

**TERMS OF BUSINESS (EMPLOYMENT AGENCY)
PERMANENT OR CONTRACT RECRUITMENT RETAINED TERMS**

This contract is between CONCEPT PERSONNEL LIMITED, T/A CONCEPT ONYX RECRUITMENT of Cobalt Business Exchange, Newcastle upon Tyne, NE28 9NZ; and

..... (“the Client”).

1. DEFINITIONS

In this Agreement, unless the context requires otherwise, the following words shall have the following meanings:

- 1.1 **“Candidate”** means any individual, firm or company who is Introduced by Concept Onyx Recruitment to the Client.
- 1.2 **“Data Protection Laws”** means the Data Protection Act 1998, the General Data Protection Regulation (EU 2016/679) and any applicable statutory and regulatory provisions in force from time to time relating to the protection and transfer of personal data.
- 1.3 **“Engages/Engaged/Engagement”** means the engagement, employment or use of a Candidate by the Client or a third party (following an introduction of the Candidate to that third party by the Client) directly or through any other employment business on a permanent or temporary basis, whether under a contract of service or for services, an agency, licence, franchise or partnership arrangement; or any other engagement whether directly or through a limited company of which the Candidate is an officer, worker or employee.
- 1.4 **“Introduction/Introduced/Introduce”** means (i) the Client’s interview of a Candidate in person or by telephone, following the Client’s instruction to Concept Onyx Recruitment to provide details of a Candidate; or (ii) the passing to the Client of a curriculum vitae or information which identifies a Candidate; or (iii) the obtaining of information by the Client from Concept Onyx Recruitment’s website that identifies a Candidate, whichever is earlier.
- 1.5 **“Remuneration”** includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and emoluments (whether taxable or not) payable to or receivable by a Candidate for services provided to or on behalf of the Client or where applicable a third party. Where the Candidate is provided with a company car, a notional amount of £10,000 will be added to the annual salary in order to calculate any fees due to Concept Onyx Recruitment.
- 1.6 Unless the context requires otherwise, references to the singular include the plural.
- 1.7 The headings contained in these Terms of Business are for convenience only and do not affect their interpretation.

2. THE CONTRACT

- 2.1 This Agreement constitutes the contract between Concept Onyx Recruitment and the Client for the Introduction of Candidates by Concept Onyx Recruitment to the Client and are deemed to be accepted by the Client by virtue of the Client’s request for, interview with or Engagement of the Candidate or the passing of any information about the Candidate by the Client to any third party following an Introduction.

- 2.2 No variation can be made to this Agreement without the written agreement of an Authorised Representative of Concept Onyx Recruitment.
- 2.3 This Agreement supersedes and replaces all previous terms and conditions relating to the Introduction of Candidates.

3. FEES

- 3.1 If a Candidate is Engaged within a period of twelve months from the date of an Introduction, the Client shall pay to Concept Onyx Recruitment the relevant fee in accordance with clause 3.7 (“the Agency Introduction Fee”). VAT shall be added to the Agency Introduction Fee.
 - 3.1.1 Please note that, for the avoidance of doubt, the Agency Introduction Fee shall remain payable if a Candidate is Engaged within the period outlined at clause 3.1 above, even if the Candidate has made a private or independent application for a job with the Client and whether or not in relation to the same position that the Candidate was Introduced by Concept Onyx Recruitment.
- 3.2 The Client shall be entitled to a refund if an Engagement is terminated in compliance with clause 5 (Refunds).
- 3.3 The Client agrees to notify Concept Onyx Recruitment immediately if:
 - 3.3.1 a Candidate is offered an Engagement;
 - 3.3.2 a Candidate is introduced by the Client to a third party; or
 - 3.3.3 a Candidate is Engaged, whether by the Client or a third party to whom the Client has introduced the Candidate.
- 3.4 For the avoidance of doubt, in the event of an Introduction of a Candidate by more than one employment agency or employment business, the Agency Introduction Fee shall remain payable by the Client, unless the Client can provide written evidence that;
 - 3.4.1 the Candidate’s details were received in writing from another employment agency or employment business before being received from Concept Onyx Recruitment; and
 - 3.4.2 the other employment agency or employment business had the authorisation of the Candidate to introduce the Candidate to the Client.
- 3.5 The Client agrees to notify Concept Onyx Recruitment immediately upon receipt of information from Concept Onyx Recruitment identifying a Candidate, which has already been received by another employment agency or employment business.
- 3.6 The Agency Introduction Fee is calculated by reference to the value of the initial annual remuneration of the Candidate.
 - 3.6.1 **The Fee for an Assignment is payable in 2 stages, as follows:**
 - Engagement Fee:** 30% of agreed fee plus VAT where applicable. Payable immediately on engagement date. This is non-refundable.
 - Completion Fee:** 70% of agreed fee plus VAT where applicable. This is invoiced on the day the successful Candidate starts in post.
- 3.7 Except in the circumstances set out in clause 6 below, no fee is incurred by the Client until the Candidate commences the Engagement when the Agency will render an invoice to the Client for its fees.

3.8 Scale of Fees

Reduced Fees for Permanent Placements

XX% for all salaries

Reduced Fees for Fixed Term Contracts

XX% for all salaries

Standard Fees for Permanent Placements

20% for salaries up to £24,999

25% for salaries of £25,000 to £49,999

30% for salaries of £50,000 and above

Fixed Term Contracts

25% for salaries up to £49,999

30% for salaries of £50,000 and above

- 3.9 In the event that the Engagement is for a fixed term of less than 12 months, the fee in clause 3.8 for fixed term contracts will apply pro-rata. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Candidate within 6 calendar months from the date of termination of the first engagement, the Client shall be liable to pay a further fee based on the additional remuneration applicable for the period of engagement following the initial fixed term up to the termination of the second engagement or the first anniversary of its commencement, whichever is the sooner.
- 3.10 If the Client subsequently engages or re-engages the Candidate within the period of 6 calendar months from the date of termination of the Engagement or withdrawal of the offer, a full fee calculated in accordance with clause 3.8 above becomes payable.
- 3.11 Within 14 days of receiving a request by Concept Onyx Recruitment the Client shall estimate the commission and/or bonuses which the Client reasonably considers the Candidate will earn in the first year of an Engagement and shall notify this figure and the figure for initial annual Remuneration to Concept.
- 3.14 Where the Client fails to comply with clause 3.11 Concept Onyx Recruitment shall, in its absolute discretion, be entitled to estimate the initial/annual Remuneration by reference to similar positions in the market.

4. PAYMENT

- 4.1 The client agrees to pay the Agency's Fees within 30 days of the date of invoice date. However, if the fee is paid within 14 days, then the Refund Guarantee set out in clause 5 shall apply to the completion fee only.
- 4.2 Invoices are payable in full and are not subject to discounts, reductions, or rebates of any kind, including but not limited to any counterclaim or set-off, except as set out in this Agreement.
- 4.3 If the Agency agrees to a reduction in the standard fees and the client fails to pay the Agency's reduced fee within 30 days, then the client shall be liable to pay the standard fee and Concept Onyx Recruitment may:-
- 4.3.1 refuse to complete any other contract between Concept Onyx Recruitment and the Client;
- 4.3.2 set off any sums paid by the Client to Concept Onyx Recruitment in relation to any other contract against the sums owed by the Client; and

- 4.3.3 charge the Client interest (both before and after judgement) at the rate of 8% per annum over Barclays Bank plc base rate from time to time.
- 4.4 Concept Onyx Recruitment shall be entitled to recover all reasonable legal costs incurred in connection with the recovery of sums due and outstanding from the Client.

5. REFUNDS

- 5.1 Concept Onyx Recruitment operates a guarantee period during which refunds are available on the Completion Fee only, providing the Client complies in full with the terms of this Agreement. In particular, the Client must have (a) paid any invoices within 14 days of the date of the invoice; and (b) have complied with clause 3.3.
- 5.2 The Completion Fee shall be subject to the following refunds where an Engagement is terminated within the periods indicated below:

Period of Engagement	Percentage of Refund
0 to 4 weeks	50%
5 to 8 weeks	30%
9 to 12 weeks	10%

- 5.3 No refund shall be paid where:
- 5.3.1 the Candidate is made redundant;
- 5.3.2 the Engagement is terminated in breach of contract or the Candidate has otherwise been treated unlawfully by the Client;
- 5.3.3 the Candidate resigns due to changes to the job specification or to the terms and conditions of the Engagement as outlined in the offer letter;
- 5.3.4 the Engagement is terminated because of the Candidate's incompatibility with the Client's other staff;
- 5.3.5 notice in writing has not been received in compliance with clause 5.4; or
- 5.3.6 any of the terms of this Agreement have been breached by the Client.
- 5.4 If the Engagement is terminated either by the Client or the Candidate, the Client must notify Concept Onyx Recruitment immediately, and in any event within 5 working days, stating the reasons for the termination.
- 5.5 Where a Candidate has resigned the Client shall provide information as to the circumstances of the resignation, together with such other information as Concept Onyx Recruitment may reasonably request.
- 5.6 Upon receipt of the clients notice in accordance with clause 5.4, Concept Onyx Recruitment shall provide a percentage refund within 28 days as outlined in clause 5.2 to the Client.
- 5.7 If, following the payment of a refund by Concept Onyx Recruitment to the Client, the Candidate is subsequently Engaged within a period of 12 months from the date of termination, the refund shall be repaid by the Client to Concept Onyx Recruitment within 14 days of the subsequent Engagement. No refunds shall apply to any such subsequent Engagements.

6. CANCELLATION FEE

- 6.1 If, after an offer of Engagement has been made to the Candidate, the Client decides for any reason to withdraw it, the Client shall be liable to pay an Agency Introduction Fee calculated by reference to the value of the initial annual remuneration of the Candidate based on a fee of 10%.

7. SUITABILITY

- 7.1 Concept Onyx Recruitment shall use reasonable endeavours to supply such Candidates as may be required by the Client throughout the duration of this Agreement.
- 7.2 While Concept Onyx Recruitment cannot and does not warrant the technical or professional competence of a Candidate, Concept Onyx Recruitment shall use reasonable endeavours to ensure reasonable standards of skill, integrity and reliability from Candidates. All Candidates proposed by Concept Onyx Recruitment will be selected by reference to the Client's specified criteria and, where required by law, the Candidate's technical qualifications and suitability will be checked and verified, so far as reasonably practicable. Concept Onyx Recruitment assess samples of a Candidate's work where appropriate and obtain copies of the Candidate's CV prior to making an Introduction.
- 7.3 Except where required by law, Concept Onyx Recruitment shall not be responsible for the following matters, which shall be the Client's responsibility:-
- 7.3.1 obtaining references for the Candidate;
 - 7.3.2 the status of the Candidate's health;
 - 7.3.3 work permits; and
 - 7.3.4 criminal record checks.
- 7.4 Concept Onyx shall notify the Client immediately if, within 3 months from the Introduction of a Candidate, it receives or otherwise obtains information which gives it reasonable grounds to believe that a Candidate Introduced to the Client is unsuitable for the position in which s/he is Engaged.
- 7.5 The Client warrants that it knows of no reason why it would be detrimental to the interests of the Candidate to be Engaged in the position for which the Candidate was Introduced, or if the Client knows or becomes aware of such a reason, the Client shall immediately inform Concept Onyx Recruitment in writing, providing such information as Concept Onyx Recruitment may reasonably request.

8. RELATIONSHIP BETWEEN THE PARTIES

- 8.1 Where Concept Onyx Recruitment has given notice to the Client that this Agreement shall apply, Concept Onyx Recruitment will operate as an employment agency in relation to the Client and the Candidate.
- 8.2 Nothing contained in this Agreement or any other contract between Concept Onyx Recruitment and the Client for the Introduction of Candidates to the Client is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party or any liability whatsoever to any third party.

9. WAIVER

- 9.1 Failure or delay by Concept Onyx Recruitment in enforcing or partially enforcing any provision of this Agreement is not a waiver by Concept Onyx Recruitment of any of its rights.
- 9.2 Any waiver by Concept Onyx Recruitment of any breach by the Client is not a waiver of any subsequent breach.

10. LEGISLATION

- 10.1 Concept Onyx Recruitment is an equal opportunities organisation and is committed to providing equal opportunities to its Candidates. This means that all Candidates and other individuals dealing with Concept Onyx Recruitment will receive equal treatment regardless

of race, colour, ethnic or national origins, religion or belief, sex, marital status, age, sexual orientation or disability. The Client acknowledges this policy and agrees to conduct its relationship with Concept Onyx Recruitment and any Candidates in accordance with equal opportunities.

- 10.2 Concept Onyx Recruitment recognises its obligations under the Data Protection Act 1998 (“the DPA”) in relation to processing personal data and complies with the requirements of the DPA in the operation of its business. The Client acknowledges it has responsibilities under the DPA and undertakes to comply with the DPA in relation to any data concerning a Candidate, howsoever such data comes into the possession of the Client. The Client shall indemnify and keep Concept Onyx Recruitment indemnified in full against any and all costs, claims, fines, penalties or liabilities incurred as a result of a breach of this clause by the Client.
- 10.3 This Agreement and any other contract between Concept Onyx Recruitment and the Client are subject to English Law and the exclusive jurisdiction of the English Courts.
- 10.4 The various provisions and sub-provisions of this Agreement are severable and if any provision or identifiable part of it is held to be unenforceable by any Court of competent jurisdiction then such unenforceability shall not affect the enforceability of the remainder of this Agreement.

11. TERMINATION

- 11.1 This Agreement may be terminated by either party on giving one month’s notice to the other party. Termination shall not affect any rights or obligations which have accrued prior to or as a result of termination or any rights which are intended to continue after termination.

12. LIABILITY

- 12.1 Subject to clause 12.4 and because Candidates are engaged by the Client, no liability (whether in contract, tort or otherwise at law) will be accepted by Concept Onyx Recruitment for any loss, damage, cost or expense incurred by the Client or arising otherwise in connection with any act, omission or neglect on the part of a Candidate. No liability will be accepted by Concept Onyx Recruitment for any loss, expense, damage or delay arising from any failure to provide any particular expertise or from the negligence, dishonesty, misconduct or lack of skill of a Candidate or as a result of a Candidate terminating an Engagement for any reason.
- 12.2 Except to the extent Concept Onyx Recruitment may be liable to the Client pursuant to this Agreement, the Client shall indemnify and keep Concept Onyx Recruitment indemnified in full against any and all costs, claims, damages, fines, penalties and liabilities incurred by Concept Onyx Recruitment as a result of any act, error or omission of the Client or the Candidate before or throughout the duration of the Engagement (including but not limited to any negligence, breach of statutory duty or breach by the Client of its obligations pursuant to this Agreement).
- 12.3 All warranties, conditions or other terms implied by statute, common law or otherwise are excluded to the fullest extent permitted by law.
- 12.4 Nothing in this Agreement excludes or limits Concept Onyx Recruitment’s liability for death or personal injury caused by Concept Onyx Recruitment’s negligence or for fraudulent misrepresentation.

12.5 Subject to clause 12.4:-

12.5.1 Concept Onyx Recruitment shall not be liable to the Client for any loss of profit, loss of production, financial loss, depletion of goodwill or any indirect losses, damages, costs or expenses whatsoever which arise out of or in connection with this Agreement or a particular Engagement or its performance or its contemplated performance or lack of performance; and

12.5.2 Concept Onyx Recruitment's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance or lack of performance of this Agreement or a particular Engagement shall be limited to the Agency Introduction Fee.

13. CONFIDENTIALITY

13.1 Concept Onyx Recruitment conforms fully to the requirement of data protection law. Therefore, the Client undertakes not to disclose the Candidate's details to any third party, or introduce the Candidate to a third party or contact the Candidate directly until the Candidate is offered an Engagement. Failure to comply with this clause may result in the Client being liable to pay the Agency Introduction Fee.

IN WITNESS whereof this Agreement has been entered into on the date below:

For and on behalf of Concept Onyx Recruitment

Signed:

Print Name:

Date:

For and on behalf of Client

Signed:

Print Name:

Date: