FourKites Data Processing Addendum

This FourKites Data Processing Addendum (this "**DPA**") is entered into as of the last date of signature and incorporated into and forms integral part of the main agreement between FourKites, Inc. and the company identified in the main agreement ("**Provider**"). This DPA outlines the requirements that apply to Provider's Processing of Personal Data on behalf of FourKites, under that agreement by and between FourKites and Provider, and any applicable Orders (the "**Agreement**"). Any capitalized terms used but not defined in Section 15 of this DPA shall have the meanings given to them under the Agreement.

1. **Role and Scope of Processing.** Provider will Process Personal Data under the Agreement only as a Processor acting on behalf of FourKites (whether FourKites acts as a Controller or is itself a Processor acting on behalf of third-party Controllers). Provider will only Process Personal Data as necessary for the purpose of providing the Services and the Deliverables and in accordance with the instructions of FourKites, which include the Agreement, the SOWs and any other reasonable instruction communicated by FourKites to the Provider in writing (as further described in **Annex I** of this DPA). Provider will promptly notify FourKites in writing if: (a) it becomes aware or believes that any data Processing instruction from FourKites violates Applicable Privacy Law(s); or (b) it is unable to comply with FourKites' data Processing instructions for any reason; or (c) otherwise is unable to comply with the terms of the Agreement, the SOWs or FourKites' instructions, for any reason.

   Provider will not retain, use or disclose Personal Data outside the direct business relationship between FourKites and Provider and it will not sell, rent, release, disclose, disseminate, make available, transfer or otherwise communicate Personal Data to any third party for monetary or other valuable consideration.

2. **Compliance with Law.** When Processing Personal Data, Provider shall at all times comply with Applicable Privacy Laws and have due regard to any relevant guidance and codes of practice governing the Processing of Personal Data. Provider warrants that it understands the restrictions and obligations for service providers and will comply with them. Provider shall not perform its obligations under the Agreement in such a way as to cause FourKites (or its customers) to breach any of its obligations under Applicable Privacy Laws.

3. **Security Requirements.** Provider represents and warrants that it shall implement and maintain all appropriate technical and organizational security measures to prevent any unauthorized or unlawful breaches of security leading to, the accidental or unlawful destruction, loss, communication or alteration of, or unauthorized disclosure or access to the Personal Data ("**Data Breach**") and to preserve the security, integrity and confidentiality of Personal Data ("**Security Measures**"). At a minimum, the Security Measures shall comply in all material respects with FourKites Security and Data Protection Requirements described in **Annex II** of this DPA.

4. **Data Breach.** In the event of a Data Breach, Provider will (a) notify FourKites of such an incident without undue delay at security@fourkites.com and within one business day; (b) refrain from making any regulatory filings or publishing any notifications relating to the Data Breach without FourKites' written approval unless required by applicable law; (c) provide all reasonable assistance, as requested by FourKites, including providing any legally required notices to affected individuals and required governmental authorities, at no cost to FourKites; and (d) provide remediation services, customer care and other reasonable assistance to individuals impacted by the Data Breach directly, or through a third party, upon request from FourKites, at no cost to FourKites.

5. **Audit.** Upon request by FourKites (which FourKites shall not exercise more than once per calendar year), Provider will provide FourKites with all reasonable documentation to evidence its compliance with this DPA with an independent assessor's report, prepared at its own cost, confirming the existence and adequacy of administrative, physical, and technical safeguards applicable to the protection of Personal Data that Provider

Processes pursuant to the Agreement. Acceptable reports include SSAE16 SOC 2 Type 2 or substantially equivalent independent certifications.

6. International Transfers of Personal Data.

6.1. **General.** Provider shall not Process or transfer (directly or via onward transfer) any Personal Data in or to a territory other than the territory in which the Personal Data was first received by the Provider unless: (a) it has first obtained FourKites' prior written consent; and (b) it takes all such measures as are necessary to ensure such Processing or transfer is in compliance with Applicable Privacy Laws (including such measures as may be communicated by FourKites to Provider). Provider shall promptly notify FourKites if it makes a determination that it can no longer meet its obligations under this Section 6, and in such event, but without prejudice to any other right or remedy available to FourKites, Provider shall: (1) work with FourKites and promptly take all reasonable and appropriate steps to stop and remediate (if remediable) any Processing until such time as the Processing meets the level of protection as is required by this Section 6; and (2) immediately cease (and require that all Subcontractors immediately cease) Processing such Personal Data if in FourKites' sole discretion, FourKites determines that Provider has not or cannot correct any non-compliance with this Section 6 within a reasonable time frame. In no event does this DPA restrict or limit the rights of any individual or of any competent Data Protection Authority. Provider acknowledges that FourKites may disclose this DPA and any relevant privacy provisions in the Agreement to the US Department of Commerce, the Federal Trade Commission, EU, UK or Swiss data protection authority, or other applicable regulatory body upon their request.

Provider agrees and warrants that, as with respect to the transfers conducted on behalf of FourKites by Provider or its subprocessors it has no reason to believe that the legislation applicable to it or its subprocessors, including in any country to which Personal Data is transferred either by itself or through a subprocessor, prevents it from fulfilling the instructions received from FourKites and its obligations under this clause and the Agreement. In the event of a change in this legislation which is likely to have an adverse effect on the representations, warranties and/or obligations provided by this Agreement, Provider will promptly notify the change to FourKites, in which case FourKites is entitled to suspend the transfer of all Personal Data and terminate the Agreement.

6.2. **European Transfer Mechanism.** To the extent that the transfer of Personal Data from FourKites to Provider involves a Restricted Transfer, the Standard Contractual Clauses shall be incorporated by reference and form an integral part of this DPA with FourKites as "data exporter" and Provider as "data importer". If and to the extent the Standard Contractual Clauses conflict with any provision of this DPA regarding the transfer of Personal Data from FourKites to Provider, the Standard Contractual Clauses shall prevail to the extent of such conflict.

a. In relation to transfers of Personal Data protected by the GDPR, the EU SCCs will apply completed as follows:

(i) the Module 2 (controller to processor) terms shall apply to the extent FourKites is a Controller of Personal Data and the Module 3 (processor to processor) terms shall apply to the extent FourKites is a Processor of Personal Data;

(ii) in Clause 7, the optional docking clause will apply;

(iii) in Clause 9, Option 1 shall apply and Provider shall submit requests for specific authorization of Subprocessors in accordance with Section 6 of this DPA;

(iv) in Clause 11, the optional language shall be deleted;

(v) in Clause 17, Option 1 shall apply and the EU SCCs shall be governed by Dutch law;

(vi) in Clause 18(b), disputes shall be resolved before the courts of the Netherlands; and

(vii) Annexes I and II of the EU SCCs shall be populated with the information set out in Annexes I and II of this DPA.

b. In relation to transfers of Personal Data protected by the UK GDPR, the EU SCCs will also apply to such transfers in accordance with paragraph (a) above, with the following modifications:

(i) any references in the EU SCCs to "Directive 95/46/EC" or "Regulation (EU) 2016/679" shall be interpreted as references to the UK GDPR; references to specific Articles of "Regulation (EU) 2016/679" are replaced with the equivalent Article or Section of UK GDPR;

(ii) references to "EU", "Union" and "Member State law" are all replaced with "UK" and "UK law" as the case may be; Clause 13(a) and Part C of Annex I of the EU SCCs are not used; references to the "competent supervisory authority" and "competent courts" shall be interpreted as references to the Information Commissioner and the courts of England and Wales;

(iii) Clause 17 of the EU SCCs is replaced to state that "The Clauses are governed by the laws of England and Wales" and Clause 18 of the EU SCCs is replaced to state "Any dispute arising from these Clauses shall be resolved by the courts of England and Wales. A data subject may bring legal proceeding against the data exporter and/or data importer before the courts of any country in the UK. The Parties agree to submit themselves to the jurisdiction of such courts",

unless the EU SCCs as implemented above cannot be used to lawfully transfer such Personal Data in compliance with the UK GDPR, in which event the UK SCCs shall instead be incorporated by reference and form an integral part of this DPA and shall apply such to transfers. Where this is the case, the relevant annexes, appendices or tables of the UK SCCs shall be deemed populated with the relevant information set out in Annexes I and II of this Agreement as follows (i) in Table 1 the details of the parties are set out in Annex I of this Addendum; (ii) in Table 2 the selected modules and clauses are set out in paragraph (a) above; (iii) in Table 3 the appendix information is set out in Annex I of this Addendum; and (iv) in Table 4 'both parties' is selected.

c. In relation to transfers of Personal Data protected by the Swiss FDPA, the EU SCCs shall apply in accordance with paragraph (a) above, with the following modifications:

(i) any references in the EU SCCs to "Directive 95/46/EC" or "Regulation (EU) 2016/679" shall be interpreted as references to the Swiss FDPA;

(ii) references to "EU", "Union" and "Member State law|" shall be interpreted as references to Switzerland and Swiss law, as the case may be; and

(iii) references to the "competent supervisory authority" and "competent courts" shall be interpreted as references to the relevant data protection authority and courts in Switzerland,

unless the EU SCCs as implemented in accordance with paragraph (c)(i) above cannot be used to lawfully transfer Personal Data in compliance with the Swiss FDPA, in which case the Swiss SCCs shall instead be incorporated by reference and form an integral part of this DPA and shall apply to such transfers. Where this is the case, the relevant Annexes of the Swiss SCCs shall be populated using the information contained in the Annexes to this DPA (as appropriate).

6.3. **Argentina, Brazil and Mexico.** Where Provider is a recipient of Personal Data under this DPA that is protected by the Applicable Privacy Laws of Argentina, Brazil or Mexico and intends to Process or transfer Personal Data in or to any country or recipient not recognized as providing an adequate level of protection for Personal Data under Applicable Privacy Laws, any consent provided by FourKites shall be conditional on the Provider complying with the following: international transfer shall also follow the standard provisions of the Applicable Law, as applicable, and any instructions to be specified, updated, amended, replaced or superseded from time to time by the applicable regulatory authority or, in the lack of instructions from such authority. Provider shall follow the Standard Contractual Clauses where applicable.

6.4. **South Africa.** Where Provider is a recipient of Personal Data under this DPA that is protected by the Applicable Privacy Laws of South Africa and intends to Process or transfer Personal Data in or to any country or recipient not recognized as providing an adequate level of protection for Personal Data under Applicable Privacy Laws, any transfer shall be conditional on the Provider ensuring that the appropriate safeguards are put in place such as an agreement that imposes contractual requirements that provide for an adequate level of data protection, together with binding and enforceable commitments of the recipient. Provider shall follow the Standard Contractual Clauses where applicable.

6.5. **Turkey.** Where Provider is a recipient of Personal Data under this DPA that is protected by the Applicable Privacy Laws of Turkey and intends to Process or transfer Personal Data in or to any country, any consent provided by FourKites shall be conditional on the Provider complying with the PDPL for the international transfer.

7. **Subcontracting.** Provider shall not subcontract any part of the Processing to any third party without FourKites written approval, which shall not be unreasonably withheld, subject to the following conditions: (a) Provider shall complete **Annex III** of this DPA identifying all Subcontractors or other third parties that will Process Personal Data on behalf of Provider during the Term of the Agreement ("**Subprocessors**"); (b) Provider will not engage new Subprocessors except with FourKites' prior written approval, having provided at least 30 days' notice of the impending change; (c) Provider imposes the same data protection terms on any Subprocessor it engages as contained in this DPA; and (d) Provider remains fully liable for any breach of this DPA or the Agreement that is caused by an act, error or omission of such Subprocessor. If FourKites objects to the engagement of any Subcontractor on data protection grounds, then either Provider will not engage the Subcontractor to Process the Personal Data or FourKites may elect to immediately suspend or terminate the Processing of Personal Data under the Agreement and/or immediately suspend or terminate the Agreement, in each case without penalty.

8. **Assistance**. Provider shall provide all reasonable assistance and cooperation, at no additional cost, to enable FourKites (or its third party Controller) (a) to respond to any requests, complaints or other communications from individuals and governmental, regulatory or judicial bodies relating to the Processing of Personal Data under the Agreement(s), including requests from individuals seeking to exercise their rights under Applicable Privacy Laws; or (b) to conduct a data protection impact assessment or equivalent assessments under Applicable Privacy Law(s). In the event that any such request, complaint, notification or other communication as envisaged in this section is made directly to Provider, Provider shall promptly pass this onto FourKites at privacy@fourkites.com and shall not respond to such communication without FourKites' express authorization, unless prohibited by law. Provider shall fully cooperate as reasonably requested by FourKites to enable FourKites to comply with any request, including, without limitation, by complying with FourKites' instruction to provide a copy of or delete an individual's Personal Data. Provider shall provide all reasonable assistance required by FourKites.

9. **Authorized Persons.** Provider shall ensure that any person that it authorizes to Process Personal Data (including Provider's staff, agent and subcontractors) (an "**Authorized Person**") shall be subject to a strict duty of confidentiality (whether a contractual duty or a statutory duty).

10. **Government Requests.** If Provider receives a subpoena, court order, warrant or other legal demand from a third party (including law enforcement or other governmental, regulatory or judicial authorities) seeking the disclosure of Personal Data, Provider shall not disclose any information but shall immediately notify FourKites in writing of such request, and reasonably cooperate with FourKites if it wishes to limit, challenge or protect against such disclosure, to the extent permitted by applicable laws. Such notices will include the relevant agency's name and contact information and the grounds for the request or complaint.

11. **Deletion or return of Personal Data**. After the expiration or termination of the Agreement or applicable Statement of Work, Provider will return to FourKites all copies of Personal Data in its possession. Alternatively, where approved by FourKites, Provider may certify in writing that it has securely destroyed Personal Data in its possession in lieu of returning it to FourKites.

12. **Third Party Controller**: Where FourKites is itself a Processor acting on behalf of another Controller ("**Third Party Controller**") (such as a FourKites customer), FourKites shall serve as the sole point of contact for Provider and Provider will not interact directly with (including to seek any authorizations directly from) any such Third Party Controller, and where Provider would (including for the purposes of the Standard Contractual Clauses) otherwise be required to provide information, assistance, cooperation or other notification to such Third Party Controller, Provider shall provide it solely to FourKites.

13. **Survival.** To the extent that Provider continues to Process Personal Data after the termination or expiration of the Agreement, these requirements will survive any termination or expiration and will continue to apply to the Processing of Personal Data.

14. **Liability.** Notwithstanding anything else to the contrary in the Agreement, Provider acknowledges and agrees that it shall be liable for any loss or misuse of Personal Data to the extent such loss or misuse results from any failure of Provider (or its Subprocessors) to comply with its obligations under this DPA and/or Applicable Privacy Law. Any exclusion of damages or liability that may apply to limit Provider's liability in the Agreement shall not apply to Provider's liability arising under or in connection with this DPA and/or Applicable Privacy Law howsoever caused. In no event shall any party exclude or limit its liability with respect to Data Subjects' rights under this DPA (including the Standard Contractual Clauses) and/or Applicable Privacy Laws.

15. **Definitions.** In this DPA, the following terms shall have the following meanings:

    a. "**Applicable Privacy Laws**" means all privacy and data protection laws applicable to the Processing of the Personal Data, including, but not limited to, European Privacy Laws, the California Consumer Privacy Act ("**CCPA**"), the Privacy Act 1988 (Cth) and the Privacy Act 1993 (NZ), the Brazilian General Data Protection Law ("**LGPD**"), the Argentinian Personal Data Protection Law ("**PDPL**"), the Mexican Federal Law on the Protection of Personal Data Held by Private Parties ("**FLPPDHPP**"), the Canadian Personal Information Protection and Electronic Documents Act ("**PIPEDA"**) or a substantially similar provincial privacy law, the Turkish Personal Data Protection Law (the "**PDPL**") and the South African Protection of Personal Information Act 4 of 2013 ("**POPIA**").

    b. "**European Privacy Laws**" means: (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (General Data Protection Regulation) (the "**EU GDPR**"); (ii) the GDPR as incorporated into United Kingdom domestic law pursuant to Section 3 of the European Union (Withdrawal) Act 2018 (the "**UK GDPR**"); (iii) EU Directive 2002/58/EC on Privacy and Electronic Communications; (iv) any EU Member State or UK law made under or

pursuant to items (i) – (iii); and (v) the Swiss Federal Data Protection Act (the "**Swiss FDPA**"), in each case as amended, superseded or replaced from time to time.

c. "**Restricted Transfer**" means a transfer of Personal Data that is subject to European Privacy Laws to a country that does not provide an adequate level of protection for Personal Data within the meaning of European Privacy Laws.

d. "**Standard Contractual Clauses**" means: (i) where the GDPR applies, the standard contractual clauses annexed to the European Commission's Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council ("**EU SCCs**"); (ii) where the UK GDPR applies, the standard data protection clauses for processors adopted pursuant to or permitted under Article 46 of the UK GDPR ("**UK SCCs**"); and (iii) where the Swiss FDPA applies, the applicable standard data protection clauses issued, approved or recognized by the Swiss Federal Data Protection and Information Commissioners (the "**Swiss SCCs**"); in each case as completed by the information set out in Section 6 and the Annexes to this DPA (as appropriate).

e. The terms "**Controller**", "**Data Subject**", "**Personal Data**", "**Processor**", "**Processing**", "**Supervisory Authority**", and "**Special Categories of Data/Sensitive Personal Data**" shall have the meanings given to them in Applicable Privacy Laws. If and to the extent that Applicable Privacy Laws do not define such terms, then the definitions given in the EU GDPR will apply, provided for purposes of CCPA, "**Controller**" shall have the meaning set forth in the CCPA for "**Business**" and "**Processor**" shall have the meaning set forth in the CCPA for "**Service Provider**".

16. **General.** By executing the Agreement, Provider certifies that it understands the restrictions on FourKites' Processing Personal Data set forth in this DPA and will comply with them. Except for the changes made by this DPA, the Agreement remains unchanged and in full force and effect. If there is any conflict between any provision in this DPA and any provision in the Agreement, this DPA controls and takes precedence. If any part of this DPA is held unenforceable, the validity of all remaining parts will not be affected. This DPA shall be governed by and construed in accordance with the governing law and jurisdiction provisions in the Agreement, unless required otherwise by Applicable Privacy Law or the Standard Contractual Clauses.