

## TRUSTONTAP – CARER / CLIENT CONTRACT

### Contract between:

- (1) *An individual providing care services to a Client (as defined below) following an introduction using the ToT Service (as defined below) (“Assistant”); and*
- (2) *An individual, health care professional, Local Authority, firm or company, who has booked Assistant Services (as defined below) from an Assistant in accordance with the terms of this agreement (“Client”).*

### 1. DEFINITIONS

1.1. Words defined below in these terms shall have the meaning given opposite:

<b>Account Holder</b>	means the Client as defined above;
<b>Agreement</b>	has the meaning set out in clause 2.1;
<b>Assistant</b>	a person introduced by ToT to the Client to be considered for an Engagement;
<b>Assistant Services</b>	means the services provided by the Assistant on the terms agreed between the Client, or a third party acting on the Client's behalf, and the Assistant and confirmed in the Booking Summary;
<b>Booking</b>	a booking confirmed for Assistant Services between an Assistant and a Client, or a third party acting on the Client's behalf, (made through the Website or otherwise);
<b>Booking Start Date</b>	the date a booking starts as defined in clause 2.3;
<b>Booking Summary</b>	means a summary of the Booking made through the ToT Service and issued to the Assistant and the Client;
<b>Care Hours</b>	means the time acquired by Client during an Engagement;
<b>Care Recipient</b>	The person(s) receiving the Assistant Services who may or may not be the Client;
<b>Confidential Information</b>	means any information of a confidential nature including, but not limited to, personal information relating to either party's health, information about friends or family of either party and/or other personal affairs relating to each party;
<b>Cover Booking</b>	means a Booking for Assistant Services to temporarily replace an Ongoing Engagement between the client and another ToT Assistant. If Cover Booking is for less than 6 weeks, it will still fall under the terms for Ongoing Engagements as set out in this Agreement;
<b>Direct Engagement</b>	an Engagement by a Client of an Assistant other than through the ToT Service during or within 24 months of termination of this Agreement;
<b>Engagement</b>	means any period during which the Assistant provides the Assistant Services to the Client in accordance with this Agreement;
<b>Live-In Engagement</b>	An Engagement (Short-Term or Ongoing) that requires the Assistant to live at the Client's property for a period of time on terms agreed between the parties;
<b>Max Hours</b>	means the maximum anticipated Care Hours per week for a Booking as stated in the Booking Summary. The number of Care Hours is agreed between the Assistant and Client and may vary each week.
<b>Notice Period</b>	the period of time during which the Assistant continues to provide Assistant Services after either Party has given notice to Terminate the Engagement as set out in clause 8;
<b>Ongoing Engagement</b>	an Engagement of an Assistant for Assistant Services continuing for a selected amount of time per week on an ongoing basis for more than six weeks;

<b>Personal Care</b>	a regulated activity involving supporting people in their homes with things like washing, bathing or cleaning themselves, getting dressed or going to the toilet;
<b>Retention Fee</b>	the fee calculated in accordance with clause 4.5.2;
<b>Short-Term Engagement</b>	an Engagement of an Assistant for Assistant Services continuing for a selected amount of time per week for a specified length of time of less than 6 weeks;
<b>Oral Terms</b>	any terms that form part of this agreement and agreed between the parties in accordance with clause 2.1.
<b>ToT</b>	means TrustonTap Limited ( <i>a company registered in England &amp; Wales with company number 08869387</i> );
<b>ToT Service</b>	means the introductory service provided by ToT to Assistants and individuals through the Website or otherwise;
<b>Termination</b>	the termination of this agreement in accordance with clause 8;
<b>Visit</b>	means an individual occasion when the Assistant provides the Assistant Services as part of the Engagement; a Visit is for a minimum of one hour.
<b>Website</b>	means <a href="http://www.trustontap.com">http://www.trustontap.com</a> ;
<b>Vulnerable Person</b>	means a person who needs assistance with day-to-day activities because of their age, illness or disability.

- 1.2. Definitions included in clause 1 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, non-binary and neuter forms.

## 2. ENGAGEMENT

- 2.1. This contract together with the Booking Summary and any terms agreed directly between the Assistant and the Client, or a third party acting on their behalf, either:
- 2.1.1. through the Website;
  - 2.1.2. in writing directly between the parties; or
  - 2.1.3. as Oral Terms,
- form the Agreement for the Engagement of the Assistant's Services by the Client.
- 2.2. A Client can choose when making a Booking through the website to purchase either:
- 2.2.1. a Short-Term Engagement for the rate advertised or advised by the respective Assistant; or
  - 2.2.2. a Ongoing Engagement for the rate advertised or advised by the respective Assistant.
- 2.3. The Booking Start Date is either the date when the Assistant first provided their services, or, in the event no services were provided through no fault of the Assistant, the date of the introductory meeting between the Assistant and the Client. If, having met the Assistant at the introductory meeting, the Client does not wish the Booking to proceed, the Client has undertaken to inform TrustonTap in writing.
- 2.4. For any Oral Terms to be binding between the parties pursuant to the terms of this Contract, they have to be confirmed subsequently by one party providing the other party confirmation in writing by any of the following communication methods:
- 2.4.1. text message;
  - 2.4.2. electronic mail (email);
  - 2.4.3. other form of electronic messaging service; or
  - 2.4.4. approval of written attendance notes.

## 3. DUTIES AND OBLIGATIONS

- 3.1. At all times when providing the Assistant Service, the Assistant shall:
  - 3.1.1. provide the Assistant Services with all due care, skill and ability;
  - 3.1.2. provide the Assistant Services at times agreed in advance with the Client;
  - 3.1.3. respond to requests from the Client in a reasonable amount of time;
  - 3.1.4. use reasonable endeavours to provide the Services at such times as are requested by the Client;
  - 3.1.5. use reasonable endeavours to provide such assistance or information as the Client may require;
  - 3.1.6. comply with all reasonable standards of safety and comply with the Client's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Client any unsafe working conditions or practices;
  - 3.1.7. comply with all applicable laws, regulations, codes and sanctions relating to the provision of care of individuals; and
  - 3.1.8. dress appropriately for the provision of the Assistant Service; and when providing Personal Care services to the Care Recipient, provide the following items necessary to assist with such Personal Care including but not limited to clinical gloves, aprons and other hygienic clothing as advised in current government guidelines;
  - 3.1.9. in the case of Ongoing Engagements, provide at least two weeks' notice of any holidays or periods when the Assistant will be unable to provide the Assistant Services;
  - 3.1.10. provide at least 48 hours' notice if the Assistant is unable to attend a Visit unless ill or injured, when the Assistant will inform the Client as soon as practicably possible;
  - 3.1.11. report any safeguarding concerns to the relevant authorities;
  - 3.1.12. not use the Client's telephone (whether landline or mobile) other than on their behalf;
  - 3.1.13. not smoke or drink alcohol in the Client's premises.
- 3.2. At all times during an Engagement, the Client shall:
  - 3.2.1. treat the Assistant with respect and dignity. If the Care Recipient is prone to behaviours that may breach this clause due to their illness or disability, the Client undertakes to inform the Assistant (and ToT) before a Booking is in place. If the Client fails to inform the Assistant before the Booking, the Assistant may choose to terminate the Engagement immediately and the Client remains liable for the notice period as set out in clause 8.2.
  - 3.2.2. ensure the place where the Assistant Services will be provided is fit for purpose and meets all relevant health and safety standards.
  - 3.2.3. ensure any equipment needed by the Care Recipient for daily living is in good working order and the Assistant has had the appropriate training to use this equipment.
  - 3.2.4. ensure funding is in place.
  - 3.2.5. provide at least 48 hours' notice of any cancellation of Visits during an Ongoing Engagement. If this is not given, the Assistant reserves the right to still charge for the visit. Cancelled visits during the Notice Period may still be charged as set out in clause 8.7.
  - 3.2.6. pay a Retention Fee for Ongoing Engagements if the Care Recipient goes into hospital, respite care or on holiday as set out in clause 4.5.1 or give notice as set out in clause 8.5 or unless otherwise agreed between the parties.
  - 3.2.7. ensure they have a valid legal basis and can meet any additional conditions required by the Data Protection Act 2018 and the UK GDPR in relation to the transfer of any personal data to the Assistant.
- 3.3. At all times during a Live-in Engagement, the Client shall additionally:
  - 3.3.1. provide the Assistant with clean, comfortable accommodation on a full board basis with a private bedroom and access to a bathroom which will be free of charge for the

- duration of the Engagement; and
- 3.3.2. provide the Assistant with a break of not less than 2 hours for every 24 hours during the Engagement and in the event such time is not provided, the Assistant may take such untaken time in lieu at a subsequent time and/or day.
- 3.3.3. provide ample food (or a food allowance); clean bedding, as well as adequate cleaning materials to carry out cleaning properly.
- 3.4. In the event the Assistant is unable to fulfil an appointment at short notice and the client requests a carer in substitution of the Assistant, the Assistant shall use reasonable endeavours to find a substitute carer with experience and skills necessary to accomplish the required tasks for the Client. If the substitute carer is, or has been within the last 24 months, using ToT's services any engagement must be done through ToT otherwise the Client agrees to pay the Direct Engagement fee as set out in clause 4.7. The Client will need to enter into a separate agreement with any substitute carer as the substitute carer is not a party to this contract.
- 3.5. Unless authorised to do so by the Client in writing, the Assistant shall not:
  - 3.5.1. have any authority to incur any expenditure in the name of or for the account of the Client; or
  - 3.5.2. hold himself out as being an employee of the Client or have authority to bind the Client.
- 3.6. Nothing in this agreement shall prevent the Assistant from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession, service or occupation during the Engagement or from being otherwise able to manage his own affairs and the provision of his services to other clients, provided that such activity does not cause a breach of any of the Assistant's obligations under this agreement.
- 3.7. The Assistant must hold, and undertakes to hold, a clear Enhanced DBS certificate dated within the last three years, if the services they provide to the Client include any of the following: Personal Care; assistance with general household matters which include one of the following: managing a Vulnerable Person's cash; paying their bills or shopping on their behalf; or driving a Vulnerable Person to health care appointments.

#### **4. INVOICES AND PAYMENT**

- 4.1. The parties agree that ToT shall issue invoices on the Assistant's behalf for any Short-Term Engagement, Ongoing Engagement, and/or Assistant Services provided by the Assistant to the Client based on timesheets submitted by the Assistant.
- 4.2. VAT may be applicable to Assistant Services and this will be included on the invoice.
- 4.3. The Assistant will charge for any mileage incurred on behalf of the Client at the government approved mileage rates.
- 4.4. The Assistant will seek reimbursement for any authorised costs as per clause 3.5.1. and provide receipts for these costs.
- 4.5. For Ongoing Engagements:
  - 4.5.1. payment is due within 5 days of the date of any Invoice;
  - 4.5.2. if the Assistant is unable to provide the Assistant Services because the Client, or Care Recipient, is in hospital, respite care or on holiday, the Client will pay a retention fee of 50% of the average weekly fees (the average calculated to exclude part weeks and weeks where no Services were provided; failing this it will be calculated as 50% of the weekly fees set out on the Booking Summary) for the duration. The Client reserves the right to terminate this contract instead, in which case the Client must give notice as set out in clause 8.5 and no Retention Fee will be due. It is anticipated that the Retention Fee will be payable for no longer than 4 weeks, when the Engagement will terminate, unless otherwise agreed between the parties. In which case, it will be assumed that notice is served as set out in Clause 9.5.
  - 4.5.3. the Care Hours may vary from the Max Hours as agreed between Client and Assistant. The Assistant will only charge for Care Hours delivered unless clause 3.2.5 applies.

- 4.6 For Short-term Engagements:
- 4.6.1 payment is due on receipt of any Invoice;
  - 4.6.2 if the Assistant is unable to provide the Assistant Services through no fault of their own, the Client will be invoiced and is liable for the Care Hours booked for the entire length of the Booking (between start and end date), see Clause 8.4;
  - 4.6.3 if the Assistant is unable to provide the Assistant Services through illness, injury, other commitments or for any reason reasonably under their control, the Client will not be charged for the Care Hours booked but unattended;
  - 4.6.4 if it is agreed between the Client and Assistant that the Assistant provides more Care Hours than the Max Hours stated on the Booking Summary, these will be added to the Invoice.
- 4.7 If the Assistant offers or agrees to provide the Assistant Services to the Client in a Direct Engagement, the Client will become liable to pay ToT a Direct Engagement fee (as set out in the Client Terms).
- 4.8 Payments from Clients, or a third party acting on their behalf, received by ToT for invoices on behalf of Assistants will be considered deemed receipts in respect of the relevant invoice.
- 4.9 In cases where the Booking has been agreed on behalf of the Client by a nominated representative of a Local Authority, the Local Authority remains bound by the terms of this Contract even if they are not the nominated Account Holder on the Booking.

## **5 DISPUTE RESOLUTION AND MEDIATION**

- 5.1 The parties will attempt, in good faith, to resolve any dispute or claims arising out of or in relation to this Agreement promptly through negotiations between the respective representatives of the parties who have authority to settle the same.
- 5.2 If the matter is not resolved through negotiation the parties may attempt to resolve the dispute or claim by appointing ToT to act as a mediator (and not as an arbitrator) at no cost to the parties.
- 5.3 The parties each agree to provide the other with such information and take such actions as may be reasonably requested by the other party, in connection with any complaints or claims made by the other party in relation to the provision of the Assistant Services.

## **6 CONFIDENTIAL INFORMATION**

- 6.1 Either party shall not (except in the proper course of his duties), either during the Engagement or at any time afterwards use or disclose to any third party (and shall use best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:
- 6.1.1 Any use or disclosure authorised by the other party or may be required by law; or
  - 6.1.2 Any information which is already in, or comes into, the public domain otherwise than through an unauthorised disclosure.
- 6.2 At any stage during the Engagement, the Assistant will promptly on request return to the Client all and any property belonging to the Client in Assistant's possession.

## **7 DATA PROTECTION**

The Assistant and the Client each consent to each other holding and processing data relating to each other for legal, personnel, administrative and management purposes and in particular to the processing of any "special category personal data" (as defined in the Data Protection Act 2018 and the UK GDPR) relating to each other. Any personal data (including special category personal data) will be deleted when it is no longer reasonably required but in any event after 7 years following the last Engagement and shall at all times be held securely by the respective party. The parties each agree not to transfer any personal data received under this Agreement outside the UK

## **8 TERMINATION**

- 8.1 The Client may terminate the Engagement with immediate effect with no liability to make any further payment to the Assistant if at any time the Assistant:
- 8.1.1 Commits any serious or repeated breach or non-observance of any of the provisions of this Agreement; or
  - 8.1.2 Is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed); and
  - 8.1.3 Is incapacitated (including by reason of illness or accident) from providing the Assistant Services for a consecutive period of 10 days.
- 8.2 The Assistant may terminate the Engagement with immediate effect, and reserves the right to charge as set out in clauses 8.3 to 8.5 (inclusive), if:
- 8.2.1 the Client, or third party acting on their behalf, has not fully disclosed the needs of the person requiring the Assistant Services.
  - 8.2.2 the place in which the Assistant is required to deliver the Assistant Services will put the Assistant at risk;
  - 8.2.3 the behaviour of Client and/or the Care Recipient receiving the Assistant Services is putting the Assistant at risk.
- 8.3 Either party may terminate the Engagement with immediate effect following the introductory meeting if that party does not wish to continue. The introductory meeting will not be charged for unless the Assistant has provided any Assistant Services. Once Assistance Services have started, the notice periods set out below must be adhered to.
- 8.4 A Short-term Engagement will terminate at the date agreed on the Booking Summary and no notice is necessary. If the Client wishes the Assistant to continue, they must make another Booking, which can be either for an Ongoing or Short-term Engagement. If, during the Short-term Engagement, the Client no longer requires the Assistant Services for any reasons, they must inform the Assistant immediately. The Client will still be charged for any Care Hours not provided for the remaining length of the booking to the end date, unless clause 8.1 applies.
- 8.5 For an Ongoing Engagement, including Cover Bookings, any Party may terminate this Agreement with 14 days written notice, unless during the first week of the Assistant providing Assistant Services in which case 48 hours' notice is sufficient.
- 8.6 During the Notice Period the Assistant will continue to provide the Assistant Services as set out in the Booking Summary. The Client may elect to terminate this Agreement immediately at any time by paying for 2 weeks' average fees in lieu of notice (the average calculated to exclude part weeks and weeks where no Assistant Services were provided; failing this it will be calculated as the weekly fees set out in the Booking Summary), or for the equivalent on the balance of the Notice Period.
- 8.7 The Assistant reserves the right to charge for any cancelled individual visits during the Notice Period.
- 8.8 In the event of the Care Recipient's death, notice will be considered given on the date that ToT or the Assistant were informed unless occurring during the Notice Period. For Short-term Engagements clause 8.4 applies. For Ongoing Engagements, the Assistant reserves the right to charge for the Notice Period as set out in clause 8.6. This Agreement will terminate when all outstanding fees have been paid including fees for the Notice Period, or the balance of any Notice Period unless otherwise agreed.
- 8.9 At the end of the Engagement, the terms of this Agreement other than clauses 5, 6, 7, 8 and 10 shall cease to apply and the Assistant shall immediately deliver to the Client all client property in their possession or under their control.

## **9 STATUS OF ASSISTANT**

- 9.1 The relationship of the Assistant to the Client will be that of independent contractor and

nothing in this agreement shall render them an employee, worker, agent or partner of the Client and the Assistant shall not hold themselves out as such.

- 9.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly for the duration of the term of this Agreement the Assistant shall be fully responsible for and shall indemnify the Client for and in respect of:
- 9.2.1 Any income tax, National Insurance and social security contributions; and
  - 9.2.2 Any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) in relation to the Engagement.
- 9.3 The parties acknowledge and agree that ToT is classified as an 'introductory agency' (in accordance with guidance produced by the Care Quality Commission) providing a service introducing self-employed carers to Clients. As an introductory agency, ToT has no 'ongoing role' in the direction or control of any Personal Care provided as part of the Assistant Services. The parties further agree that ToT is unable to advise or direct changes to how Personal Care is carried out, for example (but not limited to) frequency of visits, type of care provided or the way in which the Assistant gives Personal Care.
- 9.4 As an individual providing Personal Care to a Client, or a related third party, without an agency or business involved in managing or directing the care provided, the Assistant is currently exempt from regulation by CQC.

## 10 GENERAL

- 10.1 This Agreement is personal to each party and neither party is entitled to assign their rights or obligations or delegate their duties.
- 10.2 Any notice (other than an Oral Term) given to a party under or in connection with this contract shall be made through the Website or via email with copy to support@trustontap.com.
- 10.3 Nothing in these Terms shall be construed as constituting a partnership or joint venture between the parties.
- 10.4 This Agreement between the parties is augmented by any special contractual conditions set out on the Booking Summary; otherwise, it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 10.5 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 10.6 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).
- 10.7 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 10.8 If any term or provision of these terms and conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these terms and conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.