**3rd Party Data Processing Agreement**

**Parties to the Agreement**

**The Guide Association Anglia Region**, a registered charity (number 278508) whose offices are at 7 Great Hautbois Road, Coltishall, Norwich NR12 7JN is identified as the “**Controller**”

and

[INSERT NAME OF Data Processor] & [ADDRESS] is identified as the “**Processor”**

each a “**party**” and together the “**parties**”.

**Background**

[\* delete as appropriate]

1. **OPTION ONE\*¹:** The Controller uses the services of the Processor to [insert activity/services] (the “**Services**”); OR
2. **OPTION TWO\*¹:** The Controller has agreed to share personal data in relation to which it is the controller with the Processor so that the Processor can [insert details] (the “**Services**”).
3. Agreements between controllers and processors must comply with the GDPR and any domestic legislation, including the Data Protection Act 2018.
4. These parties have agreed to enter into this agreement to ensure compliance with the data processing requirements and obligations of the GDPR, and any other relevant Data Privacy Laws (as defined below).

**Interpretation**

The terms and expressions set out in this agreement shall have the following meanings:

|  |  |
| --- | --- |
| Term | Definition |
| Controller | Has the meaning given to it in the GDPR. |
| Data Privacy Laws | 1. the GDPR
2. PECR; and
3. All other applicable laws and regulations relating to the processing of personal data and/or governing individuals’ rights to privacy, including (but not limited to) legislation derived from the Data Protection Act 2018 and any statutory instruments.
 |
| Data subject(s) | the individuals whose personal data is processed by the Processor on behalf of the Controller pursuant to the terms of this agreement.  |
| GDPR | General Data Protection Regulation (EU) 2016/679 |
| ICO | Information Commissioner’s Office |
| Original Contract | [insert reference to contract in place with the Processor, delete row if not applicable] |
| PECR | Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended or replaced). |
| Personal data | Has the meaning given to it in the GDPR. |
| Processing | Has the meaning given to it in the GDPR. |
| Processor | Has the meaning given to it in the GDPR. |
| Protected Data | Has the meaning set out in paragraph 4. |
| Security Breach | A breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Protected Data.  |

**It is hereby agreed:**

1. The terms of this Agreement shall apply to all processing carried out on behalf of the Controller by the Processor and to all personal data held by the Processor in relation to all such processing, whether such personal data is held at the date of this Agreement or received afterwards.
2. **OPTION ONE\*¹:** This Agreement sets out the various obligations in relation to the processing of personal data under the Original Contract by the Processor. If there is a conflict between the provisions of the Original Contract and this Agreement, the provisions of this Agreement shall prevail.

**OPTION TWO\*¹:** This Agreement sets out the various obligations in relation to the processing of personal data in connection with:

 [*Insert description of why Processor is processing data for the Controller*].

The terms of this Agreement shall supersede any previous arrangement, understanding or agreement between the parties relating to data protection.

1. **Specific Processing**

The details of the specific processing to be undertaken by the Processor are set out in Schedule 1 (page 7).

1. **Processor Obligations**
	1. The Processor shall process personal data (the “**Protected Data**”) received from, or processed on behalf of, the Controller in connection with the Services only on the documented instructions of designated contacts at the Controller.

These may be specific instructions or instructions of a general nature as set out in this Agreement, the Original Contract, Schedule 1 or as otherwise notified by the Controller to the Processor during the term of the Agreement.

* 1. For the avoidance of doubt, this does not prevent the Processor processing Protected Data where required under applicable EU or UK law and, in such circumstances, the Processor shall notify the Controller of the legal requirement unless applicable law prohibits such notification on important legal grounds.
	2. The Processor shall inform the Controller immediately if, in its opinion, an instruction issued by the Controller in accordance with clause 4.1 would result in either the Controller or the Processor breaching Data Privacy Laws.
	3. All Protected Data is to be processed under a duty of confidentiality and must not be disclosed to any third party, except with the explicit prior consent of the Controller, or as required by law or a relevant regulatory body.
	4. The Processor must ensure that persons who it authorises to process the Protected Data are obliged to protect the confidentiality for the Protected Data.
	5. The Processor warrants that it and its employees and agents, will comply at all times with Data Privacy Laws and shall not perform its/their obligations under this Agreement in such a way as to cause the Controller to breach any of its obligations under the Data Privacy Laws.
	6. Where the Processor processes Protected Data on behalf of the Controller it warrants and undertakes that it shall:
		1. Process the Protected Data only to the extent, and in such manner as is necessary in order to comply with its obligations under this Agreement and/or the Original Contract.
		2. Implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, and to protect the Protected Data against any Security Breach or disclosure, including (where appropriate):
			1. The pseudonymisation and encryption of Protected Data;
			2. Ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services;
			3. Restoring the availability and access to Protected Data in the event of a physical or technical incident and
			4. Regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of processing.
		3. If requested by the Controller, supply details of the technical and organisational systems in place to comply with its obligations set out in this Agreement and under Data Privacy Laws.
		4. On reasonable notice permit persons authorised by the Controller to enter into any premises on which Protected Data is processed to inspect the Processors systems to ensure that sufficient security measures are in place.
		5. Not process or transfer the Protected Data outside the European Economic Area without the prior written consent of the Controller and, where the Controller consents to any such transfer, the Processors shall put in place measures to ensure the Protected Data remains adequately protected as required under the Data Privacy Laws.
		6. Not engage any sub-processor without prior specific or general written authorisation of the Controller. In the case of general written authorisation, the Processor shall inform the Controller of any intended changes concerning the addition or replacement of other processors, thereby giving the Controller the opportunity to object to such changes.
	7. Where the Processor is authorised under paragraph 4.7.6 to engage a sub-processor, the same data protection obligations as set out in this Agreement shall be imposed on the sub-processor by way of a similar agreement. Regardless of any authorisation provided under paragraph 4.7.6, the Processor shall remain fully liable to the Controller for any actions or omissions of any sub-processors.
	8. The Processor will ensure it protects the rights of data subjects under the Data Privacy Laws and shall (at no further expense to the Controller):
		1. Promptly notify the Controller in writing (within two working days at the latest) if it receives:
			1. a request from a data subject to have access to his or her Protected Data or
			2. a complaint, request or communication relating directly or indirectly to the processing of the Protected Data or to either party’s compliance with the Data Privacy Laws.
		2. Provide the Controller with full co-operation and assistance in relation to any such complaint or request made, including by:
			1. Promptly providing the Controller with full details of any complaint or request and any additional information requested by the Controller;
			2. Taking all necessary steps to enable the Controller to comply with a request from a data subject within the relevant timescale set out in the Data Privacy Laws and in accordance with the Controller’s reasonable instructions;
			3. Providing the Controller with any Protected Data it holds in relation to a data subject (within the timescales required by the Controller);
			4. Ensuring that no reply or other communication is made in response to such complaint or request unless approved by the Controller or as provided for in this agreement.
1. **Notification of Security Breaches**
	1. The Processor will notify the Controller (without undue delay and in any event within 12 hours) if there has been a Security Breach. The Processor will co-operate fully with the Controller to investigate the Security Breach (at no cost to the Controller) including, but not limited to:
		1. Providing full details of the nature of the Security Breach including the details of the Protected Data and the data subjects affected.
		2. The likely consequences of the Security Breach.
		3. The measures the Processor proposes to take to address the Security Breach including, where appropriate, measures to mitigate the possible adverse effects.
	2. The Processor shall (at no cost to the Controller) provide all reasonable assistance to the Controller in the event the Controller is required to notify any regulatory authority and/or affected data subjects.
2. **Duration of Processing**
	1. The Processor will process the Protected Data, as required under this Agreement, until either:
		1. The Agreement terminates (for any reason);
		2. The Original Contract terminates (for any reason) or
		3. The Controller requests that the Processor stops processing the Protected Data.
	2. Upon any of the circumstances in paragraph 6.1 occurring, the Processor shall, subject to the choice of the Controller:
		1. Securely delete the Protected Data held by it in relation to the Agreement (a destruction notice will be required); and/or
		2. Return all Protected Data to the Controller.
	3. For the avoidance of doubt, the requirements in paragraph 6.2 include any previously authorised copies or back-ups of the personal data for disaster recovery purposes. An exception will apply if the data is required to be retained by the data processor due to a need to comply with the law or a regulatory requirement.
	4. All obligations placed on the Processor in this Agreement shall remain enforceable upon its termination at least until clause 6.2 is complied with and the Processor is no longer processing or holding any personal data on behalf of the Controller.
3. **Indemnity**

**\*⁷**The Processor shall be liable for, indemnify and keep indemnified, the Controller against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demand incurred by the Controller which arise directly or indirectly in connection with the Processor’s breach of its obligations under this Agreement.

1. **Miscellaneous**
	1. All copyright, database rights and other intellectual property rights of any Protected Data (including but not limited to any updates, amendments or adaptations to the personal data by either the Controller or the Processor) shall belong to the Controller.

The Processor is licensed to use such data only for the term of and in accordance with this Agreement.

* 1. The Processor accepts the obligations in this Agreement in consideration of the Controller continuing to use its Services.
	2. This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed and construed in accordance with the laws of England and Wales and the English courts will have exclusive jurisdiction.

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| **Signed** for and on behalf of **The Guide Association Anglia Region**: |  | **Signed** for and on behalf of **[Name of data processor]**: |
| Print Name: |  | Print Name: |
| Position: |  | Position: |
| Signature: |  | Signature: |

**Schedule 1**

**Specific Processing Details**

|  |  |
| --- | --- |
| Subject matter of this processing: | [to complete] |
| Duration of this processing: | [The term set out in the Original Contract] OR [to complete] |
| Nature & purposes of processing\*²: | [to complete] |
| Type of personal data involved\*³: | [to complete] |
| Categories of data subjects\*⁴: | [to complete] |
| Special categories of personal data\*⁵: | [to complete or write non-applicable] |
| Processing activities\*⁶:  | [to complete] |

**Notes for completion:**

**\*¹** Option 1 is to be used when an existing contract is in place, option 2 is to be used where there is no existing contract in place. For option 2 ensure you complete the description of why Processor is processing data for the Controller in point 2 of the contract.

**\*²** Consent, contract, legal obligation, vital interests, public task or legitimate interest.

For more information categories and to help determine your lawful basis for processing the data visit the [ICO Lawful basis for processing webpage](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/).

**\*³** E.g. name, telephone, membership number, email, date of birth etc.

**\*⁴** E.g. volunteers, members, staff, beneficiaries, website end-users, suppliers etc.

**\*⁵** E.g. race, ethnic origin, politics, religion, trade union membership, health, sexual orientation. More information can be found on the [ICO Special category data webpage](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/special-category-data/).

**\*⁶** E.g. staff administration, customer orders, marketing.

**\*⁷** This statement asks the processor, having been given access to this data, to hold insurance to cover any costs incurred by the controller, yourself, should they breech any obligations in this contract. If the agreement is for joint control, i.e. at a joint Guide and Scout event, this statement can be deleted, and a statement of joint insurance cover inserted whereby the event insurance covers any costs incurred as a result of data loss.

**30Parental Consent for Filming/Photography (Children)**

We’re doing some photography/filming/audio recording which we’ll use to promote the RSPB and its conservation work, and would like to check that you’re happy for us to use photos or recordings featuring your child.

We take privacy and data protection very seriously, especially in the case of children. We won’t use any photos or recordings of your child without your agreement, and we’ll never identify him or her by name without your specific consent. If you’re happy for us to use photos or recordings featuring your child, please fill in the form below and return it to us.

|  |  |  |  |
| --- | --- | --- | --- |
| **Child’s name** |  | **DOB** |  |
| **Contact details** | **Address** |  | **Postcode** |  |
| **Email** |  | **Telephone** |  |
| **Shoot date/details** | 30th April 2022 Nature Discovery Day at Rainham Marshes Nature Reserve  |
| **Permission** | By signing below you agree the RSPB may take photographs and/or make visual and/or audio recordings of your child to promote the charity and its work. If this is in retrospect you agree to the RSPB using your child’s image and/or voice in a photograph or film/audio recording by signing below |
| **How we’ll use the photos/recordings**  | Photos and recordings may be used by the RSPB and RSPB Shop in communications and promotional marketing materials (e.g. newsletters, magazines, videos, online or at events) at any time now or in the future. We may also make photos available on the RSPB Images website www.rspb-images.com. We may share photos and recordings with other organisations we work with on particular projects or events, though how and why they can use these will be restricted to non-commercial purposes. Please note: the photographer may use the images for their own commercial or non-commercial purposes. |
| **Privacy and data protection**  | We’ll make sure the photos and recordings are kept safe and only used for the purposes above. Your child won’t be named without your specific consent (which you can give by ticking below). We’ll also keep this form (so we know we have permission to use them and in case we need to contact you).For more information about how we protect personal data, and to understand your rights, please visit our privacy policy at https://www.rspb.org.uk/help/privacy-policy/ |
| **Copyright and intellectual property rights** | Any and all copyright and other rights (including intellectual property rights) in the photos and recordings, in any media throughout the world, shall belong to the photographer absolutely and in perpetuity unless it has been agreed such rights shall belong to the RSPB. The RSPB shall be granted an irrevocable and perpetual licence for the use of the photo or recording. Neither you, nor your child shall be entitled to any payment or royalty now or in the future.You agree that the RSPB may reasonably modify, revise, enhance, develop, adapt, update and re-issue the photos and recordings in any way it regards as appropriate or reasonably necessary. |
| **About us** | The photography and recording will be carried out by, on behalf of or provided to the RSPB, a registered charity (no. 207076 in England and SC037654 in Scotland) based at The Lodge, Sandy Bedfordshire SG19 2DL. |
|  | **I agree to the terms set out above** |
| **Agreement** | **Signed** |  |  | **Date** |  |
|  |  ***(Parent)***If you are happy for your child to be named or attributed in the photos/recordings, **please tick here** o |