

# This document outlines our Terms of Business

## 1. The Scope of Work

The work to be undertaken by Open Communication Design or Open Digital (collectively referred to here as Open) is as detailed in the Estimate or Specification prepared by us in relation to that work. The approval, verbal or otherwise, of either of these documents by the Client or their representative indicates their acceptance both of the terms within that document and of these Terms of Business.

## 2. Our obligations to our Clients

Open will provide the services detailed by us in an Estimate or Specification for the price quoted in the Estimate.

### 2.1 Validity of prices quoted

We agree to honour the price quoted in an Estimate for a period of one month from the date the document was issued by us, as long as no third party prices have increased since the date it was issued. If Open can show evidence of an increase in the cost of goods or services supplied to us, which arose after the submission of our price within the Estimate, the increase in the cost may be added to the Client's final invoice.

### 2.2 Client alterations and Change Requests

Any work requested by the Client that is over and above the scope of work originally set out in the Estimate or Specification may require the preparation of a revised Estimate or will be documented in a Change Request and may increase timings and costs. The revised Estimate or Change Request will require Client approval before the work described there in can begin.

### 2.3 Delays caused by the Client

Open will always aim to have the work completed by an agreed target date. However, we cannot be held responsible for delays or omissions brought about by the Client's failure to provide information or other items in good time, nor for circumstances outside our control.

### 2.4 Confidentiality

We agree that we will keep the terms of our relationship with the Client and any further information supplied to each other in respect of this relationship or in respect of each other's business secret and confidential. In this respect we agree that we will not disclose the information or any part of it to anybody (except to our own employees, relevant subcontractors and maybe a close family member) without prior written consent.

## 3. The Client's obligations to Open

The Client undertakes to pay for work undertaken for them by Open, according to the Estimate or Specification that relates to that work, plus any Change Request that may exist in connection with that work.

### 3.1 Provision of information

The Client agrees to provide Open with access to sufficient information to allow the work to be undertaken in reasonable time in order to meet any deadlines. This includes obtaining the necessary input of all stakeholders and collating their feedback.

### 3.2 Availability of the Client

The Client also undertakes to be available for meetings and telephone calls at all reasonable times throughout the course of a project that may be necessary for Open to undertake the work within the agreed budget and timeframe.

### 3.3 Non-use or Cancellation charges

If staff or other resources are booked by Open but are not used due to late feedback from the Client, the cost of these resources, or any cancellation charges that may result, will be added to the cost of the project and may result in a chargeable Change Request.

### 3.4 Passwords and access rights

In respect of websites created or amended by Open for a Client, the Client agrees to provide passwords and any authority required by the Client's Internet Service Provider (ISP) to allow Open to access the Client's server and otherwise ensure satisfactory operation of the website.

### 3.5 Obscene or defamatory materials

The Client will not allow or require the work undertaken by Open to include, publish, link to or otherwise broadcast or disseminate, whether directly or indirectly, any material that is indecent, obscene, immoral, offensive, defamatory or otherwise unlawful in any form whatsoever. If Open, at our sole discretion, considers the Client to be in breach of this condition or any part of it, we may terminate the work or suspend website hosting without compensation to the Client.

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## 3.6 Rights to use assets

The Client agrees to be responsible for obtaining and holding all consents, licences, permits and other similar permissions applicable to any material or assets it supplies to Open for inclusion in any work undertaken. This includes, but is not limited to, software licences, copyrights, trade marks, logos, photography and illustration rights.

## 3.7 Indemnities

The Client indemnifies Open against all claims or charges that might arise in connection with the work, except to the extent that any such claims or charges arise as a result of the negligent act or omission of Open.

## 4. Websites and Third Party relationships

Open may, as part of any project undertaken, arrange the engagement of an Internet Service Provider (ISP) to provide website hosting for the Client. In this instance, Open is acting as an agent for the Client and the Client accepts that any agreement with an ISP requires a separate contract directly between the ISP and the Client.

### 4.1 Hosting offered by Open

Optionally, Open may offer to host the Client's website on their own server, or on a server where a contract exists between Open and an ISP. In this instance, the Client's website is subject to the terms and conditions of hosting of that ISP, and any other specific limits of the hosting service that may be agreed with Open.

### 4.2 Website availability

Open gives no warranty as to the availability or 'up time' of a website. If a website that we have created or arranged hosting for becomes unavailable, we will help the ISP and server administration staff to resolve any problems if we can, but Open will not be liable to the Client or any third party for any damages, including loss of profits or anticipated sales, or consequential damages arising out of either the availability, operation or otherwise of a website.

### 4.3 Alterations in the services provided by third parties

The Client acknowledges that the provision of certain services that might work in conjunction with their website, including but not limited to information feeds, e-commerce sales processors and mapping services, are outside the control of Open. Although Open is happy to advise on the use of the most appropriate third party providers of such services, the responsibility lies with the Client to select the most appropriate provider, and they and the third party provider are responsible for the delivery and testing of the relevant deliverables. Delays caused by non-participation of third parties, or by errors, omissions or otherwise in third

party software or services may result in a delay in delivery of the work and an increase in costs, and the Client agrees to pay such additional costs to Open should they arise.

## 4.4 Domain names

Domain name registration fees are not refundable. It is the Client's responsibility to ensure that all names are spelt correctly prior to ordering domain names.

## 5. Subcontractors

Open reserves the right to subcontract all or part of the work to third party organisations or individuals that or who may be selected at our sole discretion. This may include, but is not limited to, the creation of text, photographs, images and software and the production of print.

## 6. Copyright

Open undertakes to ensure that the intellectual property and usage rights over any aspect of the work undertaken by a subcontractor are assigned to Open, so that Open may in turn assign the usage rights to the Client on completion and delivery of the work.

### 6.1 Restriction of uses

Uses of the completed work or aspects of the work other than that or those detailed in the Estimate or Specification require the written consent of Open.

### 6.2 Copyright notices

Open retains the moral right to add or use such copyright notices or credits as is reasonable on the work, and the Client shall not remove or alter any copyright or other proprietary notice without written consent from Open.

### 6.3 Assignment to the Client

The copyright in the completed work and the source code of any individual website or other digital work is owned by Open. After receipt of the final payment, Open agrees to assign to the Client the right to use the completed design, communication, website or digital work in the manner described in the Estimate or Specification without further payment.

## 7. Acceptance of the work

If the Client does not notify Open of non-acceptance of any work provided by Open within ten days of delivery that work, it will be considered accepted. Work will also be considered accepted if the Client uses it in a 'live' environment.

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## 8. Hourly rates and charges

Open charges its time according to hourly rates as detailed on our Rate Card, which can be provided to the Client on request. We also act as an agent when procuring the services of third party organisations, and pass on the relevant charges for those services to the Client, generally with a management fee included. Expenses are charged on to the Client at cost.

## 9. Terms of payment

The Client agrees to pay the sum as set out in the Estimate according to any payment schedules that may be detailed within that document, and within 30 days of the date of an appropriate invoice from Open.

### 9.1 Interim invoices

Open reserves the right to raise interim or stage invoices for work carried out to date, prior to that work being completed and delivered.

### 9.2 Disputed invoices

Any claims/discrepancy of the invoice must be made in writing within 5 working days of receipt of the invoice.

### 9.3 Overdue invoice payments

Overdue invoices will accrue a pro rated interest surcharge of 8% over Bank of England Base Rate per annum if they remain unpaid 30 days after issue.

### 9.4 Expenses

Although expenses will be kept to a minimum, any additional costs incurred by Open in relation to the work will be charged to the Client on a monthly basis in arrears. This includes but is not limited to expenses for travel and accommodation, third party costs including print, DVD reproduction, couriers and postage, legal fees and rental of equipment.

### 9.5 VAT

All charges will incur value added tax which shall be payable by the Client in the manner and at the rate from time to time prescribed by law.

## 10. Refunds and cancellation

If the Client wishes to cancel the work at any time after approving the Estimate, they must do so in writing, to Open's registered address, with proof of delivery. Any aspect of the work undertaken to the date such cancellation is delivered to Open will be invoiced to the Client at the rate prevailing on Open's current price list and/or shown on the Estimate, together with any other charges incurred by

Open on behalf of the Client. Any aspect of the work that has been undertaken for which no price is listed and no price was detailed on the Estimate will be charged at Open's current hourly rate.

## 11. Publicity

Open may include the Client's name and the details of the work and services provided in its advertising, promotion, press releases or publicity. Similarly, Open reserves the right, unless specifically requested by the Client in writing not to do so, to include a credit to itself on any work created for the Client.

## 12. Insurance

Open confirms that a suitable Employers and Public Liability insurance policy and Professional Negligence insurance policy will be in force throughout the term of this Agreement. Open shall on request provide evidence of such insurance.

## 13. Data protection and security

Open is registered with the Data Protection Association. We take all reasonable precautions to protect information stored on behalf of client from loss, theft, corruption, or malicious attack from hackers or virus software.

## 14. Force Majeure

Open shall not be liable for any default due to any circumstance beyond our reasonable control, including but not limited to alterations or termination of third party service provision, internet infrastructure or network problems, malicious attack from hackers or virus software, Acts of God, war, civil unrest, riot, strike, lock-out, acts of civil or military authorities, fire, flood, earthquake or shortage of supply.

## 15. Termination

This Agreement may be terminated by either party on not less than one months' prior written notice. On termination of this agreement Open shall immediately, provided all accounts are paid in full, deliver up to the Client all materials, property or things belonging to the Client, together with all the work in progress carried out in relation to the Client under the terms of this Agreement.

## 6. Waiver

The failure of either party to exercise any right or enforce any obligation under these Terms of Business shall in no way prejudice or affect their right subsequently to do so, nor shall any waiver or any breach of any provision constitute the waiver of any subsequent breach nor shall it constitute a waiver of the provision itself.

**We are Open™**

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## 7. Governing Law

These Terms of Business shall be considered a contract made in England and subject to English Law. The Parties to the contract irrevocably submit themselves to the exclusive jurisdiction of the English Courts.

## Signed in acceptance of these Terms of Business:

Signature:

Name:

Organisation:

Date: