

# Herts and Home Childcare Terms Of Service- Membership

## 1. DEFINITIONS

1.1 In this Contract, the following words shall have the following meanings, unless the context requires otherwise:

"Agency" means Herts and Home Childcare Business.

"Approved Status" means the Client has approved a Nanny to be sent to them for Assignments.

"Assignment " means the role to be done by the Nanny for the Client in the terms of this Contract as agreed in the "booking confirmation".

"Booking" A scheduled "Assignment" as agreed by "The Agency" and "Client" set out within The Booking and Cancellations Terms and Conditions

"Client" means the person or persons who is registered as a member with "The Agency".

"Client Brief" means the information provided by the Client, either verbally or in writing, setting out, including but not limited to the Client's details and requirements for childcare.

"Confidential Information" means all business and personal information about a party to this Contract, including information which may give a commercially competitive advantage to any other person. It includes but it not limited to:

- Information about staff, their performance and their personal contact information.
- Information, comment or implication published on any Internet social medium.
- Information about intellectual property.

"Contract" means a legal agreement enforceable by law.

"Damage" means both economic loss, loss of, or Damage to, reputation, or professional standing.

"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 an Applicant or Nanny, by or on behalf of the Client, whether or not that Contract is in writing but in any case where the Client has agreed to provide remuneration (whether monetary or otherwise) to the Applicant or Nanny.

"Fee" means money payable to Herts and Home Childcare by the Client for the Services.

"Gross Misconduct" means behaviour that may include but is not limited to severe health and safety breach, alcoholism or drug use at work, theft, physical violence, gross negligence or serious insubordination.

"Job Description" means the information provided by the Client to outline the Assignment for purposes of placing Nannies.

"Month" means calendar month.

"Nanny" means a person supplied by Herts and Home Childcare to the Client for work on the Assignment.

## **Herts and Home Childcare Terms Of Service- Membership**

“Registration” mean the process by which a Client provides a “Job Description”, signs this Terms and Conditions, appoints a Direct Debit Payment Form and the Agency receive the registration fee for Membership Status.

"Services" means the Services whereby Herts and Home Childcare provides one or more Nannies to the Client for work.

“Unworked/non-worked” means hours where a Nanny is required but does not attend without reasonable cause including but not limited to sickness, bereavement and genuine emergency.

“Week” means a 7-day period.

### **2. INTERPRETATION**

2.1 This Contract shall be interpreted as set out below.

2.2 A reference to one gender shall include any or all genders and a reference to the singular may be interpreted where appropriate as a reference to the plural and vice versa.

2.3 Obligations undertaken by more than a single person are joint and several obligations.

2.4 A reference to a person includes reference to that person's successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that person.

2.5 The headings to the paragraphs and schedules, including but not limited to the general layout, to this Contract are inserted for convenience only and do not affect the interpretation.

2.6 These Terms Of Service apply to all work on the Assignment. They prevail over any terms proposed by the Client.

### **3. RELATIONSHIP OF PARTIES**

3.1 These Terms Of Service shall represent a legally binding Contract between the Agency and the Client, covering Membership service and status, the placement of Nannies for Childcare Assignments “Bookings” and the ongoing support for childcare Services including but not limited to offering replacement Nannies during the Assignment or any other Assignments for the Client.

3.2 These Terms Of Service represent the entire understanding between the parties and supersede all previous Contracts and representations (including, but not limited to any statements made on the Agency's website) made by or between the parties whether oral or written.

3.3a The Client should agree to these Terms Of Service in writing- via email or in person for this Contract to become binding. Should commencement of an Assignment take place before the signing of this Contract, this acts in place of signing this agreement and the terms set out in this Contract are in force.

3.3b The verbal or written instructions by the Client, or the Client's appointed agent, to the Agency to submit a suitable Applicant for assignment with the Client constitutes acceptance of these Agency's Terms Of Service by the Client.

## **Herts and Home Childcare Terms Of Service- Membership**

3.4 Nothing in this Contract shall create any relationship between the parties, other than the Contractual relationship expressly provided for in this Contract.

3.5 Neither party shall have, nor represent that it has, any authority to make any commitment on the other party's behalf, except the Services the terms of which are agreed in this Contract.

3.6 A Nanny is not an agent of Herts and Home Childcare and they do not enjoy any implied authority to act on behalf of Herts and Home Childcare otherwise than expressly authorised by Herts and Home Childcare as may be specified in the Assignment.

3.7 This Contract contains the entire Contract between the parties and supersedes all previous Contracts and understandings between the parties.

3.8 Each party acknowledges that, in entering into this Contract, it does not rely on any representation, warranty, information or document or other term not forming part of this Contract.

### **4. GENERAL**

4.1 Herts and Home Childcare is an employment business, regulated by the Employment Agencies Act 1973 and Conduct of Employment Agencies and Employment Businesses Regulations 2003.

4.2 Upon completion of Registration the Agency endeavours to provide the Client with at least five Nannies suited to the Family Profile of the Client as possible and gain 5 nannies to Approval Status. The Agency agrees to provide the Client with all relevant information concerning the Nanny and will check the Nanny's details, documentation and references. However, the final responsibility for any decision to agree a nanny to an Assignment rests with the Client.

4.3 The Client acknowledges that it understands exactly what is included in Herts and Home Childcare Services and is satisfied that the Services are suitable and satisfactory for its requirement.

4.4 The Client is responsible for providing a full detailed Job Description to the Agency when registering and making a Booking. The Client confirms that the description of work and other information that he has provided, or shall provide, is accurate and complete. In addition, the Client accepts that in order for the Agency to provide the Client with the Services to the best of its ability, the Agency shall be able to share limited details of the job with third parties such as Applicants or third parties such as job boards and / or partner agencies. The Agency confirms that no photos or contact details shall be shared to any third parties, except Applicants that the Client wishes to interview.

4.5 The Client acknowledges that Membership Status is directly linked to a successful membership fee. Where no fee is paid the Client is not entitled to make a Booking for an Assignment until the fee is paid to date.

4.6 When a Booking has been made and confirmed in line with the Booking and Cancellation Terms and Conditions the Client becomes liable for any fees as set out in those terms.

4.7 If the Client wishes to change the terms of the Assignment after a nanny has been appointed to a Booking (including, without limitation, the working hours, location or any other detail) the Agency will attempt to adjust the booking but in the circumstance of these changes not being able to be accommodated the Client is liable for the initial agreed terms.

## **Herts and Home Childcare Terms Of Service- Membership**

4.8 The Client acknowledges and agrees that any nannies, once accepted by the Client for Assignments are employed by the Agency. The Agency are responsible for all legal employment duties and ensuring that any deductions from the employee's wages are made in accordance with the law. Herts and Home Childcare shall be solely responsible for:

- Paying the Nanny it engages to work on the Assignment for the Client.
- Accounting to HMRC for any income tax and national insurance contributions which become due as a result of the arrangements in this Contract.
- Herts and Home Childcare may assign or transfer the benefit of this Contract.

4.9 The Applicant shall be under the supervision and direction of the Client throughout an Assignment ensuring the Nanny has suitable information to conduct their work, but full control of the Nanny lies with the Agency.

4.10 No term of these Terms Of Service are intended for the benefit of any third party and the parties do not intend that these Terms Of Service should be enforceable by a third party, either under the Contracts (Rights of Third Parties) Act 1999, or otherwise.

4.11 The Agency reserves the right to change or add to the above Terms Of Service without prior notification, however all changes will be posted on the website and emailed to Clients. It is the Client's responsibility to check these Terms Of Service in case there are any changes. Continuing to use the site and our Services after a change has been made is acceptance of any changes.

4.12 Nothing in this Contract shall prevent Herts and Home Childcare from entering into a similar Contract to this one with any other person.

4.13 The Client agrees not to enter into any relationship with the Nanny that may be detrimental to the interest of Herts and Home Childcare during this Contract or after its termination.

4.14 To satisfy their legal obligations each of Herts and Home Childcare and the Client agrees that it will comply with the privacy restrictions of GDPR legislation in regard to any personal information held about Applicants and Nannies. Those obligations shall continue to apply after expiry or termination of this Contract for any reason.

## **5. FEES AND PAYMENT**

5.1 The Client agrees to pay for the Services at the rates set out at each Booking.

5.2 The first overtime hour is payable at the usual hourly rate. The second and further overtime hours are payable at 1.5 times the hourly rate.

5.3 Payment is due on the day of Assignment. Should there be additional fees due to overtime hours this is payable the next working day.

5.4 Trials for Applicants are paid at the usual hourly rate.

5.5 A Registration Fee is applicable at the time of signing this agreement or it's equivalent.

5.6 Monthly membership fees are due on the 1<sup>st</sup> of each month in advance. This fee grants the Client membership status and grants them ability to Book assignments.

## **Herts and Home Childcare Terms Of Service- Membership**

5.7 Where a Nanny uses her own vehicle to transport children on Assignment she is entitled to a 45pence per mile reimbursement which will be payable via the agency payments. (Clients should record any milage to reduce the likelihood of any disputes between Nanny and Client records).

5.8 Payment shall usually be made by direct debit, or any other way agreed between the parties if the direct debit is unsuccessful.

5.9 Provided the Client is not in breach of this Contract, Herts and Home Childcare will refund the full balance of any Fees paid by the Client for which a Nanny has not been able to work unless this time is part of her annual leave or sickness allocation as agreed in the Assignment agreement.

5.10 Interest shall be payable by the Client on any money not paid within 7 days of the due date, at the rate of 5 per cent above the base rate set by the Bank of England from the due date until receipt of payment.

### **6. WORK MANAGEMENT PROCEDURE**

6.1 Herts and Home Childcare agrees that it shall endeavour to provide a competent, honest and trustworthy Nanny to work on any Assignment.

6.2 The Client shall oversee the day to day tasks of the Nanny ensuring to engage with the Agency to update about a Nanny's performance.

6.3 The Client shall inform Herts and Home Childcare as and when the Nanny is otherwise not available to work.

### **7. OBLIGATIONS OF HERTS AND HOME CHILDCARE**

7.1 Herts and Home Childcare agrees to make every reasonable effort, within an appropriate timescale, to introduce at least 5 suitable Nannies who closely meet the requirements of the Client after Registration.

7.2 Herts and Home Childcare shall make all reasonable efforts to ensure that a Nanny shall:

- Have suitable skills and experience for the purpose mentioned by the Client in the Assignment.
- Comply with the legitimate and reasonable instructions of the Client in relation to the Assignment.
- Comply with the reasonable requirements of the Client in connection with concerning conduct and standards of behaviour on the premises of the Client.
- Have provided confirmation of her identity, experience, training, qualifications and any authorisation which may be required by law or any professional body.
- Have provided proof of legal driving status and any relevant vehicle insurances
- Have a sufficient understanding of the general law relating to the Assignment.
- Understand the necessity of complying with the policies, conduct and standards of behaviour of the Client.

7.3 Herts and Home Childcare agrees to attempt to provide one of the 5 pre-approved Nannies for childcare Assignments when a Client requests a Booking. Where one of the 5 Nannies are not

## **Herts and Home Childcare Terms Of Service- Membership**

available they endeavour to provide a suitable alternative. If they are unsuitable to the Client then refunds for unworked hours or monthly membership apply.

7.3 If at any time during an Assignment, Herts and Home Childcare becomes aware of any fact which makes a Nanny unsuitable or otherwise disqualifies him from suitability for continued work on the Assignment it will inform the Client immediately and offer a replacement for the Nanny.

7.4 Herts and Home Childcare is responsible for the payment of a Nanny's remuneration and shall deduct there from and account for all applicable taxes (including, without limitations, any National Insurance contributions) required by law.

### **8. OBLIGATIONS OF THE CLIENT**

8.1 The Client undertakes that he will:

- Satisfy himself as to the suitability of a Nanny before accepting him/her to Approved Status, based on the information provided by Herts and Home Childcare and during any interviews with the Applicant. The Client may trial the Applicant at the hourly rate to satisfy this suitability.
- Ensure that the Nanny has any suitable information regarding the children's care and health including but not limited to food preferences, allergies and any other medical information or care requirements.
- Properly organise, supervise and direct the Nanny to their wishes and to the duties of the role.
- Properly inform the Nanny of household rules, set up and other medical considerations within the home.
- Provide the Nanny with safe and compliant car seats suitable to the age, stage and development of their children where they are required to transport the children.
- Comply with the Conduct of Employment Agencies and Employment Businesses Regulations 2003, Agency Workers Regulations 2010 and all applicable law including but not limited to health and safety in the workplace.
- At all times, notify Herts and Home Childcare immediately of every matter which a prudent employer should know about or which affects the Contractual relationship between Herts and Home Childcare and the Nanny.
- Not Contract or engage in any work with the Nanny for his work except through Herts and Home Childcare.
- Provide a clean and safe place of work wherever the Nanny may need to work.
- Provide adequate funds to any Nanny on Assignment to be able to adequately care and feed the children whilst on duty or for them to attend any requested activities including but not limited to transport costs.
- Not discriminate against any Nanny on the basis of information relating to his/her: racial or ethnic origin; philosophical or religious beliefs; sexual orientation or gender.
- Inform Herts and Home Childcare immediately, in writing, in the event of serious dissatisfaction with performance or conduct of the Nanny.

8.2 The Client agrees to indemnify Herts and Home Childcare against all costs, claims and expense arising directly or indirectly from:

- The Client's breach of this Contract.

## Herts and Home Childcare Terms Of Service- Membership

- Loss or Damage suffered by the Nanny as a result of an action brought by the Client or any third party.
- Any act, neglect or default by any of Client's agents, employees or Contractors.
- A Contractual claim arising from the Client's non-payment of the Fees.

### 9. Confidentiality

9.1 Both the Agency and the Client shall not, whether on their own behalf or in any capacity for any other person, firm or company, use or disclose to anyone any information of a confidential nature relating to the other (or to any of the other's associated companies or persons) or to the other's affairs or conduct of the other. This includes any Confidential Information about Nannies. Any information received by the Agency will be treated confidentially and will remain in compliance with GDPR legislation. The Agency agrees not to provide this information to third parties, other than any prospective Applicants on a need-to-know basis.

10.2 All secrets or Confidential Information relating to the business of either party, its employees, transactions or finance, disclosed to the other of them shall be regarded as having been disclosed in confidence.

9.3 The parties hereby undertake not to:

- Divulge to any person whatever or otherwise make use of any Confidential Information relating to the other.
- 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.
- Store, copy, or use the Confidential Information in any place or in any electronic form which may be accessible to any other person.

9.4 The parties agree that any Damage 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.

9.5 The Client accepts personal liability for compliance with these provisions by his children of any age, other members of his family and other domestic staff.

9.6 No matter how this Contract ends, this section shall be effective for 10 years from the date of termination of this Contract.

9.7 Herts and Home Childcare procures that upon termination of, or at any time during an Assignment, a Nanny shall deliver to the Client all books, documents, papers, materials and other property (including any copies thereof) belonging to or relating to the business of the Client which may then be in his/her possession or under his/her control].

### 10. NO COMPETITION

10.1 If, without the written approval of Herts and Home Childcare information relating to a Nanny is passed to a third party and that results in loss of any income or business opportunity to Herts and Home Childcare the Client will be liable to indemnify Herts and Home Childcare for its loss of any Fee that it would have received had the arrangement been subject to a Contract like this Contract.

## **Herts and Home Childcare Terms Of Service- Membership**

10.2 The Client agrees that it will not during the term of this Contract and for a further period of five years after its termination engage the Nanny in any way except in the terms of this Contract else the Client is liable to indemnify Herts and Home Childcare for its loss of any Fee that it would have received had the arrangement been subject to a Contract like this Contract.

10.3 The Client further agrees that it will not engage the Nanny for any Services or in any other way during their employment with Herts and Home Childcare except through the Services of Herts and Home Childcare.

### **11. LIMITATION OF LIABILITY**

11.1 This paragraph applies so far as the applicable law allows and states the entire liability of Herts and Home Childcare in Contract and in tort.

11.2 All implied conditions, warranties and terms are excluded from this Contract so far as the law allows.

11.3 At all times Herts and Home Childcare agrees to ensure the suitability of any Nanny supplied to the Client but the Client must satisfy himself as to the suitability of any Nanny and shall be responsible for taking up any additional checks and references to satisfy himself.

11.4 Herts and Home Childcare will ensure the Nanny is adequately insured for Assignments to mitigate loss to the Client.

11.5 The decision to engage a Nanny is in the sole discretion of the Client. Herts and Home Childcare does not accept responsibility and is not liable for any loss.

11.6 Herts and Home Childcare shall not be liable to the Client for any loss or expense which is:

- Indirect or consequential loss; or
- Economic loss or other loss of turnover, profits, business or goodwill; or
- Loss or Damage suffered by the Client as a result of an action brought by third party; or
- Loss or Damage caused by any fraudulent or unlawful act, omission or negligence of such Nanny.
- Loss or Damage attributable to negligence, dishonesty, misconduct or lack of skill of the Nanny.

11.7 The maximum limit of the liability of Herts and Home Childcare to the Client, whether in Contract, tort, or breach of statutory duty shall not exceed the sum of £10,000.

11.8 The limitations set out in this paragraph (and any other paragraph which excludes or restricts the liability of Herts and Home Childcare) applies to the Agency's directors, officers, employees, subcontractors, agents and affiliated companies (who may enforce them under the Contracts (Rights of Third Parties) Act 1999 / Contracts (Rights of Third Parties) (Scotland) Act 2017, as well as to Herts and Home Childcare itself.

### **12. DURATION AND TERMINATION**



## **Herts and Home Childcare Terms Of Service- Membership**

12.1 The Contract may be terminated at any stage by either party, upon 4 weeks' written notice for any reason. All Fees apply during this period and Assignments can be scheduled during this period.

12.2 During the first 14 days of this Contract either party can terminate the Contract at any time. In the unusual circumstance that any work has been undertaken by a Nanny any Fees paid that have been unworked will be refunded. If any hours have been worked the first month's Membership fee is non-refundable.

12.3 In the instance of proof of gross misconduct by a Nanny, the Client can opt to end the Assignment. No further Fees are chargeable, and a refund may apply for any unworked Fees provided the Agency are satisfied by the evidence of misconduct.

12.4 In the instance of inappropriate behaviour or breach of Contract the Agency can terminate at any time without prior notice. All Fees will be retained, and no refund will apply.

12.5 The termination of this Contract shall be without prejudice to any other right or remedy to which a party may be entitled.

### **13. MISCELLANEOUS MATTERS**

13.1 So far as any time, date or period is mentioned in this Contract, time shall be of the essence.

13.2 If any term or provision of this Contract is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally 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.

13.3 Any obligation in this Contract intended to continue to have effect after termination or completion shall so continue.

13.4 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.

13.5 Neither party shall be liable for any failure or delay in performance of this Contract which is caused by circumstances beyond its reasonable control, including any labour dispute between a party and its employees.

13.6 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.

13.7 It shall be deemed to have been delivered:

- If delivered by hand: on the day of delivery.
- If sent by post to the correct address: within 72 hours of posting.
- If sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender.

13.8 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 arbitration or litigation.

## **Herts and Home Childcare Terms Of Service- Membership**

13.9 In the event of any conflict between any term of this Contract and the provisions of the articles of a limited company or any comparable document intended to regulate any other corporate or collective body, then the terms of this Contract shall prevail.

13.10 The validity, construction and performance of this Contract shall be governed by the laws of England, and the parties agree that any dispute arising from it shall be litigated only in that country.