



Frontline intelligence powered by AI

## FYLD General Terms and Conditions

### INTRODUCTION

- (A) The Supplier has an application and digital platform that it makes available for the purpose of the execution of field workforce activities, which amongst other things includes the "FYLD Assess" functionality (core features available on the Supplier's Platform).
- (B) The Customer wishes to use the Supplier's Platform and Services to support its business operations.
- (C) The Supplier has agreed to provide, and the Customer has agreed to take and pay for, the Services subject to the terms and conditions of this Agreement.

### 1. DEFINITIONS

1.1. For the purposes of this Agreement, the following terms have the definitions set out below:

**"Authorised Users"** means the number of Customer support employees or contractors as set out in the Order Form;

**"Order Form"** means the terms signed by both parties setting out amongst other things the subscription date and Services to be provided, which form a part of the Agreement;

**"Confidential Information"** means all information (whether written, oral or in some other form) disclosed to or obtained by one party (whether directly or indirectly) from the other (whether before or after the signing of this Agreement), including all information relating to the other's, business, operations, systems, processes, source code (if applicable) products, trade secrets, know-how, contracts, finances, plans, strategies or current, former or prospective clients, customers, partners or suppliers (together with copies made of any of the foregoing) and which information is marked as being confidential or might reasonably be assumed to be confidential, but excluding information which: (i) is available to the public other than because of any breach of this Agreement; (ii) is, when it is supplied, already known to whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others; (iii) is independently obtained by whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;

**"Customer"** has the meaning set out in the Order Form

**"Fees"** has the meaning set out in the Order Form;

**"General Terms and Conditions"** means these general terms and conditions which form a part of the Agreement;

**"Intellectual Property Rights"** means all patents, copyright and related rights, moral rights, trademarks domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**"Materials"** has the meaning set out in clause 4.2;

**"Platform"** has the meaning set out in Schedule1;

"Services" has the meaning set out in Schedule 1;

"Supplier" has the meaning set out in the Order Form; and

"Term" has the meaning set out in the Order Form.

- 1.2. In the event of any conflict between the Order Form and the General Terms and Conditions, the Order Form shall prevail.
- 1.3. Clause, schedule, and paragraph headings shall not affect the interpretation of this Agreement. Any schedules and annexes form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules and Annexes.
- 1.4. Unless the context requires otherwise, words in the singular include the plural and in the plural shall include the singular, reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time, a reference to **writing** or **written** includes email and any words following the terms **including, include, in particular, for example** or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms.

## 2. SUPPLIER OBLIGATIONS

- 2.1. Supplier hereby grants to Customer (subject to Customer's compliance with the terms of this Agreement, including as set out in clause 3), a personal, non-transferable, non-exclusive, non-sublicensable, limited licence to use the Platform for Customer's own business purposes during the Term.
- 2.2. Supplier shall provide the Services to the Customer during the Term. Supplier shall perform the Services with the highest level of care, skill, and diligence in accordance with best practice in the Supplier's industry, profession, or trade and in accordance with Supplier's standard service levels (a copy of which can be obtained from the Supplier upon Customer's request).

## 3. CUSTOMER OBLIGATIONS

- 3.1. Customer is not permitted to: (i) edit, alter, modify, adapt, translate or otherwise change the whole or any part of the Platform, nor permit the whole or any part of the Platform to be combined with, or become incorporated in, any other platform or software, nor decompile, disassemble or reverse engineer or make derivative works of the Platform or attempt to do any such things; (ii) reproduce, copy, distribute, resell or otherwise use the Platform for any commercial purpose other than the purpose for which the Platform was provided; (iii) allow any third party to use the Platform on behalf of or for the benefit of any third party; (iv) use the Platform in any way which breaches any applicable local, national or international law or for any purpose that Supplier considers is a breach of this Agreement;  
(v) remove, or obscure any trademarks or proprietary rights notices provided on or with the Platform; (vi) use the Platform for purposes of competitive analysis of the Platform or the development of a competing Platform, product or service; (vii) link to any third party platform or tool other than by way of authorized API provided and agreed by the Supplier.
- 3.2. The Customer may only allow the agreed number of Authorised Users to use the Platform and any increase must be agreed in writing between the parties.
- 3.3. Customer is responsible and liable for all use of the Platform. Specifically, and without limitation, Customer is responsible and liable for all actions and failures to take required actions with respect to the Platform and for all content provided and generated by Authorised Users through using the Platform. In particular, Customer shall ensure all of its

Authorised Users using the Platform: (i) are appropriately trained and comply with all applicable Platform user guides provided by Supplier from time to time; (ii) comply with all health and safety guidance and laws; and (iii) keep any passwords and access to the Platform and Services secure. It is the Customer's responsibility to ensure it has equipment (of appropriate specification and compatible with the Platform) and internet connection to enable use of the Services. The customer is responsible for all charges for internet access (including mobile data usage) charged by its internet supplier.

- 3.4. Customer acknowledges that Supplier only provides suggested generic template risk assessment forms and process follows through the Platform but it is Supplier's responsibility to review and amend such forms and processes for its own specific purposes and to ensure compliance with applicable laws

#### **4. INTELLECTUAL PROPERTY AND MATERIALS**

- 4.1. Customer shall own all Intellectual Property Rights in its own branding which it may choose to incorporate into the Platform. Customer hereby grants to Supplier, a personal, non-transferable, non-exclusive, non-sublicensable, limited licence to use such branding and templates for the purposes of: (i) providing the Services during the Term (to the extent required to provide the same); and (ii) for discharging the rights set out in clause 9.8 (subject always to prior approval having been given under that clause). .
- 4.2. Through the Customer's use of the Platform and Services, audio, visual or audio-visual clips will be generated by the Customer/its Authorised Users. Customer shall own any Intellectual Property Rights in such clips and any Intellectual Property Rights otherwise comprised in such materials ("**Materials**") and Supplier shall provide access to such Materials for Customer through the Platform.
- 4.3. Customer hereby grants to Supplier (subject to Supplier's compliance with data protection legislation and provided that such Materials are not used in a way that identifies the Customer to any third party customer of Supplier), an unlimited, worldwide, perpetual, royalty-free, non-exclusive licence to use the Materials for the Supplier's own business purposes, including for aggregating, analysing, evaluating, reporting on, and deriving insight and intelligence from the Materials for the purposes of optimising, adjusting, improving, reporting on the Platform, and any other services, products or technology operated or which may be developed and operated by the Supplier. Customer also acknowledges and agrees that Supplier may collect and use further analytic data around and about use of the Platform and Services (on an anonymous basis), and such data shall be owned by Supplier and may be used by the Supplier for its own business purposes including analysing and improving the Platform and Services.
- 4.4. Supplier owns all Intellectual Property Rights in and to the Platform and Services, including any templates or digital processes created using FYLD by Customer. Customer does not acquire any ownership interest in the Platform under this Agreement, or any other rights, other than to use the Platform and receive the Services in accordance with the Agreement. Supplier and its suppliers and service providers reserve and shall retain their entire right, title, and interest in and to the Platform and all Intellectual Property Rights arising out of or relating to the Platform, except as expressly granted to the Customer in this Agreement.

#### **5. TERM AND TERMINATION**

- 5.1. This Agreement shall commence on the subscription date set out in the Order Form.
- 5.2. At the end of the term (the subscription end date set out in the Order Form), both Parties agree the Agreement will be automatically renewed at prevailing commercial terms plus any applicable Consumer Price Index (CPI) adjustment for the same term as set out in the Order Form, unless not less than ninety (90) days' notice of termination is provided by either party in writing to the other.
- 5.3. Without affecting any other right or remedy available to it, either party to the Agreement

may terminate it with immediate effect by giving written notice to the other party if:

- 5.3.1. the other party fails to pay an amount due under this agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment;
  - 5.3.2. the other party commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
  - 5.3.3. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
  - 5.3.4. the other party suspends or ceases, or threatens to suspend or cease, carrying on business; or
  - 5.3.5. the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in material jeopardy.
- 5.4. On termination of the Agreement for whatever reason:
- 5.4.1. any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect;
  - 5.4.2. termination or expiry of the Agreement shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
  - 5.4.3. the parties shall comply with the 'End of Agreement Data Download Policy' provided to the Customer by the Supplier.

## 6. FEES AND PAYMENT

- 6.1. In consideration of the provision of the Services and Platform by the Supplier, the Customer shall pay the Fees as set out in the Order Form to the Supplier.
- 6.2. The Supplier shall invoice the Customer for payment of the Fees at the time the Fees are expressed to be payable as set out in the Order Form and the Customer shall pay the Fees which have become payable within thirty (30) days of receipt of the invoice from the Supplier.
- 6.3. If a party fails to make any payment due to the other party under this Agreement by the due date for payment, the payee party shall notify the payor party in writing (which may include email) that such payment has not been made and giving the defaulting party a further seven (7) days to make such payment (the "**Late Payment Due Date**"). If the payor party still fails to make payment after the Late Payment Due Date has elapsed, then, without limiting the other party's remedies, the defaulting party shall pay interest on the overdue sum from the Late Payment Due Date until payment of the overdue sum, whether before or after judgement. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 6.4. All sums payable by either party under this agreement shall be paid in pounds sterling.

- 6.5. The Fees are stated exclusive of all taxes. The fees must be grossed up for any withholding tax applied, along with any local sales taxes applicable. The grossed up withholding tax any local sales taxes added at the prevailing rate as applicable and paid by the Customer following delivery of a valid invoice which includes these applicable fees.
- 6.6. Supplier reserves the right to increase the Fees proportionately by reference to the UK Consumer Prices Index (CPI) once in any twelve-month period during the Term.

## **7. DATA PROTECTION**

- 7.1. In respect of any personal data captured through use of the Platform and provision of the services (including any personal data comprised in the Materials), the parties acknowledge that each is a separate data controller and shall each be separately responsible for its own compliance with data protection laws.
- 7.2. Supplier has a privacy policy explaining to users of the Platform (including Authorised Users) how Supplier will process their personal data and explaining their rights in relation to the same. This is available at [fyld.ai/privacy-policy](https://fyld.ai/privacy-policy) and in the Platform. In the event that Customer is aware of any complaint or data breach in relation to or affecting the Platform, it shall promptly inform the Supplier.

## **8. LIABILITY**

- 8.1. Nothing in this Agreement shall limit or exclude either party's liability for death or personal injury caused by its negligence or for fraud or any other damage that cannot be excluded by law. Supplier only gives a warranty that the Platform will contain the functionality set out in this Agreement when properly installed and operated in accordance with Supplier's instructions.
- 8.2. Except as expressly and specifically provided in this Agreement, the Customer assumes sole responsibility for the use of the results obtained from the use of the Platform and the Materials, and for conclusions drawn from the results. In particular, Supplier shall not be liable for any use of such results and information or reliance upon the same.

8.3. Except as set out in clause 8.1, the Platform is provided to Customer on an "AS IS" basis and Supplier expressly disclaims all warranties whether express, implied, statutory, or otherwise with respect for the Platform and Supplier provides no warranty or undertaking that the Platform will meet the Customer's requirements or be error-free or operate without interruption. Supplier shall not be liable to Customer or any other person for any:

- 8.3.1. lost revenues or profits, delays, interruptions or loss of business, data or goodwill; or
- 8.3.2. for any indirect or consequential loss, in each case howsoever arising and regardless of whether or not such loss or damage was foreseeable.

In no event will either party's liability to the other party under or in connection with this Agreement exceed the lower of: (i) 100% of the Fees paid or payable in the preceding twelve (12) month period; and (ii) five (5) million GBP.

## **9. GENERAL**

- 9.1. Each party warrants to the other that it has all necessary rights and permissions to enter into this Agreement and to make the commitments set out in it.
- 9.2. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. Each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the

implementation of this Agreement. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction.

- 9.3. Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 9.4. This Agreement, and any dispute arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the laws of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 9.5. This Agreement, constitutes the sole and entire agreement between Customer and Supplier with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 9.6. This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 9.7. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 9.8. Marketing
  - 9.8.1. Subject to Customer's prior approval, Supplier may display Customer's name and logo within Supplier's website and other Supplier public marketing materials, including trade shows, customer events, and media publications.
  - 9.8.2. Quote / Citation. Customer will work with Supplier to publish quotes concerning the relationship with Supplier from a CXO level, vice president level, or executive management level of Customer, all such quotes to be subject to Customer's prior approval.
  - 9.8.3. Press Release. Subject to Customer's prior approval, Supplier may publish press releases announcing the official relationship with Supplier.
  - 9.8.4. White Paper. Subject to Customer's prior approval, the parties shall collaborate to jointly create a white paper and video testimonial after the successful implementation of the Platform, and no later than six (6) months after the Order Form Subscription Date for use by Customer for marketing purposes.
- 9.9. Anti-Corruption: neither party has been offered any illegal or improper bribe, kickback, payment, gift, item of value or other enticement from an employee or agent of the other party in connection with the entering into of this Agreement, excluding minor and reasonable gifts and entertainment provided in the ordinary operating course of

business.

- 9.10. Assignment: neither party may assign any of its rights or obligations under this Agreement without the other party's prior written consent, which shall not be unreasonably withheld. However, either party may assign their rights and obligations under this Agreement in the event of a merger, acquisition or corporate reorganization, or sale of the majority of business assets. Where an assignment does take place, this Agreement will bind and have the effect of transferring all rights and obligations under the Agreement to respective successors.

## **SCHEDULE 1 PLATFORM AND SERVICES**

### **1. PLATFORM AND SERVICES**

#### **a. Platform.**

The "FYLD Field Work Execution Platform" is the FYLD assess application (a phone app deployed via Google Play or Apple App Store) and the FYLD cloud software (a web site accessible to users) incorporating reporting and insights.

The Supplier will undertake all reasonable and industry accepted steps to ensure the protection of the service and the Customer Materials stored on the Platform. This will include (but not necessarily limited to):

- security infrastructure management
- firewalls
- intrusion detection
- security servers
- systems auditing
- security investigations
- policy and procedure maintenance and
- promotion of security awareness

For the avoidance of doubt, the Platform does not include the following applications unless specifically set out in the Order Form:

"FYLD Foresight", FYLD's ground breaking predictive analytics platform; or

"FYLD Add Ons".

#### **b. Services.**

The Services comprise the following:

- i. Provision of the Platform including maintenance and support in relation to the same
- ii. Real-time video risk assessments
- iii. Live job status and automated workflow
- iv. Job blocker reporting
- v. Job wrap up feature
- vi. Support in respect of the Platform comprising:

1. A live chat service operational 24 hours a day, 7 days a week, 365 days a year. A phone service is available during normal working hours.

2. Monitoring of the Platform in line with ISO 27001 standards.

3. Backup and data recovery:

All servers used to provide the service are subject to current back-up and recovery procedures provided by the Supplier's third-party suppliers. Sufficient hardware is available to ensure continuity of service in event of total server failure with a target recovery time of 12 hours for any given server. Data is backed-up on a daily basis.

4. Platform updates and maintenance:

The Supplier shall undertake planned maintenance releases that may affect system availability from time to time. A notification message of such planned maintenance will be sent to the agreed Customer contacts via email 14 days in advance. This notification will give an indication of the length of system unavailability.