

HOST TERMS AND CONDITIONS
1. ACCEPTANCE

- 1.1 This Agreement is between Niche AuPairs Pty Ltd ABN 37 605 564 485 its successors and assignees, (referred to as “**we**”, “**us**” or “**our**”), and the Client described in the Proposal (referred to as “**you**” or “**your**”), and collectively the Parties.
- 1.2 We are an agency which assists you to find and place a suitable Au Pair with your family. We develop a job description that suits your family’s needs, and if required, arrange introductions to au pairs (**Au Pair**) who have registered with us.
- 1.3 An Au Pair provides live-in care of your children in your family home, including childcare and light housekeeping and cooking duties relating to the care of those children as expressly agreed with you and as set out in the job description.
- 1.4 You have requested the services set out in the attached Proposal (**Services**). You agree and accept that these Terms and Conditions (**Terms**) form the agreement under which we will supply Services to you. Please read these Terms carefully. Please contact us if you have any questions.
- 1.5 You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully. Please contact us if you have any questions. Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older. You must not order Services from us if you are under 18 years of age. If you do not agree to these Terms, you should not purchase from us.
- 1.6 You accept our Proposal and Terms by:
 - (a) signing and returning the Proposal;
 - (b) confirming by email that you accept the Proposal;
 - (c) instructing us to proceed with the Services; or
 - (d) paying any Fees set out in the Proposal, or making part or full payment for the Services, by the methods set out in our Proposal or our tax invoice to you (**Invoice**).
- 1.7 We will not commence performing our Services until you have undertaken the initial free telephone conversation, you have paid the Fees or first instalment of our Fees and you have provided us with a copy of your driver’s licence and/or passport.

2. SERVICES

- 2.1 We agree to perform the Services set out in the Proposal with due care and skill.
- 2.2 The estimated period for us to perform the Services is set out in our Proposal.
- 2.3 We will only commence each relevant part of our Services on payment of the relevant Invoice.
- 2.4 We may provide the Services to you using our employees, contractors and third party providers and they are included in these Terms.
- 2.5 Third parties who are not our employee or our direct contractor (**Third Parties**) will be your responsibility. We are not responsible for the services provided by Third Parties.

3. PRICE, INVOICING AND PAYMENT

- 3.1 You agree to pay us any Fees and Expenses for the Services that you have requested, as set out in the Proposal (**Price**). All amounts are stated in Australian dollars. All Prices include GST (where applicable).
- 3.2 You agree to pay our Invoices within the Invoice Terms. If an Invoice is unpaid for more than 21 days we will cease to provide Services to you, until we receive payment of the Invoice.
- 3.3 We may charge interest at the rate of 2% per month on any amounts unpaid after the expiry of 7 days after the payment date.
- 3.4 If Invoices are unpaid for 7 days after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us.
- 3.5 If the Proposal states that the Fees are an estimate only, you acknowledge that the final Fees may be more or less than the estimated amounts. We will endeavour to inform you of any material variation as it becomes apparent.
- 3.6 Our pricing structure, payment methods and these Terms may be amended from time to time in our discretion. The pricing changes will apply to you for Services provided to you after the date of the change. All other changes will apply from the date that the amended or new Terms are posted on the Website or are provided to you, whichever is earlier.

4. YOUR OBLIGATIONS AND WARRANTIES

- 4.1 You agree that you will not use our Services and then complete, or assist another individual/s to complete, an arrangement with any Au Pair in order to circumvent the obligation to pay fees related to our provision of the Services.
- 4.2 You warrant that throughout the term of this Agreement that:
 - (a) there are no legal restrictions preventing you from agreeing to these Terms;

- (b) you will cooperate with us and provide us with information and comply with requirements in a timely manner, as requested by us from time to time, that are reasonably necessary to enable us to perform the Services including but not limited to;
 - (i) providing us with your personal identification including a driver's licence or passport;
 - (ii) undertaking police checks;
 - (iii) providing 2 personal reference checks;
 - (iv) undertaking a detailed consultation to assess your needs;
 - (c) the information you provide to us is true, correct and complete;
 - (d) you will not infringe any third party rights in working with us and receiving the Services;
 - (e) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve the concerns;
 - (f) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
 - (g) you will enter into your own agreement with the Au Pair before the placement begins and agree that we can review and amend it as we see fit in our absolute discretion;
 - (h) you will have an agreement with the Au Pair for a maximum period of 6 months;
- 4.3 If you accept an Au Pair to be placed with you, your rights and obligations (apart from those set out in these Terms) will be governed by the agreement between you and the Au Pair.
- 4.4 You agree that during your Au Pair's placement:
- (a) the Au Pair will only be required to assist with day-to-day childcare responsibilities and light housework duties;
 - (b) you will provide accommodation with a private fully furnished room including a bed, wardrobe, TV and wi-fi connection and all meals;
 - (c) you will provide weekly pocket money to the Au Pair in accordance with our guidelines;
 - (d) the Au Pair will have 2 days each week where they are not required to work;
 - (e) on the Au Pair's arrival and departure you will collect and take the Au Pair to and from your home;
- (f) you will assess the Au Pair's driving ability and ensure they have the appropriate driver's licence before permitting an Au Pair to operate a vehicle;
 - (g) you will ensure any vehicle which the Au Pair is given access to is fully registered and comprehensively insured;
 - (h) you agree to include the Au Pair as a driver on your vehicle's comprehensive insurance policy; and
 - (i) in the event of an insurance claim on that policy, you are liable for paying any excess if the Au Pair was required to drive the vehicle in the course of their placement; if the vehicle was used for private use, it is your responsibility to advise the Au Pair of their responsibilities for paying any excess relating to the claim and you will ensure that the Au pair is aware of this prior to driving the vehicle.
- 5. OUR INTELLECTUAL PROPERTY**
- 5.1 The work and materials that we provide to you in carrying out the Services contains material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the copyright which subsists in all creative and literary works incorporated into our Materials.
- 5.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property ownership rights in our Materials, except as stated in these Terms or with our written permission.
- 5.3 Your use of our Materials does not grant you a licence, or act as a right of use, any of the Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 5.4 You must not breach our copyright or Intellectual Property rights by, including but not limited to:
- (a) altering or modifying any of the Materials;
 - (b) creating derivative works from the Materials; or
 - (c) using our Materials for commercial purposes such as onsale to third parties.
- 5.5 You are responsible for proofing and approving all job descriptions drafted by us for you. Upon approval from you, any subsequent errors in publishing are not our responsibility.
- 5.6 All work which we prepare or draft for you, but which does not proceed to be finalised by us for you, remains our Intellectual Property.

6. CONFIDENTIAL INFORMATION

- 6.1 You agree that we may disclose certain information about you to potential Au Pairs, such as your family structure, general location, requirements and number of children, which will assist us in matching you with an Au Pair.
- 6.2 You agree not to disclose Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.
- 6.3 These obligations do not apply to Confidential Information that:
- is authorised to be disclosed;
 - is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
 - is received from a third party, except where there has been a breach of confidence; or
 - must be disclosed by law or by a regulatory authority including under subpoena.
- 6.4 The obligations under this clause will survive termination of these Terms.

7. FEEDBACK AND DISPUTE RESOLUTION

- 7.1 Reasonable endeavours are made by us to introduce suitable Au Pairs to you. However it is your responsibility to ensure suitability of the Au Pair for your family. We do not guarantee the satisfaction or compatibility of any candidate as an Au Pair for you.
- 7.2 We will check in with you and the Au Pair at 2 to 3 weeks into the Au Pair's placement to ensure suitability. We will offer reasonable attempts to resolve any concerns between you and the Au Pair.
- 7.3 In the unlikely event that the Au Pair is unable or unwilling to take up their placement or terminates within the first 30 days of your agreement with them (**Guarantee Period**), we will endeavour to provide a replacement.
- 7.4 If the Au Pair or you terminates their agreement during the Guarantee Period, you must notify us in writing immediately. Notification must be given within the Guarantee Period.
- 7.5 In the event we are required to search for a replacement, we cannot guarantee an immediate replacement. The replacement period will depend on the availability of suitable Au Pairs at any given time.
- 7.6 For any placements that are terminated prior to the end of the agreement period (stipulated in the agreement between you and the Au Pair), outside of the Guarantee Period,

Expenses will be required to be paid by you to us, for finding a replacement.

- 7.7 If there is a dispute between the Parties in relation to these Terms or if there is a problem with the Au Pair, the Parties agree to the following dispute resolution procedure:
- The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
 - If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Victoria to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 7.8 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 7.9 This clause will survive termination of these Terms.
- 8. TERMINATION**
- 8.1 Either party may terminate these Terms, if there has been a material breach of these Terms, subject to following the dispute resolution procedure.
- 8.2 We may terminate these Terms immediately, in our sole discretion, if:
- we consider that a request for a Service is inappropriate, improper or unlawful;
 - you fail to provide us with clear or timely instructions to enable us to provide the Services;
 - we consider that any checks that we have undertaken or are provided to us, raise concerns about your suitability to receive our Services;
 - we consider that our working relationship has broken down including a loss of confidence and trust;
 - for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe; or
 - you fail to pay an Invoice within 21 days of the payment date.
- 8.3 On termination of these Terms you agree that any Fees or payments made are not refundable

- to you, and you are to pay all invoices for Services rendered to you.
- 8.4 If you terminate this Agreement early, you must pay for all Services provided prior to termination, including any Services which have been performed and have not yet been billed to you.
- 8.5 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.
- 8.6 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 8.7 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 9. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 9.1 **ACL:** Certain legislation including the Australian Consumer Law (**ACL**) in the *Consumer and Competition Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**). Our liability is governed solely by the ACL and these Terms.
- 9.2 **Services:** If you are a consumer as defined in the ACL, the following applies to you: We guarantee that the Services we supply to you are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the Services for or for a result which you have told us you wish the Services to achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are unable to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.
- 9.3 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in this estimated period, which is affected by your delay in response, incomplete or incorrect information.
- 9.4 **Referral:** On request by you, we may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.
- 9.5 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 9.6 **Liability:** To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees and terms relating to the Services and this Agreement, except those set out in this agreement, including but not limited to:
- (a) implied or express guarantees, representations or conditions of any kind, which are not stated in these Terms;
 - (b) our Services being unavailable; and
 - (c) any loss, damage, costs including legal costs, or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, or otherwise, suffered by you or claims made against you, arising out of or in connection with the inability to access or use the Services, and the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.
- 9.7 **Limitation:** Our total liability arising out of or in connection with our Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the total fees paid by you to us in the 12 month period prior to the event giving rise to the liability, or AUD\$100 if no such payments have been made, as applicable.
- 9.8 We will not be responsible nor liable for any harm, damage or loss suffered by you, directly or indirectly caused by the use of our Services or during the Au Pair's placement with you.

- 9.9 This clause will survive termination of these Terms.
- 10. INDEMNITY**
- 10.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
 - (b) any breach of these Terms by you including but not limited to breach of any warranties;
 - (c) termination of these Terms by you;
 - (d) any placement we arrange for you with an Au Pair; and
 - (e) any misuse of the Services by you.
- 10.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 10.3 The obligations under this clause will survive termination of these Terms.
- 11. GENERAL**
- 11.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 11.2 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.
- 11.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 11.4 **GST:** If and when applicable, GST payable on our Services will be set out on our Invoices. By accepting these Terms you agree to pay us an amount equivalent to the GST imposed on these charges.
- 11.5 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.
- 11.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 11.7 **Severance:** If any provision (or part of it) of these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) of these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 11.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 days' notice in writing.
- 11.9 **Notice:** Any notice required or permitted to be given by either party to the other under these conditions will be in writing addressed to you at the address in the Proposal. Our postal address is set out in the Proposal. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.
- 11.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of Victoria and the Commonwealth of Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria.
- 11.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.
- 12. DEFINITIONS**
- 12.1 **Agreement** means this Host Family Agreement including Proposal and Terms.
- 12.2 **Confidential Information** includes confidential information about our business including structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, Client, customer and supplier lists

(including prospective Client, customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".

- 12.3 **Expenses** are as set out in the Proposal.
- 12.4 **Fees** are as set out in the Proposal
- 12.5 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 12.6 **Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, company names or internet domain names.
- 12.7 **Invoice** is the tax invoice issued by us to you.
- 12.8 **Invoice Terms** are as set out in the Proposal.
- 12.9 **Proposal** means the proposal attached to these Terms and Conditions.
- 12.10 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).
- 12.11 **Terms** means the Terms and Conditions and this Agreement.
- 12.12 **Website** means www.nicheaupairs.com.au.

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