



TERMS AND CONDITIONS – OCTOBER 2019

These Terms and Conditions of Business set out the basis upon which the Agency will provide its Services and will be deemed to come into effect when the Agency confirms acceptance of the Client's Instructions orally, in writing or by email to the Client and/ or the Client verbally instructs the Agency to submit suitable Applicants for an Engagement.

It is agreed as follows:

1. Definitions and Interpretation

In this Contract, the following words and expressions shall have the following meanings (unless the context requires otherwise):

“Agency” means Stella Childcare Limited, a company incorporated in England and Wales under company registration number 12164632 and whose registered office is at 305 Albion Street, Southwick, Brighton, England, BN42 4AT

“Agreement” means the agreement between the Agency and the Client for the provision of the Services incorporating these Terms and Conditions as evidenced by the acceptance by the Agency of the Client's Instructions.

“Applicant” means a person introduced by the Agency to the Client to be considered for an Engagement in respect of childcare, including nannies, maternity nurses, babysitters and doulas;

“Client” means any person, including any family connections of such person, or company who contacts the Agency with the aim of Engaging an Applicant and for whom the Agency has agreed to provide the Services in accordance with these Conditions.

“Confidential Information” means all personal and business information about the parties to this Agreement.

“Engagement Commencement Date” means the date on which the Applicant's Engagement with the Client commences;

“Engagement” means the employment, hire or other use, directly or indirectly and whether under an agreement of service or Agreement for services or otherwise, and on a permanent, temporary or other basis, of an Applicant, by or on behalf of the Client, whether or not that Agreement is in writing but in any case, where the Client provides remuneration (whether monetary or otherwise) to the Applicant;

“Instructions” means the instructions and information provided by the Client setting out, amongst other things, the Client's details and requirements for childcare.

“Permanent Engagement” means Engagement for any period of more than 8 consecutive weeks (full-time or part-time);

“Placement Fee” means money payable to the Agency by the Client for the Engagement of the Applicant as set out in Schedule 1;

“Temporary Engagement” means an Engagement for any period up to 8 consecutive weeks (full-time or part-time); and

“Services” means an introduction service whereby a Client is introduced to one or more Applicants to work for the Client providing childcare for the Client's family.

In this Agreement unless the context clearly requires otherwise:

1.1. a reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit; and if any party to this Agreement comprises more than one person, all obligations of that party shall be construed as joint and several.

1.2. a reference to a “Month” means a calendar month, and “Week” means 7 consecutive days.

2. Agreement

2.1 The Agreement between the Agency and the Client, incorporating these Terms and Conditions, shall only come into force when the Agency confirms acceptance of the Client Instructions orally, in writing or by email to the Client and/ or the Client verbally instructs the Agency to submit suitable Applicants for an Engagement.

2.2 The Agency reserves the right to vary the terms of this Agreement and/or the way it provides the Services by way of written notification to the Client who shall consent to such changes (such consent shall not be unreasonably withheld or delayed) stating the date such amendments will take effect.

2.3 This Agreement together with any schedules (which are expressly incorporated herein), constitutes the entire Agreement between the parties and supersedes all previous agreements, understandings and arrangements between them, whether written or oral in respect of its subject matter. The Client acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Contract. The Client shall not have any claim for innocent or negligent misrepresentation on the basis of any statement in this Contract. Nothing in this Agreement purports to limit or exclude any liability for fraud.

2.4 The Client acknowledges that he / she understands exactly what is included in the Services and he /she is satisfied that the Services are suitable and satisfactory for his requirements.

3 Cancellation of Agreement

3.1 If, and only if, the Client is an individual consumer, then he may cancel this within 14 days of entering into it. Accordingly, the Agency is under no obligation to commence provision of the Services until after the expiry of that 14-day period. If the Client requires the Agency to provide the Services sooner than 14 days after the Agreement has been made, he must instruct the Agency in writing by email to do so, acknowledging that he will lose his right to cancel upon such instruction.

4 Relationship of parties

- 4.1 Nothing in this Agreement shall create a partnership or agency or the relationship of employer and employee, or other relationship between any of the parties, other than the contractual relationship expressly provided for in this Agreement.
- 4.2 The Agency is an employment agency acting in accordance with The Employment Agencies Act 1973 and corresponding regulations. It acts as an intermediary which introduces Applicants to prospective clients and vice versa. The Agency has no part, contractual or otherwise, in any arrangement between the Client and the Applicant and is not an agent in law for any person.
- 4.3 Neither party shall have, nor represent that it has, any authority to make any commitment on the other party's behalf, except as expressly agreed in this Contract.
- 4.4 The Agency warrants that it has all necessary authority to perform its obligations set out in this Contract.

5 Obligations of The Client

- 5.1 The Client accepts that the Agency acts only as an introduction agency for childcare and domestic placements and therefore holds no employer responsibility for any Applicant whether introduced on a permanent, agreement or a temporary basis.
- 5.2 The Client is responsible for providing a full detailed job description to the Agency in the Instructions and confirms that is accurate and complete.
- 5.3 The Client agrees to satisfy himself as to the suitability of an Applicant generally and to, but limited to the following:
- 5.3.1 take up references, including the confirmation of any professional, academic or other qualifications;
 - 5.3.2 to obtain DBS checks criminal record checks or police checks and to ask to see copies of any certification obtained by an Applicant, including paediatric first aid certification;
 - 5.3.3 ensure that the Applicant can drive to the standard expected by the Client;
 - 5.3.4 confirm identity and proof of address confirmation documents by sight and the Client is further advised to periodically check and retain copies of these identity documents and necessary certificates;
 - 5.3.5 obtain any visa or permit necessary to enable the Applicant to accept the Engagement; and
 - 5.3.6 obtain any necessary medical certificate.
- 5.4 The Client shall not discriminate against any Applicant and shall comply with the provisions of any anti-discrimination legislation including but not limited to the Equality Act 2010. The Client is referred to Clause 14 regarding equality and diversity.
- 5.5 The Client shall inform the Agency immediately, in writing, of serious dissatisfaction with performance or conduct of the Applicant.
- 5.6 The Client agrees to inform the Agency if an Applicant introduced by the Agency has already been introduced by a third party. If the Client fails to inform the Agency and the Applicant is engaged, the Client shall be liable to pay the Placement Fee to the Agency.
- 5.7 The Client shall inform the Agency immediately if (a) an Engagement is accepted by an Applicant and (b) he / she engages an Applicant, giving details of: gross annual salary, start date and end date, and whether the Engagement is permanent or temporary.
- 5.8 The Client shall pay the relevant Placement Fee upon the Engagement of the Applicant in accordance with Clause 6.
- 5.9 The Client will comply with UK employment and tax law, including, but not limited to, the provision of a contract of employment, pay slips, correct deductions for tax and national insurance, as well as any pension contributions, if the Applicant is eligible. The Agency will, if instructed, procure administration support for the Client to enable him to comply with his legal obligations.
- 5.10 For self-employed Applicants, the Client is responsible for confirmation that the Applicant is eligible for self-employed status and should request documentation confirming self-employed status.
- 5.11 The Client is responsible for ensuring that the Applicant has current Public Liability Insurance, if required with cover of up to £1 million, including cover for administering medicine and travel overseas (if appropriate).
- 5.12 The Client warrants that he holds and will maintain appropriate Employer's Liability insurance for at least £5 million. Employer's Liability Insurance must be in place for interview and trial sessions and the Engagement of permanent, temporary and contract staff.

- 5.13 The Client is responsible for the instruction and direction of the Applicant. The Client is responsible for ensuring that the Applicant clearly understands the needs of the Client's children and expected duties.
- 5.14 During the Client's Engagement of the Applicant, the Client will ensure that the Applicant is provided with a suitable and safe working environment which in no way may compromise and affect the welfare of the Applicant and will ensure that the place of work is clean and hygienic and complies with appropriate health and safety laws;
- 5.15 For live in positions, the Client must ensure it has adequate household insurance to protect the Applicant's possessions; and suitable live-in accommodation is provided to the Applicant, including, without exception, a bedroom for exclusive use and access to a bathroom.
- 5.16 The Client may reimburse the Applicant for travelling expenses for interview at his discretion.
- 5.17 The Client agrees that for the purpose of providing the Services, the Agency can use any medium to find a suitable Applicant or to advertise vacancies including the Internet.
- 5.18 The Client agrees not to enter into any relationship with the Applicant that may be detrimental to the interest of the Agency during this agreement or within one year from the date of its termination.

6 Agency Obligations

- 6.1 The Agency shall take reasonable endeavours to introduce to the Client, Applicants which the Agency considers suitable to be employed by the Client as required in the Instructions and perform the additional services as further set out in this Clause.
- 6.2 The Agency shall request Applicants to provide; -
- 6.2.1 An up-to-date CV;
- 6.2.2 Original Government issued identity documents and address check documents;
- 6.2.3 Relevant certificates;
- 6.2.4 DBS certification or a police check from their country of origin if the Applicant is not yet based in the UK or has been here for less than one month; and
- 6.2.5 Referee contact details.
- 6.3 In relation to an Applicant, the Agency shall use reasonable endeavours to obtain references from each Applicant that it introduces to the Client but the Client must satisfy itself as to the suitability of such references and the ultimate suitability of a Candidate, including whether they have the right to work in the UK. The final responsibility for engaging the Candidate lies with the Client.
- 6.4 The Agency will inform the Client as to the status of each of the above documents set out in Clause 6.2.2- 6.2.5 prior to any decision to Engage. If, for example; the DBS is in progress at the time an offer is made, the Agency shall recommend that an Engagement does not commence until the DBS certification is received and is deemed acceptable. If the Client moves forward and commences Engagement before the DBS or any of the other relevant documents are received, then the decision rests exclusively with the Client as to whether such Engagement should proceed. For the avoidance of doubt, the relevant Placement Fee would still be due to be paid in such circumstances.
- 6.5 The Agency does not give any warranty as to the accuracy of the information supplied to them by the Applicant and which is then transferred to the Client.
- 6.6 The Agency takes reasonable steps to ensure that both the Applicant and the Client are aware of requirements imposed by law or professional bodies to enable the Applicant to work for the Client in the capacity of the position that the Client wishes to fill.
- 6.7 Time for commencement shall not be of the essence of the Agreement and the Agency shall not be held liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the Services.

7 Fee and payment

- 7.1 The Placement Fee for a Temporary or Permanent Engagement shall become due and payable when an Applicant commences an Engagement, at which time the Agency will raise an invoice. For the avoidance of doubt, such Placement Fee is due and payable by the Client even if the Client has not notified the Agency of the Engagement.
- 7.2 If an Applicant is engaged on a Temporary Engagement but the Engagement continues for more than 8 weeks, the Client shall be liable for any additional fees which shall be agreed with the Agency at the point the Engagement is extended.
- 7.3 If the Client or a member of the Client's family or any acquaintance or associate of the Client, passes on the details of an Applicant to any other person or persons within 12 months of the Applicant's introduction to the Client by the Agency, resulting in the Engagement of the Applicant, the Client shall be liable for payment of the relevant full Placement Fee.
- 7.4 If an Applicant is introduced to a Client but rather than being Engaged at the time of introduction is engaged within 12 months of the introduction to the Client by the Agency, resulting in the Engagement of the Applicant, the Client shall be liable for payment of the relevant full Placement Fee.
- 7.5 Payment is due by the Client within ten working days of the date of any invoice in pounds Sterling by direct transfer to the Agency's bank account or any other way agreed between the parties
- 7.6 The Agency reserves the right to charge the Client interest in respect of any late payment of any sum due under this Agreement at the rate of 4 per cent per annum above the base rate of Barclays Bank, from the due date until receipt of payment.

8 Replacement Applicant / Cancellation / Refund

- 8.1 These provisions apply in the event that within eight weeks of the Engagement Commencement Date, the Applicant does not commence Engagement with the Client after accepting an offer of employment or the Applicant leaves the Engagement of the Client within eight weeks (other than as a result of a breach by the Client of the contract of employment between the Client and the Applicant or a result of the Client's dismissal of the Applicant other than for reasons of gross misconduct on the part of the Nanny ("gross misconduct" being as determined in accordance with guidance set out by ACAS)).
- 8.2 The Agency shall not provide a replacement Applicant unless the Client fulfils following conditions:
- 8.2.1 the Client has informed the Agency, in writing, within seven days of such termination;
 - 8.2.2 the Client has paid the Placement Fee;
 - 8.2.3 the terms of the Engagement have not changed, including the working conditions, the job description and the location;
 - 8.2.4 it is not in breach of any UK employment law and/or contract with the Applicant;
 - 8.2.5 the Client does not retain the services of that Applicant in any other capacity; and
 - 8.2.6 the Client is looking for a new applicant and it has given a period of four weeks to the Agency to find a replacement Applicant.
- 8.3 If at the Agency's discretion the Client has fulfilled the conditions set out above, then it shall use all reasonable endeavours to provide details of possible replacement Applicants to the Client. If the Client sources childcare from elsewhere or the Agency is not successful, it shall refund the Placement Fee to the Client less a £150 admin fee provided that the full fee has been paid on time by the Client.
- 8.4 If less than 48 complete hours' notice is given of a cancellation of a babysit or temporary booking, the Client shall, regardless of the cause of cancellation, pay 50% of the amount due is payable to nanny/sitter.

9 Confidentiality

- 9.1 The Agency only collects personal information for the legitimate business purpose of introducing childcare professionals and domestic staff to Clients and finding positions on a temporary and /or permanent basis for Applicants. All information received is treated as private and confidential, and all steps are taken to ensure that information is protected from unauthorised viewing by up to date computer protection. All personal details on paper are securely stored and shredded when they are no longer required for legitimate business reasons. Personal Information is only kept for the period necessary in accordance with Data Protection Legislation (as defined in Clause 10). For the purposes of Data Protection Legislation, the Client shall be deemed to have consented to the processing of his / her all or any personal data (in manual, electronic or any other form) relevant to this Contract, by the Agency and/or any agent or third party nominated by the Agency in order for the Agency to comply with its contractual obligations under this Agreement. The Client is referred to the Agency's privacy policy available on the Agency's website or direct from the Agency.
- 9.2 Each party to this Agreement undertakes for the benefit of the other that he will not:
- 9.2.1 divulge to any person whatever or otherwise make use of any Confidential Information relating to the other, which he learns as a result of this Agreement or any circumstance flowing from the contract; and
 - 9.2.2 post any text, nor image, nor audio-visual material, on any social network or other public place which could be hurtful, embarrassing or damaging to the other party.
- 9.3 The parties agree that any economic loss, loss of opportunity, business or goodwill and/or of damage to reputation or professional standing arising directly or indirectly, foreseeable or not from a breach of the above provisions must be compensated on the basis of the effect on the damaged party and the parties hereby acknowledge that damages may not be an adequate remedy for such breach and each party will be entitled to see the remedies of an injunction, specific performance and other equitable relief for any threatened or actual breach of this clause 9. The Client accepts personal liability for compliance with these provisions by his children of any age, other members of his family and domestic staff.
- 9.4 The obligations contained within this clause 9 shall survive termination of this Agreement for a period of five years from the date of such termination.

10 Data Processing

"Data Protection Legislation" means the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK.

- 10.1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Agency is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 10.2 The Agency shall, in relation to any Personal Data (as defined in the Data Protection Legislation) processed in connection with the performance by the Agency of its obligations under this agreement:
- a) process that Personal Data only on the written instructions of the Client for the purposes of carrying out a childcare search in accordance with the terms of this agreement unless the Agent is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Agent to process Personal Data (Applicable Laws). Where the Agent is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Agent shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Agent from so notifying the Client;
 - b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that

- availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- d) assist the Client in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- e) notify the Client without undue delay on becoming aware of a Personal Data breach;
- f) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- g) maintain complete and accurate records and information to demonstrate its compliance with this clause.

11 Disclaimers and limitation of liability

11.1 All implied conditions, warranties and terms are hereby excluded from this Contract.

11.2 In providing the Services, the Agency is committed to maintain a high level of service and efficiency. However, the Service is dependent upon the accuracy of information provided by the Client which is beyond the control of the Agency. Therefore, any decision as to the suitability of an Applicant and the decision to Engage an Applicant is sole discretion of the Client. The Agency does not accept responsibility and shall not be liable for any loss that the Client may incur directly or indirectly, as a result of using the Agency's Services.

11.3 The Agency shall not be liable to the Client for loss arising from or in connection with representation contracts, statements or undertakings made prior to the date of this Contract.

11.4 The Agency shall not be liable to the Client for any loss or expense which is

- 11.4.1 indirect or consequential loss; and/or
- 11.4.2 economic loss or other loss of revenue, turnover, profits, business or goodwill; and/or
- 11.4.3 loss or damage suffered by the Client as a result of an action brought by third party; and/or
- 11.4.4 loss or damage caused during the Engagement of the Applicant or any act, omission or negligence of such Applicant.

11.5 The Agency does not exclude or restrict liability for death or personal injury resulting from its negligence.

11.6 Particulars of Applicants, their profiles and other information provided by the Agency are prepared in good faith and solely for the Client's guidance. No liability, howsoever arising shall be accepted by the Agency for the accuracy or completeness of any Applicant's profile.

11.7 The maximum limit of the liability of the Agency to the Client, whether in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the sum of £1,000.

12 Termination

12.1 The Agency may terminate this Agreement at any time, for any reason, with immediate effect by sending notice in writing to that effect.

12.2 The termination of this Agreement by this paragraph shall be without prejudice to any other right or remedy to which a party may be entitled.

12.3 There shall be no re-imbusement or credit if the Agency decides in its absolute discretion that the Client has failed to comply with any of the terms of this Contract.

12.4 Notwithstanding termination of this Agreement for whatever reason, all the provisions that are intended to operate or have effect after termination or expiration shall continue in full force and effect.

13 Indemnity by the Client

13.1 The Client agrees to indemnify the Agency against all costs, claims, demands, proceedings (civil or criminal), penalties, fines, losses, damages and expenses arising directly or indirectly from the Client's breach of this Contract; and/or any act, omission or default by the Client, any of its agents, employees, contractors, children of any age, other members of his family and domestic staff.

14 Equality and Diversity

14.1 The Agency is fully committed to equality of opportunity and to eliminating unlawful discrimination. It is the Agency's policy to treat everyone equally and regardless of their backgrounds, race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, age, religion, belief or political persuasion, or any other irrelevant basis.

14.2 The Agency is committed to providing a work environment in which individuals from a wide range of backgrounds can fulfil their potential.

14.3 The Agency shall perform its obligations under this agreement in accordance with:

- 14.3.1 all applicable equality laws and regulations (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- 14.3.2 any other requirements and instructions which the Agency reasonably imposes in connection with any equality obligations imposed under law; and
- 14.3.3 will take all necessary steps to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

14.4 In the event that a Client or Applicant wishes to complain about discrimination by the Agency, please see Complaints Procedure

15 **Complaints procedure.**

If the Client wishes to complain about the Agency, in the first instance, the complaint should be put in writing to Susan Godwin, and every effort shall be made to resolve any situation. If the situation has not been resolved to the Client's satisfaction, then the letter of complaint will be passed on to the Chair of the ANA committee, and will be officially investigated.

16 **Miscellaneous matters**

16.1 If any term or provision of this Agreement is at any time held to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.

16.2 No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.

16.3 Neither party shall be liable for any failure or delay in performance of this Agreement which is caused by circumstances beyond its reasonable control.

16.4 Any communication to be served on either party by the other shall be delivered by hand or sent by first class post or recorded delivery or by e-mail.

16.5 In the event of a dispute between the parties to this Contract, the parties undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing litigation.

16.6 This Agreement does not give any right to any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise, except that any provision in this Agreement which excludes or restricts the liability of any person, may be enforced under that Act.

16.7 The validity, construction and performance of this Agreement shall be governed by the laws of England and Wales and each party hereby irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1: Fee structure

Services

Fee structure

UK Permanent Engagement for a Nanny
(for any engagement of 8 weeks or more)

The equivalent of three weeks' gross salary.

UK Temporary Engagement
(for any engagement of up to 8 weeks or less)

£20 per day (minimum of 4 hours per day)

Overnight care

£35 per night

Maternity nurse (per 24 hours)

£40 per night

Babysitting (minimum of 4 hours' booking)

£20 per evening

Introduction of a doula / consultant or specialist

£55

All fees are exclusive of VAT and VAT will be added at the appropriate rate.