

DATA PROCESSING AGREEMENT

THIS AGREEMENT is made **BETWEEN:**

- (1) **The Provider's Home Nation Delivery Centre** (hereafter referred to as the "Delivery Centre")

AND

- (2) **The British Canoeing Qualifications/Awards Provider** (hereafter referred to as "Provider")

WHEREAS:

- (1) This Data Processing Agreement sets out the basis on which data may be processed by the parties in order to provide the services detailed in the British Canoeing Provider Service Agreement.

Background:

- (A) The Delivery Centre is the Controller in respect of the Delivery Centre Personal Data.
- (B) The Provider has agreed to carry out certain Processing functions in respect of the Delivery Centre Personal Data and to act as a Processor in respect of the Delivery Centre Personal Data.
- (C) The Parties have therefore entered into this Agreement to regulate the Processing of the Delivery Centre Personal Data by the Provider 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 Schedule;

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

"Commencement Date" is the commencement date of the British Canoeing Provider Service Agreement between the Provider and the Delivery Centre;

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

"Delivery Centre Personal Data" means the categories Personal Data which the Delivery Centre has identified for Processing by the Provider under this Agreement, short particulars of which are set out in Part 1 of the Schedule;

"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 Delivery Centre and set out in Part 2 of the Schedule; and

"Schedule" means the schedule 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

2.1 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 Provider**

- 3.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Delivery Centre is the Controller of the Delivery Centre Personal Data and the Provider is the Processor of the Delivery Centre Personal Data.
- 3.2 In respect of the Processing of the Delivery Centre Personal Data during the Term, the Provider undertakes:
- 3.2.1 to Process the Delivery Centre Personal Data strictly in accordance with the Delivery Centre'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 Delivery Centre Personal Data and safeguard against any unauthorised and unlawful Processing of, and against accidental loss or destruction of, or damage to, the Delivery Centre Personal Data, all to the reasonable satisfaction of the Delivery Centre. 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 Provider's systems and services;
 - 3.2.2.2 appropriate measures to restore the availability and access to the Delivery Centre 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 Delivery Centre Personal Data;
 - 3.2.3 to notify the Delivery Centre immediately (and in any event within two hours) of any breach of the security measures required to be put in place by the Provider pursuant to Clause 3.2.2 and / or any breach of the Data Protection Legislation by the Provider, its sub-processors or sub-contractors or employees. In the event that any Delivery Centre Personal Data is lost, stolen or subjected to unauthorised access or becomes damaged, corrupted, destroyed or unusable, the Provider shall restore such Delivery Centre Personal Data promptly at its own expense;
 - 3.2.4 to maintain records of all activities carried out by the Provider in relation to the Delivery Centre 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 Delivery Centre Personal Data to any Data Subject or third party other than at the explicit request of the Delivery Centre or as may be specifically provided for in this Agreement;

- 3.2.6 not to transfer or Process the Delivery Centre Personal Data outside the United Kingdom or a Member State of the European Union, without the prior written approval of the Delivery Centre;
- 3.2.7 that any of its employees who will have access to the Delivery Centre 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 Delivery Centre Personal Data;
- 3.2.8 to assist the Delivery Centre with all requests which may be received from Data Subjects in relation to the Delivery Centre Personal Data under the Data Protection Legislation and to notify the Delivery Centre of any such request received directly by the Provider from a Data Subject within two Business Days of receipt;
- 3.2.9 to provide the Delivery Centre with such information as the Delivery Centre may require to satisfy itself that the Provider is complying with its obligations under the Data Protection Legislation, including contributing to audits and inspections conducted by the Delivery Centre or another party authorised by the Delivery Centre under Clause 5;
- 3.2.10 to notify the Delivery Centre immediately (and in any event within two hours) if it receives a complaint, notice or any other communication concerning the Provider's Processing of the Delivery Centre Personal Data;
- 3.2.11 to assist the Delivery Centre 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 Delivery Centre with such assistance as the Delivery Centre reasonably requires in relation to the carrying out of a Data Protection Impact Assessment relating to the Processing of the Delivery Centre Personal Data, including where the Delivery Centre engages in a consultation with the Information Commissioner's Office in relation to the Provider's Processing of the Delivery Centre Personal Data; and
- 3.2.13 to restrict any Processing, return or delete the Delivery Centre Personal Data immediately as directed by the Delivery Centre.

4 **Sub-processors**

- 4.1 The Provider shall not assign, sub-contract or otherwise deal with its obligations under this Agreement to a sub-processor without the prior written consent of the Delivery Centre.
- 4.2 Where consent is given by the Delivery Centre, the Provider shall ensure that the sub-processor is subject to written contractual obligations concerning the Delivery Centre Personal Data which are no less onerous than those imposed on

the Provider under this Agreement, such written contract to be entered into before any Delivery Centre Personal Data is passed to the sub-processor.

5 **Audits**

- 5.1 The Delivery Centre is entitled to appoint an auditor (whether internal or independent), to inspect the Provider's compliance with this Agreement and the Data Protection Legislation at any time during the Term provided that the Delivery Centre ensures that any such auditor: (i) has, in the view of the Delivery Centre, the necessary professional qualifications to conduct such an audit; and (ii) is bound by a duty of confidentiality in relation to the Delivery Centre 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 Provider undertakes and warrants that it will:
- 6.2.1 collect and Process the Delivery Centre Personal Data in compliance with the Data Protection Legislation and this Agreement;
 - 6.2.2 ensure that the Delivery Centre Personal Data is kept secret and confidential; and
 - 6.2.3 fully assist the Delivery Centre in ensuring compliance with the obligations under the Data Protection Legislation and within the timescales required by the Data Protection Legislation.
- 6.3 The Provider agrees to indemnify and keep indemnified the Delivery Centre fully on demand against all losses arising from any breach by the Provider or any sub-processors or third parties engaged by the Provider, 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 Provider's unauthorised Processing, unlawful Processing, destruction of and/or damage to any Delivery Centre Personal Data Processed by the Provider or any sub-processors or third parties engaged by the Provider.

7 **Ownership**

- 7.1 All right, title and interest in the Delivery Centre Personal Data shall vest solely in the Delivery Centre.

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 Delivery Centre 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 Delivery Centre giving written notice to the Provider where the Provider is in breach of any material obligation under this Agreement and, where the breach is capable of remedy, the Provider 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 Provider and any sub-processor shall, at the choice of the Delivery Centre, either:

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

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

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

10 **Waiver**

10.1 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**

11.1 This Agreement shall not be amended and no variation to its terms shall be effective unless such amendment or variation is formally agreed by the parties and expressed to be supplemental to this Agreement and is signed by authorised representatives of each of the Parties.

12 **Invalidity**

12.1 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).

By clicking on the "I Agree", the "Submit" or similar button when receiving this Data Processing Agreement, a duly-authorised person on behalf of a party to this Data Processing Agreement is indicating they have read, accepted, acknowledged and understood the aforementioned terms and conditions and are indicating their intent to sign the Data Processing Agreement and acknowledge that this action will constitute their signature for the purposes of this Data Processing Agreement.

Schedule

Part 1

The Delivery Centre has defined that the following categories of Personal Data will be collected and processed by the Provider under this Agreement:

Personal Data:

- name
- membership number
- date of birth
- sex
- postal addresses
- email address
- telephone number
- training / qualification course completed
- course results
- Candidate written work as part of the assessment (on request)

Part 2

Personal data is processed by the Provider in order to provide qualifications and/or awards on behalf of the Delivery Centre.