



Agenda Item Details

Meeting	Sep 28, 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 Zeke Hernandez.

Final Resolution: Motion Carried

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



Agenda Item Details

Meeting	Sep 28, 2022 - REGULAR BOARD OF TRUSTEES MEETING (HYBRID)
Category	6. INSTRUCTION
Subject	6.6 *Approval of Subscription Agreement between RSCCD on behalf of Santa Ana College and Fusion Sport Inc.
Type	Action (Consent)
Fiscal Impact	Yes
Dollar Amount	27,425.00
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 Criminal Justice Academies would like to renew its purchase of Smartabase Human Performance Tracking Software to enhance its peace officer fitness training. Strong Workforce grant funds will be used for this procurement. This software tracks fitness training loads and analyzes individual results and group trends to help prevent disparate impacts during the 115 rigorous hours of Lifetime Fitness in Basic Academy training. The superordinate goal is to continue to produce physically fit graduates, who reflect the demographic diversity in the communities they will serve across Southern California.

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 Inc., including the scope of work and detailed schedule of payment. This Agreement governs nine (9) months of software usage, which shall remain in effect from October 1, 2022 through June 30, 2023, or until terminated by either party. The Agreement carries a cost of \$27,425.00.

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-22-089_CJA_Fusion Sport Subscription Agreement Packet.pdf \(1,631 KB\)](#)

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

members and the public in advance to assure an extensive and thorough review. Items may be removed from the consent agenda at the request of any board member.



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ORDER FORM

CONTACT INFORMATION

Customer	Santa Ana College – Criminal Justice Academies	Seller	Fusion Sport Inc.
Customer Rep	Tim Winchell	Seller Rep	Jason Kricke
Phone	714-566-9200	Phone	720-648-5896
Email	winchell_timothy@sac.edu	Email	jason.kricke@fusionsport.com
Billing Address	15991 Armstrong Ave.	Address	2655 W. Midway Blvd. #235
	Tustin, CA 92782		Broomfield, CO 80020

SOFTWARE & SERVICES

Item	Quantity	Initial Term (Years)	Annual Fee	Total fee
Collegiate Premium Bundle: October 1, 2022 – June 30, 2023	1	.75 (9 months)	\$23,000	\$17,250
Level 1 Hosting & Infrastructure				
Up to 25 Professional Licenses				
Up to 50 Professional Consulting Hours				
Up to 1000 SMS Alerts				
Up to 2000 Students				
Up to 5 Essential Integrations				
R Connector & Package				
Up to 2 Fusion Academy Registrations				
Professional Consulting Hours (50)	1	1	\$7,400	\$7,400
Level 2 Hosting Upgrade	1	.75 (9 months)	\$3,700	\$2,775
Total Investment				\$27,425



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AGREEMENT DETAILS

This subscription agreement is between Fusion Sport Inc. FEIN 300635057 (“Fusion Sport”) of 2655 W. Midway Blvd. #235 Broomfield, CO 80020 and Santa Ana College- Criminal Justice Academies (“the Client”) of [15991 Armstrong Avenue Tustin, CA 92782](#) and is made effective as of October 1, 2022 until June 30, 2023, for a duration of 9 months

This agreement, together with its schedules, addenda and Fusion Sport’s Standard Operating Terms, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings, and sets forth the entire agreement between Fusion Sport and the Client as to its subject matter. None of the terms of this agreement shall be amended except in writing signed by both parties.

PRICING

The Client will commit to the following minimum purchase for this package:

Items	Quantity	Investment
COLLEGIATE PREMIUM BUNDLE		
Includes:		
Level 1 Hosting and Infrastructure		
Up to 25 Professional Licenses		
Up to 50 Professional Service Hours		
Up to 1000 SMS Alerts		
Up to 2000 Athletes		
Up to 5 Essential Integrations		
R Connector & Package		
Up to 2 Smartabase Builder Course Registrations	1	\$17,250
Items, Cont.	Quantity, Cont.	Investment, Cont.
PROFESSIONAL SERVICE HOURS	1	\$7,400
LEVEL 2 HOSTING UPGRADE	1	\$2,775
TOTAL		\$27,425

Please note all prices are in United States Dollars (USD), exclusive of tax.

STANDARD CONDITIONS OF PAYMENT TERMS

- The agreement is established on an annual subscription basis. Discounts available for multi-year agreements.
- Unused professional service hours and user licenses are not transferable to subsequent years in the contract and must be used in each billing period.
- Should the Client require additional features, such as professional licenses or professional service hours, they can be purchased in addition to the above agreed and proposed arrangements. Fusion Sport can be contacted for more information on these additional features.
- Fusion Sport will raise an invoice sixty (60) days before the renewal month, in which case, full payment for invoices issued in any given month must be received by Fusion Sport thirty (30) days after the mailing date of the invoice. Failure to pay the invoice by renewal date's anniversary may result in restriction to access to Client's site.
- The initial service term as specified in the above agreed and proposed arrangements shall be automatically renewed for additional periods of the same duration as the initial service



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term, unless either party request termination through written communication at least thirty (30) days prior to the end of the then-current term.

PROFESSIONAL SERVICE HOURS:

Professional services can be conducted by a range of different Fusion Sport staff, including Sport Science Consultants, Education Specialists, Programmers, or IT Administrators. These professional services are mostly used to provide the following functions:

- Client self-build support (online, phone, email or via onsite service delivery)
- Project management (scoping, planning, and monitoring)
- Site development and testing
- Training to end-users, Client builders or Client system administration staff
- Data migration / data recovery
- Investigations / troubleshooting

Professional services are logged in 15-minute increments, and a full log can be accessed through MyFusion, Fusion Sport's client portal.

Professional services will not be charged in relation to any of the following.

- Assistance with server, or system faults or software bugs as defined in our current service level agreement.
- Account management which is handled by the Client Success Team (renewals, expansions, executive business reviews and MyFusion Client Portal enquiries).

Unused professional service hours and user licenses are not transferable to subsequent years in the contract and must be used in each billing period.

In any subscription year, the Client may purchase additional professional service hours:

- Up to 25 hours of builder services: USD \$3,900
- Up to 50 hours of builder services: USD \$7,400
- Up to 100 hours of builder services: USD \$13,700

USER LICENSING:

A professional user is a user of Smartabase who is allowed to see any additional information about other users within the organization. In other words, they will be able to view data about people other than themselves. In your case this will most likely be High Performance Managers, Coaches, S&C Coaches, Dieticians, Physio's, and other members of staff. Athletes are not considered "Professional Users" as they only see information about themselves.

An active user is a user who is able to access the software – past users who no longer need to use the software can be deactivated by The Client administrators. Within the Professional Users, The Client has unlimited capacity to upgrade a standard professional user to a builder at any time.

The Client site will be audited for active professional users monthly, and the Client will be notified if the number of active users exceeds the number purchased. If the number exceeds that purchased, the Client will have the choice to deactivate some users or purchase additional seat licenses. Should the Client require additional Professional Licenses these can be purchased in packs of 10, with an investment of USD \$2,300 per pack of 10.

EXTENDED SUPPORT DESK ACTIVITIES:

The yearly software fees include 24/7 support for critical business functions (i.e. the continuity of the platform) and support can be raised at any time using the Fusion Sport level 1 alert process.

Professional service support for the Client is available during normal working hours (08:00-18:00,



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Monday-Friday), based on three time zones:

- European office: GMT +1
- Australian Office: GMT +10
- USA Office: GMT -7

AGREEMENT

This agreement begins on the start date as outlined in the Agreement Details within this document and continues for the duration of the initial agreement period unless terminated in accordance with Fusion Sport's Terms of Service. When signed, this agreement grants the Client the right to access a dedicated Smartabase site for the agreed license period. This right is non-exclusive and nontransferable and limited by this agreement.

Please sign below to confirm that you are authorized to sign on behalf of the Client and have read and understood this subscription agreement and Fusion Sport's Standard Operating Terms.





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OPTIONAL ADDITIONAL TERMS

☐ By ticking this box, the parties also agree to enter into the Data Processing Addendum, located at <https://fusionsport.com/legal/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 (<i>required</i>):	
Alternative competent supervisory authority(ies) identified in Annex I.C. of the Standard Contractual Clauses (Controller-to-Processor and Processor-to-Processor) (<i>where applicable</i>):	

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 available at: <https://fusionsport.com/legal/general-terms-and-conditions/> ("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.

CUSTOMER	FUSION SPORT, INC.
Signed:  <small>Iris Ingram (Oct 4, 2022 14:45 PDT)</small>	Signed:  <small>Tricia Sterland (Oct 3, 2022 15:48 MDT)</small>
Printed Name: <u>Iris I. Ingram</u>	Printed Name: <u>Tricia 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**") as of 08/22/22. 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 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 available at www.fusionsport.com/SLA ("**SLA**"). 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, 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 12 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; and (ii) to its affiliates in connection with its corporate and financial reporting requirements. 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.	2655 W Midway Blvd, Suite 235, Broomfield, Colorado, 80020, United States	Colorado and controlling United States federal law	Denver, Colorado
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. 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.









BOT Item 6.6 (Apvd 9.28.2022)_SAC-22-089_CJA_Fusion Sport Agmt

Final Audit Report

2022-10-03

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