



PRIVATE & CONFIDENTIAL

China Unicom

Data Processing Agreement



PART A: KEY COMMERCIAL DETAILS

China Unicom		Customer	
Company name:	China Unicom (Europe) Operations Limited ("China Unicom")	Company name:	[insert name] ("Customer")
Registered Office:		Registered Office:	
Registered No:		Registered No:	
Notices to China Unicom under this Agreement should be sent to:	Name: Post address:	Notices to the Customer under this Agreement should be sent to:	Name: Post address:
Effective Date: / /			
Details of Personal Data processed			
Party	Type of Personal Data processed		
China Unicom:	<input type="checkbox"/> CRM Data <input type="checkbox"/> User Data <input type="checkbox"/> Communications Data <input type="checkbox"/> Content Data <input type="checkbox"/> Other (please specify)		
Customer:	<input type="checkbox"/> CRM Data <input type="checkbox"/> User Data <input type="checkbox"/> Communications Data <input type="checkbox"/> Content Data <input type="checkbox"/> Other (please specify)		
Signatures			
By signing below, China Unicom and the Customer agree to this Data Processing Agreement			
Signed for and on behalf of China Unicom:	Signature	Date:	
	Print Name and Title:		
Signed for and on behalf of the Customer:	Signature	Date:	
	Print Name and Title:		

PART B: BACKGROUND

- (A) China Unicom is a provider of information and communications technology services.
- (B) The Customer receives certain services from China Unicom (the "**Services**") as more particularly described in its contract with China Unicom (the "**Services Agreement**") and the Customer and China Unicom processes certain Personal Data in the performance and receipt of the Services and to comply with their respective legal obligations.
- (C) The purpose of this Data Processing Agreement is to set out the terms and conditions that will apply to the processing of Personal Data in connection with China Unicom's performance of the Services, in light of the Parties' respective obligations under Data Protection Law.
- (D) This Data Processing Agreement comprises this signature page and the data processing terms, definitions and interpretation provisions set out below. The terms and conditions of the Services Agreement relating to limitations and exclusions of liability, force majeure and other rights of relief set out for either Party's benefit in the Services Agreement shall also apply to this Data Processing Agreement.
- (E) This Data Processing Agreement shall continue in force for such time as the Services are provided and shall take priority over any Services Agreement that the Customer has entered into with China Unicom for the provision of the Services to the extent of any conflict or inconsistency between any provision of this Agreement and the Services Agreement.

PART C: DATA PROCESSING TERMS

1. Relationship of the Parties

- 1.1 The Parties agree that they may each process various types of Personal Data in relation to the performance and receipt of the Services and the Parties' respective business operations.
- 1.2 Each Party shall comply with its obligations under this Data Processing Agreement and under Data Protection Law with respect to the types of Personal Data it processes and according to its responsibilities as a controller, processor or joint controller (as appropriate) for the relevant Personal Data.
- 1.3 The Parties agree that:
- (a) where China Unicom processes Content Data on behalf of the Customer, China Unicom shall be acting as a processor;
 - (b) where China Unicom processes User Data in the provision of the Services to the Customer, China Unicom (or its contractors) shall be acting as a processor;
 - (c) where China Unicom processes Communications Data in the provision of communications services to the Customer, China Unicom (or its contractors) shall be acting as a controller;
 - (d) each Party shall be acting as a controller with respect to the CRM Data that it processes relating to the other Party; and
 - (e) where either Party processes any other Personal Data in the performance or receipt of the Services, such Party shall be a controller, joint controller or processor as determined in accordance with Data Protection Law.

2. Controller obligations

- 2.1 Whenever a Party is acting in a capacity as a controller or joint controller in relation to Personal Data, it shall comply in all respects with Data Protection Law including:
- (a) by processing such data fairly and lawfully;
 - (b) by implementing appropriate technical and organisational measures to protect such Personal Data against Security Incidents.
- 2.2 A controller or joint controller shall provide assistance reasonably requested by the other Party (and at that other Party's cost) in order for that other Party to comply with Data Protection Law, including with respect to data subject access requests and privacy notices.

3. Processor obligations

Where a Party (the "**Processor**") is processing Personal Data on behalf of the other Party, whether as a processor or sub-processor, and not as a controller or joint controller, the following provisions shall apply:

3.1 Purpose limitation

The Processor shall process the Personal Data as necessary: (i) to perform its obligations under this Data Processing Agreement and under the Services Agreement; and (ii) to comply with its obligations under Applicable Law (the "**Permitted Purpose**"), except where otherwise required by any Applicable Law. In no event shall the Processor process the Personal Data for its own purposes or those of any third party.

3.2 Documented instructions

The Parties agree that the Key Commercial Details set out the categories of Personal Data, which may include CRM Data, User Data, Communications Data or Content Data, that are processed in connection with this Agreement. Where the Processor is acting as a processor or subprocessor, it is the other Party's responsibility to determine if any further details of the Processor's activities need to be recorded in this Agreement to comply with Data Protection Law and the Processor shall act in good faith to cooperate with any reasonable request to do so.

3.3 International transfers

The Processor shall not permit any Processing of Personal Data outside the United Kingdom and/or the European Economic Area (as it is made up from time to time) unless:

- (a) the Processor first puts in place adequate transfer mechanisms to ensure the transfer is in compliance with Data Protection Law;
- (b) the Processor or the relevant Authorised Sub-Processor is required to transfer the Personal Data to comply with Applicable Law, in which case the Processor will notify the other Party of such legal requirement prior to such transfer unless such Applicable Law prohibits such notice from being given to the other Party; or
- (c) the Processor is entitled to rely on a permitted derogation under Data Protection Law in order to transfer the Personal Data outside of the United Kingdom and/or European Economic Area (as it is made up from time to time), which may include circumstances where (among other things): (i) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request; (ii) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another person; or (iii) the transfer is necessary for the establishment, exercise or defence of legal claims.

For the purposes of clause 3.3(a), the adequate transfer mechanisms may include: (i) transferring the Personal Data to a recipient in an Adequate Territory, (ii) to a recipient that has achieved binding corporate rules authorisation in accordance with Data Protection Law, or (iii) to a recipient that has executed Model Clauses.

3.4 Confidentiality of processing

The Processor shall ensure that any person that it authorises to process the Personal Data (including the Processor's staff, agents and subcontractors) (each an "**Authorised Person**") shall be under an obligation (whether under contract or statute) to keep the Personal Data confidential.

3.5 Security

The Processor shall implement appropriate technical and organisational measures to protect the Personal Data from Data Security Incidents. Such measures shall have regard to the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.

3.6 Subprocessing

- (a) The Processor shall be authorised to engage third parties to process Personal Data on behalf of the controller, provided that it notifies the other Party of such engagement (each, an "**Authorised Sub-Processor**"). The Processor will ensure that there is in place a written contract between the Processor and the Authorised Sub-Processor that specifies the Authorised Sub-Processor's processing activities and imposes on the Authorised Sub-Processor equivalent terms as those imposed on the Processor in this clause 3. The Processor will remain responsible for the acts and omissions of Authorised Sub-Processors in respect of their processing of Personal Data as if they were its own.
- (b) China Unicom's Authorised Sub-Processors as at the date of this Agreement shall include the organisations in the China Unicom Authorised Sub-Processors List.

3.7 Cooperation

The Processor shall:

- (a) taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising data subjects' rights; and
- (b) assist the controller in implementing appropriate technical and organisational measures against Data Security Incidents, completing data protection impact assessments and notifying Data Security Incidents to the competent supervisory authority or to the data subjects' concerned, as required by Data Protection Law and taking into account the nature of the processing and the information available to the processor.

If compliance with this clause 3.7 requires: (i) a change to the Services performed by China Unicom, (ii) a change to the Services Agreement under which the relevant Services are provided, or (iii) the expenditure of material effort or cost that is not provided in the Services Agreement, then either China Unicom or the Customer may raise this in accordance with the change control procedure set out in the Services Agreement or, in the absence of any such change control procedure, by discussing the same in good faith. For the avoidance of doubt, China Unicom shall not be required to provide any assistance under this clause 3.7 that would result in any change or expenditure referred to in paragraph (i) to (iii) of this clause 3.7, except if and to the extent that a suitable change is agreed to the Services Agreement.

3.8 Data protection impact assessments

If the Processor believes or becomes aware that its processing of Personal Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall inform the other Party and provide the other Party with assistance to conduct a data protection impact assessment in accordance with clause 3.7.

3.9 Data Security Incidents

- (a) Upon becoming aware of a Data Security Incident, the Processor shall inform the other Party without undue delay and shall provide such timely information and assistance in accordance with clause 3.7 as the other Party may require in order for the other Party to fulfil its data breach reporting obligations under Data Protection Law and to mitigate the effects of the Data Security Incident.
- (b) Where China Unicom is acting as the Processor, the Customer understands and accepts that the performance by China Unicom of certain Services may carry a risk to the Customer of loss or corruption of data. China Unicom's obligations in respect of data backup or retention shall be set out in the applicable Services Agreement. The Customer understands and accepts that, save to the extent of any obligations detailed in this Data Processing Agreement or the relevant Services Agreement, the Customer shall bear full responsibility for the loss or corruption of data that may result from a Data Security Incident.

3.10 Subject access requests

The Processor shall promptly notify the other Party if it receives a request from a data subject to exercise their rights in respect of their Personal Data and shall provide such assistance to the other Party as may be required in accordance with clause 3.7.

3.11 Deletion or return of Personal Data

Upon termination or expiry of this Data Processing Agreement, the Processor shall (at the other Party's election) destroy or return to the other Party all Personal Data (including all copies of the Personal Data) in its possession or control (including any Personal Data that is processed by an Authorised Sub-Processor). This requirement shall not apply to the extent that the Processor is required by any Applicable Law to retain some or all of the Personal Data, in which event the Processor shall isolate and protect the Personal Data from any further processing except to the extent required by such Applicable Law.

3.12 Information and audit

The Processor shall make available to the other Party all information necessary to demonstrate compliance with the obligations set out in this clause 3 and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller. No more than one audit may be carried out in any calendar year, except if and when required by instruction of a competent data protection authority. The Processor shall not be required to provide any information or to allow for and contribute to audits to the extent that such actions would or may put the Processor in breach of Data Protection Law or require the Processor to disclose the confidential information of any third party. The Processor shall be entitled to recover its costs of complying with this clause 3.12.

4. Authorised disclosures

4.1 The Customer agrees that China Unicom may be required to disclose certain Personal Data:

- (a) to Government agencies or law enforcement authorities in accordance with Applicable Law;
- (b) to third party providers or licensors who are required to disclose certain Personal Data to Government agencies or law enforcement authorities in accordance with Applicable Law; and

- (c) to third party administrators or registrars who require such Personal Data for the proper operation of the Services (for example, for the provision of databases such as the WHOIS internet and domain registry database),

in each case where relevant to the Services provided by China Unicom to the Customer.

- 4.2 This Data Processing Agreement shall be without prejudice to any obligations of the Customer under any Services Agreement or Applicable Law to provide information to China Unicom concerning its use of the Services.

5. Miscellaneous

- 5.1 This Data Processing Agreement and the Services Agreement shall constitute the entire agreement between the Parties relating to the subject matter of this Data Processing Agreement and supersede all prior agreements, understandings, negotiations and discussions of the Parties.
- 5.2 The provisions of this Data Processing Agreement are severable. If any phrase, clause or provision is invalid or unenforceable in whole or in part, such invalidity or unenforceability will affect only such phrase, clause or provision, and the rest of this Data Processing Agreement will remain in full force and effect.
- 5.3 Any notice, letter or other communication contemplated by this Data Processing Agreement will be communicated in writing via letter to the addresses set out in the relevant Schedule or by email to email addresses agreed between the Parties.
- 5.4 The provisions of this Data Processing Agreement will endure to the benefit of and will be binding upon the Parties and their respective successors and assigns.
- 5.5 This Data Processing Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- 5.6 This Data Processing Agreement will be governed by and construed in accordance with the laws of England, unless a different choice of law applies under the Services Agreement, in which case the law that governs the Services Agreement shall also govern this Agreement.
- 5.7 The Parties agree that no person who is not a Party to this Data Processing Agreement shall have the right to enforce any provision of it in accordance with the Contracts (Rights of Third Parties) Act 1999 ("CRTPA"). Nothing in this clause shall affect the right of any person which exists apart from the CRTPA.

DEFINITIONS AND INTERPRETATION

1. Definitions

1.1 In this Data Processing Agreement:

"Adequate Territory"	means a territory outside of the European Economic Area that has not been designated by the European Commission as ensuring an adequate level of protection pursuant to EU Privacy Law.
"Applicable Law"	means applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body.
"China Unicom's Authorised Sub-Processors List"	means the list of sub-processors maintained by China Unicom and provided to or made available to the Customer as at the date of this Data Processing Agreement.
"Communications Data"	means any data processed for the purpose of the conveyance of (or billing of) any electronic communication or communication on an electronic communications network, including SMS, MMS, email and internet connection records, and any Location Data.
"Content Data"	means the content (comprising any speech, music, sounds, visual images or data of any description) of any electronic communication by a User, including the content of electronic messages, such as SMS, MMS and email, and web pages requested to the extent that it is not Communications Data.
"CRM Data"	means any Personal Data of staff or representatives of a Party which is processed by the other Party for the purposes of managing the Services, administering a Services Agreement or marketing products or services to that Party.
"Data Protection Law"	means all Applicable Laws relating to data protection, the processing of personal data and privacy including: (a) prior to 25 May 2018, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data; (b) on and after 25 May 2018, the GDPR; (c) any applicable national laws and regulations that implement the laws referred to in sub-paragraphs (a) and (b), including the Data Protection Act 1998; (d) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); (e) any legislation that, in respect of the United Kingdom, replaces or converts into domestic law the GDPR, the proposed Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing or personal data and privacy as a consequence of the United Kingdom leaving the European Union.

"Data Security Incident"	means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.
"Effective Date"	has the meaning given at the top of this Data Processing Agreement.
"GDPR"	means Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
"Key Commercial Details"	means the key commercial terms set out in Part A of this Agreement.
"Location Data"	means any data processed in an electronic communications network indicating the geographic position of the terminal equipment of a User, geographic location derived from a geographic identifiers associated with the access network or any other identifiers with known or presumed coordinates for the network elements to which a User is connected.
"Model Clauses"	means model clauses for the transfer of Personal Data to controllers or processors (as appropriate) established in third countries approved by the European Commission from time to time (available online at http://ec.europa.eu/justice/data-protection/document/international-transfers/transfer/index_en.htm), as such model clauses may be amended or superseded by the European Commission from time to time.
"Personal Data"	means any information relating to an identified or identifiable natural person (including the categories of data specified in the Data Processing Schedule to this Data Processing Agreement). An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity.
"User Data"	means Personal Data regarding any individuals who use the Services provided by China Unicom (including the Customer's staff, contractors and customers), which is not Communications Data, Content Data or CRM Data. Such Personal Data include user IDs, passwords, authenticators, addresses, email address and telephone numbers.

2. Interpretation

In this Data Processing Agreement:

- 2.1 references to the following terms shall be given their meanings under Data Protection Law: "controller", "joint controller", "processor", "data subject", "process" or "processing", "subject access request", and any other terms that are defined under Data Protection Law and used in this Data Processing Agreement;
- 2.2 words in the singular shall include the plural and words in the plural shall include the singular unless the context requires otherwise;
- 2.3 headings are for convenience only and shall not affect the interpretation of this Data Processing Agreement;
- 2.4 references to a Party include references to its successors in title and permitted assigns; and
- 2.5 references to "includes" or "including" shall be read as being immediately followed by the words "without limitation".