



## TIP-TOP AU PAIRS TERMS AND CONDITIONS AGREEMENT

In this document Tip-Top Au Pairs is referred to as "the Agency". "Client" refers to any client, potential client or person representing the client during the registration process of the Agency. "Candidate" refers to any person engaging the Agency in search of employment.

### SECTION 1 – Application of the Agreement

- 1.1 These terms apply to all permanent, fixed-term and temporary engagements effected through Tip-top Au Pairs.
- 1.2 Any variation in these terms will be binding on the parties only if in writing and signed by both parties or their respective agents.
- 1.3 The written or verbal instruction of the Agency by the Client to submit suitable Candidates for contract or interview shall constitute acceptance of the Agency's terms and conditions.

### SECTION 2 – Confidentiality

- 2.1 General information regarding the specifications of a position supplied to the Agency by the Client shall be disclosed to candidates seeking to find employment through the Agency. General information includes:
  - 2.1.1 the geographical area where the Client's family lives;
  - 2.1.2 working hours required by the Client;
  - 2.1.3 ages of the Client's children and where they attend school;
  - 2.1.4 the Client's monthly salary offer
  - 2.1.5 details of employment length and dates of employment;
  - 2.1.6 details of any special circumstances, special duties or additional requirements specified by the Client (e.g. qualification requirements).
- 2.2 Personal information disclosed to the Agency by the Client shall not be disclosed to any Candidates or third parties, except upon arrangement of an interview between the Client and the Candidate, when the Client's address, contact number (to be used only in a situation of emergency) and names of members of the Client's family will be disclosed to the Candidate.
- 2.3 All correspondence and records shall be confidential and remain the property of the Agency. Information supplied to the Client by the Agency is confidential and is accepted by the Client on the condition that such information will not be disclosed to third parties.
- 2.4 Should the Client pass on an introduction to a third party which results in an engagement of the Candidate by that third party, the Client will be responsible for payment of the Agency fees as if the Candidate had been engaged by the Client. This amount will be payable immediately.

### SECTION 3 – Engagement Terms & Exchange of Contact Details

- 3.1 The Agency shall manage all engagements between Clients and Candidates.
- 3.2 No contact details of any kind may be exchanged between the Client and the Candidate without authorisation from the Agency, especially during interviews or meetings between Clients and Candidates.
- 3.3 The Client shall not engage or attempt to engage any Candidate directly in any way that is not through arrangement or authorisation by the Agency, until after finalisation of employment. Finalisation of employment occurs when the Agency has confirmed receipt of proof of payment of the Placement Fee and provided the Client with the Candidate's contact details. Similarly, the Client is required to notify the Agency immediately on engagement of a Candidate before finalisation of employment.

## SECTION 4 – Fees and Offer of Employment

### 4.1 Registration Fees

4.1.1 The Agency does not charge any registration fees to the Client.

### 4.2 Placement Fees

4.2.1 The Client is liable to pay the Agency a placement fee upon written or verbal acceptance of an offer of employment by the Candidate.

4.2.1.1 Placement Fees shall be calculated as follows:

Length of Placement	Placement Fee	Calculation
12 months or longer (or any open-ended placement)	11% of gross annual income of candidate	12 x monthly salary x 0.11

Permanent/open-ended placement fees are once-off.

4.2.1.2 For fixed-term placements or any placements lasting less than 12 months, placement fees shall be calculated as follows:

Length of Placement	Placement Fee	Calculation
1-3 months	25% of the total income over the period of the placement (minimum of R2500)	number of months x monthly salary x 0.25 or R2500
4-6 months	20% of the total income over the period of the placement	number of months x monthly salary x 0.2
7-11 months	15% of the total income over the period of the placement	number of months x monthly salary x 0.15

Should the Client wish to extend the period of employment at any time, there will be another placement fee applicable.

\*Please note that agency fees do not include any remuneration to be paid to an employee.

4.3 Once an employment offer has been accepted by the Candidate either verbally or in writing, the Candidate is considered to be employed by the Client.

4.4 Invoicing of the placement fee will take place immediately after the Candidate has accepted the offer verbally or in writing.

4.5 Payment of this invoice will be due within three days of the date of the invoice, and not at the commencement of employment or the signing of a contract of employment between the Candidate and the Client.

4.6 No Candidate shall be permitted to commence work with the Client until all agency fees have been paid in full.

4.7 Should the Client negotiate an increase in the Candidate's salary and/or working hours within sixty days from the date that the Candidate has commenced working for the Client, the Client is obligated to inform the Agency of the increased salary and/or working hours. The Agency reserves the right to charge the Client the difference in the placement fee as a result of the salary increase/increased working hours.

4.8 The Client understands that he/she will be liable to pay the full Placement Fee if any Candidate who has been introduced to the Client by the Agency is subsequently employed by:

- 4.8.1 the Client or a member of the Client's family;
- 4.8.2 any business, company or unincorporated body;
- 4.8.3 any other person as a result of the conveying of information either directly or indirectly to such a person by the Client.

4.9 Failure to submit payment to the Agency within the aforementioned time period will result in the Agency pursuing legal action for the recovery of the Placement Fee as well as all legal costs involved.

### SECTION 5 – Criminal Checks

5.1 As an additional service to the Client, the Agency agrees to perform a criminal record check on the Candidate at the Client's request, subject to the following conditions:

- 5.1.1 the Client has paid the requisite Client Registration Fee;
- 5.1.2 the Client has interviewed the Candidate;
- 5.1.3 the Client intends to employ the Candidate upon notification

that the Candidate has passed a criminal record check.

### **SECTION 6 – Contract of Employment**

6.1 The Agency will provide the Client with a draft Contract of Employment which the Client may use should they so wish. The Client understands that they are under no obligation to make use of the draft contract and that they cannot hold the Agency liable for any defects in the contract.

6.2 Notwithstanding the fact that the Contract of Employment is between the Client and the Candidate, the Agency will, if requested, endeavour to assist the Client and the Candidate in reaching a mutual agreement on the terms and conditions of the contract.

6.3 The Client understands that because the Contract of Employment is an agreement between the Client and the Candidate, it will be upon the Client him-/herself to see that the Contract of Employment is signed by both the Candidate and themselves, and to ensure that the Candidate fully understands the details of the contract.

6.4 The Client also accepts that, in terms of clause 4.3 & 4.4, they cannot withhold the Agency's Placement Fee for services rendered should a Contract of Employment not have been signed by either the Client or the Candidate.

### **SECTION 7 – Cancellation of Employment/Replacement Period**

7.1 Should the Candidate be dismissed from employment with the Client, or resign from employment with the Client, or if employment is cancelled for any fair reason within the Candidate's first 60 days (two calendar months) of employment, the Agency warrants that it will use its skills and knowledge to find a suitable replacement Candidate at no extra charge to the Client.

7.2 This replacement offer will be standing for all placements lasting six months or longer, and in all fair circumstances, excluding if the reason for the Candidate's departure was due to unlawful or disgraceful behaviour of the Client, or any reasons detailed in clause 7.11. Due to the nature of short-term placements, no replacements are offered for any placements lasting shorter than six months.

7.3 When searching for a replacement Candidate, the Agency will treat this replacement with urgency, but cannot guarantee a replacement Candidate nor guarantee a specific time frame within which a replacement will be found. Unreasonable rejection of the replacement Candidates by the Client may result in delays and will not entitle the Client to a refund.

7.4 Should all possible replacements be rejected by the Client or should the Client be unresponsive to the Agency's communication for five consecutive working days, the Agency will have no further liability to the Client.

7.5 In the event that the Client chooses either not to replace the Candidate or not to permit the Agency to provide a possible replacement Candidate, this will not result in a placement fee being refunded to the Client.

7.6 Seeing that the Client makes the final decision of whether to employ any Candidate, the Agency will not provide a refund on any placement fees, no matter what the reasons.

7.7 No placement fees will be refunded to the Client, should the Client retract or repudiate the offer of employment to the Candidate, prior to the commencement date of employment or otherwise, and whether a Contract of Employment between the Client and the Candidate has been signed or not. The Client acknowledges that the Agency fulfilled its obligation towards the Client in finding an au pair Candidate. Should the Client have failed to pay the placement fee at the time that the offer is retracted or repudiated, the Client acknowledges that he/she remains liable for the full placement fee.

7.8 Neither will any placement fees will be refunded to the Client should the Candidate repudiate or no longer accept the offer of employment from the Client, prior to the commencement date of employment or otherwise. The Agency however warrants that it

will use its skills and knowledge to find a suitable replacement Candidate at no extra charge to the Client in agreement with the terms stated in clauses 7.1, 7.2, 7.3, 7.4, 7.5 & 7.6.

7.9 Upon expiry of the Replacement Period in terms of clause 7.1, it is agreed that the engagement is satisfactory and that the Agency's obligations have been fulfilled. If the Candidate resigns or is dismissed by the Client after the Replacement Period expires, a new placement fee will apply for further placements.

7.10 The Replacement Period is not renewed when a replacement Candidate, provided by the Agency, is employed by the Client.

7.11 The Agency will have no responsibility to provide either a replacement Candidate or a refund if any the following has taken place:

7.11.1 if the Placement Fee has not been paid in full and within the stipulated time period;

7.11.2 if the Candidate complains of abuse, mistreatment or misconduct by the Client, the Client's family or acquaintances, and as a result terminates her employment;

7.11.3 if the Client restricts access to, or stops the Candidate using any amenities that she is entitled to use and the Candidate, as a result, terminates her employment;

7.11.4 if the Candidate's employment has been terminated by way of an unfair dismissal;

7.11.5 if the Candidate is retrenched;

7.11.6 if the Candidate has been asked to perform significant additional duties which are not stated in her contract or are in breach of her contract;

7.11.7 if the Client does not pay the Candidate for overtime worked, or provide the Candidate time off in lieu of overtime worked;

7.11.8 due to a breach of the employment contract by the Client;

7.11.9 if the Candidate has not been given sufficient training and support or has not been made to feel welcome;

7.11.10 if the Candidate or the Client is unable to fulfil the employment contract due to Force Majeure;

7.11.11 if the Candidate's employment is terminated by the Client should the Candidate's language skill level prove to be unsatisfactory to the Client. This is not regarded as reasonable grounds for dismissing the Candidate, as language skills must be assessed by the Client during interview prior to employing the Candidate.

### **SECTION 8 – Suitability of the Candidate & Liability**

8.1 While the Agency will endeavour to introduce reliable Candidates and will use care in selecting each Candidate, the Agency does not give any warranty concerning the history, character, age, capability, medical history, medical fitness, availability or suitability of any Candidate introduced to a Client by the Agency. The decision as to suitability of the Candidate rests with the Client and the Client is strongly advised to satisfy him-/herself in this regard. Whilst the Agency may take references in respect of the Candidate, it is for the Client to decide what reliance can be placed thereon.

8.2 The Agency will support and advise the Client but operates as an introduction agency only between Clients and Candidates. At all times after finalisation of employment, the Candidate is under the Client's supervision, control and responsibility. Candidates are not employed by the Agency either directly or indirectly and the Agency cannot be held liable by the Client or any other person for any damage, loss, or expense incurred either directly or indirectly by reason of the negligence or shortcomings of any Candidate.

*Print Name* \_\_\_\_\_

*Signature* \_\_\_\_\_

*Date:* \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_