

# Our host family terms and conditions

VERSION 11.04.17

Your use and the provision of our Services will be governed by this agreement. In this agreement we set out your obligations to us, and our obligations to you. Please read this agreement carefully, and contact us at 0800 AU PAIR (287 247) or [family@aupairlink.co.nz](mailto:family@aupairlink.co.nz) if you have any questions.

This agreement applies for the duration of the placement term, unless it is terminated earlier by you or by us in accordance with the terms of this agreement.

## YOUR RESPONSIBILITIES

### 1. Selecting your au pair

#### 1.1. Cooperation.

Your cooperation will help us to provide our Service to you and will assist in a quick and expedient placement. Therefore, you agree that you will co-operate with:

- a) us to enable us or our agents to place an au pair in your family;
- b) us or our agents throughout the placement term if, or when, mediation or other such Services are provided by Au Pair Link to you; and
- c) any Ministry of Education visit or licensing requirement that may arise.

#### 1.2. Accuracy of information.

You will ensure that all the information given by you in your application form and all information provided by you to us regarding your family is true and complete to the best of your knowledge. You declare that all information that you have provided to us is genuine – including photographs of your family and house.

#### 1.3. Offer of placement.

Because you best understand the specific needs and requirements of your family, you understand that it is your sole responsibility to carefully choose an au pair candidate that we have presented to you and make an offer of placement. You agree to only offer a placement in your family to an au pair with whom you have spoken to personally via the telephone and had correspondence with via email. Au Pair Link accepts no liability for any costs, damages, losses, harm, expenses or stress that you incur and that results from the choice of candidate that you make.

#### 1.4. Review of documentation.

You agree to review all the material provided by us prior to and upon the arrival of your au pair, including, but not limited to, visa and other such eligibility documentation. We will take all reasonable care to avoid any inaccuracies in the information provided in our materials.

#### 1.5. Required documentation.

You must complete the documentation and forms that we require and provide to you in order to receive the Services, including but not limited to child enrolment forms, ECE attestation forms, child attendance sheets, other relevant Ministry of Education forms and documents and police vetting forms.

You acknowledge and agree that the results of your Police vetting may be provided to your au pair if any convictions are disclosed through this process. You understand that disclosure of this information is necessary in order for your au pair to determine whether their placement or ongoing employment with you is suitable.

### 2. Employing your au pair

#### 2.1. Employment and tax requirements

Your au pair is your employee and not our employee. The au pair that you select to join your family will be employed by you personally for the duration of his or her stay with you. As your employee the au pair will be entitled to all the benefits and rights that a normal employee enjoys under New Zealand law. You also agree that:

- a) you are responsible for ensuring there is an employment agreement in place for the period that your au pair is in your employment.
- b) you are liable to pay all relevant taxes and levies for your au pair (e.g. PAYE, ACC) in accordance with all New Zealand tax legislation and regulations. You understand that we will not be held liable for any penalties or charges that may occur from non-payment or you not following correct tax process.
- c) your au pair will be entitled to paid annual holidays and public holidays as set out in the Holidays Act 2003.
- d) you will provide your au pair with board, meals and lodging – consisting of a separate room that is approved by us as suitable. This includes during periods of sick leave and annual leave. In instances where annual leave is owed at the end of

a placement, the board and lodgings component must be paid out to your au pair, unless mutually agreed otherwise.

e) your au pair is not to work more than 45 hours per week or a maximum of 10 hours per day unless you negotiate additional babysitting hours directly with your au pair (that may be agreed to by your au pair at his/her sole discretion). You will also ensure that your au pair has 2 consecutive days off per week unless otherwise agreed.

f) if your family is enrolled in our Au Pair 123 or Au Pair Whiz programmes your au pair must work with the child/ren a minimum of 30 hours per week, including at least one five hour block or two three hour blocks between the hours of 9am and 4pm, Monday to Friday.

g) if your family is enrolled in our Au Pair Assist programme your au pair must work with the child/ren a minimum of 25 hours per week, including at least one five hour block or two three hour blocks between the hours of 9am and 4pm, Monday to Friday.

h) if your family is enrolled in our Au Pair Mate programme your au pair must work a minimum of 25 hours per week.

i) your au pair is to be employed by you for the entire duration of the placement term e.g. 52 weeks for a 12 month term. You must provide your au pair with room, board, meals and the standard remuneration for the duration of the placement as set out in this agreement (including if you are travelling or go on holiday); and

j) you will take all reasonable measures to ensure that your au pair is employed in accordance with the rules stipulated by their visa.

#### 2.2. Payroll services.

Au Pair Link can provide you with payroll services for your au pair. Should you join our payroll service, your use of the payroll services will be governed by the [PayLink terms and conditions](#).

#### 2.3. Work environment.

You agree to provide a safe and caring environment for your au pair. You acknowledge that, as a live-in employee, your au pair must be treated with an appropriate level of respect. You also agree to ensure that your au pair has an appropriate degree of privacy including:

- a) access to their own separate and private bedroom;
- b) the ability, either at the au pair's or your expense, to make phone calls, send emails or generally communicate with family and friends;
- c) to have fair and reasonable access to all household amenities, food, drink and other such necessities; and
- d) be provided with a clean and hygienic living environment.

You also agree that you will advise your au pair before utilising closed circuit television (CCTV) equipment or other monitoring devices in your home.

### 3. Managing the relationship with your au pair

#### 3.1. Communication and mediation.

Regular and open communication with your au pair is paramount in building a good working relationship. As such, you agree to discuss your household rules, timetables, routines and methods of child discipline with your au pair upon their arrival. If you experience a breakdown in communication or have expectations that are not being met by your au pair then you will ensure that we are informed and you will enter a process of mediation in good faith if advised to do so by us. It is your responsibility to monitor the performance of your au pair in your home and notify us immediately if you identify any problems or issues.

#### 3.2. Termination of employment.

You must give at least 4 weeks' written notice to your au pair if you wish to terminate your employment relationship with them. You must have justifiable cause to terminate your employment relationship with your au pair. If you terminate your employment relationship with your au pair and exit our programme you may be liable to pay us cancellation charges as outlined in this agreement. You must also pay your au pair their completion bonus for the period they have been employed with you e.g. a prorated amount for the total length of stay in your family (please refer to clause 4.2).

#### 3.3. Responsibility for safety.

You agree that you are responsible for:

a) your au pair's safety and wellbeing and complying with all applicable laws for maintaining safe premises. You acknowledge that you will comply with the Health and Safety at Work Act 2015 and all regulations and codes of practice made under that Act. You also acknowledge that you must comply with all relevant Ministry of Education guidelines and our programme requirements; and

b) your children's safety and wellbeing. You acknowledge that your au pair is not a trained child care professional and as such cannot be held accountable for the ultimate safety and wellbeing of your children.

Whilst we carefully screen and check our au pair candidates, we will not be held liable for any injury, damage or mishap occurring whilst the au pair is in your employment.

You agree that if your au pair is required to drive as part of their role that all vehicles you provide will be safe and road worthy. The vehicle must be mechanically maintained and have a current Warrant of Fitness, registration and driver airbags.

### 3.4. Abuse and inappropriate behaviour.

Au Pair Link has a no tolerance policy regarding verbal or physical abuse, bullying, family violence or any other form of illegal or inappropriate behaviour such as drug use, prostitution or sexual advances toward your au pair. We also have a no tolerance policy concerning physical discipline of children – this includes hitting, smacking, biting or any other form of physical correctional discipline.

You understand that if you or your family act in any way that is deemed inappropriate by us, we have the right to take the following actions:

- a) immediately remove the au pair from your family without notice or consent from you;
- b) terminate this agreement; and
- c) report any illegal activities or abuse to the proper authorities such as the New Zealand Police.

### 3.5. Illegal activity.

You understand that it is a breach of this agreement if you or your family conduct any illegal activity during the placement term, including the taking or possession of any illegal substances. A breach of this clause will result in the immediate removal of the au pair from your employment and the termination of this agreement.

### 3.6. Programme participation.

You are required to comply with all our programme rules and requirements which we have provided to you during your initial phone assessment, home interview, Welcome Pack and first visit. You agree to fully participate in our programmes and to ensure that the au pair, as your employee, also fully participates in our programmes; including all curriculum requirements, Programme Manager visits, professional development and attending all activities, playgroups and events as required by us. If applicable to your programme, you further agree to complete and sign our Ministry of Education programme enrolment form if required by us. You will also review and sign weekly individual child attendance sheets for your au pair that they are required to complete and submit to us monthly. It is considered a breach of this agreement if you do not fully cooperate, in good faith, with our programme rules and requirements.

### 3.7. Dismissal of your au pair.

You agree to follow correct procedure prior to the dismissal of your au pair in accordance with the laws of New Zealand. This includes the use of both verbal and written warnings before your au pair can be dismissed, unless there is just cause for immediate dismissal (serious misconduct) or dismissal on notice. Grounds for dismissal may include but are not limited to the following:

- a) smoking on your property;
- b) physically hitting or spanking the children; and
- c) breaching any other New Zealand law such as theft, or drug taking.

If you have concerns that an au pair may have committed an act of misconduct or serious misconduct, you agree to contact us and seek appropriate advice. Following this advice, if there is not just cause for the immediate dismissal of your au pair you agree to enter a process of mediation with the au pair conducted by us.

## 4. Payment of fees

### 4.1. Our fees.

You will pay all charges in relation to the services we provide to you under this agreement, plus any applicable goods and services or similar taxes. Our host family placement fees include:

- a) Au Pair 123 Placement fee. A \$599.00 GST inclusive one-off fee per au pair

placement. Invoiced upon the Offer of Placement being accepted and to be paid within 7 days.

b) Au Pair Whiz Placement fee. A \$1,499.00 GST inclusive one-off fee per au pair placement. Invoiced upon the Offer of Placement being accepted and to be paid within 7 days.

c) Au Pair Assist Placement fee. A \$499.00 GST inclusive one-off fee per au pair placement. Invoiced upon the Offer of Placement being accepted and to be paid within 7 days.

d) Au Pair Mate Placement fee. A \$1699.00 GST inclusive one-off fee per au pair placement. Invoiced upon the Offer of Placement being accepted and to be paid within 7 days.

You understand that failure to pay any of the stipulated charges in this clause can result in the immediate removal of your au pair by us and the termination of this agreement.

You understand that due to the significant time and costs involved in placing an au pair with a family, placement fees are non-refundable.

### 4.2. Au pair wages and bonuses.

Refer to most recent copy of the [Gross Wage Calculations form](#). If you have any questions or need further information, please contact [payroll@aupairlink.co.nz](mailto:payroll@aupairlink.co.nz).

You must also pay your au pair a completion bonus in recognition of a successful placement term and as a contribution toward the return flight home of your au pair. The completion bonus must be paid at the end of the placement term by you to the au pair, except if the au pair's employment is terminated (or the au pair has been provided notice that his/her employment will be terminated) for misconduct or serious misconduct. You must agree on the length of the placement term prior to matching with an au pair (e.g. 6, 9 or 12 months). The completion bonus is \$20 net per week and is prorated over the length of the placement term. For example, for a 12 month placement term the net completion bonus is \$1,040.00 (\$20 x 52 weeks).

For Private Support host families, payment of the completion bonus is optional but recommended.

It is your responsibility to ensure that you pay your au pair in accordance with this agreement. Non payment or late payment of au pair wages is a breach of this agreement and grounds for the immediate removal of the au pair from your employment and the termination of this agreement.

You understand that it is the responsibility of your au pair to pay any additional expenses that may be incurred throughout the duration of their employment with you. We will not be held liable for any expenses or costs that are incurred by your au pair.

### 4.3. 20 Hours ECE subsidy.

20 Hours ECE (Early Childhood Education) is a Government subsidy available to 3, 4 and 5 year old children enrolled in licensed, and participating, Ministry of Education Early Childhood Education providers such as Au Pair Link.

Each 3, 4 and 5 year old child, within a licensed region, is eligible for the subsidy for up to 6 hours a day and up to 20 hours per week, within your enrolled hours. Your children become eligible for the subsidy when they turn 3. The subsidy finishes when they turn 6. However, your child cannot receive the 20 Hours ECE subsidy if they are attending school.

Your children can receive the 20 Hours ECE subsidy at multiple ECE providers. Nevertheless, you will need to ensure that no more than 6 hours per day or 20 hours per week is being claimed in total. Furthermore, the hours claimed through each ECE provider cannot overlap. You must notify us of any changes you make concerning claiming the 20 Hours ECE subsidy immediately in accordance with the terms of this agreement.

The 20 Hours ECE subsidy will not be paid in arrears and will only be paid from the date the ECE attestation form is signed and the child is enrolled and eligible for 20 Hours ECE. Au Pair Link's Service is closed on public holidays and regional anniversary days. 20 Hours ECE funding is not claimed by Au Pair Link on public holidays, during au pair annual leave or au pair sick leave. How the subsidy is paid and the value of the subsidy is determined by the New Zealand Ministry of Education and is subject to change. You must also record and disclose all weekly au pair net wage payments to us if you receive the 20 Hours ECE subsidy for your child or children.

### 4.4. Payment.

Unless otherwise agreed, you must pay all undisputed invoices by the date specified on the invoice, or if no date is specified then within 7 business days of the invoice date. Payment may be made by cash, cheque, bank transfer, internet banking, and credit card via PayPal or as otherwise agreed with us.

### 4.5. Disputed invoices.

If you dispute an invoice in good faith, you may withhold payment of the disputed fees in that invoice if you:

- a) pay all undisputed fees by the due date, or if no due date is specified within 7 business days of receiving the relevant invoice;
- b) provide us with a written explanation of the reasons you dispute the invoice within 5 business days of the date of the relevant invoice; and
- c) cooperate with us to promptly resolve the disputed invoice.

If the dispute relates to billing errors, we may credit the net difference between any discovered overcharge.

If we are unable to resolve the disputed invoice within 10 business days of receiving your written explanation, the parties agree to refer the dispute to the dispute resolution process under clause 12.10.

#### **4.6. Late payment.**

If any undisputed fees are unpaid 20 business days after the due date we may:

- a) refer the matter to a collection agency; and/or
- b) terminate this agreement and remove the au pair from your employment.

#### **4.7. Liability accepted by you.**

You accept liability to us for failure to meet any payment obligation and for expenses actually and reasonably incurred by us or anyone else (including in enforcing our rights or anyone else's rights) as a direct result of your material breach of the agreement or failure to take reasonable care to carry out your obligations under this agreement.

#### **4.8. Our liability**

To the extent permitted by law, we will not be liable for any losses, inconvenience, expenses, stress, damages or costs of any kind that you suffer or incur, including loss of income as a result of any reasonable action that we take to enforce our rights under and in accordance with this agreement (including the removal of your au pair for late or non-payment, abuse, inappropriate behaviour, illegal activity or any other such breach of this agreement). We do not accept liability for loss suffered by you as a result of any intentional or negligent acts or omissions by your au pair.

#### **4.9. Your rights and remedies under the Consumer Guarantees Act 1993 and Fair Trading Act 1986**

As a consumer you have statutory rights and remedies under the Consumer Guarantees Act 1993 and Fair Trading Act 1986. For the avoidance of doubt, nothing in these terms and conditions is intended to exclude or limit your rights and remedies under the Consumer Guarantees Act 1993 and Fair Trading Act 1986 or in relation to our negligence.

#### **5. Other responsibilities**

##### **5.1. Ministry of Education requirements.**

If enrolled in one of our Ministry of Education licenced programmes, you agree to abide by all Ministry of Education requirements as part of our home based early childhood education programmes. You agree that your au pair will only attend to child related duties, specifically related to the care and education of children between the ages of 0 to 5 years, during enrolled hours and that no unrelated 'Housework' will be performed during enrolled hours. You understand that failure to meet Ministry of Education requirements may result in our services being withheld or terminated, this includes access to government subsidies such as 20 Hours ECE. You also agree to abide by our policies and procedures that we notify you of in relation to home based childcare.

##### **5.2. Notification of changes.**

You must give us 10 business days notice of any change that you make to your 20 Hours ECE subsidy claim including any hours that you claim through other early childhood education providers. It is your responsibility to ensure that you are claiming the correct number of hours and that those hours do not overlap at multiple providers. You must also give us 10 business days notice of any changes to your au pair's standard working hours or the child enrolled hours as per the child attendance sheets that are submitted to us.

### **OUR RESPONSIBILITIES**

#### **6. Our programmes**

We offer four distinct programmes that a host family can be enrolled in: Au Pair 123, Au Pair Whiz, Au Pair Assist and Au Pair Mate:

- a) The Au Pair 123 programme is our core early childhood programme, approved by the New Zealand Ministry of Education, for families with at least 1 child under 5. The Au Pair 123 programme is only available in Au Pair Link Ministry of Education licensed regions.

- b) The Au Pair Whiz programme is our professional, qualified au pair programme for families with at least 1 child under 5. An Au Pair Whiz has a minimum of 1 year's full time childcare experience with children under the age of 5 or the equivalent of a formal Early Childhood Education degree or diploma and a minimum of 6 months' practical childcare experience with children under the age of 5.

- c) The Au Pair Assist programme is only available in Au Pair Link Ministry of Education licensed regions.

- d) The Au Pair Mate programme is designed for families with children over the age of 5. Typical Au Pair Mate duties include babysitting, dropping off and picking up from school, homework help and afterschool activities.

All our programmes are for a minimum 6 month placement term period, except our Au Pair Assist programme (which has a maximum 4 month placement term). We also provide an orientation programme for all au pairs upon their arrival in New Zealand. We will determine which programme will be available to you, and that you may be enrolled in.

#### **7. Our rematch policy**

We will replace your au pair and waive the new enrolment fee for up to 3 months (except under the Au Pair Assist programme we will only waive the new enrolment fee for up to 1 month) from the start of the placement term should your existing au pair fail to meet reasonable expectations and after mediation has been conducted in good faith by both parties. Au Pair Link reserves the right to withdraw this offer if you or your family have breached any of the terms and conditions as set out in this agreement, or we deem rematch inappropriate in your situation. We will endeavour to re-match you within a reasonable timeframe, however, if we are unable to re-match you with a new au pair we may terminate this agreement.

The rematch guarantee only applies to Au Pair Link licensed regions and is not valid for families receiving PORSE educational support.

The rematch guarantee is not applicable to any free placements.

The rematch guarantee is only applicable for 1 free rematch following a paid placement.

The rematch placement is only valid for the same value or less of the initial placement.

Private Support families are not eligible under our rematch policy. If you choose an Au Pair Link au pair, you will be required to pay the required placement fee as set out in this agreement.

#### **8. Accuracy of information**

We will take all reasonable care to avoid any inaccuracies in the information provided in our materials.

#### **9. No provision of legal advice**

We do not purport to offer legal advice concerning any aspect of your employment relationship with your au pair, either in this agreement or in general advice provided in any format. You should seek independent legal advice if you would like formal clarification or confirmation of any aspect of your employment relationship with your au pair.

### **CANCELLATION OR TERMINATION OF OUR SERVICES**

#### **10. Cancellation of services by you**

You may terminate this agreement by providing us with 4 weeks written notice if you no longer require our services.

If you terminate this agreement:

- a) you must pay all invoices which are outstanding at the end of the 4-week notice period;
- b) at the end of the 4 week notice period, your au pair may no longer work for you or your family, or reside in your home or any other property owned or leased by you; and
- c) you must pay any cancellation charges that are due in accordance with clause 11.3.

#### **11. Cancellation of services by us**

##### **11.1. When we may cancel the services**

We may terminate this agreement and remove your au pair from your employment immediately in the following circumstances:

- a) we have reasonable cause to believe that the safety and wellbeing of the au pair in your employment is at risk;
- b) we have reasonable cause to believe that you or your family are engaged in any illegal or inappropriate behaviour; or

c) you fail to comply with Ministry of Education requirements and documentation required by us in accordance with clause 1.5.

“Reasonable cause to believe” can include, but is not limited to, a verbal or written statement from your au pair concerning alleged illegal or inappropriate behaviour.

We may terminate this agreement on 4 weeks’ notice to you if you breach any of the terms of this agreement outside of the above circumstances.

### **11.2. What happens when we cancel the services:**

a) If we terminate this agreement under clauses 11.1(a) or 11.1(b) (or in any similar circumstances) we may remove the au pair without providing any notice to you. Au Pair Link has the right to remove your au pair from your family without notice or consent from you, regardless of the eventual outcome concerning the allegations made;

b) you are liable to pay all outstanding invoices to us;

c) we are not liable to you or any other party for any losses, costs, stress, inconvenience, expenses or damage that you suffer as a result of us terminating this agreement in accordance with its terms, or for any reasonable actions taken by us following termination.

### **11.3. Cancellation charges.**

If you no longer require our Services and cancel the services of your au pair prior to the commencement of the placement term you are liable to pay us cancellation charges. These cancellation charges will be invoiced to you at the discretion of Au Pair Link and are as follows:

a) if you terminate this agreement prior to the commencement of placement the cancellation charge is \$500

b) reimbursement to the au pair for flights booked and paid for as well as visa and medical expenses and any other costs incurred in organising to come to New Zealand (if you cancel prior to the arrival of your au pair in New Zealand and/or those costs are non-refundable).

You also agree to pay your au pair the completion bonus stipulated under clause 4.2 of this agreement if you cancel our Services and those of your au pair prior to the end of the placement term. All outstanding invoices must be paid in full to us upon cancellation of this agreement.

You are not liable to pay cancellation charges if you have just cause for immediate dismissal as set out in this agreement.

### **11.4. Changes to fees.**

We may change the fees:

a) if we agree to change our Services at your request;

b) on 4 weeks’ written notice to you.

If you do not agree to any change in fees under clause 11.4(b), you may terminate this agreement without penalty or any cancellation charge by providing written notice to us within that one-month period.

## **12. General**

### **12.1. Ending services.**

We may cease providing all or part of any Service if:

a) the Service is no longer viable, is to be withdrawn from general availability by us, cannot be provided, or is to be replaced with a new Service; or

b) equipment or property used to provide the Service becomes obsolete or beyond a reasonable period of economic use or support.

We will use all reasonable endeavours to give you 4 weeks’ notice of any intended cessation of our Services under this clause. If you do not accept any changes to our Services, you may terminate this agreement without penalty or any cancellation charge by providing written notice to us within the 4 weeks’ notice period.

### **12.2. Contact with our au pairs.**

We may provide you with multiple au pair candidate contact information and details during the placement and matching process including phone numbers and email addresses. This is personal and private information supplied to you by us in strict confidentiality. You agree not to contact, pursue or forward to another party any of the previous au pair candidates and their relevant contact information presented to you by us unless we give you prior written permission.

### **12.3. Expected timeframes.**

We cannot guarantee placement of an au pair within your family inside a set timeframe. External factors (such as available flights, visa approval etc) prohibited us from being able to guarantee a specific date or timeframe in which your au pair

will arrive in New Zealand. As such, you agree that we will not be held liable for any inconvenience or loss of income arising from a delayed matching or placement process. You acknowledge that any expected timeframe for placement given by us is indicative only and not binding.

### **12.4. Damages, accidents and insurance.**

We will not be liable for any loss or accidental damage caused by your au pair. Furthermore, you will agree to:

a) fully insure your car for the au pair if they will be driving your car whilst employed by you. Third party insurance is not an acceptable level of insurance. If you do not have car insurance that covers or includes the au pair, you will be held completely responsible for any accidents and associated costs that occur while the au pair is driving your car during the placement term;

b) pay 50% of the excess insurance charges as stipulated by your insurance company or 50 % of the repair cost if less than the stipulated excess if your au pair is at fault in a car accident and the accident has occurred inside working hours. If the accident has occurred outside working hours and your au pair is using the car for personal use, the au pair is expected to pay 100% of the stipulated excess insurance charges or 100% of the repair cost if less than the stipulated excess, unless covered by the other parties’ insurance; and

c) arrange and pay for regular maintenance checks, repairs and any other expenses that arise in relation to the vehicle being used by your au pair.

d) Total excess amount will not exceed more than \$1500.00. If the excess amount is higher than this you agree to pay the difference.

We are not responsible for any losses, accidents or any other incidents that may occur whilst the au pair is in your employment. You understand that the au pair is solely responsible for any debts that they may incur during their placement term and stay in New Zealand.

You agree that you will not hold your au pair responsible for any damage or loss to property (except where such loss is governed above in relation to vehicles) arising out of any act or omission on their part, unless the loss or damage is wilfully caused.

### **12.5. Confidentiality and copyright.**

Both parties must always keep the Confidential Information that is shared between you and Au Pair Link confidential and may not copy it, or use it for any purpose other than that for which it was provided, except with the other party’s written consent. If requested, a party must return the other party’s Confidential Information.

Au Pair Link (or its licensors or suppliers) owns all intellectual property rights in and to its programmes, curriculum and associated materials. You may only use the programmes, curriculum and associated materials that are provided by Au Pair Link to you in accordance with the terms of this agreement or as otherwise expressly notified to you by Au Pair Link. Au Pair Link’s programmes, curriculum, communication books and other related information that you may have access to during the course of your relationship with Au Pair Link, including passwords and online resources, are confidential and protected under New Zealand copyright law.

Our host family and au pair information is strictly confidential and must not be disseminated to any third party or used for any other purpose than for which it was provided.

This clause survives termination or expiry of this agreement.

### **12.6. Your information and photos.**

During your customer relationship with us, we may collect information about you and your family. We may:

a) hold the information and share it with our employees, related companies, suppliers and contractors but only where this is necessary to enable us to offer or provide you with our Services, send you invoices, check that your responsibilities are being met, or otherwise to administer and enforce the agreement;

b) use the information to provide you with marketing material including monthly newsletters and information concerning new services provide by us or our related companies, unless you have requested us not to do this;

c) use any photographs of your children and au pair participating in Au Pair Link related activities and events in social media or for marketing purposes, unless you have requested us not to do this;

d) use any written statements or testimonials provided by you for marketing purposes, unless you have requested us not to do this;

e) share information with law enforcement agencies if we reasonably consider that unlawful activity is taking place; and

f) use any information about you for statistical purposes, so long as you are not identified.

You are entitled to access and/or correct the information we hold about you in accordance with the Privacy Act 1993.

Au Pair Link is a part of the wider Evolve Education group. You consent to the transfer of information between entities in the broader Evolve Education Group for the purpose of enabling educational support to come from PORSE or other possible groups within the Evolve Education Group.

#### **12.7. Supply by our related companies.**

You agree that services may be provided to you by us or any of our related companies. You further understand that your au pair may be recruited and screened through a partner agency to Au Pair Link and not Au Pair Link directly. This partner agency may choose to charge your au pair a fee, however, this is at the discretion of the partner agency and not Au Pair Link.

#### **12.8. Governing law.**

The agreement is governed by, and will be construed in accordance with, the laws of New Zealand.

#### **12.9. Disputes**

If a dispute arises in relation to this agreement, the parties must first use all reasonable endeavours to attempt to resolve the dispute amongst themselves. If the parties agree a resolution of the dispute, they will sign a statement setting out the terms of the resolution and shall ensure that any actions pursuant to this resolution are fully and promptly carried out. If the parties have not resolved the dispute after 15 business days (or such longer period as the parties may agree in writing) from the date of a meeting held pursuant to this clause, either party may commence proceedings in respect of the dispute.

This clause does not affect either party's right to seek urgent interlocutory and/or injunctive relief from any New Zealand court of competent jurisdiction.

#### **12.10. No waiver.**

No failure, delay or indulgence by either party in exercising any power or right conferred on that party by this agreement will operate as a waiver of that power or right. A single exercise of any of those powers or rights does not preclude further exercises of those powers or rights or the exercise of any other powers or rights under the agreement.

#### **12.11. Invalidity.**

Any provision of the agreement that is invalid or unenforceable, will be deemed deleted from the agreement and this invalidity will not affect the other provisions of the agreement, all of which remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

#### **12.12. Continuing rights and responsibilities.**

The ending of the agreement does not affect any rights and responsibilities under the agreement which are intended to continue, or come into force after the agreement ends.

#### **12.13. Placements with PORSE.**

If your family home is outside of the Au Pair Link Ministry of Education licenced areas you may be placed with our sister company PORSE In Home Childcare (NZ) Limited ("PORSE").

PORSE is a licenced national Home Based ECE service. PORSE while being very similar to Au Pair Link has its own systems, processes and early childhood education programme.

Host families who are placed with PORSE will be required to sign and comply with PORSE terms and conditions as well as complying with Au Pair Links terms and conditions.

"Au Pair Link" "We" "Us" or "Our" also means PORSE in Home Childcare (NZ) Limited. Any differences between the PORSE and Au Pair Link terms and conditions, the PORSE terms and conditions will prevail.

For care required on statutory holidays PORSE requires the statutory day enrolment is recorded on the PORSE enrolment form.

#### **12.14. Amendments to these terms and conditions**

From time to time, we may need to make amendments to these terms and conditions. We will notify you of any material changes by electronic newsletter.

If these amendments result in detriment to you, you may terminate this agreement without penalty or any cancellation charge by providing written notice to us within one month (except in the case of amendments resulting from a change in the law or regulatory requirements).

#### **12.15. Definitions and interpretation**

"Au Pair Link", "we", "us" or "our" means Au Pair Link Limited.

"agreement" means your Au Pair Link Host Family Agreement, i.e. this document.

"business days" means Monday to Friday inclusive, excluding national public holidays and provincial anniversary days.

"Business hours" means 9:00am to 5:00pm on business days.

"cancellation charges" means the cancellation charges set out in clause 11.3.

"Charges" and "fees" are defined in clause 4 of this agreement and include cancellation charges.

"Child related duties" means any task specifically related to the care and education of children between the ages of 0 to 5 years.

"Completion bonus" means the amount paid to your au pair by you upon completion of the placement term.

"Confidential Information" includes, but is not limited to, all information and other material relating to the disclosing party's business, employees and customers that the disclosing party makes available to the recipient, or that comes to the recipient's knowledge, and includes the contents of the agreement, but excludes information that is generally available to the public (but not because the recipient, or anyone the recipient is responsible for, has disclosed it), or that the recipient or a third party have developed independently.

"Customer", "host family", "family" "you" or "your" means the customer as identified in this agreement.

"Housework" is defined as cooking, cleaning, laundry or other such typical household duties not specially related to children.

"placement term" means the agreed period that you will employ an au pair to work in your family. The maximum placement term is 12 months. This term is measured from the time your au pair arrives in New Zealand (including orientation if applicable). You must agree on the length of the placement term prior to matching with an au pair (e.g. 6, 9 or 12 months).

"Partners or third party suppliers" means any company that we use to provide services indirectly or directly. This can include related companies.

"Offer of Placement" means you inviting an au pair candidate presented by us to work in your employment for the placement term.

"Service(s)" means all products and services that we (or any of our related companies) provide to you.

In the agreement, unless the context otherwise requires:

- a) headings are for convenience only and do not affect interpretation;
- b) the singular includes the plural and vice versa;
- c) unless otherwise stated, all references to dollars, value and price are to the New Zealand currency and exclude goods and services tax;
- d) use of the words "includes" and "including" shall be construed as meaning without limitation; and
- e) a reference to any statute includes any amendments, re-enactments or replacements to that statute from time to time.