

## DREAM NANNIES – TERMS AND CONDITIONS

**NOTICE:** These Conditions affect your legal rights. Please read them carefully as they set out the terms and conditions of your engagement of Dream Nannies.

### 1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

**Agency:** Dream Nannies Pty Ltd

**Application:** a request for placement of a Candidate from the Client to the Agency submitted verbally or by way of a Family Application Form.

**Au Pair Placement:** means the Placement of an au pair with a Client;

**Candidate:** any nanny, au pair, mother's help, housekeeper, or other child care professional introduced to the Client by the Agency.

**Client:** 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 Candidate.

**Client Requirements:** the requirements that the Client has in respect of the Candidate specified in the Application, including, without limitation, skills, experience, employment history, working hours and salary expectations.

**Conditions:** 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.

**Contract:** the contract between the Agency and the Client for the provision of the Services incorporating these Conditions.

**Introduction:** the Client's 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, resume or other personal information.

**Family Application Form:** a form completed provided by the Agency and completed by the Client which sets out the Client Requirements

**Placement:** a written or verbal agreement between the Client and the Candidate that the Client will employ or use the services provided by the Candidate. Placement occurs as soon as the Candidate agrees to the Client's offer of employment and shall have occurred regardless of whether or not a written contract is subsequently entered into.

**Placement Fee:** the charge made by the Agency to a Client for the Introduction of a Candidate.

**Permanent Placement:** a Placement for any period of more than 12 consecutive weeks (full-time or part-time) that is not an Au Pair Placement.

**Non-Refundable Booking Fee:** Deposit Required with Application

**Replacement Guarantee Period:** means:

30 days from Placement commencement.

**Temporary Placement:** a Placement for any period up to 12 consecutive weeks (full-time or part-time);

**Writing:** includes facsimile transmission and e-mail.

### 2. THE CONTRACT

2.1 The Application constitutes an offer by the Client to purchase Services from the Agency in accordance with these Conditions. These Conditions constitute the Contract between the Agency and the Client and are deemed to be accepted by the Client on the earlier of:

- (a) confirmation of receipt of the Non-Refundable Booking Fee;
- (b) completion of Family Application Form;
- (c) an Introduction to a Candidate;
- (d) the Placement of a Candidate with the Client; or
- (e) registration of the Client with the Agency.

The Contract may be entered into verbally or via written instruction.

2.2 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Agency which is not set out in the Contract.

2.3 No variation or alteration to these 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 To the extent permitted by law, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.

### 3. OBLIGATIONS OF THE CLIENT

3.1 The Client understands that acknowledges that the Agency has invested time, money and resourcing into the recruitment and screening of Candidates in order to provide the Introduction. In consideration for this expenditure, the Client:

- (a) acknowledges and agrees that the Non-Refundable Booking Fee is non-refundable, regardless of whether or not a suitable Candidate is found for the Client; and
- (b) undertakes to pay the Placement Fee in accordance with clause 5.
- (c) understands and agrees that Candidates are recruited based on the Client Requirements and if actual requirements differ from those specified in the Application the Client may not be entitled to any Replacement Guarantee in the event of a Candidate leaving the Placement.

3.2 The Client agrees and acknowledges that:

- (a) the Agency is not required to provide any details of Candidates until such time as the Non-Refundable Booking Fee has been paid;
- (b) the Agency provides an introductory service only with the intention of making an Introduction of suitable Candidates to the Client;
- (c) it is the Client who employs the Candidate and the Agency does not employ any of the Candidates either directly or indirectly;
- (d) the Agency does not exercise any control over the Candidate during the Introduction or the Candidate's conduct during the Placement;
- (e) the final decision to enter into a Relevant Contract with a Candidate is the sole responsibility of the Client;
- (f) the Client is responsible for satisfying itself to the suitability of the Candidate and to investigate references provided by the Candidate before offering the Candidate a Placement;
- (g) whilst the Agency will use best endeavours to refer suitable, qualified candidates to the Client, it does not guarantee the successful outcome or Client satisfaction with any Candidate. In this situation, the Client understands that refunds will not be given, but the Client is entitled to a Replacement Guarantee

3.3 The Client shall:

- (a) ensure that the Application contains all of the Client Requirements and is true and accurate in all respects;
- (b) co-operate with the Agency in all matters relating to the Introduction and the Placement;
- (c) notify the Agency immediately if it offers a Candidate a Placement;
- (d) comply with the *Fair Work Act 2009* and any other relevant Australian legislation in place in respect of any Placement; and
- (e) obtain any medical certificates, work permits or other approvals necessary for the Candidate to work in Australia.

#### 4. OBLIGATIONS OF THE AGENCY

4.1 Subject to clause 4.2, the Agency will take all reasonable steps to introduce Candidates who:

- (a) are of sound character, honest and reliable; and
- (b) meet the Client Requirement.

4.2 The Agency does not guarantee and makes no warranty or representation, expressed or implied in respect of:

- (a) the conduct of the Candidate during the Placement;
- (b) the suitability of any Candidate introduced to the Client; or
- (c) the Candidate's character, honesty, reliability, suitability or capacity.

4.3 The Agency does not guarantee that the Candidate will complete his or her proposed length of Placement. The Agency endeavours to ensure the suitability of the Candidate based on the Client Requirements 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 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.

#### 5. FEES

##### Non-Refundable Booking Fee

The Non-Refundable Booking Fee is immediately due and payable to the Agency upon commencement of this Contract.

##### Placement Fee

5.1 The Placement Fee is immediately due and payable to the Agency upon the earlier of the Client offering a Placement to a Candidate or the Candidate confirming or accepting an offer (verbally or in writing) (the **Payment Date**).

5.2 The amount of the Placement Fee shall be in accordance with the Agency's standard rates then in force as notified to the Client by the Agency from time to time.

5.3 The Client shall provide the Agency with valid, up-to-date and complete credit card details acceptable to the Agency. The Client hereby authorises the Agency to bill and charge such credit card in the amount of the Placement Fee immediately on the Payment Date.

5.4 The Placement Fee charged relates to one Placement only. If the Client subsequently re-engages the Candidate in any capacity within 12 months from the date of the initial Introduction a new placement fee is payable in accordance with this Contract.

5.5 If a Candidate is solicited to work for the Client with the intention of bypassing the Placement Fee, the Client will be charged the Placement Fee in accordance with this clause.

#### 6. REPLACEMENT GUARANTEE

6.1 Subject to clause 6.2, if, within the Replacement Guarantee Period:

- (a) the Client notifies the Agency that the Candidate is not suitable for the Placement; or
  - (b) the Candidate resigns,
- the Agency will use best endeavours to secure one free replacement Candidate (**Replacement Candidate**) for the Client (the **Replacement Guarantee**).

6.2 The Replacement Guarantee does not apply if:

- (a) the Placement is a Temporary Placement;
- (b) the Candidate terminates the Placement or resigns due to the Client failing to set out all of the Client Requirements in the Application or providing false or misleading information in respect of the Client Requirements;
- (c) the Client confirms the Placement but subsequently terminates Placement prior to commencement by the Candidate;
- (d) the Candidate resigns or the Client notifies the Agency that the Candidate is not acceptable after the Replacement Guarantee Period.

#### 7. LIMITATION OF LIABILITY AND INDEMNITY

7.1 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.

7.2 The Client indemnifies and must keep indemnified the Agency from

and against all liability, losses, damages, expenses and costs (including own solicitor's costs) caused by or arising out of any failure or omission, whether negligent or otherwise, of the Client to observe these Conditions or the terms of the Contract.

7.3 This clause 7 shall survive termination of the Contract.

#### 8. GENERAL

8.1 **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.

8.2 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

8.3 **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 Placement Request 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.

8.4 **Severance.** If any term or provision of these 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 Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

8.5 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

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

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

8.8 **Governing Law.** These Conditions are governed by and construed in all respects in accordance with the law of Queensland and the Client agrees to submit to the exclusive jurisdiction of the courts of Queensland.