



# sportscotland example data processing clause

*This template clause wording is intended for use by clubs within service agreements with suppliers who are providing services, which involve or are likely to involve the processing of personal data on behalf of the club. Please read the separate guidance note before using this template.*

*This template clause wording includes automatic wording and clubs will need to ensure that all of the clause references within the text when the template wording is inserted into a services agreement are updated. For example, clause 1.6.9 references clause "1.9" so if the clause is inserted into a services agreement as clause 8, this reference would need to be amended to refer to clause "8.9".*

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

## Data processing clause [TEMPLATE]

### Definition:

"Data Protection Legislation" means any law applicable relating to the processing, privacy and use of personal data, including: (i) the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426 (both as amended), 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 Commissioner's Office, or other regulatory or supervisory authority responsible for administering Data Protection Legislation;

### New data protection clause:

#### 1. Data protection

- 1.1 For the purposes of the Data Protection Legislation, the Club and the Supplier agree that the Club shall be the Controller and the Supplier shall be the Processor of any Personal Data Processed by the Supplier of which the Club is the Controller ("Club Personal Data") pursuant to this agreement.
- 1.2 The Supplier Processes the Club Personal Data as necessary to deliver and provide the services.
- 1.3 The Club has defined that the following categories of Club Personal Data will be collected and processed by the Supplier under this agreement:
  - 1.3.1 [INSERT TYPES OF DATA TO BE PROCESSED BY THE SUPPLIER]
  - 1.3.2 name and title;
  - 1.3.3 addresses;
  - 1.3.4 date of birth;
  - 1.3.5 telephone number;
  - 1.3.6 professional, commercial or business e-mail address; and
  - 1.3.7 Sensitive Personal Data and Special Categories Personal Data (information about race and ethnic origin, political opinions, religious or philosophical convictions, trade union membership, health or sexuality).
- 1.4 The Club has defined the following Data Subject categories from who the Club Personal Data as defined in Clause 1.2 will be collected and processed by the Supplier under this agreement:

- 1.4.1 [INSERT CATEGORIES OF DATA SUBJECT E.G. MEMBERS];
- 1.4.2 [INSERT].
- 1.6 When Processing the Club Personal Data under this agreement as a Processor, the Supplier undertakes:
  - 1.5 The duration of the Processing by the Supplier shall be the term of this agreement (or otherwise agreement between the parties to this agreement).
  - 1.6.1 to Process the Club Personal Data strictly in accordance with the Club's documented instructions from time to time and the Data Protection Legislation;
  - 1.6.2 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:
    - 1.6.2.1 appropriate measures to ensure the ongoing confidentiality, integrity, availability and resilience of the Supplier's systems and services;
    - 1.6.2.2 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
    - 1.6.2.3 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Club Personal Data;
  - 1.6.3 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 1.6.2 and / or any breach of the Data Protection Legislation by the Supplier, its sub-processors or sub-contractors or employees;
  - 1.6.4 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 and contain the information described in the Data Protection Legislation;
  - 1.6.5 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;
  - 1.6.6 not engage any sub-processors or sub-contractors to perform the obligations imposed on the Supplier under this Agreement without the prior written approval of the Club and, where the Club's prior written approval is given, ensure that such sub-processors or sub-contractors are subject to written contractual obligations concerning the Club Personal Data which are no less onerous than those imposed on the Supplier under this Agreement;
  - 1.6.7 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;
  - 1.6.8 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 within two Business Days of receipt;
  - 1.6.9 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 a third party appointed by the Club under Clause 1.9;

- 1.6.10 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;
  - 1.6.11 to assist the Club with any notifications to the Information Commissioner's Office or Data Subjects where required under the Data Protection Legislation;
  - 1.6.12 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 Processing of the Club Personal Data;
  - 1.6.13 to restrict any Processing, return or delete the Club Personal Data immediately as directed by the Club;
  - 1.6.14 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 Clause 1 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, any sub-processors or sub-contractors or third parties engaged by the Supplier.
- 1.7 Subject to Clause 1.6, on the expiry of the Term or earlier termination of this Agreement (howsoever caused), the Supplier will immediately:
- 1.7.1 cease Processing the Club Personal Data; and
  - 1.7.2 at the Club's option and at the Supplier's sole cost and expense, either: (i) return to the Club; or (ii) delete, all the Club Personal Data wherever and in whatever manner it is held or stored.
- 1.8 If and to the extent that the Supplier is obliged to retain any Club Personal Data as a result of the Supplier being deemed to be a Controller of that Club Personal Data and/or to comply with legal or regulatory obligations to which the Supplier is subject, the following provisions will apply:
- 1.8.1 the Supplier may retain and not return or delete such Club Personal Data, only to the extent and only for as long as is legally necessary to hold such Club Personal Data in its capacity as Controller of that Club Personal Data and/or to comply with the applicable legal or regulatory obligations to which the Supplier is subject; and
  - 1.8.2 the Supplier will, following expiry or earlier termination of this Agreement, be a Controller in relation to such Club Personal Data retained by the Supplier.
- 1.9 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; and (ii) is bound by a duty of confidentiality in relation to the Club Personal Data.
- 1.10 For the purposes of this Clause 1, the terms "Controller", "Data Controller", "Data Processor", "Data Protection Impact Assessment", "Data Subject", "Information Commissioner's Office", "Personal Data", "Process" (including any derivatives thereof), "Processor", "Sensitive Personal Data", and "Special Categories of Personal Data" shall each have the same meaning as defined in the Data Protection Legislation.

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