

## **Terms of business relating to supply of Au Pairs for vacancies by NHAP / Notting Hill Au Pairs**

### **1. Interpretation**

1.1 In these terms of business ("the Terms") the following expressions shall be given the following meanings:

"Acceptance Date"	means the acceptance of an offer of Engagement (either orally or in writing) by the Au Pair;
"Au Pair"	means a person introduced by the Agency to the Client to be considered for an Engagement;
"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 Au Pair by or on behalf of the Client or their immediate family;
"Engagement Date"	means the date on which the Au Pair begins an Engagement;
"Month"	means a calendar month;
"Placement Fee"	means a fee payable on the Acceptance Date, the level of which shall be determined by the Agency and notified to the Client prior to the Acceptance Date;
"the Agency"	means NHAP;
"the Client"	means any person who approaches the Agency with a view to engaging or otherwise employing an Au Pair or to whom an Au Pair is introduced by the Agency;
"Week"	means 7 consecutive days.

1.2 In these Terms words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender and vice versa.

1.3 All and any business undertaken by the Agency is transacted subject to these Terms, all of which shall be incorporated in any agreement between the Agency and the Client. 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 by an authorised officer of the Agency. No variation in these Terms shall be valid if made without the written consent of an authorised officer of the Agency.

1.4 The interviewing by or on behalf of the Client or the Engagement of an Au Pair or the commencement by an Au Pair of work for or the provision of services to the Client (whichever first occurs) shall be deemed acceptance of and agreement to these Terms.

1.5 The complete or partial invalidity or unenforceability of any provision herein for any purpose shall in no way affect the validity or enforceability of such a provision for any other purpose or the remaining provisions. Any such provisions shall be deemed to be severed for that purpose subject to such consequential modification as may be necessary for the purpose of such severance.

1.6 These Terms supersede all previous terms of business.

### **2. Obligations of the Agency**

2.1 The Agency will use reasonable endeavours to introduce to the Client a suitable Au Pair to carry out work for the Client of such nature as the Client shall notify to the Agency when advising the Agency of the vacancy in respect of which the Au Pair has been introduced. The Client accepts that no warranty as to the suitability of the Au Pair can be given by the Agency. The Agency cannot guarantee to find a suitable Au Pair for each vacancy.

2.2 If owing to the fault of the Agency and/or the Au Pair, the Au Pair fails to commence Engagement on the Engagement Date, the Client will be offered a replacement Au Pair or a refund of the Placement Fee.

### **3. Obligations of the Client**

- 3.1 The Client shall satisfy itself as to the suitability of any Au Pair for the purposes of the vacancy for which the Au Pair has been introduced. Without prejudice to the generality of the foregoing, it is acknowledged by the Client that it is for the Client to take up references, to check the validity of qualifications and to ensure that the Au Pair is capable of operating any relevant equipment. The Client shall be responsible for obtaining any work and other permits and for ensuring that the Au Pair satisfies any medical requirements or other qualifications that may be appropriate or required by law. The Client acknowledges that the Au Pair is not a trained nanny, housekeeper, guardian or professional chef, and will ensure that the placement will be conducted in the spirit of the au pair scheme as outlined by the Home Office of HM Government.
- 3.2 The Client is responsible for ensuring the Au Pair is registered with the police and/or any other appropriate authorities.
- 3.3 The Client will give the Au Pair a timetable for work on a weekly basis. The said timetable shall state the hours of work and specific duties to be carried out.
- 3.4 The Client will pay the Au Pairs (in arrears) on a weekly basis and provide pocket money at the beginning of every week in relation for the duties required to be carried out.
- 3.5 The Client undertakes that in the event of the Client effectively introducing (directly or indirectly) any Au Pair to another person, resulting in an Engagement by that person, firm or corporation (which the Client shall immediately notify to the Agency) the Client shall pay to the Agency a Placement Fee in accordance with Clause 4, unless the Engagement occurs more than 6 months after the introduction of the Au Pair to the Client by the Agency or from the date of the Au Pair's last interview with the Client whichever is the later.

#### 4. Fees

- 4.1 The Placement Fee shall become due immediately upon the Acceptance Date. VAT shall be payable thereon at the prevailing rate where applicable.
- 4.2 All monies due hereunder shall be paid by the Client within 14 days of the Acceptance Date, whether or not the Client has received an invoice from the Agency.
- 4.3 If the Placement Fee is not paid within 14 days, the Client will not be entitled to a refund.
- 4.4 The Agency reserves the right to charge the Client interest in respect of any amount outstanding after the period for payment set out in Clause 4.2 above (both before and after any judgement) from the Acceptance Date up to and including the day of payment at the rate of 4% a year above the base rate from time to time of Barclays Bank Plc.
- 4.5 If the Client wants to cancel the placement, notice shall be provided to the Agency in writing.
- 4.6 If the Client cancels the placement after the Acceptance Date but before the Engagement Date then half of the Placement Fee will be refunded (minus a £50 administration charge) provided that cancellation does not occur less than 14 days prior to the Engagement Date in which case, no refund will be payable.

#### 5. Termination

- 5.1 In the event of an Au Pair terminating or the Client lawfully terminating an Engagement within 6 weeks of the Engagement Date and provided that:
  - 5.1.1 all monies due hereunder have been paid by the Client in accordance with Clause 4 above;
  - 5.1.2 such termination is not as a result of redundancy, pregnancy, injury or ill-health or by reason of the Au Pair's race, sex or any disability;
  - 5.1.3 such termination has not arisen where the Client has entered into the Engagement with the prior or likely intention of disposing with the Au Pair's services or terminating employment either without proper cause or with a view to obtaining a refund unfairly;
  - 5.1.4 the Client serves notice on the Agency in writing at its registered office of the termination of the Engagement within 7 days thereof; and
  - 5.1.5 the Client does not commence Engagement of the Au Pair within 6 months from the date of the termination of the Engagement

then the Client shall receive a refund calculated in accordance with the Agency's Refund Policy in force from time to time or, alternatively, the Agency will endeavour to find a replacement Au Pair for the Client. Under no circumstances will any

expenses by refunded.

- 5.2 No refund shall be payable or replacement Au Pair provided by the Agency:
- 5.2.1 in the event of failure by the Client to adhere to the Terms;
  - 5.2.2 in respect of an Engagement where the Au Pair was previously engaged in any capacity by the Client through the Agency;
  - 5.2.3 where relevant material that would materially affect the Engagement has been withheld by the Client;
  - 5.2.4 where there has been inappropriate conduct by the Client, or his/her family, friends employees, colleagues or associates.
- 5.3 The refund shall be repayable in full where the Client subsequently re-engages the Au Pair in any capacity.
- 5.4 After the Engagement Date, any termination of the Engagement by the Client or the Au Pair must be by 2 weeks notice on either side, provided that in the event of the dismissal of the Au Pair, accommodation shall be provided to the Au Pair by the Client for a period of not less than 7 days after the effective date of dismissal.

## 6. Liability and indemnity

- 6.1 Neither the Agency nor any of its staff shall be liable to the Client for any loss, injury, damage, expense or delay incurred or suffered by the Client arising directly or indirectly from or in any way connected with an Engagement and in particular, but without limitation to the foregoing, any such loss, injury, damage, expense or delay arising from or in any way connected with:

- 6.1.1 failure of the Au Pair to meet the requirements of the Client for all or any of the purposes for which he is required by the Client;
- 6.1.2 any act or omission of an Au Pair, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise;
- 6.1.3 any loss, injury damage, expense or delay incurred or suffered by an Au Pair;

PROVIDED THAT nothing in this clause 6 shall be construed as purporting to exclude or restrict liability of the Agency to the Client for personal injury or death resulting from negligence (as defined in the Unfair Contract Terms Act 1977) nor any statutory liability or any exclusion or limitation which is prohibited by law.

- 6.2 In consideration of the Agency entering into an agreement with the Client into which these Terms are incorporated, the Client hereby undertakes to indemnify the Agency in respect of any and all liability of the Agency for:

- 6.2.1 any loss, injury, expense or delay suffered or incurred by an Au Pair, howsoever caused; and
- 6.2.2 any loss, injury, damage, expense or delay suffered or incurred by anyone arising directly or indirectly from or in any way connected with the acts and omissions of an Au Pair, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise,

PROVIDED THAT this indemnity is given only in respect of any such loss, injury, damage, expense or delay caused during or arising directly or indirectly out of or in any way connected with an Engagement.

- 6.3 The Client acknowledges that the limitations and exclusions of the obligations and liabilities of the Agency set out herein are reasonable and reflected in the fee payable to the Agency hereunder and shall accept risk and/or insure accordingly.

## 7. Miscellaneous

- 7.1 Submission of an application form to the Agency (via fax, e-mail, internet or post) by the Client requesting the services of an Au Pair shall constitute acceptance of these Terms.
- 7.2 A request by an Au Pair for details of a Client shall constitute acceptance of the Terms.
- 7.3 The Agency reserves the right to review and to revise these Terms without prior notice.
- 7.4 These Terms shall be governed by and construed in accordance with the laws of England and Wales.