

# Terms and Conditions

Please read these Terms and Conditions (“Terms”) carefully as they contain important information about your legal rights, remedies and obligations.

By accessing or using the Smile Care Agency Platform, you agree to comply with and be bound by these Terms.

Last Updated: 31/03/2024.

These Terms constitute a legally binding agreement (“Agreement”) between you and Smile Care Agency (as defined below) governing your access to and use of the Smile Care Agency platform, including any subdomains thereof, and any other websites through which Smile Care Agency makes its services available (collectively, “Site”), our any mobile, tablet and other smart device applications, and application program interfaces (collectively, “Application”) and all associated services (collectively, “Services”).

The Site, Application and Services together are hereinafter collectively referred to as the “Platform”. All other Policies applicable to your use of the Platform are incorporated by reference into this Agreement.

When these Terms mention “Smile Care Agency,” “we,” “us,” or “our,” it refers to Smile Care Agency Ltd (“Smile Care Agency”), registered address: *272 Bath Street, Glasgow, G2 4JR, Scotland*.

Our collection and use of personal information in connection with your access to and use of the Platform is described in our Privacy Policy. Any and all payment processing services through or in connection with your use of the Smile Care Agency Platform (“Payment Services”) are provided to you by one or more Smile Care Agency Payments entities (individually and collectively, as appropriate, “Smile Care Agency Payments”) as set out in the Payments Terms of Service (“Payments Terms”).

## Definitions of terms:

When the following words with capital letters are used in these Terms, the definitions below will apply:

**Account Manager:** A Care Coordinator who is Your main point of contact as an existing Client for account related matters.

**Bank Holiday:** means a bank holiday in England and Wales, details of which can be found at <https://www.gov.uk/bank-holidays>.

**Bank Holiday Rate:** Bank Holiday rate is twice the non Bank Holiday Rate on each carer’s rate, unless agreed otherwise. You will be opted in to paying the bank holiday rate for any care services occurring on a Bank Holiday.

**Cancellation:** The terms concerning cancelled Care Services, paused and terminated contracts.

**Care Advisors:** Trained office based advisors who are Your first point of contact regarding provision of home care, accessible typically by phone and email.

**Care Rate:** The amount to be paid on an hourly, day, sleep in, waking night, live-in or any other on the basis for the delivery of a Care Services.

**Client:** The term we use to define the care seeker, service user, end user or individual receiving Care provided by Professional Self-Employed Carers.

**Care Service:** Any period of time where a Professional Self-employed Carer is delivering care on behalf of a care seeker.

**Carer On boarding:** The process in which Professional Self-employed Carers move through before becoming available to deliver their services through the Smile Care Agency platform. This includes right to work, Enhanced DBS checks, Training Certs, and any other document check required to complete their Vetting process.

**Carer Profile:** The online profile of each Professional Self-employed Carer that exist in the Search, detailing a short biography, care experience, interests, disclosure and barring service check and client reviews.

**Client On boarding:** The process through which You provide your needs requests and how they might be served by Smile Care Agency. This typically involves a phone discussion with a Care Advisor followed by matching of care needs to Carer on our Platform.

**Complaints:** The manner in which You can make a complaint to Us and how we will process, investigate and respond.

**Continuous Quality Improvement:** The processes and activities that we engage to improve the quality and effectiveness of our service. For example, reviews and feedback.

**Consent:** The client's capacitors agreement to receive care service (or other assistance) communicated via written, verbal or other readily understood method of communication.

**Direct Payments:** The funding mechanism provided by Local Authorities which permits Clients an allocated budget for Care Service.

**Disclosure and Barring Service Check:** A background criminal records check of the Adult and Children's Barred lists that is a statutory vetting requirement.

**Fees:** The Monies due to Us in return for the Services provided to You by a Professional Self-employed Carer that support the delivery of care through the Smile Care Agency platform.

**Frequently Asked Questions (FAQs):** An up to date list of questions and answers that address common concerns and queries

**Smile Care Agency Ltd:** Our corporate entity which is responsible for introductory Care Service with our registered Office at 272 Bath Street, Glasgow, G2 4JR, Scotland.

**Introductory Care Service:** Our non-regulated business model. Under this Introductory Care Service, Professional Self-employed Carers provide Care Service directly to Clients without further involvement of Smile Care Agency in relation to care management. The provision of Care Plans, rotas and oversight are a collaboration between the Professional Self-employed Carer, the Client and the family.

**Live in Care:** The type of care where a Professional Self-employed carer resides on a temporary basis in the client's home providing 24 hour care.

**Care Training:** The minimum requirements of training that Professional Self-employed Carers delivering Care Services using our Platform must satisfy. These trainings are reviewed annually.

**Mental Capacity:** For the purposes of the Mental Capacity Act (2005), a person lacks capacity in relation to a matter if at the material time is unable to make a decision for themselves in relation to the matter because of an impairment of, or disturbance in the functioning of, the mind or brain.

**Personal Care:** Provision of intimate and sensitive assistance in the Activities of Daily Living, ranging from but not confined to companionship to personal hygiene, washing and dressing and nutrition.

**Personal Health Budgets:** The funding mechanism provided by Clinical Commissioning Groups which permits Client's allocated budget for Care and other support for a long term condition.

**Power of Attorney:** The legal role fulfilled by the nominee of the client in relation to finances and health and welfare.

**Professional Self-Employed Carers:** The term we use for carers providing Care Services through the Smile Care Agency Platform.

**Public Liability Insurance:** Insurance that covers the cost of claims made by members of the public for incidents that occur in connection with business activities. Public liability insurance covers the cost of compensation for personal injuries and loss of or damage to property.

**Safeguarding:** Ensuring that people live free from harm, abuse and neglect and, in doing so, protecting their health, wellbeing and human rights. Children, and adults in vulnerable situations, need to be safeguarded.

**Self-Employed:** Our Professional Self-employed Carers are Self-Employed for tax purposes in accordance with advice and guidance We have received from employment lawyers, HMRC and other regulatory bodies. All commission fees accounted for by Smile Care Agency accounting processes for the Introductory Care Service.

**Sensitive Personal Data:** Personal information about You and in particular Your racial or ethnic origin, political opinions, religious beliefs or other beliefs of a similar nature, membership of a trade union, medical or physical health or condition, sexuality or the commission or alleged commission of any offence, that is protected by the Data Protection Act 1998.

**Service/s:** The activities provided to you by Professional Self-employed Carers during the course of the contracted period, which include but are not limited to provision of Care Services.

**Schedule:** The timings of Care Services agreed at the outset of the contract and modified in discussion with your Professional Self-employed Carer. Smile Care Agency Care Coordinators will assist with scheduling or carer recommendations if required for the introductory Care Service.

**Statutory Breaks:** Live-in carers are entitled to a 2 hour break in each 24 hours period. See Breaks further down these Terms and Conditions.

**Us, We and Our:** Meaning Smile Care Agency Ltd

**You:** A Client of Smile Care Agency Ltd.

## **1. General Terms of Smile Care Agency Introductory Care Service**

### **1.1 About the Smile Care Agency Introductory Care Service**

Smile Care Agency's Introductory Care Service is classified as an 'introductory agency' in line with CQC guidance. Smile Care Agency provides an online platform and telephone advice from a Care Coordinator to facilitate the process of finding a Professional Self-Employed Carer to support the client in the comfort of their home . Smile Care Agency does not directly supply carers to care seekers, nor does it employ carers or act as a care agency when facilitating introductory care. In line with CQC regulations, Smile Care Agency is not permitted to make changes to the care plan, provide rotas or effect control over the delivery of care.

Smile Care Agency's Introductory Care Service utilises the online platform, allowing self-employed carers and care seekers to connect with one another, communicate and arrange care contracts. This is facilitated through providing services which include but are not limited to:

*Carer Profiles* – A searchable online database of self-employed carers

*Care Messaging* – Communication process allowing Professional Self-employed Carers and Clients to interact with one another securely through Smile Care Agency.

*Carer matching* – via introductory phone and video calls between Professional Self-employed Carers and Clients

*Care Payments* – An online payment system enabling transactions between self-employed carers and care seekers. Payments will only be processed for booked Care Services.

Review and Feedback tools on care provision

### **1.2 Our Service to You**

The Smile Care Agency Introductory Care Service covers the following:

Assessment of Your care needs by Our Care Coordinators via phone and email (if required)

Usage of the Smile Care Agency Platform including the Carer Profiles, Care messaging, Care Payments

Provision of Care Service by a Professional Self-employed Carers

Access to vetted Carer Profiles of Professional Self-employed Carers and matching service

Access to account management through email and live chat for account and billing enquiries

### **1.3 Definition of the Introductory agency service**

Smile Care Agency provides introductory service classified as an 'introductory agency' in line with CQC guidance. Smile Care Agency does not directly supply carers to care seekers. Smile Care Agency does not employ carers, nor does Smile Care Agency act as an employment agency or regulated care provider for this service. In line with CQC regulations for Introductory Agencies, Smile Care Agency is not permitted to make changes to the care plan, provide rotas or effect control over the delivery of care.

### **1.4 Limitations of service**

All the tools provided by Smile Care Agency for the Introductory Care Service are used at the customer's and self-employed carers' own risk and there is no guarantee that these tools will work optimally, not be subject to downtime, or removed from service at any point in time. Smile Care Agency does not accept any liability for losses or damages caused by the temporary unavailability of the service or technical errors.

Smile Care Agency disclaims any liability for controversies, losses, injury, accidents, claims or damages arising out of the engagement of carers or the provision of care services by carers.

## **2. Rules for User conduct and use of service**

### **2.1 Eligibility to use the site and services; representations and warranties**

By registering and using this site you confirm that:

You accept and will abide by our terms and conditions

You are 18 years old or over and have the right to form legally binding contracts under UK law. Under the introductory Care Service, the care contract is between a client and the carer, with the client therefore agreeing to meet all contractual obligations

All the information provided by you on the site and to our advisors is correct and accurate, including any stated care requirements or specific needs. We reserve the right to support the withdrawal of care immediately should any information prove incorrect or inaccurate with the client liable for the statutory notice period

### **2.2 Permitted use**

You are not permitted to use this website other than for the following, private, non-commercial purposes: (i) viewing this website and; (ii) sending genuine enquiries to carers regarding use of their services for your own or a care recipient's care needs (iii) making/reviewing/changing bookings; (iv) checking carer feedback and care plan completion (v) changing billing information and generating invoices where relevant and (vi) communicating with Smile Care Agency representatives by phone, email or live chat to arrange bookings or seek advice.

The use of automated systems, manual copying or software to extract data from this website or Smile Care Agency for commercial purposes, ('screen scraping') is prohibited unless the third party has directly concluded a written licence agreement with Smile Care Agency. Any breach of these terms renders the user liable for damages to be determined in the local jurisdiction.

## **3 Live-in Care Requirements**

### **3.1 Live-in Care Facilities**

Live-in Professional Self-employed Carers have various legal rights which include (without limitation) the following: provision of a separate bedroom for them with suitable bathing and toilet facilities which are clean and in a good state of repair. Carers; require the provision of ample food and clean bedding as well as adequate cleaning materials and personal protective equipment (PPE) to carry out the Service properly.

### **3.2 Live-in Break Provision**

Live-in Professional Self-employed Carers require a minimum 2 hours break per day. This time off must be within daylight hours. If agreed between the Client and the Professional Self-employed Carer at the time of assessment some of these hours may be banked to provide longer periods of time off on fewer days, but the minimum provision must be 14 hours over a 7 day week.

### **3.3 Expenses**

Clients and Professional Self-employed Carers should agree prior to the start of a contract any expense and / or travel arrangements. Carers are advised that they should understand feeding and travel arrangements prior to starting a contract but we advise that all parties understand arrangements.

## **4 Smile Care Agency Professional Self-employed Carers**

### **4.1 Carer selection**

By registering and using Smile Care Agency as a person seeking care you agree it is your responsibility to select an appropriate Professional Self-employed Carer for yourself, your family member, any friend/associate or any other person you are acting for. Smile Care Agency can help you in the process of introducing and recommending carers; however Smile Care Agency will not select a carer for you and the final choice remains yours.

### **4.2 Code of conduct**

You should not discriminate against a carer on the basis of skin colour, nationality, disability, gender or any other potential source of discrimination. In addition, you represent and warrant that you and each member of your household have never been the subject of a complaint, restraining order or any other legal action involved with being arrested for, charged with, or convicted of any criminal offence involving violence, abuse, neglect, theft or fraud, or any offence that involves endangering the safety of others, dishonesty, negligence or drugs, and are not nor have ever been on the sex offenders register or other similar list.

We reserve the right to support the withdrawal of care immediately should We learn of any discrimination against the Professional Self-employed Carer with the client liable for the statutory notice period.

### **4.3 Vetting and background checking of carers**

Smile Care Agency makes reasonable efforts to check the identity and information provided by carers. This includes visual checks of:

Identity documents to confirm the right to live and work in the UK

Stated qualifications and training certificates where available

#### **Existing DBS checks**

On joining the platform, Smile Care Agency will confirm a carer's current DBS status by using the DBS update service. Where carers are not subscribed to the update service, Smile Care Agency performs a new DBS check via an external provider.

Smile Care Agency will facilitate Clients to engage with carers by a Care Coordinator arranging an interview, but clients are also recommended to:

Speak to the carer personally to understand whether they are the correct fit for Your care needs

## **Verify a carers identity via photographic ID**

Requesting proof of experience, training, qualifications, authorisations and suitability for the Client's care needs

## **Following up on references of carers**

### **4.4 Insurance cover**

Clients should ensure that their insurance covers carers working in their home and should verify whether carers have their own independent insurance cover.

### **4.5 Carer contract compliance**

Once you have set up a contract and submitted it to a carer, you are bound by the terms of that contract. You must pay the upfront required monetary amount into the client account which holds carer funds on your behalf for the contract to be active. You must negotiate with the carer regarding any deviations from the contract terms, e.g. time off for leave, illness or personal circumstances.

## **5 Fees and Billing**

### **5.1 Billing Cycle**

You will be billed at the beginning of each week, for the care that will be delivered in the following week, depending on your preferred payment method. Our preferred payment method is direct card payment provided by Stripe and all credit and debit card information is held securely and is PCI compliant. On setting up a contract you will initially be billed for requested care to synchronise with the payment cycle.

### **5.2 Bank Holiday Charges**

You will automatically be subject to a double charge for any Care Service occurring over a statutory bank holiday, as defined by the UK Government: <https://www.gov.uk/bank-holidays>

### **5.3 Payments**

Contracts for work are made between the Client and the Professional Self-employed Carer. By entering a contract as a Client you agree that you have the funds available to pay for the contract value. All payments for work completed must be made via your Smile Care Agency Care account; attempts to pay outside of the Smile Care Agency platform will lead to sanctions not limited to immediate account suspension. Any offers to pay outside of Smile Care Agency, made by either party, must be reported to Smile Care Agency immediately.

### **5.4 Carer Rates**

Carer rates are set by the carer and may be subject to change. Rates should not be changed during a contract agreement. On speaking to a Smile Care Agency Care Advisor, a set package may be suggested which will outline the fee charged to the Client. These fees will supersede the stated rates of a Carer as shown on the Carer Profiles. Any change in rates that are made before the end of a contract must result in the termination of the current contract and a new contract must be agreed.

### **5.5 Fees**

Smile Care Agency fees range from 5% – 8% of stated carers rates. This commission will be added on top of the rate stated on each carer's profile on the Smile Care Agency Carer Profiles and in any rate quoted by a Care Advisor. Smile Care Agency reserves the right to alter the terms of its fee structure at any time.

### **5.6 VAT**

We do not charge VAT on the services charged by the Professional Self-employed Carers.

### **5.7 Direct Payments and Personal Budgets**

If you are paying via Direct Payments or Personal Budgets, please call to speak to a Care Advisor. Payment by Direct Payments or Personal Budgets cannot be authorised unless we receive confirmation in writing from the relevant Local Authority or CCG.

### **5.8 Fee reviews**

We retain the right to review and increase our Fees for the Service on an annual basis.

We also retain the right to increase our Fees at any other interval if care needs has decreased.

## **6 Cancellations and Refunds**

### **6.1 Cancellations**

Smile Care Agency strongly discourages cancellations of contracts unless exceptional circumstances occur. Carers working through Smile Care Agency depend on predictable schedules and reliable income. Cancellations of contracts causes undue inconvenience to carers and provides no income protection to carers working through Smile Care Agency platform. It is therefore our policy that any Care Service cancelled within a 24 hour period prior to the Care Service commencing will be billed and paid to the carer. In exceptional circumstances and where both parties agree, Smile Care Agency will exercise its discretion to void payment in cases where cancellation has taken place within 24 hours of the contracted period and issue an account credit.

All cancellations must be submitted by email to both Smile Care Agency on [info@smilecareagency.com](mailto:info@smilecareagency.com) and the carer.

### **6.2 Account Credits and Refunds**

For Care Service cancelled outside the 24 hour cut-off, Smile Care Agency will credit the fee for the cancelled Care Service to the Client's Smile Care Agency account. Smile Care Agency may, at its sole discretion, issue refunds when it believes they are warranted.

### **6.3 Termination of contract**

In instances where an ongoing contract is in place and care has been for more than 28 days, it is our policy that a client must give four weeks (28 days) notice to terminate a contract to allow both parties to make alternative arrangements. If a Client cancels a contract within the 28 day notice period, Smile Care Agency reserves the right to retain collected funds in order to provide an element of income protection to the carer.

### **6.4 Our termination of the service**

We may terminate this Agreement:

By giving 28 days' written notice for any reason

After giving 7 days' written notice that You have failed to pay the Fees

After giving 7 days' written notice that We are unable to meet Your needs

### **6.5 Exit Fee**

If the client and carer decide to no longer work with Smile Care Agency and engage privately, an exit fee of £2,500 is payable for release of contractual obligations towards Smile Care Agency.

## **7. Disputes and Complaints**

### **7.1 Release of liability for user conduct and disputes**

Any agreements are legally binding agreements between the care seeker and the carer. Any issues should be resolved directly between care seeker and carer where at all possible. Smile Care Agency does not accept any liability for claims, demands or direct or indirect damages arising from disputes between

care seekers and carers, Smile Care Agency are not party to an agreement but will attempt to arbitrate or mediate if there is an alleged breach of contract.

### **7.2 Dispute Arbitration**

Smile Care Agency will attempt to arbitrate where there is a disagreement between a Client and a Professional Self-employed Carer. Either Client or Professional Self-employed Carer care seeker can dispute a contract. Smile Care Agency will examine the contract, compliance with terms, user analytics data including but not limited to visit logging, messaging, geoverification, user feedback and previous self-employed carer behaviour and any submissions by either party. Smile Care Agency reserves the right at its sole discretion to defer payment, reimburse or cease contractual payments at any time.

### **7.3 Disputed funds**

Smile Care Agency offers no guarantee to either Client or self-employed carer that there will be either reimbursement or full payment in the event of dispute arbitration. Smile Care Agency will endeavour to come to an equitable outcome based upon the evidence available. Any disputes should be notified in writing within 1 (one) week of the disputed period.

### **7.4 Complaints Policy**

Smile Care Agency takes all customer complaints seriously and is committed to learning from mistakes and improving our service for both current and future Clients, Care Recipients and Professional Self-employed Carers.

If you have a complaint, please send via email to [complaints@smilecareagency.com](mailto:complaints@smilecareagency.com) as soon as to the related incident. We will normally respond within 48 hours (i.e. two business days). We will investigate any matter referred and take appropriate action where necessary. If you have concerns regarding the performance, behaviour or competence of a Professional Self-Self-employed Carer, we will investigate the matter and may take proportionate action ranging from verbal and written feedback to account suspension. We are unable to consider complaints any further than 1 (one) week after the alleged incident.

## **8. Limitation of liability**

### **8.1 Responsibility for contract acceptance**

While Smile Care Agency take every reasonable step to assure the suitability of a Professional Self-employed Carer for your needs, you acknowledge that the decision to enter into a contract with a Professional Self-employed Carer is your sole responsibility. Smile Care Agency gives no warranty as to the suitability, experience, history or character of any Professional Self-employed Carer, nor does Smile Care Agency give any warranty as to the completeness, truthfulness or accuracy of any information or documentation provided by the carer.

### **8.2 Risks of an introductory service**

You agree that you understand the risks involved in participating in an introductory agency service and you hereby waive any rights to claims for damages from Smile Care Agency in relation to the service.

### **8.3 Breach of terms and conditions**

You agree to indemnify and hold Smile Care Agency harmless from any claim or demand brought against Smile Care Agency as a result of you breaching these terms and conditions.

### **8.4 Liability Cap**

You acknowledge that Smile Care Agency's total liability to you whether in respect of goods or services and whether based in negligence, breach of contract, misrepresentation or otherwise shall not exceed the value of the total commission income Smile Care Agency derived from you via the Smile Care Agency Introductory Care Service.



## **9. Quality assurance and background checks**

By using this site or service you authorise Smile Care Agency to carry out any relevant background checks and audits at a time of their choosing. Smile Care Agency reserves the right but not the obligation to use a third party to scan your personal information on an ongoing basis against a variety of sources which may include, but are not limited to; credit checking, sex offender registries, social media, criminal registries and other legally available databases and resources. Smile Care Agency has no obligation to perform checks and releases all liability associated with result from checks.

## **10. Feedback and customer reviews**

You will be asked to leave qualitative and quantitative feedback on your care experience. The feedback will affect each carer's ranking in the Carer Profile. Feedback should be provided honestly and you must not attempt to falsify, manipulate or coerce a carer by threatening negative feedback. Any attempts of a carer trying to influence you in our feedback or trying to change your opinion unduly should be reported to us. We reserve the right to remove any defamatory, abusive or offensive feedback at our discretion but are not obliged to do so. You agree to providing an exclusive and perpetual right for Smile Care Agency to publish these reviews.

## **11. Contractual Obligations**

By using any Smile Care Agency service you agree to use the service for all current and future work that takes place as a result of an introduction made through Smile Care Agency, the Platform and the Carer Library. You must not create contractual agreements outside this service with carers introduced to you through Smile Care Agency, with the deliberate intention of avoiding Smile Care Agency fees. Any severe offences will result in but are not limited to the immediate termination of a care seeker's profile.

## **12. Safeguarding Policy**

Smile Care Agency takes the safety of all parties using the Smile Care Agency introductory service extremely seriously and complies with all relevant legislation including the Care Act 2010, the Mental Capacity Act 2005 and the Safeguarding of Vulnerable Adults Act. In instances where we deem a "vulnerable" adult is at risk of exploitation or any type of harm and we have received evidence to indicate this the case, we will comply with this legislation and refer the relevant parties to the nearest Local Authority's Adult Safeguarding Team. Although the Smile Care Agency introductory model does not directly provide care, we take our duties as a responsible organisation seriously and will endeavour to ensure a duty of care to all participants on the platform.

Smile Care Agency carries out a risk assessment on all Care Seekers of the platform based on a combination of telephone triage, written communications, medical history, oral assessment of mental capacity and feedback from Professional Self-employed Carer visits. In instances where there is evidence to suggest that a Care Seeker may not be able to safely and competently receive carer from Professional Self-employed Carer sourced through the Smile Care Agency Introductory Care Service, Smile Care Agency reserves the right at its absolute discretion to cease any facilitation of care and limit access to the platform on temporary or permanent basis.

## **13. Privacy Statement**

By using the Smile Care Agency services you consent that Smile Care Agency may process the personal data that Smile Care Agency collects from them in accordance with Smile Care Agency's Privacy Policy.

## **14. Governing Law**

The terms and conditions and any dispute arising out of the site and/or the services shall be governed by and construed in accordance with the law of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these terms and conditions or in connection with this site and/ or service.

## **15. Contact Information**

If you have any questions about the terms and conditions or the services provided by Smile Care Agency please contact us at: [info@smilecareagency.com](mailto:info@smilecareagency.com)