

**MEMORANDUM OF UNDERSTANDING**

**between the**

**Jersey Data Protection Authority**

**and**

**ADGM Office of Data Protection**

## Definitions

In this Memorandum of Understanding, unless the context requires otherwise:

- “ADGM”** means Abu Dhabi Global Market a financial free zone established pursuant to Federal Decree No. (15) of 2013 and Abu Dhabi Law No . 4 of 2013 Concerning Abu Dhabi Global Market, whose principal address is at Abu Dhabi Global Market Authorities Building, Abu Dhabi Global Market Square, Al Maryah Island, P O Box 111999 Abu Dhabi, United Arab Emirates
- “Applicable Data Protection Laws”** means any law, regulation or requirement applicable in Jersey and ADGM from time to time, and where the context permits includes:  
(a) any law, regulation or order in force anywhere in the world; and  
(b) any rule, direction, requirement guidance or policy made or given by or to be taken into account by an Authority;
- “Authority”** means the JDPA and/or the ODP, as applicable;
- “Jersey Authority Law” or “DPJL 2018”** means the Data Protection Authority (Jersey) Law 2018 (as may be amended from time to time);
- “ADGM Authority Law” or “ADGM DPR”** means the ADGM Data Protection Regulations 2015 until they are repealed, and thereafter the Data Protection Regulations 2021(as may be amended);

<b>“Commissioner” or “Commissioners”</b>	<b>means the Information Commissioner for Jersey (appointed pursuant to Article 5 of the Jersey Authority Law) and the ADGM Commissioner of Data Protection (appointed pursuant to Part VI, section 47 of the ADGM Authority Law 2021);</b>
<b>“Covered Privacy Contravention”</b>	<b>means conduct that would be in contravention of the Applicable Data Protection Laws of one Authority’s country and that is the same or substantially similar conduct that would be in contravention of the Applicable Data Protection Laws of the other Authority’s country;</b>
<b>“GDPR”</b>	<b>means the General Data Protection Regulation, regulation (EU) 2016/679;</b>
<b>“Island”</b>	<b>means the Bailiwick of Jersey (“Jersey”);</b>
<b>“JDPA”</b>	<b>Means the Jersey Data Protection Authority;</b>
<b>“JOIC”</b>	<b>means the Office of the Information Commissioner in Jersey;</b>
<b>“MoU”</b>	<b>means this Memorandum of Understanding;</b>
<b>“Person”</b>	<b>means a natural person, legal entity, partnership or unincorporated association;</b>
<b>“Request”</b>	<b>means a request for assistance under this MoU;</b>
<b>“Receiving Authority”</b>	<b>means the Authority to whom a request for assistance is made under this MoU; and</b>
<b>“Requesting Authority”</b>	<b>means the Authority making a request for assistance under this MoU.</b>

## **Memorandum of Understanding ("MoU")**

**between the**

**Jersey Data Protection  
Authority ("JDPA")**

**-and-**

**Office of Data Protection  
- ADGM ("ODP")**

### **Recitals**

- A. The JDPA is a statutory body established under the Jersey Authority Law to act as Jersey's independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals. The JDPA consists of the Authority, the Information Commissioner and the staff of the office. The operational name for the Information Commissioner and staff of the office is the JOIC.
- B. The JDPA is empowered to take a range of regulatory action for breaches of the DPJL 2018, the Jersey Authority Law and the FOI Law.
- C. Part 4 of the Jersey Authority Law places a broad range of statutory duties on the JDPA, including monitoring and enforcement of the DPJL 2018, promotion of good practice and adherence to the data protection obligations by those who process personal data. These duties sit alongside those relating to the enforcement regime under the FOI Law.
- D. The JDPA's regulatory and enforcement powers include:
  - a. conducting assessments of compliance with the DPJL 2018, the Jersey Authority Law and the FOI Law;
  - b. issuing information notices requiring individuals, controllers or processors to provide information in relation to an investigation;
  - c. issuing enforcement notices, warnings, reprimands, practice recommendations and other orders requiring specific actions by an individual or organisation to resolve breaches (including potential breaches) of data protection legislation and other information rights obligations;
  - d. administering fines by way of penalty notices in the circumstances set out in Article 26 of the Authority Law;
  - e. issuing decision notices detailing the outcome of an investigation under the FOI Law;
  - f. certifying contempt of court should a public authority fail to comply with an information notice, decision notice or enforcement notices under the FOI Law;
  - g. investigating potential regulatory matters including liaising with the Jersey Financial Services Commission where appropriate; and
  - h. investigating potential criminal offences and liaising with the States of Jersey Police where appropriate.
- E. The ODP is a statutory body established under the ADGM DPR to act as ADGM's independent regulator to uphold data protection rights.

- F. The ODP is responsible for promoting data protection within ADGM, maintaining the register of Data Controllers, enforcing obligations upon Data Controllers and upholding the rights of individuals. It provides a range of information, guidance and tools not only to entities operating within ADGM, but also to individuals and the public.
- G. Part VI of the ADGM DPR places a broad range of statutory duties on the ODP, including monitoring and enforcement, promoting of good practice and adherence to the data protection obligations by those who process personal data.
- H. The ODP's regulatory and enforcement powers include:
  - a. carrying out investigations in the form of data protection audits;
  - b. initiating investigations into a Controller's or Processor's compliance with ADGM DPR;
  - c. issuing directions and reprimands to data controllers and processors for non-compliance;
  - d. serving information notices which orders data controllers and/or processors to provide information required for an investigation.
  - e. administering fines in accordance with Article 55 of the ADGM DPR
  - f. imposing temporary or permanent limitations on processing;

### **Purpose and Principles**

1. The purpose of this MoU is to provide a framework for the working relationship between the Authorities. In particular, it establishes a framework for the exchange of relevant information to assist the Authorities to carry out their respective statutory functions. This MoU also seeks to establish a working framework for the development of this relationship in practice.
2. The Authorities enter into this MoU to *inter alia*:
  - a. promote cross-border cooperation in investigation and enforcement;
  - b. endeavour to assist in information and expertise exchange in order to develop effective cooperation, which may include organising joint professional educational and training programs, research, workshops, publications, study tours, qualifications and compliance activity; and
  - c. any other area of cooperation mutually agreed upon, in writing, by the Authorities from time to time
3. This MoU does not modify or supersede any Applicable Data Protection Laws and nothing herein shall be construed as being subject to any Applicable Data Protection Laws. With the exception of clause 33, this MoU does not create any enforceable rights or binding obligations on either Authority and does not affect any arrangements either of the Authorities may have under other MoUs with third parties.

## **Liaison**

4. The Commissioners shall, in the first instance, meet bi-annually at a time and date to be agreed.
5. The meetings will be an opportunity to discuss items of mutual interest and concern in relation to the interface and operation of the Applicable Data Protections Laws and the GDPR and any other matters as the Commissioners shall deem appropriate. Each Commissioner may be accompanied by members of their respective staff, as deemed appropriate.
6. The meetings will be held virtually unless agreed otherwise between both Commissioners.
7. Nothing in this MoU will prevent more frequent meetings from taking place between the Commissioners and/or their members of staff.

## **Information Sharing**

8. The Commissioners will endeavour to share information about common issues, important and significant privacy events, emerging and evolving issues, and experience of and approaches to policy, compliance and promotional activities where appropriate. In particular, the Commissioners may share information on:
  - a. public attitude research;
  - b. privacy research projects;
  - c. promotional, education and training programmes and approaches;
  - d. trends and techniques of enforcement efforts;
  - e. audits, experience relating to inspections and privacy impact assessments;
  - f. potential for parallel or joint investigations or enforcement actions, if applicable;
  - g. significant privacy policy issues;
  - h. notable law reform developments; and
  - i. regulatory experience and developments.
9. Each Commissioner may (where feasible and appropriate) share with the other, on a regular basis and at an early stage of development and subject to any confidentiality requirements, information which it feels may be of interest to the other including in respect of any developments that may have implications for the other party.
10. The Commissioners will endeavour to share experiences in relation to various techniques designed to investigate and promote compliance with privacy principles.

## **Cross-border cooperation in investigation and enforcement**

11. Within the constraints of the DPJL and ADGM DPR, the Commissioners will endeavour, where appropriate, to cooperate in relation to complaints or investigations that may affect the other or have a cross-border element.

12. As a precursor to any transfer of a complaint, or request for cooperation in an investigation, the Authorities will consult each other, where appropriate. This may involve discussions in general terms between the nominated liaison persons to identify if the other party will have jurisdiction in respect of a complaint or investigation of the type of issue.
13. The Authorities intend generally to share information about the range of matters set out at paragraph 8, but particularly on their experience in complaint handling, audits and investigations and the potential to undertake joint investigations or enforcement actions.
14. The Authorities intend to explore the usefulness of developing more detailed protocols for handling complaints that may affect the other Authority or that have a cross-border element when the first such complaint occurs.

#### **No obligation to meet Requests**

15. Either Authority may decline or limit cooperation on any subject matter contained in this MoU, on the basis that compliance or a request for cooperation may be inconsistent with domestic laws, policies or priorities or for any reason as deemed appropriate by the relevant Authority.

#### **Procedure for Assistance**

16. Each Authority will designate a primary contact for the purposes of requests for assistance and other communications under this MoU.
17. In requesting assistance in procedural, investigative and other matters involved in the enforcement of Applicable Privacy Laws across borders, Authorities will ensure that:
  - a. requests for assistance include sufficient information to enable the Receiving Authority to determine whether a request relates to a Covered Privacy Contravention. Such information may include a description of the facts underlying the request and the type of assistance sought, as well as an indication of any special precautions (if any) that should be taken in the course of fulfilling the request;
  - b. requests for assistance specify the purpose for which the information requested will be used; and
  - c. prior to requesting assistance, the Requesting Authority to ensure that the request is consistent with the scope of this MoU and does not impose an excessive burden on the Receiving Authority.
18. The Authorities intend to communicate and cooperate with each other, as appropriate, about matters that may assist ongoing investigations.

19. The Authorities will make reasonable efforts to notify each other without delay, if they become aware that information shared under this MoU is not accurate, complete, or up-to-date.
20. Subject to paragraphs 22 to 29 below, the Authorities may, as appropriate and subject to their Applicable Privacy Laws, refer complaints to each other, or provide each other notice of possible Covered Privacy Contraventions of the Applicable Privacy Laws of the other Authority.
21. The Authorities will use their best efforts to resolve any disagreements related to co-operation that may arise under this MoU through the contacts designated under this section, and, failing resolution in a timely manner, by discussion between the Commissioners (or their deputies) of the respective Authorities.

### **Investigation and enforcement**

22. The Authorities recognise that there are areas in which they have complementary functions and powers. To the extent permitted by law and having regard to their respective powers, expertise and resources, they will seek to ensure that in cases of investigations, the Authorities may notify each other of significant developments where the other is likely to have an interest. Where appropriate, the Authorities may discuss the steps they propose to take and ensure co-ordination takes place in a timely manner, where possible, allowing for a proper exchange of views.
23. The Authorities may refer a matter for action if the other body is considered more appropriate to deal with the matter. Any such referral will include the action sought and the legal powers it considers are available to the other. Acceptance of the referral is at the sole discretion of the Receiving Authority.
24. Where the Authorities agree that an investigation should be carried out by both of them, it will usually be appropriate that both investigations proceed in parallel. However, in appropriate circumstances, they will consider whether the particular facts of the matter, as they are known at that time, suggest that one party's investigation should proceed before the other.
25. Where either party carries out any subsequent investigation and proceedings alone, that party will keep the other regularly updated on material aspects of the progress of the investigation.
26. If a decision is made by either party to take action against a controller or processor, the Authorities should consider whether it is possible and would be appropriate to co-ordinate publication of applicable enforcement announcements so that both Authorities publish the outcome of their investigations simultaneously. In any event, the JDPa and ODP will endeavour to give the other appropriate notice of any press release or other public statement it intends to make relating to enforcement cases in which the other may have an interest.

## **Assessing requests**

27. Each request will be assessed on a case by case basis by the Receiving Authority to determine whether assistance can be provided under the terms of this MoU.
28. In deciding whether and to what extent to fulfil a request, the Requesting Authority may take into account:
- a. whether the request conforms with this MoU;
  - b. whether the provision of assistance would be so burdensome as to disrupt the proper performance of the Receiving Authority's functions;
  - c. whether it would be otherwise contrary to the public interest to give the assistance sought;
  - d. any other matters specified by Applicable Privacy Laws, regulations and requirements (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness);
  - e. whether complying with the request may otherwise be prejudicial to the performance by the Receiving Authority of its functions; and
  - f. the security arrangements, including cyber defences, that will apply to information disclosed under this MoU.
29. The Authorities recognise that assistance may be denied in whole or in part at the absolute discretion of the Receiving Authority.

## **Confidentiality**

30. The Authorities will take appropriate security measures to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the sender.
31. Where confidential material is shared between Authorities, it will be marked with the appropriate security classification.
32. Where one Authority has received information from the other, it will consult with the other Authority before passing the information to a third party or using the information in an enforcement proceeding or court case.
33. Where confidential material obtained from, or shared by, the originating party is wrongfully disclosed by the party holding the information, this party will bring this to the attention of the originating party immediately. This is in addition to obligations to report a personal data breach under the DPJL 2018 and ADGM DPR where personal data is contained in the information disclosed.

34. The JDPA and ODP will hold in confidence all confidential information received from the other Authority and will not directly or indirectly disclose to any person or use for its own benefit any information provided by the other Authority or otherwise obtained or developed by, as a result of or in connection with the collaboration contemplated by this MoU that is confidential or proprietary in nature to the disclosing Authority, whether written, verbal or in any other form.
35. Where one Authority has received information from the other, it may use the information for purposes set out in requests for information or otherwise agreed, but will notify the other before passing the information to a third party unless the sending party has placed additional restrictions.
36. The JDPA and ODP will liaise where relevant, to the extent permitted by law and having regard to their respective objectives, on responding to enquiries from the public, including freedom of information requests and will consult each other before releasing information originally belonging to the other.

#### **Retention and disposal of information**

37. The Authorities acknowledge that any information provided under this MoU must not be retained for longer than is reasonably required to fulfil the purpose for which it was sought or for longer than is permitted under Applicable Privacy Laws, regulations and requirements. As soon as practicable after any information supplied under this MoU is no longer required, the relevant Authority will dispose of it in a secure manner.

#### **Changes in Applicable Privacy Laws**

38. In the event of amendments, replacement or other modification of the Applicable Data Protection Laws that are within the scope of this MoU, the Authorities will use best efforts to consult promptly and, if possible, to determine whether to amend this MoU.

#### **Costs**

39. Unless otherwise agreed between the Authorities, each Authority shall bear its own costs and expenses relating to the matters described in this MoU, including without limitation the fees and expenses of their respective advisers.

#### **Commencement, Review & Termination**

40. This MoU will take effect once both Authorities have signed it.
41. This MoU will continue to have effect until terminated, for any reason, by either Authority giving 30 days' advance written notice to the other Authority.
42. In the event of the termination of this MoU, information shared under this MoU will remain subject to clauses 34.

- 43. The Authorities will keep the operation of this MoU under review and will consult where necessary with a view to improving its operation and resolving any matters.
- 44. Both Authorities will consult in matters relating to any difficulties that may arise in relation to specific request made pursuant to this MoU (e.g. where a request may be denied, or if it appears that responding to a request will involved a substantial cost).
- 45. Any changes to this MoU can only be made by mutual agreement.
- 46. The ability of the Authorities to carry out their obligations under this MoU and the binding obligations in clause 34 are subject to the laws and regulations applicable to the Authorities.

**Publication**

- 47. The Authorities agree that they will collaborate to agree upon language that each Authority may use to publicise their relationship on each Authority’s website or in other media and agree not to publicise their relationship without the other Party's prior written consent.

Other than as specifically agreed upon in writing or as otherwise permitted by this MoU, each Authority agrees not to use the name, trade name, trademark, or any other designation of the other Authority for any promotional purpose without the other Authority’s prior written consent.

**Executed by the Authorities:**

**For the JDPa**

**For the ODP**

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**Dr. J Fedorak.**

**Sami Mohammed**

**Information Commissioner.**

**Commissioner of Data Protection**

**10 May 2021**

**18 May 2021**