



Agenda Item Details

Meeting	Oct 24, 2022 - REGULAR BOARD OF TRUSTEES MEETING (HYBRID)
Category	4. PUBLIC SESSION
Subject	4.5 Approval of Consent Calendar
Type	Action
Recommended Action	Motion to approve the Consent Calendar.

Motion & Voting

Motion to approve the Consent Calendar.

Motion by Phillip Yarbrough, second by Sal Tinajero.

Final Resolution: Motion Carried

Aye: Tina Arias Miller, David Crockett, Zeke Hernandez, John Hanna, Lawrence Labrado, Sal Tinajero, Phillip Yarbrough, Ryan Foley

**Agenda Item Details**

Meeting	Oct 24, 2022 - REGULAR BOARD OF TRUSTEES MEETING (HYBRID)
Category	6. INSTRUCTION
Subject	6.1 *Approval of Subscription Agreement between RSCCD on behalf of Santa Ana College and Fusion Sport, Inc.
Type	Action (Consent)
Fiscal Impact	Yes
Dollar Amount	12,750.00
Budgeted	Yes
Recommended Action	Motion to approve the Subscription Agreement between RSCCD on behalf of Santa Ana College and Fusion Sport, Inc., located in Broomfield, Colorado, as presented.

BACKGROUND:

The Santa Ana College Fire Technology Department would like to renew its agreement with Fusion Sport, Inc., for the Smartabase human performance tracking software to enhance public safety, through its Wellness Program and Fire Academy student fitness training. The Smartabase software is currently used for the following classes: Fire Technology Core (FTC) 121 and FTC 121 L; and Fire Academy (FAC) 029, FAC 007 and FAC 008. It provides a centralized location for all fitness related student data, customized dashboards to visualize the data, encourages student engagement and improves accountability.

ANALYSIS:

This new Subscription Agreement between RSCCD on behalf of Santa Ana College and Fusion Sport, Inc. ("Agreement") identifies the services and responsibilities for the District and Fusion Sport, including the scope of work and detailed schedule of payment. This Agreement governs an initial six (6) month term from January 1, 2023 to June 30, 2023 with a provision for four (4) additional one (1) year terms or until termination by written notice of either party. The Agreement carries a cost of \$12,750 for fiscal year 2022/2023 and \$39,000 for fiscal years 2023/2024, 2024/2025, 2025/2026, and 2026/2027.

RECOMMENDATION:

It is recommended the Board of Trustees approve the Subscription Agreement between RSCCD on behalf of Santa Ana College and Fusion Sport, Inc., located in Broomfield, Colorado, as presented.

PREPARED BY:

Jeffrey N. Lamb, Ph.D., Vice President, Academic Affairs
Larisa Sergeyeva, Ed.D., Dean, Human Services & Technology

SUBMITTED BY:

Annebelle Nery, Ph.D., President, Santa Ana College

[SAC-22-090 Fire Tech_Fusion Sport Agreement Packet FINAL.pdf \(1,799 KB\)](#)

Our adopted rules of Parliamentary Procedure, Robert's Rules, provide for a consent agenda listing several items for approval of the Board by a single motion. Most of the items listed under the consent agenda have gone through Board subcommittee review and recommendation. Documentation concerning these items has been provided to all board



ORDER – Rancho Santiago Community College	Order Effective Date
Order# SACFIT-2023	01/01/2023

ORDER FORM

CONTACT INFORMATION

Customer	Rancho Santiago Community College Santa Ana College- Fire Wellness	Seller	Fusion Sport Inc
Customer Rep	Kris Ross	Seller Rep	Jason Kricke
Phone	714-564-6864	Phone	720-648-5896
Email	ross_Kristina@sac.edu	Email	jason.kricke@fusionsport.com
Billing Address	2323 N. Broadway	Address	2655 West Midway Blvd Suite 235
	Santa Ana, CA 92706		Broomfield, CO 80020

SOFTWARE & SERVICES

Item	Quantity	Initial Term (Months)	Annual Fee	Total fee
Performance Bundle, January 1, 2023 - June 30, 2023 Includes:	1	6	18,750	\$18,750
Up to 100 Professional Service Hours				
Up to 500 Users				
Up to 10 Essential Integrations				
Up to 2 Fusion Academy Registrations				
Sub Total				\$18,750
Multi-Year Contract Discount				\$-6,000
Total Investment – 6 Months				\$12,750

QUALIFYING CONDITIONS

The Bundle offering herein has been quoted on the acceptance of the below terms. Should the Customer wish to amend these terms, the Customer acknowledges that the proposal herein will be adjusted to reflect the standard annual rate of the Bundle offering as per our publicly available price sheet.

- Minimum 3 Year Contract Commitment
- Maximum of 5 Year Contract Commitment
- Acceptance of Fusion Sport's General Terms and Conditions
- Fusion Sport will have the option to publicly list Santa Ana College- Fire Wellness as a client




ORDER – Rancho Santiago Community College	Order Effective Date
Order# SACFIT-2023	01/01/2023

OPTIONAL ADDITIONAL TERMS

☐ By ticking this box, the parties also agree to enter into the Data Processing Addendum, which terms are incorporated herein by reference. In furtherance of the foregoing, Customer's data protection details are as set forth below:

Customer contact for data protection matters (required):	
Alternative competent supervisory authority(ies) identified in Annex I.C. of the Standard Contractual Clauses (Controller-to-Processor and Processor-to-Processor) (where applicable):	

This Order constitutes an offer to sell the items listed above expressly conditioned on Customer's acceptance of the terms herein and Fusion Sport's General Terms and Conditions mutually agreed upon by the parties on 8-25-22 ("GTC"). Capitalized terms not defined herein have the meanings set forth in the GTC. By signing this Order, you represent that you have authority to accept and agree to these terms on behalf of Customer.

RANCHO SANTIAGO COMMUNITY COLLEGE	FUSION SPORT, INC.
Signed: 	Signed: <u>Patricia Sterland</u>
Printed Name: <u>Iris I. Ingram</u>	Printed Name: <u>Patricia Sterland</u>
Title: <u>Vice Chancellor of Business Services</u>	Title: <u>Vice President, The Americas</u>



ORDER – Rancho Santiago Community College	Order Effective Date
Order# SACFIT-2023	07/01/2023

ORDER FORM

CONTACT INFORMATION

Customer	Rancho Santiago Community College Santa Ana College- Fire Wellness	Seller	Fusion Sport Inc
Customer Rep	Kris Ross	Seller Rep	Jason Kricke
Phone	714-564-6864	Phone	720-648-5896
Email	ross_Kristina@sac.edu	Email	jason.kricke@fusionsport.com
Billing Address	2323 N. Broadway	Address	2655 West Midway Blvd Suite 235
	Santa Ana, CA 92706		Broomfield, CO 80020

SOFTWARE & SERVICES

Item	Quantity	Initial Term (Years)	Annual Fee	Total fee
Performance Bundle, July 1, 2023 - June 30, 2024 Includes:	1	1	45,000	\$45,000
Up to 100 Professional Service Hours				
Up to 500 Users				
Up to 10 Essential Integrations				
Up to 2 Fusion Academy Registrations				
Sub Total				\$45,000
Multi-Year Contract Discount				\$-6,000
Total Investment – 1 Year				\$39,000

QUALIFYING CONDITIONS

The Bundle offering herein has been quoted on the acceptance of the below terms. Should the Customer wish to amend these terms, the Customer acknowledges that the proposal herein will be adjusted to reflect the standard annual rate of the Bundle offering as per our publicly available price sheet.

- Minimum 3 Year Contract Commitment
- Maximum of 5 Year Contract Commitment
- Acceptance of Fusion Sport's General Terms and Conditions
- Fusion Sport will have the option to publicly list Santa Ana College- Fire Wellness as a client




ORDER – Rancho Santiago Community College	Order Effective Date
Order# SACFIT-2023	01/01/2023

OPTIONAL ADDITIONAL TERMS

☐ By ticking this box, the parties also agree to enter into the Data Processing Addendum, which terms are incorporated herein by reference. In furtherance of the foregoing, Customer's data protection details are as set forth below:

Customer contact for data protection matters (required):	
Alternative competent supervisory authority(ies) Identified in Annex I.C. of the Standard Contractual Clauses (Controller-to-Processor and Processor-to-Processor) (where applicable):	

This Order constitutes an offer to sell the items listed above expressly conditioned on Customer's acceptance of the terms herein and Fusion Sport's General Terms and Conditions mutually agreed upon by the parties on 8-25-22 ("GTC"). Capitalized terms not defined herein have the meanings set forth in the GTC. By signing this Order, you represent that you have authority to accept and agree to these terms on behalf of Customer.

RANCHO SANTIAGO COMMUNITY COLLEGE	FUSION SPORT, INC.
Signed:  <small>Iris Ingram 2/6/23 7:02:34 AM PDF</small>	Signed: <u>Patricia Sterland</u>
Printed Name: <u>Iris I. Ingram</u>	Printed Name: <u>Patricia Sterland</u>
Title: <u>Vice Chancellor of Business Services</u>	Title: <u>Vice President, The Americas</u>

General Terms and Conditions

These General Terms and Conditions ("**Terms**") governs all Offerings (defined below) set forth in an order, proposal, statement of work, or similar document referencing these Terms (an "**Order Form**") that is entered into by and between the entity seeking to access or use the Offerings pursuant to these Terms ("**Customer**") and the Fusion Sport entity set forth in Section 17 (Contracting Entity; Choice of Laws; Venue) ("**Fusion Sport**"). Together, these Terms, the Order referencing these Terms, and all documents referenced in these Terms, form the parties' entire agreement (the "**Agreement**") regarding any access to or use of the Offerings. The Agreement is effective as of the date set forth in the Order Form (the "**Effective Date**").

1. **TERM.** Unless terminated by either party as set forth herein, the term of the Agreement begins on the Effective Date and will continue for the initial term stated in the Order Form or, if no term is stated, for 1-year (the "**Initial Term**"). The parties may agree in writing to renew the Agreement for successive terms (each a "**Renewal Term**"). The Initial Term and each Renewal Term are referred to collectively as the "**Term**".

2. OFFERINGS.

2.1 **Generally.** Subject to the terms and conditions of the Agreement and Customer's payment of all applicable Fees, Fusion Sport will provide to Customer the Offerings identified in the Order Form during the applicable Term. The "**Offerings**" consist of all subscriptions, licenses, services, and other offerings set forth in the Order Form, including the features and functionality provided through Fusion Sport's Smartabase Human Performance Data Management Platform (the "**Platform**") and all services relating to the development, configuration, or implementation of Customer's instance of the Platform, including self-build support, project management, development and testing, customization of forms, performance standards, data migration, data-analyses, and training ("**Services**").

2.2 **Platform Access.** If the Order Form includes the Platform, then subject to the terms of the Agreement, including all usage restrictions and Customer's payment of all applicable Fees, Fusion Sport hereby grants Customer the right to access to and use of the Platform, during the Term, for Customer's internal business purposes. Access to and use of the Platform will be through an account on the Platform provided for Customer ("**Account**"). Customer will be permitted to authorize its employees and contractors acting on Customer's behalf to access the Platform under Customer's Account (each a "**User**"). Customer will designate a User as the administrator of Customer's Account (the "**Admin**"). Until an Admin is designated by Customer, the Admin will be the first User added to Customer's Account. Subject to the usage restrictions set forth in the Order Form, the Admin may designate other Users as either Professional Users or End Users. As used in the Agreement, "**Professional Users**" means Users permitted to view information about other Users and "**End Users**" means Users permitted to only view information about themselves. Customer will ensure that all information about each User provided to Fusion Sport is and remains accurate and complete. Customer will advise Users of the restrictions set forth in the Agreement and will be solely responsible for all acts and omissions of its Users just as if each were "Customer" under the Agreement. Customer will implement commercially reasonable measures to protect the security and confidentiality of all User credentials associated with Customer's Account and to prevent unauthorized access to or use of the Platform through any User credentials. Customer will notify Fusion Sport promptly of any such unauthorized access or use of the Platform or if any User credentials are lost, stolen, or otherwise compromised. Customer will be responsible for obtaining and maintaining at its expense all the necessary computer hardware, software, services, modems, connections to the internet and other items operated or provided by third parties as required for Customer's access and use of the Offerings. Fusion Sport is not responsible for the operation of any foregoing nor the availability or operation of the Offerings to the extent such availability and operation is dependent upon the foregoing.

2.3 **Services.** Subject to the terms of the Agreement, including all usage restrictions and Customer's payment of all applicable Fees, Fusion Sport warrants that it will perform the Services in a competent and professional manner consistent with industry standards and to provide the deliverables ("**Deliverables**") as set forth in the Order Form. As Customer's sole remedy, and Fusion Sport's sole obligation, for any failure by Fusion Sport to comply with the foregoing sentence, Fusion Sport will at its option: (a) re-perform the affected Services and provide the resulting Deliverables; or (b) refund the portion of any Fees actually paid by Customer for the affected Services. If the Order Form provides that only a maximum number of Services hours will be provided in a certain time period, and Customer exceeds such maximum, then any overage will be charged at Fusion Sport's then current rates for Services. Services hours are not transferrable to subsequent years and must be used within each billing period set forth in the Order Form. Customer may purchase additional Services at any time by entering into an additional Order Form with Fusion Sport and these additional Services must be used within the period specified in the additional Order Form.

2.4 **Support and Maintenance.** Fusion Sport will provide support and maintenance relating to the Platform solely as specified in the Service Level Agreement (SLA) available at Exhibit A of this agreement. Reasonable support and maintenance provided to Customer will not count against Customer's Service hours set forth in the Order Form.

2.5 Text Messaging Functionality. Subject to the terms of the Agreement, including all usage restrictions and Customer's payment of all applicable Fees, Fusion Sport will provide Customer with the functionality to send Text Messages to its Users as and to the extent set forth in the Order Form. "**Text Message**" means a short message service text message that can be transmitted to a person or persons designated by Customer. Customer shall distribute all Text Messages in accordance with the Mobile Marketing Association Guidelines, any network/wireless carrier requirements, conditions or codes of practice, and all applicable Laws. The content of each Text Message is Customer Content and subject to the covenants set forth in Section 4.4 (Customer Content). No Text Messages may exceed the maximum permissible Text Message length designated by Fusion Sport. Fusion Sport reserves the right to segment, truncate, or otherwise reduce the length of any Text Message or to refuse to transmit and/or deliver a Text Message that does not comply with Fusion Sport's, or any third party network operator's, policies or conditions.

2.6 Third Party Offerings. The Platform may provide the option to obtain, or Fusion Sport may recommend Customer obtain, access to functionality, products and other offerings of third-party providers ("**Third Party Offerings**"). All Third Party Offerings are provided by third parties and Fusion Sport does not control any Third Party Offerings itself nor provide any offerings to Customer other than the Offerings pursuant to the Agreement. Fusion Sport is not responsible or liable for Customer's access to or use of any Third Party Offerings, including any damages, losses, liabilities, failures, or problems caused by, related to, or arising from any Third Party Offerings. Customer's use of and access to any Third Party Offerings is solely between Customer and the third party provider of that Third Party Offerings. Customer's access to and use of any Third Party Offerings is subject to any additional terms, conditions, or agreement provided or entered into in connection with the Third Party Offerings (each, a "**Third Party Agreement**"). The terms of any Third Party Agreement (which may include payment of additional fees) will apply to the applicable Third Party Offerings provided under that Third Party Agreement but will not otherwise apply to Customer's access to or use of the Offerings. Except as set forth in the Agreement, in the event of a conflict between the terms of the Agreement and a Third Party Agreement, the terms of the Third Party Agreement will control with respect to all access to and use of any Third Party Offerings provided under that Third Party Agreement. The Agreement will continue to control in all other respects.

3. RESTRICTIONS. Customer acknowledges that the Platform, Fusion Sport Content (as defined below), and all software, hardware, data, datasets, information, all other technology used by or on behalf of Fusion Sport to provide the foregoing, and any updates, upgrades, new versions, modifications, or enhancements to any of the foregoing (collectively the "**Platform Technology**"), constitute the valuable IPR of Fusion Sport. As an express condition to the rights granted to Customer under the Agreement, and in addition to the other conditions in the Agreement, Customer will not and will not permit any third party to: (1) use or access any Platform Technology or any portion thereof, except as expressly provided in the Agreement; (2) modify, adapt, alter, revise, translate, or create derivatives (including derivative works) from any Platform Technology; (3) sublicense, distribute, sell, convey, assign, pledge, or otherwise transfer or in any way encumber any Platform Technology or any portion thereof; (4) use any Platform Technology for the benefit of any third party or make any Platform Technology available to any third party; (5) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code, structure, design, or method of operation for any Platform Technology; (6) circumvent or overcome (or attempt to circumvent or overcome) any technological protection measures intended to restrict access to any portion of the Platform or any other Platform Technology; (7) access or utilize the any Platform Technology for any purpose that is illegal in any way or that advocates illegal activity; (8) interfere in any manner with the operation or hosting of any Platform Technology or attempt to gain unauthorized access to any Platform Technology; (9) use automated scripts to collect information from or otherwise interact with any Platform Technology; (10) alter, obscure or remove any copyright notice, copyright management information or proprietary legend contained in or on any Platform Technology; (11) download, capture, extract, or otherwise remove any Fusion Sport Content from the Platform. All use of all Platform Technology will be in accordance with any documentation for the applicable Platform Technology provided by Fusion Sport. As used in the Agreement, "**IPR**" means any and all intellectual property and proprietary rights throughout the world, including all copyrights, trademarks, service marks, trade secrets, patents (and patent applications), moral rights, rights in data and databases, contract rights, and any other legal rights protecting data or information.

4. OWNERSHIP AND RIGHTS.

4.1 Platform Technology. The Platform Technology is and will remain the exclusive property of Fusion Sport and its licensors, and nothing in the Agreement will operate to provide Customer with any ownership thereof. If Customer, whether acting alone, with Fusion Sport, or with any third party, makes, acquires, creates, or conceives any developments, modifications, or improvements ("**Improvements**") to the Platform Technology, Customer agrees to and hereby does assign to Fusion Sport any and all right, title and interest in and to such Improvements, including all IPR therein or relating thereto.

4.2 General Knowledge. Customer agrees that Fusion Sport is free to reuse all general knowledge, experience, know-how, works and technologies (including ideas, concepts, processes, and techniques) acquired during provision of the Offerings hereunder, to the extent the foregoing do not constitute Customer Content or Customer's Confidential Information.

4.3 Fusion Sport Content. All Fusion Sport Content is owned by Fusion Sport and its respective licensors. “**Fusion Sport Content**” means (a) all information, data, datasets (including the structure, organization, selection, coordination, and arrangement thereof), content, and all reports and other materials, provided by Fusion Sport or its licensors through the Platform and (b) all Usage Data (as defined below) (together, “**Fusion Sport Content**”). Customer acknowledges that all Fusion Sport Content is provided for informational purposes only and Customer is solely responsible for verifying the accuracy, completeness, and applicability of all Fusion Sport Content prior to making use of that Fusion Sport Content. Fusion Sport has not verified the accuracy of, and will not be responsible for, any errors or omissions in, any Fusion Sport Content.

4.4 Customer Content. As between Fusion Sport and Customer, all Customer Content is owned by Customer and its respective licensors. “**Customer Content**” means the data, datasets (including the structure, organization, selection, coordination, and arrangement thereof), content, and reports, equations, algorithms and other materials, including specific fitness tests, reports, questionnaires and training logs, that Customer or its Users upload, provide, or otherwise make available to the Platform. Customer Content also includes any reports specific to Customer, which Customer generates through its use of the Platform, and which are derived from data uploaded by Customer to the Platform and available for export from the Platform. Customer commits to Fusion Sport that neither the Customer Content, nor use of the Customer Content as permitted herein, will: (a) violate the Agreement or any applicable Laws; (b) be libelous, defamatory, obscene, abusive, pornographic, threatening, or an invasion of privacy; (c) constitute an infringement or misappropriation of the IPR or other rights of any third party; (d) be illegal in any way or advocate illegal activity; or (e) be false, misleading, or inaccurate. Customer is solely responsible for, and assumes all risks associated with all Customer Content, including processing through the Platform. Fusion Sport is under no obligation to review any Customer Content, but Fusion Sport has the right to review any Customer Content and take appropriate action, including removal or modification of Customer Content, if deemed necessary by Fusion Sport to prevent any damage, injury, or harm to Fusion Sport, the Platform, any other Fusion Sport customer, or any third party. Fusion Sport will not be responsible or liable for any deletion, destruction, or loss of any Customer Content and Customer is solely responsible for creating and maintaining adequate backups of all Customer Content as deemed reasonable by Customer. Customer acknowledges that certain Customer Content may be available from other sources, and nothing in the Agreement shall limit Fusion Sport’s rights as to data or information obtained from any source other than Customer. Customer grants to Fusion Sport a nonexclusive, royalty-free, fully paid, worldwide license to utilize all Customer Content as necessary for the Fusion Sport to perform its obligations and exercise its rights under the Agreement. Customer further authorizes Fusion Sport to (i) use aggregated and anonymized insights and learnings derived generally from Customer Content and (ii) generate and maintain usage information and similar statistics regarding Customer and its End Users’ use of the Offerings, which may include usage patterns, traffic logs, and other statistical data associated with use of the Platform. Fusion Sport may use each of the foregoing (collectively, “**Usage Data**”) to improve, test, develop, and provide Fusion Sport’s offerings and otherwise for Fusion Sport’s own lawful business purposes. Customer represents and warrants to Fusion Sport that it has and will maintain all rights, permissions, and consents necessary to grant Fusion Sport each of the foregoing rights set forth in this Section.

4.5 Deliverables. The Deliverables provided by Fusion Sport may consist of either (a) derivatives of Customer Content, including analyses, results, or reports; (b) Improvements to the Platform Technology, including system configuration, apps, forms, dashboards, workflows, or integrations with third party apps; or (c) results of the Services that fit into neither of the foregoing categories. To the extent Deliverables constitute Improvements to the Platform Technology, they are and will be the exclusive property of Fusion Sport and its licensors, and while nothing in the Agreement will operate to provide Customer with any ownership thereof, Fusion Sport hereby grants Customer the right to access and use such Deliverables in conjunction with Customer’s use of the Platform, during the Term, for Customer’s internal business purposes. To the extent Deliverables do not constitute Improvements to the Platform Technology, including any derivatives of Customer Content, but excluding Usage Data, they are and will be the exclusive property of Customer, and nothing in the Agreement will operate to provide Fusion Sport with any ownership thereof. Subject to the terms of the Agreement, including payment of all applicable Fees, Fusion Sport grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license to use any Deliverables that constitute Improvements to the Platform Technology, solely as available through the Platform during the Term for Customer’s internal business purposes.

4.6 Names & Logos. The names, logos, and other trademarks and service marks of each party are and will remain the property of each party. During the term, Fusion Sport may include Customer’s name and logo in Fusion Sport’s standard marketing materials and customer lists, provided that customers approves of this usage in writing and subject to any usage guidelines provided by Customer.

4.7 Actions. Each party agrees to, and hereby does, make such assignments to the other party as are required to provide the other party with the ownership rights set forth in this Section 4 (Ownership & Rights). At the other party’s request and expense, each party will execute and deliver such instruments and take such other action as may be reasonably requested by the other party to perfect or protect the other party’s rights in any IPR.

4.8 No Other Rights. Nothing in the Agreement is intended to grant or create any right or license to either party with respect to any Intellectual Property owned, licensed, or controlled by the other party, except as expressly specified herein.

5. FEES AND EXPENSES. Customer shall pay the fees specified in the Order Form ("**Fees**") when due. Customer will reimburse Fusion Sport for expenses incurred in providing the Offerings if specified in the Order Form ("**Expenses**"). Unless specified otherwise in an Order Form, Fusion Sport will invoice Customer the applicable Fees for the Initial Term on the Effective Date and, for each Renewal Term, up to 60 days prior to such Renewal Term. Fusion Sport may increase the Fees for any Renewal Term, effective upon such renewal, by providing Customer notice at least 45 days prior to the end of the Initial Term or then-current Renewal Term. If Customer has specified credit card, debit card, online payment account, mobile services account, or other payment method as an applicable payment mechanism for the Offerings under the Agreement, Customer hereby grants Fusion Sport and its payment processors the right to charge the applicable payment account for all Fees and Expenses incurred under the Agreement, including payment processing fees. Unless specified in the Order Form, all Fees and any Expenses will be due and payable by Customer in advance within 30 days of the date of each applicable invoice. Fees and Expenses are non-refundable once paid. Amounts not paid when due will be subject to a late charge of 1.5% per month or any applicable legal maximum, whichever is greater. If Fusion Sport requires use of collection agencies, attorneys, or courts of law for collection of past due Fees, Customer will be responsible for those expenses. Customer agrees to pay any taxes and other fees and charges imposed by any government entity on the Platform or arising from the Agreement, excluding taxes based on Fusion Sport's net income.

6. WARRANTIES.

6.1 Mutual. Each party represents, warrants and covenants to the other party that: (a) such party has full power and authority to enter into the Agreement; (b) the Agreement will not conflict with, result in a breach of, or constitute a default under any other agreement to which such party is a party or by which such party is bound; and (c) the Agreement is a legal and valid obligation binding upon such party and enforceable in accordance with its terms.

6.2 Compliance. Each party represents, warrants and covenants to the other party that: (a) such party will comply with all laws, rules, and regulations applicable to such party in connection with such party's performance under the Agreement, including all data privacy and security laws ("**Laws**"); and (b) such party's performance under the Agreement will not cause the other party to violate any Laws applicable to such party.

6.3 No Viruses. Each party represents, warrants, and covenants to the other that it has taken commercially reasonable measures to test all data and materials provided to the other party under the Agreement, including all Customer Content and Platform Technology, for the presence of any viruses, trojan horses, or other devices which would disable or impair the other party's networks, systems, data, or software and to the best of its knowledge, no such devices are present in such data and materials.

7. DISCLAIMER. THE WARRANTIES EXPRESSLY STATED IN THE AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE BY EACH PARTY UNDER THE AGREEMENT. ANY REMEDY EXPRESSLY STATED IN THE AGREEMENT IS THE SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THOSE WARRANTIES. FUSION SPORT SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE PLATFORM AND ANY PLATFORM TECHNOLOGY OR ANY OF ITS OBLIGATIONS HEREUNDER, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. EXCEPT AS EXPRESSLY STATED IN THE AGREEMENT, ALL PLATFORM TECHNOLOGY IS PROVIDED BY FUSION SPORT AND ITS LICENSORS ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY REPRESENTATIONS, WARRANTIES, OR COVENANTS OF ANY KIND.

8. INDEMNIFICATION.

8.1 By Customer. Customer will indemnify and hold harmless Fusion Sport, its affiliates and licensors, and each of their respective officers, directors, shareholders, employees, contractors, agents, and representatives from all losses, liabilities, costs, judgments, awards, settlements, penalties, damages, fines, expenses, costs and fees (including attorneys' fees and costs of collection) ("**Losses**") incurred in connection with any claim, allegation, action, suit, or demand ("**Claims**") brought against any of them by a third party insofar as the Claim arises out of or relates to the Customer Content or Fusion Sport's permitted use of the Customer Content infringing, misappropriating, or violating any IPR, privacy right, or contract right. THIS SECTION STATES FUSION SPORT'S SOLE AND EXCLUSIVE REMEDY AND CUSTOMER'S ENTIRE LIABILITY FOR THE FOREGOING CLAIMS.

8.2 By Fusion Sport. Fusion Sport will indemnify and hold harmless Customer, its affiliates and licensors, and each of their respective officers, directors, shareholders, employees, contractors, agents, and representatives from all Losses incurred in connection with any Claims brought against any of them by a third party insofar as the Claim alleges that the Offerings or Customer's use of the Offerings as expressly permitted herein infringes, misappropriates, or violates such third party's IPR. In the event such Claim is made or, in Fusion Sport's reasonable opinion be likely to be made, in addition

to Fusion Sport's indemnification obligations under this Section, Fusion Sport may, at its option and expense: (a) procure for Customer the right to continue using the applicable Offering; (b) replace or modify the applicable Offering so as to no longer infringe; or (c) terminate the Agreement. Fusion Sport's obligations under this Section will not extend to, and Fusion Sport shall have no liability under this Section for, any Claim based on, arising out of, or relating to any: (i) failure by Customer to comply with the terms of the Agreement or any documentation or instructions provided by Fusion Sport; (ii) Customer Content; (iii) specifications or instructions provided by Customer; (iv) additions, changes, or modifications to the Platform Technology, unless provided by Fusion Sport; (v) products, services, or other offerings not provided by Fusion Sport; or (vi) any systems, networks, databases, hardware, and software provided under any license or agreement other than the Agreement. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND FUSION SPORT'S ENTIRE LIABILITY FOR THE FOREGOING CLAIMS.

8.3 Procedure. As a condition to obtaining indemnification from the other party under this Section, each party will: (a) give the other party prompt notice of any claim for indemnification, provided however that the failure to give such notice shall not relieve the indemnifying party of its obligations hereunder except to the extent that such indemnifying party is materially prejudiced by such failure; (b) grant to the other party sole control of the defense or settlement of any resulting legal proceedings, provided that any settlement that involves more than the payment of money and a full release of the indemnified party will require the indemnified party's written consent; and (c) provide the other party with reasonable cooperation and, at the other party's request and expense, assistance in the defense or settlement of any claim for indemnification. Notwithstanding the foregoing, the indemnified party may participate in any defense, settlement, or other legal proceedings relating to any such indemnification at such party's expense through counsel of such party's choice.

9. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE LICENSORS OR PROVIDERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE OFFERINGS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING LOSS OF PROFIT, REVENUE, BUSINESS INTERRUPTION, TIME OPPORTUNITY, OR GOODWILL. THE TOTAL CUMULATIVE LIABILITY OF EACH PARTY TO THE OTHER PARTY UNDER OR RELATED TO THE AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES, IN AN AMOUNT NOT TO EXCEED THE FEES PAID BY CUSTOMER TO FUSION SPORT IN THE 24 MONTHS PRECEDING THE LIABILITY. THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS SECTION WILL NOT APPLY AS TO ANY DAMAGES OR OTHER LIABILITY BASED ON OR RESULTING FROM: (1) A PARTY'S OBLIGATIONS UNDER SECTION 8 (INDEMNIFICATION); (2) A PARTY'S BREACH OF SECTION 3 (RESTRICTIONS) OR 12 (CONFIDENTIALITY); (3) A PARTY'S INFRINGEMENT, MISAPPROPRIATION OR VIOLATION OF THE OTHER PARTY'S IPR; (4) THE BAD FAITH OR WILLFUL MISCONDUCT OF A PARTY; OR (5) A PARTY'S PAYMENT OBLIGATIONS. ALL CLAIMS BY A PARTY AGAINST THE OTHER PARTY RELATING TO THE AGREEMENT OR THE OFFERINGS MUST BE BROUGHT WITHIN 18 MONTHS AFTER THE CLAIM ARISES, OR ANY SHORTER PERIOD SPECIFIED BY APPLICABLE LAW. IN STATES WHERE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IS NOT PERMITTED, EACH PARTY'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

10. TERMINATION.

10.1 Termination. The Agreement may be terminated by either party if the other party materially breaches any provision of the Agreement and fails to cure such breach within 30 days after receiving notice thereof from the non-breaching party.

10.2 Effect of Termination. Termination of the Agreement will not relieve either party of any rights or obligations accruing prior to such termination. Upon any termination of the Agreement: (a) all Fees owed under the Agreement prior to such termination will be immediately due and payable (including, at minimum, the Fees due under the Agreement pro-rated based on Offerings provided by Fusion Sport prior to termination and any Fees attributable to non-cancelable commitments entered into by Fusion Sport prior to such termination); (b) Fusion Sport may cease providing all access to the Offerings under the Agreement; (c) all rights and licenses granted to Customer with respect to any Offerings will terminate and Customer will cease all access and use of the Offerings; (d) except as may be expressly permitted under the Agreement, including Section 10.3 (Removal of Customer Content), each party will return to the other party or, at the option of the other party, permanently destroy any Confidential Information of the other party in such party's possession or control, including any Fusion Sport Content and Customer Content. At the request of the other party, each party will certify in writing to its compliance with this Section. Furthermore, upon Fusion Sport's termination of the Agreement for Customer's breach, Customer will pay all outstanding Fees.

10.3 Removal of Customer Content. The Platform includes functionality allowing Customer to delete its Customer Content from the Platform and/or to export its Customer Content from the Platform in an industry-standard format. Customer may access and use such functionality during the Term of the Agreement and for 30 days following termination of the Agreement. Fusion Sport will delete Customer Content automatically when delete features within the Platform are

utilized by Customer and, in any event, in accordance with Fusion Sport's standard procedures if Customer fails to utilize the delete features within the 30 days following termination of the Agreement.

10.4 Survival. The following Sections will survive termination of the Agreement for any reason: 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 18, 19, and 20.

11. SUSPENSION. Fusion Sport reserves the right to immediately suspend Customer's access to the Offerings where: (1) Customer is past due on any payment obligation hereunder and fails to pay all amounts owed within 10 days after receiving notice thereof from Fusion Sport; or (2) Fusion Sport reasonably believes that Customer's use of the Offerings may be in violation of the Agreement or applicable Law or present a risk of harm, loss, or liability to Fusion Sport or any other customer or third party. In such cases, without limiting its obligations under subsection (1) of the preceding sentence, Fusion Sport will use commercially reasonable efforts to (a) limit the extent and duration of any suspension, (b) notify Customer of any suspension (in advance if possible), and (c) reinstate any suspended Offerings as soon as possible.

12. CONFIDENTIALITY. Each party ("**Recipient**") may receive Confidential Information from the other party ("**Discloser**") during the Term of the Agreement. Each Recipient agrees to protect from disclosure such Confidential Information with the same degree of care that it affords its own confidential information, but in no event with less than reasonable care, and to only use the Discloser's Confidential Information as is necessary to perform its obligations and exercise its rights under the Agreement. For purposes of the Agreement, "**Confidential Information**" means all information regarding a party's business or affairs, including customer information, marketing information, financial information, data (including software code), business concepts, business strategy, processes, methods, systems, know-how, devices, formulas, product specifications, marketing methods, prices, and customer lists, whether in oral, written, or electronic form, that is either: (1) designated as confidential; (2) of a nature such that a reasonable person would recognize it as confidential; or (3) disclosed under circumstances such that a reasonable person would know it is confidential. The terms and conditions of the Agreement shall constitute the Confidential Information of each of the parties. The Customer Content shall constitute Customer's Confidential Information and the Fusion Sport Content shall constitute Fusion Sport's Confidential Information. The following information will not be considered Confidential Information: (a) information that is publicly available through no fault of the party that was obligated to keep it confidential; (b) information that was known by a party prior to commencement of discussions regarding the subject matter of the Agreement; (c) information that was independently developed by a party; and (d) information rightfully disclosed to a party by a third party without continuing restrictions on its use or disclosure. Each Recipient may disclose the Confidential Information: (i) to the extent necessary to comply with an order or requirement of a judicial or administrative process, provided that Recipient promptly notifies Discloser and allows Discloser sufficient time to oppose such disclosure; (ii) to its affiliates in connection with its corporate and financial reporting requirements; and (iii) as required by governing law. If Customer provides any feedback, comments, or ideas to Fusion Sport regarding the Platform Technology or improvements thereto, Customer agrees that Fusion Sport will be free to use, disclose, and exercise any rights in the same in connection with its products and services with no financial, credit, confidentiality, or other obligation to Customer. Except as set forth in Section 10.3 (Removal of Customer Content), upon Discloser's written request, Recipient will promptly return to Discloser, or destroy (if requested), all the Discloser's Confidential Information in Recipient's possession or control and permanently erase all electronic copies of such Confidential Information. Recipient's obligations under this Section shall continue for 3 years after the termination of the Agreement, except such obligations will survive with respect to trade secrets for so long as any such Confidential Information remains a trade secret under applicable Laws.

13. FORCE MAJEURE. With the exception of any monetary obligations under the Agreement, neither party will be responsible for performance of its obligations hereunder where delayed or hindered by events beyond its reasonable control, including, without limitation, acts of God or any governmental body, war or national emergency, riots or insurrection, epidemic, sabotage, embargo, fire, flood, accident, strike or other labor disturbance, or interruption of or delay in systems, power or telecommunications under third-party control ("**Force Majeure Events**"). In the event of a Force Majeure Event, the period for performance hereunder will be extended by the length of the Force Majeure Event (or by such other length of time as is reasonably required).

14. DISPUTE RESOLUTION. The parties will attempt to resolve all disputes, controversies, or claims arising under, out of, or relating to the Agreement, including the formation, validity, binding effect, interpretation, performance, breach or termination, of the Agreement and the arbitrability of the issues submitted to arbitration hereunder and non-contractual claims relating to the Agreement (each, a "**Dispute**") through discussion between the parties. Except as otherwise provided in Section 15 (Injunctive Relief), if any Dispute cannot be resolved through negotiations between the parties within 30 days of notice from one party to the other of the Dispute, either party may submit such Dispute for final settlement through binding arbitration under the Rules of the International Chamber of Commerce then in effect (the "**Rules**"). Either party may commence the arbitration by delivering a request for arbitration as specified in the Rules. The arbitration will be conducted before a sole neutral arbitrator selected by agreement of the parties. If the parties cannot agree on the appointment of a single arbitrator within 30 days after either party to the Agreement delivers a request for arbitration, a neutral arbitrator will be selected as provided in the Rules. The arbitration will be conducted confidentially at a site specified by Fusion Sport in the applicable venue, as set forth in Section 16 (Contracting Entity; Choice of Laws; Venue). The arbitrator will apply the

Law set forth in Section 16 (Contracting Entity; Choice of Laws; Venue) to any such arbitration and shall have the power to award any remedy available at Law or in equity; provided, however, that the arbitrator shall have no jurisdiction to amend the Agreement or grant any relief not permitted herein or beyond the relief permitted herein. The award of the arbitrator will be the exclusive remedy of the parties for all claims, counterclaims, issues or accountings presented or plead to the arbitrator. The award of the arbitrator may not require payment of the costs, fees and expenses incurred by the prevailing party in any such arbitration by the non-prevailing party. Judgment upon the award may be entered in any court or governmental body having jurisdiction thereof. Any additional costs, fees or expenses incurred in enforcing the award may be charged against the party that resists its enforcement.

15. INJUNCTIVE RELIEF. Without prejudice to the parties' right to proceed with arbitration, nothing in the Agreement will limit either party's right to seek immediate injunctive or other equitable relief in any court of competent jurisdiction. Each party acknowledges and agrees that due to the unique nature of the Platform Technology and the IPR relating thereto, there can be no adequate remedy at Law for any breach by Customer of its obligations hereunder, that any such breach may allow Customer or third parties to unfairly compete with Fusion Sport resulting in irreparable harm, and therefore, that upon any such breach of the Agreement or threat thereof, Customer will not oppose any attempt by Fusion Sport to obtain, in addition to whatever remedies it may have at law, an injunction or other appropriate equitable relief without making any additional showing of irreparable harm (and agrees to support the waiver of any requirement that Fusion Sport be required to post a bond prior to the issuance of any such injunction or other appropriate equitable relief).

16. CONTRACTING ENTITY; CHOICE OF LAWS; VENUE. Which Fusion Sport entity is entering into the Agreement, the address to which Customer should direct notices under the Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with the Agreement, and, subject to Section 14 (Dispute Resolution) the site for any arbitration and the courts that have jurisdiction over any such dispute or lawsuit, depend on where Customer is domiciled. The Agreement will be governed in accordance with such law, without regard to any choice of law provisions. Subject to Section 14 (Dispute Resolution) such courts will have exclusive jurisdiction over any disputes arising under the Agreement and each party hereby irrevocably submits to the personal jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement, and the parties hereby disclaim the application thereof.

If Customer is domiciled in:	The Fusion Sport entity entering into the Agreement:	The address for notice:	Governing law is:	Venue for Arbitration & courts with exclusive jurisdiction:
Australia, New Zealand, and any other country in the Asia-Pacific region	Fusion Sport Pty Ltd.	Level 1, North Tower, 339 Coronation Drive, Milton, QLD, 4064, Australia	Queensland, Australia	Queensland, Australia
The United States of America, and any other country in North, Central, or South America, including the Caribbean Islands	Fusion Sport Inc.	2935 Baseline Road, Suite 102, Boulder, CO, 80303, USA, attn: Legal Department	California and controlling United States federal law	Orange County, California
The United Kingdom	Fusion Sport Europe Ltd.	9 Greyfriars Road, Reding, Berkshire, RG1 1NU, United Kingdom	England and Wales	London, England
Any country in Europe, the Middle East, or Africa, other than the United Kingdom.	Fusion Sport BV	Papendallaan 60, Arnhem, 6816 VD, Netherlands	England and Wales	London, England

17. NOTICE. All notices, consents, and approvals to be given by a party under the Agreement will be in writing and will either be via: (1) hand-delivered, which is effective upon delivery; (2) sent by a reputable overnight courier (for example, Federal Express), which is effective on the business day following deposit with such courier; (3) or sent by prepaid certified or registered mail, which is effective on the third business day after mailing. Customer shall direct its notices to the address for the applicable Fusion Sport entity, as set forth in Section 16 (Contracting Entity; Choice of Laws; Venue). Fusion Sport shall direct its notices to the address set forth in the Order Form. Either party may change its address for notice by giving notice of the new address to the other party in accordance with this Section.

18. EXPORT. Customer will comply with all export and import control laws, rules, and regulations applicable to the access to and use of the Platform. Customer will obtain all licenses, permits, and approvals required by the U.S. government or any other government and under any applicable Laws. Customer will not export or re-export any Platform Technology without all such required licenses, permits, and approvals. Customer will defend, indemnify, and hold harmless Fusion Sport from and against all fines, penalties, liabilities, damages, costs, and expenses incurred by Fusion Sport as a result of any violation of such Laws by Customer.

19. U.S. GOVERNMENT CUSTOMERS. All relevant portions of the Platform and Fusion Sport Content are each a "commercial item" as that term is defined at FAR 2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 CFR 12.212 (Sep 1995), and is provided to the U.S. government only as a commercial end item. Consistent with FAR 12.212 and DFARS 227.7202 (Jun 1995), all U.S. government users acquire the licenses and rights granted with respect to the Platform or Fusion Sport Content with only the rights expressly set forth herein and no other rights.

20. ADDITIONAL TERMS. The Agreement, including these Terms, the Order Form, and the SLA, represents the entire understanding and agreement between the parties with respect to the subject matter of the Agreement and supersedes any and all oral or written agreements or understandings, whether written or verbal, between the parties as to the subject matter of the Agreement. Each Order Form referencing these Terms is considered a separate agreement between the parties thereto and these Terms, and the SLA, are hereby incorporated by reference into each Order Form. Except as noted herein, this Agreement may be amended or changed only by a writing signed by both parties. Neither party may assign the Agreement or any right, interest or benefit under the Agreement without the prior written consent of the other party; provided, however, either party may assign the Agreement to a successor who acquires substantially all of its assets or equity through purchase, merger or other transaction without the other party's consent. Any purported assignment in breach of the foregoing will be null and void. The Agreement will be fully binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, and nothing in the Agreement confers upon any other person or entity any legal or equitable right whatsoever to enforce any provision of the Agreement. English (as the meaning of the words and phrases thereof are commonly interpreted in the U.S.) shall be the language used in all written communications between the parties pursuant to the Agreement, including all notices. If Fusion Sport provides a translation of the English language version of this Agreement or any component of this Agreement, the translation is provided solely for convenience, and the English version will prevail. The words "include," "includes" and "including" will mean "include," "includes," or "including," in each case, "without limitation." The Agreement may be changed only by a writing signed by both parties. The failure of either party to enforce any right or provision in the Agreement will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of each party. Except as expressly set forth in the Agreement, the exercise by either party of any of its rights or remedies under the Agreement will be without prejudice to its other rights or remedies under the Agreement or otherwise. If any provision of the Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable Law and the remaining provisions of the Agreement will continue in full force and effect. Except as may be expressly agreed by the parties in writing, there are no third-party beneficiaries to the Agreement. The parties are independent contractors, and nothing in the Agreement will be construed as creating an employer-employee relationship, a partnership, or a joint venture between the parties. Neither party is an agent of the other and neither party is authorized to make any representation, contract, or commitment on behalf of the other party. Any portion of Agreement, including the Order Form referencing these Terms, may be executed electronically or in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Execution of this agreement, signifies the parties' mutual consent to conduct transactions electronically. Pursuant to the California Uniform Electronic Transactions Act ("UETA") (Cal. Civ. Code § 1633.1 et seq.) and California Government Code 16.5, the Customer reserves the right to conduct business electronically, unless otherwise communicated by the Customer to stop such electronic transactions, including without limitation to the use of electronic or digital signatures.

21. ACCESSIBILITY OF INFORMATION TECHNOLOGY. Fusion Sport hereby warrants that the Services to be provided under this Agreement comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C §794d), and its implementing regulations set forth at Title 36, Code

of Federal Regulations, Part 1194. Fusion Sport agrees to promptly respond to and resolve any complaint regarding accessibility of its products brought to its attention. Fusion Sport further agrees to indemnify and hold harmless Customer from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this Agreement.

22. INSURANCE. Fusion Sport shall procure and maintain insurance which shall contain the following coverage: \$2,000,000 per occurrence / \$2,000,000 annual aggregate.

- (a) Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information; including credit monitoring and regulatory fines arising from such theft, dissemination or use of the confidential information.
- (b) Network security liability arising from the unauthorized use of, access to, or tampering with computer systems.
- (c) Liability arising from the failure of technology products (software) required under the contract for Consultant to properly perform the services intended.
- (d) Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.
- (e) Liability arising from the rendering, or failure to render, professional services

23. FERPA SCHOOL OFFICIAL. Fusion Sport acknowledges that for the purposes of this Agreement, it is designated as a "school official" with a "legitimate educational interest" in the education records of Customer students, as those terms have been defined under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations at 34 CFR 99. Fusion Sport agrees to abide by the limitations and requirements imposed by 34 CFR 99.33 (a) on school officials. Fusion Sport shall use Customer education records only for the purposes of fulfilling its duties under the contract and it will not monitor or share such data with or disclose it to any third party except as provided for in this contract, an Agreement, as required by law, or authorized in writing by Customer or subject student. By way of illustration and not of limitation, Fusion Sport will not use such data for Fusion Sport's own benefit and, in particular, will not engage in "data mining" of Customer data or communications, whether through automated or human means, except as necessary to fulfill its duties under this Agreement, which includes providing and improving the Fusion Sport Services, as defined in this Agreement, or as specifically and expressly provided for in this Agreement, an Addendum, as required by law, or authorized in writing by Customer.

EXHIBIT A
SERVICE LEVEL AGREEMENT

This Service Level Agreement ("SLA") forms part of the General Terms and Conditions to which this SLA is attached (the "Agreement"). Capitalized terms used but not defined in this SLA have the meanings set forth in the Agreement.

1. UPTIME COMMITMENT.

1.1 Uptime. Fusion Sport commits that the Platform will be available 99% of the time in any calendar month (the "Uptime Commitment"). Uptime is measured monthly, commencing at 12:00 am on the first calendar day of the month in accordance with the following formula:

$$\text{Uptime} = \frac{(\text{Hours in the Month} - \text{Service Outages})}{\text{Hours in the Month}}$$

1.2 Service Outage. A "Service Outage," as used above, occurs when (a) material features or functionality of the Platform cannot be accessed or utilized by Customer or its Users; and (b) such failure is recorded with Fusion Sport's helpdesk. The length of the Service Outage is measured from the time the technical support request is submitted to Fusion Sport until the time Fusion Sport confirms that the affected Platform is again able to transmit and receive data. Service Outages exclude any time that the Platform is unavailable due to (i) Scheduled Maintenance (as defined below) or (ii) reasons outside Fusion Sport's direct control, including: (1) Customer's or a User's own telecommunications or Internet service providers; (2) a Force Majeure Event; (3) any systemic Internet failures; or (4) any failure in Customer's or a User's own hardware, data, software or network connection.

1.3 Scheduled Maintenance. "Scheduled Maintenance" means a planned maintenance period or scheduled downtime. Fusion Sport will use commercially reasonable efforts to notify Customer one week in advance of any Scheduled Maintenance.

1.4 Service Credits. Fusion Sport's sole liability (and Customer's exclusive remedy) for any failure to meet the Uptime Commitment shall be to issue a service credit ("Service Credit") calculated as a percent of Platform Subscription Fees applicable to the month in which the Service Outage occurred, as set forth in the table below. Customer must request any Service Credit in writing within 30 days of the last day of the month in which Fusion Sport failed to meet the Uptime Commitment. Fusion Sport shall issue such Service Credit within 30 days of Customer's request.

Uptime Percentage	Service Credit
99 - 98%	5%
97.9 – 95%	10%
94.9 – 90%	25%
less than 90%	50%

2. SUPPORT COMMITMENTS.

2.1 Assessment of Priority Levels and Target Response Times. Customer may report any Service Outage or other Platform error to Fusion Sport's helpdesk. Fusion Sport will designate each reported Service Outage or other error as Priority 1, Priority 2, Priority 3, or Priority 4, in accordance with the table below. Fusion Sport will use commercially reasonable efforts to resolve any Service Outages or other errors in accordance with the table below.

Priority Level	Response Time	Target Resolution Time	Priority Definition	Fault Definition / Example	Practical Examples
Priority 1	Within 1 hour of notification of the fault	4 hours	Critical Priority: Immediate action is required, using all available resources until resolved.	The Platform is not operational or is inaccessible and is required to be restored back to normal service operations as quickly as possible. OR A fault representing a possible significant security risk has been identified.	AWS server failure causing slow or unresponsive behavior. Application login failure. Publication of an exploitable vulnerability of critical severity.
Priority 2	Within 2 hours of notification of the fault	1 day	High Priority: The situation is assessed and staff working normal tasks may be interrupted for assistance if required.	The Platform is still operational, but a major part of the Platform is unavailable. The interruption disrupts the usability of the Service significantly.	Comms / data connectivity failure. E.g., SNS / SMS, email, API.
Priority 3	Within 1 business day of notification of the fault	7 days	Moderate Priority: The fault should be resolved, and resources are used according to standard business procedures and operations.	A major part of the Platform is not operating efficiently, or a minor part of the Platform is unavailable. The Customer is able to continue operations or work-around is available to re-mediate the impact of the fault.	Intermittent slow or poor server performance relative to normal business use. User-interface, data management or reporting behavior issues.

Priority 4	Within 2 business days of notification of the fault	As part of routine maintenance service or major release cycle	Low Priority: The fault is an irritant, which should be repaired, but repair can be deferred until routine maintenance or major release cycle	A problem with part of the Platform which has minimal impact on performance or operability of the Services. OR A fault representing a possible minor security risk has been detected	Supported third party browser or device updates change the expected behavior of the Platform. Publication of a vulnerability of low severity.
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2.3 Limitations. Fusion Sport is not responsible for correcting any Service Outage or other error not reproducible by Fusion Sport on the unmodified Platform or errors caused by any of the following: (a) any alterations of or additions to the Platform or Platform Technology made by parties other than Fusion Sport; (b) use of the Platform or Platform Technology in a manner for which it was not designed; or (c) accident, negligence, or misuse of the Platform.

3. Support for Self-Hosted Environments. Fusion Sport occasionally allows Customers to host their own instance of the Platform, in which case Fusion Sport staff may not have direct access to the Platform or servers without Customer's assistance ("**Self-Hosted Environments**"). Any installation, use, or provisioning of the Platform or Platform Technology for a Self-Hosted Environment is and will be subject to a separate agreement between the parties covering such Self-Hosted Environment and the terms of the Agreement, including this SLA, do not apply to such Self-Hosted Environment. Unless otherwise agreed by the parties, Fusion Sport will use commercially reasonable efforts to support Customer's Self-Hosted Environment and hereby disclaims all other uptime or support commitments.