



GENERAL TERMS AND CONDITIONS FOR DATA PROVIDERS

Effective Date: September 29, 2023

These General Terms and Conditions for Data Providers (these “**Terms**”) apply to Data Providers and their Authorized Users in relation to (a) sharing of Data through the Platform and, where applicable, and (b) access and use of the Platform.

Data Provider accepts and agrees to be bound by these Terms by either (1) clicking a box indicating acceptance or (2) accessing or using the Platform in any manner or (3) executing an Order Form or other document that references these Terms (each action qualifying as “**Acceptance**”). The individual accepting these Terms is accepting such on behalf of the Data Provider and represents that (s)he has the authority to bind the Data Provider. FourKites may amend these Terms as may be necessary, for example, to comply with applicable laws and/or to reflect changes to the Platform. FourKites shall notify Data Provider electronically of any updates to these Terms. Data Provider’s continued sharing of the Data and/or access or use of the Platform thereafter shall constitute acceptance of, and consideration for, such amendments.

Capitalized terms have the meanings ascribed to them throughout these Terms.

1. DEFINITIONS

Authorized User means a Data Provider’s or its affiliates’ employees who are authorized by Data Provider to access and use the Platform pursuant to these Terms.

Carrier means a party that handles Shipments.

Data Provider means the Carrier, Telematics Provider, broker, freight forwarder or other third-party entity providing Data to FourKites and/or accessing and using the Platform that has accepted these Terms.

Data means any data Data Provider or its Authorized Users share or input into the Platform with respect to a Shipment including, without limitation, telematics and/or other location data (e.g., GPS position, EDI status updates), dispatching data, truck number, appointment data, load creation data, order data, invitations to Carriers to join the Platform and instant messages and other electronic communication data to other Customers.

FourKites means:

- where Data Provider is located in the European Economic Area, Switzerland or the United Kingdom: FourKites B.V. with principal offices at Schiphol Boulevard 175, 1118 BG Schiphol, Netherlands;
- in any other case: FourKites, Inc., a Delaware corporation, with principal offices at 110 N. Wacker Drive, Suite 4550, Chicago, IL 60606.

FourKites Materials means the Platform (including all updates, customizations, and/or modifications thereto) and any associated documentation or manuals accessible at the [Knowledge Base](#) on the Platform or other materials provided in or with the Platform, including all intellectual property rights therein.

Customer means any party that is a direct or indirect customer of FourKites for which Data Provider has Data for Shipments that FourKites is tracking for such party. For clarity, where Data Provider is using the Platform to track and manage its Shipments, Data Provider is acting as a Customer.

Platform means FourKites’ patented (U.S. Patent No. 11,017,347 and U.S. Patent No. 11,195,139) proprietary cloud-based, online real-time predictive supply chain visibility platform, APIs, and mobile and/or device applications, which, among other things, processes data provided by shippers, carriers, telematics providers, truckers, brokers and other participants within the logistics and transportation industry to better plan, manage, and track freight location and/or orders (i.e., “FourKites Visibility Cloud®”) and/or manage ocean shipments (i.e. “Dynamic Ocean”®) or yards (i.e., “Dynamic Yard®”) and otherwise communicate with one another.

Platform Partner means a third party that integrates its platform with the FourKites Platform to enable the parties to share Data for Customers’ Shipments.



Purpose means sharing and using Data to enable FourKites to provide supply chain visibility and related services through the Platform, including, without limitation, making available Shipment and order visibility data and related analytics and reports, to Customers, Platform Partners or to other third parties as directed by Customer.

Shipment means a transport of goods by truck, rail, ship or aircraft.

Telematics Provider means any telematics provider or other supplier of GPS tracking devices or any other devices and services that are or may be used to obtain any information related to transportation services, including, but not limited to, GPS tracking information and other information registered concerning a Shipment.

The terms “**controller**”, “**business**”, “**processor**”, “**services provider**”, “**personal data**”, and “**processing**” shall have the meanings given to them under the applicable privacy laws, including where applicable the EU General Data Protection Regulation, and the California Consumer Privacy Act of 2018.

2. BACKGROUND

- 2.1. Data Provider has Data for Shipments of one or more Customers that FourKites has been requested to provide supply chain visibility and related services through the Platform.
- 2.2. To the extent Data Provider has been granted user access to the Platform, Data Provider’s and its Authorized Users’ access and use of the Platform are subject to the additional terms in **Exhibit A**.

3. ACCESS AND USE OF DATA

- 3.1. Data Provider hereby grants to FourKites and its affiliates a limited, non-exclusive, royalty-free license to incorporate the Data, and/or any API the Data Provider may provide to FourKites to carry out the Purpose and to copy, make available and otherwise use the Data in accordance with these Terms.
- 3.2. FourKites will only use the Data necessary to carry out the Purpose. In the event Data Provider provides any Data not necessary for the Purpose, Data Provider authorizes FourKites to delete such Data.
- 3.3. Data Provider understands and agrees that FourKites makes the Data pertaining to a Customer available to (a) any authorized Platform user of such Customer; (b) any third party through the Platform to the extent requested or authorized by such Customer; (c) the applicable Platform Partner where such Customer is receiving supply chain visibility and related services through such Platform Partner; and (d) as otherwise authorized by such Customer.
- 3.4. Notwithstanding anything to the contrary in these Terms, Data Provider agrees that FourKites may anonymize or aggregate the Data (the “**Aggregate Data**”) to prepare reports, analyses and enhancements and to incorporate such Aggregate Data containing the Data into other features or work product in connection with the Platform. FourKites shall own and retain all right, title, and interest in and to Aggregate Data.
- 3.5. At any time, Data Provider may withdraw approval for sharing Data with a specific Customer electronically through the Platform or by providing prior written notice to FourKites. Following Data Provider’s withdrawal of an approval for a specific Customer FourKites shall continue to have the right to use the Data collected prior to the date of withdrawal to fulfill the Purpose, subject to these Terms.

4. REPRESENTATIONS AND WARRANTIES

- 4.1. Each party represents and warrants that: (a) it has all corporate authority to execute and perform these Terms; (b) it is duly organized and in good standing under the laws of the jurisdiction of its organization; (c) it will comply with all laws and regulations applicable to it in carrying out its responsibilities and exercising its rights hereunder; and (d) it is not a party identified on any governmental or export exclusion list.
- 4.2. FourKites represents and warrants that it will maintain appropriate administrative, physical, and technical safeguards for protecting the security of Data entered into the Platform consistent with the ISO 27001:2013 and SOC2 Type II frameworks and will make commercially reasonable efforts to maintain ISO 27001:2013 and SOC2 Type II certifications.
- 4.3. Data Provider represents and warrants (a) it has all right, license, title and ownership, including all intellectual property rights, in and to the Data necessary to grant the license herein; (b) the Data does not infringe the intellectual property rights of a third party and (c) providing the Data to FourKites and use by FourKites as contemplated under these Terms complies with all applicable laws and regulations (including the receipt of consents and permissions required under data protection laws to collect the Data, transfer the Data to FourKites, and use of the Data in the Platform as described in these Terms).

5. DATA PROTECTION

- 5.1. FourKites will process personal data of Authorized Users for the purpose of managing access and use of the Platform as a



controller under the applicable data protection laws. FourKites shall process such personal data in accordance with the [FourKites Privacy Policy](#).

- 5.2. FourKites will process any personal data that forms part of the Data it receives in accordance with these Terms and any relevant instructions, contracts or other agreements it has in place with its Customer or Platform Partner (as applicable).
- 5.3. To the extent that Russian or Ukrainian law applies to the processing of personal data that forms part of the Data:
 - 5.3.1. the Data Provider will be considered as the independent operator (controller) of personal data and FourKites will process on behalf of the Customer
 - 5.3.2. the Data Provider shall ensure that it has a sufficient legal basis for the relevant data processing and complies with other obligations of the operator (controller) provided by applicable law required to fulfil its obligations under these Terms; in particular, if required by applicable law, the Data Provider shall obtain the consents of the data subjects to the processing of their personal data, including transfer of personal data to FourKites, the Customer and the Platform Partner (if applicable) and further processing of personal data by FourKites, Customer and the Platform Partner (if applicable);
 - 5.3.3. the Data Provider shall provide FourKites, at its request, with sufficient evidence of the Data Provider's compliance with applicable data protection law.
- 5.4. If Russian law applies, when collecting personal data, the Data Provider shall provide recording, arrangement, accumulation, storage, rectification (renewal, alteration), retrieval of personal data of Russian citizens with the use of a database located in Russia.
- 5.5. To the extent that the California Consumer Privacy Act of 2018 applies to the processing of personal data, FourKites acts as a service provider on behalf of the Customer. For the avoidance of doubt, Data Provider does not provide personal data to FourKites for any valuable consideration.

6. TERM, TERMINATION AND SURVIVAL

- 6.1. These Terms shall remain in effect as of the date of acceptance by Data Provider and shall continue until either party requests to terminate by providing at least 30 days advance written notice to the other party.
- 6.2. Sections 3, 8, 9, 10, 11, 13 of these Terms and, where applicable, Section 1 of Exhibit A shall survive any termination of these Terms.

7. NO FEE

Unless otherwise stipulated in an Order Form or equivalent document, neither party shall be required to pay any fees, commission, royalties or other amounts to the other party or any third party in connection with access and use of the Data or the Platform under these Terms.

8. CONFIDENTIALITY

Each party (the “**receiving party**”) agrees that, as between the parties hereto, all business, technical, financial and other confidential or proprietary information and data, (including the Data and the FourKites Materials), that it obtains from the other party (the “**disclosing party**”) is the confidential information of the disclosing party (“**Confidential Information**”). The receiving party will: (i) protect the disclosing party's Confidential Information using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care; (ii) limit access to the Confidential Information to those employees, affiliates, subprocessors and contractors who need to know such information in connection with the Purpose and who are bound by confidentiality and non-use obligations just as protective of the disclosing party's Confidential Information as these Terms; and (iii) except as set forth in these Terms, will not disclose any of disclosing party's Confidential Information to any third parties without disclosing party's prior written consent. Upon termination or expiration of these Terms or upon request of the disclosing party, the receiving party will return to the disclosing party or destroy (and certify such destruction in writing) all Confidential Information of such disclosing party (except the Data), all documents and media containing such Confidential Information, and any and all copies or extracts thereof, provided, FourKites will destroy the Data in accordance with FourKites' backup and retention policies. The receiving party shall not be obligated under this Section with respect to data or information the receiving party is required to disclose by law or by order of a court of competent jurisdiction, provided that the receiving party will (i) unless prohibited by such order or statute provide prompt notice of such disclosure; (ii) further use commercially reasonable efforts to limit the disclosure and maintain confidentiality to the maximum extent possible and (iii) comply with any protective order imposed on such disclosure. .

9. LIABILITY

- 9.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR OTHERWISE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR



CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR DATA, ARISING OUT OF THESE TERMS, WHETHER BASED IN CONTRACT, TORT, OR ANY OTHER LEGAL OR EQUITABLE THEORY, AND NEITHER PARTY SHALL BE LIABLE FOR ANY DELAYS OR DAMAGES RESULTING FROM "FORCE MAJEURE" EVENTS OR OTHER EVENTS BEYOND SUCH PARTY'S REASONABLE CONTROL.

- 9.2. THE AGGREGATE LIABILITY OF FOURKITES TO DATA PROVIDER FOR ANY CLAIM RELATING TO THESE TERMS, THE PLATFORM, OR OTHERWISE SHALL NOT EXCEED \$10,000.00 USD. IN NO EVENT SHALL FOURKITES BE LIABLE FOR (A) ANY PLATFORM DOWNTIME, ERRORS WITHIN OR CAUSED BY THE PLATFORM OR OTHER FAILURES IN PERFORMANCE OF THE PLATFORM, (B) CLAIMS ARISING OUT OF COMMUNICATIONS OR ACTIONS INITIATED BY DATA PROVIDER ITS AUTHORIZED USERS OR ANY THIRD PARTY THROUGH OR WITHIN THE PLATFORM, OR (C) ANY MISINFORMATION AND/OR FRAUD COMMITTED BY ANY USER OF THE PLATFORM OR (D) ANY CLAIM MADE BY ANY THIRD PARTY BASED ON ANY FAILURE OF DATA PROVIDER, CARRIERS, TELEMATICS PROVIDERS, CUSTOMERS, PLATFORM PARTNERS OR ANY OTHER PARTY TO COMPLY WITH ANY APPLICABLE DATA PROTECTION LEGISLATION, REGULATIONS, AND RULES IN CONNECTION WITH THE PROVISION AND USE OF THE DATA AS CONTEMPLATED BY THESE TERMS

10. INDEMNIFICATION

Data Provider shall defend FourKites, its affiliates, and their respective successors, assigns, officers, directors and employees (each a **"FourKites Indemnified Party"**) against any claim, demand, suit, or proceeding made or brought against a FourKites Indemnified Party alleging that the Data infringes the intellectual property and/or privacy rights of a third party (**"Claim against FourKites"**) and shall indemnify FourKites Indemnified Party for any damages finally awarded against, and for reasonable attorney's fees incurred by, a FourKites Indemnified Party, and those costs and damages agreed to in a monetary settlement; provided that FourKites (i) promptly gives Data Provider written notice of the Claim against FourKites; (ii) gives Data Provider sole control of the defense and settlement of the Claim against FourKites (provided that Data Provider may not settle any Claim against FourKites unless the settlement unconditionally releases each FourKites Indemnified Party of all liability); and (iii) provides to Data Provider all reasonable assistance, at Data Provider's expense. The limitations of liability set forth in section 9 shall not limit's indemnification obligations under this section.

11. TRADE LAWS ASSURANCES

Each party (a) will conduct business in accordance with all applicable anti-corruption, anti-money laundering, economic and trade sanctions, export controls, and other international trade laws, regulations, and governmental orders (collectively, **"Trade Laws"**) in the jurisdictions that apply directly or indirectly to the FourKites Materials including, without limitation, the United States and the European Union and (b) represents and warrants that it is (and, in the Data Provider's case also its Authorized Users are) not on any government prohibited, denied, unverified-party, sanctions, debarment, or exclusion list or export-controlled restricted party list. Data Provider shall not export or re-export, directly or indirectly, or provide to any other person or entity for export or re-export or provide access to the FourKites Materials without first complying with all U.S. and applicable foreign export control regulations, including, without limitation, obtaining any necessary export or re-export authorization from the applicable governmental authority. In particular, but without limitation, the FourKites Materials may not be exported (a) into (or to a national resident of) any U.S. embargoed country or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders.

12. MARKETING MATERIALS

FourKites may list Data Provider as a user of the Platform on FourKites' website and/or in marketing materials. In addition, FourKites may reproduce and publish in the media Data Provider's trademarks, logos, service marks, trade names and similar designations (collectively, **"Trademarks"**) in accordance with any Data Provider's brand guidance provided by Data Provider to FourKites. All goodwill from the use of the Data Provider's Trademarks shall inure to the benefit of the Data Provider.

13. MISCELLANEOUS

- 13.1. These Terms shall be construed and governed by the laws as stipulated in the table below, without reference to conflict of law principles. Any dispute or claim arising out of or in connection with these Terms or the performance, breach or termination thereof, shall be submitted to the competent courts stipulated in the table below without prejudice to parties' right to appeal or cassation. The immediately preceding paragraphs shall not prevent either party from seeking immediate injunctive relief in any court of competent jurisdiction.

Contracting Party	Governing Law	Court Jurisdiction
FourKites B.V.	Dutch Law	Netherlands Commercial Court, Amsterdam (following proceedings in English)
FourKites	Illinois State Law	Chicago, Illinois

- 13.2. Each party shall pay its own costs and expenses in connection with these Terms and its activities hereunder.
- 13.3. Except as expressly set forth in these Terms, no other rights or licenses, express or implied, are granted under these Terms by either party. No ownership of any intellectual property rights of either party is assigned or transferred to the other party, except as expressly provided herein.
- 13.4. These Terms, together with any forms and policies referenced herein (all of which are hereby incorporated by reference unless otherwise expressly excluded), supersede all prior written or oral agreements between the parties regarding the subject matter hereof (including any earlier version replaced by this version).
- 13.5. Neither party shall be, nor represent itself to be, the joint venturer, franchiser, franchisee, partner, agent or representative of the other party for any purpose whatsoever.
- 13.6. These Terms shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, but shall not be assignable by either party without the advance written consent of the other party, except in the case of assignment by FourKites to an affiliate or an entity acquiring substantially all or all of FourKites' assets, equity, or business and assuming all its obligations and liabilities hereunder.
- 13.7. No waiver will be deemed effective unless set forth in writing and signed by the party charged with such waiver, and no waiver of any right arising from any breach will be deemed to be a waiver or authorization of any other breach or of any other right arising under these Terms.
- 13.8. If any provision of these Terms is held to be unenforceable or invalid for any reason, or if any governmental agency rules that any portion of these Terms is illegal or contrary to public policy, the remaining provisions, to the extent feasible, will continue in full force and effect with such unenforceable or invalid provision to be changed and interpreted to best accomplish its original intent and objectives.
- 13.9. Any notice pursuant the Terms shall be deemed effective when delivered in person or one day after sending such notice by reputable overnight courier with confirmation of next-day receipt, in each case to the receiving party's address as such party may update from time-to-time. Copies of any notice to FourKites must be sent to legalnotices@fourkites.com to the attention of FourKites' general counsel.

14. LANGUAGE

Data Provider expressly acknowledges that the language of any legal proceedings, of any kind, arising out of or in connection with these Terms will be in English. For sake of convenience only, these terms may be translated into languages other than English. In the event of any conflict arising out of the interpretation and/or performance of these Terms the version in the English language takes precedence and prevails over any other version in any other language.



Exhibit A – Platform Access and Use Terms

To the extent that Data Provider has signed an Order Form or equivalent document and associated agreement (a "**Customer Agreement**") and has thus become a paying FourKites Customer, the provisions of such Customer Agreement will prevail over these Terms in relation to access and use of the Platform as a Customer.

1. PLATFORM LICENSE

- 1.1. License. Subject to Data Provider's and its Authorized User(s)' compliance with these Terms, FourKites grants Data Provider a revocable, non-exclusive, non-transferable, non-sublicensable license to access and use the Platform, solely through its Authorized Users, strictly for Data Provider's internal business purposes and in connection with the Purpose. For the avoidance of doubt, Data Provider shall not make the Platform available to any of its customers.
- 1.2. FourKites Materials. All right, title, and interest in and to the FourKites Materials are and will remain with FourKites and its relevant licensors. The structure, organization, and code of the Platform and the products and services provided by FourKites are the valuable trade secrets and Confidential Information of FourKites, its licensors, and/or its or their affiliates.
- 1.3. General Learning. FourKites keeps track of Platform usage and performance data to better serve its customers and improve Customer experience. Data Provider agrees that FourKites may reuse all general knowledge, experience, know-how, works, and technologies (including ideas, concepts, processes, and techniques) related to Data Provider's and its Authorized Users' use of the Platform.
- 1.4. Feedback. Data Provider acknowledges and agrees that any suggestions, improvements, feedback, and/or bug fixes relating to the Platform that Data Provider or its Authorized Users may suggest from time to time ("**Feedback**") shall be deemed to be owned in full by FourKites, that FourKites may use any or all such Feedback without restriction, and that, to the extent Data Provider has any rights to the Feedback, Data Provider hereby assigns such rights to FourKites at no cost to FourKites.
- 1.5. Data Protection. Where Data Provider uses the Platform to track and manage its Shipments, it will act in the capacity of a controller to any personal data contained in the Data and FourKites will act as a processor in accordance with the [FourKites Data Processing Addendum](#) ("**DPA**"). Reference to 'Company' in the DPA shall be the Data Provider agreeing to these Terms. Furthermore, Data Provider acknowledges that FourKites is part of a global company with global operations, and that personal data may be processed outside Data Provider's country. All such transfers of personal data shall be in accordance with applicable data privacy laws. Data Provider represents that it has processed any personal data provided to FourKites in accordance with applicable data protection laws.
- 1.6. Restrictions; Suspension. All use of the Platform by Authorized Users will be considered use by Data Provider and Data Provider shall be fully liable for Authorized Users' compliance with these Terms. Data Provider shall notify FourKites promptly of any unauthorized access or use of the Platform that violates these Terms. Data Provider shall not, and shall not permit its Authorized Users to, directly or indirectly reverse engineer, attempt to derive the source code of, copy or reproduce all or any portion of the FourKites Materials, whether electronically, mechanically or otherwise, in any form including, but not limited to, copying presentation, look and feel, style, or organization. Data Provider shall use, and shall cause its Authorized Users to use, the FourKites Materials solely for their intended purposes and shall not use, and shall not permit its Authorized Users to use, the FourKites Materials for the benefit of any third party except as specifically contemplated under these Terms. Without limiting the foregoing, Data Provider hereby acknowledges that the Platform is not intended for storage or use of any data not related to the Purpose, including, without limitation, social security numbers, financial account numbers, health information, driver's license, passport or visa number, credit card data or any special categories of personal data ("**Prohibited Data**"). Data Provider and its Authorized Users will not input (i) any Prohibited Data into the Platform; (ii) use the FourKites Materials in violation of any applicable law, the Documentation or the acceptable use policy located at <https://www.fourkites.com/legal/acceptable-use-policy/>. Data Provider shall be solely responsible for maintaining all passwords and access codes to the Platform and/or any dashboard related thereto and refraining from sharing or otherwise permitting third parties to use any such passwords and/or access codes. Any other software or services that are included in the Platform and are not proprietary to FourKites are licensed subject to the applicable license, all of which are incorporated herein by reference if identified in any Documentation or otherwise made available to Data Provider. FourKites shall have the right to immediately suspend access to the Platform if Data Provider's or its Authorized Users' use or access of the Platform results in a risk of loss or damage to the Platform, FourKites' other systems, or the data or property of any other FourKites licensee or supplier.
- 1.7. **DISCLAIMER**. EXCEPT AS EXPLICITLY SET FORTH IN THESE TERMS, NEITHER FOURKITES NOR ITS EMPLOYEES, AFFILIATES, AGENTS, SUPPLIERS, OR LICENSORS MAKES ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, (I) WARRANTIES OF



MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, (II) WARRANTIES REGARDING PLATFORM UPTIME OR DOWNTIME, OR (III) WARRANTIES AS TO THE ACCURACY OF RESULTS THAT MAY BE OBTAINED BY DATA PROVIDER OR ITS AUTHORIZED USERS OR CUSTOMERS BY ENTERING INTO THESE TERMS. DATA PROVIDER ACKNOWLEDGES THAT THE PLATFORM IS PROVIDED AS-IS AND MAY BE UNAVAILABLE FROM TIME TO TIME FOR ROUTINE MAINTENANCE AND/OR OTHER REASONS.

- 1.8. Notwithstanding anything to the contrary herein, FourKites may terminate Data Provider's and/or any Authorized User(s)'s access and use of the Platform immediately upon written notice to Data Provider in the event that Data Provider declares bankruptcy or Data Provider or any Authorized User breaches these Terms.
- 1.9. Upon termination of these Terms, Data Provider shall, and shall inform is Authorized Users to, discontinue use of the Platform and return, remove, or destroy (with written certification) FourKites' Confidential Information.

2. INDEMNIFICATION

- 2.1. FourKites shall defend Data Provider its affiliates and their respective successors, assigns, officers, directors and employees (each a "**Data Provider Indemnified Party**") against any claim, demand, suit, or proceeding made or brought against such Data Provider Indemnified Party by a third party alleging that the use of the Platform as permitted hereunder infringes or misappropriates the intellectual property rights of a third party ("**Claim against Data Provider**"), and shall indemnify Data Provider for any damages finally awarded against, and for reasonable attorney's fees incurred by, Data Provider in connection with any such Claim against Data Provider that are specifically attributable to such Claim against Data Provider, or those costs and damages agreed to in a monetary settlement of such Claim against Data Provider; provided that Data Provider (i) promptly gives FourKites written notice of the Claim against Data Provider; (ii) gives FourKites sole control of the defense and settlement of the Claim against Data Provider (provided that FourKites may not settle any Claim against Data Provider unless the settlement unconditionally releases such Data Provider Indemnified Party of all liability for the Claim against Data Provider); and (iii) provides to FourKites all reasonable assistance, at FourKites' expense. Notwithstanding the foregoing, FourKites will have no obligation of defense or indemnification or otherwise with respect to any claim or demand based upon (1) any use of the Platform not in accordance with these Terms; (2) any modification of the Platform made by or content provided by any person other than FourKites; and/or (3) Data Provider's continuation of the allegedly infringing activity after being notified thereof and provided modifications, replacements, or other remedies that would have avoided the alleged infringement or misappropriation.