

## PRODUCT SPECIFIC TERMS

In addition to the General Terms and Conditions or your negotiated master agreement (“Terms”) the following terms and conditions shall apply to the applicable Services listed herein (“Product Specific Terms”). These Product Specific Terms are incorporated with the Terms and in the event of a conflict between the Terms and these Product Specific Terms, these Product Specific Terms shall take precedence for the applicable Service. Please note that these Product Specific Terms may be updated by us from time to time with the changes affecting you at the time of your subsequent renewal of the applicable Service.

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Fourth is not a party to the DiscoverLink Content Use Agreement and Subscriber acknowledges and agrees that Fourth shall have no liability under such agreement or for any DiscoverLink content.

### FOURTH ESSENTIALS AND FOURTH PLUS

#### 14 Day Free Trial.

1. Registration and Termination. A valid email address is required to begin your 14 day free trial. Your free trial begins upon the day you register. If you do not upgrade to the paid version of Fourth Essentials or Fourth Plus prior to the end of your free trial period, access to the Subscription Service and data uploaded into the Subscription Service (Subscriber Data) will be automatically and immediately terminated. You may only use the Free Trial offer once per Location.

#### Paid Subscriptions.

2. License/Usage Model. Fourth Essentials and Fourth Plus is licensed by the number of Active Users for each monthly billing period per Location. An Active User is person that has an account in Fourth Essentials or Fourth Plus that has an 'Account Status' set to 'Active' at any time during the applicable billing month. Active Users include any Above Store Console accounts even if such accounts are hidden from the staff list. A person that is an Active User at multiple Locations in the same month shall require a license for each Location. Fourth shall bill you for each Location where such person is an Active User. Fourth assisted training is not required nor included in a Fourth Essentials or Fourth Plus subscription. You are solely responsible for maintaining the Account Status of its users. Fourth shall not provide any refunds or credits for Subscriber’s failure to maintain an accurate Account Status for its users.

#### 3. Commitment Term, Billing, And Termination.

a. Monthly Subscription. If you elect a month to month subscription, Fourth shall bill your credit card on file in arrears based on your total number of Active Users from the previous month. You may use the same or a different credit card as the billing method for multiple Locations. We will begin to charge you for your use beginning on the date your free trial expires, or if you have not previously entered in your billing information, when you provide us your billing

information, whichever is later. Fourth shall bill you on a monthly recurring basis thereafter. You may cancel your month to month subscription at any time from your account billing page. Any subscription or use that is less than a full month shall be prorated. Once you terminate your subscription, access to the Subscription Service and data uploaded into the Subscription Service will be automatically and immediately terminated. All monthly subscriptions automatically renew on a monthly basis unless you terminate your subscription in accordance with these Terms.

b. Annual Subscription. If you elect a prepaid annual subscription, you must provide the number of Locations and number of Active Users you plan to schedule per Location. Fourth shall then bill your credit card for the total number of all Active Users from all Locations (“Prepaid Active User Licenses”) for the applicable twelve-month period at a discounted rate. Fourth shall charge you additional non-discounted Subscription Fees for each additional Active User that is over your Prepaid Active User License total in the applicable month (“License Overuse”). License Overuse Fees shall be billed to your credit card at the end of each applicable month in which the License Overuse has occurred. You may cancel your annual subscription at any time from your account billing page. Once you terminate your subscription, access to the Subscription Service and data uploaded into the Subscription Service will be automatically and immediately terminated. You will not be entitled to any refunds or credits for any use below your Prepaid Active User License total or in the event you terminate your Subscription Services for any reason. All annual subscriptions automatically renew on an annual basis for additional 12 months terms unless you terminate your subscription in accordance with these Terms, prior to the end of your then current term.

4. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS AND CONDITIONS, FOURTH WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO SUBSCRIBER OR SUBSCRIBER’S USERS FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO LOST GOODWILL OR BUSINESS VALUE, LOST PROFITS, OR LOSS OF BUSINESS, EVEN IF FOURTH IS APPRISED OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. DURING THE FREE TRIAL PERIOD UNDER NO CIRCUMSTANCES WILL FOURTH’ TOTAL LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED ONE HUNDRED DOLLARS (\$100). THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT INCREASE THIS LIMIT.

5. Warranty. DURING YOUR FREE TRIAL PERIOD FOURTH MAKES NO WARRANTIES FOR THE SUBSCRIPTION SERVICE AND DELIVERS SUCH SERVICE ON AN “AS IS” BASIS. FOURTH DISCLAIMS ALL WARRANTIES 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, NON-INFRINGEMENT. FOURTH DOES NOT WARRANT THAT ANY SERVICE OR DOCUMENTATION IS ERROR-FREE OR THAT OPERATION OR USE OF THE SUBSCRIPTION SERVICE WILL BE SECURE OR UNINTERRUPTED. FOURTH EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR 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.

6. Data Retention. Fourth may, but is not obligated to, delete all Subscriber data within 60 days after Subscriber has terminated its Subscription. If you delay in entering in your billing information after the free trial has expired or if you elect to renew your subscription after having cancelled, the Subscriber Data from your previous use may not be available.

## USAGE BASED SERVICES

Should Subscriber order payroll services, FOURTH agrees to compute and prepare pay checks and to make appropriate tax withholdings based solely upon information supplied to FOURTH by Subscriber (hereafter such services are referred to as "Payroll Services".) All hours and other payroll information needed by FOURTH (including but not limited to the exempt or non-exempt status of employees under applicable wage and hour laws) in order to prepare pay checks shall be submitted by Subscriber in writing to FOURTH at least 5 days prior to the date FOURTH is to prepare pay checks. Subscriber assumes sole and exclusive responsibility for the consequences of supplying erroneous or late information to FOURTH. Subject to the requirements, terms and conditions set forth herein, FOURTH will process payroll for Subscriber's employees, from Subscriber's bank account, either by preparing and distributing payroll checks to Subscriber for execution and dissemination ("check delivery") or by deposit of net wages into Subscriber's employees' designated accounts (full service direct deposit, or "FSDD"), or both.

Should Subscriber contract for tax filing services, Subscriber shall sign each additional form in order for the accurate tax filing documents to be completed. Where Subscriber contracts for tax filing services, Subscriber shall ensure sufficient good funds to cover Subscriber's tax deposits and other payments are in the account from which FOURTH shall make withdrawals, including but not limited to payments to FOURTH for its service fee, no later than the day prior to the date the payroll checks are dated, for the applicable payroll. If sufficient good funds to cover Subscriber's tax deposits and payments are not present in the account, FOURTH may, at its sole discretion, immediately cease providing Subscriber with tax filing services and/or payroll services, whereupon Subscriber will immediately become responsible for preparation of all payroll checks and for all tax deposits and filings then and thereafter due and related penalties and interest. Notwithstanding anything to the contrary, FOURTH shall have no obligation to make any payment to any governmental authority or to any other person, unless good and negotiable funds are first deposited by Subscriber in the account from which FOURTH makes its withdrawals.

All fees due FOURTH for services provided by FOURTH are to be paid no later than TWO (2) business days prior to the date paychecks are to be distributed to assigned employees. Any payments received from Subscriber returned for non-sufficient funds or for any other reason will be charge a one-time fee of:

1st Return = \$250  
2nd Return = \$500  
Additional Returns = 1.5% of return amount  
(Minimum of \$500)

A late payment charge of one and one-half percent (1.5%) will be added to all accounts not paid when due. Checks returned unpaid from Subscriber's bank will be subject to the late payment charge plus any additional costs incurred by FOURTH. An unpaid balance will also be subject to periodic charge of one and one-half percent (1.5%) per calendar month (or such maximum lesser interest amount if set by applicable law at a lower amount) until paid in full. FOURTH reserves the right to, in its sole discretion, to change the payment method and timing by Subscriber, or terminate this Agreement if full payment is not made when due.

Should Fourth be forced to seek reimbursement from Subscriber for any wages, payroll Service Fees, administrative fees, or other monies due and owing Fourth, Subscriber shall further be responsible for any and all costs of collection, including attorney's fees and costs. Fourth may charge additional fees for any refilings, amendments, or corrections of initial data sent to us.

Subscriber will, at its sole expense, defend Fourth from and settle any claim, fine, fees, or penalties claimed or levied against Fourth to the extent arising from or relating to its breach of the General Terms and Conditions or the Product Specific Terms including without limitation Subscriber not providing required information in a complete, accurate, and timely manner, and will indemnify Fourth from all damages, costs, fines, fees, penalties, and attorneys' fees finally awarded and unappealable against Fourth as a result of such Claim, including without limitation any penalties and fines from a government entity for any late, incomplete, incorrect, data including any required refiling or amendments to initial filings.

Subscriber understands that FOURTH is not in any way acting as an employer, co-employer, joint employer, or as an employment agency with regard to any of Subscriber's employees.

Subscriber specifically authorizes FOURTH to conduct a credit and background reference check on Subscriber and such officers of Subscriber as FOURTH deems appropriate in compliance with the requirements of law.

Subscriber acknowledges and agrees that FOURTH is not engaged in the practice of law or the provision of legal services, and that Subscriber alone is completely and independently responsible for its own legal rights and obligations.

**TEN KITES**

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