

Data Processing Agreement

between

Scottish Canoe Association Ltd.

A company incorporated under the Companies Act 2006 (Company Number SC207488), having its registered office at Caledonia House, 1 Redheughs Rigg, Edinburgh EH12 9DQ

and

Canoe Club affiliated to the Scottish Canoe Association Ltd.

together referred to as the "**Parties**" and separately as a "**Party**".

Both organisations pass personal data to the other under specific circumstances - set out in the schedules at the end of this agreement

- For the transfer of data from the Scottish Canoe Association to the Affiliated Club, the Scottish Canoe Association is the Customer and the Controller of data and the Affiliated Club is the Supplier and also a Controller of data
- For the transfer of data from the Affiliated Club to the Scottish Canoe Association, the Affiliated Club is the Customer and the Controller of data and the Scottish Canoe Association is the Supplier and also a Controller of data

Background:

- (A) The Customer is the Controller in respect of the Customer Personal Data.
- (B) The Supplier has agreed to carry out certain Processing functions in respect of the Customer Personal Data and to act as a Processor in respect of the Customer Personal Data.
- (C) The Parties have therefore entered into this Agreement to regulate the Processing of the Customer Personal Data by the Supplier in terms of the Data Protection Legislation.

It is agreed as follows:

1 **Definitions and Interpretation**

1.1 The following words and phrases used in this Agreement shall have the following meanings except where the context otherwise requires:

"Agreement" means this agreement, including the Schedules;

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in Glasgow are open for business;

"Commencement Date" means 24th May 2018;

"Controller" has the meaning set out in the Data Protection Legislation and includes the definition of **"Data Controller"**;

"Customer Personal Data" means the categories Personal Data which the Customer has identified for Processing by the Supplier under this Agreement, short particulars of which are set out in Part 1 of the Schedules;

"Data Protection Impact Assessment", **"Data Subject"**, **"Information Commissioner's Office"**, **"Personal Data"** and **"Process"** (including any derivatives thereof) have the meanings set out in the Data Protection Legislation;

"Data Protection Legislation" means any law applicable relating to the processing, privacy and use of personal data, including, without limitation: (i) the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive) or Directive 2002/581EC; (ii) the General Data Protection Regulation (EU) 2016/679, and/or any corresponding or equivalent national laws or regulations; and / or (iii) any judicial or administrative implementation of any of the above, any guidance, guidelines, codes of practice, codes of conduct or approved certification mechanisms issued by the Information Commissioners Office, or other regulatory or supervisory authority responsible for administering Data Protection Legislation;

"Processor" has the meaning set out in the Data Protection Legislation and includes the definition of **"Data Processor"**;

"Purpose(s)" means the purpose as determined by the Customer and set out in Part 2 of the Schedules; and

"Schedules" means the schedules attached as relative to this Agreement.

1.2 In this Agreement:

1.2.1 the singular includes the plural and vice versa;

1.2.2 references to statutes, any statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time;

1.2.3 unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by a Party is without prejudice to that Party's other rights and remedies;

1.2.4 a person includes a corporate or unincorporated body (whether or not having separate legal personality); and

1.2.5 any phrase introduced by the words **"including"** or **"includes"** or similar shall be construed as illustrative and shall not limit the generality of the related general words.

2 **Term**

This Agreement shall commence on the Commencement Date and shall continue in full force and effect until completion of the Purpose(s) (the "**Term**"), unless terminated earlier in accordance with Clause 8.

3 Processing and obligations of the Supplier

3.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller of the Customer Personal Data and the Supplier is the Processor of the Customer Personal Data.

3.2 In respect of the Processing of the Customer Personal Data during the Term, the Supplier undertakes:

3.2.1 to Process the Customer Personal Data strictly in accordance with the Customer's instructions from time to time and the Data Protection Legislation;

3.2.2 to put in place appropriate technical and organisational measures to ensure appropriate security of the Customer Personal Data and safeguard against any unauthorised and unlawful Processing of, and against accidental loss or destruction of, or damage to, the Customer Personal Data, all to the reasonable satisfaction of the Customer. Such measures shall include, but are not limited to:

3.2.2.1 appropriate measures to ensure the ongoing confidentiality, integrity, availability and resilience of the Supplier's systems and services;

3.2.2.2 appropriate measures to restore the availability and access to the Customer Personal Data in a timely manner in the event of a physical or technical incident; and

3.2.2.3 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Customer Personal Data;

3.2.3 to notify the Customer immediately (and in any event within two hours) of any breach of the security measures required to be put in place by the Supplier pursuant to Clause 3.2.2 and / or any breach of the Data Protection Legislation by the Supplier, its sub-processors or sub-contractors or employees. In the event that any Customer Personal Data is lost, stolen or subjected to unauthorised access or becomes damaged, corrupted, destroyed or unusable, the Supplier shall restore such Customer Personal Data promptly at its own expense;

3.2.4 to maintain records of all activities carried out by the Supplier in relation to the Customer Personal Data. Such records shall be in the form prescribed by and contain the information described in the Data Protection Legislation;

3.2.5 not to disclose or allow access to the Customer Personal Data to any Data Subject or third party other than at the explicit request of the Customer or as may be specifically provided for in this Agreement;

3.2.6 not to transfer or Process the Customer Personal Data outside the United Kingdom or a Member State of the European Union, without the prior written approval of the Customer;

3.2.7 that any of its employees who will have access to the Customer Personal Data have undergone data protection training and are aware of their obligations under the Data Protection Legislation, including but not limited to, a duty of confidentiality in respect of the Customer Personal Data;

3.2.8 to assist the Customer with all requests which may be received from Data Subjects in relation to the Customer Personal Data under the Data Protection Legislation and to notify

the Customer of any such request received directly by the Supplier from a Data Subject within two Business Days of receipt;

- 3.2.9 to provide the Customer with such information as the Customer may require to satisfy itself that the Supplier is complying with its obligations under the Data Protection Legislation, including contributing to audits and inspections conducted by the Customer or another party authorised by the Customer under Clause 5;
- 3.2.10 to notify the Customer immediately (and in any event within two hours) if it receives a complaint, notice or any other communication concerning the Supplier's Processing of the Customer Personal Data;
- 3.2.11 to assist the Customer with any notifications to the Information Commissioner's Office or Data Subjects where required under the Data Protection Legislation;
- 3.2.12 to provide the Customer with such assistance as the Customer reasonably requires in relation to the carrying out of a Data Protection Impact Assessment relating to the Processing of the Customer Personal Data, including where the Customer engages in a consultation with the Information Commissioner's Office in relation to the Supplier's Processing of the Customer Personal Data; and
- 3.2.13 to restrict any Processing, return or delete the Customer Personal Data immediately as directed by the Customer.

4 Sub-processors

- 4.1 The parties both use the Scottish Canoe Association's online system called Go Membership provided by Azolve Ltd. in order to process personal data. The parties shall not assign, sub-contract or otherwise deal with its obligations under this Agreement to another sub-processor without the prior written consent of the other party.
- 4.2 Where consent is given by the Customer, the Supplier shall ensure that the sub-processor is subject to written contractual obligations concerning the Customer Personal Data which are no less onerous than those imposed on the Supplier under this Agreement, such written contract to be entered into before any Customer Personal Data is passed to the sub-processor.

5 Audits

The Customer is entitled to appoint an auditor (whether internal or independent), to inspect the Supplier's compliance with this Agreement and the Data Protection Legislation at any time during the Term provided that the Customer ensures that any such auditor: (i) has, in the view of the Customer, the necessary professional qualifications to conduct such an audit; and (ii) is bound by a duty of confidentiality in relation to the Customer Personal Data.

6 Warranties and Indemnities

- 6.1 Each Party warrants that it has full legal authority to enter into this Agreement.
- 6.2 The Supplier undertakes and warrants that it will:
 - 6.2.1 collect and Process the Customer Personal Data in compliance with the Data Protection Legislation and this Agreement;
 - 6.2.2 ensure that the Customer Personal Data is kept secret and confidential; and

6.2.3 fully assist the Customer in ensuring compliance with the obligations under the Data Protection Legislation and within the timescales required by the Data Protection Legislation.

6.3 The Supplier agrees to indemnify and keep indemnified the Customer fully on demand against all losses arising from any breach by the Supplier or any sub-processors or third parties engaged by the Supplier, of this Agreement and/or as a result of any claim made or brought by an individual or other legal person in respect of any loss, damage or distress caused to them as a result of the Supplier's unauthorised Processing, unlawful Processing, destruction of and/or damage to any Customer Personal Data Processed by the Supplier or any sub-processors or third parties engaged by the Supplier.

7 **Ownership**

All right, title and interest in the Customer Personal Data shall vest solely in the Customer.

8 **Review and termination for breach**

8.1 The Parties will review this Agreement, and the operational arrangements which give effect to it, if any of the following events takes place:

8.1.1 one or both of the Parties is found to have breached the terms of this Agreement in any significant way;

8.1.2 one or both of the Parties has identified a substantial data security breach or data loss in respect of the Customer Personal Data. A substantial security breach or data loss is defined as one that: (a) requires to be notified to the Information Commissioner's Office; and (b) impacts upon more than one Data Subject or impacts upon a single Data Subject in a severely detrimental manner;

8.1.3 any Party indicates that it intends to withdraw from this Agreement; or

8.1.4 the Information Commissioner's Office recommends that this Agreement be reviewed.

8.2 Any unscheduled review under Clause 8.1 may be either in respect of this entire Agreement, or only in respect of the elements of this Agreement directly relating to the event which triggered the review, as the Parties agree is appropriate.

8.3 This Agreement may be terminated with immediate effect by the Customer giving written notice to the Supplier where the Supplier is in breach of any material obligation under this Agreement and, where the breach is capable of remedy, the Supplier has failed to remedy the breach within 14 days of receipt of notice so to do.

9 **Consequences of termination**

9.1 The Parties agree that on expiry of the Term or earlier termination of this Agreement (howsoever caused), the Supplier and any sub-processor shall, at the choice of the Customer, either:

9.1.1 return all the Customer Personal Data transferred including any data storage media supplied to the Supplier, including all Customer Personal Data created for the performance of this Agreement, and the copies thereof to the Customer within any timescales specified by the Customer and the Supplier warrants that it will guarantee the confidentiality of the Customer Personal Data transferred and will not actively process the Customer Personal Data anymore; or

9.1.2 destroy all the Customer Personal Data and certify to the Customer that it has done so within any timescales specified by the Customer,

unless legislation imposed upon the Supplier prevents it from returning or destroying all or part of the Customer Personal Data. In that case, the Supplier warrants that it will guarantee the ongoing confidentiality of the Customer Personal Data retained and will not actively process the Customer Personal Data transferred anymore other than for the purpose to enable it to comply with such legislation.

10 Waiver

Failure by either Party to exercise or enforce any rights or remedies available to that Party or any delay in exercising the same shall not be construed as a waiver thereof under this Agreement.

11 No Variation

This Agreement shall not be amended and no variation to its terms shall be effective unless such amendment or variation is in writing by a document expressed to be supplemental to this Agreement and is signed by authorised representatives of each of the Parties.

12 Invalidity

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining part or provisions of this Agreement.

13 Notices

13.1 Any notice to, or demand to be served by, one Party on another Party in terms of this Agreement may be delivered or sent by first-class recorded delivery post to that Party at its address appearing in this Agreement or at such other address as it may have notified to the other Party in accordance with this Clause 13, or as a signed document sent in PDF format by email to such email address as may be intimated by each Party to the other from time to time.

13.2 Any such notice or demand shall be deemed to have been served:

13.2.1 if delivered, at the time of delivery;

13.2.2 if posted, at 10am on the second day after it was put into the post;

13.2.3 if emailed within the Business Day, on that Business Day; or

13.2.4 if emailed after 5pm, on the next Business Day.

13.3 In proving service of a notice or demand, it shall be sufficient to prove that delivery was made or that the envelope containing the notice or demand was properly addressed and posted as a pre-paid first-class recorded delivery letter, as the case may be.

14 Governing Law

14.1 This Agreement and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) is governed by, and shall be construed in accordance with, Scots law.

14.2 The Parties submit to the exclusive jurisdiction of the Scottish courts for all purposes relating to this Agreement and any disputes or claims arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims).

This is the Schedules referred to in the foregoing agreement between the Scottish Canoe Association Ltd. and the Affiliated Club.

Schedule A

The Scottish Canoe Association is the Customer and the Affiliated Club is the Supplier

Part 1

The Scottish Canoe Association Ltd. has defined that the following categories of Personal Data will be processed by the Affiliated Club under this Agreement:

- name and title
- address
- email address
- date of birth
- telephone number
- Scottish Canoe Association membership number
- Scottish Canoe Association membership category
- Scottish Canoe Association membership expiry date
- emergency Contact details (name and phone number)
- qualifications and credentials e.g. training and roles (type, date completed, expiry date)
- outcome of investigations and disciplinary procedures where applicable
- information relating to incidents, accidents, actions and claims where applicable

The Scottish Canoe Association has defined the following Data Subject categories where personal data will be collected and processed by Affiliated Club under this Agreement:

- Scottish Canoe Association Members who join the Affiliated Club
- other individuals that have given their personal data to the Scottish Canoe Association

Part 2

The purpose for the Affiliated Club processing personal data on behalf of the Scottish Canoe Association is:

- for Scottish Canoe Association members, who join the Affiliated Club, to be included in the Club's membership register (in the online Go Membership system) without creating duplicate records
- to share the outcome of investigations and disciplinary procedures where there is a public interest for this information to be shared with other home nation associations for the purpose of keeping the sport safe and safeguarding children
- share information about incidents and accidents in order to continue to make the sport safer and to process any resulting actions or claims

Schedule B

The Affiliated Club is the Customer and the Scottish Canoe Association is the Supplier

Part 1

The Affiliated Club has defined that the following categories of Personal Data will be processed by and controlled by the Scottish Canoe Association under this Agreement:

- name and title
- address
- email address
- date of birth
- telephone number
- Club membership number
- Club membership expiry date
- Regulated Work Status
- emergency contact details (name and phone number)
- outcome of investigations and disciplinary procedures where applicable
- information relating to incidents, accidents, actions and claims where applicable

The Affiliated Club has defined the following Data Subject categories where personal data will be collected and processed by the Scottish Canoe Association under this Agreement:

- members of the of the Affiliated Club
- other individuals that have given their personal data to the Affiliated Club

Part 2

Personal data is processed by the Scottish Canoe Association when it has been entered into the online Go Membership system by the Affiliated Club in order for the Scottish Canoe Association:

- to maintain records of the membership of Affiliated Clubs for insurance purposes and in order to report on participation in the sport in aggregate to government agencies including **sportscotland**
- to process applications from Club members (who are not Scottish Canoe Association members) when they e.g. apply to take part in a Scottish Canoe Association event
- to share the outcome of investigations and disciplinary procedures where there is a public interest for this information to be shared with other home nation associations for the purpose of keeping the sport safe and safeguarding children
- share information about incidents and accidents in order to continue to make the sport safer and to process any resulting actions or claims