Open Source

What is it?

If a piece of software is 'open source' then this means the source code is freely available to the public.

Users must accept the terms of a licence when they use open source software (sometimes called OSS) —but the legal terms of open source licences differ dramatically from those of proprietary or 'closed source' licences. OSS is provided under licences which grant certain freedoms to a licensee.

Types of open source

There are **two** main types of licensing model which affect the way people use, modify and distribute OSS.

1. Permissive

Permissive licences seek to maximise the utilisation of software by not restricting others from enjoying its benefits.

It is usually only necessary that any distribution of the original OSS is on the same terms as those on which it is provided, without dictating generally how derivative works are licensed.

Therefore, the code can be amended and added to proprietary "closed source" software without placing significant restrictions on those amendments or adaptations and how these are licenced going forwards.

2. Restrictive
(also sometimes referred to as "reciprocal", "hereditary" or "copyleft")

Restrictive licences go further than permissive licences by stipulating that anyone who releases a modified open source program must also release the source code for that program alongside it and on the same licence as the open source software.

These restrictions on works deriving from the software means that, where software has been combined with proprietary code/software, this could also unintentionally be made subject to an open source licence.

If you intend to charge people to use software that includes restrictive OSS you may not be able to do this!

Best Practice

For businesses developing software and code, best practice is to have an **open source governance structure** including a policy with a white and black list of open source code and products which can be used.

When procuring software and/or engaging software developers the contract between the parties should set out whether or not OSS can be used and include contractual assurances such as warranties and indemnities on this point.