

DATA PROCESSING AGREEMENT

between

INSTITUTION

and

STAGECLIP

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AGREEMENT

between

1 **INSTITUTION**

and

2 **Stageclip**, a company registered in England with number 10714821 and having its registered office at Knight Farm, Avon Dassett, Southam, Warwickshire, CV47 2AS (the "**Processor**"),

each a "Party" and together the "Parties".

BACKGROUND:

1 The University has engaged the Processor under a contract to provide certain online virtual graduation services (the "**Services Agreement**").

2 The performance of the Services Agreement will involve the Processing by the Processor of Personal Data of which the University is the Data Controller.

3 The University and the Processor have agreed to enter into this Agreement in order to regulate and control the Processing of such Personal Data by the Processor.

The terms of this Agreement are:

1 Definitions and interpretation

1.1 In this Agreement the expressions which follow are given these meanings unless the context in which they are used requires a different meaning:

1.1.1 "**Data Controller**" has the meaning given to that term in Data Protection Law;

1.1.2 "**Data Processor**" has the meaning given to that term in Data Protection Law;

1.1.3 "**Data Subject**" means an individual who is the subject of any of the Disclosed Data. The categories of Data Subject within the scope of this Agreement are listed in Schedule 1;

1.1.4 "**Data Subject Request**" means a written request of the Data Controller by or on behalf of a Data Subject to exercise any rights conferred by Data Protection Law;

1.1.5 "**Disclosed Data**" means the Personal Data disclosed to the Processor by or on behalf of the University in connection with the Purpose, and in this context "disclose" includes directly or indirectly giving the Processor, or arranging for the Processor to have, access to Personal Data in any manner and in any form or format whatsoever, including by instructing the Processor to collect Personal Data directly from the Data Subject (or

anyone authorised by the Data Subject to provide it) The categories of Data Subject within the scope of this Agreement are listed in [Section 1 of][Part 1];

- 1.1.6 **"Data Protection Law"** means any Law that applies from time to time to the Processing of Personal Data by either Party under this Agreement, including the EU Privacy & Electronic Communications Directive 2002/58/EC, Regulation (EU) 2016/679, all national legislation (including the Data Protection Act 2018) and subordinate legislation in the United Kingdom and any applicable decisions and guidance made under any of them;
- 1.1.7 **"Effective Date"** means the last date of execution of this Agreement;
- 1.1.8 **"Law"** means any statute, directive, other legislation, law or regulation in whatever form, delegated act (under any of the foregoing), rule, order of any court having valid jurisdiction or other binding restriction, decision or guidance in force from time to time;
- 1.1.9 **"Personal Data"** and **"Processing"** each have the meanings given to them in Data Protection Law and **"Process"** and any other tense or part of that verb will be interpreted accordingly;
- 1.1.10 **"Purpose"** means the purpose described in Part 2;
- 1.1.11 **"Schedule"** means the Schedule in 3 Parts annexed to and forming part of this Agreement; and
- 1.1.12 **"Security Breach"** means any breach or suspected breach of any of the Processor's obligations in terms of Clauses 4 and/or 5 or any other unauthorised or unlawful Processing, accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or damage or access to the Disclosed Data;
- 1.1.13 **"Security Incident"** means a Security Breach or a Security Risk;
- 1.1.14 **"Security Measures"** has the meaning given to that term in Clause 4.4;
- 1.1.15 **"Security Risk"** means any risks or vulnerabilities that are likely to affect the integrity or effectiveness of the Security Measures (including vulnerabilities relating to any software or third party system or network) that are known or ought reasonably to be known to the Processor.
- 1.2 Unless the context requires a different interpretation or this Agreement expressly provides otherwise, the following rules will be used to interpret this Agreement:
- 1.2.1 Any reference to a Law or to a provision of a Law includes references to that statute or that provision as amended, extended, applied, consolidated or re-enacted from time to time, whether before, on or after the entry into force of this Agreement, and will be

interpreted as including reference to any subordinate legislation made under that statute or that provision from time to time.

- 1.2.2 Words used in the singular will be interpreted to include the plural and vice versa.
 - 1.2.3 Words which refer to one gender will be interpreted to include other genders.
 - 1.2.4 A reference to a "person" is to any legal person, including any individual, partnership, company or other body corporate.
 - 1.2.5 The word "including" means "including but not limited to" and "include" and "includes" will be interpreted accordingly.
 - 1.2.6 Where this Agreement defines a word or expression by reference to its meaning in Law and the Law changes such that the word or expression no longer has that (or any) meaning in Law then, for the purposes of this Agreement, the word or expression will be interpreted as referring to the term in Law then current which most nearly approximates to the meaning given to that word or expression before the Law changed.
- 1.3 References to Clauses and Parts are to the relevant clauses of and Parts of the Schedule to this Agreement, unless otherwise specified.
 - 1.4 The recitals (or background provisions) and Clause and Schedule Part headings in this Agreement do not create legal rights or obligations, nor affect the meaning of this Agreement.
 - 1.5 Where this Agreement uses a Scottish legal term and the relevant provision of this Agreement is being considered in the context of a jurisdiction other than Scotland, the term will be interpreted as referring to that which most nearly approximates to the Scottish legal term in such other jurisdiction.

2 Term

This Agreement will come into effect on the Effective Date and will continue for so long as the Processor continues to Process any Disclosed Data.

3 Relationship between the University and the Processor

In relation to any Processing for the Purpose, the University and the Processor acknowledge that, for the purposes of Data Protection Law, the University is the Data Controller and the Processor is the Data Processor of any Disclosed Data.

4 Obligations of the Processor

- 4.1 Subject to Clause 4.2, the Processor will Process the Disclosed Data only to the extent, and in such a manner, as is necessary for the Purpose, subject to and in accordance with the University's express written instructions from time to time. If the Processor considers that any instruction from

the University contravenes Data Protection Law, it shall immediately notify the University, giving reasonable details.

- 4.2 Where the Processor is obliged by Law to Process the Disclosed Data other than on the express written instructions of the University, it will inform the Controller of such legal requirement before commencing such Processing, unless prohibited to do so by Law.
- 4.3 The Processor will acquire no rights or interest in or to the Disclosed Data and, without affecting the generality of Clause 4.6, on demand by the University will either deliver to the University or destroy and/or permanently delete from its information technology systems (at the option of the University) all copies of any Disclosed Data in its possession (in any form or format whatsoever) and give the University a certificate signed by one of its authorised signatories (who is properly authorised to give such a certificate) confirming that it has done so.
- 4.4 In accordance with the requirements of Data Protection Law, the Processor will implement appropriate technical and organisational measures (the “**Security Measures**”), including the security measures set out in Part 3, so as to ensure an appropriate level of security is adopted to mitigate the risks associated with the Processing of such Disclosed Data, including against unauthorised or unlawful Processing, accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or damage or access to the Disclosed Data[, to ensure that the University complies with its obligations under Data Protection Law]. The Processor shall regularly review the Security Measures to ensure that they are appropriate and reflect good industry practice, and provide the University with details of any material changes in accordance with Clause 4.5.2. Where required by the University, the Processor shall promptly enter into an amendment to this Agreement to update Part 3 to incorporate the then current Security Measures.
- 4.5 The Processor will:
- 4.5.1 comply with its obligations as a Data Processor under Data Protection Law in relation to the Processing of Personal Data by it under this Agreement, including keeping records of all Processing of Disclosed Data that it carries out as Data Processor on behalf of the University under this Agreement as required by Data Protection Law;
 - 4.5.2 provide to the University all information necessary to demonstrate compliance with Data Protection Law in relation to the Processing of Personal Data by the Processor under this Agreement, including:
 - 4.5.2.1 evidence of the Security Measures implemented by the Processor pursuant to Clause 4.4; and
 - 4.5.2.2 the records referred to in Clause 4.5.1.
 - 4.5.3 permit the University (or any third party auditor appointed by the University) to have access to the Processor's premises, personnel and records, on reasonable notice, for the purposes of inspecting, testing and auditing the technical and organisational

measures implemented by the Processor pursuant to Clause 4.4 and otherwise verifying compliance with Data Protection Law in respect of the Processor's Processing of Disclosed Data under this Agreement;

- 4.5.4 promptly make such changes to those measures, and otherwise take such steps as the University requests it to take, to ensure that those measures are sufficient to ensure the University's compliance with Data Protection Law; and
 - 4.5.5 without prejudice to Clauses 4.5.1 to 4.5.3 (both inclusive), generally assist the University to ensure compliance with the University's obligations under Data Protection Law in relation to the Processing of the Disclosed Data under this Agreement, having regard to the nature of the processing and the information available to the Processor, including by doing such further acts or things as may be required by the University at the University's reasonable cost and expense.
- 4.6 The Processor will promptly comply with any request from the University requiring the Processor to update or otherwise amend, transfer, delete or destroy the Disclosed Data and in any event promptly delete or destroy the Disclosed Data upon the expiry or termination of the Services Agreement.
- 4.7 The Processor will not transfer any of the Disclosed Data outside the European Economic Area, except upon and in accordance with the express written instructions or agreement in writing of the University. Without limiting Clause 4.8, where the Processor has transferred any of the Disclosed Data outside the European Economic Area on such instructions of the University or with such agreement, the University may require the Processor to transfer the Disclosed Data back to within the European Economic Area:
- 4.7.1 on giving not less than 10 days' notice in writing to that effect; or
 - 4.7.2 at any time in the event of a change in Law which makes it unlawful for the Disclosed Data to be Processed in the jurisdiction outside the European Economic Area where it is being Processed.
- 4.8 Where the legal basis upon which Disclosed Data is transferred outside the European Economic Area pursuant to Clause 4.7 is ruled by any court of competent jurisdiction to be unlawful or otherwise ceases to exist, the Processor shall, at the University's discretion either:
- 4.8.1 take such steps and execute such documents as the University may reasonably require to ensure that the transfer of Disclosed Data takes place on a lawful basis; or
 - 4.8.2 transfer the Disclosed Data back to within the European Economic Area in accordance with Clause 4.7.
- 4.9 If the Processor receives any complaint, notice or communication which relates directly or indirectly to the Processing of the Disclosed Data or to either Party's compliance with Data Protection Law, it

will immediately notify the University and it will provide the University with full co-operation and assistance in relation to any such complaint, notice or communication.

- 4.10 The Processor agrees to assist the University, within such timescale as may be reasonably required by the University, in responding to any Data Subject Request which is received by the University or the Processor. However the Processor will not acknowledge or otherwise respond to any such Data Subject Request, nor disclose any of the Disclosed Data to any Data Subject or to any third party, other than upon and in accordance with the University's instructions or as otherwise provided for in this Agreement.

5 Processor's employees

- 5.1 The Processor will ensure that access to the Disclosed Data is limited to:
- 5.1.1 those of its employees who need access to the Disclosed Data to meet the Processor's obligations under this Agreement (the "**Relevant Employees**"); and
 - 5.1.2 in the case of any access by any such employee, such part or parts of the Disclosed Data as is strictly necessary for performance of that employee's duties.
- 5.2 The Processor will ensure that its Relevant Employees:
- 5.2.1 only Process Disclosed Data to the extent permitted by Clause 4.1 and (where applicable) Clause 4.2;
 - 5.2.2 are bound by appropriate obligations of confidentiality in respect of the Disclosed Data and understand that the Disclosed Data is confidential in nature;
 - 5.2.3 have undertaken training in Data Protection Law; and
 - 5.2.4 are aware of the Processor's obligations under such Data Protection Law and this Agreement.
- 5.3 Without affecting the generality of Clause 4.4, the Processor will take appropriate steps to ensure the reliability of any of the Processor's employees who have access to the Disclosed Data, [including those steps set out in Part 3].

6 Sub-contracting etc.

- 6.1 The Processor may not:
- 6.1.1 sub-contract the performance of any of its obligations under this Agreement (or otherwise authorise any third party to Process the Disclosed Data on its behalf); nor
 - 6.1.2 sub-license the exercise of any of its rights under this Agreement; nor

6.1.3 assign or otherwise transfer (as applicable) its rights and obligations under this Agreement,

in each case whether in whole or in part, without the prior written consent of the University, which consent the University may give or withhold in its entire discretion. The Processor shall provide the University with such information that the University reasonably requires to carry out appropriate diligence on the relevant party. Any consent by the University may be given subject to conditions and, in such circumstances, any failure by the Processor to comply with such conditions shall mean that the relevant activity under Clause 6.1.1, 6.1.2 or 6.1.3 (as appropriate) was carried out without the University's consent.

6.2 Notwithstanding Clause 6.1, where the Processor engages another Data Processor by way of sub-contract to perform all Processing activities on behalf of the University:

6.2.1 the Processor shall be solely responsible for complying with Data Protection Law in terms of ongoing sub-contracting and supervising that other Data Processor and its Processing operations;

6.2.2 the Processor shall ensure that the sub-contract incorporates terms and conditions equivalent to the terms of this Agreement; and

6.2.3 any act or omission by such Data Processor which constitutes a breach by the Processor of its obligations under this Agreement shall be a breach by the Processor of such obligations for which the Processor is liable to the University.

7 Security Incidents

7.1 The Processor shall put in place and maintain appropriate systems to monitor and identify Security Incidents. Upon becoming aware of any Security Incident, the Processor shall take the steps set out in this Clause 7.

7.2 The Processor will immediately upon becoming aware of a Security Incident take such steps as are necessary to mitigate the detrimental impact of the Security Incident.

7.3 The Processor will promptly (and, in any event, no later than 12 hours after becoming aware of the Security Incident inform the University in writing of any Security Incident. Such notification shall specify (at a minimum):

7.3.1 the nature of the Security Incident,

7.3.2 the date and time of occurrence,

7.3.3 the extent of the Disclosed Data and Data Subjects affected or potentially affected,

- 7.3.4 the likely consequences of the Security Incident for Data Subjects and any measures taken or proposed to be taken by the Processor to contain or rectify the Security Incident; and
- 7.3.5 any other information that the University shall require in order to discharge its responsibilities under Data Protection Law in relation to the Security Incident.
- 7.4 The Processor will thereafter promptly, at the Processor's expense (i) provide the University with all such information as the University requests in connection with the Security Incident; (ii) take any such additional steps as the University requires it to take to mitigate the detrimental effects of the Security Incident on any of the Data Subjects and/or on the University; and (iii) otherwise cooperate with the University in investigating and dealing with the Security Incident and its consequences.
- 7.5 The University's rights under this Clause 7 are without prejudice to any other rights and remedies which it has in respect of any breach of this Agreement whether in contract or otherwise in law.

8 Indemnity

The Processor will indemnify the University against any

- 8.1 losses, costs, damages, or awards of compensation;
- 8.2 any monetary penalty notices;
- 8.3 administrative fines and/or
- 8.4 any expenses (including legal fees and expenses)

suffered, incurred by the University, or awarded, levied or imposed against the University, as a result of any breach by the Processor of its obligations under this Agreement.

9 Miscellaneous

- 9.1 This Agreement does not create a partnership or joint venture between the Parties to it, nor authorise either Party to act as agent for the other.
- 9.2 No failure or delay by the University in enforcing or exercising any right or remedy under this Agreement, or arising otherwise in law in connection with this Agreement, will constitute a waiver of that right or remedy or an election to abandon that right or remedy in respect of any event or circumstances and, where applicable, to thereby affirm this Agreement, or will otherwise preclude or restrict the subsequent exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will preclude or restrict the further exercise of that or any other right or remedy.

- 9.3 If and to the extent that any provision of this Agreement is held to be invalid, unlawful or unenforceable by a court of competent jurisdiction, such provision will be treated as having been deleted from the remaining terms of this Agreement which will remain in full force and effect.
- 9.4 This Agreement may only be amended in writing signed by a duly authorised signatory of each Party.
- 9.5 This Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes any prior arrangement, understanding or agreement between them in relation thereto.

10 Law

- 10.1 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) will be governed by and construed in accordance with **jurisdiction** law.

10.2 The Parties irrevocably agree that the Scottish courts will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF this Agreement has been executed as follows:

SIGNED on behalf of **INSTITUTION** by

.....
[Signed]

.....
[Position]

.....
[Full Name]

.....
[Date]

.....
[Place of signing]

In the presence of:

.....
[Witness]

.....
[Position]

.....
[Full Name]

.....
[Date]

.....
[Address]

SIGNED on behalf of **STAGECLIP** by

M. A. Andrew
.....

Director

Mark Andrew

20th July 2020

Shakespeare House, London

In the presence of:

[Signature]

Stageclip Director

[Witness]
Rupert Forsythe

20th July 2020

StageClip Limited,
Knights Farm,
Avon Dassett,
Southam,
Warwickshire.
CV47 2AS

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING DATA PROCESSING AGREEMENT
BETWEEN THE UNIVERSITY COURT OF THE UNIVERSITY OF EDINBURGH AND STAGECLIP**

PART 1 – DISCLOSED DATA AND DATA SUBJECTS

Section 1 – Disclosed Data

Name, UUN, degree title, College plus email contact details

Section 2 – Data Subjects

University students

PART 2 - THE PURPOSE

**STAGECLIP WILL PROVIDE VIRTUAL CEREMONIES TO THE UNIVERSITY ALONG WITH
PERSONALISED CLIPS FOR EACH GRADUATE.**

PART 3 – SECURITY MEASURES

<https://stageclip.com/terms-conditions/>

