

Elizabeth Henry Nannies: Terms and Conditions of Business

1. DEFINITIONS

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

'Agency' means Elizabeth Henry Nannies

'Candidate' means a person introduced by the Agency to the Client to be considered for an Engagement;

'Client' means any person, including any family connections of such person, firm or corporation who approaches the Agency with a view to Engaging or otherwise employing a Candidate or to whom a Candidate is introduced by the Agency;

'Engagement' means the employment, hire or other use, directly or indirectly and whether under a contract of service or contract for services or otherwise, and on a permanent, temporary or other basis, of a Candidate by or on behalf of the Client;

'Instructions' means the instructions and information provided by the Client setting out, amongst other things, the Client's details and requirements for childcare or other staff whether submitted on-line, orally or in writing via email.

'Introduction' means (i) the Client's interview of a Candidate in person or by telephone following the Client's verbal or written instruction to the Agency to search for a suitable Candidate or (ii) the passing to the Client by the Agency via telephone, e-mail, post or otherwise of a Curriculum Vitae or other information which identifies the Candidate;

'Introduction Fee' means the fee payable to the Agency by the Client for the Engagement of the Candidate as set out in Schedule 1;

'Month' means calendar month;

'Permanent Engagement' means an Engagement for a period of more than 12 consecutive weeks (full time or part time);

'Scale' means the Agency's scale of fees in relation to a Candidate in force from time to time (a copy of which may be obtained from the Agency on request);

'Services' means an introduction service whereby a Client is Introduced to one or more Candidates to work for the Client as a nanny, maternity nurse or other form of private domestic staff for the Client.

'Temporary Engagement' means an Engagement for a period of up to and including 12 consecutive weeks (full time or part time)

'UK Data Protection Legislation' means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended

'Vacancy' means the available position to carry out work for the Client notified by the Client to the Agency in respect of which the Candidate has been introduced;

'Week' means seven consecutive days.

2. THE CONTRACT

- 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's Instruction orally, in writing or by email to the Client and/ or the Client verbally instructs the Agency to submit suitable Candidates for an Engagement. For the avoidance of doubt no signature is required for the Agreement to come into effect and by accepting CVs from the Agency or engaging with any Candidates proposed by the Agency, the Client will be deemed to have entered into a legally binding contract with the Agency.
- 2.2. In the event of any conflict between these Terms and any other Terms and Conditions, these Terms shall prevail unless expressly otherwise agreed in writing.
- 2.3. No variation or alteration to these terms and conditions of business (including and special terms and conditions agreed between the parties) shall be binding unless the details of such variation are agreed between the Agency and the Client and are set out in writing by the Agency stating the date on or after which such varied terms shall apply.

3. RIGHT TO CANCELLATION IN ACCORDANCE WITH THE CONSUMER CONTRACT REGULATIONS

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

4. SUITABILITY AND REFERENCES

- 4.1. The Agency will use reasonable endeavours to introduce a suitable Candidate to the Client to fill the Vacancy but cannot guarantee to find a suitable Candidate.
- 4.2. Whilst the Agency endeavours to take all reasonable care to interview Candidates, take up references, check for appropriate qualifications and criminal records checks and ensure the suitability of any Candidate introduced to the Client. The Client accepts that the Agency can give no warranty as to the suitability of the Candidate for the Vacancy. The Client must satisfy themselves to the overall suitability of any Candidate introduced. The Agency advises the Client to also verify references provided by the Candidate.

5. CLIENT RESPONSIBILITIES

- 5.1. The Client acknowledges that it is their responsibility to:
 - 5.1.1. obtain any work and other permits required by the Candidate to work with them; and ensure that the Candidate satisfies any medical requirement or other qualifications that may be appropriate or required by law.
 - 5.1.2. Treat all information provided by the Agency as strictly confidential.
 - 5.1.3. Inform the Agency immediately should the Agency introduce a Candidate whose details have already been introduced to the Client from a third party. If the Client fails to do so and an offer of Engagement ensues, the introduction fee will be payable by the Client to the Agency.
- 5.2. The Client will notify the Agency immediately an offer of employment is accepted by the Candidate or otherwise upon the commencement of an Engagement (whichever first occurs).
- 5.3. The Agency advises all Candidates to undertake an Enhanced DBS Check. The Client will be held responsible should they decide to engage a candidate who does not hold a current Enhanced DBS Disclosure or who is in the process of applying for an Enhanced DBS Disclosure. The Agency will advise the Client of the DBS status of each Candidate.
- 5.4. Pay any Income Tax and National Insurance liabilities or similar contribution in respect of the Candidate and agrees to indemnify the Agency against all demands for Income Tax, penalties and interest made against it in respect of the Candidate and against its costs in dealing with such demands.

6. FEES AND REFUNDS

- 6.1. The Client shall pay the Agency the appropriate Introduction Fee in accordance with the following Scale upon confirmation of Engagement. The length of Engagement shall define whether the position is permanent or temporary. 12 weeks or more constitutes a permanent placement and therefore the permanent fee supersedes the temporary rates.

Permanent placements:	
Full time / Part time	3 times gross weekly salary (minimum charge of £400)
Nanny share – Full / Part time	4 times gross weekly salary (minimum charge of £500). The Introduction Fee will be split equally between the two families.
Temporary placements:	
Per day	£25
Per week	£75
Emergency day care (Providing less than 48 hours' notice)	£30 per day
Maternity night nanny	£25 per night capped at £100 per week
Maternity nurse	£100 per week
Sleep consultant	Introduction fee of £50

- 6.2. The Client agrees to pay the appropriate Introduction Fee within 14 days of the date of the invoice date, or prior to the commencement of the Engagement, whichever first occurs. If payment is not received within this time scale the replacement and refund provisions will not apply.
- 6.3. The Introduction Fee is payable regardless of whether the offer of Engagement by the Client is verbal or written.
- 6.4. Should the Client subsequently increase the Candidate's hours and salary within a period of three months from commencement of Engagement a further Introduction Fee will be due and payable by the Client based on the increased hours / salary.

- 6.5. Introductions of Candidates are confidential. The disclosure by the Client to a third party of any details regarding a Candidate introduced by the Agency which results in an Engagement with that particular third party within six months of the Introduction shall render the Client liable to payment of the Introduction Fee as set out in Clause 6.1 above and also forfeiting the entitlement to any refund.
- 6.6. An Introduction Fee shall be payable in the event that any Candidate is Engaged by a Client as a consequence of or resulting from an Introduction by or through the Agency, whether direct or indirect, within 12 months of the initial Introduction
- 6.7. If the Client employs a Candidate on a Temporary Engagement and subsequently employs that Candidate on a Permanent Engagement or if the Temporary Engagement is extended so that the period of the engagement lasts longer than three months then the Client will pay to the Agency the full permanent Introduction Fee less any Introduction Fees already paid in respect of the Temporary Engagement.
- 6.8. When confirming Temporary or Maternity Engagements the Client is required to detail at the outset the length of Engagement. The Agency will calculate the Introduction Fee payable for the short term contracts using the dates provided to the Agency at the outset. Fees will become payable upon confirmation of the start date of the Engagement and Introduction Fee must be paid in full prior to the commencement of the Engagement. Should the Client re-engage the Candidate for further periods of employment or extend the original contract dates given to the Agency, then a further charge will be payable for the exact period of employment. All Candidates engaged on a short term basis must be re-booked and re-engaged through the Agency
- 6.9. The Client will pay interest to the Agency on any amount due to the Agency, which is not paid within 14 days of the due date at the rate of 3% above the base rate of National Westminster Bank Plc.

7. REFUND AND REPLACEMENTS

- 7.1. Should the Candidate fail to take up the Engagement and full payment of the Introduction Fee has been received in accordance with section 6.1 of the Agency's Terms a full refund of the Introduction Fee will be made to the Client, unless such failure is a result of the Client's change of mind or change in circumstances. In such cases, it will be at the Agency's discretion whether a refund will be paid.
- 7.2. If an offer of Engagement is made by the Client but is subsequently withdrawn 14 days or more prior to commencement of engagement for any reason the Client will pay to the Agency an administration fee of £250. Payment of the full fee is due where less than 14 days' notice is given.
- 7.3. Should the Candidate in a Permanent Engagement leave, or be asked to leave by the Client, within 6 weeks of the date of commencement of the Engagement except where the Candidate is made redundant (for reasons unconnected to a change in job description, unreasonable working conditions, change in working location not previously agreed, or failure by the Client to comply with current employment legislation) a replacement Candidate will be provided free of charge (Only one free replacement is allowed and the job specification must remain the same) The Agency will endeavour to find a replacement within 4 weeks. In the event that a suitable replacement Candidate cannot be found, 70% of the fee will be refunded within 2 weeks of commencement of employment, 50% within 4 weeks of commencement of employment and 20% within 6 weeks of commencement of employment, provided that all clauses of these Terms and Conditions of Business have been adhered to by the Client. Where a replacement Candidate's salary is less than or more than the original Candidate's salary, the Introduction Fee will be adjusted accordingly. No replacement or refund is available under any circumstances where the Candidate leaves more than 6 weeks after the date of commencement of Engagement.
- 7.4. All instances of termination of an Engagement where a free replacement or refund is likely to be claimed must be notified in writing to the Company within three days of the termination of the Engagement. No refund or free replacement will be applicable if payment has not been received by the Agency in accordance with section 6.1 of the Agency's Terms of Business or if the Client is in breach of any other of the Company's Terms of and Conditions of Business. No refund is available where the Client does not request that a replacement is found or where the Client makes other arrangements during the period in which a replacement is being sought. Requests for replacements or refunds must be made within a 3-month period from the date of termination of the Engagement. No requests for refunds will be considered where the Client has been unwilling to interview potential replacement candidates or has otherwise failed to co-operate in the replacement process.
- 7.5. No refund or free replacement will be applicable if the Client has failed to honour a previously agreed start date or has prevaricated over the date to such an extent that the Candidate has sought employment elsewhere.
- 7.6. No refund or free replacement will be applicable if the Client continues to retain the services of a Candidate even after they have advised the Agency they have deemed the Candidate to be unsatisfactory.
- 7.7. Should the Candidate in a temporary or maternity Engagement leave or be asked to leave by the Client within the invoiced period (for reasons unconnected to a change in job description, unreasonable working conditions, change in working location not previously agreed, or failure by the Client to comply with current employment legislation) a pro-rata refund for each complete week not worked – subject to a maximum of 50% of the original invoice – will be made if a replacement cannot be found.

8. DATA PROCESSING

- 8.1.** The parties acknowledge that for the purposes of the UK 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 UK Data Protection Legislation).
- 8.2.** The Agency shall, in relation to any Personal Data (as defined in the UK 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, reviewed and approved by the Client, to protect against unauthorised or lawful 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 accessing 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 UK 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.

9. LIABILITY

- 9.1.** All implied conditions, warranties and terms are hereby excluded from this Agreement.
- 9.2.** 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 Candidate and the decision to Engage an Candidate 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.
- 9.3.** 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.
- 9.4.** The Agency shall not be liable to the Client for any loss or expense which is
- 9.4.1.** indirect or consequential loss; and/or
 - 9.4.2.** economic loss or other loss of revenue, turnover, profits, business or goodwill; and/or
 - 9.4.3.** loss or damage suffered by the Client as a result of an action brought by third party; and/or
 - 9.4.4.** loss or damage caused during the Engagement of the Candidate or any act, omission or negligence of such Candidate.
- 9.5.** The Agency does not exclude or restrict liability for death or personal injury resulting from its negligence.
- 9.6.** Particulars of Candidates, 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 Candidate's profile.

9.7. 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.

10. TERMINATION

10.1. The Agency may terminate this Agreement at any time, for any reason, with immediate effect by sending notice in writing to that effect. The Client shall remain liable for any outstanding Fees that are due and payable as at the date of termination.

10.2. 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.

10.3. 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.

10.4. 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.

10.5. The Client agrees that he will not during this Agreement and within one year of its termination, by any means and neither for himself nor for any other person, directly or indirectly, advise, instruct, do or assist in any activity, the effect of which is to compete with the Agency.

11. SEVERANCE

Any term or provision of these Terms and Conditions of business is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

12. MISCELLANEOUS

12.1. The Agency reserves the right to review and to revise these Terms without prior notice.

12.2. 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.

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

12.4. These Terms and Conditions of Business are governed by and construed in accordance with the law of England and Wales and the parties hereby agree to submit to the exclusive jurisdiction of the Courts of England and Wales.