



EMERGENCY SCHOOL PICK-UP TERMS AND CONDITIONS – DECEMBER 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 Client pays the first Monthly Subscription Fee.

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.

“**Childcare Provider**” means a person introduced by the Agency to the Client to collect the Client’s children, either on foot or by car, from school and / or nursery;

“**Client**” means any person, including any family connections of such person, or company who contacts the Agency with the aim of engaging the Agency to provide emergency school pick up services.

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

“**Engagement Commencement Date**” means the date on which the Childcare Provider’s Engagement with the Client commences;

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

“**Monthly Subscription Fee**” means £35.00 payable to the Agency by the Client for the Services on a monthly basis by direct debit;

“**Placement Fee**” has the meaning given to it in Clause 7.4.

and

“**Services**” means the emergency pick up school and / or nursery pick-up service provided by the Agency to the Client as more specifically described in Clause 6.1.

In this Agreement unless the context clearly requires otherwise, 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.

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 the Client pays the first Monthly Subscription Fee.

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 one month’s written notification, stating the date such amendments will take effect, to the Client who shall by continuing to use the Agency’s Services be deemed to have consented to such changes.

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 / her 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 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.
- 4.3 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 shall pay the Monthly Subscription Fee to the Agency for the Services in accordance with Clause 7.1.
- 5.2 The Client is responsible for ensuring that the Childcare Provider clearly understands the needs of the Client's children and expected duties.
- 5.3 The Client shall not discriminate against any Childcare Provider 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.
- 5.4 The Client shall inform the Agency immediately, in writing, of serious dissatisfaction with performance or conduct of the Childcare Provider.
- 5.5 Childcare Providers are deemed to be under the supervision, direction, care and control of the Client from the moment they report to the Client, pick the Client's child up or enter the Client's premises and it is understood and agreed that the Client is responsible for the acts, errors or omissions of the Childcare Provider conducted in the course of the Childcare Provider's Engagement by the Client. The Client is responsible for ensuring that the Childcare Provider clearly understands the needs of the Client's children and expected duties.
- 5.6 It is the Client's responsibility to notify the Agency of any extra work offered to a Childcare Provider. If a temporary or permanent engagement is offered to and accepted by the Childcare Provider, then the appropriate additional fees are payable by the Client on the acceptance, either verbally or in writing, by a Childcare Provider of a permanent or temporary position with the Client. The fees will be the fees of the Agency at the time. Should any engagement or re-engagement occur without notification to the Agency by the Client, the full permanent fee will be charged to the Client irrespective of the length of employment. The Client shall inform the Agency immediately he / she decides to engage a Childcare Provider, giving details of: gross annual salary, start date and end date, and whether the Engagement is permanent or temporary.
- 5.7 The Client is responsible for paying the Childcare Provider for any time spent with their child beyond the hour included within the Services as well as reimbursing the Childcare Provider for travelling expenses undertaken.
- 5.8 The Client is responsible for ensuring that appropriate child seats are provided and that the Childcare Provider has free parking available, if necessary, for the duration of the booking. If the Childcare Provider receives any charges because the Client has not ensured free parking is available, the Client will be liable for said charges.
- 5.9 The Client shall indemnify and keep indemnified the Agency against any costs, claims or liabilities incurred by the Agency arising out of any claim by the Childcare Provider in relation to a booking with the Client, save in the event that such cost, claim or liability arises out of the Agency's negligence or breach of contract.
- 5.10 The Client agrees not to enter into any relationship with the Childcare Provider 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 In consideration of the Monthly Subscription Fee payable by the Client in accordance with Clause 5.1, the Agency shall provide access to a Childcare Provider on standby from 09.00 – 15.00 for the Client to call in case their child is unwell and needs picking up from nursery or school. The Monthly Subscription Fee will cover approximately 1hr emergency pick, from getting the call, to picking the child up and returning home (to their home) with the child. (the "**Services**"). The Services will also include will the entrance fee to a drop in once a half term to meet and greet the Childcare Providers so that the Client and Childcare Providers can meet each other.
- 6.2 The Agency shall be responsible for the engagement of each of the Childcare Providers during the time they are offering the Services and will account to HMRC for PAYE and National Insurance.
- 6.3 The Agency shall carry out a full background check on its Childcare Providers, including verifying; -
 - 6.3.1 An up-to-date CV;
 - 6.3.2 Original Government issued identity documents and address check documents;
 - 6.3.3 Relevant certificates;
 - 6.3.4 DBS certification or a police check from their country of origin if the Childcare Provider is not yet based in the UK or has been here for less than one month; and

6.3.5 Referee contact details.

6.4 The Agency warrants that the Agency and each of the Childcare Providers shall have public liability insurance as well as appropriate car insurance suitable for using his / her car for business use.

6.5 The Agency does not give any warranty as to the accuracy of the information supplied to them by the Childcare Provider and which is then transferred to the Client.

6.6 The Agency takes reasonable steps to ensure that both the Childcare Provider and the Client are aware of requirements imposed by law or professional bodies to enable the Childcare Provider to provide the Services for the Client.

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 Monthly Subscription Fee is payable by the Client on a monthly basis by direct debit. Upon registering for the Services, the Agency will take an initial payment on a pro rata basis for the month in which the Client registers and thereafter on the first day of each month. There is a 3 (three) month minimum contract period.

7.2 There is no refund should the Client cancel his / her membership. Membership will be renewed automatically subject to prior cancellation.

7.3 If the Client wishes to cancel his / her membership, please email hannah@stellchildcare.co.uk with 'Membership Cancellation' in the Subject field. The Agency will end your Monthly Subscription Fee either within five working days or immediately at the end of the Client's initial three month minimum contract for monthly members.

7.4 The Monthly Subscription Fee is for one family only. If the Client or a member of the Client's family or any acquaintance or associate of the Client, passes on the details of a Childcare Provider to any other person or persons within 6 months of the Childcare Provider's introduction to the Client by the Agency, resulting in the Engagement of the Childcare Provider, the Client shall be liable for payment of either the relevant total Monthly Subscription Fee or a fee amounting to the current permanent fee of the Agency at the time.

7.5 In the event the Client requires the Childcare Provider for longer than the hour included within the Services, then a fee of £10 per hour is payable directly to the Childcare Provider.

7.6 If a Childcare Provider is introduced to a Client but rather than being Engaged in providing the Services is subsequently engaged within 12 months of the introduction to the Client by the Agency, resulting in the Engagement of the Childcare Provider, the Client shall be liable for payment of the relevant permanent fee at the time.

8 **Confidentiality**

8.1 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 Childcare Providers. 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 9). 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.

8.2 Each party to this Agreement undertakes for the benefit of the other that he will not:

8.2.1 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

8.2.2 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.

8.3 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.

8.4 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.

9 **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.

9.1 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).

- 9.2 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.

10 Disclaimers and limitation of liability

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

10.2 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 Childcare Provider and the decision to Engage an Childcare Provider 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.

10.3 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.

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

10.4.1 indirect or consequential loss; and/or

10.4.2 economic loss or other loss of revenue, turnover, profits, business or goodwill; and/or

10.4.3 loss or damage suffered by the Client as a result of an action brought by third party; and/or

10.4.4 loss or damage caused during the Engagement of the Childcare Provider or any act, omission or negligence of such Childcare Provider.

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

10.6 Particulars of Childcare Providers, 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 Childcare Provider's profile.

10.7 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.

11 Termination

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

11.2 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.

11.3 There shall be no re-imburement 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.

11.4 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.

12 Indemnity by the Client

12.1 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.

13 Equality and Diversity

13.1 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.

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

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

13.3.1 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);

13.3.2 any other requirements and instructions which the Agency reasonably imposes in connection with any equality obligations imposed under law; and

13.3.3 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).

13.4 In the event that a Client or Childcare Provider wishes to complain about discrimination by the Agency, please see Complaints Procedure

14 Complaints procedure.

If the Client wishes to complain about the Agency, in the first instance, the complaint should be put in writing to Hannah Clayson, 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.

15 Miscellaneous matters

15.1 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.

15.2 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.

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

15.4 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.

15.5 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.

15.6 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.

15.7 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.