



TERMS OF SUBSCRIPTION – PILOT

Effective Date: January 31, 2022

These Terms of Subscription – Pilot (“**Terms of Subscription**”) are applicable to any Statement of Work issued by FourKites, Inc., a Delaware corporation, with principal offices at 300 S Riverside Plaza, Suite 850, Chicago, IL 60606 (“**FourKites**”) and accepted by the company identified in such Statement of Work (the “**Company**”). Each Statement of Work shall be subject to these Terms of Subscription and these Terms of Subscription (these Terms of Subscription along with the Statement of Work, collectively constitute the “**Agreement**”). Capitalized terms have the meanings ascribed to them throughout the Agreement.

1. **Platform Subscription; Related Services.** During the Term (as defined below):

(a) *Platform Subscription.* Company hereby subscribes for the access to the Platform described in the Statement of Work for Pilots that is signed by both parties (each, a “**Statement of Work**”). Subject to Company’s and its Authorized User(s)’ compliance with the Agreement, during the Term, FourKites hereby grants Company a revocable, non-exclusive, non-transferable, non-sublicensable, limited license to access and use the Platform, solely through its Authorized Users, solely for purpose of evaluating the Platform’s capabilities. For purposes of the Agreement: (i) “**Platform**” means FourKites’ patented (U.S. Patent No. 11,017,347 and U.S. Patent No. 11,195,139) cloud-based, online real-time supply chain visibility platform and mobile and/or device applications (to the extent identified in the Statement of Work), which, among other things, allows shippers, truckers, brokers and other participants within the logistics and transportation industry to track freight location (i.e., FourKites® Visibility Cloud) and/or manage yards (i.e., Dynamic Yard®) and otherwise communicate with one another and (ii) “**Authorized Users**” means Company’s and its affiliates’ employees, consultants, contractors, and agents who manage Company’s or its affiliate’s freight and are authorized by Company to access and use the Platform under the rights granted to Company pursuant to the Agreement; provided, however, that neither Company nor its affiliate may grant Authorized User rights to any person employed or contracted by a third party that directly competes with FourKites, including, without limitation, any software and/or software-as-a-service provider, without FourKites’ prior written consent.

(b) *Services.* FourKites agrees to provide to Company, the implementation and related services described in the Statement of Work (“**Services**”).

2. **Fees.** Company shall pay to FourKites the fees specified in the Statement of Work, if any (the “**Fees**”) within 30 days from the applicable invoice date. In addition, and without limiting any other rights and remedies, FourKites may suspend access to the Platform and/or provision of the Services in the event that any Fees are 30 or more days overdue.

3. **Term.** The Agreement shall commence on the Effective Date of the Statement of Work (the “**Effective Date**”) and end on the date specified in the Statement of Work (the “**Term**”). Notwithstanding the foregoing, either party may terminate the Agreement immediately upon written notice to the other party in the event that the other party declares bankruptcy or breaches any material term set forth in the Agreement and fails to cure such breach within 30 days from the date of receipt of written notice thereof. Upon termination or expiration of the Agreement, Company shall, and shall inform its Authorized Users to, discontinue use of the Platform and return, remove, or destroy (with written certification) FourKites’ Confidential Information. Sections 4-10 of these Terms of Subscription shall survive any termination or expiration of the Agreement.

4. **Intellectual Property.**

(a) *FourKites Materials.* All right, title, and interest in and to the Platform (including all updates, customizations, and/or modifications thereto) and any associated documentation or other materials provided in or with the Platform (“**Documentation**”), including all intellectual property rights therein, (individually and collectively, 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.

(b) *Data.*

(i) *Company Data.* As between Company and FourKites, Company is and will remain the sole and exclusive owner of all right, title, and interest in and to all the data and information uploaded, submitted or otherwise made available by Company to the Platform through its Authorized Users or through APIs integrating the Platform with third-party systems licensed by Company or its service providers or contractors, and all intellectual property rights relating thereto (“**Company Data**”). Company represents and warrants that it has the right to provide FourKites with the Company Data for the purposes described in the Agreement and shall be responsible for the accuracy, quality and legality of Company Data.



(ii) *General Learning, Aggregate Data.* FourKites keeps track of Platform usage and performance data to better serve its customers and improve customer experience. Company agrees that FourKites may reuse all general knowledge, experience, know-how, works, and technologies (including ideas, concepts, processes, and techniques) related to Company's use of the Platform or acquired during provision of the Services. Company agrees that FourKites shall have the right to anonymize or aggregate Company Data (such as anonymized or aggregated data, "**Aggregate Data**") to prepare reports, studies, analyses, enhancements and other work product; provided, however, that under no circumstances shall FourKites distribute or otherwise make available data that is identifiable as Company Data to any third party other than FourKites, its affiliates, the Company, its Authorized Users, its carriers or any third party approved by Company in writing.

(c) *Trademarks.* Each party may reproduce and publish in the media the other party's trademarks, logos, service marks, trade names and similar designations (collectively, "**Trademarks**") in accordance with such company's brand guidance to create the marketing materials set forth in Section 13 below but may not remove any trademark symbols. For purposes of FourKites, Company shall comply with the FourKites Trademark Usage Guidelines located at <https://www.fourkites.com/legal/fourkites-trademark-usage-guidelines/>. All goodwill from the use of the other party's Trademarks shall inure to the benefit of the owning party.

(c) *Feedback.* Company acknowledges and agrees that any suggestions, improvements, feedback, and/or bug fixes relating to the Platform that Company 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 Company has any rights to the Feedback, Company hereby assigns such rights to FourKites at no cost to FourKites.

(d) *Reservation of Rights.* Except as expressly set forth in the Agreement, no other rights or licenses, express or implied, are granted under the Agreement 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.

5. *Restrictions; Suspension.* All use of the Platform by the Authorized Users will be considered use by Company and Company shall be fully liable for Authorized Users' compliance with the Agreement. Company shall notify FourKites promptly of any unauthorized access or use of the Platform that violates the Agreement. Company 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. Without limiting the foregoing, Company hereby acknowledges that the Platform is intended only to allow shippers, truckers, brokers and other participants within the logistics and transportation industry to track freight location, manage yards, and otherwise communicate with one another and that the Platform is not intended for storage or use of any data not related to such 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**"). Company and its Authorized Users will not input any Prohibited Data into the Platform. Company will not, and will not permit its Authorized Users to, use the FourKites Materials: (i) in violation of any applicable law; (ii) in a manner such that any viruses, Trojan horses, worms, time bombs, cancel bots, or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, or personal information are entered into the Platform; or (iii) in violation of the Documentation and the acceptable use policy located at <https://www.fourkites.com/legal/acceptable-use-policy/> or otherwise made available to Company from time to time. Company shall be solely responsible for maintaining all passwords and access codes to the Platform 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 Company. FourKites shall have the right to immediately suspend access to the Platform if Company'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 customer or supplier.

6. Confidentiality.

(a) *Generally.* Each party agrees to treat as confidential all Confidential Information of the other party, not to use such Confidential Information for any purpose other than to the limited extent necessary to perform and/or exercise its rights under the Agreement, and not to disclose such Confidential Information to any third party other than (i) its and its affiliate's legal counsel, accountants, consultants, service providers, contractors, officers, and/or employees ("**Representatives**") in each case on a need to know basis and subject to confidentiality obligations at least as protective as those set forth herein or (ii) as set forth in Section 5(b) below. Each party shall ensure that its affiliates and Representatives comply with the terms and conditions of the Agreement. Without limiting the generality of the foregoing, each of the parties shall use at least the same degree of care which it uses to prevent the disclosure of its own Confidential Information of like importance to prevent the disclosure of Confidential Information disclosed to it



by the other party, provided, however, that in no event shall such degree of care be less than reasonable in light of general industry practice. Upon discovery of an unauthorized disclosure of Confidential Information, the receiving party shall use its good faith efforts to prevent any further disclosure or unauthorized use thereof and shall notify the disclosing party without any delay. “**Confidential Information**” means all information about business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, whether or not marked, designated, or otherwise identified as “confidential”. The parties agree that the Company Data constitutes the Confidential Information of Company. Company authorizes FourKites to disclose Company Data to Company’s Authorized Users, its carriers and as otherwise provided in writing. The parties agree that the terms set forth in these Terms of Subscription, in each Statement of Work, as well as the FourKites Materials, the Documentation, and the Aggregate Data constitute the Confidential Information of FourKites.

(b) *Exceptions.* Notwithstanding the foregoing, Confidential Information shall not include any information which (i) is or becomes within the public domain through no act or omission on the receiving party’s part in breach of the Agreement, (ii) was lawfully in the receiving party’s possession without any restriction on use or disclosure prior to its disclosure by the disclosing party under the Agreement, (iii) is lawfully received by the receiving party from another source subsequent to the date of the Agreement without any restriction on use or disclosure, (iv) is independently developed by the receiving party without access to or use of the disclosing party’s Confidential Information, as evidenced by contemporaneous written record, or (v) is required to be disclosed pursuant to any governmental statute or regulation or by order of any court of competent jurisdiction or other governmental authority. In the case of disclosure pursuant to (v), the receiving party shall timely inform the disclosing party of all such legal or governmental proceedings so that the disclosing party may attempt by appropriate legal means to limit or condition such disclosure, and the receiving party shall further use commercially reasonable efforts to limit the disclosure and maintain confidentiality to the maximum extent possible.

7. DISCLAIMER. COMPANY ACCEPTS THE PLATFORM AND SERVICES “AS IS”. FOURKITES NOR ITS EMPLOYEES, AFFILIATES, AGENTS, SUPPLIERS, OR LICENSORS MAKES ANY WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, (A) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, (B) WARRANTIES REGARDING PLATFORM UPTIME OR DOWNTIME OR (C) WARRANTIES AS TO THE ACCURACY OF RESULTS THAT MAY BE OBTAINED BY THE OTHER PARTY OR THE OTHER PARTY’S CUSTOMERS BY ENTERING INTO THE AGREEMENT.

8. Limitation on Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR DATA, ARISING OUT OF THE AGREEMENT, THE PLATFORM, OR THE SERVICES, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, THE AGGREGATE LIABILITY OF FOURKITES TO THE COMPANY FOR ANY CLAIM RELATING TO THE AGREEMENT, THE PLATFORM, THE SERVICES, OR OTHERWISE SHALL NOT EXCEED THE GREATER OF THE FEES PAID TO FOURKITES UNDER THE AGREEMENT OR FIVE HUNDRED DOLLARS (\$500).

9. Governing Law. The Agreement shall be construed and governed by the laws of the State of Illinois, without reference to conflict of law principles. Any dispute or claim arising out of or in connection with the Agreement or the performance, breach or termination thereof, shall be submitted to the competent court in Chicago, Illinois without prejudice to parties’ right to appeal or cassation. This Section shall not prevent either party from seeking immediate injunctive relief in any court of competent jurisdiction.

10. Export Law Assurances. Company shall not use or otherwise export the the FourKites Materials except as authorized by U.S. law. 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. By using the FourKites Materials, Company represents and warrants that it and each of its Authorized Users is not located in, under control of, or a national or resident of any such country or on any such list.

11. Miscellaneous. Each party shall pay its own costs and expenses in connection with the Agreement and its activities hereunder. The Agreement supersedes all prior written or oral agreements between the parties regarding the subject matter hereof (including any contradictory or additional language in any purchase order). Company shall be responsible for all sales taxes, use taxes and any other similar taxes and charges of any kind imposed by any federal, state or local governmental entity on the transactions contemplated by the Agreement, excluding taxes based solely upon FourKites’ income derived hereunder. The relationship between the parties under the Agreement is that of independent contractors and neither shall be, nor represent itself to be, the joint venture, franchiser, franchisee, partner, agent or representative of the other party for any purpose whatsoever. The Agreement may be executed in counterparts and by electronic signature and may further be exchanged by facsimile or in scanned form, each of which shall



constitute originals and all of which, when taken together, shall constitute the same original. The Agreement 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 to an entity acquiring substantially all or all of a party's assets, equity, or business and assuming all of that party's obligations and liabilities hereunder. Any notice pursuant the Agreement 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 listed in the Statement of Work or to such updated address as such party may notify the other party. Copies of any notice to FourKites must be sent to FourKites' general counsel. If any provision of the Agreement is held to be unenforceable or invalid for any reason, or if any governmental agency rules that any portion of the Agreement 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.