



SMARTABASE SUBSCRIPTION  
AGREEMENT FOR  
Santa Ana College- Criminal  
Justice Academies

CONTRACT REFERENCE: SB2020- 0065

📍 NORTH AMERICA

📍 ASIA PACIFIC & AUSTRALIA

📍 UK & EMEA

Thank you for engaging with Fusion Sport regarding the provision of the Smartabase Human Performance Data Management Platform. Please read the proposed agreement carefully. If you agree, please complete the signing page and return the document to [daniel.campbell@fusionsport.com](mailto:daniel.campbell@fusionsport.com).

## STANDARD OPERATING TERMS

This subscription agreement should be read in conjunction with the standard operating terms

Fusion Sport's Standard Operating Terms consist of our Standard Terms of Service, Service Level Agreement and Privacy Policy, links to which have been provided below.

[Standard Terms of Service](#)

Attached below

[Standard Service Level Agreement](#)

Attached below

[Privacy Policy](#)

Attached below

Fusion Sport reserves the right to change the Standard Operating Terms at any time by providing sixty (60) day written communication to the Client and upon mutual written consent of the parties to this Agreement.

California law governs Fusion Sport's Standard Operating Terms and the client submits to the exclusive jurisdiction of the courts of California, USA for all disputes arising out, of or in connection with these Terms, without reference to any conflicts of laws.

## AGREEMENT DETAILS

This subscription agreement is between Fusion Sport Inc. FEIN 300635057 ("Fusion Sport") of 2655 West Midway Blvd, Suite 235, Broomfield, CO 80020 and Rancho Santiago Community College District on behalf of Santa Ana College- Criminal Justice Academies ("the Client") of Rancho Santiago Community College District, 2323 N. Broadway, Santa Ana, CA 92706 and is made effective upon the execution of this agreement by both parties or October 1, 2021, until September 30, 2022, for a duration of 12 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	QTY	INVESTMENT
<b>COLLEGIATE PREMIUM BUNDLE</b> 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 Students Up to 5 Essential Integrations R Connector & Package Up to 2 Smartabase Builder Course Registrations	1	USD \$23,000
<b>PROFESSIONAL SERVICE HOURS</b>	1	USD \$7,400
<b>LEVEL 2 HOSTING UPGRADE</b>	1	USD \$3,700
<b>TOTAL</b>		<b>USD \$34,100</b>

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

## STANDARD CONDITIONS OF PAYMENT TERMS

- a) The agreement is established on an annual subscription basis. Discounts available for multi-year agreements.
- b) Unused professional service hours and user licenses are not transferable to subsequent years in the contract and must be used in each billing period.
- c) 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.
- d) 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.
- e) 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 term, not to exceed a maximum contract term of five (5) years, 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:

SAC-21-013A

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, Instructors, S&C Instructors, Dieticians, Physio's, and other members of staff. Students 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, 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 non-transferable 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.

SIGNED for and on behalf of  
Fusion Sport Inc.  
by its duly authorized delegate:

SIGNED for and on behalf of  
Rancho Santiago Community College District for Santa  
Ana College- CriminalJustice Academies  
by its duly authorized delegate:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Iris L. Ingram

Position: \_\_\_\_\_

Position: Vice Chancellor of Business Services

Company: Fusion Sport Inc.

Company: Rancho Santiago Community College District

# SMARTABASE TERMS OF SERVICE AGREEMENT

The Terms of Service (Terms) are the contractually binding terms that are intended to explain our obligations as a software and service provider and your obligations as a customer. Please read them carefully. These Terms are binding on any use of the Software and/or Site and apply to you from the time that we provide you with access to an existing Site or to your custom developed Software Site, and also incorporate the accompanying SMARTABASE Privacy Policy and SMARTABASE Service Level Agreement documents.

These Terms are not intended to answer every question or address every issue raised by the use of the Software. We reserve the right to change these Terms at any time, by providing sixty (60) day written communication to the Client and upon mutual written consent of the parties to this Agreement. It is likely the Terms of Service will change over time. It is your obligation to ensure that you have read, understood and agree to the most recent Terms that we provide you in writing. No changes to these terms and conditions will be effective without mutual signature by the parties to this Agreement. Notwithstanding the foregoing, in no event will a change in the Terms increase the Fees or costs applicable to the Software or Additional Services except with sixty (60) day written notice to you with respect to any renewal term, and in no event will we be allowed to change Material Terms without your consent. Material Terms include Sections 7 through 12, inclusive, and Sections 16, 17 and 19.

## 1.0 DEFINITIONS

### 1.1 "Access"

Means to enable Users to store data, manage report and/or analyse data or otherwise approach or make use of a Site.

### 1.2 "Additional Costs"

Means the fees associated with additional SMS messages over your allocated limit and for video and attachment storage and transfer over and above 1GB per month per user.

### 1.3 "Additional Services"

Means the fees associated with additional Services that you require for your Project including but not limited to customisation of forms, performance standards, data-analysis or training.

### 1.4 "Administrator"

Means a User that you can nominate to permit new Users to Access your Site, set up access and sharing capabilities between Users and set up the Hierarchical structure of Users within your organisation.

### 1.5 "Confidential Information"

Means all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Software but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

### 1.6 "Build Fee"

Means the upfront fee (excluding any applicable taxes and duties) payable by you in accordance with Our Pricing Schedule (which may change from time to time), and/or in accordance with any written quotes provided by us and accepted by you.

Fusion Sport Pty Ltd  
Level 1, North Tower

339 Coronation Drive, Milton  
QLD, 4064, Australia  
Email: info@fusionsport.com  
Website: www.fusionsport.com

1.7 “Data”

Means any Templates, Data, personal data or information inputted by you or us into your Software Site.

1.8 “Data Protection Laws”

Means the applicable legislation that governs the protection of personal data, and the individual’s right to privacy with respect to the processing of personal data.

1.9 “Data Controller”

Means a person who determines the purposes for which, and the manner in which, Data and personal information is to be processed or transferred. This may be an individual or an organisation and the processing may be carried out jointly or in common with other persons.

1.10 “Data Processor”

Means any person who obtains, records, or holds the Data, or carries out any operation or set of operations on Data on behalf of the Data Controller.

1.11 “Fees”

Means the Licence Fee, Build Fee, Additional Costs and Additional Services.

1.12 “Intellectual Property Right”

Means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

1.13 “License Fee”

Means the annual license fee (excluding any applicable taxes and duties) payable by you in accordance with our Pricing Schedule (which may change from time to time), and/or in accordance with any written quotes provided by us and accepted by you.

1.14 “Our”, “We”, “Us”

Means Fusion Sport and all its affiliated entities.

1.15 “Pricing Schedule”

Means any pricing material produced by us detailing the structure and cost of the Fees.

1.16 “Privacy Policy”

Means the privacy policy that is maintained by Us and which is hereby attached and which may be amended from time to time in order to ensure that we are complying with the relevant Data Protection Laws. We will provide you sixty (60) day written communication on any changes to the Privacy Policy and any amendments will only be considered effective upon mutual written consent of the parties to this Agreement

1.17 “Project”

Means the development of a private Site by Us on your behalf, together with the Services to be performed by us.



#### 1.18 "Services"

Means access to the on-line help manual, email and phone support services, and any additional services requested and accepted by you for an additional cost.

#### 1.19 "Software"

Means your version of all Fusion Sport-owned and operated products including, but not limited to, the web apps and mobile apps that may be associated with each product (as may be changed or updated from time to time by us).

#### 1.20 "Site"

Means the unique implementation that is developed for each Project which is available via the Internet on the World Wide Web at the following URLs: <https://my.smartabase.com/Name> (project name), or <https://my.smartabase.co.uk/Name>, or <https://my.smartabase.eu/Name> (project name), or a custom installed site which shall be password protected.

#### 1.21 "Templates"

Means the structure of the Data that is going to be recorded in your Site. For example, specific fitness tests, questionnaires, and training logs.

#### 1.22 "User"

Means a customer who has been granted a non-transferable license by us to facilitate Access to a Site for a period of twelve (12) months.

#### 1.23 "Website"

Means the Internet site at the domain <https://my.smartabase.com> , <https://my.smartabase.co.uk> and [www.fusionsport.com](http://www.fusionsport.com) , or any other site operated by us.

#### 1.24 "You"

Means you and includes your employees, consultants, representatives, students, instructors, and sports professionals.

### 2.0 YOUR USE OF THE SOFTWARE

2.1 We grant you the right to access an existing implementation or use your custom-built version of the Software via the Site/Website for the agreed license period. This right is non-exclusive and non-transferable and limited by these Terms.

2.2 In order to use the Software, you must first agree to these Terms. You may not use the Software if you do not accept the Terms.

2.2.1 You accept these Terms upon execution and signature of this agreement by both parties.

2.3 The Software which you use may be automatically update from time to time by us. These updates are designed to improve, enhance and further develop the Software and may take the form of bug fixes, enhanced functions, new software modules and completely new versions. You agree to receive such updates (and permit us to deliver these to you) as part of your use of the Software/Site.

### 3.0 YOUR OBLIGATIONS

### 3.1 Payment obligations:

You are responsible for paying the software fees, support fees, service fees and additional costs as detailed in your Smartabase subscription agreement and the user license fees for all professional users (including upgrades as required). You are additionally responsible for payment of all taxes and duties (if any) for all costs associated with your Software.

Fusion Sport's standard payment terms are thirty (30) days from the invoice date.

Subscriptions to Smartabase shall be automatically renewed on an annual basis unless either party requests termination through a written communication at least thirty (30) days prior to the end of the then-current term. Should custom renewal terms be agreed in writing as part of your Smartabase subscription agreement, your subscription shall automatically renew for additional periods of the same duration as your initial subscription. Notwithstanding the aforementioned, the total subscription term will not exceed a maximum of five (5) years.

For subscription renewals, Fusion Sport will raise an invoice sixty (60) days before the renewal month. Full payment for invoices issued in any given month must be received by Fusion Sport thirty (30) days from the invoice date. Failure to pay the invoice by the renewal date's anniversary may result in restriction to access the Site.

Invoices will be sent via email to the contacts we hold on record for You. Any amendment to your contact information should be submitted in writing at least thirty (30) days prior to the end of the current term.

- **3.1.1 Consequences of Non-payment:**  
Upon default of the above payment obligations, Fusion Sport will issue a request for immediate payment, and send reminders to the account contact at 14 and 21 days overdue. If payment is not received within 30 days of the due date, Fusion Sport reserves the right to restrict access to the Site until payment is received or may bring into effect the actions outlined in Section 17 of this document (Termination).

### 3.2 General Obligations:

You must only use the Software and Site/Website for your own lawful internal business purposes, in accordance with these Terms and any notice sent by us or by condition posted on the Website.

## 4.0 ACCESS CONDITIONS

You will ensure that all usernames and passwords required to access the Software are kept secure and confidential. You will immediately notify us of any unauthorised use of your passwords, or any other breach of security and we will reset your password.

4.2 As a condition of these Terms, when accessing and using the Software, you must:

- 4.2.1 Not attempt to undermine the security or integrity of our computing systems or networks or, where the Software is hosted by a third party, that third party's computing systems and networks;
- 4.2.2 Not use, or misuse, the Software in any way which may impair the functionality of the Software or Website, or impair the ability of any other User to use the Software or Website;
- 4.2.3 not attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the Software is hosted;
- 4.2.4 not transmit, or input into the Software, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which you do not have the right to use); and

- 4.2.5 Not modify, copy, adapt, reproduce, disassemble, decompile, or reverse engineer the Software except as is strictly necessary to use them for normal operation.
- 4.2.6 unless you have been specifically permitted to do so in a separate agreement with Us, you agree that you will not reproduce, duplicate, copy, sell, trade, or resell the Software for any purpose.

## 5.0 SERVICE CONDITIONS

As a condition of these Terms, if you use any communication tools available through the Website or as part of the Services (such as any forum, chat room or message center); you agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Software including (but not limited to): offers of goods or services for sale, files that may damage any other person's computing devices or software, content that may be offensive to any of our other users, or material in violation of any law (including material that is protected by copyright or trade secrets which you do not have the right to use).

When you make any communication or enter Data on the Website and/or Site, you represent that you own the content of the communication. We are under no obligation to ensure that the communications on the Website is legitimate or that they are related only to the use of the Software. We reserve the right to remove any communication at any time at our sole discretion.

## 6.0 INDEMNITY

Each Party to this Agreement shall insure or self-insure its activities in connection with this Agreement and obtain, keep in force and maintain during the term hereof insurance or self-insurance for commercial general liability including a contractual liability endorsement with a limit of liability of at least one million dollars (\$1,000,000) per occurrence.

Each Party agrees to indemnify the other party against all claims, costs, damage and loss arising from the non-indemnifying party's breach of any of these Terms, but neither Party shall be liable to the other party for any lost profits, lost revenues or opportunities, downtime, or any consequential damages or costs, resulting from any claim or cause of action based on breach of warranty, breach of contract, negligence, or any other legal theory, even if Licensor knew or should have known of the possibility thereof.

We will defend You in any suit or cause of action alleging the Software, as provided by Us and used in accordance with the terms of this Agreement, infringes upon any United States patent, copyright, trade secret, or other proprietary right of a third party. We will pay damages assessed, including reasonable attorney's fees, against You in any such suit or cause of action, provided that, We are promptly notified in writing of such suit or cause of action.

To the maximum extent permitted by law, we exclude all liability and responsibility to you (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including profits, and savings) or damage resulting, directly or indirectly, from the use of, or reliance on, the software for factors within the control of Fusion.

In no event shall either Party's aggregate liability exceed the amount of all the fees paid by You to Us under the contract in the previous 24 months. This limitation of liability does not apply to claims that the software infringes (or is alleged to infringe) the intellectual property rights of a third party or breaches of either party's obligations with respect to confidential information.

If you are not satisfied with the software, your sole and exclusive remedy is to terminate these terms in accordance with clause 17.

## 7.0 CONFIDENTIALITY

7.1 Unless the relevant party has the prior written consent of the other or unless required to do so by law:

- 7.1.1 Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms;
- 7.1.2 Each party assumes responsibility for the actions of its employees, agents and consultants who have access to Confidential Information to an extent reasonably necessary and for the purposes of providing the Services in accordance with these Terms. Each Party will ensure that their employees, agents and consultants who have access to the Confidential Information are aware of and adhere to the warranties and obligations created under these Terms.
- 7.1.3 Each party's obligations under this clause will survive termination of these Terms.

7.2. The provisions of clauses 7.1.1 to 7.1.3 shall not apply to any information which:

- 7.2.1 Is or becomes public knowledge other than by a breach of this clause;
- 7.2.2 Is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 7.2.3 Is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;  
or
- 7.2.4 Is independently developed without access to the Confidential Information.

7.3. In the event We receive a subpoena or other order/request related to Your Data, we agree to provide You prompt notice and to reasonably cooperate with You in seeking an appropriate protective order or in otherwise responding to the request.

#### 8.0 PRIVACY AND DATA PROTECTION

8.1 1 We maintain a [Privacy Policy](#) that sets out the parties' obligations in respect of data, which is hereby attached. You should read that policy since you will be taken to have accepted it when you accept these Terms

8.2 Data Protection Warranties: You warrant that any instruction given to us regarding your Data or Templates will not breach any Data Protection Law's relevant to you or your Data.

8.3 Insurance: To the fullest extent permitted by law, We shall, at all times carry (i) broad form commercial general liability insurance with minimum limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, including liability coverage for but not be limited to: protection against claims arising from death, bodily injury, personal injury, and damage to property resulting from actions, failures to act, operations or equipment of the insured, or by its employees, agents, or by anyone directly or indirectly employed by or acting on behalf of the insured; (ii) excess or umbrella coverage with a minimum limit of two million dollars (\$2,000,000); (iii) cyber liability insurance with a minimum limit of five million dollars (\$5,000,000); and (iv) errors and omission coverage with a minimum limit of five million dollars (\$5,000,000).

The above policies shall be primary and any insurance maintained by You is excess and non-contributory. We shall provide You with thirty (30) days' notice of the cancellation or nonrenewal of any of the above policies. It is understood and agreed that all such insurance, and the additional insurance coverage provided to You under this Agreement SHALL BE INDEPENDENT OF ANY OF THE INDEMNITY PROVISIONS OF THIS AGREEMENT AND SHALL NOT BE TIED TO SUCH INDEMNITY PROVISION

8.4 Secure Socket Layer (SSL) of Protection: We utilise some of the most advanced technology for Internet security available today. When you access our Site's using an Internet Browser such as Firefox and Chrome, a Secure Socket Layer (SSL) system protects your information using both server authentication and data encryption. This means your data is safe, secure, and available only to registered Users in your organisation with a Licence to your Site.

8.5 Data Encryption: We encrypt the information, so all data transferred between the Users the Our Servers is kept safe according to industry standards. We also encrypt data at rest.

8.6 User Restricted Access: We provide each User in your organisation with a unique username and password that must be entered each time a User logs on to their Site. We take precautions to ensure that User account information is kept private. We use reasonable measures to protect User information that is stored within our database. We restrict access to User information to those employees who need access to perform their job functions, such as our customer service personnel and technical staff.

8.7 User Responsibility: It is the User's responsibility to keep their passwords safe. It is the Administrator's responsibility to ensure that any Users that are invited to use your Project/Organisation's Site have permission to enter and view information stored about them or other Users on your Site. Please note that we cannot guarantee the security of User account information. Your unauthorised entry or use, hardware or software failure, and other factors may compromise the security of User information at any time.

#### 9.0 INTELLECTUAL PROPERTY

9.1 Any existing Intellectual Property is not altered, transferred, or assigned merely by virtue of its use by either party for the purposes of the Project.

#### 9.2 General:

Title to, and all Intellectual Property Rights in the Software, the Website, the Site and any documentation relating to the Software remain the property of Fusion Sport.

#### 9.3 Data:

All rights, title and interest in the Data, including Intellectual Property Rights, transferred to or acquired by or on behalf of US under this Agreement shall vest and remain vested solely in you.

#### 10.0 ACKNOWLEDGEMENT

You acknowledge that:

10.1 You are authorised to use the Software and the Site/Website and are authorised to view the User's information that you Access, and/or to act as a Data Controller who transfers Personal Data using the Software and the Website (whether that information is your own or that of anyone else).

10.2 If you are using the Software and accessing the Site on behalf of or for the benefit of an organisation (whether a body corporate or not) then we will assume that you have the right to do so and that organisation will be liable for your actions or omissions (including any breach of these Terms).

10.3 THE PROVISION OF, ACCESS TO, AND USE OF, THE SOFTWARE/SITE IS ON AN "AS IS, WHERE IS" BASIS AND AT YOUR OWN RISK.

10.4 WE DO NOT WARRANT THAT THE USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE FOR FACTORS WITHIN THE CONTROL OF FUSION. AMONG OTHER THINGS, THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING THE SOFTWARE, INCLUDING PUBLIC TELEPHONE SERVICES, COMPUTER NETWORKS

AND THE INTERNET, CAN BE UNPREDICTABLE AND MAY FROM TIME TO TIME INTERFERE WITH OR PREVENT ACCESS TO THE SOFTWARE. WE ARE NOT IN ANY WAY RESPONSIBLE FOR ANY SUCH INTERFERENCE OR PREVENTION OF YOUR ACCESS OR USE OF THE SOFTWARE. WE ADHERE TO OUR BEST PRACTICE POLICIES AND PROCEDURES TO PREVENT DATA LOSS, INCLUDING A SYSTEM DATA BACK-UP REGIME EVERY TWO MINUTES, BUT DO NOT MAKE ANY GUARANTEES THAT THERE WILL BE NO LOSS OF DATA, EXCEPT AS PROVIDED BY THE DATA PROTECTIONS OUTLINED IN SECTION 10, "DATA PROTECTION," WITHIN THE PRIVACY POLICY AND IN SECTION 8.0, "BUSINESS CONTINUITY / DISASTER RECOVERY WITHIN THE SERVICE LEVEL OBJECTIVES.

10.5 IT IS YOUR SOLE RESPONSIBILITY TO DETERMINE THAT THE SOFTWARE, SITE AND PROJECT MEET YOUR NEEDS.

#### 11.0 NO SOFTWARE WARRANTIES

WE GIVE NO WARRANTY ABOUT THE SOFTWARE. WITHOUT LIMITING THE FOREGOING, WE DO NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT IT WILL BE SUITABLE FOR YOUR PURPOSES. TO AVOID DOUBT, ALL IMPLIED CONDITIONS OR WARRANTIES ARE EXCLUDED IN SO FAR AS IS PERMITTED BY LAW, INCLUDING (WITHOUT LIMITATION) WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE, TITLE AND NON- INFRINGEMENT.

#### 12.0 OUR OBLIGATIONS AND WARRANTIES

We acknowledge that:

12.1 We will act diligently, efficiently and in accordance with industry best practices;

12.2 Use appropriately skilled, qualified, and experienced personnel to provide the Services, where all Authorised Personnel and/or personnel and/or appointees shall comply in all respects with the provisions of these Terms;

12.3 Provide all personnel, processes and resources required to provide the Services;

12.4 Keep you fully advised of the progress of the Services and changes or possible changes to the scope or timing of the Services. No unauthorised expenditure or costs will be incurred without your written consent in advance;

12.5 The Software will perform materially in accordance with the requirements set out in written correspondence provided to you;

12.6 That it is free and entitled to produce these Terms and to perform the obligations undertaken by it hereunder and that it has not entered into any agreement with any third party which might conflict with the Terms hereof.

#### 13.0 YOUR AND OUR COMBINED OBLIGATIONS AND WARRANTIES

13.1 Nothing expressed or implied in these Terms will constitute either party as the partner, agent, employee, or officer of, or as a joint venture with, the other party.

13.2 Neither party will damage or adversely affect the business operations or assets of the other party or act in any manner which may be prejudicial to or may bring either party's reputation into disrepute.

13.3 Both parties will at all times throughout the Project provide sufficient and appropriate personnel and resources to ensure that the Services provided are in accordance with the provisions of these Terms.

13.4 The Customer is responsible for notifying Fusion Sport of any changes to contact details for its System Administrator(s) and keeping such details accurate and up to date at all times; Ensuring the security of all User IDs, Passwords and other IDs necessary to access the Service, Provision of all personal computers.

#### 14.0 SERVICE COMMITMENT

14.1. We are committed to providing you with Software and a level of Service that meets your needs. In the event of an increase in the scope of the Services or the time required to provide the Services, you may notify us in writing of the need for such Additional Services. Upon receipt of a notice in writing, we will quote for any changes in Service and then seek written approval from you prior to initiating any work;

14.2. If additional levels of Service are requested and accepted by you in writing, we shall inform you immediately of any failure or anticipated failure to supply any element of the Services.

#### 15.0 CONSUMER GUARANTEES

You warrant and represent that you are acquiring the right to access and use the Software/Site and agree to these Terms for the purposes of business or personal use and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect business and personal users customers in any jurisdiction do not apply to the supply of the Software, the Website or these Terms.

#### 16.0 RESERVED

#### 17.0 TERMINATION

17.1 Thirty day return policy: Within thirty days of being granted access to the Software by us for the first time, you may terminate these Terms by serving notice to us within those 30 days. No Licence Fee will be payable but Build Fees and any Additional Fees incurred during this 30 day period will still be charged.

17.2 No-fault termination: These Terms will continue for the period covered by the Licence Fee. These Terms will automatically continue for the same period unless either party terminates these Terms by giving notice to the other party at least 30 days before the end of the relevant payment period.

17.3 Breach: If either party:

- 17.3.1 breaches any of these Terms and does not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
- 17.3.2 breaches any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any payment more than 30 days overdue); or
- 17.3.3 goes into liquidation or has a receiver or manager appointed of any of its assets or becomes insolvent, or makes any arrangement with its creditors, or becomes subject to any similar insolvency event in any jurisdiction,

17.4 the other party may take any or all of the following actions, at its entire discretion:

- 17.4.1 Terminate these Terms
- 17.4.2 In the case of default by you, terminate your use of the Site/Software and the Website;
- 17.4.3 in the case of default by you, we may suspend for any definite or indefinite period of time, your use of the Site/Software and the Website;

- 17.4.4 In the case of default by us, you may suspend for any definite or indefinite period of time, your payments under this agreement
- 17.4.5 Take either of the actions in clause 17.4.1 and 17.4.3 in respect of any other persons in your organisation or who have access to your information or that of your organisation.

17.5 Accrued Rights: Termination of these Terms is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement, you will:

- 17.5.1 remain liable for any accrued charges and amounts which become due for payment before or after termination; and
- 17.5.2 Immediately cease to use the Software and the Site/Website.

17.6 Expiry or termination: Clauses 3.1, 6.0, 7.0, 8.0, 9.0, 10.0, 11.0, 13.0, 15.0, 16.0, 17.0, 18.0, 19.0 and 21.0 survive the expiry or termination of these Terms.

17.7 Data Export upon Termination: Upon Expiry or termination we will provide the customer with 30 days' access to the site to export their data in CSV or Excel format, and download all attachments stored in the system at no additional cost. Should the customer require access to the site past 30 days, additional fees will be prorated based on subscription fee.

17.8 Destruction of Data: Upon Expiry or termination, we will destroy and/or return all information in our possession, or control, relating to your Site and Project, on receipt of a written request from an authorised representative. We will conduct all data destruction in a secure manner using techniques consistent with NIST 800-88 ("Guidelines for Media Sanitization"). If additional certification is requested, a certificate signed by our authorised representative will be sent confirming the destruction of the materials pertaining to your Project. In the case where legislation imposed on us prevents us from returning or destroying all or part of the personal data transferred, we warrant that we will guarantee the confidentiality of the personal data transferred and will not actively process the personal data anymore.

## 18.0 GENERAL

18.1 Entire Agreement: The Standard Terms of Service, Service Level Agreement and Privacy Policy contained herein supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between you and Us relating to the Software and the other matters dealt with in these Terms.

18.2 Waiver: If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

18.3 Delays: Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

18.4 No Assignment: You may not assign or transfer any rights to any other person without our prior written consent.

## 19.0 SEVERABILITY

If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding between you and us.

## 20.0 OUR COMMITMENT TO ALL OUR USERS



We undertake that if any changes are made to the Terms, Privacy Policy or SLA, these changes will not compromise the existing purpose of any existing part, provision, or clause. This means we cannot remove or change clauses regarding Data protection measure, our commitment to you, or our Warranties. We provide exceptionally high levels of Customer Protection to ensure your Intellectual Property, Confidential information, Data and Personal information are kept secure, protected and confidential at all times, without the need for a signed contract.

#### 21.0 NOTICES

Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given 1 day (24 hours) after transmission. Notices to us must be sent to smartabase@fusionsport.com or to any other email address notified by email to you by us. Notices to you will be sent to the email address which you provided when setting up your access to the Software.

#### 22.0 RIGHTS OF THIRD PARTIES

A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms.

#### 23.0 ACCESSIBILITY OF INFORMATION TECHNOLOGY

We hereby warrant 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. We agree to promptly respond to and use best endeavors to resolve any complaint regarding accessibility of our products brought to our attention. We further agree to indemnify and hold you harmless from any claim arising out of our 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 without penalty.

24.0 Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. Any such counterpart containing an electronic, digital or facsimile signature shall be deemed an original. 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, you reserve the right to conduct business electronically, unless otherwise communicated by you to stop such electronic transactions, including without limitation to the use of electronic or digital signatures.

## SERVICE LEVEL AGREEMENT

This Service Level Agreement ("SLA") is a policy governing the use of the Smartabase Software and services under the Smartabase Terms of Service (the "SB Terms Agreement") between Fusion Sport Pty Ltd ("Fusion", "us" or "we") and users of Smartabase ("you").

This SLA applies separately to each account using Smartabase. Unless otherwise provided herein, this SLA is subject to the terms of the Smartabase Terms Agreement and capitalized terms will have the meaning specified in the Smartabase Terms Agreement. We reserve the right to change the terms of this SLA in accordance with the Smartabase Terms Agreement.

#### 1.0 DEFINITIONS

We undertake that if any changes are made to the Terms, Privacy Policy or SLA, these changes will not compromise the existing purpose of any existing part, provision, or clause. This means we cannot remove or change clauses regarding Data protection measure, our commitment to you, or our Warranties. We provide exceptionally high levels of Customer Protection to ensure your Intellectual Property, Confidential information, Data and Personal information are kept secure, protected and confidential at all times, without the need for a signed contract.

#### 21.0 NOTICES

“Data” – means any Templates, personal data or information inputted by you or Fusion Sport into your version of the Smartabase Software.

“Monthly Uptime Percentage” – means the proportion of total Planned Uptime the service is available.

“Non-availability” – means the proportion of time the service is not available (excludes Planned Downtime and the Smartabase SLA Exclusions)

“Planned Uptime” – means the proportion of time that Fusion plan to make the service available.

“Planned Downtime” – means the time that the service is schedule to be unavailable due to maintenance, updates or new releases.

“Templates” – means the structure of the Data that is going to be recorded in your Site. For example, specific fitness tests, questionnaires and training logs.

#### 2.0 SERVICE COMMITMENT

Fusion Sport is committed to providing all customers using the Smartabase software with consistent availability. Fusion recognize that our customers need to have their Smartabase software service

available whenever they need to review and analyze their student's performance, management injury information. Fusion Sport strives to consistently exceed other service level providers and their level of service commitment.

Fusion Sport will use commercially reasonable efforts to make Smartabase available with Service Level Objectives (defined below). The percentages exclude Planned Downtime.

### 3.0 SERVICE LEVEL OBJECTIVES

The current Service Level Objectives are as follows:

#### PLANNED UPTIME

99.0%

#### PLANNED DOWNTIME

The most significant benefit of using the Smartabase software is the fact that our customers have access to regular upgrades thanks to our agile development environment. To bring our customers these benefits, Fusion Sport schedule a weekly maintenance period to upgrade the existing application and/or make any minor enhancements. This late-night maintenance is scheduled for two-hours on a Sunday and occurs during the lowest usage periods in the US, Australia, and the EU. Where possible, planned maintenance will be during low usage periods outside working hours when usage patterns are at their lowest. The maintenance period is usually scheduled at this time, but will not occur if there are no additional enhancements or updates.

#### MAJOR RELEASE

On a quarterly basis Fusion Sport usually has a major new release where significant new functionality is added to the Smartabase software.

These periodic major releases can take several hours to release which means your system will not be accessible during this time. Before doing so, Fusion Sport will give the Customer as much notice as possible, and whenever practicable will agree with the Customer when the Service will be suspended.

#### EMERGENCY UPDATES

Emergency maintenance, updates, and other procedures will be scheduled by Fusion Sport on a case-by-case basis, notice will be given to the Customer where practicable and ensure that customers are notified to logout of the system and save changes. Any periodic major releases usually occur at a time when usage patterns are at their lowest to minimize the impact on you.

### 4.0 FUSION SPORT SLA EXCLUSIONS

The exclusions for non-availability include:

- In typical installations the Smartabase software is built utilizing the Amazon web services components Simple Storage Service (S3) and Elastic Compute Cloud (EC2). Downtime caused as a result of a known fault within third party cloud infrastructure will not be the responsibility of Fusion Sport. The service status for such incidents can be monitored through the respective third party cloud hosting provider's service portal.
- Planned Downtime that is part of our regular weekly maintenance, or a major new release which you will be notified of.

- Any unavailability, suspension or termination of Fusion Sport, or any other Fusion Sport performance issues:
- caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of Fusion Sport;
- that result from any actions or in-actions of you or any third party;
- that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); or
- arising from our suspension and Termination of your right to use SMARTABASE in accordance with the Fusion Sport Terms

If availability is impacted by factors other than those used in our calculation Monthly Percentage Uptime, we may issue a Credit considering such factors in our sole discretion.

## 5.0 HELP DESK

5.1. Technical Problems: In the case of technical problems you must make all reasonable efforts to investigate and diagnose problems before contacting us. If you still require technical help, please check the support provided on the on-line help first, or failing that use the 'help' button located on the left of Site, or email us at Smartabase@fusionsport.com.

5.2. Software availability: Whilst We intends that the Software should be available 24 hours a day, seven days a week; it is possible that on occasion it may be unavailable to permit maintenance or other development activity to take place (see the Service Level Agreement for more detail). If for any reason we have to interrupt the Software for longer periods than we would normally expect, we will use reasonable endeavors to publish in advance details of such activity on the Website.

## 6.0 NOTIFICATION OF FAULT

Fusion Sport will operate a fault notification line where faults will be assigned a priority between 1 and 4 based on the criteria established in the below table. The response times stipulated here are available for Smartabase platform, server or system faults only. Within this section of the SLA, a fault is defined as "a condition that causes Smartabase to fail its required functions, making it incapable of performing the required purpose or business operations".

Service Level	Response Time	Resolution Time	Priority Definition	Fault Definition/ Example	Practical examples
Priority 1 faults	Within 1 Hour of notification of the fault	4 Hours	Critical Priority: Immediate action is required, using all available resources until resolved.	The Smartabase 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 behaviour Application login failure Publication of an exploitable vulnerability of critical severity
Priority 2 faults	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 Smartabase platform is still operational but a major part of Smartabase is unavailable. The interruption disrupts the usability of the service significantly.	Comms / data connectivity failure e.g. SNS / SMS, email, API
Priority 3 faults	Within 1 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 Smartabase platform is not operating efficiently, or a minor part of Smartabase 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 behaviour issue
Priority 4 faults	Within 2 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 Smartabase platform which has minimal impact on performance or operability of the system.  OR a fault representing a possible minor security risk has been detected.	Supported third party browser or device updates change the expected behaviour of Smartabase Publication of a vulnerability of low severity

The service levels stated in the above table shall apply when the Customer raises a support issue for a fault within Smartabase through a supported communication channel. Upon Fusion Sport's receipt of a fault notification, the Customer's primary builder/administrative contact shall receive automated alerts and emails as appropriate via the myfusion customer portal. (Note: if the reporting individual is not the primary contact, then a manual email will be sent to the reporting individual separate to the automated communications.)

The primary contact will receive progress updates including but not limited to:

- Receipt alert of the fault and its relative prioritization according to the above table, such as a note of intended actions and a target resolution time
- Any subsequent change to target resolution time and date of final resolution completion

Fusion Sport reserves the right to charge the Customer for work done by Fusion Sport at standard consulting rates to investigate faults or software bugs in the Service reported by the Customer where Fusion Sport finds no fault exists or the fault is in a component not provided by Fusion Sport, for example; caused by non-orthodox or poor build by a non-Fusion Sport builder or due to an error in a 3rd party vendor integration or other fault outside of Fusion Sport's control.

Note: Any support issues raised via an unsupported communication channel cannot be guaranteed a resolution within the defined period. Further, if there is an issue with a third party provider (e.g. AWS, Clickatell), the above service levels cannot be guaranteed and a best efforts approach will be applied.

#### Software Bugs

A software regression (bug) is defined as the software having been designed and evidenced to work in a previously understood way in relation to its handling, calculating and reporting of data, however, subsequent to a release this known behavior has then altered and been found to negatively impact a customer's workflows or data integrity. The above table shall not apply to the response and resolution of software bugs, which will be addressed and resolved in system updates, as and when required.

#### 7.0 NOTIFICATION OF DATA BREACH

We shall, within one calendar day of discovery, report to You any (i) actual or potential loss or misuse (by any means) of Your Data, (ii) inadvertent, unauthorized, and/or unlawful processing, disclosure, access, alteration, corruption, transfer, sale, rental, destruction, or use of Your Data; or (iii) other act or omission that compromises or may compromise the security, confidentiality, preservation, or integrity of Your Data (each of the forgoing events a "Security Breach"). We shall use best efforts to immediately remedy any Security Breach and prevent any further Security Breach at Our expense in accordance with applicable privacy rights, laws, regulations and standards. We shall also pay all costs and expenses of all efforts that are necessary, reasonable, and appropriate under the circumstances, or required by applicable law (collectively, "Remediation Efforts") to remedy the cause and effects of the Security Breach to the extent that such Security Breach including, but not limited to all costs of notice and/or remediation.

#### 8.0 BUSINESS CONTINUITY / DISASTER RECOVERY

Fusion Sport partners with globally recognised commercial cloud hosting providers and will schedule database backups every five minutes for its hosted sites. This means that, in the event of a disaster, there will be a back up copy of the system and the data for customers to access

# SMARTABASE PRIVACY POLICY

We recognize that our customers and users who use the Internet sites at the domain <https://my.smartabase.com> or any other site operated by Us (collectively or individually) value their privacy and require a high level of protection regarding the ownership and the safety of the information on their "Site". This Privacy Notice information is regarding the use and disclosure of User's Data collected on any "Website" or "Site". We provide this Privacy Policy to help you make an informed decision about whether to use or continue using Our Sites.

This Privacy Policy is incorporated into and is subject to the Our Terms of Service (Terms). Your use of Our sites and any personal information you provide on Our sites remains subject to the terms of this Privacy Policy and Our Terms of Service.

## 1.0 DEFINITIONS

### 1.1 "Access"

Means to enable Users to store data in, manage, report and/or analyse data or otherwise approach or make use of a Site.

### 1.2 "Administrator"

means a User that you can nominate to permit new Users to Access your Site, set up access and sharing capabilities between Users and set up the Hierarchical structure of Users within your organisation.

### 1.3 "Confidential Information"

Means all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Software but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

### 1.4 "Data"

Means any Templates, Data, personal data or information inputted by you or Us into your Software Site.

### 1.5 "Data Protection Laws"

Means the applicable legislation that governs the protection of personal data and the individual's right to privacy with respect to the processing of personal data.

### 1.6 "Data Controller"

Means a person who determines the purposes for which, and the manner in which, Data and personal information is to be processed or transferred. This may be an individual or an organisation and the processing may be carried out jointly or in common with other persons.

### 1.7 "Data Processor"

Means any person who obtains, records or holds the Data or carries out any operation or set of operations on Data on behalf of the Data Controller.

#### 1.8 “Intellectual Property Right”

Means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

#### 1.9 “License Fee”

Means the annual licence fee (excluding any applicable taxes and duties) payable by you in accordance with our Pricing Schedule (which may change from time to time), and/or in accordance with any written quotes provided by Us and accepted by You.

#### 1.10 “Our”, “We”, “Us”

Means Fusion Sport and all its affiliated entities.

#### 1.11 “Project”

Means the development of a private Site by Us on your behalf, together with the Services to be performed by Us.

#### 1.12 “Services”

Means access to the on-line help manual, the 24/7 fault line, and any additional services requested and accepted by you for an additional cost.

#### 1.13 “Software”

Means your version of all Fusion Sport-owned and operated products including, but not limited to, the web apps and mobile apps that may be associated with each product (as may be changed or updated from time to time by us).

#### 1.14 “Site”

means the unique implementation that is developed for each Project which is available via the Internet on the world wide web at an address such as <https://my.smartabase.com/Name> (project name), <https://my.smartabase.co.uk/Name> (project name), or a custom installed site which shall be password protected.

#### 1.15 “Templates”

Means the structure of the Data that is going to be recorded in your Site. For example, specific fitness tests, questionnaires and training logs.

#### 1.16 “User”

Means a customer who has been granted a non-transferable licence by the Us to facilitate Access to a Site for a period of twelve (12) months.

#### 1.17 “You”

Means you and includes your employees, consultants, representatives, students, instructors and sports professionals.

## 2.0 YOUR USE OF THE SOFTWARE/SITE

We provide online and offline Software and Services that allows our customers to develop their own implementation of the Software, or use existing implementation's, to capture, store, analyse, share and understand the Templates and Data that is important to them, for which they have cleared all applicable copyright information, while adhering to all applicable Data Protection Laws.

Once a specific Project has been completed, it is available at a unique Site, and can be accessed on-line using the preferred Web browser (Firefox and Chrome Browsers), or off-line via an installation, by any User who has paid all applicable Licence Fees. Users Personal Data is entered and then stored and retrieved via the Site, using the Amazon S3 Servers in your region, or a region agreed with You. Under no circumstances will your data be transferred to any data centre or hosting location outside of the United States.

Each User who requires Access to a specific Site must request a Licence, receive clearance by the business, organisation or sport who requested the project and/or developed the Site, and then pay the Licence Fees. A unique login and password is provided for each User. The User can only access the information on the Site that they have clearance to, and they can only access other Users' Data that they have been given permission to access.

2.1 Fusion Sport is a Registered Data Controller with the Information Commission in the United Kingdom. We act as a Data Processor when we handle data for your team, and we act as a Data Controller when we handle personal data not related to an organisation. We are registered under the UK Data Protection Act, registration number ZA286179.

## 3.0 YOU OWN YOUR DATA

We store Data that is entered by the Users, or automatically imported at a User's instruction. The Data entered, or imported on instruction, by the Users remains the property of the User and We will not use nor make available for use any of this information without the written permission of the Users.

## 4.0 ACCESSING YOUR DATA

The data entered, or imported on instruction, by the Users is stored securely in a database and is only accessible to the approved Users within the Organisation.

4.1 Administration: An Administrator of the Project can be selected to have full control over who is given Access to be a User and who has Access to other Users Data and information on the Site.

4.2 Individual Access: Users within each implementation can set up unique personal profiles on some implementations and can choose to share their information and Data with other Users of that Site. Some Site's Users can search for other users, share and receive information, and communicate with other students or instructors via the internal messaging system, post comments about specific events, and provide feedback about the information they are given access to. To ensure each User within a Site can find other Users, We request and displays some personal information to other Users. Some Users can change their personal profile information at any time and control what information other users have access to.

4.3 Data Export: You can export your data out of the software at any time from your Site. Additionally, on request, We can provide a nominated person or Administrator in your organisation with a full export of the data that you or other Users of your Site have entered.

## 5.0 COOKIES, INFORMATION COLLECTION AND USE BY US



5.1 To use the Software you must enable cookies in order to access most of the functions on the site. We also use cookies to store visitors' preferences and to record session information. Check the Help menu of your browser to learn how to change your cookie preferences.

5.2 We have access to and may use aggregate information such as number of associated Users, number of transactions and billing information for the purpose of billing and monitoring server and software performance as well as for other internal purposes.

5.3 We collect User submitted information such as username, name, and email address, to authenticate Users and to send notifications to those Users relating to Our service.

5.4 We also log information including IP address, account information, aggregate User data, and browser type, from Users to the site. This data is used to manage the website, track usage and improve Our services. User IP addresses are recorded for security and monitoring purposes.

5.5 Email addresses may be used for the purposes of informing Users regarding changes in Data and to send notifications related to the Site and/or Service.

5.6 We send billing information, product information, service updates and Site information in line with the provision of the Services to some Users via email. Users can also select to use the Site's capabilities to have instant alerts and messages sent directly to their cell phone.

5.7 In future public versions of the Software, email addresses may be used for the purposes of inviting new friends to join Sites.

5.8 We can access non-identifying and aggregated usage information and transaction volumes in order to better understand how our customers are using the Site so we can improve the system's design.

## 6.0 INVITATIONS AND OTHER SITES

6.1 On future public implementations of the Software, users will be able to invite friends to join the service by sending invitation emails via our automated invitation system. Their information is not used by Us unless they choose to become a User.

6.2 Our sites may contain links to other sites outside of the Our Website/Sites. We are not responsible for the privacy policies and/or practices on other sites. When linking to another site the user should read the privacy policy stated on that site. Our Privacy Policy only governs information collected on Our Sites.

## 7.0 CORRECTING, UPDATING OR REMOVING INFORMATION

Our users may modify their personal information by logging into their account and editing their account and any profile data they have access to. They can also send a message [support@fusionsport.com](mailto:support@fusionsport.com) requesting that their information is changed/updated, or to their system Administrator.

## 8.0 SHARING AND DISCLOSURE OF INFORMATION WE COLLECT

Except as otherwise described in this Privacy Policy, We will not disclose personal information to any third party unless we are required to by Law, or have been authorised to as part of a signed contract with You.

## 9.0 SPECIAL NOTE TO INTERNATIONAL USERS

9.1 Amazon Storage: Our Sites are intended for Users worldwide. We store Your Data using the Amazon S3 and EC2 services in Australia, the U.S, EU, UK or another specific region by mutual agreement. If you are a User accessing Our Site from the European Union, Asia, or, any region with laws or regulations governing personal data collection, use, and disclosure, please be advised that through your continued use of the Websites/Sites you may be choosing to store your Data outside of your specific country and that you consent to that transfer.

9.2 Safe Harbour Certified Storage: Amazon.com is a participant in the Safe Harbor program developed by the U.S. Department of Commerce and the European Union. Amazon have certified that they adhere to the Safe Harbor Privacy Principles agreed upon by the U.S. and the E.U. For more information about the Safe Harbor and to view Amazon's certification, visit the U.S. Department of Commerce's Safe Harbor Web site. If you would like to contact Amazon.com directly about the Safe Harbor program, please send an e-mail to [safeharbor@amazon.com](mailto:safeharbor@amazon.com)

## 10.0 DATA PROTECTION

10.1 We warrant and undertake that in so far as applicable to the purposes and subject-matter of the Terms and Services to:

- 10.1.1 ensure that We Process your Data only to the extent reasonably necessary and for the purposes of providing the Services and in accordance with these Terms;
- 10.1.2 take reasonable steps to ensure the reliability of the employees, agents and consultants in relation to the handling of Data;
- 10.1.3 take Appropriate Technical and Organizational Measures to protect the Data against accidental loss, destruction or damage, theft, use and/or disclosure;
- 10.1.4 not cause or permit such Data to be transferred to or be accessible by any third party (other than employees, agents and consultants appointed and acting in accordance with this clause) without your prior written consent (which may be given or withheld in its absolute discretion).

10.2 We agree and warrant to:

- 10.2.1 Use the Data for the specific purposes for which it was collected.
- 10.2.2 Not disclose Data to other parties without the consent of the individual whom it is about, unless authorized by the Data Controller, and/or there is legislation or other overriding legitimate reason to share the information (for example, the prevention or detection of crime).
- 10.2.3 Provide Users with the right to access the information held about them, subject to certain exceptions (for example, information deemed as classified by the Data Controller).
- 10.2.4 Keep Personal Data for no longer than is necessary.
- 10.2.5 Not transmit Personal information outside the European Economic Area unless the individual whom it is about has consented or adequate protection is in place, for example by the use of a prescribed form of contract to govern the transmission of the data.
- 10.2.6 Provide Users with the right to make changes to wrong information as outlined in 7.0 above.
- 10.2.7 Abide by the breach notification provisions in California Civil Code § 1798.82 and that the company will notify us in writing within 24 hours of becoming aware of any data breach affecting our data

10.3 We agree and warrant that each User has the right to:

- 10.3.1 Require that data is NOT used in a way which causes damage or distress.
- 10.3.2 Require that their data is NOT used for direct marketing.

## 11.0 DATA SECURITY

11.1 Secure Socket Layer (SSL) of Protection: We utilise some of the most advanced technology for Internet security available today. When you access our Site's using an Internet Browser such as Firefox and Chrome, a Secure Socket Layer (SSL) system protects your information using both server authentication and data encryption. This means your data is safe, secure, and available only to registered Users in your organisation with a Licence to your Site.

11.2 Data Encryption: We encrypt the information so all data transferred between the Users the Our Servers is kept safe according to industry standards. All data is encrypted in transit and at rest.

11.3 User Restricted Access: We provide each User in your organisation with a unique user name and password that must be entered each time a User logs on to their Site. We take precautions to ensure that User account information is kept private. We use reasonable measures to protect User information that is stored within our database. We restrict access to User information to those employees who need access to perform their job functions, such as our customer service personnel and technical staff.

11.4 User Responsibility: It is the User's responsibility to keep their passwords safe. It is the Administrator's responsibility to ensure that any Users that are invited to use your Project/Organisation's Site have permission to enter and view information stored about them or other Users on your Site. Please note that we cannot guarantee the security of User account information. Your unauthorised entry or use, hardware or software failure, and other factors may compromise the security of User information at any time.

11.5 Acquisition or Merger: In the event that Fusion Sport is acquired by or merged with a third party entity, we reserve the right, in any of these circumstances, to transfer or assign the information we have collected from our Users as part of such merger, acquisition, sale, or other change of control. In the unlikely event of our bankruptcy, insolvency, reorganization, receivership, or assignment for the benefit of creditors, or the application of laws or equitable principles affecting creditors' rights generally, we may not be able to control how your personal information is treated, transferred, or used. In the aforementioned circumstances, we will treat your Data according to our Data Protection and Privacy Policies. In the unlikely event that bankruptcy, insolvency, reorganization, receivership, or assignment for the benefit of creditors occurs, we will notify you so that you can request what happens to your Data.

## 12.0 DESTRUCTION AND DELETION OF DATA

Refer to Standard [Terms of Service](#), contained herein.

## 13.0 PRIVACY POLICY UPDATES

13.1 We reserve the right to change this Privacy Policy at any time. We will provide you sixty (60) day written communication on any changes to the Privacy Policy and any amendments will only be considered effective upon mutual written consent of the parties to this Agreement.

13.2 Any amended policy will be posted on this website.

13.3 All use of software available on this website is subject to Our Terms of Service. In the event of a conflict or disagreement between this Privacy Policy and the Terms of Service, the Terms of Service will prevail.