

Subscription Agreement

Fourth Limited (Editions)
December 2018



This Agreement is made and entered into on the Effective Date between Fourth Limited, a company registered in England and Wales with company number 3887115 whose registered office is at 90 Long Acre, Covent Garden, London WC2E 9RA ("**Fourth**") and the company detailed in the System Schedule (the "**Customer**"). This Agreement sets out the terms pursuant to which Fourth shall grant access to the Fourth Solution and supply certain Products and Services (as set out in the System Schedule) to the Customer. The parties agree as follows:

1. DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"**Acceptable Use Policy**" means Fourth's acceptable use policy available from www.fourth.com/agreements, as amended by Fourth from time to time;

"**Add-on**" means any Fourth Solution and/or Services described in the System Schedule as an add-on, and shall include Payroll Bureau Services;

"**Agreement**" means this Subscription Agreement, the System Schedule, the SoW(s) (if any), the Salary Service Addendum, the Acceptable Use Policy, the Data Protection and Privacy Policy, the Service Level Agreement and all and any documents referred to within these documents;

"**API**" means any software application interface or workflow method made available by Fourth to enable integration, implementation and interoperability with third party hardware and software;

"**Authorised Processor**" has the meaning given to it in the Data Protection and Privacy Policy;

"**Charges**" means all charges payable by the Customer pursuant to this Agreement, being as at the Effective Date (i) as identified in the System Schedule; and (ii) the RTW Charges (if any);

"**Confidential Information**" means information which is designated as "confidential" or which by its nature ought reasonably to be considered confidential. Confidential Information includes any information concerning the technology, products, processes, trade secrets, know-how, business and financial affairs, prices, customers, employees and suppliers of a party;

"**Contract Year**" means a period of 12 months (or shorter period immediately prior to termination) commencing on the Effective Date or on any anniversary of the Effective Date;

"**Data Protection and Privacy Policy**" means Fourth's data processing agreement and privacy policy available from www.fourth.com/agreements, as amended by Fourth from time to time, provided that such policy shall, at a minimum, comply with applicable law;

"**Documentation**" means any operating manuals, user instructions and other related materials that Fourth provides to the Customer in connection with this Agreement from time to time;

"**Effective Date**" means the last date of signature by the Customer of (i) the System Schedule; and (ii) the SoW(s) (if any);

"**Fourth Solution**" means Fourth's web-based services set out in the System Schedule;

"Group Company" means a company that is, from time to time, a subsidiary or holding company of a party, or is a subsidiary of a party's holding company, where for purposes of this definition a company is a "subsidiary" of another company (the "holding company") if the holding company: (i) holds a majority of the voting rights in it; or (ii) is a member of it and has the right to appoint or remove a majority of its board of directors; or (iii) is a member of it and controls (alone, pursuant to an agreement with other members) a majority of voting rights in it or if it is a subsidiary of a company which is a subsidiary of that other company;

"Insolvency Event" means in respect of a party, if such party (a) is for any reason dissolved; (b) goes into liquidation or passes a resolution for voluntary winding up or its directors convene a meeting of shareholders to consider passing such a resolution (except for the exclusive purpose of a *bona fide* reconstruction or amalgamation in each case not involving insolvency and in such manner that the entity resulting there from effectively agrees to be bound by or assumes the obligations imposed on that party under this Agreement); (c) has an encumbrancer take possession of or an administrative receiver or receiver or similar officer appointed over all or any part of its assets or undertaking, or an application is made for the appointment of an administrative receiver, receiver or similar officer over all or any part of its assets or undertaking; (d) has an administrator appointed (by court order or otherwise including by its directors or by a floating charge holder), or has an application made either for the appointment of an administrator or for an administration order, or has a notice of intention to appoint an administrator given; (e) is the subject of any judgment or order made against it which is not complied with or discharged within 30 days or is the subject of any execution, distress, sequestration or other process levied upon or enforced against any of its assets; (f) a proposal being made for a voluntary arrangement or for any other compromise, composition, scheme or arrangement with, or assignment for the benefit of, its creditors; (g) a petition being presented for its winding up or dissolution (which is not dismissed within 14 days of its service) or a creditors' meeting is convened for the purpose of winding up the company or an application is made for bankruptcy, liquidation, or similar proceeding; (h) the Party being deemed unable to pay its debts or as having no reasonable prospect of so doing; (i) a moratorium coming into force; or (j) anything analogous to any of the events in paragraphs (a) to (i) above inclusive occurs in relation to such party under the law of any jurisdiction to which such party is subject;

"Intellectual Property Rights" or "IPR" means patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names, domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;

"Minimum Monthly Charges" means the sum of the total Recurring and the total Payroll charges as shown in the System Schedule;

"Minimum System Requirements" means the minimum system requirements as set out at <http://www.fourth.com/agreements>;

"Monthly Charges" means the total monthly recurring charges for the rights granted to the Fourth Solution for the Sites and for the Payroll Bureau Services and/or Salary Service (if applicable) being (1) at the Effective Date as set out in the System Schedule (and listed as Recurring in the Category column in the System Schedule); and (2) thereafter as otherwise calculated in accordance with the provisions of this Agreement (including clauses 3.4 and 4.5). For the avoidance of doubt any RTW Charges shall be excluded from this definition;

"party" and **"parties"** means Fourth and the Customer and their respective permitted assignees and successors in title;

"Payroll Bureau Services" means those services to be provided as identified in Payroll Bureau Service Definition document set out at <http://www.fourth.com/agreements>, and such services shall be subject to the additional terms set out in the "Payroll Bureau Service Agreement" set out at www.fourth.com/agreements;

"Payroll Monthly Charges" means the charges for the Payroll Bureau Services as set out in the System Schedule (and listed as Payroll in the Category column in the System Schedule) and calculated on a "per employee, per month" basis;

"Products" means the items of hardware and/or sundries supplied or to be supplied (as the context requires) to the Customer as described in the System Schedule including any Third Party Hardware;

"RTW Charges" means the aggregate of the per transaction charge for each RTW Check;

"RTW Check" means the electronic validation by Third Party Software of identified documents against certain criteria set out in the document entitled "*Right To Work Checks – Description*" as set out at www.fourth.com/agreements, as amended by Fourth from time to time;

"Salary Service" means those services to be provided as identified in the Salary Service Addendum set out at www.fourth.com/agreements, as amended by Fourth from time to time;

"Service Level Agreement" or **"SLA"** means the "service level agreement" as set out at www.fourth.com/agreements, as amended by Fourth from time to time;

"Service Charges" means the charges payable in respect of the Services as set out in the System Schedule (and listed as Service in the Category column in the System Schedule) and any additional charges payable for providing Services;

"Services" means the services to be supplied to the Customer by Fourth as referenced in the System Schedule (and listed as Services in the Category column in the System Schedule) and more particularly described in the SoW(s) (if any), together with (i) the Payroll Bureau Services; (ii) any learning management system made available by Fourth; and (ii) any other services agreed between the parties in writing ;

"Site" means the number of site(s) and/or locations identified in the System Schedule, together with any new or additional sites and/or locations added in accordance with clause 3.4;

"Solution Provision Date" means (as applicable):

- (a) in respect of Workforce Management, when employee data has been loaded into the solution for the respective sites;
- (b) in respect of Purchase to Pay & Inventory, when product data has been loaded into the solution for the respective sites;
- (c) in respect of any Add-on, the date falling 3 months from the Agreement Date or such other date as is expressly set out in the relevant SoW; and
- (d) in respect of any upgrade of either Workforce Management or Purchase to Pay & Inventory, the Target Billing Date.

"SoW" means the document(s) titled "Statement of Work" and signed by the Customer, as the same may be amended or updated by mutual agreement between the parties;

"System Schedule" means the document(s) titled "System Schedule" and signed by or on behalf of the Customer;

Target Billing Date means the date targeted for completion of the Services which relate to implementation and configuration (as set out in the System Schedule), such date being identified in the System Schedule;

"Term" means the term of this Agreement, as set out in clause 9.1;

"Third Party Hardware" means those items identified as hardware in the System Schedule;

"Third Party Hardware Maintenance" means the maintenance and support services in respect of the Third Party Hardware as set out in the System Schedule, such services being described in the Service Level Agreement; and

"Third Party Software" means any third party software that is incorporated in, interfaces with or is otherwise used by, in any manner, the Fourth Solution or any component thereof.

1.2 In this Agreement:

1.2.1 use of the singular includes the plural (and vice versa);

1.2.2 the words "*including*", "*include*", "*for example*", "*in particular*" and words of similar effect shall not limit the general effect of the words that precede them;

1.2.3 a reference to persons includes individuals, corporations, and unincorporated bodies or associations that are recognised at law (whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence);

1.2.4 references to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment; and

1.3 If there is any conflict, ambiguity or inconsistency between the provisions of this Agreement the conflict, ambiguity or inconsistency shall be resolved in accordance with the following order of precedence (i) the System Schedule (other than in relation to the scope of the Services set out in set out in the SoW(s), in respect of which the SoW(s) shall take precedence); (ii) the SoW(s); (iii) this Subscription Agreement; (iv) the Salary Service Addendum (if any); (v) the Service Level Agreement; (vi) the Payroll Bureau Service Agreement (if applicable); (vii) the Data Protection and Privacy Policy; and (viii) the Acceptable Use Policy.

2. **FOURTH SOLUTION AND FOURTH RESPONSIBILITIES**

2.1 Fourth grants to the Customer and its Group Companies during the Term a personal, worldwide, non-exclusive, non-transferable right to use the Fourth Solution at the Sites solely in connection with the Customer's (or its Group Companies') internal business operations.

2.2 Fourth shall:

2.2.1 provide the Services (other than the Payroll Bureau Services) from the Effective Date and the Products from the Solution Provision Date;

2.2.2 provide the Fourth Solution and Payroll Bureau Services from the Solution Provision Date;

2.2.3 provide the Fourth Solution and Services with reasonable skill and care and in accordance with its obligations under the Service Level Agreement;

2.2.4 only provide support, maintenance or upgrades or a warranty for Third Party Hardware, where and to the extent that the System Schedule identifies that the Customer has purchased Third Party Hardware Maintenance;

2.2.5 be entitled at any time to make any changes to the Fourth Solution, Documentation, Services and/or Products which are necessary to comply with any applicable legal requirement(s) and/or security requirement(s) and which do not materially adversely affect the nature or quality of the Fourth Solution, Documentation, Services and/or Products; and

2.2.6 comply with its obligations set out in the Data Protection and Privacy Policy.

3. CUSTOMER RESPONSIBILITIES

3.1 The Customer shall (and shall procure that its Group Companies shall) comply with the:

3.1.1 Acceptable Use Policy; and

3.1.2 Data Protection and Privacy Policy.

Any breach of clause 3.1.1 shall be deemed a material breach of this Agreement and in addition to the rights set out in clause 9.1, Fourth shall also be entitled to suspend the Customer's access to the Fourth Solution immediately.

3.2 The Customer shall maintain in place systems, networks, browsers and communication links that comply with the Minimum System Requirements and such other specifications provided by Fourth from time to time. Any changes to the Minimum System Requirements or other specifications provided by Fourth from time to time shall be reasonable and provided with sufficient notice for the Customer to implement.

3.3 The Customer shall, at its own expense, provide all information, documentation and assistance reasonably required by Fourth to deliver the Fourth Solution and the Services pursuant to this Agreement and the Customer shall ensure the accuracy of any such information and documentation provided. In particular the Customer shall comply with its obligations in the SoW(s) (if any) and the project plan and/or other project documentation agreed by the parties during the projects scoping phase, including ensuring (a) it has sufficient, dedicated and appropriate resource available to Fourth when required; (b) its data is current, fit for purpose and in the format specified by Fourth; and (c) its other third party suppliers (if any) do all such acts and things as are necessary to comply with the project plan in accordance with its timelines. For the avoidance of doubt Fourth shall not be responsible for liaising with the Customer's third party suppliers in connection with the project implementation, and Fourth's project management services shall only extend to the implementation of the Fourth Solution (although Fourth may provide advice to the Customer in respect of working with and/or the scoping of interfaces with, third party suppliers). The Customer shall own the relationship with its third party suppliers.

3.4 During the Term the Customer shall pay the applicable Charges for the Fourth Solution in respect of each site and/or location at which the Fourth Solution are used or made available, provided that the Customer shall always be obliged to pay the Minimum Monthly Charges as a minimum. Subject to the foregoing, the Customer may add or remove sites and/or locations to or from the System Schedule during the Term by providing at least 30 days' written notice to Fourth. Fourth shall adjust the Charges payable to reflect such added or removed site and/or location from the month following the month in which such notice expires (and subject to the payment of the Minimum Monthly Charges by the Customer as set out above). For each site and/or location added during the Term the Customer shall pay the then current Charges applicable under this Agreement. Should additional Services be required for added sites, the scope and cost of these shall be agreed between the parties in writing at the relevant time. Where, as a result of sites and/or locations being removed, a portal split is required to separate the data applicable to such removed sites and/or locations, the Customer shall be responsible to Fourth for all the costs associated with such portal split.

3.5 The Customer shall be responsible for:

3.5.1 compliance with this Agreement by its Group Companies and its and their respective personnel (including former personnel for so long as such personnel retain access to any Fourth Solution post termination of employment with the Customer or any of its Group Companies)

3.5.2 ensuring that all usernames, passwords and other credentials ("**Credentials**") in relation to the Fourth Solutions, and any APIs for the Fourth Solution, are kept secure, including by any third party providers with whom the Customer shares such Credentials;

3.5.3 all activity that occurs under or using any Credentials, and all acts and omissions of third party providers with whom the Customer shares such Credentials.

3.6 The Customer may only use the Third Party Hardware in the jurisdiction to which it was originally shipped by or on behalf of Fourth.

4. **CHARGES AND PAYMENT**

4.1 Fourth shall invoice:

4.1.1 the Monthly Charges (other than Payroll Monthly Charges) monthly in advance from the earlier of (i) the relevant Solution Provision Date for each Fourth Solution; and (ii) the Target Billing Date. Fourth shall not commence invoicing where the Target Billing Date occurs before the relevant Solution Provision Date solely as a result of the acts or omissions of Fourth; in such circumstances invoicing shall commence on the relevant Solution Provision Date. Where a direct debit has not been agreed with the Customer, the Customer shall pay the Monthly Charges annually in advance from the relevant date referred to above;

4.1.2 the Payroll Monthly Charges monthly in arrears from the first month the system calculates a payroll (whether a live pay run or a parallel run);

4.1.3 the RTW Charges monthly in arrears from the first month in which a RTW Check is submitted;

4.1.4 25% of the Service Charges (or such other amount as is set out in the System Schedule) on the Effective Date;

4.1.5 the remainder of the Service Charges on the earlier of (i) the relevant Solution Provision Date for each Fourth Solution; and (ii) the Target Billing Date. Fourth shall not invoice where the Target Billing Date occurs before the relevant Solution Provision Date solely as a result of the acts or omissions of Fourth; in such circumstances the invoice for the remainder of the Service Charges shall be issued on the relevant Solution Provision Date;

4.1.6 25% of the Charges relating to Third Party Hardware on the Effective Date;

4.1.7 75% of the Charges relating to Third Party Hardware on the date the Third Party Hardware is sent to the Customer,

4.1.8 any costs described in this Agreement to be the Customer's responsibility, or other amounts agreed between the parties, in the month in which such costs or amounts are incurred by Fourth,

and the Customer shall pay any such amounts in accordance with Clause 4.3.

4.2 The Service Charges identified in the System Schedule are based upon Fourth's estimate of the time required to complete the Services and the Customer's compliance with the project plan (including timelines). Fourth shall be entitled to invoice and be paid for the actual time expended in providing the Services.

4.3 Only one invoice shall be provided by Fourth in respect of each of the (a) Payroll Monthly Charges; and (b) remainder of the Monthly Charges, per month/annum (as applicable) and shall be issued in the name of the Customer. The Customer shall be solely responsible for the allocation of the Monthly Charges among its Group Companies or Sites. All invoices shall be payable by the Customer (i) where the Customer is paying the Monthly Charges monthly, by direct debit and within 14 days of their date; and (ii) where the Customer is paying the Monthly Charges annually, by electronic bank transfer within 45 days of their date. The Customer shall be responsible for all costs associated with such methods of payment.

4.4 The Charges are exclusive of Value Added Tax and/or any other applicable tax or duty which shall be paid in addition by the Customer at the rate and in the manner for the time being prescribed by law and the Customer shall have sole responsibility for such taxes and duties.

4.5 Fourth shall be entitled annually to increase the Charges at the higher of a rate which does not exceed the increase in the published UK Retail Price Index (excluding mortgages) for the same period or 3%. No increase

to Charges pursuant to this Clause shall be made during the 12 month period after the Target Billing Date. Notwithstanding the foregoing, if the maximum increase allowable by law is less than the higher of the increase in the published UK Retail Price Index or 3%, then the increase in Charges shall not exceed the maximum allowed by law in the jurisdiction specified in Clause 13 below.

- 4.6 All reasonable expenses for travel, subsistence and accommodation incurred by Fourth in the provision of on-site Services, or in relation to the set up of Third Party Hardware, shall be recharged to the Customer.
- 4.7 Notice of cancellation of any training must be received by Fourth at least 48 hours in advance. Where notice of such cancellation is received less than 48 hours in advance the Customer shall pay 100% of the Charges in respect of such training.
- 4.8 If any sum payable to Fourth by the Customer under this Agreement (in each case without prejudice to the other rights and remedies of Fourth):
- 4.8.1 Is not paid within 30 days of the due date, Fourth reserves the right to (a) charge interest to the Customer at a rate of 3% above the Bank of England Base Rate from time to time in force compounded quarterly from the due date; (b) withhold the supply of and/or access to all or part of the Fourth Solution, Documentation, Services and/or Products until such time as full payment has been made to Fourth; and/or (c) terminate this Agreement. This clause 4.8.1 shall not apply in circumstances where clause 4.8.3 applies;
 - 4.8.2 Is not paid and the Customer suffers an Insolvency Event, Fourth reserves the right to withhold the supply of and/or access to all or part of the Fourth Solution, Documentation, Services and/or Products until such time as full payment has been made to Fourth;
 - 4.8.3 is not paid as a result of the failure of the direct debit in place between the Customer and Fourth, Fourth reserves the right to (a) charge the Customer an admin fee of £35.00 for each failed direct debit (b) withhold the supply of and/or access to all or part of the Fourth Solution, Documentation, Services and/or Products until such time as full payment has been made to Fourth; and/or (c) where such amount remains unpaid for a period of 30 days post the date of first attempted collection of the direct debit, terminate this Agreement,

and in each case, the Customer shall pay, on an indemnity basis, Fourth's costs in instructing any debt collection agency, and all legal and other costs ancillary thereto, including in relation to separation of Customer data (including Personal Data).

- 4.9 Should an invoice be legitimately disputed by the Customer then payment of any undisputed element of the invoice shall be made by the Customer in accordance with the requirements of this Agreement and interest shall be abated on the disputed element (the "**Disputed Amount**") until the dispute is resolved. If the invoice is subsequently accepted (or reduced to an acceptable level), then interest calculated in accordance with Clause 4.8 above shall apply on the Disputed Amount (or relevant part thereof which has been agreed to be payable) calculated from the original due date to the actual payment date. If the invoice is cancelled and no amount is payable, or if the Disputed Amount is not payable, by the Customer then no interest will be due. It is the Customer's responsibility to check each invoice when received and to raise any dispute or query promptly following receipt, and in any event prior to payment of the same. Fourth shall not be obliged to credit a Customer's account or to issue a credit note in respect of any invoiced amounts that are not disputed by the Customer prior to the date payment of such invoice is due.

5. **WARRANTIES, ACCESS TO AND USE OF THE FOURTH SOLUTION**

- 5.1 Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; and (b) no authorisation or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement.

- 5.2 The Customer acknowledges that access to the Fourth Solution may be subject to limitations, delays and other problems inherent in the use of communications facilities. Fourth (a) shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks or facilities, including the internet; and (b) does not warrant that the Fourth Solution, Services or Products will be error-free or that operation of the Fourth Solution, Services and the Products will be secure or uninterrupted.
- 5.3 The Customer acknowledges and agrees that:
- 5.3.1 it is relying solely on its own skill and judgment, and not that of Fourth, in determining the suitability of the Fourth Solution, Documentation, Services and/or Products for its business or for any general or specific purposes;
 - 5.3.2 the Fourth Solution, Documentation, Services and/or Products have not been developed to meet the individual requirements of the Customer and the Fourth Solution, Documentation, Services and/or Products are provided to the Customer on an "as is" basis;
 - 5.3.3 it assumes sole responsibility for results obtained from the use of the Fourth Solution, Documentation, Services and/or Products and for conclusions drawn from such use;
 - 5.3.4 the Fourth Solution, Documentation, Services and/or Products may incorporate or rely on data provided by third parties such as suppliers, which may include nutritional and allergen information. The parties agree that Fourth is not responsible for and has no control over the accuracy of any such data provided by third parties, nor is Fourth under any duty to verify the accuracy of data provided by those third parties to the Customer
- 5.4 The Customer represents and warrants that (1) neither it nor any of its Group Companies, are named on any U.S. government denied-party list; and (2) it, and each of its Group Companies, is located in a jurisdiction permitting use of the Fourth Solution, Documentation, Services and/or Products. Any breach of this Clause 5.4 is a material breach of this Agreement incapable of remedy and, without prejudice to any other right, relief or remedy, entitles Fourth to terminate this Agreement immediately.
- 5.5 All warranties, representations, conditions and other terms whether express, implied (either in fact or by operation of law), by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement and explicitly disclaimed, including (without limitation) warranties of merchantability and fitness for a particular purpose.
- 5.6 Fourth shall use reasonable efforts to provide the Customer the benefit of all indemnities and warranties granted to Fourth by the providers of the Third Party Software, to the extent possible without additional cost to Fourth, as and if permitted by Fourth's agreement with the provider of the Third Party Software, as applicable, and to the extent such indemnities and warranties pertain to the Customer's use of the Third Party Software under the Agreement. In the event of any defect in any Third Party Software (in the form delivered by Fourth and when properly used for the purpose and in the manner specifically authorised by the Agreement), Fourth shall use commercially reasonable efforts to have such Third Party Software replaced or correct without charge pursuant to any applicable warranty terms, in each case, to the extent available. This Clause 5.6 states Fourth's entire responsibility, and the Customer's sole and exclusive remedy, with respect to any defect in any Third Party Software.
- 5.7 Fourth may make APIs available for the Fourth Solution for data input and other purposes. The Customer's use of such APIs shall be at its sole risk. The Customer may not use the APIs or incorporate the runtime components thereof to develop a product or service that competes with any product or service offered by Fourth.

6. **CONFIDENTIALITY**

- 6.1 Subject to the provisions of Clause 6.2 and Clause 6.3, each party shall treat and maintain as confidential all Confidential Information disclosed to it by or on behalf of the other party pursuant to or in relation to this

Agreement, and shall not, without the prior written consent of the other party, use or disclose such Confidential Information except for the purposes of this Agreement.

- 6.2 A party may disclose Confidential information to (a) such of its employees and sub-contractors who need to know the same for the purposes of the performance of this Agreement; and (b) its auditors, tax authorities, professional advisors; and (c) any other person having a statutory or regulatory right to request and receive the Confidential Information, ((a) and (b) being “**Permitted Disclosees**”) provided that a party ensures that its Permitted Disclosees comply with the provisions of this Clause 6 as if a party to this Agreement, and ensures that the disclosees referred to in limb (c) are made aware of the confidential nature of the information disclosed .
- 6.3 Clause 6.1 does not apply to information which the receiving party can demonstrate (a) is in the public domain or subsequently enters the public domain otherwise than as a result of a breach of this Clause 6; or (b) was already rightfully in its possession prior to disclosure to it without any obligation of confidentiality.

7. **INTELLECTUAL PROPERTY INFRINGEMENT**

- 7.1 All Intellectual Property Rights subsisting and/or arising in the Fourth Solution, Services and Documentation shall vest and remain vested in Fourth.
- 7.2 Subject to clause 7.4, Fourth shall indemnify the Customer against any amounts awarded against the Customer pursuant to any claim by a third party that the use of the Fourth Solution, Documentation and/or Services (excluding the Third Party Software) infringes any Intellectual Property Right of that third party (“**IPR Claim**”) provided that:
- 7.2.1 the Customer shall promptly notify Fourth in writing of the IPR Claim;
 - 7.2.2 Fourth shall have the exclusive conduct of the defence of the IPR Claim and all negotiations for its settlement or compromise and shall have sole authority to settle the IPR Claim; and
 - 7.2.3 the Customer shall, at the reasonable cost of Fourth, give Fourth all necessary assistance requested by Fourth in the defence of such IPR Claim.
- 7.3 If an IPR Claim is made, or Fourth anticipates that an IPR Claim might be made, Fourth may, at its own expense and sole option, either (a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or (b) replace or modify the relevant item with non-infringing substitutes provided that the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item and there is no additional cost to the Customer.
- 7.4 Fourth shall not be liable to the Customer for an infringement (or alleged infringement) of an Intellectual Property Right of a third party to the extent that such infringement is caused by:
- 7.4.1 use of the Fourth Solution, Documentation and/or Services in combination with any item not provided or supported by Fourth;
 - 7.4.2 use of information, data or programs furnished by the Customer in the course of the Fourth Solution, Documentation and/or the Services and/or Fourth acting on the specific instruction(s) of the Customer;
 - 7.4.3 alteration of the Fourth Solution, Documentation and/or Services other than by Fourth or as authorised in writing by a duly authorised representative of Fourth;
 - 7.4.4 failure of the Customer to use replaced or modified parts of the Fourth Solution provided by Fourth pursuant to Clause 7.3 in order to avoid such infringement; or
 - 7.4.5 use of the Fourth Solution, Documentation and/or Services for any purpose other than as permitted by, or in contravention of, this Agreement.

- 7.5 This Clause 7 together with Clause 8 states Fourth's entire liability to the Customer arising from an infringement (or alleged infringement) of an Intellectual Property Right of a third party.
- 7.6 The Customer grants to Fourth a non-exclusive, non-transferable licence to use its trademarks, trade names and/or logos (i) so far as is reasonably necessary for the purposes of this Agreement; and (ii) to include the Customer as a customer of Fourth in Fourth's marketing material, including on Fourth's website.
- 7.7 Fourth may, without the prior approval of the Customer, disclose the Customer's use of the Fourth Solution to employees and sub-contractors of Fourth and/or to potential or existing customers of the Fourth Solution and/or to potential investors of Fourth.
- 7.8 Notwithstanding anything to the contrary in this Agreement:
- 7.8.1 Fourth shall be entitled to capture and use information provided by the Customer through access and use of the Fourth Solution, Documentation, Services and/or Products including for the purpose of developing and maintaining the Fourth Solution provided such use does not identify in any way the Customer or an individual specifically ; and
- 7.8.2 if the Customer provides any feedback to Fourth concerning the functionality and performance of the Fourth Solution, Documentation, Services and/or Products (including identifying potential errors and improvements), the Customer hereby assigns to Fourth all right, title, and interest in and to the feedback, and Fourth is free to use the feedback without payment or restriction.
- 7.9 The Customer acknowledges and agrees that Fourth may compile and exploit reports which include information provided by the Customer although such information shall be in generic, anonymised or aggregated form. The Customer shall be entitled to a copy of such reports on request by the Customer, provided such report is used for the Customer's internal purposes only and not otherwise exploited or resold. Where the capture and use of such information involves Personal Data such Personal Data shall be used by Fourth in compliance with the Data Protection and Privacy Policy.

8. **LIMITATION OF LIABILITY**

- 8.1 Nothing in this Agreement shall exclude or in any way limit:
- 8.1.1 either party's liability for death or personal injury caused by its own negligence;
- 8.1.2 either party's liability for fraud or fraudulent misrepresentation; or
- 8.1.3 any other liability which cannot be excluded by law.
- 8.2 The provisions of this Clause set out the entire financial liability of Fourth, including any liability for the acts or omissions of its employees, agents and sub-contractors (including the Authorised Processors), to the Customer, and any indemnity given by Fourth under this Agreement in respect of:
- 8.2.1 any breach of this Agreement;
- 8.2.2 any use made by the Customer of any of the Fourth Solution, Documentation, Services and/or Products; and
- 8.2.3 any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.
- 8.3 Subject to Clause 8.1:
- 8.3.1 Fourth's total liability in contract, tort, including negligence or breach of statutory duty, misrepresentation, restitution or otherwise for all claims in aggregate that occur in a Contract Year shall be limited to the monies paid by the Customer to Fourth in the immediately preceding

Contract Year less any Service Charges, save that (A) for all claims in aggregate that occur in the first Contract Year the liability of Fourth shall be limited to the greater of (i) the monies paid by the Customer to Fourth under this Agreement in respect of that first Contract Year less the Service Charges; and (ii) 50% of the Charges less the Service Charges payable in respect of that first Contract Year; and (B) in respect of liability in connection with the Salary Service, the limits and exclusions of liability in the Salary Service Addendum shall apply;

8.3.2 Fourth excludes any liability arising out of or based upon the results of the Customer's use of the Fourth Solution, Documentation, Services and/or Products; and

8.3.3 Fourth shall not be liable to the Customer for (a) any loss (whether direct or indirect) of revenue or profits; (b) any loss (whether direct or indirect) of anticipated savings; (c) any loss (whether direct or indirect) of goodwill or injury to reputation; (d) any loss (whether direct or indirect) of business opportunity; (e) any loss (whether direct or indirect) of or corruption to data (including Personal Data); (f) any loss suffered by third parties; (g) any wasted management time; (h) indirect, consequential, punitive or special loss or damage; in each case arising out of or in connection with this Agreement including without limitation as a result of breach of contract, negligence or any other tort, under statute or otherwise, and regardless of whether Fourth knew or had reason to know of the possibility of the loss, injury or damage in question.

8.4 It is the responsibility of the Customer to properly assess any consequential loss that it may suffer and to obtain and maintain adequate insurance in relation to such losses. The Customer shall also ensure that it has adequate insurance cover in relation to any loss or damage which may be caused to Fourth through the negligence or default of the Customer, its employees, sub-contractors or agents.

9. **TERM AND TERMINATION**

9.1 This Agreement shall commence upon the Effective Date and shall continue unless and until terminated in accordance with this Clause 9. Either party may terminate this Agreement: (i) if the other party commits a material breach of this Agreement and (where capable of remedy) does not remedy such breach within 30 days of receiving written notice of the material breach from the non-breaching party. Termination in accordance with this Clause 9.1 shall take effect when the breaching party receives written notice of termination from the non-breaching party, which notice must not be delivered until the breaching party has failed to remedy its material breach during the 30 day remedy period (if applicable); (ii) immediately on written notice if the other party should suffer an Insolvency Event; or (iii) at any time after the Target Billing Date, on providing to the other party at least 12 months' written notice. For the avoidance of doubt, the Charges shall be payable in full during the notice periods referred to in this Clause.

9.2 If this Agreement is terminated:

9.2.1 the rights granted to the Customer in this Agreement shall immediately cease and Fourth shall cease to make the Fourth Solution, Documentation, Services and/or Products available to the Customer;

9.2.2 the Customer shall pay to Fourth any Charges, or other amounts that have accrued prior to the effective date of the termination; and

9.2.3 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.

9.3 Any termination of this Agreement (howsoever occasioned) is without prejudice to and shall not affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination including Clauses 6 (Confidentiality), 7 (Intellectual Property Infringement), 8 (Limitations of Liability), 10 (Force Majeure) and 13 (Governing Law).

10. **FORCE MAJEURE**

- 10.1 Except in respect of the obligation of the Customer to pay the Charges, neither party will be liable for any delay in performing any of its obligations under this Agreement or for failure to perform any such obligations if the delay or failure results from circumstances beyond the control of the party including strikes, labour disputes, acts of God, war, riot, terrorism, civil commotion, malicious damage, accident, breakdown of plant or machinery, fire, flood, storm, explosion, flu or other epidemic, compliance with any law or government order, rule, regulation or direction, difficulty or increased expense in obtaining workers, materials or transport, refusal of third party licence, or failure of a utility service or telecommunications network.
- 10.2 The party seeking to rely on the provisions of this Clause 10 shall notify the other of the facts and the circumstances, and shall use its reasonable endeavours to minimise the impact of such circumstance and to recommence the performance of its obligations as soon as reasonably possible.

11. **ANTI-CORRUPTION**

- 11.1 Each party shall not violate any Applicable Anti-Bribery Law and shall at all times implement adequate procedures designed to prevent it and any Associated Person from engaging in any activity which would constitute an offence under any Applicable Anti-Bribery Law.
- 11.2 Any breach of this Clause 11 by a party is a material breach of this Agreement incapable of remedy and, without prejudice to any other right, relief or remedy, entitles the other party to terminate this Agreement immediately.

12. **GENERAL**

- 12.1 Fourth shall be and shall act as an independent contractor (and not as the agent or representative of the Customer) in the performance of this Agreement.
- 12.2 Fourth may utilize a subcontractor or other third party to perform its duties under this Agreement (including an Authorised Processor) so long as Fourth remains responsible for all of its obligations under this Agreement.
- 12.3 Except for assignments to a party's third party lender in security, neither party shall be entitled to assign, sublicense or otherwise transfer this Agreement whether in whole or in part without the prior written consent of the other party.
- 12.4 Any notice required or permitted to be given in accordance with this Agreement shall be effective if it is in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate party at (a) in respect of the Customer, the address set forth on the System Schedule; and (b) in respect of Fourth, its registered office from time to time. Notices are deemed delivered three working days following the date of certified or registered mailing or one working day following delivery to a reputable and insured overnight or same day courier.
- 12.5 The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 12.6 Except as expressly provided in this Agreement, the rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 12.7 Other than as set out in the Salary Service Addendum (if relevant), no person other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 12.8 If any part of this Agreement is found by any court or administrative body of competent jurisdiction to be illegal, unenforceable, or invalid, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. If any material limitation or restriction

on the use of the Fourth Solution, Documentation, Services and/or Products under this Agreement is found to be illegal, unenforceable, or invalid, the Customer's right to use the Fourth Solution, Documentation, Services and/or Products shall immediately terminate.

- 12.9 The Agreement is the entire agreement and understanding between the parties in respect of its subject matter and supersedes (i) any previous agreement, warranty, statement, representation, understanding or arrangement, whether written or oral, express or implied, given or made before the Effective Date by or on behalf of either party in respect of the subject matter of the Agreement; and (ii) any other agreements for Fourth solutions and/or services which exist between the parties as at the Effective Date (the “**Existing Agreements**”), and the terms of the Agreement shall apply, from the Effective Date, to such provision of Fourth solutions and/or services so provided in place of the Existing Agreement, however, the Agreement shall not supersede (a) the then current pricing applicable under the Existing Agreements, which shall continue to apply; (b) any nondisclosure or comparable agreement between the parties executed prior to the Effective Date; or (c) any agreements between the parties relating to professional services relating to the Fourth Solution, Documentation, Services and/or Products that Fourth may provide.
- 12.10 Each of the parties acknowledges and agrees that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty other than as expressly set out in Clause 5 of this Agreement. Neither party shall be entitled to claim the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, understanding or undertaking whether or not it is set out in this Agreement. Nothing in Clause 12.9 or 12.10 shall limit or exclude any liability for fraud or fraudulent misrepresentation.
- 12.11 No usage of trade or other regular practice or method of dealing between the parties shall be used to modify, interpret, supplement, or alter this Agreement. Fourth shall not be bound by any term, condition, or other provision that is proffered by the Customer in any receipt, acceptance, confirmation, correspondence, or otherwise, or that the Customer seeks to impose or incorporate, unless Fourth specifically agrees to such provision in writing and signed by an authorised agent of Fourth.
- 12.12 This Agreement may be amended from time to time by Fourth as required to comply with law or regulation, or as otherwise expressly permitted in this Agreement. Fourth shall give the Customer reasonable notice of any such material proposed amendment. All other amendments shall be subject to the prior written approval (not to be unreasonably withheld or delayed) of each party.
- 12.13 During the Term and for a period of one year thereafter, the Customer will not, directly or indirectly, employ, engage or solicit the employment or engagement of the services of a Fourth employee or independent contractor of Fourth, with whom it had dealings during the Term, without the prior written consent of Fourth.

13. **GOVERNING LAW**

- 13.1 This Agreement shall be governed by and shall be construed in accordance with the laws of England and Wales. The Courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit or action or proceedings and settle any disputes which may arise out of or in connection with this Agreement, and for such purposes, each party irrevocably submits to the exclusive jurisdiction of the Courts of England and Wales.