

**TERMS AND CONDITIONS OF BUSINESS
OF**

FULHAM NANNIES

(Fulham Nannies is Moira Walsh trading as Fulham Nannies, 69a Stephendale Road, Fulham, London SW6 2LT)

Please read this document carefully as it sets out the terms and conditions between Fulham Nannies (the Agency) and the employer (the Client) relating to the introduction of temporary and permanent staff to you (the Client) by Fulham Nannies (the Agency), which is a legally binding contract.

1 DEFINITIONS

1.1 The following expressions shall have the following meanings:

“Agency” means Fulham Nannies (Moira Walsh trading as Fulham Nannies) of 69a Stephendale Road, Fulham, London SW6 2LT;

“Client” means any person or family or third party appointed by such people to represent them, who engage the Agency either through written or verbal instruction and request that the Agency introduce the Client to a nanny, maternity nurse or mother’s help, to provide childcare services;

“Services” means the Introduction of a Candidate by the Agency to the Client in the accordance with this Agreement.;

“Terms and Conditions” means the terms and conditions of supply of Services as set out in this document and any subsequent terms and conditions agreed in writing by the Agency;

“Agreement” means the contract between the Agency and the Client for the provision of the Services incorporating these Terms and Conditions;

“Candidate” means any nanny, maternity nurse, mother’s help, housekeeper, or other child care professional introduced to the Client by the Agency;

“Introduction” means the Clients interview of a Candidate in person or by telephone and/or the passing by the Agency to the Client via email, phone, post or other means of a Candidate’s details, Curriculum Vitae or other personal information;

“Placement” means an agreement between a Client and a Candidate that the Client will employ or use the services of the Candidate. Such agreement may be oral or in writing (whichever is the earlier) and shall have occurred whether or not a written contract is subsequently entered into;

“Engagement” means the engagement, employment or use of the Candidate by the Client or any third party on a permanent or temporary basis, whether or not a written contract is subsequently entered into;

“Agency Fee” means the charge made by the Agency to a Client for the Introduction of a Candidate which results in the Placement of a Candidate with a Client.

“Permanent Staff” means an Engagement for any period of more than 13 consecutive weeks (full-time or part-time);

“Temporary Staff” means an Engagement for any period up to 13 consecutive weeks (full-time or part-time);

“Week” a week is calculated from Monday to Sunday inclusive;

“Writing” includes facsimile transmission and e-mail.

1.2 The headings in these Terms and Conditions are for convenience only and do not affect the interpretation or construction of the Terms and Conditions of Business.

1.3 Unless the context otherwise requires the provisions of these Terms and Conditions of Business shall be construed as follows:

1.3.1 The singular includes the plural and vice versa.

1.3.2 The masculine includes the feminine and vice versa.

1.4 If the Client comprises more than one person those persons shall be jointly and severally liable in respect of all obligations and liabilities contained herein.

2 THE CONTRACT

2.1 These Terms and Conditions constitute the contract between the Agency and the Client and are deemed to be accepted by the Client by virtue of an Introduction to a Candidate or the Placement of a Candidate with the Client or by registering with the Agency either verbally or through written instruction, whichever happens first.

2.2 These Terms and Conditions shall in all respects apply to and govern all contracts or agreements made verbally or in writing between The Client and The Agency and shall supersede any other documentation or communication between parties.

2.3 No variation or alteration to these terms and conditions (including any 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.

2.4 Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Agency may be entitled in relation to the Services, by virtue of any statute, law or regulation.

3 OBLIGATIONS OF THE CLIENT

3.1 The Client acknowledges that the Agency provides an introductory service only to introduce suitable candidates to work as nannies, maternity nurses, mother's helps, or other child care professionals and it is the Client who employs the Candidate. The Agency does not employ any of the Candidates directly or indirectly. Candidates are introduced to Clients on the basis that they will be employed by the Client, unless the Candidate is self-employed.

3.2 The Client shall provide full details to the Agency of its exact requirements relating to the proposed employment by providing full details of the work for which the Candidate is required and in particular by notifying the Agency of any special skills required for such work when placing its request.

3.3 The Client undertakes to notify the Agency immediately upon any offer of employment to a Candidate that has been accepted and to provide details of the Remuneration to the Agency.

3.4 It is the obligation of the Client to immediately inform the Agency if a Candidate introduced by the Agency has already been introduced by a third party. If the Client fails to inform the Agency, then it will be presumed that this Introduction has been effected by the Agency and the relevant fee will become payable.

3.5 The Client is solely responsible for ensuring compliance with all employment, fiscal, and other relevant legislation and regulations and all taxation obligations including, without limitation, National Insurance contributions relating to the Engagement and any and all payments made to a Candidate and in any other way relating to the Engagement.

3.6 The Client is responsible for agreeing remuneration and must provide the Candidate with a written contract of employment, prior to the commencement of the Candidate's employment. The Client in any event warrants that conditions relating to tax, National Insurance, working hours, holiday and sickness benefit, accommodation, remuneration, notice and grievances shall be notified in writing to the Candidate on Engagement.

3.7 If the Client requires the Candidate to work abroad during the period of Engagement then the terms must be detailed and agreed by the Client and the Candidate in the Contract of Employment. It is the Client's responsibility to pay for the Candidate's travel costs, medical and travel insurance, car insurance (if applicable) and provide adequate food and water for every mealtime, unless alternative arrangements are agreed otherwise and set out in the Contract of Employment.

- 3.8 The Client is responsible for obtaining any medical certificates, work permits or other approvals necessary for the Candidate prior to the commencement of employment.
- 3.9 For live-in positions, the Client accepts and understands its obligations adequately to insure with a company of good repute the Candidate's property, contents and any other items of value to the Candidate, and shall also ensure that such insurance remains in full force and effect for the duration of the Candidate's employment.

4 OBLIGATIONS OF THE AGENCY

- 4.1 The Agency confirms that as a member of The Association of Nanny Agencies (ANA) it will comply with the ANA's Code of Standards of Best Practice. It is standard procedure that we request our Candidates to provide written references, a CRB Disclosure (police check), an up-to-date CV, proof of ID and proof of qualifications. If we have not been able to check these yet, we will inform you. If the Candidates cannot provide any of these documents or are in the process of obtaining one we will inform you before you agree to interview them. If you request a Candidate with certain skills/documents (such as first aid training, driving licence, childcare diploma, etc.) but she is in the process of obtaining these we will inform you. The Agency do not directly employ the Candidate and are not able to insist upon CRB checks. If a candidate who does not have an up to date CRB and/or are in the process of obtaining one, then the agency will inform the Client of the CRB status of the Candidate before you agree to interview them.
- 4.2 The Agency will take all reasonable steps to introduce Candidates who are of sound character, honest and reliable but cannot be held responsible for the conduct of a Candidate.
- 4.3 The Agency endeavours to ensure the suitability of the Candidate based on the information the Client has provided but the Agency does not guarantee the suitability of any Candidate introduced to the Client and makes no warranty or representation expressed or implied in respect of any Candidate. The final decision to employ a candidate is the sole responsibility of the Client. The Client shall therefore satisfy themselves as to the suitability of the Candidate and the Client shall take up any references provided by the Candidate and/or the Agency before employing a Candidate. The Agency does not accept any liability for any inconvenience, damage or loss arising whether caused directly or indirectly from any act or omission of a Candidate introduced to the Client by the Agency. The Agency offers no warranty for a Candidates character, honesty, reliability, suitability or capacity.
- 4.4 The Agency can provide for the Client and the Candidate a draft standard Contract of Employment but makes no representations whatsoever in relation to that document and cannot provide any legal advice to either party as to its content or the terms of employment between the Client and the Candidate or in fact any terms and conditions therein.
- 4.5 The Agency does not operate a payroll system but can refer the Client to a nanny payroll tax specialist if requested.

5 FEES

- 5.1 There is no VAT to pay on any Agency Fees (Fulham Nannies is a non-VAT registered entity below the VAT registration threshold for the tax year 2009/2010).
- 5.2 The Client agrees to pay all Agency Fees within 14 days of the date of the invoice submitted by the Agency.
- 5.3 The full Agency Fees will become payable when a Candidate introduced by the Agency is offered and accepts employment with the Client, either by verbal or written agreement, and not at the commencement of employment.
- 5.4 The Agency Fees charged relate to one engagement only. Where a Candidate is engaged on a temporary basis and the Candidate's employment is extended either beyond the original period of Engagement or the Client subsequently re-engages the Candidate in any capacity within 12 months from the date of the initial Introduction, the Client undertakes to inform the Agency within 7 days and pay the relevant Introduction fee again in accordance with the Agency Fee Structure for a new Placement. The Agency will then raise an invoice for the appropriate Introduction fee as set out in these Terms and Conditions less any fees already paid in respect of the original Engagement.

- 5.5 If a maternity nurse is subsequently employed as a nanny, mothers help or housekeeper then a further fee shall be payable in accordance with the Agency's Fee Structure for a new Placement within 14 days.
- 5.6 If the Client employs a Candidate but does not inform the Agency within 7 days, the fee payable will be subject to a 50% surcharge.
- 5.7 If a Candidate is solicited to work for the Client with the intention of bypassing the Agency's Fees then the Client will be invoiced the fee then chargeable by the Agency for the relevant Placement plus £1000 penalty charge.
- 5.8 If a Candidate is engaged on a trial basis for a period of up to a maximum of 1 day and the Placement does not become permanent then the Agency will not charge a fee.
- 5.9 If a Candidate is engaged on a trial basis for a period of more than 1 day and the Placement does not become permanent then the fee chargeable will be calculated on the basis of a temporary Placement. If the Placement does become permanent then the balance of the fee for a permanent Placement is payable immediately upon the rendering of the Agency's invoice less any fees already paid in respect of the trial Placement.
- 5.10 All information provided by the Agency including personal details of Candidates should be treated as strictly confidential and must not be passed either directly or indirectly to other potential Clients or Candidates. The disclosure by the Client to a third party of any details regarding a Candidate from the Agency which results in the subsequent Engagement of that Candidate by that third party within 12 months of the initial Client Introduction will render the Client liable for full payment of the Agency Fee relevant to the exact period of Engagement..
- 5.11 The Client acknowledges and understands that the Agency Fees do not include any part of the Candidate's salary.
- 5.12 The fee payable to the Agency by the Client for an Introduction resulting in an Engagement is calculated in accordance with the Agency's Fee Structure.
- 5.13 Fee Structure (stated in pounds sterling):
- 5.13.1 Permanent Staff - 5 Weeks net salary
 - 5.13.2 Temporary Staff - £80 for each Week booked or any part of Week thereof (a Week is calculated from Monday to Sunday)
 - 5.13.3 Maternity Nurses - £80 for each Week booked or any part of Week thereof (a Week is calculated from Monday to Sunday)
- 5.14 A discounted placement fee (equivalent to 20%) will be applicable if the Client agrees in writing to conduct their Candidate search solely through the Agency for a period of four weeks.

6 REPLACEMENT GUARANTEE AND REFUNDS

- 6.1 All fees must be paid within 14 days of the date of the invoice submitted by the Agency, which will be issued immediately after the Client has accepted either verbally or in writing a Candidate for employment. If settlement is not received within this time-scale, the replacement and refund provisions detailed below will not apply. The Agency reserves the right to charge interest on unpaid invoices in accordance with the provisions of The Late Payment of Commercial Debts (Interest) Act 1998 and any subsequent amendments, calculated from the due date until the date of actual payment. Late payments may also incur a late payment administration charge of twelve pounds for every weekly reminder.
- 6.2 Should the Candidate fail to take up an Engagement A FULL REFUND WILL BE MADE provided the Client advises the Agency, in writing, within 7 days of the failure. Should the Agency have already been paid a full refund will be made within 14 days of the Agency being advised of the Candidates failure. The Agency will also offer the Client a separate guarantee of 20% discount for finding a new nanny through the Agency.
- 6.3 The Agency cannot guarantee that the Candidate will complete his or her proposed length of Engagement.
- 6.4 If the Engagement is lawfully terminated by the Client or Candidate within 8 eight weeks of the date of commencement of a permanent Placement or within the invoiced period of a temporary Placement, the Agency will use all best endeavours to find a suitable replacement Candidate for the Client (by reference to the

Candidate's experience and/or qualifications and the Client's job specification) within 4 weeks from the date of the Client's notification to the Agency. A refund will only be valid if the Client provides the Agency this opportunity. The Agency will attempt to find a replacement Candidate at no extra cost to the Client provided that:

- i) the Client notifies the Agency in writing within 7 days of the termination of Employment;
- ii) the Client allows the Agency 4 weeks to introduce a suitable replacement Candidate to the Client;
- iii) all payments due to the Agency under these terms and conditions have been made by the due date;
- iv) the Client has not failed to carry out any of its obligations under these terms and conditions and current employment legislation;
- v) the Candidate did not leave due to a change in the job description or a change in the work location, or due to unreasonable working conditions;
- vi) the Placement did not fail as a result of unreasonable demands by the Client;
- vii) the Client has not requested that no replacement Candidate be sought
- viii) the Client has not found a new carer via another source after advising the Agency to look for a replacement Candidate;
- ix) the Client had paid the Candidate's PAYE (a copy of all the Candidate's pay slip within the first month of employment needs to be supplied to the Agency for proof);
- x) the client has not varied the request for replacement from that of the original specification;

- 6.5 In the event that the Agency puts forward a Candidate (or Candidates) that it considers to be suitable by reference to the Candidate's experience and/or qualifications and the Client's job specification and the Client unreasonably fails to offer the Candidate a position on the same terms as the previous Candidate's terms, then the Agency shall be under no further obligation to offer further replacements or a refund of the Introductory fee.
- 6.6 If the Client finds the Candidate unsuitable yet retains the Candidate in their employ the Client is liable to pay the full Agency fee and the Agency will offer no refund.
- 6.7 Whilst the Agency shall endeavour to find a replacement Candidate the Agency makes no guarantee that such a Candidate will be found.
- 6.8 The Client will no longer be eligible for a refund after the first Candidate has been replaced.
- 6.9 If the Engagement is lawfully terminated by the Client or Candidate within 8 eight weeks of the date of commencement of a permanent Placement or within the invoiced period of a temporary Placement and no suitable replacement Candidate can be found by the Agency within 4 weeks of notice of that termination being given to the Agency by the Client, part of the fee paid by the Client to the Agency will be refunded, calculated in accordance with the following scale:
- i) Permanent Placements
 - if termination occurs within 2 weeks: 50% of the Agency fee
 - if termination occurs within 4 weeks: 40% of the Agency fee
 - if termination occurs within 6 weeks: 30% of the Agency fee
 - if termination occurs within 8 weeks: 20% of the Agency fee
 - ii) Temporary Placements

Where a Candidate for a temporary position leaves the Client's employment within the invoiced period, a refund will be available for each complete week not worked if the agency cannot find a replacement.
- 6.10 A permanent Placement is deemed satisfactory after 8 weeks unless the Agency is notified to the contrary within the first 8 weeks from the start of the permanent Placement. No refund will be payable should a Candidates employment be terminated after 8 weeks.
- 6.11 A temporary Placement is deemed satisfactory after 2 days unless the Agency is notified to the contrary within the first 2 days from the start of the temporary Placement. No refund will be payable should a Candidates employment be terminated after 2 days.
- 6.12 No refund will be paid if a maternity Engagement is terminated before the conclusion of the agreed period of employment.

- 6.13 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.
- 6.14 In the case of temporary Placements the relevant fee is based on the number of weeks initially requested. No refund or deduction from the Agency fee will be given if the number of weeks is subsequently reduced on a temporary Engagement. Similarly no refund or deduction will be made if an Engagement is reduced from full-time to part time or permanent to temporary.
- 6.15 If the Client has to delay the commencement of the Engagement of the Candidate (for example because of the birth of a baby later than expected) then the Client shall be liable to pay the Candidate the full agreed weekly salary from the agreed date of commencement and no refund of the Agency Fee or any part thereof shall be payable.

7 CANCELLATION FEE

7.1 If after an offer of Engagement has been made to the Candidate and accepted (either verbally or in writing) and the Client decides for any reason to withdraw from the agreement the Client shall be liable as follows:

(a) If the due start date is 14 days or less from date of cancellation the full fee is payable to the Agency plus one weeks salary to the Candidate

(b) If the due start date is 15 days or over from the start date then 50% of the full fee is payable to the Agency.

7.2 There will be no charge if the Candidate cancels the Engagement before the commencement date.

8 LIMITATION OF LIABILITY

8.1 Nothing in these Terms and Conditions shall exclude or limit the liability of the Agency for death or personal injury, however the Agency shall not be liable for any direct loss or damage suffered by the Client or any third party howsoever caused, as a result of any negligence, breach of contract or otherwise in excess of the sum insured under the professional indemnity insurance policy held by the Agency in the insurance year in which the Clients claim is first notified.

8.2 The Agency accepts no liability for any loss, damage, expense or compensation suffered or incurred of any nature by the Client, arising directly or indirectly from an act or omission by any Candidate introduced to the Client by the Agency.

9 INDEMNITY

The Client shall indemnify the Agency against all claims, costs and expenses which the Agency may incur and which arise directly or indirectly from the Clients breach of any of its obligations under these Terms and Conditions.

10 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

11 NOTICES

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Registration Form or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

12 SEVERANCE

Document Reference: FNTC04/26 August 2009

If any term or provision of these Terms and Conditions 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.

13 ASSIGNMENT

The Client shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Agency.

14 THIRD PARTY RIGHTS

It is not intended that any of the terms and conditions of this agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

15 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions.

16 ENTIRE AGREEMENT

These Terms and Conditions supersede any previous agreements, arrangements, documents or other undertakings either written or oral.

17 GOVERNING LAW

These Terms and Conditions of Business are governed by and construed in all respects in accordance with the law of England and Wales and the Client agrees to submit to the exclusive jurisdiction of the Courts of England & Wales.

SIGNATURE

I hereby declare that I have read, understood and accept the Agency's terms and conditions, and hereby agree to be bound, without any limitation or qualification whatsoever, to the terms and conditions of business set out above and to pay the Introduction fee according to the Agency's Fee Structure upon confirmation of a Placement.

Name:

Signature:

Date of signing: