



## TERMS & CONDITION

### OPEN FORMULA LIMITED

Updated 1<sup>st</sup> August 2022 (Version 6-1)

**(These T&Cs apply to all OFL brands: Open Formula, Open Formula Limited, Open Formula Web Design & SEO, Burton Web Solutions, Excel Spreadsheet Solutions, referred to as either OFL or Open Formula Limited)**

#### AREAS COVERED BY THIS AGREEMENT

All work carried out by Open Formula Limited (OFL) either directly as that brand or our sub brands above is covered by this agreement. Engagement of any of our services or advice requested / given is done so on the explicit understanding that all interested parties have read, understood and agreed to these T&Cs and any changes or updates implemented thereafter.

This agreement covers all work carried out by OFL, including but not limited to; web design, web building, web support, website updates, web hosting, email services implemented and / or supported, SEO work and Excel spreadsheet development.

The client refers to any person or business that uses our services or interacts with OFL via our media including, but not limited to, email or the web or engages OFL for advice or to complete work for them. Within this agreement "The Client" and "You" are one and the same.

#### SECTION A - WEB DESIGN & BUILDING

You, The Client, are hiring OFL (**OFL**) to design and build your website for the price agreed and within the specifications of quote issued and all related correspondence.

#### What do both parties agree to do?

**You:** You have the authority to enter into this contract / agreement on behalf of yourself, your company or your organisation. You'll give OFL everything OFL

need to complete the project as and when and in the format OFL need it. You'll review our work; provide feedback and approval in a timely manner too.

Our standard aim is to have the website in a presentable / publishable format within 12 weeks from contract and completed (fine-tuned) within approx. 16 weeks maximum. Timelines will be agreed to within the quote where different to this. OFL will be driven by your pace which may change the timelines. This is at the discretion of OFL and monies due may still fall due within the quote timeframes. You also agree to stick to the payment schedule set out at the end of this contract.

**OFL:** OFL and our sub-contractors have the experience and ability to do everything OFL have agreed with you (as per emails to date) and OFL will do it all in a professional and timely manner. OFL will endeavour to meet every deadline that's set and on top of that OFL will maintain the confidentiality of everything you give OFL. Timelines are always a target and best endeavours but not guaranteed nor subject to any late penalties unless specified explicitly and agreed to by OFL within the quote or estimate for work.

## **Design & Build**

OFL create web layouts that adapt to the capabilities of many devices and screen sizes. OFL use predominantly CMS (Content Management Systems, i.e. Wordpress combined with commercial off the shelf themes or propriety page building plugins). These are more rigid than fully coded / bespoke work but offer a quick & cost-effective build with lower ongoing maintenance requirements. This keeps the cost down whilst giving you a professional website. Wordpress is also recognised as one of the best platforms for SEO.

We aim to build the website to 95% match of the design. Note that the look of the final build will always vary depending to the device being used to view the completed website.

OFL will generally purchase a propriety theme / template or plugin incorporating Cascading Style Sheets (CSS) & build in PHP, HTML code & plugins required to complete your site.

The templates we primarily choose use **shortcodes**.

- These are proprietary codes unique to the template provider that call the various functions and style of the design. They are not transferable to other templates or web platforms.
- The templates usually come with an annual licence that covers updates. Whilst you have a Managed Wordpress Hosting service package with OFL these costs are included. Should you move your hosting away from OFL then you would need to take ownership of the template and its associated costs. As of 2021 these average £60 p.a.

**Plugins / Apps:** Standard Plugins OFL use cover SEO, Google Webmaster / Analytics, EU Cookie Compliance, Sitemaps, HTML Editors, Contact Forms,

security plugins as well as any other plugins to meet yours, or legal, requirements.

Note that it is solely the clients responsibility to ensure that their website's content and functionality complies with all legal requirements including, but not limited to, cookie management and copyright ownership of all media / content.

## **Legal Responsibilities**

Open Formula Limited limits its responsibility to our core processes and services which includes, design, build, support, hosting, content changes / functionality, SEO as well as managed hosting. Whilst we may make the client aware of some legal requirements that we are aware of, this does not represent full or legal advice as we are not qualified to do so.

**The legal compliance for ALL content, functionalities and processes of the website are the sole responsibility of the website owner/client.** We therefore strongly recommend that before going live the client seeks legal advice to ensure their website is fully compliance with all legal requirements. This includes, but not limited to, Cookie policy and use, Privacy Policy and management of PII data and distance selling regulations, particularly where selling services or products direct to consumers.

**Businesses evolve and regulations change so it is the responsibility of the client to ensure their website continues to remain legally compliant.**

## **Cookies – more detail**

OFL Install the free cookie policy pop up warning plugins. These warn the user that cookies are being used on your website.

However, there is greater belief now that under GDPR regulations you should block all non-essential cookies from loading when a visitor goes to your website and, importantly, provide the facility for users to opt in to accepting non-essential cookies.

OFL can purchase and install a plugin to deliver this functionality for a modest additional monthly fee to cover the software licence costs.

If a client installs additional plugins or changes the functionality or type of data collected using cookies such as Google Analytics, then the client must advise OFL so that the cookie plugin can be updated to include this warning to website visitors.

In summary, whilst OFL provide non legal advice, we are not legally or GDPR qualified. It is the absolute responsibility of clients to ensure their website is and remains legally compliant, including the use of cookies. Advice is only given on that understanding and OFL can provide connection to excellent legal and GDPR specialists.

**Design & Build Terms:** OFL Standard terms are for 20% of quote to be paid before starting work. This books our designers studio time and is non-refundable.

On sign off of the design you agree to stage pay 30% of the quote total within 7 days from invoice. This is non-refundable and covers the design studio costs and a small proportion of build costs. This is not refundable.

**IPR & Software Ownership:** All designs created, and software purchased at that point will remain the property of OFL. You will not have the right to copy these. If after approving the first draft, and after build has commenced, you later decide to withdraw from the contract then your liability is for 100% of the total quote, payable on invoice. All website designs and software remain the property of Open Formula Limited until full invoice payment.

Logos designed for our clients by our logo design partners, Forty49 Limited, are also subject to the terms and conditions of [Forty49 Limited](#).

### **Text Content / Copy**

Where you supply the website copy, OFL will adjust to optimise for good SEO to help potential customers find you unless requested otherwise by you.

OFL will check in advance if OFL suggest changes to the copy for SEO. You of course have the right to not accept and / or adapt but recognise this may affect your site SEO. OFL will work collaboratively with you to get a good blend of your copy and SEO requirements. Our aim is to deliver a great website visitor experience that you are pleased with but that also ranks well in Google & Bing!

Please note that all legal responsibility for site content / copy rests with yourself so please advise OFL at every stage, including post build when live, if there is something you are not comfortable with, is incorrect or creates legal risk.

### **Site Functionality**

You recognise that this is a Wordpress website. Wordpress is extremely flexible, being open source, and is quite future proof. However, you recognise & understand that should you require a much higher level of technical functionality in the future, that you may need to rebuild on a different CMS / platform.

Our websites are built using a variety of plugins, themes and addons. We cannot accept liability, should any future update cause one or more of the other software elements, including the theme to malfunction.

We will work to correct any issues where we can. Our time to try and correct is usually covered if you have a Managed Wordpress Hosting contract but this is limited to a fair use policy. Where the time to correct any issue exceeds 2 hours then time thereafter is chargeable at our standard rates.

Over time, the website functionality and associated plugins may get to a stage where they are no longer serviceable, cause conflicts within the site, the software

supplier withdraws support or software vulnerability to malware increases. OFL cannot accept any liability, direct or consequential where this occurs and is a natural evolution of any website or business.

Our endeavour is only to use well supported plugins and themes to minimize security threats but there is never a 100% guarantee that at the time of build or post build that security is 100%. This is the very nature of online software and websites.

### **Photographs / Digital Media**

Where you supply media files these should be in an editable, digital format. You should supply photographs in a high-resolution digital format. If further images are required or requested OFL will discuss this and costs with you. Images may be scaled down to acceptable quality levels to ensure speedy browser loading for website visitors. You retain the right to revert to higher quality images, recognising the impact on the visitor experience.

OFL understand that you have the rights to these images you supply. It is the responsibility of the client to ensure all images, even those supplied by OFL have the necessary rights / licences.

OFL use a variety of image sources for stock images including paid licence images and free to use stock images.

### **HTML, CSS and Javascript**

OFL deliver CSS templates developed by the CMS provider or external specialist suppliers and adapt these as required to meet your design needs.

### **Browser testing / Compatibility**

OFL test our work in current versions of major desktop browsers including those made by Google (Chrome), Microsoft Edge (Internet Explorer is no longer supported), Firefox and Safari. However, OFL can't test all older / smaller browser performance accepting that this will meet most website visitor requirements. Please note that there will be some variation in appearance across the different browsers & devices. OFL will try to optimize these to get a good result across them all within the budget of the client.

Websites are tested at the point of go live and immediately afterwards but as web browsers develop over time there is no guarantee that they stay compatible. To minimise this, we always recommend you keep the hosting php version, Wordpress core, theme files and plugins up to date.

### **Device Responsiveness**

All the websites we build are responsive. The look and feel adapts to each device from mobile to table to laptops and desktops. Unless specifically requested, we design and build for 1920x1080 ratio standard screens. The building software we use comes with auto-device responsiveness out of the box. Our quotes for design and build assume that this responsive functionality will be sufficient for

most recent mobile devices. We may make some small adjustments for the mobile / tablet look but this is at our discretion. You should therefore expect to see slightly different views based on the device you are using. We do not specifically adjust the view for older mobile devices to keep our pricing competitive.

Whilst our quotes are for the auto-responsive functionality, we can of course quote for any additional change to achieve a specific look on a specific device or devices.

If we have quoted specifically for a design and build that is mobile first then we will lead with that the clients will recognise that there is a significant number of different devices in terms of age/models, screen sizes and screen resolutions. We will therefore design and build to work across the latest devices and most popular screen sizes but cannot guarantee the look across all devices.

### **Technical support / Website Hosting & CMS Performance**

You can opt not to host your website with Open Formula. There is absolutely no obligation to do so. In fact, one of the reasons OFL chose the Wordpress platform is to give our clients complete flexibility.

If you choose not to host with OFL, you will be responsible for all ongoing maintenance and plugin updates, licence & domain renewal costs.

#### **Important:**

Once built, if your website is ported and hosted by your own hosting company, Open Formula Limited are not liable for any technical issues, errors, omissions once uploaded to your hosts. Support is available at our standard hourly rate.

Costs of moving your website to your new host are included on completion of build assuming that your host has installed Wordpress and provided access for us at Admin level. More complicated installs will incur a small charge to cover our time but this usually averages approximately 1 hour.

**Payment would be required in full after sign-off of the website and before porting to a non-Open Formula hosting host solution.**

### **Changes and revisions**

OFL know from experience that fixed-price contracts are rarely beneficial to you, as they often limit you to your earliest ideas. OFL don't want to limit your ability to change your mind. The price at the beginning of this contract is based on the length of time OFL estimate OFL will need to accomplish everything you've told OFL you want to achieve, but OFL are happy to be flexible. If you want to change your mind or add anything new, that won't be a problem as OFL will provide a separate estimate for that.

OFL do strongly believe in openness and integrity so will always be pragmatic around requests. Small changes, additions etc. will not normally incur any extra charges.

## Additional Important Legal Notes

OFL can't guarantee that our work will be error-free or problem free either at the time of build or at any time thereafter and so OFL can't be liable to you or any third-party for damages, including lost profits, lost savings or other incidental, consequential, or special damages, even if you've advised OFL of them. Where a direct or consequential loss or problem that OFL could have taken reasonable steps to resolve or prevent occurs, then liability is strictly limited to the total fee for building the website if within 12 months or any total build / website update costs invoiced by OFL within the previous 3 months.

Our aim is to deliver greater than 99.8% uptime over any 12-month period. For hosting / uptime issues, liability is strictly limited to OFL managed hosting costs for service during the month of the issue.

Finally, if any provision of this contract shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this contract and shall not affect the validity and enforceability of any remaining provisions.

## Copyrights

First, you guarantee that all elements of copy, images or other artwork you provide are either owned by your good selves or that you've permission to use them.

Then, when your final payment has cleared, copyright will be automatically assigned as follows:

You will own the visual elements that OFL create for this project. OFL will give you source files and finished files and you should keep them somewhere safe as OFL are not required to keep a copy. You own all elements of text, images and data you provided, unless someone else owns them.

OFL love to show off our work and share what OFL learned with other people, so OFL reserve the right, with your permission, to display your logo and link to your project as part of our portfolio and to write about it on websites, in magazine articles and in books.

OFL believe our rates are incredibly competitive, keeping our rates low through word-of-mouth advertising and passing those marketing savings onto you by way of a low build fee.

To help with word-of-mouth OFL build a small footer at the bottom of your pages stating that web design & support is by Open Formula and / or our designer. ***This is genuinely optional*** so please state after the build, when you have seen what it looks like, if you do not wish to have this. There is a big benefit to you though in that back links (two way links between websites) really help your site SEO / Google ranking so please consider this if deciding to remove the link back to our site.

With some highly branded websites OFL recognise that they do not wish to have any links to web / other companies. As above this is **totally OK**. Our preference is for a good long term working relationship.

## **Payments (Web Design & Build)**

OFL are sure you understand how important it is as a small business that you pay the invoices that OFL send you promptly. As OFL are also sure you'll want to stay friends, you agree to stick tight to the following payment schedule unless a different schedule is specified in the quote.

- On contract sign off: 20% non-refundable deposit to cover studio time.
- On design sign off: 30% of the total quote is payable and non-refundable.
- The balance (50%) is payable **on invoice**, issued once the website is signed off by yourself.

Legal ownership of the finished site transfers to yourself on cleared payment of the balance outstanding. The website will then be ported to your host solution or onto our servers should you chose a package with OFL. OFL can assist with transfers but usually a host company will arrange the transfer free of charge.

**Late payment:** OFL Terms are strictly 7 days from date of invoice unless otherwise advised by exception. Late payments attract an automatic statutory interest charge of 8% pa + Base rate, charged at a daily rate from the day after the last payment date.

## **Leaving Open Formula Managed Wordpress Hosting Service**

You are free to leave our hosting service at any time without penalty. If you leave part way through the month the fees for the remaining part of the month are note refundable.

There are no fees for opening the domain or adding a user for your new service provider to transfer the website and /or domain.

Where we built your site using a template purchased with our Open Formula licence, you will need to purchase your own licence from the template provider. This is usually around £50 to £60 (2018). Where your accounts with Open Formula Limited are up to date, we will fund this licence purchase. Where you have an outstanding balance that is not settled when you leave, you will need to purchase the licence yourselves and invoice us for the difference, if any.

Please note that you are totally responsible to website and domain during the transfer and post transfer process. Open Formula Limited take no responsibility for any issues that arise during the transfer process or at anytime thereafter.



## **SECTION B: MANAGED WORDPRESS HOSTING**

### **B.1 Leaving Open Formula including the Managed WordPress Hosting Service**

You are free to leave our hosting service at any time without penalty. If you leave part way through the month the fees for the remaining part of the month are not refundable.

There are no fees for opening the domain or adding a user for your new service provider to transfer the website and /or domain.

#### **Premium Plugins & Themes**

Where we built your site using a premium paid theme/template/page builder, this will have been with our Open Formula multi-site licence which is generally incorporated into a lower quote for the design and build. You will need to purchase your own licence from the provider. This is usually around £50 to £70 (2021).

Some themes and page builders also have an annual licence. Where your website uses these then you your new web company will need to purchase these licences which as of 2021 average approx. £80pa.

We also use our multi-site licence for other premium plugins such as image & speed optimisation and certain function related plugins. These again are included as part of the build or ongoing hosting and are not transferable if you leave. We will help you work with your new provider to purchase the plugins so that your site continues to work or we will downgrade the plugin to the free version to help where this is possible.

#### **Transfer Process Liability**

You are totally responsible for the website and domain during the transfer and post transfer process. OFL takes no responsibility for any issues that arise during the transfer process or at any time thereafter.

#### **Accounts Status**

Note that before any transfer of website can take place your account for all services with Open Formula Limited **must be fully settled**. All outstanding invoices and commitments for all work, including but not limited to, hosting, ad hoc work / website changes, new website developments, business services, domain renewal fees, plugin licences (including value remaining where we have paid up front), social media work etc must be settled before full access and transfer of the website is permitted.

## **B.2 Using Our Managed WordPress Hosting Service or Website Management Service for Self hosted Websites**

*These T&Cs apply regardless of OFL hosting your website or us managed your website on your own hosting service.*

### **Software Updates / Ad Hoc changes**

Our aim is to keep your website running well, fast and as secure as possible.

We will maintain and update the core hosting system, WordPress Core and all plugins, in most cases within 1 month of release. We do not generally update plugins / hosting / WP software immediately as we prefer to wait to make sure there are no early bugs in the releases. OFL cannot be held liable if any update does not work or causes issues on your website. All plugins and software work interactively and most installations are unique so we cannot validate all changes prior to update. Should an issue arise we will rollback the plugin version.

OFL can't guarantee that our work or software updates will be error-free or cause website errors including complete site failure and so OFL can't be liable to you or any third-party for damages, including lost profits, lost savings or other incidental, consequential or special damages, even if you've advised OFL of them. Where a failure of the site occurs we will recover the website from the last backup.

### **Security**

OFL takes our clients' website security seriously.

- 1) We implement Wordfence (free) or similar security plugins to improve security. Whilst the free version is very good, we do however recommend clients upgrade to Wordfence Premium for real time threat updates. This costs approx. £9.75/month as at 2022. We strongly recommend this is used for ecommerce and sensitive websites.
- 2) We use 2 factor authentication for our logins and require clients to also use 2FA where they have full Admin login access
- 3) In most cases we will also implement other security measures such as masking the admin login url and removing the user password reset function. This means that website owners would need to request a password reset direct from OFL but does provide better security.
- 4) We recommend owners connect their contact forms via an API or SMTP service as these have a much higher level of security than the php mailer system. Using the PHP mailer is not secure and does not give the better user experience of SMTP/API mail connections.

As above, Open Formula take security seriously but it is impossible to guarantee 100% security and make the website hack proof or subject to DDoS attacks. We therefore cannot accept liability for any direct or indirect costs or loss of earnings or any other impacts of a hack or DDoS attack.

Should a hack or DDoS attack occur then we will work fast to make the site safe again and recover the website to the last good backup where that is required.

### **SECTION C: WEBSITE SUPPORT**

We will often test significant changes on a dev site but this is not always possible. Often tests in dev for changes that work correctly do not always work the way on the live site. OFL can't therefore guarantee that our work will be error-free or cause website errors including complete site failure and so OFL can't be liable to you or any third-party for damages, including lost profits, lost savings or other incidental, consequential or special damages, even if you've advised OFL of them. Where a failure of the site occurs, we will recover the website from the last backup or rollback the plugin or CMS to an earlier version whilst a corrective strategy can be worked out and implemented.

### **SECTION D: DATA PROTECTION**

To the extent that [Open Formula Limited] is a data processor on behalf of its clients within the meaning of UK data protection legislation, the following terms will apply:

#### **Acting on instructions**

1. To comply with all applicable Data Protection Laws in the processing of personal data on behalf of the Client; and
2. not to process personal on behalf of the Client other than on its documented instructions unless processing is required by any applicable laws to which Open Formula Limited is subject.

#### **Our colleagues**

Open Formula Limited will take reasonable steps to ensure the reliability of any employee, agent or contractor of any contracted processor who may have access to the personal data processed on behalf of the Client, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant personal data, as strictly necessary for the purposes of this agreement, and to comply with applicable laws in the context of that individual's duties to the contracted processor, ensuring that all such individuals are subject

to confidentiality undertakings or professional or statutory obligations of confidentiality.

## **Data Security**

Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Open Formula Limited shall in relation to personal data processed on behalf of Clients implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

In assessing the appropriate level of security, the Client and Open Formula Limited shall take account in particular of the risks that are presented by processing, in particular from a personal data breach.

## **Sub-processing**

The Client authorises Open Formula Limited to appoint (and permit each sub-processor appointed in accordance with this section 6 to appoint) sub-processors in accordance with this section. Open Formula Limited shall give the Client prior written notice of the appointment of any new sub-processor, including full details of the processing to be undertaken by the sub-processor.

Open Formula Limited shall before the sub-processor first processes personal data on behalf of the Client:

1. Carry out adequate due diligence to ensure that the sub-processor is capable of providing the level of protection for the personal data required by this agreement;
2. Ensure that the arrangement between it and the sub-processor is governed by a written contract including terms which offer at least the same level of protection for personal data as those set out in this agreement and meet the requirements of article 28(3) of the GDPR; and
3. If that arrangement involves a transfer of personal data outside of the EEA, ensure that the standard contractual clauses are at all relevant times incorporated into the agreement between it and the sub-processor.

## **Data Subject Rights**

Taking into account the nature of the processing, Open Formula Limited shall assist the Client by implementing appropriate technical and organisational

measures, insofar as this is possible, for the fulfilment of the Client's obligations to respond to requests to exercise data subject rights under data protection laws.

Open Formula Limited shall:

1. Promptly notify the Client if any contracted processor receives a request from a data subject under any data protection law in respect of personal data; and
2. Ensure that the contracted processor does not respond to that request except on the documented instructions of the Client or as required by applicable laws to which the contracted processor is subject, in which case it shall to the extent permitted by applicable laws inform the Client of that legal requirement before the contracted processor responds to the request.

### **Personal Data Breach**

Open Formula Limited shall notify the Client without undue delay upon it or any sub-processor becoming aware of a personal data breach affecting personal data processed on the Client's behalf, providing the Client with sufficient information to allow each it to meet any obligations to report or inform data subjects of the personal data breach under data protection laws.

### **FINAL NOTE**

Just like a parking ticket, you can't transfer this agreement to anyone else without our permission. This agreement stays in place and need not be renewed. If for some reason one part of this contract becomes invalid or unenforceable, the remaining parts of it remain in place.

Although the language is simple, the intentions are serious and this contract is a legal document under exclusive jurisdiction of [English and Welsh] courts.

Finally, if any provision of this contract shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this contract and shall not affect the validity and enforceability of any remaining provisions.

## **Terms and Conditions Update Key Notes**

### **Version 6-1 – 1<sup>st</sup> August 2022**

No material legal changes, mainly...

- Spelling and grammar adjustments
- Pricing adjustments for 2022

### **Version 5.5 – August 22<sup>nd</sup> 2021**

- Greater clarification and additional information of legal responsibility of the client for cookies and website content.
- Changes to software licence fees on leaving or not hosting your website with OFL
- Leaving OFL – theme/software costs updated to include annual licence costs where these options are used on your website.
- Website security section added for clarity and the addition of the requirement of the client to use 2FA if they have logins to the website