

Club template data processing agreement

This template agreement wording is intended for use by clubs when engaging third parties to process personal data on behalf of the club. Please read the separate document called “Guidance notes for Clubs using the data processing templates” before using this template.

Except where highlighted in the template wording, clubs should not amend the text without first obtaining legal advice.

Data Progressing Agreement [TEMPLATE]

between

[INSERT NAME OF CLUB]

and

[INSERT NAME OF SUPPLIER]

This Agreement is between:

1. [INSERT REGISTERED NAME OF CLUB], [an unincorporated association of its members established in Scotland OR a company incorporated under the Companies Act 2006 (Company Number [INSERT NUMBER])], having its [address OR registered office] at [INSERT REGISTERED ADDRESS] (the “ClubClub”); and
2. [INSERT REGISTERED NAME OF SUPPLIER], a company incorporated under the Companies Act 2006 (Company Number [INSERT NUMBER]), having its registered office at [INSERT ADDRESS] (the “Supplier”),
together referred to as the “Parties” and separately as a “Party”.

Background:

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

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

“**Commencement Date**” means [INSERT DATE];

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

“**Club Personal Data**” means the categories Personal Data which the Club has identified for Processing by the Supplier 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 Club 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

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 Club is the Controller of the Club Personal Data and the Supplier is the Processor of the Club Personal Data.
- 3.2. In respect of the Processing of the Club Personal Data during the Term, the Supplier undertakes:
 - 3.2.1. to Process the Club Personal Data strictly in accordance with the Club'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 Club Personal Data and safeguard against any unauthorised and unlawful Processing of, and against accidental loss or destruction of, or damage to, the Club Personal Data, all to the reasonable satisfaction of the Club. 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 Club 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 Club Personal Data;
 - 3.2.3. to notify the Club 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 Club Personal Data is lost, stolen or subjected to unauthorised access or becomes damaged, corrupted, destroyed or unusable, the Supplier shall restore such Club 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 Club 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 Club Personal Data to any Data Subject or third party other than at the explicit request of the Club or as may be specifically provided for in this Agreement;
- 3.2.6. not to transfer or Process the Club Personal Data outside the United Kingdom or a Member State of the European Union, without the prior written approval of the Club;
- 3.2.7. that any of its employees who will have access to the Club 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 Club Personal Data;
- 3.2.8. to assist the Club with all requests which may be received from Data Subjects in relation to the Club Personal Data under the Data Protection Legislation and to notify the Club 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 Club with such information as the Club 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 Club or another party authorised by the Club under Clause 5;
- 3.2.10. to notify the Club 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 Club Personal Data;
- 3.2.11. to assist the Club 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 Club with such assistance as the Club reasonably requires in relation to the carrying out of a Data Protection Impact Assessment relating to the Processing of the Club Personal Data, including where the Club engages in a consultation with the Information Commissioner's Office in relation to the Supplier's Processing of the Club Personal Data; and
- 3.2.13. to restrict any Processing, return or delete the club Personal Data immediately as directed by the Club.

4. Sub-processors

- 4.1. The Supplier shall not assign, sub-contract or otherwise deal with its obligation under this Agreement to a sub-processor without the prior written consent of the Club.
- 4.2. Where consent is given by the Club, the Supplier shall ensure that the sub-processor is subject to written contractual obligations concerning the Club 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 Club Personal Data is passed to the sub-processor.

5. Audits

The Club 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 club ensures that any such auditor: (i) has, in the view of the Club, the necessary professional qualifications to conduct such an audit; (ii) is bound by a duty of confidentiality in relation to the Club 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 Club Personal Data in compliance with the Data Protection Legislation and this Agreement;
 - 6.2.2. ensure that the Club Personal Data is kept secret and confidential; and
 - 6.2.3. fully assist that Club 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 Club 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 Club 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 Club Personal Data shall vest solely in the Club.

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 the 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 Club 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 Club 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 Club, either:
- 9.1.1. return all the Club Personal Data transferred including any data storage media supplied to the Supplier, including all Club Personal Data created for the performance of this Agreement, and the copies thereof to the Club within any timescales specified by the Club and the Supplier warrants that it will guarantee the confidentiality of the Club Personal Data transferred and will not actively process the Club Personal Data anymore; or
 - 9.1.2. destroy all the Club Personal Data and certify to the Club that it has done so within any timescales specified by the Club,
- unless legislation imposed upon the Supplier prevents it from returning or destroying all or part of the Club Personal Data. In that case, the Supplier warrants that it will guarantee the ongoing confidentiality of the Club Personal Data retained and will not actively process the Club Personal Data transferred anymore other than for the purpose to enable it to comply with such legislation.

10. Wavier

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 wavier 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 providing service of 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 of claims).

IN WITNESS WHEREOF these presents typewritten on this and the [five] preceding pages, together with the Schedule attached as relative hereto, are executed as follows:

[Subscribed for and on behalf of [INSERT REGISTERED NAME OF CLUB] [in his/her capacity as a committee member]	
by	
at	
on	
before	
	Witness
	Full Name
	Address

[Subscribed for and on behalf of [INSERT REGISTERED NAME OF CLUB] [in his/her capacity as a committee member]	
by	
at	
on	
before	
	Witness
	Full Name
	Address

This is the Schedule referred to in the foregoing agreement between [INSERT REGISTERED NAME OF CLUB] and [INSERT REGISTERED NAME OF SUPPLIER].

Schedule

Part 1

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

- [INSERT TYPES OF DATA TO BE PROCESSED BY THE SUPPLIER]
- name and title;
- professional, commercial or business addresses;

- date of birth;
- telephone number;
- professional, commercial or business e-mail address; and
- Sensitive Personal Data and Special Categories Personal Data (information about race and ethnic origin, political opinions, religious or philosophical convictions, trade union members, health or sexuality).

The Club has defined the following Data Subject categories from who the Club Personal Data will be collected and processed by the Supplier under this Agreement:

- [INSERT CATEGORIES OF DATA SUBJECT E.G. MEMBERS];
- [INSERT].

Part 2

[INSERT PURPOSE(S) OF PROCESSING CLUB PERSONAL DATA]

Updated: 21/04/2018