

Service Agreement - Terms and Conditions

Calo Consultants CC t/a SA Nanny

1. Definitions

- 1.1. “**Agency**” shall mean Calo Consultants CC t/a SA Nanny is a Close Corporation with registration number: **2009/079190/23** duly registered in terms of the Laws of the Republic of South Africa;
- 1.2. “**Application Form**” shall mean the application form completed by the Client for the services of a Care Worker
- 1.3. “**Care Worker**” shall mean the person requested by the Client to render the required services;
- 1.4. “**Client**” shall mean any party with whom the Agency contracts for the provision of any Services;
- 1.5. “**Services**” shall mean the services as contemplated in clause 2 herein below;
- 1.6. “**Reliever Care Worker**” shall mean an alternate Care Worker who will relieve the Care Worker if the need arises;

2. Services

The Agency offers the Client **various options** to appoint the services of a Care Worker. The Client must indicate the option they prefer. Should the Client wish to change to a different appointment option, they must communicate such intention to the Agency in writing. The new appointment option will come in to effect on the first day of the following month. The appointment options are:

- **Private Placement**
- **Ad Hoc**
- **Monthly Hiring**
- **Fixed term project**

2.1. Private Placement

- 2.1.1. The Client may choose to appoint a Care Worker in their private capacity, with consent from the Agency, at a once-off placement fee, payable to the Agency. The Placement will come into effect on the first day of the month following the month that the Client requested to appoint the Care Worker privately;
- 2.1.2. The Placement fee will be an once off payment payable, 7 days from the date of invoice;
- 2.1.3. The Placement Fee will be based on the annual monthly remuneration offered to the Care Worker including any additional benefits;
- 2.1.4. The Placement Fee will be calculated at a rate of 10% of annual projected remuneration for the Care Worker/s, at a minimum fee of R1,500.00 or whichever is the greater amount;

- 2.1.5. Once a Care Worker has accepted an offer of appointment from the Client, an invoice will be issued to the Client for the Placement Fee. The Placement Fee will be due and payable regardless of whether the Client or the Care Worker has signed a Contract of Appointment, or not;
- 2.1.6. The Client will be required to have a written contract of appointment with the Care Worker they wish to appoint;
- 2.1.7. The Agency will, upon request, provide the Client with a sample contract of appointment at no extra charge;
- 2.1.8. The aforesaid contract of appointment must be completed and signed before commencement of appointment and a copy thereof must be sent to the Agency;
- 2.1.9. The Agency will provide the Client support for a period of 90 days, from the commencement date of Appointment contract by the Care Worker, once the Placement Fee has been paid in full within 7 days of invoice and comply fully with the requirements as stipulated in this agreement, subject to these terms and conditions;
- 2.1.10. If the Client chooses a Care Worker and then subsequently cancels the Care Worker's appointment, for whatever reason, before or after the commencement of duties, the Client will be liable for the full Placement Fee, whether the contract of appointment has been signed or not. The Agency would have fulfilled its obligations to the Client in finding them a suitable Care Worker;
- 2.1.11. If the Care Worker cancels appointment before commencement of duties, the Agency will do their best to find and place another suitable Care Worker. If the Client does not want a replacement Care Worker, the Agency will refund the client 50% of the Placement Fee paid;
- 2.1.12. If the Care Worker cancels appointment after commencement of duties, no refund of the placement fee will be given to the Client;
- 2.1.13. The Agency may supply a Reliever Care Worker, upon request from the Client, depending on availability, at the going Ad Hoc rate for the relevant service, to be paid directly to the Agency;
- 2.1.14. Any trial shifts worked, will be charged at the going Ad Hoc rates for the relevant service, to be paid directly to the Agency;

2.2. Ad Hoc

- 2.2.1. The Ad Hoc services are dependent on the availability of a suitable Care Workers, as per the Client's requirements and location, as per their submitted application form;
- 2.2.2. Ad Hoc Rates include the Care Worker's rate as well as the Agency fee;
- 2.2.3. A minimum shift Rate will apply for all Ad Hoc shifts worked, based on the care for one (1) person, unless otherwise stated, which will include a minimum amount of hours per shift;
- 2.2.4. Additional hours (overtime) worked, over and above the minimum shift hours, will be charged at one-and-a-half times (1.5 x) the going hourly over time rate for the service;
- 2.2.5. Minimum shift rates are determined by the Agency and rates may change without prior notice;

- 2.2.6. Public holiday and Sunday shift Rates are charged at double (2 x) the Standard Rate. If any part of a shift falls on a Public holiday or on a Sunday, the whole shift will be considered a double rated shift; this rate will also apply to overtime worked on these shifts.
- 2.2.7. First time Ad Hoc Clients MUST make a minimum deposit amount payment to the Agency, as determined by the Agency, and proof of such deposit must reflect in the company's Bank Account before any arrangements will be made for the requested service;
- 2.2.8. If the Agency should fail to provide a Care Worker as requested by the Client, the Agency will refund 90% of the minimum deposited amount received, back into the bank account specified by the Client - within 7 working days;
- 2.2.9. The Client must provide adequate directions to the Care Worker and must also be prepared to meet them at a public place or landmark, to assist find the Client's residential or requested address of service;
- 2.2.10. Should any shift finish after 19h00 and /or there are no reasonable and safe transport options available to the Care Worker to return home, the Client will provide the Care Worker with overnight accommodation until the Care Worker can find public or other transport; or the client must provide at their expense a personal transport service (Uber, Taxify, etc) for the Care Worker;
- 2.2.11. The Agency will make every effort to assist the Care Worker with directions and advice, but will take no responsibility for a Care Worker not finding the specified address nor arriving on time, due to transport or any other issues;

2.3. Monthly Hiring

- 2.3.1. The Agency offers the Client the option to hire a Care Worker as an Independent Contractor on a temporary basis on the following conditions:
- 2.3.1.1. The Client requests the Agency to appoint a Care Worker on their behalf on a contractual basis, to perform the services and duties, which is in accordance with the Agency description and the Client's submitted application form;
- 2.3.1.2. The Agency and the Client are jointly and severally liable for the appointment of the Care Worker/s;
- 2.3.1.3. The Agency will charge the Client a monthly administration fee as a percentage of the combined rate of the Care Worker/s, which include the agreed monthly rate or remuneration per Care Worker; plus, any over time worked; plus, any Public holidays worked and any other financial contributions, which may form part of the combined monthly rate;
- 2.3.1.4. The arranged working days and hours, between the Client and Care Worker (work arrangement) must be clearly communicated in writing to both the Care Worker and the Agency;
- 2.3.1.5. The Client agrees to communicate any changes in the required work arrangement to the Agency immediately in writing;

- 2.3.1.6. It is the Client's responsibility to check; confirm and ensure that the Agency receives the Care Worker/s time sheet in good time for processing and invoicing for each month or period;
- 2.3.1.7. The Agency will send the Client an detailed Invoice with a breakdown of the Care Worker/s rate; the Agency administration fee and if applicable - statutory deductions made from the Care Worker/s. The Client must make the necessary payments without delay, upon receiving the invoice;
- 2.3.1.8. The Client will make payment directly into their Care Worker/s Bank Account, as per the Agency's invoice and contractor slip breakdown, with the correct payment references; and send such proof to the Agency for allocation and record keeping;
- 2.3.1.9. The Client will make payment to the Agency for the Administration fee as well as deductions made from the Care Worker/s, without delay;
- 2.3.1.10. Where commencement of services is on or after the 15th day of any given month, the arranged Ad hoc rate will be charged for all shifts worked for the remainder of that month. The agreed Monthly rate will only come into effective on the 1st day of the following month;
- 2.3.1.11. Public holidays which fall on any shift within the agreed work arrangement, are considered to be paid holiday leave. Should the Client however request their regular Care Worker to work on such a shift, the Agency will charge an extra shift rate – as determined by the rate for a shift for the given month - which will make it a double rated shift. Should their regular Care Worker be unable to do so – for whatever reason - and a Reliever Care Worker is requested by the Client, the regular Care Worker will forfeit their leave day portion payment; and the Reliever holiday shift will be charged at the going Agency Ad Hoc Rates for Public Holidays for the relevant service;
- 2.3.1.12. If the Client's regular Care Worker/s were to miss a work shift/s which falls within the agreed work arrangement, the Agency will attempt to provide a suitable replacement Reliever Care Worker(depending on availability), upon request from the Client for that period, at the going Ad hoc Agency rate. The Agency needs adequate notification time and no guarantees will be provided for a Reliever Care Worker. The regular Care Worker's missed days will be taken as Paid leave in accordance with point 2.3.1.13 or if they have no available leave shifts, the shifts will be considered as unpaid leave, which will be deducted from the agreed monthly rate, either for the current or the next month, based on the daily rate for that given month;
- 2.3.1.13. The Care Worker/s will accumulate paid leave at a rate of 1 paid leave shift for every 17 shifts worked. Sick leave is accumulated at 1 paid shift for every 26 shifts worked, with a maximum of 26 sick leave shifts in a 36 months period. Full Statutory leave will be allocated after six months of service. Should the Client request a Reliever Care Worker, the Agency will charge the going Ad Hoc rate for the service;
- 2.3.1.14. The Client is liable for all the accumulated paid leave shifts for their Care Worker after twelve months of service or upon the termination of the services, by either granting their Care Worker paid leave, or by agreement between both parties, pay the Care Worker for their accumulated leave shifts;

2.3.1.15. After each 12 months of continuous appointment of a Care Worker, the Client must communicate an annual rate increase to the Agency. IF no reasonable annual increase is communicated by the Client, a standard increase rate of 7% will automatically apply;

2.4. Fixed Term Project including Events

2.4.1. The Client must communicate the project or event requirements; dates and times to the Agency, via an official Application form. The Client must supply a complete breakdown of requirements, i.e. estimated number of respective age groups to be cared for, Care Worker responsibilities, function start and end times, etc;

2.4.2. The Agency will give a written quotation, based on the supplied requirements of the Client for the project or event, based on the official Application form. Upon written acceptance of the quotation, the Client is required to make a 50% deposit into the Agency's bank account. The balance will become due, upon completion of the invoice issued;

2.4.3. Should the Client wish to cancel the project with the Agency, it must be done in writing at least 7 days prior to the event. The Agency will keep a 10% cancellation fee and the remainder of the deposited payment will be paid into a nominated valid bank account via EFT, excluding any incurred bank charges, etc;

2.4.4. Should the Customer cancel the requested service for the event or function:

2.4.4.1. More than 7 days from the event, a 10% cancellation fee will be charged.

2.4.4.2. 7 – 4 days from the function date – 50% of the deposit will be held as a cancellation fee.

2.4.4.3. 3 – 1 days from the function date – full deposit will be held as a cancellation fee.

2.4.4.4. On the day of the function – full quoted invoice amount will be due.

2.4.4.5. The remainder of the paid deposit amount will be paid into a nominated valid bank account via EFT, excluding any bank charges incurred by the Agency.

2.5. The Client must provide the Care Worker/s with refreshments during the course of any shift, longer than 5 hours, which will include a light meal and drinks.

2.6. It is the Client's responsibility to effectively communicate any instructions to the Agency regarding arrangements; procedures and instructions to the Care Workers for the event or project.

3. Cancellations & Service Terminations

Cancellations must be done in writing and received by the Agency. Cancellation requirements:

3.1. Ad hoc Clients must give at least 2 full shifts notice.

3.2. Fixed Term Projects must be cancelled at least 7 days prior to the event

3.3. Monthly Hiring Clients must give notice:

3.3.1. 2 full shifts, within the first month of appointment

3.3.2. 1 weeks' notice for 2 - 3 months of appointment

3.3.3. 2 weeks' notice for 3 - 6 months of appointment

3.3.4. 4 weeks' notice for 6 + months of appointment (30 days – will be liable for full notice period even if Care Worker does not work)

3.3.5. For service contracts of more than 1 year, as per Section 41 of the Basic Conditions of Employment Act 75 of 1997 (BCEA), severance pay, equivalent to one week's remuneration for

each completed year of continuous service provided by the same Care Worker/s - must be paid to the Care Worker/s as final settlement.

- 3.4. As a full & final settlement for the Termination of the Service agreement, the final payment to the Care Worker/s must include the balance of the accumulated Paid Leave shifts owed; the actual shifts worked for that period; the applicable notice period shifts if decided the Care Worker should not work during the Notice Period; as well as - If applicable - severance pay..

4. Payment

- 4.1. All invoices are electronic and will be e-mailed to a valid e-mail address provided by the Client.
- 4.2. **Invoices** are due upon receipt thereof and payment must be made without deduction or set-off and the Client shall not be entitled to withhold or defer any payment or to affect any set-off in regard to any alleged claim or counter claim. Invoices must be paid BEFORE services are rendered. Payment must be made to the banking details on the invoice:
- 4.2.1. Proof of payment must be faxed to (011) 252-5661 or e-mailed to pop@sananny.co.za. The Client must clearly indicate their name and invoice number as a reference on such proof.
- 4.2.2. The Client will be responsible for any bank charges incurred by the Agency, for any CASH, CHEQUE, FOREX or any other payments received.

5. Breach

- 5.1 Should any party breach any of its obligations in terms of this agreement and persist in such breach for a period of 20 (twenty) business days after written notice has been given the other party, the aggrieved party shall be entitled without prejudice to any rights which it/he/she may have in terms hereof or at law, to an order for specific performance and damages or to cancel this Agreement and claim damages.
- 5.2 The Client will be charged interest on any overdue invoices, at the current lending interest rate + 5%.
- 5.3 The Client will be liable for any charges incurred by the Agency, for collecting outstanding amounts or debts, which may include contacting, legal and debt collection fees.
- 5.4 The Agency may use subcontractors or named partners to issue invoices for services rendered.
- 5.5 The Client must explain and express their reasonable **preferences and instructions** to the Care Worker and preferably put it in writing. Clients must check that the Care Worker fully understands such instructions and preferences.
- 5.6 The Client must:
- 5.6.1 Provide all necessary equipment and supplies for the Care Worker to perform the requested service and duties.
- 5.6.2 Provide the Care Worker with a light reasonable meal for any shift worked longer than 5 hours.
- 5.6.3 Provide the Care Worker with coffee or tea during any shift
- 5.6.4 Provide the Care Worker with adequate facilities to rest and clean-up on a Live-in work arrangement
- 5.6.5 Provide Night Shift Care Workers with a comfortable chair.
- 5.7 A Care Worker's duties and responsibilities are restricted to the capacity in which they are appointed, as per the Client's submitted Application form.
- 5.8 The Client **must report** ANY disputes or complaints with the Care Worker in writing immediately to the Agency.

6 Indemnity

6.1 **Reasonable care** must be taken by the Client to ensure that their personal valuables are kept safe and locked away, as the Agency will take no responsibility for any loss or damages suffered.

6.2 The Agency will take NO responsibility for any monies paid, remuneration advances, loans or gifts given, directly or indirectly from the Client to the Care Worker, or any disputes arising over such matters.

6.3 The Agency will take no responsibility, when a Client requests a Care Worker to go for a **medical test or exam**. The cost and responsibility for such test will be that of the Client's and must be done with the full unforced co-operation of the Care Worker. Such request must be done in compliance with the South African Constitution and Law.

7 Interviews

The Client may choose to interview possible suitable candidates for their position or let the Agency place the best suitable Care Worker in their opinion for such position, based on the Client's completed application form. The Client may choose to interview candidates at the premises of the Agency or at a reasonable location of their choice, at no additional charge. The Agency takes no responsibility for candidates not arriving for an interview, after it was arranged and confirmed by the Agency with the specific candidate/s. The Client may not change or alter any part of the work arrangement during an interview, from the application form submitted to the Agency. Interviews must be cancelled in writing at least 24 hours prior to the confirmed interview date and time. Late cancellations by Clients or "no-shows" will be charged at a Cancellation fee of R50.00 per candidate, as compensation for their transport costs.

8 Special Conditions

Should any Care Workers referred by The Agency (whether or not this contract came into being as a result of said referral), be employed by the Client on any terms whatsoever, without the Agency's involvement and consent, before the commencement of this contract, during its term or after termination of this contract, the Client will then be liable to pay a set penalty fee of R10,000.00 to the Agency. The Client will also be liable for this penalty fee, should any member of the Client's family or any other person, introduced to the Care Worker by the Client, appoint the Care Worker without the involvement or consent of the Agency.

9 Indemnity

9.1 The Agency takes every care in selecting and placing suitable candidates of the highest caliber. The Agency cannot however be held responsible for any dispute that might arise between the Client and the Care Worker for whatever reason.

9.2 The Agency cannot be held liable for any misrepresentation by a Care Worker or for any loss or damage resulting from any act or omission of a Care Worker, whether intentional or through negligence.

10 Disclaimer

The Agency cannot be held responsible for any acts or omissions by a Care Worker, due to the lack of supervision by the Agency within the Client's private residence and due to the nature of the home care service. The Client will be ultimately responsible for the happenings at their own private homes. No fees due to the Agency can be withheld, based on the actions or omissions of a Care Worker.

The Agency recommends that the Client take every possible security measure to ensure the safety of their family and home.

11 General

- 11.1 The Service Agreement and; the Terms and Conditions are governed by the Laws of the Republic of South Africa
- 11.2 The Site and its original content, features and functionalities are owned by Calo Consultants t/a SA Nanny and are protected by international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws.
- 11.3 The Agency requires an annual registration fee, a completed application form and an Acceptance of the Terms & Conditions of Service as described in this document, before any services will commence. The annual registration fee is payable, once suitable Care Workers have been identified and confirmed by the Agency, as per the Client's submitted application form, and will allow the Client to make use of our services for 12 consecutive months. The Annual Registration fee is non-refundable.
- 11.4 The parties choose as their *domicilia citandi et executandi* their respective physical addresses as follows:
- 11.4.1 Calo Consultants CC t./a SA Nanny:
No 6 Celia ave, Northcliff Ext 9, 2195
- 11.4.2 Client: _____
- 11.5 Both the Agency and the Client consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings which may be brought against either of them by the other; provided that either of them shall be entitled to bring any proceedings in the High Court where such proceedings would, but for this consent, fall outside the jurisdiction of the Magistrate's Court.
- 11.6 This Agreement does not constitute either of the Parties an agent or legal representative of the other for any purposes whatsoever, and neither of the Parties shall be entitled to act on behalf of, or to represent the other unless duly authorized thereto in writing.
- 11.7 This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement, and the Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained in this Agreement.
- 11.8 No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the Parties. Neither party to this Agreement has given any warranty or made any representation to the other party, other than any warranty or representation which may be expressly set out in this Agreement.
- 11.9 No indulgence, leniency or extension of a right, which either of the Parties may have in terms of this Agreement, and which either Party ("the grantor") may grant or show to the other Party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right.
- 11.10 No waiver on the part of either Party to this Agreement of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.
- 11.11 In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

11.12 By continuing with the Service you are accepting the conditions of this agreement in its entirety.

E&OE

No changes to this contract will be allowed, unless agreed to by the Agency in writing.

12. ACCEPTANCE

I, the undersigned: - _____
Full Names of Applicant *ID number*

Do hereby accept and fully agree to the Terms and Conditions of this Agreement, as well as irrevocably indemnify and hold harmless: **Calo Consultants CC t/a SA Nanny or subcontractors and partners** against all and any actions, suits, proceedings, claims, demands, costs and expenses of whatsoever nature and howsoever incurred, which may be taken or made against him or be incurred or become payable by him arising out of the placement of a Care Worker.

(SIGNATURE)

(Date)