Dated   **201[8]**

1.   **INCLUSIVE SKATING**

2.   **{INSERT NAME OF DATA PROCESSOR}**

DATA PROCESSING AGREEMENT

THIS AGREEMENT is made on the   day of   20[18]

BETWEEN

1.   Inclusive Skating whose registered office is c/o KJM Accountancy, 42 Dalsetter Avenue, Glasgow G15 8TE ("**Client**"); and

2.   {*insert name of data processor*} whose registered office is at {*insert registered office address of data processor*} ("**User**")

BACKGROUND

1.   The User is engaged in the business of [*insert description of business e.g. a mailing house, payroll provider*] which facility the Client wishes to utilise.

2.   The Client will disclose to the User certain confidential information and personal data (as defined below) to enable the User to perform its Linked Contract with the Client.

3.   The Client wishes to ensure that the User shall maintain the confidentiality and security of all such information and data so disclosed at all times, acknowledges the Client's ownership of such information and data and that the User complies with Data Protection Laws.

4.   [This Agreement is to replace the data protection provisions in the existing Linked Agreement.] [This Agreement is to supplement and add to the terms in the existing Linked Agreement.]

IT IS AGREED as follows:-

1.   **DEFINITIONS AND INTERPRETATION**

        For the purposes of this Agreement:

        "Data Protection Laws"
        Means the Data Protection Act 1998 and, with effect from the date on which it enters into force, the General Data Protection Regulation, and the enacted version of the Data Protection Bill 2017, and the Privacy and Electronic Communications (EC Directive) Regulations 2003 together with any other laws applicable to the protection of personal data in force from time to time in England and Wales and any related regulations and guidance (as from time to time amended, extended, re-enacted or consolidated) and all subordinate legislation, regulations and guidance made pursuant to any of them;

        "Information"
        Means any and all information and personal data disclosed directly or indirectly by or on behalf of the Client to the User or acquired by the User on behalf of the Client from time to time;

        "Linked Contract"
        Means the contract entered into between the User and the Client in relation to which the User is appointed to provide services and/or carry out works for the Client and the performance of which involves the provision of the Information to the Client and the processing of personal data by the User as a data processor of the Client being [insert details of the linked contract which covers the services/works to be carried out];

        The terms "**personal data**", "**process**", "**data controller**", "**data processor**", "**data subje**ct" have the meanings attributed to them in the Data Protection Laws;

        Reference to 'writing' or similar expressions shall include reference to any communication effected by facsimile, electronic mail and/or any comparable means but shall not include communication by SMS or similar text messaging facilities;

        Any obligation on any party not to do and/or omit to do anything is to include an obligation not to allow that thing to be done and/or omitted to be done;

The phrase "and/or" means either of the alternatives and both of the alternatives as the case may be;

Where a party incurs an obligation under this Agreement and such obligation is created by the use of words such as "shall", "will", "undertakes to", "must", "agrees to" or any other verb which implies that a party has so incurred such obligation, it is agreed that all obligations shall not be distinguishable from one another by reason only of the verb used when creating such obligation. Any obligation under this Agreement by a party not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing; and

Any reference to "procure" or "ensure" shall create a primary obligation and not a secondary obligation or guarantee.

2. INFORMATION

2.1   The parties hereby acknowledge and agree that the Information may comprise, contain and/or incorporate confidential information in which the Client has a proprietary interest and that the disclosure of it in any way and/or the use of it in any way other than as authorised by the Client would cause harm to the Client.

2.2   Subject to clause 2.4, the User hereby agrees to maintain as confidential and not to directly or indirectly use, or disclose to (or permit to be used by or disclosed to) any third party, any part or the whole of the Information, except in the proper performance of the Linked Contract with the Client or as specifically authorised by the Client in writing.

2.3   The User will allow access to the Information only to those agents, employees, representatives and staff who need to see and use it for the purposes of performing the Linked Contract with the Client.

2.4   The obligations of confidentiality set out in clause 2.2 and 2.3 shall continue indefinitely except that they shall not apply to Information:

   2.4.1   which the User proves by documentary evidence was already in its possession and at its free disposal prior to disclosure by the Client or was developed by it without reference to any of the Information;

   2.4.2   which is after the date of this Agreement disclosed to the User without any obligations of confidentiality by a third party who is not in breach of any duty of confidentiality in doing so;

   2.4.3   which is or becomes generally available to the public in printed publications through no default and/or omission on the User's part; or

   2.4.4   to the extent it is required to be disclosed by law and/or the rules of any recognised stock exchange and/or regulatory authority on condition that the User gives the Client as much advance notice of such disclosure as possible.

2.5   The User hereby undertakes to immediately upon the Client's demand at any time deliver up to the Client or at the Client's option destroy any and all materials comprising, including and/or incorporating the Information (which shall include but shall not be limited to all documents and records whatsoever in any form and on whatever media and all copies of them whether prepared or written by the User or the Client or its or their respective agents, employees, officers or sub-contractors individually, collectively or jointly with the Client or a third party or provided by the Client) in the User's possession, power or control and shall furnish the Client with a certificate signed by a duly authorised representative certifying the User's compliance with this clause.

2.6   The User acknowledges and agrees with the Client that:-

   2.6.1   The Information remains the property of the Client at all times;

   2.6.2   The Client shall have the right of access to the Information at any time;

   2.6.3   The User will at all times maintain adequate security for the Information;

2.6.4   Any and all copyright in the Information and any and all other intellectual property rights (whether existing now and/or in the future) in or arising in or connection with the Information shall at all times belong to the Client; and

2.6.5   If any intellectual property rights arise as a result of the collection, use and/or arrangement of the Information, the User assigns such intellectual property rights (whether existing now and/or in the future) to the Client and/or will procure such assignment to the Client with full title guarantee, free from third party rights and for the full term during which those rights and any renewals or extensions subsist.

3.   **DATA PROTECTION**

3.1   Each party acknowledges that the Client operates as the data controller and the User as a data processor in respect of the personal data within the Information.

3.2   The purpose for the User to process the Information will be to [insert details of the purpose for the processing of the Information e.g. to provide payroll services] for the performance of the Linked Contract and to achieve this the User will process the Information as follows [insert description of the nature of the processing]. The categories of data subjects to which personal data within the Information relates will be [insert details of the types of individuals to whom the personal data will relate e.g. your employees] and the categories of personal data which will be processed are [insert details e.g. name, contact details, D.O.B etc.]. The User shall only process the Information for a maximum period which is equal to the duration of the Linked Contract with the Client. *[Art 28 (3) of GDPR requires that the subject matter and duration of the processing, nature and purpose of the processing, the type of personal data and categories of data subjects be set out in the processing agreement. Accordingly, this clause should be amended for each separate data processor depending on the processing activities they carry out and categories of personal data they hold for you.]*

3.3   The User agrees to:

3.3.1   only process personal data in accordance with the relevant principles under the Data Protection Laws and all guidelines, statutory orders and codes of practice issued by relevant supervisory authorities or regulators pursuant to or in connection with Data Protection Laws;

3.3.2   only process the personal data for and on behalf of the Client for the purposes of performing the Linked Contract with the Client and in accordance with any other instructions issued by the Client in writing from time to time unless otherwise required by law or any other regulatory body (in which case the User shall, where permitted, inform the Client of that legal requirement before processing);

3.3.3   not permit any third party to process any of the personal data without the Client's prior written consent;

3.3.4   (where consent is provided pursuant to clause 3.3.3) impose upon each such third party sub-processor (and procure each such third party sub-processor's compliance with) the terms of this clause 3 as if the processing being carried out by the sub-processor was being carried out by the User;

3.3.5   where legally possible ensure that the Client has the right to directly enforce any terms relating to processing of the personal data against any such third party sub-processor;

3.3.6   not transfer or allow the transfer of the personal data outside the European Economic Area without the Client's prior written consent;

3.3.7   notify the Client from time to time of the location of the personal data and, where relevant of any computer system on which the personal data is held by the User;

3.3.8   ensure that only such of the User's personnel who may be required by the User to assist it in meeting its obligations under this Agreement shall have access to the personal data. The User shall ensure that all the User's personnel used by it

in relation to this Agreement have undergone training in data protection and in the care and handling of personal data and are obliged to comply with the terms of this agreement;

3.3.9　immediately notify and provide full details to the Client of any breach or potential breach of this clause, take all measures necessary to remedy or address the breach or potential breach and cooperate with the Client to resolve such issue;

3.3.10　immediately notify and provide full details to the Client of any potential or actual loss of personal data, take all measures necessary to remedy or address the breach or potential breach and cooperate with the Client to resolve such issue;

3.3.11　immediately notify the Client of any contact with or investigation or audit of the User in relation to data processing and/or personal data by any regulatory authority prior to providing any information, unless the User is prevented from doing so by law or court of competent jurisdiction;

3.3.12　implement and at all times maintain an information security management system that:

(a)　[is independently certified by a third party to comply with the most current version of the ISO/IEC 27000 series of standards*;] [This can be omitted if the data processor does not currently have this certification]*

(b)　operates and has robust back up and disaster recovery procedures in place;

(c)　is able to comply with any rights of data subjects exercised under Data Protection Laws; and

(d)　includes all appropriate technical and organisational measures necessary or desirable to:

(i)　ensure a level of security appropriate to the risk against unauthorised or unlawful processing, accidental loss or destruction of or damage to personal data;

(ii)　protect the rights of the data subject; and

(iii)　enable the personal data to be processed in compliance with obligations equivalent to those imposed on the Client under the Data Protection Laws;

and ensure that all personal data processed by the User is subjected to the controls of the information security management system implemented and maintained in accordance with this clause 3.3;

3.3.13　[not without the prior written consent of the Client to use any of the personal data within the Information:

(a)　for statistical or analytical purposes or for big data analysis (whether or not converted into anonymised or psuedonymised data);

(b)　for matching against other personal data;

except as specifically required to perform the Linked Contract.] *[This can be deleted if not relevant]*;

3.3.14　from time to time on request provide full details in writing of the User's data processing activities in respect of the personal data, including the address of all locations where such processing takes place, and allow its data processing facilities, procedures and documentation which relate to the processing of the personal data to be inspected and audited (on reasonable written notice) by the Client, a representative or auditor of the Client or a regulatory body in order to ascertain compliance with Data Protection Laws and the terms of this Agreement; and

3.3.15　on termination of this Agreement return (or, at the Client's discretion at any time upon instruction from the Client, permanently delete) all personal data

processed on behalf of the Client pursuant to this Agreement (and permanently delete any copies, save to the extent retention is required by law).

3.4   Where the Client requires assistance from the User in order to respond to requests, queries and/or investigations in respect of the personal data within the Information or requires that the User help the Client in reconstructing and/or otherwise safeguarding the personal data within the Information or requires that the User assists the Client in complying with Data Protection Laws, the User shall (at its cost) provide the Client with such assistance as the Client reasonably requests within any timescales specified by the Client. If no time scales are specified, the User must respond to and comply with the Client's request within the earlier of a reasonable period of time of receiving the request for assistance or the time period needed to allow the Client to comply with its obligations under the Data Protection Laws.

3.5   Where the User will be collecting personal data on behalf of the Client, the User shall:

3.5.1   ensure that it informs the data subject at the time of collecting the personal data that the Client is the data controller in respect of the data, the purposes for which the Client will be using the personal data and the possible recipients of the personal data all as notified by the Client to the User from time to time and the other matters required under Data Protection Laws; and

3.5.2   obtain the data subject's consent to any purposes for processing personal data where required in accordance with the Data Protection Laws.

3.6   [Subject to clause 3.5, the Client warrants that:

3.6.1   all personal data provided by or on behalf of the Client shall have been lawfully obtained and retained by the Client (or its nominated third party);

3.6.2   all necessary consents and data processing notices have been provided in relation to the processing of personal data; and

3.6.3   the Client is lawfully entitled to provide, procure the provision of or authorise the User to obtain (as the case may be) personal data for the purposes envisaged by this Agreement.]*[Consider whether it is appropriate to provide the data processor with some comfort. If so include this clause.]*

3.7   The User will keep, and provide to the Client upon request, a complete, accurate and up-to-date record of all processing activities carried out by the User on behalf of the Client including but not limited to:

3.7.1   details of the data controller, the data processor (and where applicable the Data Protection Officer of the data controller and data processor);

3.7.2   details of those employees who have access to the personal data and the types of processing carried out on behalf of the data controller;

3.7.3   where applicable, information on any transfer of personal data to a country outside the EEA (including the identification of the country receiving the personal data, the Client's consent and the adequate safeguards used); and

3.7.4   a general description of the security measures implemented in respect of the personal data.

3.8   Each party shall:

3.8.1   comply with all Data Protection Laws;

3.8.2   co-operate with any regulatory authority for data processing; and

3.8.3   not do or omit to do anything which will place the other party in breach of any Data Protection Laws. *[This clause could be made to apply one way, but a data processor would generally expect some obligations on the data controller.]*

4. **GENERAL**

4.1 [The parties agree that the terms of this Agreement will replace the data protection provisions currently in the Linked Agreement and that this Agreement will form part of the Linked Agreement so that they together form one contract.] [The parties agree that the terms of this Agreement are supplemental to the terms of the Linked Agreement and that this Agreement will form part of the Linked Agreement so that they together form one contract.]*[Select/Amend as appropriate]*

4.2 The User will be liable under this Agreement for the acts and/or omissions of any agent, employee, sub processor or sub-contractor and/or those of any of its group companies as if they were its own acts and/or omissions under this Agreement.

4.3 The User acknowledges that damages may not be an adequate remedy for breach of this Agreement and accordingly the User agrees that the Client shall be entitled to seek and obtain any injunctive and/or other equitable relief in relation to any breach of this Agreement.

4.4 Without prejudice to any other right or remedy the Client may have, the User will indemnify and keep indemnified (on a full indemnity basis) the Client (and any member of the Client's group who has provided the User with Information) against any and all claims, demands, penalties, fines, actions, proceedings, damages, lost profits, damage to goodwill, costs (including professional and legal costs), expenses, special, indirect, and consequential loss and any other loss and/or liability suffered or incurred by or awarded against Client arising out of or in connection with any breach of this Agreement, any tortious act and/or omission and/or any breach of statutory duty by the User, whether or not such losses were foreseeable or foreseen at the date of this Agreement.

4.5 The User shall, at the request and cost of the Client (and irrespective of the termination of this Agreement) sign and execute any documents and/or deeds and/or do any and all such acts and/or things as the Client may require to give effect to the provisions of this Agreement.

4.6 All third party rights are excluded and no third party shall have any right to enforce this Agreement except members of the Client's group from time to time who shall, subject to the Client's consent, have the right to enforce this Agreement in addition to the Client. Any right of a third party to enforce this Agreement may be varied and/or extinguished by Agreement between the parties without the consent of any such third party.

4.7 This Agreement is governed by English Law and the parties the parties each agree to submit to the non-exclusive jurisdiction of the English Courts in relation to any disputes connected with this Agreement.

………………………………………………………

SIGNED for and on behalf of

Inclusive Skating

Name: ……………………………………..

Title: ……………………………………..

………………………………………………………

SIGNED for and on behalf of
{insert name of data processor}

Name: ……………………………………..

Title: ……………………………………..