

## GENERAL TERMS AND CONDITIONS

These General Terms and Conditions ("Terms and Conditions") are between Fourth Enterprises, LLC ("Fourth") and any person or entity that uses or Accesses a Service, that is either named on an Order or Statement of Work that incorporates these Terms and Conditions, or any other person or entity whose use of a Service is not governed by a mutually executed superseding agreement ("Subscriber"). BY CLICKING A BOX INDICATING ACCEPTANCE, SIGNING AN ORDER OR STATEMENT OF WORK, BY MAKING PAYMENT FOR OR BY RECEIVING, ACCESSING, OR USING THE SUBSCRIPTION SERVICES, SUBSCRIBER AGREES THAT ITS USE OF FOURTH'S SUBSCRIPTION SERVICES, PROFESSIONAL SERVICES, PROCESSING SERVICES, AND TECHNICAL SUPPORT SERVICES (collectively referred to as "Services") ARE SUBJECT TO AND GOVERNED EXCLUSIVELY BY THESE TERMS AND CONDITIONS AND ANY ADDITIONAL TERMS STATED IN AN ORDER OR STATEMENT OF WORK AND ANY EXHIBITS ATTACHED THERETO. IF YOU ARE AN INDIVIDUAL ENTERING INTO THIS AGREEMENT ON BEHALF OF A SUBSCRIBER THAT IS A COMPANY OR OTHER LEGAL ENTITY, YOU WARRANT AND REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, SUCH ENTITY MAY NOT USE THE SERVICES AND YOU ARE SOLELY RESPONSIBLE FOR YOUR USE OF THE SERVICES. These Terms and Conditions are effective the earlier of the date that Subscriber accepts these Terms and Conditions, signs an Order Form or Statement of Work that incorporates these Terms and Conditions, or the date that Subscriber begins receiving, accessing or using the Services ("Effective Date"). Fourth reserves the right to change these Terms and Conditions from time to time by posting an update to this URL. However, for then existing Subscribers, such changes shall not take effect until the beginning of Subscriber's subsequent Renewal Term.

THESE TERMS AND CONDITIONS REQUIRES FINAL AND BINDING ARBITRATION TO RESOLVE ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THESE TERMS AND CONDITIONS, OR YOUR RECEIPT OF, ACCESS TO OR USE OF THE SERVICES, INCLUDING THE VALIDITY, APPLICABILITY OR INTERPRETATION OF THIS AGREEMENT, AND YOU AGREE THAT ANY SUCH CLAIM WILL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION, SUIT, OR OTHER SIMILAR PROCESS. PLEASE REVIEW SECTION 10.7 CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE RESOLUTION OF ANY CLAIM.

### 1. USE OF THE SUBSCRIPTION SERVICE

1.1 Limited License to Use the Subscription Service. Subject to and conditioned on Subscriber's ongoing compliance with the provisions hereof, Fourth grants to Subscriber a limited, worldwide, non-exclusive, non-sublicensable, non-transferable right only during the Term (as defined below) and within the number of Locations designated in the applicable Order Form to (a) use the hosted software identified on an Order as 'Subscription Services', as well as any other software, data Application Programming Interfaces ("APIs"), Software Development Kits ("SDKs"), software plugins, code, libraries, protocols, and algorithms provided by Fourth (collectively, the "Subscription Service"), solely in its internal business operations as set forth in the Documentation; and (b) reproduce, without modification, and internally use a reasonable number of copies of the Fourth-provided text-based online user documentation for the Subscription Service (the "Documentation") and other Fourth online materials and media solely as necessary for its permitted use of the Subscription Service. "Order" means each mutually agreed upon order on Fourth's order form or other document that specifies the Services, Term, number of Locations, the fees for such items and any additional terms applicable to the use of such items.

1.2 Locations and Pricing. A "Location" means a discrete physical location at which Subscriber has operations. During the Term, Subscriber shall (a) use the Subscription Service at no more than the maximum number of Locations specified in the applicable Order; and (b) restrict the ability to log into the Subscription Service ("Access") to those employees and/or third-party contractors performing services on behalf of Subscriber at such Locations (each a "User"). Subscriber's and its Users' use of the Subscription Service shall be subject to and governed exclusively by these Terms and Conditions even if such use has not been licensed in an Order.

1.3 Use Restrictions. Subscriber shall not, and shall not permit or authorize third parties under its control to:

(a) rent, lease, or otherwise permit anyone other than Users to use the Subscription Service or Documentation; (b) use or offer the Subscription Service to third parties on a service bureau, service provider, hosted, software as a service, or time sharing basis, provide or permit other individuals or entities to create Internet “links” to the Subscription Service, or “frame” or “mirror” the Subscription Service on any other server, or wireless or Internet-based device; (c) circumvent or disable any security or other technological features or measures of the Subscription Service, or attempt to probe, scan, gain Access to, or test the vulnerability of a network and or system; (d) upload or provide any information or materials that are defamatory, offensive, abusive, obscene, of menacing character, or that violate privacy or intellectual property rights; (e) use the Subscription Service to threaten, defame, bully, harass, or harm persons or their property; (f) send, store or distribute any malware, viruses or any other routines, code or programs with the intent or effect of damaging, destroying, disrupting, monitoring or otherwise impairing Fourth’s, or any other person’s or entity’s, network, computer system, or other equipment, or any third party data contained therein; (g) reverse engineer, decompile, disassemble, translate, or otherwise attempt to derive the source code of the Subscription Service; or (h) access the Subscription Service or use the Documentation in order to build a similar product or competitive product. Subscriber will neither alter nor remove any proprietary rights notices that may appear on the Documentation and will include all such notices on any copies. Subscriber will use the Subscription Service and Documentation, and upload data into the Subscription Service, in compliance with all applicable laws and regulations, and in compliance with Fourth’s Acceptable Usage Policy, available at <https://www.fourth.com/legal/>. Subscriber will ensure that all Users comply with the applicable obligations of Subscriber under these Terms and Conditions and will be directly responsible and liable to Fourth for all Users’ conduct. Any act or omission of a User that would constitute a breach of these Terms and Conditions is deemed to be a breach by Subscriber. Fourth reserves the right to traffic shape to ensure a reasonable allocation of bandwidth across all Subscriber accounts.

1.4 Feedback. Notwithstanding anything to the contrary in these Terms and Conditions, any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber to Fourth relating to the Subscription Service or any other Service (collectively “Submissions”) shall be Fourth’s sole exclusive property and shall constitute Fourth’s Confidential Information. Fourth shall exclusively own all rights, including all intellectual property rights, in and to all Submissions. Fourth shall be entitled to the unrestricted use and dissemination of Submissions for any purpose, including without limitation, the right to create improvements to the Subscription Service and any other Service and derivative works based on Submissions, without acknowledgement, consent, or compensation to Subscriber. If any intellectual property rights within any Submissions vests, or has previously vested, in or to Subscriber, Subscriber hereby assigns to Fourth all of Subscriber’s right, title and interest in all such intellectual property rights and Submissions, and Subscriber hereby waives to and in favor of Fourth any of its moral rights therein, including, without limitation, any right of integrity or author attribution.

1.5 Assistance. Subscriber shall promptly provide all reasonably requested information and devote such assistance as is reasonably required to Fourth to enable Fourth to implement and provide Access to the Subscription Service. Upon request from Fourth, Subscriber shall promptly deliver Subscriber Data to Fourth in an electronic file format specified and accessible by Fourth. Subscriber acknowledges that Fourth’s ability to implement and provide the Subscription Service in the manner and timing provided in these Terms and Conditions and any Order is dependent upon the accuracy and timeliness of Subscriber’s information and assistance. If any Order or Statement of Work contains implementation or delivery dates, such dates are contingent upon Subscriber’s assistance as required in this Section 1.5.

## **2. PROVISION OF SUBSCRIPTION SERVICES**

2.1 Service Availability. During the term of the Subscription Service, Fourth will (a) use commercially reasonable efforts to avoid any unplanned interruptions to Subscriber’s Access to the Subscription Service (“Downtime”); (b) utilize a reputable hosting infrastructure to provide the Subscription Service; and (c) use commercially reasonable efforts to notify Subscriber in advance of planned Subscription Service interruptions.

2.2 Data Integrity and Security. Fourth will maintain commercially reasonable physical, electronic, and managerial procedures intended to protect against the loss, misuse, or unauthorized access, alteration or disclosure of Subscriber Data. If Fourth learns of any unauthorized access to Subscriber Data, Fourth will, as required by law, notify Subscriber of such unauthorized access, and the parties agree to coordinate and cooperate in good faith on developing the content of any related public statements or any required notices for the affected persons. Subscriber shall ensure that no User usernames and passwords are shared and is solely responsible for maintaining the confidentiality of all

User usernames and passwords and for all activities that occur under such usernames, including in respect of Integrated Subscription Services (as defined in section 2.5) and APIs (as defined in section 2.7). Subscriber will immediately notify Fourth of any suspected security breach or unauthorized access at [security@fourth.com](mailto:security@fourth.com), copying Subscriber's relationship manager. Fourth reserves the right to suspend the Subscription Service if Fourth reasonably determines that Subscriber or Subscriber's Users use of the Subscription Service is causing immediate and ongoing harm to Fourth or others. In the extraordinary case that Fourth suspends the Subscription Service, Fourth shall immediately notify Subscriber of the suspension and the parties shall diligently attempt to resolve the issue. Fourth shall not be liable to Subscriber or to any third party for any liabilities, claims or expenses arising from or relating to any suspension of the Subscription Service in accordance with this Section 2.2.

2.3 Technical Support Services. Fourth shall provide Subscriber with standard Technical Support Services applicable to the Subscription Service, as described on Fourth's website at <https://www.fourth.com/support-policy/> ("Technical Support Services"), so long as Subscriber is current in all payments due to Fourth under these Terms and Conditions. Fourth may use all technical information provided by Subscriber in connection with Technical Support Services for Fourth's business purposes, including, without limitation, for product support and the improvement of Services.

2.4 Subscriber's Responsibilities. Subscriber will be responsible for supplying its own internet connection, computer and network equipment, and mobile devices to Access the Subscription Service, which at a minimum will comply with the minimum system requirements as described on Fourth's website at <https://www.fourth.com/minimum-system-requirements/> ("Minimum System Requirements"). As a condition to Fourth's provision of any Services, Subscriber will provide all assistance, cooperation, information, equipment, and resources reasonably necessary for Fourth to perform such Services. Subscriber will prevent any unauthorized use of the Subscription Service or Documentation, and Subscriber will promptly notify Fourth if it learns of any unauthorized use. In such case, Subscriber will take all steps reasonably necessary to terminate the unauthorized use and will cooperate and assist with any actions taken by Fourth to prevent or terminate such unauthorized use.

2.5 Integrated Services. If the Subscription Service (i) integrates or interoperates with third party hardware, software, services, websites, or data; or (ii) at Subscriber's request enables automatic login, access to and transmission of (including automatic updates of) Subscriber data to nominated third parties' systems via connected applications by logon to the Subscription Service (known as single sign-on) (together "Integrated Subscription Service"), it is Subscriber's responsibility to secure the right for Fourth to receive, transmit, process, display, and store all data from and to such third party ("Integrated Data") to the extent required for Fourth to perform its obligations and exercise its rights under these Terms and Conditions. Fourth's obligation to provide Integrated Subscription Services are contingent upon Subscriber securing such rights. Subscriber's failure to secure such rights does not terminate or suspend Subscriber's obligation to pay Fees for the Integrated Subscription Service. Subscriber acknowledges that the Integrated Subscription Services may be provided through credentials which represents an administrator (or equivalent) level of access to the Subscription Service, the Integrated Data and Subscriber's data. Fourth does not control, is not responsible for, and Subscriber bears all risks associated with access to and use of such third-party hardware, software, services, websites, or Integrated Data, including all activity that occurs through Subscriber's credentials for the Integrated Subscription Service, and all acts and omissions of third parties in connection with their use of such credentials, Subscriber Data and the Integrated Subscription Service. Any Integrated Data made accessible by Fourth in or through the Integrated Subscription Service is provided on an "as-is" and "as available" basis without any warranty of any kind. Integrated Data may be indecent, offensive, inaccurate, incomplete, infringing or otherwise objectionable or unlawful, and Subscriber acknowledges that Fourth is not responsible for and under no obligation to control, monitor or correct Integrated Data; provided, however, Fourth reserves the right to take remedial action if any such data violates applicable law or these Terms and Conditions, including without limitation, the removal of, or disablement of access to, such data and the Integrated Subscription Service. Fourth reserves the right to limit the amount, type, and frequency in which Integrated Data may be uploaded into the Integrated Service. Subscriber's change in or additional use of third-party hardware, software, services, or websites that requires integration with a Fourth Integrated Subscription Service may result in immediate additional Fees beginning at the time such change was made. Subscribers with an Integrated Service shall provide at all times a current and active contact within its organization to Fourth so that Fourth may provide Subscriber notice of any material changes to its API. Integrated Subscription Service warranties are contingent upon Subscriber maintaining such a contact and Subscriber's integrated software or hardware meeting Fourth's [Minimum Requirements](#) for such software or hardware. Fourth is not responsible for any Integrated Subscription Service degradation or downtime due to Subscriber's failure to provide

and maintain such a contact. Where credentials associated with an Integrated Subscription Service have not been used for a period of six months or more, Fourth reserves the right, but is not required, to deactivate such credentials.

2.6 Delay in Performance. Subscriber acknowledges that Fourth's ability to deliver each Service is contingent upon Subscriber or User's compliance with these Terms and Conditions and any applicable third party's terms of use. Accordingly, if Fourth's performance of its obligations under these Terms and Conditions is prevented or delayed by any act or omission of Subscriber or its agents, subcontractors, consultants, third party vendors (other than Fourth), or employees, ("Subscriber Delay") Fourth shall not be deemed in breach of its obligations under these Terms and Conditions or otherwise be liable for any costs, charges or losses sustained or incurred by Subscriber, in each case, to the extent arising directly or indirectly from Subscriber Delay. A Subscriber Delay does not terminate, suspend, or delay Subscriber's obligation to pay any Fees otherwise due under these Terms and Conditions.

2.7 Third Party APIs. Subscriber acknowledges that: (i) the nature, type, quality and availability of Integrated Data may change at any time during the Term, and (ii) features of the Integrated Subscription Service that integrate or interoperate with third parties and Integrated Data depend on the continuing availability of such third parties' respective APIs for use with the Integrated Subscription Service. Fourth may update, change or modify the Integrated Subscription Services under these Terms and Conditions because of a change in, or unavailability of, such Integrated Data or APIs. If any third-party ceases to make its Integrated Data or APIs available on reasonable terms for the Integrated Subscription Services, as determined by Fourth in its sole discretion, Fourth may cease providing access to the affected Integrated Data or without any liability to Subscriber. Any changes to Integrated Data or APIs, including their availability or unavailability, during the Term does not affect Subscriber's obligations under these Terms and Conditions or the applicable Order, and Subscriber will not be entitled to any reduction in Fees, refund, credit or other compensation due to any such changes.

2.8 Installed Agent. For some Integrated Subscription Services, Fourth may require the installation of Fourth software on Subscriber's hardware ("Integration Agent"). If Fourth requires the installation of an Integration Agent, Subscriber consents to such installation and represents and warrants that it has the right to allow Fourth to install the Integration Agent. For purposes of these Terms and Conditions, the Integration Agent shall be deemed part of the Subscription Service and Subscriber's obligations and rights to use the Integration Agent are subject to these Terms and Conditions.

### **3. PROFESSIONAL SERVICES.**

3.1 General. The following terms and conditions shall apply to any Professional Services that Fourth provides to Subscriber. Such professional services may include without limitation: installation, implementation, deployment, configuration, or integration of Subscription Services; data migration; training; consulting; or other work listed in an Order, Statement of Work, and exhibits attached thereto ("Professional Services"). Subscriber may purchase Professional Services from Fourth via an Order and/or a document detailing the scope of such work, associated Fees, and other applicable terms that is subject to these Terms and Conditions ("Statement of Work").

3.2 No Works for Hire. Professional Services provided to Subscriber and any deliverables resulting therefrom shall not constitute works for hire and Fourth reserves and retains all right, title and interest, including without limitation, all patents, copyrights, and trade secret rights anywhere in the world, and all other intellectual property and rights in connection therewith shall be the sole property of and remain with Fourth or its licensors, as applicable.

3.3 Termination of Professional Services. Professional Services whether ordered through a Statement of Work or Order may be terminated prior to the planned completion of the Professional Services as follows:

- (a) Time and Materials. Either party may terminate time and materials based Professional Services at its convenience or due to a party's uncured material breach of these Terms and Conditions, or applicable Order or Statement of Work by providing the other party thirty (30) days prior written notice. If either party terminates time and materials based Professional Services for any reason, Subscriber shall pay all Professional Services Fees for all Professional Services performed prior to the effective termination date plus all reasonable actual costs incurred by Fourth during its performance of the Professional Services. If Subscriber has prepaid any Professional Services Fees, Fourth shall refund all unused prepaid Professional Services Fees on a pro rata basis based on the effective date of the termination.

(b) **Fixed Fees.** Subscriber may terminate fixed fee based Professional Services due to an uncured material breach by Fourth of these Terms and Conditions, or applicable Order or Statement of Work and any exhibits attached thereto. Subscriber may also terminate such Professional Services at Subscriber's convenience. Fourth may only terminate fixed fee based Professional Services due to Subscriber's uncured material breach of these Terms and Conditions, or applicable Order or Statement of Work and any Exhibits attached thereto. If (i) Subscriber terminates any fixed fee based Professional Services for any reason other than due to Fourth's uncured material breach of these Terms and Conditions, Order, or Statement of Work; or (ii) if Fourth terminates any fixed fee based Professional Services due to Subscriber's uncured material breach of these Terms and Conditions, Order, or Statement of Work, then Subscriber shall promptly pay Fourth all unpaid fixed fee amounts for the terminated Professional Services. Additionally, Subscriber shall not be entitled to a refund or credit for any prepaid fixed fee amounts.

3.4 **Professional Services Delays.** If Subscriber delays the scheduled start date or otherwise causes a delay in the delivery of Professional Services, Subscriber shall reimburse Fourth for all reasonable and actual costs incurred due to such delay. Additionally, delays by Subscriber may affect timelines or the work proposed in a Statement of Work or Order and may result in an increase in reimbursement costs and an increase in Fees subject to an additional Statement of Work or change order.

3.5 **Consent to Subcontract.** Subscriber hereby consents for Fourth to subcontract Professional Services to persons or companies qualified and certified by Fourth to provide Professional Services on Fourth's behalf. Subject to the limitations contained in these Terms and Conditions, Fourth shall be responsible for the actions of its Subcontractors.

3.6 **Change Orders and Project Leaders.** Changes to the Professional Services or a Statement of Work will not be effective unless mutually agreed upon by the parties in a written change order. Each party will designate a project leader as its single point of contact regarding the Professional Services.

3.7 **Additional Services.** If Subscriber requests changes to its account, implementation, deployment, configuration, or integration, or if Subscriber requests data migration, training, consulting, or other Services which require the provision of additional Services that were not previously identified on an Order or Statement of Work, then Subscriber may be required to purchase Professional Services at Fourth's then-current rates.

#### **4. FEES AND PAYMENT**

4.1 **Fees.** This Section 4 shall apply in respect of payment of Subscription Fees, Professional Services Fees, Processing Service Fees, and Training Fees (together "Fees"). Except as otherwise specified herein or in an Order, (i) Fees are based on Services subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term. The Fees for each Location may be based on the average number of Users or employees at such Location during the then current Term on a tiered basis, and Fourth reserves the right to change such fees if such number of Users or employees significantly increases or decreases.

4.2 **Subscription Fees.** Subscription Fees may be based on a per Location basis as specified in an Order. Unless otherwise stated in an Order, the Subscription Commencement Date for each Location is the Effective Date of the applicable Order. Subscription Fees identified in an Order ("Subscription Fees") shall be charged for all Locations beginning on the Subscription Commencement Date for each Location and shall be paid on the recurring basis set forth in the applicable Order (as "Billing Frequency"). In the absence of a stated billing frequency, Subscription Fees will be paid on a calendar monthly basis in advance continuing through the end of the Term, unless otherwise stated in an Order. Partial payments will be pro-rated on a daily basis for the initial invoice only. Subscription Fees include initial standard setup services for the Subscription Service. Standard setup services include site provisioning, Subscription Service standard integration with Subscriber's point of sale (for Fourth supported points of sale only) and granting Subscriber Access to the Subscription Service. Standard setup services do not include, without limitation, master data uploads, customer specific configurations, non-supported or custom integrations, training, custom development, or data migration. If Subscriber orders Subscription Services for additional Locations during an already existing Term, as long as the additional Locations are of the same size and type as the existing Subscriber Locations,

Fourth shall charge Subscriber the same per Location Subscription Fees for the additional Locations.

4.3 Price Increases. Fourth is entitled to increase the Subscription Fees for all applicable Locations, each year of the Initial Term and the Renewal Terms. If Subscriber elects to not renew a Subscription Service in accordance with Section 5.1, Subscriber shall be responsible for a full month's Subscription Fees for the month the Subscription Service is effectively terminated.

4.4 Additional Locations. If Subscriber requires an increase in the number of Locations where personnel are accessing the Subscription Service, Subscriber shall execute an additional Order for such Locations. In such event, Fourth shall deliver a subsequent Order and invoice reflecting the changes at the then current price. Such Order shall be billable and payable per the terms of these Terms and Conditions.

4.5 Changes in Ownership; Assignment. Transferring ownership of a Location or business entity that owns a Location or any other attempted assignment including any proceeding under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding ("Assignment") does not terminate or transfer any Services, Order, Statement of Work, or these Terms and Conditions. If Subscriber initiates an Assignment to a third party ("Transferee"), Subscriber agrees to remain responsible for performance of its obligations under this Agreement (including payment of Fees) until (i) Fourth receives a transfer request containing true and correct contact and billing information of the Transferee and a certification by the Transferee indicating that Transferee has agreed to assume all of Subscriber's obligations under this Agreement and the applicable Order for the transferred Locations, and (ii) Fourth provides Subscriber a written acceptance of such request. Subscriber and the Transferee will cooperate with any requests for information and documentation made by Fourth for the purposes of evaluating the transfer request and verifying any information provided to Fourth in connection with the transfer request. Fourth may reject the request in its sole discretion or if Fourth determines that the Transferee is not financially stable or is otherwise an unsuitable contracting party. Subscriber further agrees that Fourth may continue to bill Subscriber for all Fees otherwise due until Fourth approves a transfer request and has received and verified all documentation necessary to demonstrate that ownership and Subscriber's obligations hereunder have been transferred. Fourth may require Subscriber to execute a data transfer consent form prior to providing Access to any Service or historical Subscriber Data to a Transferee and its Users. Additionally, Fourth may terminate all Access to Subscriber and any Transferee and their Users until Fourth has received such executed consent.

4.6 Bundled Pricing, Promotional Pricing, and Billing Frequency. If Subscription Services and/or Processing Services are sold as a bundle and are subsequently unbundled or if the Billing Frequency as defined in the applicable Order are changed at Subscriber's request, such Services ordered shall be billed at Fourth's then current rates for the remainder of the Term and any subsequent Renewal Term. If any Services are provided at a discounted cost (as identified on the applicable Order) or at no charge during the Initial Term, such Services shall be billed at Fourth's then current rates for any subsequent Renewal Term. Except as otherwise provided for in an Order or these Terms, Subscription Fees and Processing Service Fees are noncancelable and nonrefundable.

4.7 Professional Services Fees and Expenses. Fees for Professional Services shall be defined in a Statement of Work or Order and any exhibit attached thereto. For Professional Services based on time and materials, invoices may be issued on a monthly basis or as otherwise stated in the Statement of Work or Order. For Professional Services based on fixed fees, all Fees shall be due and payable upon the execution of the applicable Order or Statement of Work and are nonrefundable unless otherwise stated in the applicable Order or Statement of Work. Professional Services Fees exclude expenses for travel, food and lodging, that may be reasonably required for Fourth to perform the Professional Services.

4.8 Training and Training Fees. All Subscription Services require at least one training session. Unless otherwise stated on an Order or Statement of Work, Subscriber must participate in all training courses within sixty (60) days from the Subscription Commencement Date of the applicable Subscription Service. Training sessions shall be on a fixed fee basis and shall be due and payable upon the execution of the applicable Order or Statement of Work. Training fees are nonrefundable. If Subscriber fails to participate in training at the agreed upon time, Subscriber shall be required to pay additional Training Fees for additional training sessions.

4.9 Processing Service Fees. "Processing Services" (as defined in the applicable Order), are subject to the fees identified in the Order ("Processing Service Fees"), and shall be performed, charged, and billed in accordance with

the terms of the applicable Order (i.e. “Weekly”, Bi-Weekly”, “Monthly”). Processing Service Fees contained in an Order are an estimate only and all such Fees shall be charged based on actual Services performed by Fourth during each billing period. Two (2) days prior to Fourth’s performance of Processing Services for each billing period, Subscriber shall deposit by ACH, electronic transfer, or reverse wire transfer a sufficient amount of funds to adequately cover the anticipated Processing Service Fees (and applicable funds for payroll or other distribution applicable to the Services) for at least one billing period (“Processing Service Fee Deposit”). Subscriber hereby authorizes Fourth to deduct an amount equal to the Processing Service Fees (and applicable funds for payroll or other distribution applicable to the Services) from the Processing Service Fee Deposit contemporaneously with each billing period. Subscriber's failure to fund a Processing Service Fee Deposits (or if a deposit is returned for insufficient funds) is a material breach of these Terms and shall subject Subscriber to Late Fees and Fourth, in its sole discretion, may change in the transfer of funds deposit method and timing of the Processing Service Fee Deposits and exercise any other remedy it may have under these Terms and applicable law.

4.10 Payment Terms. Unless otherwise stated in an Order, Statement of Work, or payment authorization form, Subscriber shall pay all Fees via Automated Clearinghouse (“ACH”), Electronic Funds Transfer (“EFT”), or by credit card. Unless otherwise stated in an Order or Statement of Work, all Fees payable under these Terms and Conditions are denominated in and shall be paid in United States dollars, and Subscriber will pay all such Fees in United States dollars. For any late payments, Fourth reserves the right to impose late fees equal to the lesser of (a) 1.5% of the unpaid balance per month, or the highest rate permitted by applicable law, determined and compounded daily from the date due until the date paid (“Late Fees”). Subscriber will reimburse any costs or expenses (including without limitation collections and attorneys’ fees) incurred by Fourth to collect any amount that is not paid when due. Fees due from Subscriber under these Terms and Conditions may not be withheld or offset by Subscriber against other amounts due to Subscriber for any reason. If Subscriber fails to timely pay any Fees due under these Terms and Conditions, Fourth may, without limiting any of its other rights or remedies, refer Subscriber’s account to a third-party collections agency, report delinquent Fees to credit reporting agencies, suspend performance of any or all Services, and/or terminate the applicable Order or Statement of Work or the Terms and Conditions.

4.11 Payment Authorizations. Subscriber hereby authorizes Fourth to initiate debit entries to Subscriber’s account specified in the Order, through ACH or ETF transfers, credit card, or other payment method as stated in an Order, in order to satisfy all payment requirements hereunder, and will provide Fourth at least thirty (30) days’ notice of any change in Subscriber’s account.

4.12 Taxes. The Fees stated on the Order do not include local, state, federal or foreign taxes (e.g., value-added, sales or use taxes), fees, duties, or other governmental charges resulting from these Terms and Conditions (collectively, “Taxes”). Subscriber is responsible for paying all applicable Taxes, excluding Taxes based on Fourth’s net income or property. If Fourth determines it has the legal obligation to pay or collect Taxes, Fourth will add such Taxes to the applicable invoice and Subscriber will pay such Taxes, unless Subscriber provides Fourth with a valid tax exemption certificate from the appropriate taxing authority. Subscriber is wholly responsible for self-assessing, reporting, and remitting applicable Taxes to the appropriate taxing authorities if Fourth does not add such Taxes to its applicable invoices. If a taxing authority subsequently inquires or pursues Fourth for unpaid Taxes for which Subscriber is responsible under these Terms and Conditions and which were not paid by Subscriber to Fourth, Subscriber agrees to cooperate with Fourth in good faith during such inquiry or pursuit, and Fourth may invoice Subscriber and Subscriber will pay such Taxes to Fourth or directly to the taxing authority, plus all applicable interest, penalties and fees.

## **5. TERM AND TERMINATION**

5.1 Term. All initially ordered Subscription Services shall be licensed beginning upon the Effective Date for a period of three (3) years, unless otherwise stated in an applicable Order (“Initial Term”). After the Initial Term, all Subscription Services, Technical Support Services, and all Processing Services shall automatically renew for successive one (1) year terms unless a different Renewal Term is specified on the Order (each, a “Renewal Term” and together with the Initial Term, the “Term”) unless either party provides written notice of its intent not to renew no later than ninety (90) days prior to the expiration of the applicable Term.

5.2 Termination for Material Breach. If either party breaches a material term of an Order, Statement of Work, any exhibits attached thereto, or these Terms and Conditions and fails to correct the breach within 30 days of receipt

of written notification specifying such breach (including Subscriber's breach for nonpayment), then the non-breaching party may terminate the applicable Service, Order or Statement of Work upon providing the other party written notice.

5.3 Post-Termination Obligations. If any Service, Order, or Statement of Work, or these Terms and Conditions are terminated for any reason, Fourth shall have no obligation to provide the applicable Service(s) after the effective date of the termination. If a Service, Order, or Statement of Work, is terminated by Fourth due to Subscriber's uncured material breach or if the Subscriber elects to terminate any Subscription Service or Order prior to the end of its then current Term, absent an uncured material breach by Fourth, Subscriber shall immediately pay to Fourth the total remaining Subscription Fees and Processing Service Fees for the remainder of the then current Term and all other Fees that have accrued prior to the effective termination date. If an Order, Statement or Work, or these Terms and Conditions is terminated due to Fourth's uncured material breach, Subscriber will immediately pay to Fourth any Subscription Fees, Processing Service Fees, Professional Services Fees, and all other Fees that have accrued prior to the effective date of the termination and Subscriber shall be relieved of its obligation to pay Subscription Fees for the remainder of the applicable Term. Upon written request, Subscriber shall be provided with limited Access to the terminated Subscription Service for fourteen (14) days following termination solely for the purpose of retrieving Subscriber Data through standard reports. Any Subscriber request for retrieval of Subscriber's Data by Fourth personnel must be requested through a support ticket submitted to Fourth's Support Team. For such requests, Fourth will provide a Statement of Work outlining any required Fees for such retrieval. Only upon Subscriber's execution of such Statement of Work shall Fourth be obligated to provide Subscriber Data to Subscriber.

## 6. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

6.1 Subscription Service and Documentation. The Subscription Service and Documentation are licensed, not sold, and except as explicitly granted herein, Fourth reserves and retains all rights, title, and interest in and to the Subscription Service, Documentation, and all Services and deliverables provided under these Terms and Conditions, including all intellectual property rights therein.

6.2 Subscriber Data. All data or information uploaded into or otherwise provided by or on behalf of a Subscriber to Fourth for processing ("Subscriber Data") is, between Fourth and Subscriber, Subscriber's property. Fourth's use and disclosure of all Subscriber Data shall be governed by its then-current data processing agreement, the current version of which is available at <https://www.fourth.com/dpa> ("DPA"). Subscriber grants to Fourth a nonexclusive, perpetual, irrevocable, worldwide, royalty-free and fully-paid license to use Subscriber Data to perform its obligations under these Terms and Conditions, to improve and enhance Fourth's products and Services, and as permitted under the DPA. In addition, Fourth shall have the right to access, use, modify, store, manipulate, distribute and publish in a de-identified format all Subscriber Data and all metrics, analytics, statistics or other data related to use of the Subscription Service, Integrated Subscription Services, and Third Party APIs for any legally permissible purpose, including, but not limited to, benchmarking purposes and for otherwise improving Services.

6.3 Confidential Information. This section supersedes all confidentiality provisions of all prior agreements between Fourth and Subscriber. "Confidential Information" means non-public information that a reasonable person should understand to be confidential due to its nature and the circumstances in which it was disclosed and that is disclosed by or on behalf of either party ("Disclosing Party") to the other party ("Receiving Party"), whether such information is disclosed before or after the Effective Date. Confidential Information excludes information that (i) was in the public domain prior to the time of disclosure; (ii) enters the public domain after disclosure through no action or inaction of the Receiving Party; (iii) is already known by the Receiving Party at the time of disclosure; (iv) is obtained by the Receiving Party from a third party without a breach of the third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. The Receiving Party may disclose the Disclosing Party's Confidential Information to its employees, consultants, and agents who are bound by obligations of confidentiality no less protective than those set forth in these Terms and Conditions. In addition, the Receiving Party may disclose the Disclosing Party's Confidential Information to the extent required by law so long as the Receiving Party gives the Disclosing Party prompt written notice prior to the disclosure and reasonable assistance in limiting disclosure or obtaining a protective order. Fourth may also disclose these Terms and Conditions to actual and potential investors and funding sources who agree to hold it in confidence. The Receiving Party agrees to take steps to protect the Disclosing Party's Confidential Information that are substantially similar to those it takes to protect its own proprietary information (but not less than reasonable care) to prevent the unauthorized disclosure of such Confidential Information. Except as otherwise expressly set forth in these



Terms and Conditions, the Receiving Party shall hold in confidence and not disclose (including without limitation distribute, transmit or transfer) or use the Confidential Information of the Disclosing Party or any portion thereof without the prior written consent of Disclosing Party except for the purpose of exercising its rights or performing its obligations under these Terms and Conditions. Upon any termination or expiration of these Terms and Conditions, and after a minimum thirty (30) day holding period, the Receiving Party will destroy or permanently obfuscate all of the Disclosing Party's Confidential Information in its possession; provided, however, that this requirement will not limit Fourth's rights to retain, use, and disclose data in accordance with the DPA and Section 6.2 of these Terms and Conditions. This Section 6.3 and the obligations set forth hereunder shall survive for five (5) years following expiration or termination of all Services subject to these Terms and Conditions.

## 7. WARRANTIES AND DISCLAIMER

7.1 Mutual Warranties. Each party represents and warrants to the other that (i) these Terms and Conditions constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (ii) during the performance of its obligations hereunder it will not violate any laws applicable to such performance, and that the performance of such obligations does not conflict with or result in a breach of any other agreement of such party or any judgment, order, or decree by which such party is bound; and (iii) it is not relying upon any statement, promise, or representation of the other party except as expressly stated herein.

7.2 Subscription Service Warranty. Fourth represents and warrants that the Subscription Service shall materially perform in accordance with the Documentation. For any material breach of a warranty, Subscriber's exclusive remedy shall be as provided in Section 5, Term and Termination.

7.3 Professional Services and Processing Services Warranty. Fourth shall perform all Professional Services and all Processing Services in a good and professional manner and in accordance with the industry standards for such Professional Services and Processing Services.

7.4 Personal Information. Subscriber represents and warrants that (a) except to the extent expressly requested in a data field specified by the Subscription Service or otherwise required by Fourth, Subscriber will not upload or enter into the Subscription Service or otherwise provide any information that may be deemed personal data, personal information or sensitive data of any individual person under the laws of any applicable jurisdiction (including, without limitation, the California Consumer Privacy Act, the EU's Global Data Protection Regulation, Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act of 1996, and Family Educational Rights and Privacy Act) (all of the foregoing information, "Personal Information"), without Fourth's prior written consent; and (b) if Personal Information is uploaded, entered, or otherwise provided, Subscriber and its Users have complied and will comply with all applicable laws with respect to the collection, transfer, and use of that Personal Information, including by obtaining any required third-party consents to transfer that Personal Information to servers associated with the Subscription Service located in the United States or elsewhere.

7.5 Disclaimer. THE DOCUMENTATION AND/OR SERVICES MAY INCORPORATE OR RELY ON DATA AND INFORMATION PROVIDED TO FOURTH OR THE SUBSCRIBER BY THIRD PARTIES, INCLUDING SUPPLIERS OF NUTRITIONAL AND ALLERGEN DATA AND INFORMATION TO THE SUBSCRIBER. THE SUBSCRIBER ACKNOWLEDGES AND AGREES THAT FOURTH IS NOT RESPONSIBLE FOR, HAS NO CONTROL OVER, AND IS UNDER NO DUTY TO VERIFY THE ACCURACY OF ANY SUCH DATA OR INFORMATION. THE SUBSCRIBER'S USE OF ALL SUCH DATA AND INFORMATION IS AT ITS OWN RISK, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FOURTH SHALL HAVE NO LIABILITY FOR ANY SUCH USE. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 7, FOURTH MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. FOURTH EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, QUIET ENJOYMENT, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICES. FOURTH DOES NOT WARRANT THAT ANY SERVICE OR DOCUMENTATION IS ERROR-FREE OR VIRUS-FREE, OR THAT OPERATION OR USE OF THE SUBSCRIPTION SERVICE WILL BE SECURE OR UNINTERRUPTED. FOURTH EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND

WARRANTIES THAT SUBSCRIBER'S USE OF ANY SERVICE WILL SATISFY ANY STATUTORY, ORDINANCE, OR REGULATORY OBLIGATIONS, OR GUARANTEE OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS, ORDINANCES, OR REGULATIONS, INCLUDING WITHOUT LIMITATION LABOR WAGE LAWS. SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. FOURTH IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

## **8. INDEMNIFICATION**

8.1 Indemnification by Fourth. Fourth will, at its expense, defend and hold harmless Subscriber from or settle any claim, proceeding, or suit brought by a third party ("Claim") against Subscriber to the extent that the Subscription Service infringes or misappropriates any intellectual property right of such third party, and will indemnify Subscriber from all damages, costs, and attorneys' fees finally awarded and unappealable against Subscriber as a result of such Claim; provided, however, that (a) Subscriber gives Fourth prompt written notice of the Claim; (b) Subscriber grants Fourth full and complete control over the defense and settlement of the Claim; (c) Subscriber provides reasonable assistance at Fourth's request in connection with the defense and settlement of the Claim; and (d) Subscriber complies with any settlement or court order made in connection with the Claim.

Fourth will have no obligation under this Section 8.1 for any Claim to the extent arising out of or is based upon (i) use of the Subscription Service in combination with other products or services if such Claim would not have arisen but for such combination; (ii) compliance with requirements or specifications required by or provided by or on behalf of Subscriber, if such Claim would not have arisen but for such compliance; (iii) use of the Subscription Service for purposes not intended or other than in accordance with these Terms and Conditions; (iv) use of the Subscription Service inconsistent with instructions or Documentation provided by Fourth; or (v) any modification of the Subscription Service. This Section 8.1 states Fourth's sole liability, and Subscriber's exclusive remedy, for any actual or alleged infringement or misappropriation of any third-party intellectual property right by the Subscription Service.

In the event of such a Claim being brought or threatened or in the event an injunction is issued or threatened, Fourth may, at its sole option and expense, either procure for Subscriber the right to continue to use the Subscription Service, modify the Subscription Service in a manner that does not materially degrade the Subscription Service's functionality, or terminate the Subscription Service. If Fourth terminates the Subscription Service under this Section, Subscriber shall not be liable for any Subscription Fees that Subscriber would otherwise be obligated to pay after the termination date.

8.2 Indemnification by Subscriber. Subscriber will, at its expense, defend and hold harmless Fourth from or settle any Claim against Fourth to the extent arising from or relating to (i) the Subscriber Data, Integrated Data, or other materials or information provided by or on behalf of Subscriber that infringes on any patent, copyright or trademark, or misappropriates any trade secret; (ii) any violation of law by Subscriber, its contractors or its agents (including the employees of any of the foregoing); (iii) Subscriber, its contractors or its agents (including the employees of any of the foregoing) use of the Subscription Service to threaten, defame, bully, harass, or harm persons or their property, and will indemnify Fourth from all damages, costs, and attorneys' fees finally awarded and unappealable against Fourth as a result of such Claim; provided, however, that (a) Fourth gives Subscriber prompt written notice of the Claim provided that Fourth's failure to provide such prompt written notice shall not relieve Subscriber of its defense and indemnification obligations except to the extent Subscriber establishes that such failure materially prejudiced Subscriber's defense of the indemnifiable Claim; (b) Fourth grants Subscriber full and complete control over the defense and settlement of the Claim provided that Subscriber may not enter into any settlement with respect to an indemnifiable Claim without Fourth's written consent; (c) Fourth provides reasonable assistance at Subscriber's request in connection with the defense and settlement of the Claim; and (d) Fourth complies with any settlement or court order made in connection with the Claim. In addition, if Fourth is compelled by subpoena to respond or reply to a third-party Claim brought against Subscriber requiring Fourth to collect or retrieve any Subscriber Data or Integrated Data, Subscriber agrees to promptly pay Fourth Professional Services Fees and all reasonable expenses related to such third-party Claim.

## 9. LIMITATIONS OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS AND CONDITIONS, FOURTH WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO SUBSCRIBER OR ANY OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE SERVICES OR THESE TERMS AND CONDITIONS, OR FOR ANY LOST GOODWILL OR BUSINESS VALUE, LOST PROFITS, OR LOSS OF BUSINESS OR DATA, EVEN IF FOURTH IS APPRISED OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

UNDER NO CIRCUMSTANCES WILL FOURTH'S TOTAL LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THE SERVICES OR THESE TERMS AND CONDITIONS (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL FEES PAID BY SUBSCRIBER TO FOURTH UNDER THE APPLICABLE ORDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT INCREASE THIS LIMIT.

THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY WHETHER OR NOT (a) SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE; (b) SUCH LIABILITY IS FORESEEABLE OR CONTEMPLATED BY THE PARTIES AT THE EFFECTIVE DATE; AND (c) THE DAMAGED PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION ON LIABILITY HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW. EACH PROVISION OF THESE TERMS AND CONDITIONS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THESE TERMS AND CONDITIONS BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY FOURTH TO SUBSCRIBER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS AND CONDITIONS. THE LIMITATIONS IN THIS SECTION 9 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THESE TERMS AND CONDITIONS.

## 10. GENERAL

10.1 Relationship. Fourth will be and act as an independent contractor (and not as the agent, partner, or representative of Subscriber) in the performance of Services governed under these Terms and Conditions.

10.2 Assignability. Subscriber may not assign any Order, these Terms and Conditions, or any of the interests, rights, or obligations granted under either, in whole or in part, whether voluntarily or by operation of law, contract, merger (whether Subscriber is the surviving or disappearing entity), stock or asset sale, consolidation, dissolution, through government action, or otherwise. Any such attempted assignment, except with the express written consent of Fourth, is null and void, and Fourth may immediately terminate any and all Orders, and these Terms and Conditions. These Terms and Conditions will bind and inure to the benefit of each party's permitted successors and assigns.

10.3 Subcontractors. Fourth may use a subcontractor or other third party in carrying out its obligations under these Terms and Conditions so long as Fourth remains responsible for all of its obligations under these Terms and Conditions.

10.4 Notices. Any notice required or permitted to be given in accordance with these Terms and Conditions will be effective if it is in writing and sent by certified or registered mail, or overnight courier, return receipt requested, to the appropriate party at the address set forth on Order and with the appropriate postage affixed. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section 10.4. Notices are deemed given two (2) business days following the date of mailing or one business day following delivery to a courier.

10.5 Force Majeure. Except for the obligation to pay Fees, neither party will be liable for or be considered in breach of or in default of their obligations under these Terms and Conditions to the extent the failure or delay to perform such obligations result, directly or indirectly, from any cause or condition beyond a party's reasonable control, so long as that party uses commercially reasonable efforts to avoid or remove the causes of non-performance. Such causes and conditions include without limitation: acts of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); war; hostilities (whether war be declared or not); an act of foreign enemies; an act of terrorism; embargo; rebellion; revolution; contamination by hazardous or radioactive material; or an outbreak of infectious disease on a local, regional, national, or global scale.

10.6 Governing Law and Jurisdiction. These Terms and Conditions will be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Texas, without reference to its choice of law rules. Subject to Section 10.7 of these Terms and Conditions, if for any reason a claim proceeds in court rather than in arbitration, each party waives any right to a jury trial, and Subscriber and Fourth submit to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Austin, Texas and waive all challenges to such jurisdiction and venue including, without limitation, *forum non conveniens*. Neither the Uniform Computer Information Transaction Act (UCITA) nor The United Nations Convention on Contracts for the International Sale of Goods shall apply to these Terms and Conditions or any transaction contemplated hereunder.

10.7 ARBITRATION. EXCEPT FOR DISPUTES ARISING FROM OR RELATED TO INTELLECTUAL PROPERTY RIGHTS OR OWNERSHIP AND THE RIGHT OF EITHER PARTY TO APPLY TO A COURT OF COMPETENT JURISDICTION FOR A TEMPORARY RESTRAINING ORDER, A PRELIMINARY INJUNCTION, OR OTHER EQUITABLE RELIEF TO PRESERVE THE STATUS QUO OR PREVENT IRREPARABLE HARM, ANY ACTION ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS WILL BE SETTLED BY BINDING ARBITRATION IN AUSTIN, TEXAS, U.S.A. UNDER THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION BY ONE ARBITRATOR APPOINTED IN ACCORDANCE WITH SUCH RULES. SUBSCRIBER AGREES THAT IT WILL NOT SERVE AS A CLASS REPRESENTATIVE OR PARTICIPATE AS A CLASS MEMBER IN AN ARBITRATION PROCEEDING, THAT ONLY ITS CLAIMS WILL BE ADDRESSED IN THE ARBITRATION PROCEEDING, AND THAT ADDITIONAL PARTIES CANNOT BE ADDED TO THE ARBITRATION PROCEEDING UNLESS SUBSCRIBER AND FOURTH AGREE IN WRITING BEFORE THE ARBITRATION. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATORS IS BINDING AND MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION. THE PREVAILING PARTY WILL BE ENTITLED TO RECEIVE FROM THE OTHER PARTY ITS ATTORNEYS' FEES AND COSTS INCURRED IN CONNECTION WITH ANY ARBITRATION OR LITIGATION INSTITUTED IN CONNECTION WITH THESE TERMS AND CONDITIONS.

10.8 Right to Preliminary and Injunctive Relief. Each party agrees that money damages would be an inadequate remedy in the event of a breach or threatened breach of the provisions in these Terms and Conditions protecting such party's intellectual property or such party's Confidential Information, and that in the event of such a breach or threat, such party, in addition to any other remedies to which it is entitled, is entitled to such preliminary or injunctive relief (including an order prohibiting the other party from taking actions in breach of such provisions), without the need for posting bond, as well as specific performance as may be appropriate to preserve all of such party's rights.

10.9 Publicity. Fourth may include Subscriber's name and logo in its customer lists and on its website. Upon signing, Fourth may publicly announce the relationship and the manner in which Subscriber will use the Fourth solution.

10.10 Other Terms. Any waiver of the provisions of these Terms and Conditions, an Order, or Statement of Work or of a party's rights or remedies thereunder must be in writing to be effective. Failure, neglect, or delay by a party to enforce such provisions or its rights or remedies at any time, will not be construed as a waiver of the party's rights and will not in any way affect the validity of the whole or any part of these Terms and Conditions, Order, or Statement of Work or prejudice the party's right to take subsequent action. Exercise or enforcement by either party of any right or remedy under these Terms and Conditions will not preclude the enforcement by the party of any other right or remedy under these Terms and Conditions or that the party is entitled by law to enforce. There are no third-party beneficiaries to these Terms and Conditions, including, without limitation, Subscriber's Users. If any part of these Terms and

Conditions is found to be illegal, unenforceable, or invalid, the remaining portions of these Terms and Conditions will remain in full force and effect. Orders and Statements of Work may be executed in any number of identical counterparts, notwithstanding that the parties have not signed the same counterpart, with the same effect as if the parties had signed the same document. All counterparts will be construed as and constitute the same agreement. Orders and Statements of Work may also be executed and delivered by facsimile, email, or electronically and such execution and delivery will have the same force and effect of an original document with original signatures.

10.11 Entire Agreement. These Terms and Conditions, together with any Order or Statement of Work and any Exhibits attached thereto is the final and complete expression of the agreement between the parties regarding the Services, Documentation, and all materials and deliverables provided by Fourth. These Terms and Conditions supersede all previous oral and written communications between the parties regarding these matters and may be changed only by a written agreement signed by an authorized agent of both parties. Sections 1.3, 1.4, 3.2, 4, 5.3, 6, 7.1, 7.4, 7.5, 8, 9 and 10 will survive the termination of these Terms and Conditions. If there is a conflict between a Statement of Work, an Order, and Exhibit and these Terms and Conditions, such conflict will be resolved in the following order of precedence: The Statement of Work, the Order and any exhibit attached thereto, then these Terms and Conditions. No employee, agent, or other representative of Fourth has any authority to bind Fourth with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in these Terms and Conditions. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter these Terms and Conditions. Headings are used for reference only and will not be considered when interpreting these Terms and Conditions. Fourth shall not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to these Terms and Conditions, Orders, and Statements of Work that is proffered by Subscriber or any third party in any acceptance, confirmation, invoice, purchase order, receipt, correspondence, or otherwise, unless Fourth specifically agrees to such provision in a writing signed by an authorized officer of Fourth.