) **End Date** means the date of the last agreed Service Booking or any earlier date on which this Agreement ends;
- (13) **Fee** means a fee or charge payable by you under this Agreement, including the Service Fee, the Emergency Event Cost and/or the Cancellation Fee, as the context permits;
- (14) **GST** means the goods and services tax levied under the GST Act or any other goods and services tax, value added tax, consumption tax or tax of similar effect levied from time to time;
- (15) **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (16) **Guarantor** means the person or people specified as the guarantor(s) in the Agreement Details;

- (17) **Home** means the service address specified in the Agreement Details where we will provide you with Services or if an alternate address is agreed, the alternate address;
- (18) **Part** means a section of this Agreement with the heading 'Part';
- (19) **Payment Method** means the manner in which payments are to be made to us under this Agreement, being as set in the Agreement Details or in any other manner we agree from time to time;
- (20) **Payment Terms** means the manner in which the Service Fee is to be paid, as set out in the Agreement Details or in the case of an amount which is not payable at regular intervals, on demand and on this Agreement ending, means the date this Agreement ends;
- (21) **Prescribed Rate** means the rate of interest specified in the Agreement Details;
- (22) **Schedule of Fees** means the schedule of fees set out in Part D including any changes to those fees from time to time;
- (23) **Service Booking** means an agreed scheduling of Services on Service Days, starting on the Start Date and ending on the End Date;
- (24) **Service Day** means a day during the period of the Service Booking that we have agreed to provide you with the Services;
- (25) **Service Fee** means the fees and charges payable to us for the provision of Services, being as at the date of this Agreement, the amount specified in the Agreement Details;
- (26) **Service Manager** means the person we nominate to oversee the provision of Services to you, as advised to you;
- (27) **Service Plan** means your plan setting out the Services you will receive that we develop in consultation with you and thereafter as updated from time to time;
- (28) **Services** means the agreed services we are to provide to you at private cost under this Agreement;
- (29) **Start Date** means the date of the first agreed Service Booking; and
- (30) **Variation** means any change made pursuant to or in accordance with this Agreement and any other variation agreed by us and you or which you are taken to have agreed to.

PART C PAYMENT GUARANTEE

C1 Guarantor's obligations

In consideration of the Company entering into this Agreement with the Client, the Guarantor:

- (1) unconditionally guarantees that the Client will perform all of the Client's obligations arising under or in connection with this Agreement;
- (2) must pay the Company on demand any money owing or payable to the Company by the Client; and
- (3) indemnifies the Company from and against all direct and indirect costs, losses and damages the Company suffers or incurs in connection with:
 - (a) the Client failing to comply with the Client's obligations under this Agreement; or
 - (b) this Agreement being or becoming unenforceable against the Client,but excluding any amount which the Client cannot be required to pay the Company under an applicable law (assessed as if there is a binding agreement in place).

C2 Liability not affected

The Guarantor's liability is not affected by:

- (1) the Company granting the Client or any Guarantor any time or other indulgence;
- (2) the Company agreeing not to sue the Client or any Guarantor;
- (3) the death of the Client;
- (4) the termination of this Agreement;
- (5) any assignment or Variation of this Agreement; or
- (6) any provision of this Agreement being unenforceable.

C3 Covenants

The Guarantor agrees:

- (1) not to seek to recover any money from the Client by way of reimbursement for payments made by the Guarantor to the Company until the Company has been paid in full;
- (2) not to prove, claim or exercise voting rights if a trustee in bankruptcy is appointed in respect of the Client for any amount which the Company has demanded from the Guarantor until the Company has been paid in full; and
- (3) to pay the Company any money which the Company is required to refund to the Client's trustee in bankruptcy as preferential payments received from the Client.

C4 Reinstatement of guarantee

If any payment or other transaction in connection with this Agreement including this Part C is void, voidable, unenforceable or defective or claimed to be so and that claim is upheld:

- (1) the liability of the Guarantor is to be what it would have been if the payment or other transaction had not been made; and
- (2) immediately after the Company requests it, the Guarantor must do everything necessary to put the Company back into the position it would have been in had the payment or other transaction not been made.

C5 Assignment

The Company may assign its rights under this Part C to any person to whom it assigns its interest in this Agreement without the consent of any other party.

C6 Joint and several liability

If there is more than one Guarantor, the guarantee and indemnity in this Part C binds them jointly and each of them individually.

PART D SCHEDULE OF FEES

Refer attached fee schedule provided in conjunction with this document.