

Data Processing Agreement and Privacy Policy (EU)

Classification: **PUBLIC**

March 2018



1. PURPOSE AND SCOPE

1.1 This document sets out Fourth's Data Processing Agreement and Privacy Policy for its Customers with operations in the EU and/or who process Personal Data of data subjects located in the EU. It should be read in conjunction with Fourth's Subscription Agreement, of which this Data Processing Agreement and Privacy Policy, as amended from time to time, forms part. This Data Processing Agreement and Privacy Policy applies to the Fourth Solution and Services, and the servers and network employed by Fourth in the provision of the Fourth Solution and Services (up to the boundary of the Fourth network).

This Data Processing Agreement and Privacy Policy will apply from 25 May 2018.

2. DEFINITIONS

2.1 In this Data Processing Agreement and Privacy Policy terms used and not otherwise defined shall have the meaning given to them in the Subscription Agreement.

"**Authorised Processor**" has the meaning given to it at paragraph 6 below;

"**Applicable Privacy Law**" means the obligations under all applicable laws, rules and regulations regarding privacy and security which apply to that party including the General Data Protection Regulation 2016/679 and any enacting or amending legislation to the extent that it applies to that party;

"**Data Controller**" means a natural or legal person who (either alone, jointly or in common with other natural or legal persons) determines the purposes for which and the manner in which any Personal Data is, or is to be, processed;

"**Data Processor**" means a natural or legal person which processes Personal Data on behalf of the Data Controller;

"**Personal Data**" means the personal data processed by or behalf of Fourth in the course of providing the Fourth Solution; and

"**Personal Data Breach**" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

2.2 In this Policy references to a "**Customer**" shall, where appropriate, include a reference to the Customer acting as agent on behalf of each of its Group Companies.

2.3 The Fourth Solution is subject to continual development and, accordingly, this Policy is subject to change from time to time. Changes to the Policy shall be effective as soon as the updated Policy is posted to www.fourth.com/agreements. Where Fourth considers that any changes are material and might materially impact the rights and freedoms of data subjects Fourth will provide reasonable advance notice to the Customer of any such changes.

3. POLICY

3.1 Each party warrants and undertakes that it shall comply with all of its obligations under Applicable Privacy Law in force from time to time.

4. CUSTOMER RESPONSIBILITIES AS DATA CONTROLLER

4.1 The Customer, in respect of Personal Data of which it is a Data Controller, warrants that it has complied and shall continue to comply with Applicable Privacy Law in respect of all Personal Data uploaded to the Fourth Solution.

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- 4.2 The Customer warrants and undertakes that:
- 4.2.1 the Personal Data provided by or on behalf of the Customer under the Subscription Agreement (or any document referred to in the Subscription Agreement) has been obtained and processed lawfully and the data subjects have been provided with an appropriate privacy notice as required under Applicable Privacy Law;
 - 4.2.2 the Fourth Solution, Documentation, Services and Products to be provided by Fourth under the Subscription Agreement (or any document referred to in the Subscription Agreement) will be entirely consistent with and appropriate to the Customer's lawful purposes; and
 - 4.2.3 the Personal Data is accurate and the Customer shall keep the Personal Data fully up to date at all times during the continuance of the Subscription Agreement; and
 - 4.2.4 it has the authority to send the Personal Data to Fourth and for it to be processed by Fourth on the Customer's behalf.
- 4.3 The Customer shall ensure that its personnel and end users shall at all times:
- 4.3.1 use each security feature provided by Fourth and by the Customer (including in the transmission of Personal Data to Fourth); and
 - 4.3.2 comply with any information security policy, recommendations or best practices issued by Fourth or the Customer from time to time.
- 4.4 Where Fourth offers a secure method of processing or transmitting Personal Data and the Customer chooses a less secure (or non-secure) method of processing or transmitting Personal Data then Fourth shall not be liable for any breach of the Subscription Agreement or Applicable Privacy Law or liability that occurs or arises from such less secure method of processing.

5. **FOURTH'S RESPONSIBILITIES AS DATA PROCESSOR**

- 5.1 The parties agree that, where the Customer is acting as a Data Controller, Fourth will be a Data Processor of any Personal Data it processes for or on behalf of the Customer (which shall include all Personal Data uploaded by or behalf of the Customer into the Fourth Solution) and Fourth shall:
- 5.1.1 maintain reasonable and appropriate technical and organisational measures to ensure a level of security appropriate to the risk;
 - 5.1.2 ensure that Fourth personnel authorised to process the Personal Data are subject to confidentiality obligations and do not process such Personal Data otherwise than on the instructions of the Customer;
 - 5.1.3 assist the Customer, insofar as this is possible in accordance within the architecture of the Fourth Solution and at the Customer's cost, to satisfy the Customer's obligations under Applicable Privacy Law;
 - 5.1.4 notify the Customer of any Personal Data Breach of which Fourth is aware and which Fourth believes is likely to prejudice the rights of data subjects without undue delay, to document any such breaches that have occurred and to provide any information that may reasonably be required by the Customer in order to satisfy any obligations that it may have to notify data subjects and/or any regulatory authorities; and

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5.1.5 make available to the Customer, at the Customer's cost, all documentation reasonably necessary to demonstrate compliance with the obligations laid down in this paragraph 5. Fourth shall immediately inform the Customer if, in its opinion, an instruction infringes Applicable Privacy Law.

5.2 Fourth may commission a third party auditor to examine certain agreed systems and controls. If commissioned by Fourth, upon request, Fourth shall make available to the Customer a copy of its most recent third party audit report which has been provided to it by its auditor for this purpose. The reports will be provided by Fourth without cost to the Customer provided that the Customer shall agree to be bound by the terms which Fourth has agreed with the auditor will apply to those Customers who wish to review these reports (including as to confidentiality). The scope and frequency of such audits will be determined by Fourth.

5.3 Fourth shall permit the Customer (or a third party auditor appointed by the Customer) to evaluate its compliance with its obligations under paragraph 5.1 above, upon prior written request. Fourth shall provide the Customer (or its auditor) with reasonable and appropriate access to its relevant documentation, premises and personnel for this purpose. The auditor may be appointed by the Customer subject to the approval of Fourth and subject to the execution by the auditor of an appropriate engagement and confidentiality letter. Nothing shall require Fourth to provide either the Customer or its auditor with access to any data relating to another customer. The Customer shall be solely responsible for the costs of any third party auditor and for the cost incurred by Fourth in facilitating such audit (whether conducted by the Customer or its auditor). Fourth may limit the time and frequency of audits and shall be solely responsible for scheduling the timing of such audits, which will be subject to the availability of relevant Fourth personnel and to its other operational commitments.

5.4 Where Fourth's obligations are expressed to be at the Customer's cost, the Customer shall reimburse Fourth for all time incurred at its prevailing labour rates together with all reasonable expenses.

5.5 The Customer acknowledges that any networked solution carries with it inherent risk to the security of the Personal Data held within it. The Customer shall be solely responsible for evaluating the access, controls, method of connecting to the Fourth Solution and the security features operated by Fourth which are described in the Documentation.

6. AUTHORISED PROCESSORS

6.1 It is acknowledged and agreed that in order provide the Fourth Solution, Fourth must sub-contract certain of its obligations including in respect of the hosting and other aspects of the processing of Personal Data. The Customer expressly authorises Fourth to appoint sub-processors (referred to as "**Authorised Processors**") provided that:

6.1.1 a list of Authorised Processors from time to time are available at www.fourth.com/agreements/subprocessors;

6.1.2 the Authorised Processors are contractually required comply with the obligations imposed on Fourth in this Data Processing Agreement and Privacy Policy in all material respects as if they were obligations imposed on them directly; and

6.1.3 Fourth shall be responsible for the acts and omissions of its Authorised Processors in their capacity as such.

6.2 Fourth may add to or amend the list of Authorised Processors (including Key Hosting Sub-Processors as defined in paragraph 6.3) from time to time and such change will be effective ten business days after it is posted.

6.3 The Fourth Solution is hosted on equipment operated by third party data centre operators (the "**Key Hosting Sub-Processor**") whose details are set out at www.fourth.com/agreements/subprocessors and who are Authorised Processors for the purposes of this policy.

7. INSTRUCTIONS

- 7.1 Fourth shall only process Personal Data for and on behalf of the Customer on documented instructions from the Customer. The Customer hereby issues a general instruction to Fourth to process the Personal Data in the course of any processing that it may undertake in order to provide, maintain and develop the Fourth Solution, in accordance with the Documentation (from time to time) and as otherwise necessary or expedient to satisfy its contractual obligations under or in connection with the Subscription Agreement. The Customer acknowledges that Fourth may collect information from the Customer's personnel's usage of the Fourth Solution in order to develop and maintain the Fourth Solutions.
- 7.2 The Customer instructs Fourth to store and delete Personal Data in accordance with Fourth's Data Retention Policy, available from www.fourth.com/agreements, as amended by Fourth from time to time.
- 7.3 Where Fourth is instructed by the Customer to delete Personal Data it is instructed to do so in accordance with its usual backup cycle under which archive copies may remain for up to 13 months after the date of deletion.
- 7.4 The Customer may also issue ad hoc instructions to Fourth from time to time provided that such instructions do not require modification to the Fourth Solution (unless agreed by Fourth in writing). Any modifications to the Fourth Solution agreed between Fourth and the Customer will be at the Customer's expense. The Customer shall nominate one or more authorised representatives to issue such instructions. Fourth shall be entitled to rely on oral instructions where it considers it reasonable to do so but reserves the right to require instructions to be given in writing.

8. DELETION OF DATA ON TERMINATION

- 8.1 Upon termination of the Subscription Agreement or if the Customer ceases to subscribe to any Fourth Solution:
- 8.1.1 upon request from the Customer within 30 days of such termination or cessation, Fourth shall deliver to the Customer the most recent backup of any of the Customer's data stored on the Fourth Solution (or the relevant part of the Fourth Solution) provided that the Customer has paid all fees and charges outstanding at and resulting from termination or cessation (whether or not due at the date of termination or cessation);
- 8.1.2 the Customer shall pay for Fourth's time and all reasonable expenses incurred by Fourth in providing such data;
- 8.1.3 after the expiry of the 30 day period at paragraph 8.1.1, Fourth shall have no obligation to maintain or provide Customer data (including Personal Data) and **unless instructed to the contrary in writing may delete or destroy all copies of Customer data** (including Personal Data) in Fourth's possession or control; and
- 8.1.4 the Customer, on its own behalf and on behalf of each of its Group Companies, irrevocably consents to and instructs Fourth to delete of all Personal Data and other Customer data in accordance with this paragraph.

9. LOCATION

- 9.1 The Fourth Solutions for Customers located in the EEA (other than the Fourth Analytics platform) are hosted on servers located in the EEA.
- 9.2 The Fourth Analytics platform is managed by Fourth Limited and is hosted in the United States of America by a Key Hosting Sub-Processor who participates in the US Department of Commerce Privacy Shield Framework.
- 9.3 Fourth may also share Personal Data internally with members of its Group Companies around the world, subject

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to the terms of the model clauses.

- 9.4 In the provision of the Fourth Solution and Services to customers, Personal Data will be transferred outside the EEA where necessary or expedient to do so, and shall be transferred in accordance with the requirements of Applicable Privacy Law.

10. DESCRIPTION OF PROCESSING

- 10.1 Both Fourth and the Customer acknowledge and agree that the description of processing as set out in this clause is accurate:

Subject matter of the processing	The processing of Personal Data by Fourth in the provision of the Fourth Solution for Workforce Management pursuant to the Subscription Agreement.
Duration of the processing	Fourth shall process Personal Data for the duration of the Subscription Agreement and in accordance with Fourth's Data Retention Policy, as amended from time to time.
Nature and purpose of the processing	Fourth will process the Personal Data as necessary to provide the Fourth Solution, Services and Products pursuant to the Subscription Agreement, paragraph 7 (Instructions) above and as further instructed by the Customer.
Type of Personal Data being processed	As a Human Resources solution, the type of Personal Data which may be processed will include any information which may relate to the employment/engagement of the Customers' staff, which may include, but is not limited to, the following categories of Personal Data: contact information, personal details, salary information, rotas, performance/appraisal information, grievances, disciplinary records, medical records, maternity/paternity records and any other records which the Customer may store in the Fourth Solution from time to time.
Categories of data subjects being processed	Fourth may process Personal Data to the extent which it is determined and controlled by the Customer, which may include, but is not limited to the following categories of data subjects: <ul style="list-style-type: none">• employees, agents, suppliers or other contacts of the Customer;• personnel authorised by the Customer to use the Fourth Solution,• any other individuals who are included in the Fourth Solution by the Customer by virtue of their connection with the Customer and/or its employees, for example next of kin or dependents of the Customers' employees or advisors of the Customer.
Obligations and rights of the Customer	As set out under this Data Processing Agreement and Privacy Policy or otherwise under the Applicable Privacy Law.

11. DATA PROTECTION OFFICER

- 11.1 Any comments or questions relating to this policy can be addressed to Fourth's Data Protection Officer at security@fourth.com

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