Guidance on Cross-boundary Data Transfer: Standard Contract for Cross-boundary Flow of Personal Information Within the Guangdong – Hong Kong – Macao Greater Bay Area (Mainland, Hong Kong)

Part 1: Introduction

Given the close integration of cities within the Guangdong–Hong Kong–Macao Greater Bay Area **(GBA)**, and that data flows between Hong Kong and other cities within the GBA are becoming increasingly frequent, the Cyberspace Administration of China **(CAC)** and the Innovation, Technology and Industry Bureau of the Government of the Hong Kong Special Administrative Region **(ITIB)** signed the Memorandum of Understanding on Facilitating Cross-boundary Data Flow Within the Guangdong–Hong Kong–Macao Greater Bay Area **(MoU)** on 29 June 2023 to jointly promote cross-boundary data flows in the GBA.

The Standard Contract for Cross-boundary Flow of Personal Information Within the Guangdong–Hong Kong–Macao Greater Bay Area (Mainland, Hong Kong) **(GBA SC)** (see Appendix) is a facilitation measure under the MoU to foster the cross-boundary flows of personal information[1] within the GBA. It was formulated by the CAC, ITIB, and Office of the Privacy Commissioner for Personal Data, Hong Kong **(PCPD)**.

Through this Guidance, the PCPD aims to help organisations in Hong Kong understand the applicability of the GBA SC and the relationship between the GBA SC and other Recommended Model Contractual Clauses for Cross-border Transfer of Personal Data **(RMCs)** issued by the PCPD.

Requirements under the Personal Data (Privacy) Ordinance

Where a data user transfers personal data to places outside Hong Kong, it is required to comply with the relevant requirements under the Personal Data (Privacy) Ordinance (Cap. 486) **(PDPO)**, including the Data Protection Principles **(DPPs)** in Schedule 1 of the PDPO.

DPP1 of the PDPO stipulates the requirements relating to the purpose and manner of the collection of personal data. If a data user collects personal data directly from a data subject, the data user should take all practicable steps to ensure that the data subject is explicitly informed of the purpose for which the data is to be used and the classes of persons to whom the data may be transferred. Therefore, when a data user conducts cross-boundary data transfers to places outside Hong Kong, it should inform the data subject that his or her personal data will be transferred to data recipients outside Hong Kong and the purpose for which the data is to be used.

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1   According to the GBA SC, personal information processed by personal information processors in the Mainland cities of the GBA shall be determined in accordance with the Personal Information Protection Law of the People's Republic of China; personal information processed by personal information processors in the Hong Kong Special Administrative Region shall be determined in accordance with the definition of "personal data" under the Personal Data (Privacy) Ordinance of the Hong Kong Special Administrative Region.

DPP3 of the PDPO, which is directed against the misuse of personal data, specifies that personal data shall not, without the data subject's prescribed consent, be used for a new purpose. "New purpose" means any purpose other than the purpose for which the personal data was originally collected or a directly related purpose. "Prescribed consent" means consent that is expressly and voluntarily given and has not been withdrawn by the data subject in writing, while "use" includes both the disclosure and transfer of data. Thus, the transfer of personal data to a place outside Hong Kong would require the data subject's prescribed consent under DPP3 if it is for a new purpose, unless such transfer falls within the exemptions under Part 8 of the PDPO.

Further, if a data user engages a data processor to process personal data outside Hong Kong on its behalf, the data user must adopt contractual or other means to, among other things, (i) prevent any personal data transferred to the data processor from being kept longer than is necessary for processing of the data (under DPP2(3)) and (ii) prevent unauthorised or accidental access, processing, erasure, loss or use of the data transferred (under DPP4(2)). The data user remains liable for the act done by its agent with its authority under section 65 of the PDPO.

Part 2: The Use of the Standard Contract for Cross-boundary Flow of Personal Information Within the Guangdong–Hong Kong–Macao Greater Bay Area (Mainland, Hong Kong) or Recommended Model Contractual Clauses

To help data users enter into clear agreements for cross-border personal data transfers in compliance with the requirements of the PDPO and good data ethics, the PCPD issued the Guidance on Personal Data Protection in Cross-border Data Transfer[2] in December 2014 and the Guidance on Recommended Model Contractual Clauses for Cross-border Transfer of Personal Data[3] in May 2022 to provide data users with the PCPD's RMCs for reference.

If a data user intends to conduct cross-boundary personal data[4] transfers to Mainland cities within the GBA and the recipient meet the requirements of a personal information processor[5] and a recipient under the GBA SC respectively, that is, the data user is registered (applicable to organisations) or located (applicable to individuals) in the Hong Kong Special Administrative Region and the recipient is registered (applicable to organisations) or located (applicable to individuals) in Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen or Zhaoqing of Guangdong Province, the PCPD encourages them to adopt the GBA SC for cross-boundary transfers of personal data. For other cross-boundary/cross-border transfers of personal data, data users and recipients may continue to use the RMCs.

Adopting the GBA SC or the RMCs will serve to demonstrate that the data user has taken all reasonable precautions and exercised all due diligence to ensure that the relevant data will not be collected, held, processed or used in the recipient's jurisdiction in any manner which, if it took place in Hong Kong, would be a contravention of a requirement under the PDPO. If there is a suspected or alleged breach of the requirements of the PDPO (including the DPPs), all of the above factors will be considered.

Notably, the GBA SC applies to cross-boundary personal information transfers between the Mainland cities within the GBA (i.e. Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing of Guangdong Province) and Hong Kong, including cross-boundary personal information transfers from the Mainland cities within the GBA to Hong Kong and those from Hong Kong to the Mainland cities within the GBA.

Further, the CAC and ITIB issued the Implementation Guidelines on the Standard Contract for Cross-boundary Flow of Personal Information Within the Guangdong–Hong Kong–Macao Greater Bay Area (Mainland, Hong Kong)[6] **(Implementation Guidelines on the GBA SC)** on 13 December 2023 regarding the implementation of the GBA SC. Data users and recipients should take note of the requirements set out under the Implementation Guidelines on the GBA SC before adopting the GBA SC.

The requirements under the Implementation Guidelines on the GBA SC do not affect the PCPD's work in strengthening personal data protection and its supervisory and management roles within the scope of its functions under the PDPO, including the handling of complaints and reports relating to personal data protection, conducting investigations and dealing with activities involving unlawful handling of personal data.

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2   The Guidance on Personal Data Protection in Cross-border Data Transfer is accessible at
     https://www.pcpd.org.hk/english/resources_centre/publications/files/GN_crossborder_e.pdf

3   The Guidance on Recommended Model Contractual Clauses for Cross-border Transfer of Personal Data is accessible at
     https://www.pcpd.org.hk/english/resources_centre/publications/files/guidance_model_contractual_clauses.pdf

4   Personal information that has been classified or promulgated by the relevant authorities or regions as critical data is excluded.

5   According to the GBA SC, "personal information processor", for the Mainland, refers to an organisation or individual that autonomously determines the purposes and means of personal information processing; for the Hong Kong Special Administrative Region, it also includes a "data user", which, in relation to personal data, means a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data. A "personal information processor" is a transferor of personal information across the boundary.

6   The Implementation Guidelines on the GBA SC is accessible at
     https://www.ogcio.gov.hk/en/our_work/business/cross-boundary_data_flow/doc/gbascc00_gn_scc_en.pdf

Part 3: How to Use the GBA SC

The GBA SC contains the following eight parts:

Article 1   Definition

Article 2   Obligations and Responsibilities of Personal Information Processors (including data users)

Article 3   Obligations and Responsibilities of Recipients

Article 4   Rights of Personal Information Subjects (including data subjects)

Article 5   Remedies

Article 6   Termination of Contract

Article 7   Liabilities for Breach of Contract

Article 8   Miscellaneous

In addition, the GBA SC imposes restrictions on the cross-boundary flows of personal information (including personal data[7]), in particular: -

Obligations and Responsibilities of Personal Information Processors (including data users[8])

1. Personal information subjects (including data subjects[9]) should be informed of the name and contact information of the recipient, the purposes of processing the personal information to be transferred across boundary, the means of such processing, the categories of personal information, the retention period(s), the transfer to a third party in the same jurisdiction as the recipient (if the recipient is registered (applicable to organisations) or located (applicable to individuals) in a Mainland city within the GBA, "same jurisdiction" includes all Mainland cities within the GBA; if the recipient is registered (applicable to organisations) or located (applicable to individuals) in Hong Kong, "same jurisdiction" means Hong Kong), and the methods and procedures for exercising their rights as personal information subjects, etc. If notice is not required under the relevant laws and regulations of the jurisdiction concerned, such provisions shall prevail. (Article 2(2) of the GBA SC)

2. Prior to the cross-boundary transfer of personal information to the recipient, the consent of personal information subjects should be obtained in accordance with the laws and regulations of the jurisdiction concerned. (For the Hong Kong Special Administrative Region, if the cross-boundary transfer of personal data to the recipient is for a new purpose, prescribed consent of the data subject must be obtained.) (Article 2(3) of the GBA SC)

3. Personal information subjects should be informed that they will be a third-party beneficiary as agreed by the personal information processor and the recipient under the GBA SC; if a personal information subject does not explicitly reject this term within 30 days, he/she shall enjoy the rights of a third-party beneficiary in accordance with the GBA SC. (Article 2(4) of the GBA SC)

4. Conduct a personal information protection impact assessment on the intended transfer of personal information to the recipient. The impact assessment should focus on the following, and the personal information protection impact assessment report should be retained for at least 3 years:

   • The legality, legitimacy and necessity of the purposes and means, etc. of processing personal information by the personal information processor and recipient;

   • The impact on and security risks to the rights and interests of personal information subjects;

   • Whether the obligations undertaken by the recipient, as well as its management, technical measures and capabilities, etc. to perform the obligations, can ensure the security of personal information transferred across the boundary.

   (Article 2(8) of the GBA SC)

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7   See Footnote 1.

8   See Footnote 5.

9   According to the GBA SC, "personal information subject", for the Mainland, refers to the natural person identified by or associated with the personal information; for the Hong Kong Special Administrative Region, it also includes a "data subject", which, in relation to personal data, means the individual who is the subject of the data.

Obligations and Responsibilities of Recipients

5. The recipient shall not provide personal information received in accordance with the GBA SC to organisations or individuals outside the GBA. The recipient may only provide personal information to a third party in the same jurisdiction of the Mainland cities within the GBA or the Hong Kong Special Administrative Region (if the recipient is registered (applicable to organisations) or located (applicable to individuals) in a Mainland city within the GBA, "same jurisdiction" means all Mainland cities within the GBA; if the recipient is registered (applicable to organisations) or located (applicable to individuals) in Hong Kong, "same jurisdiction" means Hong Kong) if all of the following conditions are met:

    -   There is a business need for the transfer.

    -   The personal information subject has been informed of the third party's name and contact information, purposes of processing, means of processing, categories of personal information, retention period(s) and methods and procedures for exercising their rights as a personal information subject, etc. If notice is not required under the relevant laws and regulations of the jurisdiction of the personal information processor, such provisions shall prevail.

    -   Consent has to be obtained from the personal information subject in accordance with the laws and regulations of the jurisdiction of the personal information processor, if the processing of personal information is based on the consent of the individual.

    -   The personal information is provided to a third party in the same jurisdiction in accordance with the terms set out in "Description of cross-boundary transfer of personal information" in Appendix I of the GBA SC.

    (Articles 3(7) and (8) of the GBA SC and Article 4(2) of the Implementation Guidelines on the GBA SC)

6. If the recipient receives a request from a government department or judicial body of the jurisdiction where it is located to provide personal information received under the GBA SC, it should immediately notify the personal information processor. (Article 3(13) of the GBA SC)

Other Management Measures

7. The personal information processor and the recipient should file their GBA SC with the relevant department of the jurisdiction concerned (for the Hong Kong Special Administrative Region, the OGCIO) within 10 working days of its effective date, and should be responsible for the authenticity of the materials filed. (Article 8 of the Implementation Guidelines on the GBA SC)

Disclaimer

The information and suggestions provided in this publication are for general reference only. They do not serve as an exhaustive guide to the application of the law. The Privacy Commissioner makes no express or implied warranties of accuracy or fitness for a particular purpose or use with respect to the information and suggestions set out in this publication. The information and suggestions provided will not affect the functions and powers conferred upon the Privacy Commissioner under the Personal Data (Privacy) Ordinance.

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Appendix:

Standard Contract for

Cross-boundary Flow of Personal Information

Within the Guangdong-Hong Kong-Macao

Greater Bay Area (Mainland, Hong Kong)

Formulated by

The Cyberspace Administration of China

The Innovation, Technology and Industry Bureau of the Government of the Hong Kong Special Administrative Region

The Office of the Privacy Commissioner for Personal Data, Hong Kong

In order to foster the safe and orderly cross-boundary flow of personal information within the Guangdong-Hong Kong-Macao Greater Bay Area (Greater Bay Area), and to specify the rights, obligations and responsibilities of the personal information processor and the recipient on personal information protection, both parties hereby enter into this Contract upon mutual agreement.

Personal Information Processor: _____

Address: _____

Contact Information: _____

Contact Person: _____ Title: _____

Recipient: _____

Address: _____

Contact Information: _____

Contact Person: _____ Title: _____

 (Note: The personal information processor and the recipient should be registered (applicable to organisations) / located (applicable to individuals) in the Mainland cities within the Greater Bay Area, i.e. Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen, Zhaoqing of Guangdong Province, or the Hong Kong Special Administrative Region (HKSAR))

The personal information processor and the recipient will carry out cross-boundary personal information activities and related business activities in accordance with this Contract. Both parties [have entered into] / [have agreed to enter into] a _____ (business contract, if any) on _____ (Day)_____(Month)____ (Year).

The main text of this Contract is formulated in accordance with the "Memorandum of Understanding on Facilitating Cross-boundary Data Flow Within the Guangdong-Hong Kong-Macao Greater Bay Area" signed by the Cyberspace Administration of China and the Innovation, Technology and Industry Bureau of the Government of the HKSAR. Both parties may specify other terms and agreements, if any, in Appendix II on the premise that such terms and agreements do not conflict with the main text of this Contract. The Appendices shall constitute an integral part of this Contract.

Article 1 Definition

Unless otherwise specified in the context, in this Contract:

(1)   "Personal information processor", for the Mainland, refers to an organisation or individual that autonomously determines the purposes and means of personal information processing; for the HKSAR, it also covers a "data user" which, in relation to personal data, means a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data.

The personal information processor referred to in this contract is the party that transfers personal information across the boundary.

(2)   "Recipient" refers to an organisation or individual that receives personal information from the personal information processor across the boundary.

(3)   The personal information processor and the recipient are

individually referred to as a "party" and collectively as the "parties".

(4)   Personal information being processed by personal information processors in the Mainland cities of the Greater Bay Area is determined in accordance with the Personal Information Protection Law of the People's Republic of China; personal information being processed by personal information processors in the HKSAR is determined in accordance with the definition of "personal data" under the Personal Data (Privacy) Ordinance of the HKSAR.

(5)   "Personal information subject", for the Mainland, refers to a natural person identified by or associated with the personal information; for the HKSAR, it also covers a "data subject", which, in relation to personal data, means the individual who is the subject of the data.

(6)   "Regulatory authorities", for the Mainland, refer to the Cyberspace Administration of China and the Cyberspace Administration of Guangdong Province; for the HKSAR, refer to the Innovation, Technology and Industry Bureau and the Office of the Government Chief Information Officer of the HKSAR Government and the Office of the Privacy Commissioner for Personal Data, Hong Kong.

(7)   "Relevant laws and regulations", for the Mainland, refer to the laws and regulations including the Cybersecurity Law of the People's Republic of China, the Data Security Law of the People's Republic of China, the Personal Information Protection Law of the People's Republic of China, etc.; for the HKSAR, refer to the laws and regulations including the Personal Data (Privacy) Ordinance.

Article 2 Obligations and Responsibilities of the Personal Information Processor

The personal information processor shall fulfil the following obligations and responsibilities:

(1)   Process personal information in accordance with the requirements under the relevant laws and regulations of the jurisdiction concerned and this Contract, and the personal information transferred to the recipient shall be limited to the minimum scope required for the purpose of processing.

(2)   Inform the personal information subject of the name and contact information of the recipient, purposes of processing, means of such processing, categories of personal information, retention period(s) and the transfer of personal information to a third party in the same jurisdiction as set out in Appendix I "Description of Cross-boundary Transfer of Personal Information", as well as the methods and procedures for exercising the rights as the personal information subject, etc. If notice is not required under the relevant laws and regulations of the jurisdiction concerned, such provisions shall prevail.

(3)   Prior to the cross-boundary transfer of personal information to the recipient, the personal information processor shall, in accordance with the laws and regulations of the jurisdiction concerned, obtain the consent of the personal information subject.

(4)   Inform the personal information subject that he/she will be a third-party beneficiary as agreed by the personal information processor and the recipient under this Contract, and may enjoy the rights of a third party beneficiary in accordance with this Contract if he/she does not explicitly reject within 30 days.

(5) Make reasonable efforts to ensure that the recipient adopts the following technical and management measures (comprehensively considering the personal information security risks that may arise from the purpose of processing the personal information, the categories, scale, scope of the personal information, the quantity and frequency of the personal information transmission, the transmission of personal information and the retention period of the recipient, etc.) in order to fulfil its obligations and responsibilities under this Contract.

(Such as encryption, anonymisation, de-identification, access control and other technical and management measures)

(6) Provide the recipient with copies of the relevant laws and regulations and technical standards of the jurisdiction concerned at the request of the recipient.

(7) Respond to enquiries from the regulatory authorities of the jurisdiction concerned regarding the personal information processing activities of the recipient.

(8) Conduct a personal information protection impact assessment on the intended activities of transferring personal information to the recipient. The assessment shall focus on the following:

1. The legality, legitimacy and necessity of the purposes and means, etc. of processing personal information by the personal information processor and recipient;

2. The impact on and security risks to the rights and interests of personal information subjects;

3. Whether the obligations undertaken by the recipient, as well as its management, technical measures and capabilities, etc. to perform the obligations, can ensure the security of personal information transferred across

the boundary.

The report of the impact assessment on personal information protection shall be retained for at least three years.

(9) Provide the personal information subject with a copy of this Contract upon his/her request. If any commercial secrets or confidential business information are involved, the relevant content of the copy of this Contract may be appropriately processed, provided that it does not affect how the personal information subject understands the Contract.

(10) Bear the burden of proof for the fulfilment of the obligations and responsibilities under this Contract.

(11) Provide the regulatory authorities of the jurisdiction concerned with the information referred to in Article 3(10) of this Contract, including all the compliance audit findings in accordance with the requirements under the relevant laws and regulations of the jurisdiction concerned and this Contract.

Article 3 Obligations and Responsibilities of the Recipient

The recipient shall fulfil the following obligations and responsibilities:

(1) Process personal information in accordance with the terms set out in Appendix I "Description of Cross-boundary Transfer of Personal Information". In the event the processing of personal information goes beyond the agreed purposes of processing, the means of processing and the categories of personal information processed, the personal information processor shall be informed in advance, a supplemental agreement or a new Standard Contract shall be entered into by both parties, and the corresponding filing procedures shall be conducted. If notice is not required under the relevant laws and regulations of the jurisdiction of the personal information processor, such provisions shall prevail.

(2)　　Provide the personal information subject with a copy of this Contract upon his/her request. If any commercial secrets or confidential business information are involved, the relevant content of the copy of this Contract may be appropriately processed, provided that it does not affect how the personal information subject understands the Contract.

(3)　　Process personal information in a way that least impacts the rights and interests of individuals.

(4)　　The retention period of personal information shall be the minimum time necessary to achieve the purpose of processing. Upon expiry of the retention period, the personal information (including all backups) shall be erased. Where the processing of personal information is entrusted by the personal information processor, and the entrustment contract has not taken effect, or is invalid, revoked or terminated, or upon request by the personal information processor, the personal information shall be erased, and a written statement shall be provided to the personal information processor. If it is technically infeasible to erase the personal information, the processing of personal information other than retention and taking necessary security protection measures shall cease.

(5)　　Safeguard security of personal information processing by:

1.　　Adopting technical and management measures including but not limited to those set out in Section (5) of Article 2 of this Contract, and conducting regular inspections to ensure security of personal information.

2.　　Ensuring that the personnel authorised to process personal information fulfil their confidentiality obligations and responsibilities, and establishing access control with the least privilege.

(6)　　If the personal information processed is or may be tampered with, damaged, disclosed, lost, unlawfully used, provided or consulted or accessed

without authorisation, the following measures shall be adopted:

1.   Adopt appropriate remedial measures in a timely manner to mitigate the adverse impact on the personal information subject.

2.   Notify the personal information processor immediately and report to the regulatory authorities of the jurisdiction concerned. The notice shall contain the following items:

(1) the categories of personal information which has been or may be tampered with, damaged, disclosed, lost, unlawfully used, provided or consulted or accessed without authorisation, as well as the reasons and possible harm.

(2) remedial measures adopted.

(3) measures that the personal information subject may take to mitigate the harm.

(4) the contact information of the person or team in charge of handling the relevant incident.

3.   Where personal information subject shall be notified under the relevant laws and regulations, such notice shall contain the items set out under Item 2 of this section.

4.   Record and retain all circumstances related to the occurrence or possible occurrence of tampering, damage, disclosure, loss, unlawful use, provision or consultation, access without authorisation, including all remedial measures adopted.

(7)   Not to provide personal information received under this Contract to individuals and organisations outside the Guangdong-Hong Kong-Macao Greater Bay Area.

(8)   Where all of the following conditions are met, one may provide personal information to a third party in the same jurisdiction in the Mainland

cities within the Greater Bay Area or the HKSAR:

1.   There is a business need for the transfer.

2.   The personal information subject has been informed of the third party's name, contact information, purposes of processing, means of processing, categories of personal information, retention period(s) and methods and procedures for exercising their rights as a personal information subject, etc.

3.   The consent of the personal information subject shall be obtained in accordance with the laws and regulations of the jurisdiction of the personal information processor, if the processing of personal information is based on the consent of the individual.

4.   The personal information is provided to a third party in the same jurisdiction in accordance with the terms set out in Appendix I: "Description of cross-boundary transfer of personal information".

(9)   Obtain consent of the personal information processor in advance where the processing of personal information is entrusted by the personal information processor and further entrusted to a third party, and request the third party not to process the personal information beyond the purposes and means of processing, etc. as agreed in Appendix I "Description of cross-boundary transfer of personal information" of this Contract, and supervise the personal information processing activities of the third party.

(10)   Undertake to provide the personal information processor with necessary information required for compliance with the obligations and responsibilities under this Contract, allow the personal information processor to conduct compliance audits on the processing activities covered under this Contract and facilitate the personal information processor to conduct compliance audits.

(11) Keep objective records of personal information processing activities conducted. Such records shall be retained for at least three years.

(12) Agree to be supervised and managed by the regulatory authorities of the jurisdiction concerned under the relevant supervisory procedures in the course of the implementation of this Contract, including but not limited to answering the enquiries of the regulatory authorities of the jurisdiction concerned, cooperating with the regulatory authorities of the jurisdiction concerned in inspections, complying with the measures taken or decisions made by the regulatory authorities of the jurisdiction concerned, and providing documentary proof that the necessary actions have been taken, etc.

(13) Where government departments or judicial bodies of the jurisdiction where the recipient is located request the recipient to provide personal information received under this Contract, the personal information processor shall be notified immediately.

Article 4 Rights of the Personal Information Subject

Both parties agree that the personal information subject, as a third-party beneficiary under this Contract, is entitled to the following rights:

(1) The personal information subject shall, in accordance with the relevant laws and regulations of the jurisdiction of the personal information processor and this Contract, have the right to be informed and the right to make decisions on the processing of his/her personal information, the right to restrict or refuse the processing of his/her personal information by others, the right to request access, duplicate, rectify, supplement and erase his/her personal information, as well as the right to request for an explanation and elaboration on the rules for processing his/her personal information.

(2)	Where the personal information subject requests to exercise the above-mentioned rights on the personal information transferred under this Contract, the personal information subject can request the personal information processor to take appropriate measures to achieve the same, or make a request to the recipient directly. If the personal information processor cannot assist the personal information subject in exercising his/her rights, it shall notify and request the recipient to assist.

(3)	The recipient shall, in accordance with the notice given by the personal information processor or the request of the personal information subject, realise the rights of the personal information subject under the relevant laws and regulations of the jurisdiction of the personal information processor and this Contract within a reasonable period of time.

The recipient shall truthfully, accurately and fully inform the personal information subject of the relevant information in an apparent manner and in clear and comprehensible language.

(4)	If the recipient refuses the request made by the personal information subject, it shall inform the personal information subject of the reasons for the refusal, as well as avenues for personal information subjects to file complaints with the relevant regulatory authorities of the jurisdiction of the personal information processor or the recipient and to seek judicial remedies.

(5)	The personal information subject, as the third-party beneficiary of this Contract, has the right to claim against either or both the personal information processor and the recipient in accordance with the terms of this Contract, and demand performance of the following provisions relating to the rights of the personal information subject under this Contract:

1. Article 2, except Sections 5, 6, 7 and 11 of Article 2.

2. Article 3, except Items 2 and 4 of Section 6, Sections 9, 10, 11, 12 and 13 of Article 3.

3. Article 4.

4. Article 5.

5. Sections 2 and 3 of Article 7.

6. Section 5 of Article 8.

The above agreement does not affect the rights and interests of the personal information subject under the relevant laws and regulations of the jurisdiction of the personal information processor or the recipient.

Article 5 Remedies

(1)   The recipient shall designate and authorise a contact person to respond to enquiries or complaints on the processing of personal information, and handle the enquiries or complaints raised by a personal information subject in a timely manner.   The recipient shall inform the personal information processor of the information of its contact person, and through a separate notice or an announcement on its website, inform the personal information subject of the information of the contact person in a concise and comprehensible manner, namely:

Contact person and contact information (office telephone number or email account)

(2)   Where a party has a dispute with the personal information subject in the performance of this Contract, it shall notify the other party, and both parties shall cooperate to resolve the dispute.

(3)   If the dispute cannot be resolved amicably, and the personal information subject exercises the rights of third-party beneficiary in accordance with Article 4, the recipient accepts the following channels for the personal information subject to assert his/her rights:

1. to file a complaint with the relevant regulatory authorities.

2. to commence legal proceedings with the court specified in Section 5 of this Article.

(4)   Both parties agree that where the personal information subject exercises his/her rights as a third-party beneficiary in disputes arising from this Contract, and the personal information subject chooses the relevant laws and regulations of the jurisdiction of the personal information processor as the applicable law, such choice shall be respected.

(5)   Both parties agree that where the personal information subject exercises his/her rights as a third-party beneficiary in disputes arising from this Contract, the personal information subject may commence legal proceedings in the court in Mainland or HKSAR with jurisdiction pursuant to the Civil Procedure Law of the People's Republic of China, the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned or the laws and regulations of the HKSAR.

(6)   Both parties agree that the choice made by the personal information subject to assert his/her rights shall not undermine the rights of the personal information subject to seek remedies in accordance with other laws and regulations.

Article 6 Termination of Contract

(1)   If the recipient violates the obligations and responsibilities

stipulated in this Contract, or is subject to compulsory measures rendering the recipient unable to perform this Contract, the personal information processor may suspend the transfer of personal information to the recipient until the violation is rectified or the Contract is terminated.

(2)   The personal information processor has the right to terminate this Contract and notify the regulatory authorities of the jurisdiction of the personal information processor under any of the following circumstances:

1.   The personal information processor has suspended the transfer of personal information to the recipient for over one month in accordance with Section 1 of this Article.

2.   The recipient seriously or continuously violates the obligations and responsibilities stipulated in this Contract.

3.   According to the final decision made by the competent court or the regulatory authorities, either the recipient or the personal information processor has violated the obligations and responsibilities stipulated in this Contract.

Under the circumstances stated in Items 3 of this Section, the recipient may terminate this Contract.

(3)   The termination of this Contract does not exempt both parties from performing their obligations and responsibilities of protecting personal information in the course of processing personal information.

(4)   Upon the termination of this Contract, the recipient shall promptly return or erase the personal information (including all backups) received under this Contract, and provide a written statement to the personal information processor. If it is technically infeasible to erase the personal information, the processing of personal information other than retention and taking necessary security protection measures shall cease.

Article 7 Liability for Breach of Contract

(1)   Both parties shall be liable for the damages caused to the other party due to their breach of this Contract.

(2)   Any party who infringes the rights of the personal information subject due to its breach of this Contract shall bear civil liability to the personal information subject, and this shall not affect the administrative, criminal or other legal liabilities borne by the personal information processor under the relevant laws and regulations.

(3)   Where both parties are jointly and severally liable to the personal information subject, the personal information subject is entitled to request either party or both parties to bear the liability. Each party has recourse against the other party if it assumes more than its share of liability.

Article 8 Others

(1)   In the event of conflict between this Contract and any other legal documents executed by both parties, the terms of this Contract shall prevail.

(2)   The conclusion, validity, performance, interpretation of this Contract, and any disputes between the parties arising from this Contract shall be governed by the relevant laws and regulations of the jurisdiction of the personal information processor.

(3)   Notifications shall be sent by email, telegram, telex, fax (certified true copy sent by airmail) or registered airmail to (specific address) or other addresses in lieu of this address as otherwise notified in writing. If the notice under this Contract is sent by registered airmail, it shall be deemed to have been received within ＿＿ days from the postmark date; if it is sent by email, telegram, telex or fax, it shall be deemed to have been received within working days after it is sent.

(4)   Any disputes arising from this Contract between the parties and

either party's claim against the other party to recover compensation already paid to the personal information subject shall be resolved by the parties through negotiation. If negotiation fails, either party may adopt the __ option set out below to resolve the disputes (if arbitration is opted, please indicate the arbitration institution):

1. Arbitration. The dispute shall be submitted to the

    ☐ China International Economic and Trade Arbitration Commission

    ☐ China Maritime Arbitration Commission

    ☐ Guangzhou Arbitration Commission

    ☐ Guangdong-Hong Kong-Macao Greater Bay Area International Arbitration Centre

    ☐ Hong Kong International Arbitration Centre

    for arbitral proceedings at (the place of arbitration) according to the arbitration rules in force at that time;

2. Legal proceedings. The case shall be brought before the court in Mainland or HKSAR having jurisdiction in accordance with the laws.

 (5)   This Contract shall be construed in accordance with the applicable provisions under the relevant laws and regulations of the jurisdiction of the personal information processor, and shall not be construed in a way that conflicts with the rights, obligations and responsibilities stipulated in the applicable provisions under the relevant laws and regulations of the jurisdiction of the personal information processor.

 (6)   This Contract shall be executed in *(number of copies)*, each party holds *(number of copies)*, and each copy shall have the same legal effect.

This Contract is executed at *(venue)* _____

Personal information processor:_____

on _____ (Day) _____ (Month) _____ (Year).

Recipient _____

on _____ (Day) _____ (Month)_____ (Year).

Appendix I

Description of cross-boundary transfer of personal information

The details of cross-boundary transfer of personal information to the recipient under this Contract are agreed as follows:

(1)   The purposes of processing the personal information:

(2)   The means of processing the personal information:

(3)   The scale of personal information transferred across the boundary:

(4)   The categories of personal information transferred across the boundary (Reference is made to GB/T 35273 "Information Security Technology – Personal Information Security Specifications" or relevant standards of the jurisdiction of the personal information processor):

(5)   The recipient shall only provide personal information to a third party registered (applicable to organisations) / located (applicable to individuals) in the same jurisdiction in the Mainland cities within the Guangdong-Hong Kong-Macao Greater Bay Area or the HKSAR

(6)   Means of transfer:

(7)   Retention period after being transferred across the boundary (from ___ day ___month ___year to ___ day ___month___ year):

(8)   Place of retention after being transferred across the boundary:

(9)   Other matters (as the case may require):

Appendix II

Other terms agreed by both parties (if necessary)