

## Affiliation Agreement

THIS AGREEMENT, dated January 1, 2022, is by and between USA Swimming, Inc., a Colorado nonprofit corporation located at One Olympic Plaza, Colorado Springs, Colorado 80909 (“USA Swimming”), and New Mexico Swimming, Inc., a New Mexico nonprofit corporation having its principal place of business at 4412 Rancho Largo NW, Albuquerque, NM 87120 (“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; and supports the development and achievement of athletes, coaches, officials and clubs; and 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 and oversee competitive swimming events and otherwise conduct competitive swimming events within the Territory, its Region and its Zone (as those terms are defined in Part Six of the USA Swimming Rules and Regulations).
- C. WHEREAS, USA Swimming and LSC desire to document their respective rights and obligations in accordance with USA Swimming’s Corporate Bylaws, LSC’s Bylaws, the USA Swimming Rules and Regulations, and all applicable policies and procedures.
- 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. 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 territory of LSC is as set forth in Article 603 of the USA Swimming Rules and Regulations.
- 3. Governance. At a minimum, LSC agrees to the following governance practices:
  - (a) LSC shall adopt and maintain a certificate of incorporation and bylaws complying with the USA Swimming LSC Model Bylaws. The bylaws shall be adopted no later than the date specified by the USA Swimming House of Delegates and shall be

submitted to the USA Swimming Rules & Regulations Committee and USA Swimming's General Counsel for review within thirty (30) days of enacting the bylaws.

- (b) LSC shall comply with its bylaws.
- (c) LSC shall remain a nonprofit corporation in good standing in accordance with the state regulations in the state in which it is incorporated.
- (d) LSC shall comply with the requirements of USA Swimming's LSC Evaluation and Achievement Program ("LEAP") and any subsequent iterations of the LEAP program that may be developed.
- (e) LSC cannot and shall not attempt to legally bind USA Swimming to any agreement without USA Swimming's prior written consent.

4. Financial Management. LSC agrees to comply with Article 8 of the USA Swimming Corporate Bylaws (LSC Reporting Requirements) and to complete the Local Swimming Committee Financial Assessment Program.

- (a) If the prior year's total net assets of LSC exceed two hundred thousand dollars (\$200,000), LSC shall also obtain annually either (i) an independent audit; or (ii) an independent Agreed-Upon Procedures review as set forth in the current AICPA's Statements on Standards for Attestation Engagements (until such time that the prior year's total net assets are two hundred thousand dollars (\$200,000) or less).
- (b) LSC shall ensure that LSC Internal Revenue Service ("IRS") and state tax submissions are filed timely and completely with the IRS and/or the applicable state government agency.
- (c) LSC shall submit to USA Swimming headquarters its Financial Assessment Program, annual closing Balance Sheet, Statement of Income and Expense, Form 990, and outcome of review or audit (as applicable) within five (5) months of the close of its fiscal year. Upon submission of a request to extend the time to file its federal income tax return, LSC may be granted additional time to meet its financial reporting requirements to USA Swimming equal to the extension period, provided LSC submits a copy of the request for extension with the IRS to USA Swimming at the time the extension is filed and the IRS grants such an extension.
- (d) LSC agrees to enact the following USA Swimming financial and management policies. In the absence of an LSC-specific policy, the USA Swimming model policy will take effect.
  - i. Crime Policy;
  - ii. Conflict of Interest Policy;
  - iii. Whistleblower Protection Policy;
  - iv. Document Destruction Policy;
  - v. USA Swimming Reserve Policy;
  - vi. USA Swimming Investment Policy;
  - vii. Any other management or financial policy required by USA Swimming.

5. 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.

6. LSC Membership Registration and Collection of Payments. LSC shall comply with then-current USA Swimming Rules and policies concerning the registration of club, individual and organizational members and the collection of membership dues.
7. Outreach Membership Reporting. LSC shall submit to USA Swimming an annual report of its outreach membership qualification criteria and associated fees.
8. Responsibility to Cooperate. LSCs shall cooperate fully with and assist USA Swimming and any outside legal counsel representing either LSC or USA Swimming with matters related to pending litigation involving either LSC or USA Swimming. Full cooperation includes, but is not limited to:
  - (a) Reporting to USA Swimming when LSC receives a notice of claim or a complaint naming LSC in litigation;
  - (b) Timely responding to requests from USA Swimming and any outside legal counsel representing either LSC or USA Swimming;
  - (c) Full participation 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.
9. Meet Sanctions. LSC agrees to comply with Article 202 of the USA Swimming Rules and Regulations (Sanctions and Approval). As the National Governing Body for competitive swimming in the United States and as a Federation member of FINA, USA Swimming has the sole and exclusive authority to sanction or approve domestic and international swimming competition conducted within its jurisdiction. LSC has been authorized by USA Swimming to issue the sanction and approval for all swimming competition and benefits, exhibitions, clinics and entertainment involving competitive swimming within its geographical boundaries, except that USA Swimming shall sanction national swimming competitions. LSC shall be responsible for ensuring that all swimming competition, benefits, exhibition, clinics and entertainment involving competitive swimming within its geographical boundaries for which it grants a sanction are conducted in accordance with Article 202 of the USA Swimming Rules and Regulations.
10. Issuance of Public Statements. LSC shall only issue public statements with respect to its and USA Swimming's rules, bylaws, policies, programs and sanctioned competitions.
11. Political Lobbying Activities. LSC shall not engage in political lobbying efforts without the express written permission of USA Swimming.
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 geographic 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 "TM" on all materials prepared by LSC, its employees or agents that incorporate one or more Marks. Said registration identification shall appear below and to the right of said 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. Insurance.

- (a) USA Swimming. 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.
- (b) LSC. 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 Section 8(a) of this Agreement.

14. 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 him/her in his/her capacity as director, officer, or employee, or arising out of his/her 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.

15. 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.**

16. Effect of Decertification.

- (a) USA Swimming. In the event 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 giving of notice to USA Swimming.

- (b) LSC. In accordance with Section 15 of this Agreement, the USA Swimming Board of Directors has the power to decertify LSC as an affiliate within the USA Swimming governance structure. Any such action shall be taken at the initiative of the USA Swimming President & CEO as a result of a compliance review undertaken by USA Swimming or pursuant to other information known to USA Swimming and shall be finally determined by the USA Swimming Board of Directors.

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 books and records.

- 17. Penalties. 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 by the USA Swimming Board of Directors:
  - (a) Inability to sanction, approve, observe and oversee competitive swimming events;
  - (b) A financial penalty in the amount of \$100.00 per day of noncompliance;
  - (c) Suspension from voting at the House of Delegates meeting at USA Swimming;and/or
  - (d) Decertification as a Local Swimming Committee.
- 18. Opportunity To Appeal. Any penalty, including decertification, imposed by the USA Swimming Board of Directors may be appealed to the National Board of Review for a hearing pursuant to Article 407 of USA Swimming's Rules & Regulations. The decision of the National Board of Review shall be final without opportunity to appeal. Nothing in this Section 14 shall be construed to limit the rights of members provided by the Ted Stevens Olympic and Amateur Sports Act and Article 301.3 of the USA Swimming Rules and Regulations.
- 19. General Provisions.
  - (a) 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.
  - (b) 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.

- (c) Assignment. No party may transfer or assign this Agreement without the prior express written consent of the other party.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) Amendments/Modification. This Agreement may not be amended or modified except by written document signed by both parties.
- (h) 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.

By: Tim Hinchey, III



Its: President & Chief Executive Officer

Date: 1/3/22

NEW MEXICO SWIMMING, INC.

By:



Its: General Chair

Date: 12/26/21