

## **Local Swimming Committee Affiliation Agreement**

THIS AGREEMENT, dated January 1, 2024, is by and between USA Swimming, Inc., a Colorado nonprofit corporation located at One Olympic Plaza, Colorado Springs, Colorado 80909 (“USA Swimming”), and \_\_\_\_\_ Swimming, Inc., a \_\_\_\_\_ nonprofit corporation having its principal place of business at \_\_\_\_\_ (“LSC”).

### **Recitals**

- A. WHEREAS, USA Swimming is the national governing body for the sport of swimming in the United States in accordance with the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. § 220501 et seq. (“Act”). As the national governing body for the sport of swimming, USA Swimming is responsible for promoting and developing public interest and participation in all levels of competition for the sport of swimming in the United States.
- B. WHEREAS, LSC is engaged in the education, instruction, and training of individuals to develop and improve their capabilities in the sport of swimming; supports the development and achievement of athletes, coaches, officials, and clubs; has jurisdiction over the sport of swimming as delegated to it by USA Swimming to conduct swimming programs consistent with LSC’s and USA Swimming’s objectives; and may sanction, approve, observe, oversee, and conduct on behalf of USA Swimming competitive swimming events within the LSC boundaries.
- C. WHEREAS, USA Swimming and LSC desire to document their respective rights and obligations in accordance with USA Swimming’s Corporate Bylaws (the “Bylaws”), LSC’s Bylaws, the USA Swimming Rules and Regulations (the “Rulebook”), and all other applicable policies and procedures, including those in the USA Swimming Operating Policy Manual.
- D. NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, USA Swimming and LSC agree as follows:

### **Agreement**

- 1. **Term.** This agreement shall continue in force for a period of two years, from January 1, 2024, through December 31, 2025. Upon expiration, this Agreement shall continue in force until either party notifies the other party in writing of its intent to terminate this Agreement, in which case it shall terminate 60 days from the date of the notice.
- 2. **Geographic Territory.** The geographic areas or boundaries (“Territory”) of LSC are set forth in Article 603 of the Rulebook.
- 3. **Governance.** At a minimum, LSC agrees to the following governance practices:
  - (a) LSC shall abide by the Bylaws, the Rulebook, and any applicable policies and procedures, including those in the USA Swimming Operating Policy Manual.
  - (b) LSC shall adopt and maintain a certificate of incorporation and bylaws (the “LSC Bylaws”) complying with the Bylaws. The LSC Bylaws shall be adopted no later than the date specified by the USA Swimming House of Delegates and shall be submitted to the Rules & Regulations Committee and USA Swimming’s Secretary & General Counsel for review within thirty days of enactment.
  - (c) LSC shall comply with the LSC Bylaws.

- (d) LSC shall remain a nonprofit corporation in good standing in accordance with the state regulations in the state in which it is incorporated.
- (e) LSC shall comply with the requirements of USA Swimming's LSC Evaluation and Achievement Program and any subsequent iterations of the program.
- (f) LSC cannot and shall not attempt to legally bind USA Swimming to any agreement.

### **LSC's Obligations to USA Swimming**

#### 4. Financial Management. LSC agrees to comply with Article 8 of the Bylaws.

- (a) If the prior year's total net assets of LSC do not exceed \$200,000, LSC shall only submit annually to USA Swimming headquarters the following:
  - i. a completed Financial Assessment Program document, found on USA Swimming's website here (<https://www.usaswimming.org/about-usas/top-resources/lsc-treasurer>),
  - ii. an annual closing balance sheet,
  - iii. a statement of income and expense,
  - iv. a Form 990 for each fiscal year; and
  - v. an annual breakdown of membership, participation, and competition fees. Template for completion found on USA Swimming's website here: <https://www.usaswimming.org/about-usas/top-resources/lsc-treasurer>.
- (b) If the prior year's total net assets of LSC exceed \$200,000, LSC shall obtain and submit annually to USA Swimming headquarters either:
  - i. an independent Agreed-Upon Procedures review, conducted by an independent, certified public accountant; OR
  - ii. an independent review, conducted by an independent, certified public accountant; OR
  - iii. an independent audit, conducted by an independent, certified public accountant.

LSC shall also submit:

- iv. a Form 990 for each fiscal year; and
  - v. an annual breakdown of membership, participation, and competition fees. Template for completion found on USA Swimming's website here: <https://www.usaswimming.org/about-usas/top-resources/lsc-treasurer>.
- (c) All documents required under Paragraph 4(a) and (b) are due within five months of the close of LSC's fiscal year.
  - (d) LSC shall ensure that LSC Internal Revenue Service ("IRS") and state tax submissions are filed timely and completely with the IRS and its state government agency.
  - (e) Upon submission of a request to extend the time to file its federal income tax return, USA Swimming may grant LSC additional time period to meet all of its financial reporting requirements (within this Paragraph 4) to USA Swimming, which shall equal the IRS extension period, provided LSC submits to USA Swimming a copy of the IRS's grant of such extension.
  - (f) LSC agrees to enact the following policies to apply to its own governance and operations:
    - i. Conflict of Interest Policy;
    - ii. Document Destruction Policy; and
    - iii. Any other management or financial policy required by USA Swimming.

5. LSC Membership Registration and Collection of Payments. LSC shall comply with the current Rulebook and USA Swimming policies concerning the registration of club, individual, and organizational members and the collection of membership dues. All USA Swimming and LSC Individual Annual Membership fees will be collected by USA Swimming, with LSC fees distributed back to LSC. To the extent that LSC has any outstanding debts to USA Swimming, USA Swimming may withhold those amounts from LSC fee distribution.
6. Outreach Membership Reporting. LSC shall submit to USA Swimming an annual report of its outreach membership qualification criteria and associated fees.
7. Responsibility to Cooperate. LSCs shall cooperate fully with and assist USA Swimming and any outside legal counsel representing LSC or USA Swimming with matters related to pending litigation involving LSC or USA Swimming. Full cooperation includes, but is not limited to:
  - (a) Reporting to USA Swimming when LSC receives a notice and/or service of claim or a complaint naming LSC (or one of its clubs) in litigation;
  - (b) Timely responding to requests from USA Swimming and any outside legal counsel representing either LSC or USA Swimming;
  - (c) Fully participating in discovery requests and litigation proceedings;
  - (d) Making a full and complete disclosure of relevant information, including timely production of materials or information requested, and in the format requested; and
  - (e) Preserving the integrity of the pending matter and abiding by all applicable confidentiality requests and instructions.
8. Issuance of Public Statements. LSC shall only issue public statements to inform members and prospective members of LSC programs and sanctioned competitions, and must stay within USA Swimming rules, bylaws, and policies in doing so. The LSC may not release public statements on behalf of USA Swimming unless it is a simple forward of the USA Swimming statement in full, with proper attribution to USA Swimming as the author. All questions or requests for further guidance with respect to issuing public statements can be directed to the USA Swimming General Counsel or Chief Commercial Officer.
9. Political Lobbying Activities. LSC shall not engage in political lobbying efforts without the express written permission of USA Swimming.

#### **USA Swimming's Obligations to LSC**

10. USA Swimming Group Tax Exemption. Provided LSC is in compliance with this Agreement and is otherwise qualified as an organization exempt from federal taxation under Internal Revenue Code §501(c)(3) and such other requirements as imposed by law, LSC shall be entitled to use the group tax exemption obtained by USA Swimming from the IRS.
11. Meet Sanctions. As the National Governing Body for competitive swimming in the United States and as a Federation member of World Aquatics, USA Swimming has the sole and exclusive authority to sanction or approve domestic and international swimming competition conducted within its jurisdiction. USA Swimming authorizes LSC to issue the sanction and approval for all swimming competition and benefits, exhibitions, clinics, and entertainment involving competitive swimming within the Territory, except that USA

Swimming shall sanction national swimming competitions. As a condition of this grant, LSC agrees to comply with the sanctioning provisions in Article 202 of the Rulebook and shall be responsible for ensuring that all swimming competition, benefits, exhibition, clinics, and entertainment involving competitive swimming within the Territory for which it grants a sanction are conducted in accordance with Article 202. As part of its sanction application forms, LSC will require that Meet Directors read and comply with the conditions of sanction in Article 202.

12. Use of Intellectual Property. USA Swimming is the owner of various trademarks, trade names, service marks, logos, and event names ("Marks"). USA Swimming grants LSC a limited, non-exclusive license to use Marks, within the Territory, in connection with the education, instruction, and training of individuals to develop and improve their capabilities in the sport of swimming and the promotion and advertisement of sanctioned competitive swimming events. LSC shall cause to appear the identification "@," or "™" on all materials prepared by LSC, its employees, or agents that incorporate one or more Marks. This registration identification shall appear below and to the right of any Mark. LSC recognizes that USA Swimming has established a great deal of goodwill through its reputation and the representation of the Marks. Therefore, LSC shall not use, commercially exploit, permit the use of, or permit the commercial exploitation of any Marks in negative advertising, nor in any manner that is contrary to public morals or which has been found to be deceptive or misleading, or which reflects unfavorably on the good name, goodwill, reputation, or image of USA Swimming.
13. Reference to the Olympics. In any promotional or advertising activities, events, or materials, LSC agrees that it may not reference the Olympic Games, nor shall the word "Olympic" or any derivative thereof, the symbol of the International Olympic Committee (the "IOC") consisting of five interlocking rings, the emblem of any National Olympic Committee, or any trademark, trade name, sign, symbol, or insignia of either the IOC or any National Olympic Committee, be referenced or used directly or indirectly for any reason in connection with such activities, unless LSC has prior written consent for such reference or use from the IOC or the appropriate National Olympic Committee.
14. Insurance. USA Swimming shall provide LSC with certain insurance, including directors and officers, commercial general liability, non-owned automobile liability, bodily injury, personal injury, and abuse and molestation coverages in commercially reasonable amounts, provided such coverage is available in the marketplace at a reasonable cost. It is the responsibility of LSC to obtain workers compensation coverage in compliance with applicable state law, as well as property coverage for any property utilized by LSC. Any insurance coverage obtained by LSC shall serve as primary coverage for covered persons, entities, and activities. LSC shall not obtain insurance coverage which negates the insurance coverage provided by USA Swimming under this Paragraph. LSC is responsible for complying with all insurance underwriting and policy requirements and terms and conditions.
15. National Governing Body Status. If USA Swimming is decertified as the National Governing Body for the sport of swimming in the United States in accordance with the Act, LSC shall have the right to terminate this Agreement effective upon notice to USA Swimming.

#### **General Provisions**

16. Indemnification. LSC shall indemnify each person who is or was a director, officer, or

employee of LSC (including the heirs, executors, administrators, or estate of such person) to the fullest extent possible by applicable state law against any liability, cost, or expense incurred by them in their capacity as director, officer, or employee, or arising out of their status as a director, officer, or employee (including serving at the request of LSC as a director, trustee, officer, employee, or against of another corporation), provided such person acted in good faith and with due care.

17. **Limitation of Liability.** **NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER PARTY, NOR ANY OF THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS, SHALL HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF OPPORTUNITY, REVENUES, OR PROFITS, ARISING OUT OF THIS AFFILIATION AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES OR LOSSES WERE KNOWN OR FORESEEABLE.**
  
18. **Penalties.** Penalties may be determined and issued by the USA Swimming Board of Directors after a review has been conducted by USA Swimming, at the initiative of the USA Swimming President & CEO. In addition to any other remedies available at law or in equity, a failure by LSC to comply with any of the above provisions, after being given notice and a reasonable time to cure, may result in, with written notice:
  - (a) Inability to sanction, approve, observe, oversee, and conduct competitive swimming events;
  - (b) A financial penalty in the amount of \$100.00 per day of noncompliance;
  - (c) A public censure
  - (d) Suspension from voting at the USA Swimming House of Delegates annual meeting; and/or
  - (e) Decertification as a Local Swimming Committee.
  
19. **Effect of Decertification.** If LSC is decertified, LSC shall immediately cease using any Marks, and all events and activities of LSC shall be suspended unless prior written approval of USA Swimming is obtained. LSC shall provide USA Swimming with immediate access to all LSC books and records.
  
20. **Opportunity To Appeal.** Any penalty, including decertification, imposed by the USA Swimming Board of Directors may be appealed to the National Board of Review (the "NBOR") for a hearing pursuant to the Operating Policy Manual. The decision of the NBOR shall be final without opportunity to appeal. Nothing in this Paragraph 20 shall be construed to limit the rights of members provided by the Act and Article 301.3 of the Rulebook.
  
21. **Waiver.** The failure by any party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the provisions of this Agreement, shall not constitute a waiver of the provisions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the provisions hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies which may be granted by law.
  
22. **Severability.** Should any provision of this Agreement be determined to be invalid for any reason, such invalidity shall not affect the validity of any other provisions, which other

provisions shall remain in full force and effect as if this Agreement had been executed with the invalid provision eliminated, and it is hereby declared the intention of the parties that they would have executed the other provisions of this Agreement without including therein any such provisions which may for any reason be hereafter determined invalid.

- 23. Assignment. No party may transfer or assign this Agreement without the prior express written consent of the other party.
- 24. Headings. The Paragraph and Section headings in this Agreement are for convenience only and shall not be used in the interpretation nor considered part of this Agreement.
- 25. Entire Agreement and Effect. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings. All representations and negotiations relative to the matters contemplated by this Agreement are merged herein, and there are no contemporaneous understandings or agreements relating to the matters set forth herein other than those incorporated herein.
- 26. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without regard to their conflict of laws provisions.
- 27. Amendments/Modification. This Agreement may not be amended or modified except by written document signed by both parties.
- 28. Execution in Counterpart. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated next to their respective signatures, effective as of the date specified above.

USA SWIMMING, INC.

[LSC]

By: Tim Hinchey, III

By: \_\_\_\_\_

Its: President & Chief Executive Officer

Its: General Chair

Date: \_\_\_\_\_

Date: \_\_\_\_\_