

THIS NDIS CLIENT SERVICES AGREEMENT IS:

BETWEEN Flair & Fine Pty Ltd (ABN 663 742 498) t/a Flair & Fine of 26 Laura Street, Clayton South, VIC 3169 ('Flair & Fine')

AND The Client (as identified in Schedule 1).

RECITALS

- A. Flair & Fine is a Registered Support Services Provider within the meaning of the NDIS Act (Registration 4-CCGJXX5).
- B. The Client wishes to engage, and Flair & Fine agrees to provide, the professional services of Flair & Fine on the terms as set out in this Agreement.

OPERATIVE PART**1. Definitions and interpretation**

In this Agreement:

- (a) **Agreement** means this NDIS client services agreement.
- (b) **Business day** means a day that is not a Saturday, Sunday, bank holiday, or any Victorian or Australian public holidays.
- (c) **Claim** means any action, suit, proceeding or demand of any kind (including against Flair & Fine, the Client, a third party, or any their personnel staff, agents or employees).
- (d) **Client** means the person(s) identified in Schedule 1.
- (e) **Client Premises** means the Client's premises where Services are to be performed.
- (f) **Client's Representative** means the person(s) identified in Schedule 1.
- (g) **Commencement Date** means the date this Agreement shall commence, as specified in Schedule 1.
- (h) **Confidential information** means all information, in whatever form, be it oral, in writing or electronic concerning the business of Flair & Fine, or any related entity, that is likely to damage the business of the Flair & Fine or its related entities if disclosed to a third party, but does not include information that is in the public domain or was known to the third party.
- (i) **Dispute Resolution Process** means the process contained in clause 17.
- (j) **Fee** means the amounts owed or owing to Flair & Fine by the Client for the performance of the Services, which are in accordance with the NDIS Price Guide and listed in Schedule 3.
- (k) **Force Majeure Event** means one or more of the following events, provided such event is beyond the reasonable control of Flair & Fine, including but not limited to:
 - (i) state-wide industrial disputation or other industrial disputation, which in neither case is caused or contributed to by either Party, or that Party's employees or agents;
 - (ii) act of God, flood, hurricane, fire or other event or a similar act of nature;

- (iii) war, invasion, act of foreign enemies, hostilities (whether declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority;
 - (iv) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from combustion of nuclear fuel not caused by the either Party or persons for whom that Party is responsible; or
 - (v) the effects of the COVID-19 virus.
- (l) **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and other related legislation, as amended from time to time.
 - (m) **Intellectual Property** means any copyright, all rights in relation to inventions (including registered and registrable patents), registered and unregistered trademarks, registered and unregistered designs, business names, logos, systems of operation, know-how and confidential information.
 - (n) **Labour Hire Act** means the *Labour Hire Licensing Act 2018* (Vic).
 - (o) **NDIS** means the National Disability Insurance Scheme.
 - (p) **NDIS Act** means the *National Disability Insurance Scheme Act 2013* (Cth).
 - (q) **NDIS Price Guide** means the *National Disability Insurance Scheme Pricing Arrangements and Price Limits 2022-23*, as updated from time to time and published on the NDIS Website.
 - (r) **OHS Act** means the Occupational Health and Safety Act 2004 (Vic) and any relevant regulations, as amended from time to time.
 - (s) **Parties** means Flair & Fine and the Client.
 - (t) **Premises** means the Client's premises.
 - (u) **Privacy Act** means the *Privacy Act 1988* (Cth), any relevant privacy regulations and the *Australian Privacy Principles*.
 - (v) **Registered Plan Management Provider** means the person identified in Schedule 1 (if applicable).
 - (w) **Services** means the services that is required by the Client as detailed in Schedule 2.
 - (x) **Service Shift** means a Support Person's attendance at or with the Client.
 - (y) **Support Coordinator** means the third party who supervises the conduct of Support Person.
 - (z) **Support Person** means the person engaged by Flair & Fine to undertake the performance of the Service in accordance with this Agreement.
 - (aa) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
 - (bb) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;
 - (cc) Grammatical forms of defined words or phrases have corresponding meanings;
 - (dd) Parties must perform their obligations on the dates and times fixed by reference to the capital city of Victoria;
 - (ee) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;

- (ff) References to a party are intended to bind their executors, administrators and permitted transferees; and
- (gg) Obligations under this agreement affecting more than one party bind them jointly and each of them severally; and
- (hh) References to this Agreement includes this agreement and its schedules.

2. Commencement and term of Agreement

- (a) This Agreement shall:
 - (i) begin on the Commencement Date; and
 - (ii) remain in force, unless terminated earlier in accordance with the terms of this Agreement.
- (b) This Agreement is binding on the Client and the Client's Representative (if applicable). The Client and Client's Representative (if applicable) will be jointly and severally liable for any and all obligations owed by either Party under this Agreement. For the avoidance of doubt, this means that the Client's Representative may be liable for any payments required by the Client under this Agreement.
- (c) The Client's Representative (if applicable) warrants that they have the authority to enter into this Agreement for and on behalf of the Client.
- (d) The Client acknowledges that prior to entering this Agreement, Flair & Fine have conducted a risk assessment(s) as required under the NDIS Act.

3. The Services

- (a) In consideration of the Fees, Flair & Fine must perform the Services in accordance with the terms of this Agreement.
- (b) The **Services**:
 - (i) include Flair & Fine engaging a Support Person to undertake care services for the Client, or a person nominated by the Client's Representative in accordance with this Agreement;
 - (ii) are further detailed in Schedule 2.
- (c) The Services do not include additional supports or expenses that are outside of those identified in Schedule 2, which must be borne by the Client themselves. This includes, but is not limited to, meals, entrance fees, and tickets.

4. Performance and standard of Services

Flair & Fine agrees and warrants that:

- (a) it is responsible for the performance of this Agreement;
- (b) it is not responsible for the quality and performance of the Services as performed by the Support Person;
- (c) without limiting clause 4(b), Flair & Fine acknowledges that the NDIS Act aims to:
 - (i) support the independence and social and economic participation of people with disability;
 - (ii) enable people with disability to exercise choice and control in the pursuit of their goals; and
 - (iii) the planning and delivery of their supports.

- (d) an emergency and disaster management plan has been implemented by Flair & Fine as a standard practice.

5. Selection and supervision of the Services

In recognising the importance of the Client's safety, wellbeing and reasonable satisfaction with the Services provided, Flair & Fine will:

Selection of Support Person

- (a) prior to the commencement of the Services pursuant to this Agreement, an induction session(s) between the Client and any potential Support Persons will be held. The purpose of this induction(s) is to determine the suitability of the Support Persons in regard to the Client's individual needs, as well as any risks;

Review and supervision of the implementation of the Services

- (b) review the implementation of the Services, which may include such means as, but are not limited to, visits to the Premises and scheduled meetings between a Support Person and the Client;
- (c) supervise and monitor the performance of Support Persons which may include such means as, but are not limited to, cooperating alongside a Support Coordinator. The frequency of such attendances are managed on a case-by-case basis and in accordance with the Client's needs and/or risks. Attendances by Flair & Fine will be at its sole discretion;

Engagement with other NDIS providers

- (d) to the extent necessary to provide the Services, and in accordance with Flair & Fine's obligations under the NDIS Act, it will cooperate with other NDIS providers who are involved in the provision of supports or services to the Client in the Premises, or alternatively assist in providing the Client access to community-based activities; and

Communication with the Client

- (e) in giving effect to the matters referred to in clauses 5(a)-(d), Flair & Fine will, and encourages the Client to, communicate openly and frequently whether face-to-face or via the Dispute Resolution Process.

6. Client's Responsibilities

Without limiting any other clause in this Agreement, the Client understands and agrees that:

- (a) maintain clear and open dialogue with Flair & Fine regarding the provision of the Services;
- (b) they must treat Flair & Fine (including its staff, agents and employees) and any Support Person with courtesy and respect;
- (c) if an issue arises under this Agreement, whether relating to the provision of the Services or not, the Client will comply with the Dispute Resolution Process before escalating the matter; and
- (d) they must notify Flair & Fine of any change in circumstances which may prevent Flair & Fine, or any Support Person, from undertaking their obligations pursuant to this Agreement.

7. Access to Premises

- (a) The Client will make available to Flair & Fine (as well as any Support Person) the Premises for the purpose of undertaking the Services.
- (b) The Client must inform Flair & Fine (as well as any Support Person) of any restrictions, dangers, risk or otherwise associated with the Premises prior to that person gaining entry to the Premises.
- (c) The Client warrants that the Premises is safe and free from defects.

8. Client representations and legislative requirements

The Client warrants and agrees that:

- (a) they have read and understood the terms of this Agreement;
- (b) they have been given the opportunity to obtain independent legal advice regarding this Agreement;
- (c) they have entered into this Agreement freely and without duress or undue influence;
- (d) to the extent required of it, it will comply with all legislative requirements, including but not limited to the OHS Act, NDIS Act and Labour Hire Act;
- (e) it will ensure that all Premises are properly maintained and are otherwise safe to conduct the Services.

9. Termination of Agreement

Termination of Agreement

- (a) Either Party may terminate this Agreement on no less than 1 months' notice.
- (b) Either Party may terminate this Agreement immediately and without notice if the other Party:
 - (i) engages in serious misconduct;
 - (ii) acts in serious breach of this Agreement; and/or
 - (iii) in the case of the Client terminating this Agreement, if Flair & Fine causes serious damage to the Client or the Premises.

Termination of Service Shift by Client

- (c) Short Notice Cancellations Where a provider has a Short Notice Cancellation (or no show), they are able to claim 100% of the agreed fee associated with the activity from the participant's plan, subject to the NDIS Pricing Arrangements and Price Limits and the terms of the service agreement with the participant. A cancellation is a short notice cancellation if the participant:
 - Does not show up for a scheduled support within a reasonable time, or is not present at the agreed place and within a reasonable time when the provider is travelling to deliver the support;
 - Has given less than seven (7) clear days' notice for a support

- (d) Flair & Fine can only claim from a Client's NDIS plan for a Short Notice Cancellation of the delivery of a Service Shift to the Client if all of the following conditions are met:
- (i) the NDIS Price Guide indicates that providers (Flair & Fine) can claim for Short Notice Cancellations in respect of the relevant support item; and
 - (ii) the proposed charges for the activities comply with the NDIS Price Guide; and
 - (iii) Flair & Fine has the agreement of the Client in advance (that is, this Agreement between the Client and Flair & Fine, which specifies that Short Notice Cancellations can be claimed); and
 - (iv) Flair & Fine was not able to find alternative billable work for the Support Worker and is required to pay the Support Worker for the time that would have been spent providing the support.

Termination of Service Shift by Flair & Fine and/or Support Person

- (e) If Flair & Fine and/or Support Person wishes to cancel a Service Shift, they will endeavour to provide no less than 48 hours' notice prior to that Service Shift commencing.
- (f) If Flair & Fine and/or Support Person cancels a Service Shift on less than 12 hours' notice, the Client may seek request from Flair & Fine an explanation of the cancellation.

10. Indemnity and guarantee

- (a) Notwithstanding any other clause in this Agreement, the Client hereby unconditionally indemnifies, and keeps indemnified, Flair & Fine against any and all:
 - (i) Claims, costs (including legal costs), damages, or losses incurred by or claimed against Flair & Fine as a result of any act, omission, fault, negligence, or wrongful act done by the Support Person or Support Coordinator, its employees, agents or other person(s) engaged on their behalf, during its performance of the Services; and
 - (ii) taxes for which the Client is responsible in respect of or pursuant to this Agreement, the Services.

11. Materials to be used to conduct the Services

- (a) The Client will take all necessary steps to enable Flair & Fine's entry to the Premises. The Client must ensure that its personnel, employees or agents are also aware that Flair & Fine have its consent to enter the Premises.
- (b) In undertaking the Services, the Support Persons may be required to use various tools and equipment, such as telephones. The Client acknowledges and agrees that that Support Persons may use such tools and equipment in the performance of the Services.

12. Fees and invoices

Flair & Fine may obtain the **Fees** in accordance with one of the following methods:

Client payment

- (a) Flair & Fine will provide to the Client a line item breakdown of the services undertaken by the Support Person as relating to the Services. Each line item is payable to Flair & Fine by the Client in accordance, as per the current NDIS **Fees**.
- (b) Flair & Fine will provide to the Client an invoice which includes each line item that is due to be paid by the Client ('**The Invoice**'). The Invoice is payable within 7 days of it being received.
- (c) Failure to make full payment of the Invoice by the due date will constitute a default of this Agreement. In the event of such a default, any unpaid amounts owing to Flair & Fine will, after 21 days, become a debt owing to it by the Client. Flair & Fine may then, without further notice, seek to recover these amounts from the Client; or

Client's Representative

- (d) alternatively and if applicable, the Client's obligations outlined in clauses 12(a)-(c) may be undertaken by the Client's Representative; or

NDIS management claim

- (e) alternatively, if the Client has nominated the NDIS to manage their funding, Flair & Fine may make a claim for the payments to the NDIS for those fees that would be payable pursuant to clauses 12(a)-(c); or

Registered Plan Management Provider

- (f) alternatively, if the Client has nominated a Registered Plan Management Provider to manage their funding, Flair & Fine may make a claim for the payments to the NDIS for those fees that would be payable pursuant to clauses 12(a)-(e).

13. Goods and Services Tax (GST)

- (a) The Parties confirm the following:
 - (i) the Client has a **Participant Plan** in effect within the meaning of Part 2 of the NDIS Act;
 - (ii) the Services under this Agreement are a supply of one or more of the reasonably necessary supports specified under the NDIS Act and the NDIS Participant Plan; and
 - (iii) the Services are of a kind that is covered under the GST-free Supply (National Disability Insurance Scheme Supports) Determination 2017.
- (b) Subject to clause 13(a) and unless otherwise stated elsewhere in this Agreement:
 - (i) the GST Law applies to the supply of goods and services under this Agreement; and
 - (ii) unless otherwise stated, all amounts referred to in this Agreement are to either be inclusive of the application goods and services tax ('**GST**'), or otherwise state what GST has been included in any payment.

14. Relationship of the parties

- (a) The Parties acknowledge and agree that nothing in this Agreement will give rise to any relationship of:
 - (i) employer or employee;

- (ii) partnership;
- (iii) joint venture; or
- (iv) agency.

15. Confidentiality

- (a) The terms of this Deed are to be treated as strictly confidential and cannot be shared, disclosed or otherwise expressed to any person, unless required to do so by law.
- (b) During the operation of this Agreement, each Party may use or disclose the Confidential Information of the other only:
 - (i) to perform its duties;
 - (ii) if the other Party has consented in writing to the particular use or disclosure on a case by case basis; or
 - (iii) if required by law.
- (c) The Parity's must:
 - (i) keep Confidential Information in a secure manner and take all precautions and steps reasonably necessary to prevent unauthorised disclosure or unauthorised use of the Confidential Information;
 - (ii) immediately notify the other Party of any suspected or actual unauthorised use, copying or disclosure of any Confidential Information by any entity or person; and
 - (iii) must provide assistance to the other Party, upon request in relation to any proceeding that is made against a person, group or other entity, for the unauthorised use, copying or disclosure of Confidential Information.
- (d) For the avoidance of doubt and subject to clauses 15(a)-(c) unless prior written consent has been given by the other Party, either Party must not disclose any Confidential Information to any third party in circumstances where this Agreement:
 - (i) has been terminated; or
 - (ii) has not been terminated.

16. Intellectual Property and moral rights

- (a) Unless as otherwise indicated in this Agreement, neither Party will acquire any rights in respect of the Intellectual Property of the other. Namely, the ownership of a Party's Intellectual Property which exists or existed before the commencement of this Agreement shall remain that Party's.
- (b) Neither Party may use the Intellectual Property of the other party in any way except with prior written consent of the other.
- (c) To the extent necessary to perform the Services, the Parties provide to one another a licence to use its moral rights. For the avoidance of doubt, this licence only extends to those moral rights required solely to perform the Services, or another to ensure the proper compliance with this Agreement.

17. Dispute Resolution Process

- (d) If the Client has an issue or concern regarding this Agreement or the Services, they must first speak with Flair & Fine's customer relations teams by contacting 1800 352 472 or flairfinecare@gmail.com.

- (e) If after speaking directly with Flair & Fine the issue or concern is unresolved, the Client may contact the NDIS directly by:
 - (i) phoning 1800 035 544 or 133 677 (in which NDIS may organise for an interpreter to be arranged);
 - (ii) phoning the National Relay Service and asking for 1800 035 544; or
 - (iii) completing an online complaint form available on the NDIS website, accessible here: <http://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=PRD00-OCF>

18. Personal information and privacy

- (a) Flair & Fine may collect the Client's personal information for the purpose of providing the Services which includes, but is not limited to, administrative tasks, planning and billing.
- (b) Flair & Fine may disclose the Client's personal information to third parties for the purpose of providing the Services, which include but are not limited to, disclosures to the NDIS, health authorities and health professionals. Further, such disclosures may be made to authorised auditors (such as registered NDIS auditors) who may then access the Client's personal information and subsequently contact them.
- (c) Flair & Fine is bound by the Privacy Act, however the Privacy Act does not form a term of this Agreement.
- (d) Notwithstanding the above, the Client consents to Flair & Fine providing

19. No Assignment

- (a) The Client cannot subcontract or otherwise assign the performance of this Agreement.

20. Force Majeure

- (a) Neither party shall have the right to make a Claim against the other in the event of either party being prevented from properly fulfilling this Agreement due to a Force Majeure Event, Act of Parliament such as a change in legislation, regulation or order made under legislative authority, or anything beyond either party's control.

21. Independent advice

- (a) Both Parties acknowledge that they have been given the opportunity to obtain independent legal advice prior to signing this Agreement.

22. No waiver

- (b) A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (c) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- (d) A waiver is not effective unless it is in writing and is only waived in respect of the specific instance to which it refers to and relates.

23. Variation

- (a) Unless otherwise stated, no amendment or variation this Agreement is valid or binding on a Party unless made in writing and signed by both Parties.

24. Existing NDIS service arrangements

- (a) Save for any obligation for the Client to pay any amounts owed to Flair & Fine, all existing agreements or arrangements between Flair & Fine and the Client are superseded by this Agreement.

25. Severability

- (a) If any provision of this Deed is or becomes invalid or unenforceable for any reason then:
- (i) where the offending provision can be read down so as to give it a valid and enforceable operation for a partial nature, it must be read down to the minimum extent necessary to achieve that result; and
 - (ii) in any other case the offending provision must be severed from these terms, in which event the remaining provisions of these terms operate as if the severed provision had not been included.

26. Governing law and jurisdiction

- (a) The terms of this Agreement are governed by and construed in accordance with all applicable laws in force in the Commonwealth of Australia and the State of Victoria as may apply from time to time.
- (a) The parties submit to the non-exclusive jurisdiction of the courts of the Commonwealth of Australia, the State of Victoria and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

27. Further assurances

- (a) Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement contemplated by it.

28. Time is of the essence

- (a) Time shall be of the essence of this Agreement.

29. Entire Agreement

- (a) This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.
- (b) A copy of a counterpart sent by facsimile machine or emailed as a PDF:
- (i) must be treated as an original counterpart;
 - (ii) is sufficient evidence of the execution of the original; and
 - (iii) may be produced in evidence for all purposes in place of the original.

Schedule 1 – Personal Information

The Client Name	As indicated in the service agreement
Client’s Representative (if applicable)	As indicated in the service agreement
Client’s Premises	As indicated in the service agreement
NDIA Management (if applicable)	As indicated in the service agreement
Registered Plan Management Provider (if applicable)	As indicated in the service agreement
Commencement Date	As indicated in the service agreement

Schedule 2 – The Services

What services will be provided	<ul style="list-style-type: none"> ➤ Assistance with Daily Personal Activities ➤ Assistance with Travel/ Transport Arrangements ➤ Development of Daily Living and Life Skills ➤ Household Tasks ➤ Participation in Community, Social and Civic Activities
How will the services be provided	➤ As per client’s requests