Dated   **2018**

1.   **INCLUSIVE SKATING**

2.   **[INSERT NAME OF DATA PROCESSOR]**

DATA PROCESSING AGREEMENT

THIS AGREEMENT is made on the   day of   2018

BETWEEN

1.   Inclusive Skating SC042584 whose registered office is c/o KJM Accountancy, 42 Dalsetter Avenue, Glasgow, G15 8TE at ("**Client**"); and

2.   [INSERT NAME OF PROCESSOR] whose registered office is at [INSERT REGISTERED OFFICE] with company number [INSERT DETAILS] ("**User**")

BACKGROUND

1.   The User is engaged in the business of [*insert description of business e.g. website host, e-mail marketing specialist*] 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 Contract.] [This Agreement is to supplement and add to the terms in the existing Linked Contract.] *[Select/Amend as appropriate]*

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 subject" 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.

The Schedules form part of this **agreement** and shall have effect as if set out in full in the body of this **agreement**. Any reference to this **agreement** includes the Schedules.

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**

Compliance with Data Protection Laws

3.1 Each party agrees that, in the performance of its respective obligations under the Linked Contract it shall comply with the provisions of the Data Protection Laws, in each case to the extent it applies to each of them.

3.2 For the avoidance of doubt, nothing in this agreement relieves either party of its own direct responsibilities and liabilities under Data Protection Laws.

3.3 Where the User is processing personal data on the Client's behalf under this agreement, 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 and such processing shall:

3.3.1 be solely for the purposes of the User performing the Linked Contract and otherwise undertaking its obligations under this agreement;

3.3.2 be undertaken only by persons authorised to process the personal data who are subject to a duty of confidence in respect of any such personal data to which they may have access; and

3.3.3 be undertaken strictly in accordance with the terms of this agreement and the Client's instructions from time to time unless otherwise required by law or any regulatory requirements (in which case the User shall, where permitted, inform the Client of that legal requirement or regulatory requirement before processing).

Processor obligations

3.4   Where the User processes any personal data on behalf of the Client it shall:

    3.4.1   implement and at all times maintain an information security management system that includes all appropriate technical and organisational measures necessary or desirable to ensure a level of security appropriate to the risk, protect the rights of the data subject and enable the personal data to be processed in compliance with obligations equivalent to those imposed on the Client by 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 paragraph;

    3.4.2   immediately notify the Client of any breach or potential breach of this data processing agreement or if it otherwise has reason to consider that there has been a personal data breach and cooperate with Client to resolve such issue;

    3.4.3   provide such assistance as the Client may require to allow it comply with its own obligations to keep the personal data secure, inform a regulatory authority or data subject of a personal data breach, conduct a data protection impact assessment and consult with a regulatory authority regarding the processing of personal data (articles 32 to 36 of the GDPR);

    3.4.4   not appoint any sub-processors in respect of the personal data save where and strictly to the extent that such sub-processor has been expressly and specifically approved in writing by the Client, and then only for such purposes as the Client has expressly authorised;

    3.4.5   impose upon each sub-processor (and procure each such 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 (and to be liable for the acts and omissions of such sub-processors as if they were the acts and omissions of the User);

    3.4.6   provide such assistance as the Client may require to enable it to respond to requests made by data subjects pursuant to the Data Protection Laws;

    3.4.7   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 (on reasonable written notice) by the Client, a representative of the Client or a regulatory body in order to ascertain compliance with the Data Protection Laws and the terms of the Linked Contract and this data processing agreement; and

    3.4.8   indemnify, keep indemnified and hold the Client harmless against all claims, demands, penalties, fines, actions, costs, expenses, losses and damages suffered or incurred by or awarded against the Client arising from or in connection with any failure of the User to comply with this clause **Error! Reference source not found.**

Data exports

3.5   The parties acknowledge that performance of the Linked Contract shall involve personal data being transferred outside the United Kingdom and European Economic Area to countries which are not considered to provide an adequate level of protection for the rights of data subjects.

3.6   The Client (*as data exporter*) hereby approves data exports of the nature described in schedule 1 to the User (*as data importer*) provided that:

3.6.1   The Standard Contractual Clauses for the transfer of personal data to third countries under Directive 95/46/EC contained in the Annex to Commission Decision 2010/87/EU are incorporated into this agreement with the details set out in **0** deemed to be inserted into the appendices to the Standard Contractual Clauses.

3.6.2   If the Standard Contractual Clauses are updated or replaced from time to time then the reference to the Standard Contractual Clauses above shall be read as a reference to the updated or replacement clauses.

3.6.3   The approval extends only to the export of personal data to the User and not to any sub-processor or other entity. If the Client authorises the appointment of any sub-processor then approval to an export being made to that sub-processor must be sought separately and will be subject to that sub-processor entering into an agreeing incorporating the Standard Contractual Clauses with the Client directly.

3.6.4   Save for the activities described in schedule 1 the User must not under any circumstances transfer or allow the transfer of the personal data outside the United Kingdom or European Economic Area unless authorised in writing by the Client.

4.   **GENERAL**

4.1   [The parties agree that the terms of this agreement will replace the data protection provisions currently in the Linked Contract and that this agreement will form part of the Linked Contract so that they together form one contract.] [The parties agree that the terms of this agreement are supplemental to the terms of the Linked Contract and that this agreement will form part of the Linked Contract 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.

5.   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: …………………………………..

SCHEDULE 1

PROCESSING ACTIVITIES [TO BE COMPLETED]

DESCRIPTION OF PERSONAL DATA AND PROCESSING ACTIVITIES		
CATEGORIES OF DATA SUBJECTS	[E.G EMPLOYEES, MEMBERS]	
TYPE OF DATA WHICH MAY BE PROCESSED	*STANDARD*	[Name, address, email address, telephone number, information regarding payment history, service and usage history, User IDs and passwords, and answers to security questions (such as town/county of birth, mother's maiden name, father's name etc.), employment history, job title, business address, department etc., employee number, member account number, business email addresses. business telephone/fax/mobile numbers [other]]
	SPECIAL CATEGORIES	[Racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation]
NATURE AND PURPOSE OF DATA PROCESSING ACTIVITIES	[E.G. USING THE PERSONAL DATA FOR THE PURPOSES OF FULFILLING USER'S OBLIGATIONS UNDER THE LINKED CONTRACT]	

APPROVED DATA EXPORTS			
PURPOSE OF TRANSFER	**NATURE OF DATA TO BE EXPORTED**	**PROCESSING ACTIVITIES TO BE UNDERTAKEN**	**COUNTRY TO WHICH DATA TO BE EXPORTED**
[•]	[•]	[•]	[•]

SECURITY MEASURES TAKEN BY USER
DESCRIPTION OF THE TECHNICAL AND ORGANISATIONAL SECURITY MEASURES IMPLEMENTED BY USER IN ACCORDANCE WITH CLAUSES 4(D) AND 5(C) OF THE STANDARD CONTRACTUAL CLAUSES.
[•]

GOVERNING LAW
For the purposes of clauses 9 and 11 of the Standard Contractual Clauses, it is agreed that the Standard Contractual Clauses shall be governed by [English Law] and the provisions relating to data protection aspects for sub-processing shall be governed by [English Law].