

Website Design and Development Services Terms and Conditions

In addition to the General Terms and Conditions this Agreement applies ONLY where Open Imagination provides Website Design and Development Services for the Customer.

1. General

- 1.1. Open Imagination will develop the Website for the Customer. Open Imagination warrants that the Website will comply with the Requirements Strategy in all material respects for a period of 60 days after Acceptance.
- 1.2. The Customer grants Open Imagination the right to copy and modify any Content for the purpose of developing and testing the Website.
- 1.3. As from Acceptance or, if later, the termination of any Contract for the Hosting of the Website, Open Imagination will grant the Customer a personal, non-exclusive, nontransferable, indefinite licence to use a runtime version of the Website Software for the purpose of porting the Website to an alternative host platform and maintaining and publishing the Website, but for no other purpose.
- 1.4. The Customer may not sub-license the use of the Website Software, make it available to anyone else (except its employees), or share its use.
- 1.5. The Customer may not copy the Website Software except incidentally to use it in accordance with these Terms and Conditions, or to make a reasonable number of back-up copies. The Customer may only use a back-up copy by substituting it for the original copy of the Website Software, and each back-up copy must be kept in a secure place, in the Customer's possession and under its control at all times.
- 1.6. The Customer must ensure that each and every copy of any of the Website Software that the Customer makes bears the copyright and other proprietary notices on the original copy of the Website Software supplied by Open Imagination. Those notices must not be removed, obliterated or modified.
- 1.7. The Website Software must not be modified or incorporated in any other software. If the Website Software is modified by anyone except Open Imagination, Open Imagination will have no liability or responsibility in relation to it.
- 1.8. Except as permitted under the European Software Directive or any legislation implementing that directive, the Website Software may not be reverse engineered or decompiled to determine any design structure, concepts or methodology behind it, or to incorporate the software in any other software or product, or for any other purpose.
- 1.9. The licence granted in Condition 1.4 will immediately terminate if any of the circumstances in Section Termination arise. On the termination of that licence the Customer must stop using the Website Software and must delete all copies of it from its systems and destroy all back-up copies.
- 1.10. The Customer is responsible for ensuring that its computer systems are suitable to access and use the Website and, unless Open Imagination is providing Hosting Services, to host the Website.

2. Testing and Acceptance

- 2.1. Unless otherwise agreed between Open Imagination and the Customer in writing, Open Imagination will test the Website and the Equipment (as the case may be) in accordance with any test plan agreed with the Customer. The Customer will provide Open Imagination with all test data and facilities (if any) included in that test plan.
- 2.2. The Customer will accept or be deemed to have accepted the Website (as the case may be) immediately after Open Imagination confirms to the Customer in writing that it has passed those tests. Where no test plan is agreed with the Customer, the Customer will be deemed to have accepted the Website Software or the Equipment (as the case may be) within 14 days after Open Imagination first delivers it or makes it available to the Customer.
- 2.3. If the Website Software or the Equipment fails to pass any acceptance tests, Open Imagination will be given a reasonable opportunity to correct Defects or to replace it and to carry out repeat tests.

This process will be repeated as often as is necessary until Open Imagination confirms to the Customer that the Website Software or the Equipment (as the case may be) has passed those tests.

- 2.4. If at any time the Customer begins use of the Website Software or the Equipment (as the case may be) in a live or production environment, that is, if the Customer uses it for any purpose except testing or evaluation, the Customer will be deemed to have accepted it.

3. Warranties

- 3.1. The Customer's rights under this section in relation to the Website Software are limited to a period of 60 days immediately following the Customer's Acceptance.
- 3.2. Open Imagination makes no representation and gives no warranty that the Website Software is error-free or that it will run without interruption.
- 3.3. The Customer must report any Defect in the Website Software to Open Imagination immediately.
- 3.4. When notifying Open Imagination of a defect, error or deficiency, the Customer must provide Open Imagination with a documented example of that defect, error or deficiency and with all other information and materials Open Imagination needs to reproduce it.
- 3.5. Open Imagination's liabilities and obligations are subject to the Customer having complied with its obligations under these Terms and Conditions and to no alterations or modifications having been made to the Website Software.
- 3.6. The express terms of these Terms and Conditions are in lieu of all other warranties, conditions, terms, undertakings and obligations on the part of Open Imagination, whether express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.
- 3.7. The Customer warrants to Open Imagination that the Customer has not been induced to enter into any Contract by any representation or by any warranty except those specifically contained in these Terms and Conditions as warranties. The Customer waives all claims for breach of any warranty and all claims for any breach of representation and for any misrepresentation, (whether negligent or otherwise) unless made fraudulently.

4. Intellectual Property Rights

- 4.1. Except as specifically stated to the contrary in the Quotation or Condition 4.4 for Condition 4.2, and except in relation to the Content, and other information, software and data the Customer supplies to Open Imagination, the Intellectual Property Rights in the Website and developed software, documentation and other materials used or prepared in the course of rendering the Services are, as between Open Imagination and the Customer, reserved to Open Imagination. Open Imagination may grant licences to use them to third parties. If any of those Intellectual Property Rights vests in the Customer or in any of its employees or contractors the Customer will, on Open Imagination's request, assign those rights to Open Imagination.
- 4.2. Any Open Source software used remains under the terms of the [GNU General Public License](#) (or "GPL"), which means anyone is free to download it and share it with others.
- 4.3. The Customer will give Open Imagination any assistance Open Imagination may require to enable Open Imagination to obtain, enjoy, defend and enforce the Intellectual Property Rights reserved to Open Imagination in Condition 3.1.
- 4.4. The Intellectual Property Rights in the look and feel of the Website and in the Customer's branding used in connection with the Website and in the Content are, as between Open Imagination and the Customer, reserved to the Customer.
- 4.5. If the Customer makes or has anyone else (except Open Imagination) make any modification to the Website Software, Open Imagination will have no further liability or responsibility in respect of the same, will be released from any obligation to provide any service in respect of the same, and will be entitled to raise additional charges in return for any Service that Open Imagination does provide.
- 4.6. Despite anything else in these Terms and Conditions or any Quotation, Open Imagination will not be obliged to do anything which, in its reasonable opinion, may infringe the Intellectual Property Rights or other rights of any third party.

- 4.7. The Customer will notify Open Imagination immediately if it becomes aware of any unauthorised use of the Website, any Software Product or any Website Software. The Customer will permit Open Imagination at any time to check that the use of any Software Product and any Website Software is in accordance with these Terms and Conditions and any Quotation and, for that purpose, Open Imagination may enter any of the Customer's premises (and the Customer irrevocably licenses Open Imagination, its employees and agents to enter any of those premises for that purpose).

5. **Representatives**

- 5.1. Open Imagination and the Customer will each appoint a person who will act as its representative for the purposes of liaising with the other, who will be authorised to take decisions on behalf of the appointor, and who will be responsible for providing any information which may be required by the other party to perform its obligations. Open Imagination and the Customer will each immediately notify the other of the name, telephone number, fax number and e-mail address of its appointee and of any change in the identity or the contact details of that appointee.