

# **BrandFour Ltd**

**Revision 3.5 Jan 2018.**

## **TERMS AND CONDITIONS**

These terms and conditions shall govern the contract between (1) BrandFour Limited trading as BrandFour and (2) the Client. BrandFour may agree modifications to these terms but such modifications must be in writing signed by BrandFour and cannot be inferred from a course of behaviour.

### 1. **SCOPE OF CONTRACT**

- (a) BrandFour provides graphic design brand consultancy web and application development marketing consultancy design advice hosting and other web services relating to the packaging and marketing advertising promotion of the Client's goods and/or services and the Client's brand and corporate identity and:-
  - (i) will on request pitch for such work (a "Pitch") and/or
  - (ii) will provide such advice in accordance with a brief agreed in Writing (for the avoidance of doubt this expression includes electronic communication) ("the Service")
- (b) BrandFour will provide the Service to the Client using reasonable care and skill and, unless BrandFour is prevented by circumstances beyond its reasonable control, in accordance with the agreed Brief.
- (c) In the event of an unsuccessful Pitch the Client will not use any designs documents concepts ideas or information provided as part of the Pitch ("Pitch Material") and will return all Pitch Material to BrandFour.
- (d) If the Client shall have any complaint about the quality of the Service or goods provided then notice shall be given to BrandFour within [7] days of delivery. In the absence of such notification the Client shall be deemed to have accepted the supply.

- (e) A binding contract for the provision of the Service will be made when BrandFour confirm in Writing the instructions received from the Client.
- (f) BrandFour cannot guarantee that emails sent to it or its agents or representatives will be received and all critical communications should be sent or confirmed by personal delivery, post or fax.
- (g) BrandFour will accept and act upon instructions communicated to is by means howsoever by the Client and/or its representatives, agents or authorised persons and is not obliged to seek verification of such instructions.

2. **CLIENT'S DUTY TO PROVIDE INFORMATION**

- (a) The Client shall be solely responsible for providing BrandFour with all necessary information concerning its goods/services, the Service (including the scope of use required), the market and generally. BrandFour shall not be responsible for any shortcomings in such information. The Client accepts that its knowledge and experience in its industry sector and the manufacture processing and packaging of its goods/services is vital in this regard.
- (b) Any advertising material supplied by or on behalf of the Client must comply with the Trades Description Act 1968 and 1972 and any other applicable laws and regulations.
- (c) The Client shall be responsible providing all necessary permissions, licences and consents which may be required for the provision of the Service unless BrandFour has expressly agreed in writing to do so.
- (d) The Client warrants that it either owns or holds the necessary licence(s) in respect of materials supplied by it to BrandFour in connection with the provision of the Service and indemnify BrandFour against all costs, claims, liabilities and losses if this is not the case.

3. **RETAINERS**

- (a) BrandFour is prepared in certain circumstances to provide its Service on a retainer basis and will agree in writing the nature of the services covered by the retainer. The retainer fee and the frequency of payment (“Retainer Service”). Any service provided to the Client outside the Retainer Service will be charged for either at the agreed fees/agreed rates or otherwise at BrandFour’s usual rate applicable for the individual(s) at the time.
- (b) Whilst BrandFour is providing a Retainer Service it will use its reasonable endeavours to notify the Client before it provides any services which are not part of the Retainer Service.
- (c) Save as expressly agreed to the contrary any agreed Retainer Service will not include any third party costs or expenses/disbursements incurred by BrandFour and these will be charged to the Client (plus a reasonable handling charge) either before they are incurred or as part of a subsequent Retainer Invoice.
- (d) BrandFour will submit invoices in respect of its Retainer Service regularly (usually monthly) for the agreed Retainer Fee together with its charges for services/goods provided to the Client over and above the Retainer Service.
- (e) Unless otherwise agreed the Retainer Service/Fees shall be reviewed every 3 months.
- (f) BrandFour will keep a record of the time spent on the Retainer Service during each month and if this shows that had the work carried out as part of the Retainer Service been charged for on a time spent basis then the fee will be 10% or more greater than the Retainer Fee for that month and BrandFour reserves the right to charge such additional fees to the Client but if the charge calculated on a time spent basis for a particular month is 10% or more below the amount of the Retainer Fee then BrandFour shall make a refund to the Client or if it has not already charged the relevant Retainer Fee then it will reduce the fees for that month accordingly.

- (g) A Retainer Service can be terminated with not less than 60 days written notice at the end of any calendar month.

4. **PITCHES**

- (a) All pitches (other than those where purely the credentials of BrandFour are shown) shall be charged for at the previously agreed fee.
- (b) All intellectual property rights in and title to any material created by BrandFour and shown at a pitch remains with BrandFour.
- (c) All ideas and concepts of BrandFour which are disclosed to a Client as part of a pitch are confidential and shall remain the property of BrandFour and unless the same shall come into the public domain other than by reason of a breach of a duty of confidentiality due to BrandFour the Client shall not use any such ideas or concepts itself or disclose them to a third party without the written permission of BrandFour.

5. **DELIVERY**

- (a) The delivery times of the Service stated by BrandFour are reasonable estimates and BrandFour shall not be responsible for any delay that is not directly attributable to the fault of BrandFour which for the avoidance of doubt means any circumstances beyond BrandFour's reasonable control. Time shall not be of the essence unless expressly agreed in writing. BrandFour will use its reasonable endeavours to meet client timescales.
- (b) The Client recognises that for BrandFour to be able to perform the services in a timely fashion and to meet any agreed timetable the Client must also respond to enquiries and deal promptly with the signing off and approval of materials submitted to it. The Client acknowledges that if it fails to do this then BrandFour cannot be expected to perform the Service within the agreed period of time.

6. **CONTRACT PRICES/TITLE**

- (a) The Contract Price includes studio costs and fees (plus additional charges for extras and modifications) and all reasonable expenses (including materials travelling and accommodation expenses courier fees and electronic costs) plus a handling charge of 17.65% and is exclusive of VAT and local tax
- (b) Any estimate of the whole or any part of the Contract Price is given based upon information available to BrandFour at the time and shall remain valid for 1 month and is given in good faith and shall be treated as an estimate only and all errors and omissions shall be excepted.
- (c) The Client must contact BrandFour concerning any queries with an invoice within 5 working days of the date of the invoice.
- (d) Payment of the Contract Price shall be made in pounds sterling within 30 days of the date of invoice and without any set off or counterclaim (save where such claim is based on fraud). BrandFour shall be entitled to charge interest and claim compensation on overdue sums in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Interest will be calculated from the invoice date to the date of payment.
- (e) The Client may not withhold payment of any part of the Contract Price or any expenses or other monies due to BrandFour, by reason of claims or alleged claims against BrandFour unless the amount to be withheld has been agreed in writing by BrandFour as due to the Client or has been awarded in adjudication, arbitration or litigation in favour of the Client in relation to the same project and save as aforesaid all rights of set off are excluded.
- (f) Title to or license to use any property or intellectual property forming part of the Service shall pass to the Client when and only when the full Contract Price for the Service has been paid in accordance with clause 7.
- (g) Where the Contract is quoted in stages then each such stage shall be under these conditions and BrandFour shall be entitled to be paid [50%] of the estimated Contract Price for each stage in advance.

- (h) For new business, BrandFour may, at its discretion, invoice up to [50%] of the total estimated fees and/or costs in advance and will not commence work until this has been settled. The final 50% shall be payable on completion of the agreed work. Completion is defined when the service from BrandFour is complete and is not subject to client testing or delays in receipt of information and content from the Client.
- (i) All approved third-party cost will be invoiced prior to commissioning and BrandFour reserves the right to wait until such costs have been paid before commencing work.
- (j) BrandFour reserves the right to withhold final delivery of work and to remove hosted applications and websites until all of its fees and expenses have been paid in full in accordance with 6 (d).
- (k) Unless otherwise agreed in writing the Contract Price will make provision for up to two sets of reasonable minor corrections and further corrections shall be charged for as additional work. Any additions to design, web or software specifications shall be charged at market rate and added to the final invoice.
- (l) The Client shall pay BrandFour any expenses incurred by or in connection with recovery of monies owing by the Client to BrandFour.

7. **INTELLECTUAL PROPERTY**

(a) Graphic Design

The copyright design right registered designs trade marks patents confidential information and ideas (“the Rights”) of BrandFour and/or its subcontractors forming part of the Service belongs to BrandFour and is hereby asserted. BrandFour shall grant to the Client an irrevocable exclusive royalty-free non-assignable worldwide licence to use all the Rights in the final design (“Final Graphic Design”) chosen by the Client for implementation for the purposes of the contract for which it was supplied only

(b) Web and Application Development including Hosting

- (i) As part of the Service and unless the Client notifies BrandFour otherwise, BrandFour shall host the work in accordance with provision 11 and on completion of the Service and subject to the payment of a monthly hosting management fee BrandFour shall grant to the Client an irrevocable exclusive non-assignable worldwide licence to use the Rights in the visual appearance of the work including the page layout content photographs videos music text branding and corporate image chosen by the Client for implementation (“the Front End”) (which for the avoidance of doubt includes all software specifically developed by BrandFour for the Client as specified in the proposal for the purposes of operating the website or application but not the Back End Code as defined below, this remains the Intellectual Property of BrandFour Ltd)
- (ii) If the parties agree that the Client shall host the Service the Client shall take full responsibility for the operation and accessibility of the work. In addition to the licences granted in provision 7(b)(i) and on payment of the relevant fee, BrandFour will grant to the Client a non-exclusive world-wide irrevocable non-assignable royalty-free licence to us the Rights in all the coding and programming required for the development and use of the work including any application or software systems for updating the work or similar programming tools which are not specifically included within the definition of the Front End (“the Back End Code”). The licence will allow the Client to use the Back End Code but the software remains the Intellectual Property of BrandFour
- (iii) BrandFour shall permit the Client to use the Front End and the Back End Code prior to completion of the Service but only to enable the Client to review and sign off the work.
- (iv) The Client acknowledges and understands that it shall not have the right, by itself or through any third party:-

- a) to access any source code, object code, middleware or any other proprietary program or software incorporated into the Back End Code and that this remains the property of BrandFour Ltd; or
- b) to modify the Back End Code including the content management system or any application without the prior written consent of BrandFour.
- (v) If the Client wishes to purchase the Intellectual Property in the Front End, Back End Code or Final Graphic Design or elements of it for any purposes BrandFour shall negotiate a release fee to accommodate this at market value.

c) **Reservation of Technical and Artistic Concepts**

BrandFour will not infringe the Final Graphic Design but reserves exclusive right to use all other designs software concepts ideas or intellectual property developed during the course of the Service.

d) **Multi Designs**

If more than one design is chosen by the Client and this was not provided for in the agreed brief for that Service an additional fee may be payable by the Client.

e) **Sub-contractors Intellectual Property**

- i) BrandFour will use all reasonable endeavours to secure the relevant intellectual property rights of its sub-contractors.
- ii) Clients are reminded that illustrators photographers copywriters usually retain ownership of the original illustration and may demand its return undamaged although this should not restrict the Client's use of any illustration within the negotiated usage rights.

f) **Originality**

BrandFour warrants that its own design work is original and that it will not knowingly or negligently infringe the rights or intellectual property of a third



party but (unless expressly agreed to the contrary) it is under no obligation to make any enquiry in this respect and it shall have no liability to the Client in respect of any infringement or alleged infringement of intellectual property or passing off.

g) **Further Assurance**

BrandFour will on demand and at the cost of the Client execute such documents and do such things as are necessary to give effect to this clause.

8. **MORAL RIGHTS**

BrandFour hereby reserves and asserts all moral rights.

9. **CANCELLATION OF CONTRACT**

- a) The Client shall be entitled to cancel the Service at any time upon 30 days notice and thereupon shall immediately pay to BrandFour all fees due up to cancellation and all disbursements which cannot be cancelled.
- b) Following cancellation and subject to the payment to BrandFour of all sums due (but being not less than 50% of the Contract Price) the Client shall be entitled to select and will receive title and intellectual property rights in accordance with clause 7 in one of the designs, software or applications that have been presented to the Client prior to the date of termination.
- c) All materials relating to any other designs presented by BrandFour shall be returned forthwith. For the avoidance of doubt unless a minimum of 50% of the Contract Price has been paid to BrandFour the Client shall receive no rights in respect of any design materials or intellectual property.
- d) BrandFour shall be entitled to terminate or suspend the Contract if any part of the Contract Price (on any work being undertaken for the Client) is outstanding (but not formally disputed) 30 days after the due date or if the Client shall go into liquidation, receivership or equivalent (or if proceedings are issued in relation thereto) or if it shall enter into an agreement with its creditors.
- e) BrandFour reserve the right to terminate the Contract if in its reasonable opinion the continuing involvement with the Client or the Project might be damaging on the goodwill and reputation of BrandFour and in such circumstances the provisions of clause 7 shall apply.

- f) In respect of (d) and (e) above the Client shall pay to BrandFour all fees due up to the date of termination.
- g) Each party shall comply with the obligations under the Data Protection Act 1998 relating to the use and storage of personal information.

10. **DUTY OF CONFIDENTIALITY**

Each party will use its best endeavours to preserve the confidential information of the other and will comply with the other's reasonable requirements in this regard. The Client recognises that BrandFour's methods of working and pricing structures are proprietary and are not generally in the public domain.

11. **HOSTING**

- (a) BrandFour do not allow any of the following on sites hosted by them:
  - (i) Any material which is or might (in the reasonable opinion of BrandFour) be illegal or, unlawful. It is the Client's responsibility to verify whether the content violates any law or other national and international controls including inter alia those relating to the collection storage and use of personal data.
  - (ii) Any content which infringes any patent, trade mark, trade secret, copyright or other proprietary right.
- (b) BrandFour reserves the right (and will have no liability for any consequences thereof) to immediately suspend for any period of time (or after consultation with the Client to terminate the hosting) any site hosted by or on its behalf if in its opinion there is displayed on the site anything that is contrary to what BrandFour considers to be good, lawful and ethical business practice on the World Wide Web. The opinion of BrandFour with regard to such matters shall not be challenged provided that it is reached having regard to its own contractual obligations and also having applied the highest standards of acceptable

behaviour in relation to the use of the Internet and where BrandFour exercises its rights in this regard then it shall inform the Client as soon as is reasonably practical and provide an explanation for the action it has taken.

- (c) BrandFour shall not be responsible for the actions of the internet service provider who hosts a Client's site withstanding that BrandFour may have an ongoing responsibility to manage the relationship with that internet service provider with a view to maximising the accessibility of the site.
- (d) If BrandFour refers the Client to a third party internet service supplier the Client acknowledges that they will have a contractual relationship with the third party and will be required to adhere to the third party terms and conditions. BrandFour will not be responsible for any failings by the third party supplier.
- (e) The Client will own the rights to any data stored in the Client's database hosted by BrandFour.

## 12. **WEBSITE DEVELOPMENT**

- (a) The Client acknowledges that any new inventions, designs or process which evolve in the provision of the Services in relation to website application or software development shall belong to BrandFour unless otherwise agreed in writing.
- (b) The Client shall take exclusive responsibility to ensure that any agreed specification contains full details of, and adequately, reflects the Client's business and/or financial requirements in relation to any website commissioned by the Client.
- (c) the Client acknowledges that the website shall only be compatible or interoperable with the platforms, browsers and operating systems set out in the website specification set out by BrandFour and will only operate to any performance benchmarks set out in the specification.
- (d) On completion of the website development by BrandFour the Client shall carry out an acceptance test for the purposes of confirming that the website has been successfully completed in accordance with the specification. The Client shall

report any errors to BrandFour within 28 days of delivery including any additional information which may correct the error. If the Client fails to notify BrandFour within this time period the website shall be deemed accepted by the Client.

- (e) BrandFour will use reasonable endeavours to correct any errors and supply a corrected version of the website to the Client as soon as reasonably possible.

13. **CLIENT'S RESPONSIBILITY FOR IMPLEMENTATION**

- a) In the case of graphic designs full responsibility for implementation, display, electronic integration and compatibility, back up, production and manufacture of the Service shall remain with the Client.
- b) In the case of three dimensional designs:-
  - i) Subject to Clause 2 above, BrandFour will advise on implementation based upon normal production methods and techniques.
  - ii) Proposals for implementation of the Service are based upon the information provided by the Client and no warranty or representation is given concerning performance of any packaging.
- c) BrandFour is not responsible for the production of packaging, full responsibility for which remains with the Client.
- d) The Client shall indemnify the company in respect of any claim howsoever arising under consumer protection or other legislation other than due to a default of BrandFour
- e) Failure to consult BrandFour on implementation may result in unsatisfactory implementation.
- f) In the case of electronically displayed designs Clients are reminded that they may need to obtain relevant licenses for proprietary software, and once the final electronically displayed design has been shown the Client must then inform BrandFour of all final required alterations within 7 days and upon completion of them the design will be deemed to have been accepted.

14. **LIMITATION OF LIABILITY**

- a) The liability of BrandFour under the Contract or in tort (other than in respect of death or personal injury) shall not exceed the greater of the sums paid by the Client under the contract or such sum as shall be receivable by BrandFour in respect of any claim under any insurance policy effected by BrandFour from time to time. BrandFour warrants that it maintains insurances and that the cover is better if these conditions apply.
- b) BrandFour shall not be liable for any indirect or consequential loss (including loss of sales, profit, production, goodwill, reputation, or packaging or distribution costs)
- c) If the Service includes the provision of subcontractors then BrandFour will advise on and procure the services of subcontractors who BrandFour is satisfied are reasonably professionally competent. BrandFour will not be responsible for any default of any third party or sub-contractor, manufacturer or supplier but will give all reasonable assistance to permit the Client to enforce its rights against them to include assigning all of its rights to the Client.
- d) Where an error is found in delivered work that is the responsibility of BrandFour then the liability of BrandFour shall be limited to correcting or replacing (as appropriate) the work.
- e) BrandFour warrant that it maintains such insurances as are reasonable and normal in its industry.
- f) The Client accepts reasonable tolerances in relation to the Service including in respect of, inter alia, paper quality and colour.
- g) BrandFour shall not be responsible for any errors apparent in artwork, copy or proofs that have been signed off by or on behalf of the Client. The Client is reminded in these circumstances that they will be responsible for Brandfour's additional costs in rectifying the error in any work signed off by the client.

- h) The Client is deemed to provide BrandFour with the authority to determine the print finish, colour balance, paper stock, weight, type and colour in addition to all other print quality related matters unless such authority is withdrawn by the Client in writing to BrandFour.

15. **PUBLICITY AND EXAMPLES**

Once the Service is in the public domain the BrandFour shall have a right to reasonable publicity.

16. **RESTRICTIONS**

The Client agrees that whilst BrandFour is providing Services to is and for a period of six months thereafter it shall not:-

- a) Approach any of the employees of BrandFour regarding the possibility of them providing services directly to the Client independent of BrandFour.
- b) Engage or employ or offer to engage or employ an employee or former employee (being a person who has been an employee of BrandFour in the previous six months) for the provision of services that BrandFour are capable of providing.
- c) Contract directly with any subcontractor of BrandFour who have been associated with the provision of the Services to the Client.

17. **LEGAL**

- a) The Contract shall be subject to English Law and under the non-exclusive jurisdiction of the English Courts .
- b) Any of these provisions which may be unenforceable shall (to that extent) be severable
- c) BrandFour is the trade name of Brand Four Limited a company registered in England and Wales under Company Number 06023725 whose registered office is at Lime Kiln Way, Lincoln, LN2 4US.