



**sportscotland**  
**example data processing**  
**clause**

*This template clause wording is intended for use by SGBs 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 SGB.*

*This template clause wording includes automatic wording and SGBs 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 1.4.9 references clause "1.7" so if the clause is inserted into a services agreement as clause 8, this reference would need to be amended to refer to clause "8.7".*

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

# Data processing clause [TEMPLATE]

## New definition: 1

"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 Customer and the Supplier agree that the Customer shall be the Controller and the Supplier shall be the Processor of any Personal Data Processed by the Supplier of which the Customer is the Controller ("**Customer Personal Data**") pursuant to this Agreement.
- 1.2 The Customer has defined that the following categories of Customer Personal Data will be collected and processed by the Supplier under this Agreement: 2
  - 1.2.1 [INSERT TYPES OF DATA TO BE PROCESSED BY THE SUPPLIER]
  - 1.2.2 name and title;
  - 1.2.3 professional, commercial or business addresses;
  - 1.2.4 date of birth;
  - 1.2.5 telephone number;
  - 1.2.6 professional, commercial or business e-mail address; and
  - 1.2.7 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).
- 1.3 The Customer has defined the following Data Subject categories from who the Customer Personal Data as defined in Clause 1.2 will be collected and processed by the Supplier under this Agreement: 3
  - 1.3.1 [INSERT CATEGORIES OF DATA SUBJECT E.G. MEMBERS];
  - 1.3.2 [INSERT].

- 1.4 During the Term, as Processor, the Supplier undertakes: <sup>4</sup>
- 1.4.1 to Process the Customer Personal Data strictly in accordance with the Customer's documented instructions from time to time and the Data Protection Legislation;
  - 1.4.2 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:
    - 1.4.2.1 appropriate measures to ensure the ongoing confidentiality, integrity, availability and resilience of the Supplier's systems and services;
    - 1.4.2.2 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
    - 1.4.2.3 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Customer Personal Data;
  - 1.4.3 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 1.4.2 and / or any breach of the Data Protection Legislation by the Supplier, its sub-processors or sub-contractors or employees;
  - 1.4.4 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 and contain the information described in the Data Protection Legislation;
  - 1.4.5 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;
  - 1.4.6 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 Customer and, where the Customer's prior written approval is given, ensure that such sub-processors or sub-contractors are subject to written contractual obligations concerning the Customer Personal Data which are no less onerous than those imposed on the Supplier under this Agreement;
  - 1.4.7 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;
  - 1.4.8 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 within two Business Days of receipt;
  - 1.4.9 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 a third party appointed by the Customer under Clause 1.7;
  - 1.4.10 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;
  - 1.4.11 to assist the Customer with any notifications to the Information Commissioner's Office or Data Subjects where required under the Data Protection Legislation;

- 1.4.12 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 Processing of the Customer Personal Data;
  - 1.4.13 to restrict any Processing, return or delete the Customer Personal Data immediately as directed by the Customer;
  - 1.4.14 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 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 Customer Personal Data Processed by the Supplier, any sub-processors or sub-contractors or third parties engaged by the Supplier.
- 1.5 Subject to Clause 1.6, on the expiry of the Term or earlier termination of this Agreement (howsoever caused), the Supplier will immediately:
- 1.5.1 cease Processing the Customer Personal Data; and
  - 1.5.2 at the Customer's option and at the Supplier's sole cost and expense, either: (i) return to the Customer; or (ii) delete, all the Customer Personal Data wherever and in whatever manner it is held or stored.
- 1.6 If and to the extent that the Supplier is obliged to retain any Customer Personal Data as a result of the Supplier being deemed to be a Controller of that Customer Personal Data and/or to comply with legal or regulatory obligations to which the Supplier is subject, the following provisions will apply:
- 1.6.1 the Supplier may retain and not return or delete such Customer Personal Data, only to the extent and only for as long as is legally necessary to hold such Customer Personal Data in its capacity as Controller of that Customer Personal Data and/or to comply with the applicable legal or regulatory obligations to which the Supplier is subject; and
  - 1.6.2 the Supplier will, following expiry or earlier termination of this Agreement, be a Controller in relation to such Customer Personal Data retained by the Supplier.
- 1.7 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.
- 1.8 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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## NOTES

### Definitions

- 1 In the definitions section of the services agreement, the definition of "Data Protection Legislation" should be included where appropriate.

The clause also includes references to defined terms of "Business Days" and "Term". SGBs should amend these if not defined in the services agreement or insert appropriate definitions.

### Clause

- 2 Clause 1.2 requires SGBs to identify the categories of personal data to be processed by the supplier. SGBs should ensure that all categories are included to clearly set out what the supplier will be required to process on behalf of the SGB. In particular, any sensitive / special categories of personal data must be listed if relevant. SGBs also need to list the categories of data subject to which the personal data relates.
- 3 Clause 1.3 requires SGBs to set out the purpose of the processing of personal data (for example, to administer an electronic membership database on behalf of the SGB).
- 4 Clause 1.4 sets out the obligations on the supplier acting as a processor as required by the GDPR and new Data Protection Act. SGBs should read through these carefully to monitor compliance by the supplier during the operation of the services agreement.

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