

FYTT Master Subscription Agreement 2022v1

This Master Subscription Agreement (“**MSA**”) governs the procurement of FYTT Products and Services as set forth in the Sales Order (or other ordering document) which references this MSA. This MSA may govern multiple Sales Orders between FYTT and Customer (including between their Affiliates).

1. **Products and Services.**

- 1.1. **Description.** The Products and Services consist of: (i) a cloud-based back-end which stores, analyzes, manages, distributes, and processes Customer Data; and (ii) front-end clients (e.g. mobile applications, web interface, plugins, system connectors) which allow for the retrieval, presentation, distribution, and management of the Customer Data and related analytics. The FYTT platform provides solutions for managing and automating the delivery of high performance sports content.
- 1.2. **Future Functionality, Modifications, and Enhancements.** Customer’s procurement is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by FYTT regarding future functionality or features. The Products and Services are regularly updated and enhanced using a continuous delivery model during the Subscription Term. In some cases FYTT may deprecate, diminish, or remove certain features and functionality, but such changes will not have a materially adverse impact on Customer’s use of the Products and Services unless Customer consents to such change.
- 1.3. **Professional Services.** If Customer procures Professional Services from FYTT, the specific details of the Professional Services will be described on the Sales Order on a per-project basis. FYTT does not provide any custom deliverables or services under the Agreement which would qualify as work-made-for-hire. Professional Services are not subject to any acceptance procedure. Professional Services will be performed remotely unless otherwise specified, in which case, Customer will be invoiced at cost for pre-approved reasonable travel, hotel, and out-of-pocket expenses properly incurred by FYTT in connection with the Professional Services.
- 1.4. **Technical Support Services.** FYTT’s standard technical support services are included at no additional charge during the Subscription Term. Access to email and in-app technical support is provided during normal business hours (Mon – Fri, 8am – 5pm Mountain Time). Access to online support resources (help.fytt.io) are available 24x7x365 to all Users.
- 1.5. **Feedback and Usage Analytics.** Customer may provide feedback to FYTT about the Products and Services (e.g. technical support input, suggestions, or enhancement requests) and generate usage analytics (e.g. non-identifiable technical data and metadata from usage of the Products and Services). FYTT may use Customer’s feedback and anonymous usage analytics to: (i) compile statistical and performance information related to the Products and Services; (ii) improve the Products and Services; and (iii) develop and publish benchmarks and similar informational reports.

2. **License Grant and Restrictions.**

- 2.1. **License Grant and Reservation of Rights.** Subject to ongoing compliance with the Agreement, FYTT grants Customer a non-exclusive and non-transferable license during the Subscription Term to permit Users to access, install, implement, and use the Products and Services solely for Customer's direct beneficial business purposes. Customer's rights to use the Products and Services are limited to those expressly set forth in the Agreement, including limitations based on license type set forth in the Sales Order. FYTT retains all right, title, and interest in and to the Products and Services and all related intellectual property rights, including without limitation any modifications, updates, customizations, apps, or other add-ons.
- 2.2. **Restrictions and Acceptable Use.** Except as explicitly permitted under the Agreement, Customer must not do any of the following with the Products and Services: (i) use in violation of any applicable law or regulation; (ii) use in a manner that would cause a material risk to the security or operations of FYTT or any of its other customers; (iii) disassemble, decompile, or reverse engineer; (iv) redistribute, republish, sell, rent, lease, host, sub-license, or permit usage on a time-sharing basis as part of a hosted service or on behalf of any third party; (v) remove, obscure, or alter any proprietary notices; or (vi) circumvent, disable, or stress test any security or other technological features.
- 2.3. **Users.** Access to the Products and Services is limited to Users. Customer agrees to: (i) supervise and monitor Users' use of the Products and Services; (ii) promptly report to FYTT any violation of the Agreement by its Users; (iii) immediately disable access for anyone violating the Agreement on the Customer's account; and (iv) ensure that no false or misleading personal information is used to create User accounts.

3. **Customer Data and Privacy**

- 3.1. **Ownership and Permitted Use.** As between FYTT and Customer, all Customer Data is Customer's property. Customer grants FYTT a non-exclusive, worldwide, royalty-free license to process, reproduce, display, copy, communicate, and otherwise use Customer Data solely: (i) to the extent necessary to perform its obligations or enforce its rights under the Agreement or (ii) where required or authorized by law.
- 3.2. **Data Processing.** FYTT will comply with applicable privacy and data protection laws governing its processing and storage of Personal Data in connection with its role as described in the Agreement.
- 3.3. **Customer Responsibility and Obligations Regarding Customer Data.**
 - 3.3.1. **Storage.** Customer acknowledges and agrees that the Products and Services are not designed to serve as master storage of Customer Data, and Customer is responsible for ensuring that master copies of the Customer Data are stored in a separate system. Customer retains

complete control over the installation, configuration, and usage of the Products and Services, and FYTT will not be responsible or liable for any deletion, corruption, damage, destruction, or unintended exposure of Customer Data due solely to acts or omissions of Customer.

3.3.2. **Applicable Laws.** Customer is responsible for ensuring that Customer Data does not violate applicable laws and regulations, or third-party intellectual property rights, and Customer will take reasonable steps to identify and promptly remove any such Customer Data.

3.3.3. **Personal Information.** Customer represents and warrants that Customer Data will not include any Sensitive Personal Information other than remuneration details for Users, and that all of Customer's collection, transfer, and use of any Personal Data transmitted or otherwise processed through the Products and Services will comply with all applicable privacy laws, regulations, and self-regulatory guidelines (including proper disclosure via Customer's privacy policy and receipt of all consents required to process any Personal Data with the Products and Services).

3.4. **FERPA**

3.4.1. If Customer is an educational institution, FYTT recognizes that Customer is subject to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99 ("FERPA") and that FYTT may have access to student information during the performance of the Services. FYTT will maintain all educational records and information concerning students (the "Educational Records") in a manner consistent with its policies regarding personal data, FERPA, and other applicable laws and regulations. All Educational Records will remain the property of Customer.

3.4.2. The parties understand and agree that FYTT has a "legitimate educational interest" in having such access to the Educational Records to perform its functions in delivering the Service, as contemplated in 34 CFR §99.31(a)(1)(A).

3.4.3. The parties likewise understand and agree that, in furtherance of this Agreement, Customer has outsourced to FYTT certain institutional services and functions, such that FYTT is considered a "school official" and will have access to the Educational Records relevant to the scope of the Service, in accordance with 34 CFR §99.31(a)(1)(B).

3.4.4. FYTT agrees to access, use, disclose, and process Educational Records solely as necessary for FYTT to provide the Service to Customer under this Agreement, and all such access, use, disclosures, and processing must be in compliance with the terms of this Agreement and of FERPA and other applicable laws, and that it is FYTT's duty to ensure that any

of its subcontractors who access the Educational Records also comply with the terms of FERPA and other applicable laws.

- 3.4.5. FYTT will implement and maintain commercially reasonable data security measures to protect Customer's Educational Records. FYTT shall ensure that all agents and contractors to whom it provides Educational Records agree in writing to restrictions and conditions at least as stringent as those that apply to FYTT under this Agreement, including with respect to compliance with FERPA. Throughout the Agreement Term and for two (2) years thereafter, FYTT will keep records of all such agents and contractors and will provide such records to Customer promptly upon Customer's request. FYTT remains responsible under this Agreement for the acts, failures, and omissions of its agents and contractors as if they were the FYTT's own acts, failures, and omissions.
- 3.4.6. Except as permitted under this Agreement, FYTT (including any subcontractors used by FYTT) will not disclose Educational Records except as required by judicial order, or by a lawfully issued subpoena, provided however, that FYTT first must provide Customer with reasonable notice and an opportunity to object or otherwise protect the Educational Records at issue from being so disclosed.

4. **Security**

- 4.1. **General.** While providing services under the Agreement, FYTT will employ industry standard information security and physical security ("IT Security") safeguards, procedures, and practices to protect the privacy and security of Customer Data (as defined herein) FYTT receives, accesses, uses, creates, or discloses. Such IT Security safeguards shall be: (a) at least equal to industry standards, (b) in accordance with reasonable Customer security requirements (including the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended ("HIPAA"), and (c) reasonably appropriate to protect against accidental or unlawful destruction, loss, alteration or unauthorized third-party disclosure or access of Customer Data. Customer Data means any information, regardless of the format it is in (for example, paper, electronic, oral conversations, or films), about any patient, resident, employee, student, physician, professional staff, or Customer business and financial operational information that is not available to the public. Customer Data includes protected health information, technical ideas and inventions, written published works, business practices, or information that is only intended for internal use. Without limiting the generality of the foregoing, FYTT will take all reasonable measures to secure and defend FYTT locations and equipment both physically and logically against any who may seek, without authorization, to modify or access the FYTT systems or the information found therein.

- 4.2. **Data Security.** In addition to any applicable privacy laws, FYTT shall comply with the following IT Security requirements with respect to all information transmitted by, or maintained in, electronic media for or on behalf of Customer.
- 4.2.1. **Access Controls.** FYTT will maintain an adequate level of data security, including, but not limited to, logical access controls (such as unique user identification and dual factor authentication for remote access). Access to Customer Data will be provided on a “business need-to-know” basis so users are granted the least amount of access required to successfully fulfill their job requirements. Access that is not explicitly defined is not allowed.
- 4.2.2. **Data-at-Rest Encryption:** FYTT agrees that it will use non-proprietary, publicly available methods for encrypting data-at-rest. Advanced Encryption Standard with a 256-bit key (also known as “AES256”) or better encryption is required. Data encryption is required for: servers, desktop and laptop computers, and other mobile devices where Customer data may exist. Should FYTT not have the ability to encrypt confidential data stored by FYTT, the following compensating controls will be implemented: (a) Adequate physical security of servers and equipment; (b) Network segmentation (e.g., internal firewalls); (c) Restricted access to authorized users or programs; (d) Use of secure coding techniques and testing; (e) Presence of IDS (Intrusion Detection System)/IPS (Intrusion Prevention System) solution; (f) Encryption of offsite backups; (h) Isolation of Customer Data from other partner/customer access; (i) Procedures to secure and/or destroy data from decommissioned devices; (j) Ensure all FYTT-outsourced IT services have these controls in place.
- 4.2.3. **Data in Transit Encryption:** FYTT agrees to utilize adequate security for Customer Data transmitted across public networks – at a minimum, TLS 1.2 or better will be used for web traffic and bulk data transfers containing any confidential data. Transmission of data may include, but is not limited to, file transfer methods, email, file upload or file download, and file exports. FYTT must provide a list of any external vendors with whom Customer Data will be shared.
- 4.2.4. **Hardware and Software Changes.** FYTT shall maintain strict change control processes for both hardware and software changes. FYTT shall ensure that all FYTT personnel are familiar with and utilize this process.
- 4.2.5. **Disposal of Customer Data.** FYTT shall securely and completely dispose of Customer Data residing on FYTT equipment that will be retired or at the termination of the Agreement.
- 4.2.6. **Handling of Transferred Files that Contain Customer Data.** If Secure File Transfer Protocol (SFTP) servers are implemented to support the

- services, FYTT will check at least every 2 hours for Customer Data files and move the Customer Data files from the SFTP servers to internal devices for processing or storage within 1 hour.
- 4.2.7. **International Export Prohibited.** FYTT shall not transfer or store Customer Data outside of the United States of America. FYTT must obtain explicit approval from Customer before allowing access from non-US locations.
- 4.3. **Incident Response.** FYTT shall maintain a program plan to detect and respond to data security incidents. The program shall include identification, containment, mitigation, and remediation of an incident (security breach or attack) and communication to Customer.
- 4.3.1. **Event Notification.** To protect Customer Data and IT assets, FYTT agrees to immediately (within 24 hours) report a cyber event/situation to Customer when a potential or verifiable (the triggering alert is not a false positive incident) unauthorized disclosure or access is identified.
- 4.3.2. **Breach Notification.** FYTT shall meet Federal and State regulatory requirements for breach notification. FYTT shall cooperate with Customer and authorities should a security breach of Customer Data occur.
- 4.4. **Security Awareness.** (1) FYTT shall maintain policies or codes of conduct documenting responsibilities regarding IT Security practices; (2) FYTT workforce shall acknowledge and review these documents at least annually; (3) FYTT shall provide IT Security awareness, HIPAA and other training to its workforce as part of FYTT's overall awareness program; (4) FYTT shall require confidentiality agreements to be completed as part of hiring process to ensure that FYTT's workforce understands their responsibilities regarding the protection of Customer Data.
- 4.5. **Disaster Recovery and Data Backup.** FYTT shall maintain and implement disaster recovery procedures in accordance with FYTT's written Disaster Recovery Plan. FYTT's Disaster Recovery Plan shall contain procedures designed to safeguard Customer Data and the availability of the services and solutions.
- 4.5.1. **Testing.** FYTT will perform disaster recovery testing at least annually, which shall include testing of hardware, installation and operation of all FYTT systems and services, conversion of Customer Data, processing of Customer Data and generation of reports, testing of telecommunications facilities and fail over to back up equipment.
- 4.5.2. **Data Backups.** FYTT will perform daily and long term backups of all Customer Data. FYTT agrees to store all backup Customer Data as part of its designated backup and recovery processes, using a commercially supported encryption solution. All backup copies shall be available for content replacement should the need arise. FYTT shall be responsible for periodically testing that backup processes are working to ensure

that data can be recovered in a reasonable timeframe in the instance of an outage or disaster on the primary infrastructure.

- 4.6. **Physical Controls.** All Customer Data must be stored in a physically and logically secure environment that protects it from unauthorized access, modification, theft, misuse or destruction. FYTT will maintain an adequate level of physical security controls over FYTT facilities, including appropriate alarm systems, visitor access procedures, security guards, cameras, and video surveillance.
 - 4.7. **Environmental Controls.** FYTT will ensure that the data center housing Customer Data has proper environmental controls including power, connectivity, temperature controls, fire suppression, Uninterruptible Power Supply (UPS), and backup generator to support availability of services and solutions.
 - 4.8. **Software Lifecycle.** FYTT shall identify vulnerabilities, risks, and threats as early as possible at any time during the software lifecycle. The software lifecycle shall mean from development, management, and updates through retirement of such application. FYTT shall maintain a strict change control process for FYTT software development lifecycle. FYTT shall include the use of secure coding practices. FYTT shall ensure that all software provided to Customer undergoes routine security testing to reduce the risk of malware, compromises, or other exploitable vulnerabilities.
 - 4.9. **Malware Protection.** FYTT shall maintain active and up-to-date anti-malware programs to protect the FYTT system, software and Customer Data and services.
 - 4.10. **Security Framework.** FYTT shall maintain an active IT Security Program using an industry recognized security standard and methodology, such as ISO27001, HITRUST, COBIT, or NIST. FYTT shall meet or exceed all HIPAA requirements or other regulatory requirements that apply to FYTT.
 - 4.11. **Security Assessments.** Customer or its third party designee may perform assessments of FYTT's environment, including security questionnaires and website monitoring, as it relates to the receipt, maintenance, use, or retention of Customer Data. FYTT agrees to comply with all reasonable recommendations and remediation requests that result from such assessments within reasonable timeframes.
 - 4.12. **Employee Screening Practices.** Prior to granting access to Customer Data and privileged user accounts, each FYTT employee or contractor shall undergo a formal security clearance review to include criminal background check. Any past activity that would subject confidential information and critical systems to risk will be cause to restrict a FYTT employee or contractor's access to Customer Data.
5. **Fees, Payments, & Taxes.**
- 5.1. **Payments and Fees.** Customer must pay the Fees according to the payment terms in the Sales Order in the currency stated. All invoices will only be delivered electronically using the billing and contact information provided by Customer.

Customer agrees to provide clear indication with its payment as to which invoices (or portions thereof) the payment should be applied. Alternatively, these payment details can be emailed to support@fytt.io no later than the date of payment.

- 5.2. **Failure to Pay and Disputes.** If Customer believes that FYTT has billed Customer incorrectly, Customer must contact FYTT in writing within 30 days of the invoice date, specifying the error. Customer is not entitled to offset or deduct any amounts from FYTT's invoice unless: (i) Customer has properly notified FYTT of the dispute; (ii) the dispute is made in good faith; and (iii) FYTT has approved a payment limited to the undisputed amounts. If Customer fails to pay any amount due under the Agreement within 15 days of the due date, FYTT may suspend or restrict the Products and Services. FYTT may charge interest at a monthly rate equal to the lesser of 1% per month or the maximum rate permitted by applicable law on any overdue fees.
- 5.3. **Taxes.** The fees stated in a Sales Order do not include Taxes. Customer is responsible for paying all applicable Taxes. If FYTT determines that FYTT has a legal obligation to pay or collect Taxes, FYTT will add such Taxes to the applicable invoice and Customer will be obligated to pay such Taxes, unless Customer provides FYTT with a valid tax exemption certificate from the appropriate taxing authority. If a taxing authority subsequently pursues FYTT for unpaid Taxes for which Customer is responsible under the Agreement and which Customer did not pay to FYTT, FYTT may invoice Customer, and Customer will be obligated to pay such Taxes to FYTT or directly to the taxing authority, plus all applicable interest, penalties, and fees.

6. **Obligations.**

- 6.1. **FYTT Obligations.** FYTT will: (i) defend at its expense and (ii) pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by FYTT) for third-party Claims alleging the following:
- 6.1.1. The Products and Services directly infringe the third party's patent, copyright, or trademark; or FYTT has misappropriated the third party's trade secret.
- 6.1.2. A breach by FYTT of its obligations under applicable data protection laws and regulations.
- 6.2. **Customer Obligations.** Customer will: (i) defend at its expense and (ii) pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by Customer) for third-party Claims alleging the following:
- 6.2.1. Injuries sustained by athletes from consuming content provided by Customer.

- 6.2.2. A breach by Customer of its obligations under applicable data protection laws and regulations (including failure to comply with its own data privacy policy).
 - 6.3. **Conditions.** The indemnification obligations under this article are subject to the indemnified Party: (i) promptly giving written notice of the Claim to the indemnifying Party; (ii) giving the indemnifying party sole control of the defense, negotiation, and settlement of the indemnified portion of the Claim; and (iii) providing the indemnifying Party with all reasonable assistance required to effectively defend the Claim.
 - 6.4. **IP Exceptions.** Neither party will have any indemnification obligation or liability regarding a third-party intellectual property infringement Claim when the infringement was caused by: (i) a combination of the Products and Services with any component not supplied by FYTT; (ii) unauthorized alteration or modification of the Products and Services by anyone other than FYTT; or (iii) failure by Customer to use the latest version of the Products and Services as requested by FYTT.
 - 6.5. **IP Remedies.** In the defense or settlement of any third-party intellectual property infringement Claim, FYTT may, at its sole option and expense: (i) procure for Customer a license to continue using the Products and Services in the same manner as anticipated by the Agreement; (ii) replace or modify the allegedly infringing Products and Services to avoid the infringement at no additional cost to Customer; or (iii) terminate Customer's license and access to the Products and Services (or its infringing part) and refund any prepaid unused Fees as of the date of termination. Customer will not be entitled to direct damages for any third-party intellectual property infringement Claim resolved by FYTT pursuant to Section 5.
 - 6.6. **Data Privacy Exceptions.** Neither Party will have any indemnification obligation or liability regarding a third-party data security and privacy Claim when acts or omissions of the indemnified Party impede or prevent the indemnifying Party's ability to meet its data security and privacy obligations under the Agreement.
7. **Limitation of Liability.**
 - 7.1. **Disclaimer of Indirect Damages.** To the extent permitted by law, neither Party will, under any circumstances, be liable to the other Party or to any third party for indirect, consequential, incidental, special, or exemplary damages, or for lost profits or loss of business arising out of or related to the Agreement, even if the Party is apprised of the likelihood of such damages occurring.
 - 7.2. **Cap on Liability.** To the extent permitted by law, except for liability under Section 5 (Indemnity) and Section 9 (Confidentiality), under no circumstances will either Party's total liability of all kinds arising out of or related to the Agreement, regardless of the forum and regardless of whether any action or claim is based on contract, tort, or otherwise, exceed two times the total

amounts payable by Customer under the Agreement during the 12 months immediately preceding the date of the event giving rise to the Claim. Liability under Section 5 (Indemnity) and Section 9 (Confidentiality) is limited to five times the total amounts payable by Customer under the Agreement during the 12 months immediately preceding the date of the event giving rise to the Claim.

- 7.3. **Third-Party Products.** This MSA does not govern Customer's use of Third-Party Products used in connection with the Products and Services. Third-Party Products are governed solely by the terms and conditions between Customer and the Third-Party Product developer. FYTT does not make any commitments or claims regarding security, confidentiality, or performance of any Third-Party Products, and FYTT specifically disclaims any liability regarding Third-Party Products. To the extent any Third-Party Product accesses, processes, or gathers Personal Data, the applicable third party is Customer's direct data processor, and is not acting as a data sub-processor of FYTT.

8. **Term and Termination.**

- 8.1. **Term.** The Subscription Term is set forth in the applicable Sales Order. This Master Subscription Agreement will apply to each Sales Order in which it is incorporated until the expiration of the Subscription Term, as modified by any applicable extension or early termination.
- 8.2. **Termination for Cause.** If either Party commits a material breach of the Agreement, the non-breaching Party may give written notice describing the nature and basis of the breach to the breaching Party. If the breach is not cured within 30 days of the notice date, the non-breaching Party may immediately terminate the Agreement, in whole or in part.
- 8.3. **Suspension.** FYTT may, without limitation to any other rights or remedies, temporarily suspend access to the Products and Services if Customer's use of Products and Services poses a security risk or may adversely impact FYTT's systems.
- 8.4. **Effect of Termination or Expiration.**
- 8.4.1. All access to and use of the Products and Services must immediately cease upon termination or expiration of the Sales Order.
- 8.4.2. If the Agreement is terminated for any reason other than FYTT's uncured material breach, Customer will be responsible for Fees covering the remainder of the then-current term.
- 8.4.3. If the Agreement is terminated for FYTT's uncured material breach, FYTT will provide Customer a pro-rata refund of all prepaid but unused Fees.
- 8.4.4. Each Party will return to the other Party, or destroy, all materials containing or reflecting any of the other Party's Confidential Information. Customer Data will be purged from FYTT systems in accordance with its internal data retention policies and procedures.

- 8.4.5. FYTT is not obligated to retain any Customer Data for longer than 30 calendar days after the applicable Subscription Term. During such period, Customer will be able to retrieve all Customer Data in its native format from the Products and Services.
- 8.5. **Survival.** The termination or expiration of the Agreement will not affect any provisions of the Agreement which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: definitions, payment obligations, confidentiality, term and termination, effect of termination, intellectual property, license compliance, limitation of liability, privacy, content monitoring, and the “General Provisions” section in this MSA.

9. **Warranties, Disclaimers, and Remedies.**

- 9.1. **Products and Services.** FYTT warrants that the Products and Services as delivered to Customer will materially conform to the Documentation and specifications set forth in the applicable Sales Order. FYTT further warrants that FYTT will perform Professional Services in a professional and workmanlike manner. Customer must notify FYTT of a claim under this warranty within 30 days of the date on which the condition giving rise to the claim first appears.
- 9.2. **Remedies.** To the extent permitted by law, Customer’s sole and exclusive remedy arising out of or in connection with a breach of warranty is limited to replacement of the non-conforming Products and Services or re-performance of the Professional Service, as applicable. If in FYTT’s sole discretion replacement or re-performance is not commercially reasonable, FYTT may terminate the applicable portion of the Sales Order and provide a refund of any prepaid unused fees for the applicable Product and Services.
- 9.3. **Implied Warranties.** To the maximum extent permitted by law and except for the express warranties in this section, FYTT provides the Products and Services on an “as-is” basis. FYTT disclaims and makes no other representation or warranty of any kind, express, implied, or statutory (including claims about merchantability, title, non-infringement, accuracy, or fitness for a particular purpose). Customer acknowledges that FYTT does not control, and FYTT is not responsible for, any interruptions, delays, cancellations, delivery failures, data loss, content corruption, packet loss, or other damage arising from: (i) Customer equipment or the transfer of data over communication networks, facilities, or devices (including the Internet); (ii) limitations, interruptions, delays, cancellations, or other problems inherent in the use of such communications networks, facilities, and devices not within FYTT’s control; or (iii) Customer’s failure to properly install appropriate security updates and patches to software and programs on networks and devices within Customer’s control.

10. **Confidentiality.**

- 10.1. **Use and Protection.** The receiving Party will only use Confidential Information for the purposes of the Agreement and will not reproduce, disseminate, or disclose Confidential Information to any person, except to the Party's employees and authorized representatives (e.g. temporary employees, consultants, and contractors) who need to know the Confidential Information for the purposes of the Agreement and are bound by confidentiality obligations at least as restrictive as those in this section. The receiving Party will treat Confidential Information with the same degree of care as it treats its own information of similar sensitivity, but never with less than reasonable care. The obligations in this section survive for three (3) years following expiration or termination of the Agreement.
 - 10.2. **Permitted Disclosure.** The receiving Party may disclose Confidential Information: (i) as approved in a writing signed by the disclosing Party; (ii) as necessary to comply with any law or valid order of a court or other governmental body; or (iii) as necessary to establish the rights of either Party, but in the case of (ii) and (iii), only if the receiving Party promptly notifies the disclosing Party of the details of the required disclosure and gives the disclosing Party all assistance reasonably required by the disclosing Party to enable the disclosing Party to take available steps to prevent the disclosure or to ensure that disclosure occurs subject to an appropriate obligation of confidence.
11. **General Provisions.**
- 11.1. **Relationship.** FYTT will be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of the Agreement. The Agreement does not create a partnership, franchise, joint venture, agency, or fiduciary relationship between the Parties.
 - 11.2. **Notices.** Any notice given under the Agreement must be in writing and delivered by email to the following addresses (or alternative addresses provided in writing by each Party): legal@fytt.io (to FYTT); the primary billing email address set forth in the Sales Order (to Customer). All notices will be deemed to have been delivered the second business day after sending by email.
 - 11.3. **Waiver, Modification.** No failure or delay by either Party in exercising any right under the Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies. The Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing signed by the Parties.
 - 11.4. **Severability.** If any provision of the Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or invalid, the provision may be interpreted by the court so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining portions of the Agreement will remain in full force and effect.

- 11.5. **Independent Allocations of Risk.** Each provision of the Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages is to allocate the risks of the Agreement between the Parties. This allocation is reflected in the pricing offered by FYTT to Customer and is an essential element of the basis of the bargain between the Parties.
- 11.6. **Assignment.** Neither Party may assign any of its rights or obligations under the Agreement without the prior written consent of the other Party (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, either Party may assign the Agreement in its entirety (including all rights and obligations) without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other Party. Any purported assignment in violation of this section will be null and void. Subject to the foregoing, the Agreement will bind and inure to the benefit of the Parties, their respective successors, and permitted assigns.
- 11.7. **Force Majeure.** Neither Party will be liable for, or be considered to be in breach of, the Agreement on account of any delay or failure to perform as required by the Agreement as a result of any unforeseeable or exceptional situation beyond its reasonable control, so long as the non-performing Party: (i) did not cause such situation by its own negligent acts or omissions and (ii) exercised all due diligence and used commercially reasonable efforts to avoid such situation and mitigate the impact.
- 11.8. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to the Agreement, including, without limitation, Permitted Third Parties or Users.
- 11.9. **Entire Agreement.** The Agreement contains the entire understanding of the Parties relating to the subject matter and supersedes all earlier agreements, understandings, proposals, discussions, negotiations, representations, and warranties, both written and oral, regarding the subject matter.
- 11.10. **Customer's Purchase Order.** Any terms or conditions in Customer's purchase order or any other related documents submitted by or on behalf of Customer to FYTT do not form part of the Agreement and are void, unless otherwise expressly agreed in writing and signed by the Parties.
- 11.11. **Counterparts.** The Agreement (or a component) may be executed in counterparts, which taken together will form one legal instrument.
- 11.12. **Trade Rules.** Customer acknowledges that the Products and Services may be subject to the trade control laws and regulations of the United States and other national governments, and Customer agrees to comply with them.
- 11.13. **Anti-Corruption.** Customer acknowledges and agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of FYTT's employees or agents in connection with the Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any

violation of the above restriction, Customer will use reasonable efforts to promptly notify FYTT of such violation.

- 11.14. **Government Licensing.** For US Government end users: Customer acknowledges that Products and Services are “Commercial Item(s),” as that term is defined at 48 C.F.R. section 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as the terms are used in 48 C.F.R. section 12.212 or 48 C.F.R. section 227.7202, as applicable. Customer agrees, consistent with 48 C.F.R. section 12.212 or 48 C.F.R. sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users: (i) only as Commercial Items and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights are reserved under the copyright laws of the United States.
- 11.15. **Governing Law, Venue, and Disputes.** The Agreement is governed by and construed under the laws of the state of Utah, without regard to any conflict of law rules or principles, and excluding the application of the United Nations Convention on Contracts for the International Sale of Goods. The Parties irrevocably submit to the exclusive jurisdiction of the courts of competent jurisdiction in the state of Utah. Parties will first try to settle any dispute between them amicably in good-faith negotiations prior to seeking enforcement from a court.
- 11.16. **General.** Where relevant, a reference in the Agreement to Customer should be construed as equally including a reference to Customer’s Affiliates and Users. Similarly, a reference in the Agreement to FYTT should be construed as equally including a reference to FYTT’s Affiliates. Any obligation in the Agreement not to do something includes an obligation not to support or allow that thing to be done.
12. **Definitions.**
- 12.1. **“Athlete(s)”** means any User for whom the Customer is using the Products and Services to prescribe sports performance content.
- 12.2. **“Affiliate(s)”** means, for a Party, any other entity that controls, is controlled by, or under common control with, the Party. For the purposes of this definition, the term “control” means the direct or indirect power to direct the affairs of an entity through at least 50% of the shares, voting rights, participation, or economic interest in such entity.
- 12.3. **“Agreement”** means the applicable Sales Order and this Master Subscription Agreement (including all exhibits, addenda, and amendments which are properly attached or incorporated by reference).
- 12.4. **“Commissioned User”** means any User for whom Customer is using the Products and Services to track or calculate commissions.

- 12.5. “**Claim**” means a claim, demand, action, or legal proceeding filed against a Party.
- 12.6. “**Confidential Information**” means non-public or proprietary information about the disclosing Party’s business (including copies, summaries, and extracts) which is: (i) disclosed in tangible form and is identified in writing as confidential at the time of disclosure; (ii) disclosed in non-tangible form that is unambiguously identified as confidential at the time of disclosure; or (iii) disclosed in such a manner, or of such a nature, that a reasonable person under the same circumstances would clearly understand the information to be confidential. Confidential Information does not include information that: (i) is or becomes generally publicly available through no fault of the receiving Party; (ii) was known to the receiving Party, free of any confidentiality obligations, before its disclosure by the disclosing Party; (iii) becomes known to the receiving Party, free of any confidentiality obligations, from a source other than the disclosing Party; or (iv) is independently developed by the receiving Party without use of or reference to the Confidential Information, as demonstrated by documents and other competent evidence in the receiving Party’s possession.
- 12.7. “**Customer Data**” means all files, content (including audio, video, text, or images), and data (including Personal Data) belonging to or controlled by the Customer which is uploaded into, or accessed by the Products and Services, or otherwise provided to FYTT for processing pursuant to the Agreement.
- 12.8. “**Customer**” means the entity entering the Agreement with FYTT and identified in the Sales Order, including, as applicable, Customer’s Affiliates.
- 12.9. “**Documentation**” means written technical and usage documentation about the Products and Services published by FYTT on support.fytt.io/help.
- 12.10. “**Fees**” means the fees payable for the Products and Services specified in the Sales Order.
- 12.11. “**FYTT**” means FYTT, Inc., a Delaware corporation with offices in Saratoga Springs, UT.
- 12.12. “**FYTT Privacy Policy**” means the privacy policy maintained at www.fytt.io/privacy, as updated from time to time.
- 12.13. “**Party**” means FYTT or Customer, as applicable.
- 12.14. “**Permitted Third Party**” means an individual or entity under contract with Customer who needs to access the Products and Services as part of its relationship with Customer and who is not FYTT’s competitor.
- 12.15. “**Personal Data**” means any information relating to an identified or identifiable natural person (i.e., a person who can be identified, directly or indirectly, by reference to an identifier or to one or more factors specific to such person’s physical, physiological, genetic, mental, economic, cultural, or social identity).
- 12.16. “**Products and Services**” means the FYTT technology, software, and Professional Services (including any deliverables) set out in the Sales Order. Customer acknowledges FYTT will not be delivering copies of the software to Customer.

- 12.17. **“Professional Services”** means any consulting, training, implementation, or technical services provided by FYTT to Customer, as set out in the Sales Order.
- 12.18. **“Sales Order”** means the sales order form, statement of work, or other written document detailing the Products and Services being procured by Customer, and which references this MSA.
- 12.19. **“Sensitive Personal Information”** means information of a sensitive nature, including without limitation, financial account information, sexual orientation, personal medical or health information, personal information of children under 13, personal education records, and social security, national identity, national insurance, and similar personal identifiers. Where specific privacy or data protection laws apply (e.g. the General Data Protection Regulation (GDPR), the Gramm-Leach-Bliley Act (GLB), Health Insurance Portability and Accountability Act of 1996 (HIPAA), US Children’s Online Privacy Protection Act (COPPA), Americans with Disabilities Act (ADA), Family Educational Rights and Privacy Act (FERPA)), and those laws define Sensitive Personal Information or a similar term (e.g. “Sensitive Personal Data,” “Special Categories,” or “Protected Health Information”), Sensitive Personal Information will adopt the meaning from the applicable law or regulation.
- 12.20. **“Services”** means the products and services described in section 1 of this agreement.
- 12.21. **“Subscription Term”** means the duration of the subscription for Products and Services, as stated in the Sales Order, and modified by any applicable extension or early termination.
- 12.22. **“Taxes”** means any local, state, provincial, federal, or foreign taxes (e.g., value-added, sales, or use taxes), or fees, duties, or other governmental charges resulting from the Agreement.
- 12.23. **“Third-Party Product(s)”** means any product, platform, or service not developed by FYTT which enhances, manipulates, integrates with, interacts with, interoperates with, or adds functionality to the Products and Services or Customer Data. Third- Party Products may include public APIs, stand-alone software, or hardware. Third-Party Products may be obtained directly from the developer or through a reseller. FYTT may act as a reseller for some Third-Party Products.
- 12.24. **“User”** means all Athletes and other users who have created an account to use the Products and Services. Users must be an employee of Customer or its Affiliates, or a Permitted Third Party.