**DATA PROCESSOR AGREEMENT**

This Data Processor Agreement is entered between the Huacheng entity (“**Huacheng**”) and the legal person (“**Partner**”) that are parties to a “Non-Exclusive Distribution Agreement” or “Huacheng Dealer Partner Program Agreement” or any other agreement entered between the Partner and Huacheng and under which Huacheng needs to process Personal Data and such agreement expressly incorporates by reference the terms of this Data Processor Agreement (“**Agreement**”) by signing the relevant acknowledgement. (collectively hereinafter as “**Parties**” and individually as “**Party**”).

Huacheng reserves the right to update and revise the terms of this Data Processor Agreement. The relevant notice shall be published on the official Huacheng website. The new edition of Data Processor Agreement shall be in force after two weeks after the relevant announcement made if no objections from the Partner raised.

The Parties agree that the terms of this Data Processor Agreement and its Appendices supplement the Agreement. Under the Agreement, Huacheng may be required to Process certain Personal Data of employees, customers or suppliers from Partner. This Data Processor Agreement sets out the terms and respective rights and obligations of the Parties in respect of such Processing of Personal Data.

IT IS AGREED AS FOLLOWS:

1. Definitions
   1. In this Processor Agreement the capitalised terms below shall be assigned the following meanings:

|  |  |
| --- | --- |
| **Agreement** | refers to the “Non-Exclusive Distribution Agreement” or “Huacheng Dealer Partner Program Agreement” or any other agreement entered between the Partner and Huacheng and under which Huacheng needs to process Personal Data and such agreement expressly incorporates by reference the terms of this Data Processor Agreement. |
| **Affiliated Company** | means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with either Party and is acting as controller jointly with the Partner or as subprocessor of Huacheng (if applicable). |
| **Controller** | means the party which, acting alone or jointly with others, determines the purposes and means of the Processing of Personal Data. |
| **Huacheng** | refers to Hangzhou Huacheng Network Technology Co., Ltd., a company incorporated under the laws of the People's Republic of China, with its principle place of business located at the No.2930, Nanhuan Road, Binjiang District, Hangzhou, China, or any other Huacheng entity that concluded the Agreement with the Partner. |
| **Data Subject** | means an identified or identifiable natural person. |
| **EEA** | means the European Economic Area. |
| **EU Model Contract** | means the Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to controllers established in third countries under Directive 95/46/EC of the European Parliament and of the Council (2010/87/EU). |
| **Order** | has the meaning assigned to that term in Article 9.1 of this Processor Agreement. |
| **Partner** | means the legal person referred to as *Distributor* in the “Non-Exclusive Distribution Agreement” or *Dealer* in the “Huacheng Dealer Partner Program Agreement” or under any other title indicated in the Agreement. |
| **Personal Data** | means any information relating to a Data Subject. |
| **Process** or **Processing** | means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. |
| **Processor Agreement** | means this data processor agreement between Partner and Huacheng. |
| **Processor** | means the party which Processes Personal Data on behalf of the Controller. |
| **Regulations** | means all laws and regulations applicable to the Processing of Personal Data, including, but not limited to, the General Data Protection Regulation (“**GDPR**”) and other EU Law related to data protection, and, to the extent applicable, any implementation act, or any privacy or telecommunications act provided by the Applicable Law. |
| **Security Breach** | has the meaning assigned to that term in Article 6.3 of this Processor Agreement. |
| **Sensitive Data** | means Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data and biometric data Processed for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation or any Personal Data qualifying as such under applicable Regulations. |
| **Subprocessor** | means a subcontractor or affiliate engaged by Huacheng who has, or may have, access to Personal Data. |
| **Huacheng Employee** | means any person employed or hired by Huacheng involved with the performance of this Processor Agreement. |
| **Supervisory Authority** | means one (or more) independent public authority(ies) which is (are) established by an EU Member State pursuant to Regulations or which is (are) competent for the protection of the fundamentals rights and freedom of natural persons in relation to processing of personal data under applicable law. |
| **Transfer** | has the meaning assigned to that term in Article 8.1 of this Processor Agreement. |

* 1. The Parties agree that in the event of a conflict between this Processor Agreement and the Agreement, the terms of this Processor Agreement shall prevail.

1. Processing of Personal Data
   1. Huacheng shall perform its activities pursuant to the Agreement, acting as Processor on behalf of Partner. Partner shall remain the Controller for all Personal Data which is Processed under the Agreement. The types of Personal Data, categories of Data Subjects and the purposes of the Processing by Huacheng are described in **Appendix 1** (Personal Data and Processing activities) and are further detailed in the Agreement.
2. Obligations of Partner
   1. As Controller, Partner shall comply with its obligations under applicable Regulations and this Processor Agreement.
   2. Partner shall instruct Huacheng to Process the Personal Data on Partner's behalf and in accordance with applicable Regulations. The Processing instructions of Partner are documented in **Appendix 1** (Personal Data and Processing activities) and are further detailed in the Agreement.
   3. Partner may act as Controller jointly with its Affiliated Company. In such case, the Partner shall inform the Huacheng accordingly and give the relevant details of the Affiliated Company to Huacheng.
   4. Partner may issue additional instructions with regard to Huacheng’s Processing activities, or amend such instructions, if necessary at the Partner’s sole discretion, provided that such instructions are consistent with the terms of the Agreement and this Processor Agreement, reasonable and in accordance with applicable Regulations. Partner shall issue any such additional or amended instructions in writing or by electronic mail [(receipt verified)] to Huacheng. Partner shall (a) grant Huacheng a reasonable amount of time to implement or comply with any additional or amended instructions and (b) upon request, reasonably cooperate with Huacheng to implement or comply with such additional or amended instructions.
3. Obligations of Huacheng
   1. As Processor, Huacheng shall comply with its obligations under applicable Regulations and this Processor Agreement.
   2. Huacheng shall ensure that it and each of its Employees (a) only Processes Personal Data on behalf of Partner and in accordance with Partner’s instructions; (b) refrains from Processing the Personal Data for its own purposes or for purposes of third parties; and (c) Processes the Personal Data only in so far as necessary to perform its activities under the Agreement; unless Huacheng is required to do otherwise by applicable EU or Member State law and it promptly notifies Partner thereof in accordance with Article 4.5.ii. Huacheng shall document the instructions given by Partner.
   3. During the term of this Processor Agreement, if Huacheng receives any request from a Data Subject relating to his or her Personal Data, Huacheng shall promptly refer that Data Subject to Partner to submit his or her requests. Partner shall be responsible for responding to any such request. Huacheng shall provide such assistance as Partner may reasonably specify to enable Partner to meet its obligations to respond to requests for exercising the rights of Data Subjects pursuant to applicable Regulations, including, but not limited, to requests from Data Subjects to access, correct or delete their Personal Data.
   4. Huacheng shall provide such assistance as Partner may reasonably specify to enable Partner to (a) carry out a data protection impact assessment and a possible subsequent prior consultation with a Supervisory Authority and (b) to respond to or defend against enquiries, requests or investigations from a Supervisory Authority.
   5. Huacheng shall promptly inform Partner in any of the following events if:
      * 1. Huacheng has reason to believe that it cannot comply with this Processor Agreement;
        2. applicable EU or Member State law prevents Huacheng from fulfilling the instructions received from Partner, unless that law prohibits Huacheng from providing such information on compelling grounds of public interest;
        3. Huacheng or a Huacheng Employee has acted in breach of this Processor Agreement or if a Subprocessor has acted in breach of the written agreement between Huacheng and such Subprocessor; or
        4. Huacheng has received a warning or a reprimand from a Supervisory Authority that the Processing activities are likely to infringe, or have infringed, applicable Regulations.
   6. Upon termination of the Agreement or after the end of the provision of Processing services (whichever is earlier), Huacheng and its Subprocessors (if any) shall, if directed by Partner, return all Personal Data to Partner and/or delete all copies of such Personal Data and notify Partner that it has done so, unless applicable EU law or Member State law prohibits Huacheng from returning or deleting all or part of the Personal Data. With respect to any Personal Data that Huacheng is unable to return or destroy following termination of the Agreement or after the end of the provision of Processing services (whichever is earlier), Huacheng shall continue to protect such Personal Data in accordance with the terms of the Agreement and this Processor Agreement and shall not actively Process the Personal Data.
4. Subprocessors
   1. With the signing of this Agreement, Partner acknowledges that and gives consent to Huacheng to subcontract or assign any of its obligations under the Agreement to a Subprocessor, to the extent that the Subprocessor is an Affiliated Company of Huacheng. Should Huacheng wish to engage a non-Affiliated Company as Subprocessor, Partner’s prior written consent shall be needed, and Partner may not unreasonably withhold or delay such consent. Partner may attach reasonable conditions to its consent. The Subprocessors listed in **Appendix 3** (Approved Subprocessors) are hereby approved for the areas of work specified therein.
   2. Huacheng may only engage a Subprocessor by way of a written agreement with such Subprocessor which imposes at least the same obligations on the Subprocessor as are imposed on Huacheng under this Processor Agreement.
   3. Huacheng shall prohibit the Subprocessor from accessing or using Personal Data for any purpose not related to the performance of its assigned activities under the Agreement.
   4. Huacheng shall remain responsible for its compliance with its obligations under the Agreement and this Processor Agreement. Huacheng shall not be liable for damages and claims to the extent that such damages or claims arise from Partner's instructions to Huacheng or its Subprocessors.
5. Security and Security Breaches
   1. Huacheng shall implement appropriate administrative, organisational, physical and technical safeguards to protect the confidentiality, integrity and availability of the Personal Data consistent with applicable Regulations, including, without limitation, to protect the Personal Data against destruction, loss, unauthorised disclosure or access, or any other form of unlawful processing. To clarify, Huacheng shall consider the state of the art and implementation costs when considering the appropriateness of such administrative, organisational, physical and technical safeguards, and ensure that such measures offer an appropriate level of security given the risks associated with Processing and the nature of the Personal Data to be protected.
   2. Huacheng shall implement and maintain in any event adequate Security Measures **(Appendix 2)**. Huacheng may update or modify the Security Measures from time to time, provided that such updates and modifications do not result in any degradation of the level of security.
   3. Huacheng shall, without undue delay and, where feasible, but no later than thirty-six (36) hours after discovery, notify Partner of any actual or reasonably suspected (i) accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed; or (ii) a breach of the security measures as referred to in this Article 6 (a “**Security Breach**”). Huacheng shall also notify Partner if a Security Breach takes place at a Subprocessor. Huacheng shall maintain procedures aimed at detecting, responding to and recovering from Security Breaches.
   4. The notification shall at least:
      1. describe the nature of the Security Breach, including, where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
      2. describe whether the Personal Data are encrypted, anonymised or otherwise made incomprehensible;
      3. communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;
      4. describe the likely consequences of the Security Breach; and
      5. describe the measures that Huacheng has taken, or proposes taking, to address the Security Breach, including, where appropriate, measures to mitigate its possible adverse effects.
   5. At Partner’s request, Huacheng shall provide all reasonable cooperation to handling the Security Breach, such as informing Supervisory Authorities and Data Subjects (if required); provided, however, that Partner will bear the cost of any such notifications.
6. Compliance
   1. At Partner’s request, Huacheng shall provide Partner with information about Huacheng’s Processing activities under the Agreement necessary to enable Partner to verify Huacheng’s compliance with the provisions of this Processor Agreement.
7. Transfer of Personal Data outside the EEA
   1. The Parties acknowledge that the Regulations contain restrictions on transferring Personal Data from the EU Member State where the Parties are situated or another EU Member State to countries or organisations outside the EEA which do not ensure an adequate level of protection, which includes making such Personal Data accessible from any such country or organisation (“**Transfer**”).
   2. Huacheng shall not Transfer Personal Data other than (a) as explicitly mentioned in the Standard Contractual Clauses attached herein or otherwise authorised under the Agreement or (b) with the specific prior written consent of Partner, unless it is required to do so by EU law or Member State law to which it is subject to and it promptly informs Partner thereof in accordance with Article 4.5.ii.
   3. Subject to Article 8.1, Huacheng shall ensure that any Transfers shall only occur on the basis of a legally recognised transfer mechanism, such as an EU Model Contract or binding corporate rules.
8. Inspection Requests
   1. If Huacheng or a Subprocessor receives a request or order from a Supervisory Authority to provide access to Personal Data (“**Order**”), Huacheng shall promptly notify Partner of that fact. When responding to or otherwise addressing the Order, Huacheng shall provide full reasonably required cooperation.
   2. If the Order prohibits Huacheng from complying with such obligations, Huacheng shall promote Partner’s reasonable interests. To that end, in any event, Huacheng shall:
      1. perform a legal review to determine the extent to which (i) Huacheng is required by law to comply with the request or Order; and (ii) Huacheng is de facto prohibited from complying with its obligations set out in this Article 9;
      2. only cooperate with the Order if this is required by applicable law and, where possible, object (at law or otherwise) to the Order enjoining it from informing Partner in this respect or from following its instructions;
      3. refrain from providing any more or any other Personal Data than is strictly necessary to comply with the Order;
      4. if Personal Data are transferred to a non-EEA country: if reasonably possible, comply with the data transfer rules of the Regulations;
      5. inform Partner promptly once this is permitted.
9. Term and Termination
   1. This Processor Agreement constitutes an integral part of the Agreement and shall automatically terminate upon termination of the Agreement.

APPENDICES attached to this Data Processor Agreement:

**Appendix 1 – Personal data and Processing activities**

Appendix 2 – Security measures

appendix 3 - Approved Subprocessors

**APPENDIX 4 – STANDARD CONTRACTUAL CLAUSES (processors)**

Appendix 1 – Personal data and Processing activities

**Categories of Data Subjects**

Partner’s employees or self-employed workers; Partner’s customers; Partner’s partners; and shareholders or directors of all the above.

**Categories of Personal Data**

Name, surname, email, email text, address, telephone number, fax, account details, transaction details, passport or ID copy (if need to apply for visa to China); IP address of equipment; S/N number

Sensitive Data

Copy of passport (if appropriate)

**Processing activities**

Storing, recording, organisation, use, transmission, disclosure, collection for the needs of:

billing and delivery of products; providing technical support and after sales services; providing repair services; providing training; assisting with procedures for visit to China

Appendix 2 – Security measures

* Encrypted passwords
* SSL encryption in databases with personal data
* Use of VPN
* Firewall and Antivirus
* Automatic lock screen function for desktops and laptops after a certain period of inactivity
* Establishment of Information Security Committee consisted by the managers of each department, presided by the Chief Director of IT Department of Hangzhou Huacheng Network Technology Co., Ltd (the parent company of Huacheng group) as consultant.
* Establishment of Information Security Department, which is responsible for monitoring the implementation of the information security policy by the employees in every department with the help of a contact person of each department.
* Implementation of different policies in accordance with the requirements of ISO27001.
* Dissemination of the policies through different means such as portal, forum, announcements in elevators, posters, e-learning platform, employees’ exams.
* Access provided only for authorized employees; employee’s number and access date appear as watermarks when employees access company’s documents; use of RMS protection based on which unauthorized users cannot open carriers of the relevant information.
* Use of subcontractors we have signed NDA agreements with.
* We have a professional PSIRT team, which is responsible for receiving, disposing and publicly revealing security vulnerability related to products and services. Meanwhile, we 4 have established perfect incident response system and formulated SLA (Service-Level-Agreement) for different customers according to their individual requirements
* Other organisation and technical measures

Appendix 3 - Approved Subprocessors

other Huacheng entities;

providers of IT service, such as salesforce, benchmark etc.

providers of products supplementary to Huacheng’s products, such as SEAGATE, TOSHIBA, Western Digital

forwarders or any delivery entities of Huacheng products, such as DHL

entities cooperating with Huacheng for assemble of products, such as FLEX

Appendix 4 – Standard Contractual Clauses (processors)

**Standard Contractual Clauses (processors)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: Partner as in the Agreement

Address:

Tel.: ; fax: ; e-mail:

Other information needed to identify the organisation:

……………………………………………………………  
(the data **exporter**)

And

Name of the data importing organisation: Huacheng as in the Agreement

Tel.: ; fax: ; e-mail:

Other information needed to identify the organisation:

…………………………………………………………………  
(the data **importer**)

each a “party”; together “the parties”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

*Clause 1*

***Definitions***

For the purposes of the Clauses:

(a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject'* and *'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[[1]](#footnote-1);

(b) '*the data exporter'* means the controller who transfers the personal data;

(c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

(d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e) '*the applicable data protection law****'*** means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

*Clause 2*

***Details of the transfer***

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

*Clause 3*

***Third-party beneficiary clause***

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

*Clause 4*

***Obligations of the data exporter***

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

*Clause 5*

***Obligations of the data importer[[2]](#footnote-2)***

The data importer agrees and warrants:

(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d) that it will promptly notify the data exporter about:

(i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,

(ii) any accidental or unauthorised access, and

(iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

(i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;

(j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

*Clause 6*

***Liability***

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

*Clause 7*

***Mediation and jurisdiction***

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

*Clause 8*

***Cooperation with supervisory authorities***

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

*Clause 9*

***Governing Law***

The Clauses shall be governed by the law of the Member State in which the data exporter is established, namely………………………………………………………………………….

*Clause 10*

***Variation of the contract***

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

*Clause 11*

***Subprocessing***

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses[[3]](#footnote-3). Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely …………………………………… …………………………………………………………………………………………………………………………………………………………………………

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

*Clause 12*

***Obligation after the termination of personal data processing services***

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**On behalf of the data exporter:**

Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature……………………………………….

(stamp of organisation)

**On behalf of the data importer:**

Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature……………………………………….

(stamp of organisation)

**Appendix 1 to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

**Data exporter**

The data exporter is (please specify briefly your activities relevant to the transfer):

**Data importer**

The data importer is (please specify briefly activities relevant to the transfer):

Hangzhou Huacheng Network Technology Co., Ltd.

**Data subjects**

The personal data transferred concern the following categories of data subjects (please specify):

employees or self-employed workers; Partner’s customers; Partner’s partners; and shareholders or directors of all the above

**Categories of data**

The personal data transferred concern the following categories of data (please specify):

Name, surname, email, email text, address, telephone number, fax, account details, transaction details, passport or ID copy (if need to apply for visa to China); IP address of equipment; S/N number

**Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data (please specify):

Copy of passport (for visit to China)

**Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify):

Storing, recording, organisation, use, transmission, disclosure, collection for the needs of:

Storing, recording, organisation, use, transmission, disclosure, collection for the needs of: billing and delivery of products; providing technical support and after sales services; providing repair services; providing training; assisting with procedures for visit to China

………………………………………………………………………………………………………………………………………………………………………………………………

DATA EXPORTER

Name: Partner………………………………

Authorised Signature ……………………

DATA IMPORTER

Name: Huacheng……………………………

Authorised Signature ……………………

**Appendix 2 to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

**Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):**

* Encrypted passwords
* SSL encryption in databases with personal data
* Use of VPN
* Firewall and Antivirus
* Automatic lock screen function for desktops and laptops after a certain period of inactivity
* Establishment of Information Security Committee consisted by the managers of each department, presided by the Chief Director of IT Hangzhou Huacheng Network Technology Co., Ltd (the parent company of Huacheng group) as consultant.
* Establishment of Information Security Department, which is responsible for monitoring the implementation of the information security policy by the employees in every department with the help of a contact person of each department.
* Implementation of different policies in accordance with the requirements of ISO27001.
* Dissemination of the policies through different means such as portal, forum, announcements in elevators, posters, e-learning platform, employees’ exams.
* Access provided only for authorized employees; employee’s number and access date appear as watermarks when employees access company’s documents; use of RMS protection based on which unauthorized users cannot open carriers of the relevant information.
* Use of subcontractors we have signed NDA agreements with.
* We have a professional PSIRT team, which is responsible for receiving, disposing and publicly revealing security vulnerability related to products and services. Meanwhile, we 4 have established perfect incident response system and formulated SLA (Service-Level-Agreement) for different customers according to their individual requirements
* Other organisation and technical measures

1. Parties may reproduce definitions and meanings contained in Directive 95/46/EC within this Clause if they considered it better for the contract to stand alone. [↑](#footnote-ref-1)
2. Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, *inter* *alia,* internationally recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements. [↑](#footnote-ref-2)
3. This requirement may be satisfied by the sub-processor co-signing the contract entered into between the data exporter and the data importer under this Decision. [↑](#footnote-ref-3)