

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER

AND

**THE PERSONAL DATA PROTECTION COMMISSION OF THE REPUBLIC
OF SINGAPORE**

**ON COOPERATION IN
PERSONAL DATA PROTECTION**

The Office of the Australian Information Commission (hereinafter referred to as “**OAIC**”) and the Personal Data Protection Commission of the Republic of Singapore (hereinafter referred to as “**PDPC**”), hereinafter referred to individually as the “**Participant**” and collectively as the “**Participants**”,

Recognising the importance of data governance and cross border data flows to global trade in a digital economy, along with the importance of safeguarding the data protection rights of the citizens of Australia and the Republic of Singapore when they engage in the digital economy;

Recognising that in today’s globally connected digital economy, each Participant needs to be able to collaborate and cooperate on data protection matters and developments to ensure the effective protection of data protection rights of the citizens of Australia and the Republic of Singapore;

Reaffirming their intent to deepen their existing relations and to promote the safe exchanges in personal data protection to engender trust and facilitate trusted cross border data flows; and

Recognising the need to foster closer collaboration and cooperation in personal data protection,

HAVE REACHED the following understanding:

PARAGRAPH 1 PURPOSE

This Memorandum of Understanding (hereinafter “this MOU”) has been developed in connection with the Australia-Singapore Digital Economy Agreement, in the context of the Joint Declaration by the Prime Ministers of Australia and Singapore on a Comprehensive Strategic Partnership’s objective to deepen bilateral relations and cooperation, and enhance the integration of the economies of Australia and the Republic of Singapore.

This MOU expresses the understandings and intentions of the Participants in relation to cooperation in personal data protection.

PARAGRAPH 2 SCOPE OF COLLABORATION

1. The Participants will collaborate in personal data protection in accordance with this MOU. For this purpose, the Participants may jointly identify one or more areas or initiatives for cooperation. Such cooperation will be carried out in accordance with each Participant’s respective laws, regulations and competence, and may include:
 - a) The sharing of experiences and exchange of best practices on data protection, which may include short-term attachments and exchange of officers;
 - b) The sharing of and active participation in initiatives to develop the competencies of data protection officers¹;
 - c) The exchange of information (excluding personal data) involving potential or on-going investigations of organisations in their respective jurisdictions in relation to a suspected contravention of either Participant’s data protection legislation;
 - d) Provision of mutual assistance to facilitate investigations in the respective jurisdictions in relation to potential contraventions of either Participant’s data protection legislation;
 - e) Co-ordination and provision of mutual assistance in parallel or joint investigations into cross border personal data incidents in relation to potential contraventions of legislation in both jurisdictions (excluding the sharing of personal data);

¹ Data Protection Officers are privacy specialists within organisations in both jurisdictions.

- f) Active participation in and joint promotion of, the Asia-Pacific Economic Cooperation - Cross-Border Privacy Rules System (hereinafter “the CBPR System”) with the aim to improving awareness, participation in and encourage more industry adoption of the CBPR System;
- g) The exchange of information and sharing of experiences on the development and implementation of national trustmark or certification frameworks; and,
- h) Any other areas of cooperation as may be mutually decided upon by the Participants.

PARAGRAPH 3 SPECIFIC ARRANGEMENTS

Each Participant may, within the limits of its respective laws, regulations and competence, enter into separate written arrangements with the other Participant, for the execution of projects or activities within the scope of this MOU.

PARAGRAPH 4 ROLE AND FUNCTION OF OAIC

1. The Office of the Australian Information Commissioner is an independent statutory agency within the Attorney-General’s portfolio, and is established by the Australian Information Commissioner Act 2010 (hereinafter “the AIC Act”).
2. The Australian Information Commissioner (hereinafter “the Australian Commissioner”) is appointed by the Governor-General pursuant to section 14 of the AIC Act.
3. The Australian Commissioner leads the OAIC as Australia’s key independent regulator responsible for promoting and upholding privacy and information access rights.
4. The Australian Commissioner has a range of statutory functions, duties, obligations and powers and is empowered to take a range of regulatory action under or in relation to parts, or all, of the following legislation (as amended from time to time). This is not an exhaustive list:
 - a) Australian Information Commissioner Act 2010
 - b) Privacy Act 1988 (hereinafter “the Privacy Act”)

- c) Freedom of Information Act (hereinafter “the FOI Act”)
- d) Competition and Consumer Act 2010 (in relation to the Consumer Data Right)
- e) Crimes Act 1914 (in relation to spent convictions)
- f) National Health Act 1953 (in relation to Medical Benefits Schedule/Pharmaceutical Benefits Schedule data matching)
- g) Data-matching Program (Assistance and Tax) Act 1990
- h) Healthcare Identifiers Act 2010
- i) My Health Record Act 2012
- j) Telecommunications Act 1997

The Australian Commissioner’s regulatory and enforcement powers include:

- a) conducting assessments of compliance with the Privacy Act;
- b) making preliminary inquiries and investigating privacy and Freedom of Information (hereinafter “FOI”) complaints;
- c) conducting Commissioner initiated investigations into acts or practices that may breach the Privacy Act or the FOI Act;
- d) conducting reviews of FOI decisions;
- e) issuing written notices requiring production of information and documents in relation to an investigation;
- f) conducting hearings, examining witnesses and directing persons to attend compulsory conferences;
- g) making determinations in relation to privacy investigations, which can include a compensation award payable by the respondent;
- h) issuing proceedings in the Federal Court to enforce determinations;

- i) applying to the Federal Court for a civil penalty order against an agency or organisation

PARAGRAPH 5
ROLE AND FUNCTION OF THE INFO-COMMUNICATIONS MEDIA
DEVELOPMENT AUTHORITY AND PDPC

1. The Info-communications Media Development Authority is established under section 3 of the Info-communications Media Development Authority Act 2016 of the Republic of Singapore, and is designated as the PDPC under section 5(1) of the Personal Data Protection Act 2012 of the Republic of Singapore (hereinafter referred to as “PDPA”). The PDPA governs the collection, use and disclosure of personal data by organisations in a manner that recognises both the right of individuals to protect their personal data and the need of organisations to collect, use or disclose personal data for purposes that a reasonable person would consider appropriate in the circumstances.
2. The functions of the PDPC set out in section 6 of the PDPA include the following, amongst others:
 - a) to administer and enforce the PDPA;
 - b) to represent the Singapore Government internationally on matters relating to data protection; and,
 - c) to manage technical co-operation and exchange in the area of data protection with foreign data protection authorities and international or inter-governmental organisations.
3. The PDPC’s regulatory and enforcement powers include the following, amongst others:
 - a) conducting investigations and reviews in relation to organisations’ compliance with the PDPA;
 - b) requiring individuals and organisations, by notice in writing, to produce to the PDPC information and/or documents which the PDPC considers relates to any matter relevant to any investigation;
 - c) issuing advisory notices, warnings and directions to organisations to ensure their compliance with the PDPA;
 - d) administering financial penalties and composition fines for contravention of the PDPA;
 - e) registering its directions with the Courts and enforcing them as an Order of Court; and;

- f) prosecuting criminal offences before the Courts.

**PARAGRAPH 6
NO SHARING OF PERSONAL INFORMATION**

1. This MOU is not intended to cover any sharing of personal data by the Participants.
2. If the Participants wish to share personal data, for example in relation to any cross border personal data incidents involving organisations in both jurisdictions, each Participant will have to consider compliance with its own applicable data protection laws, which may require the Participants to enter into a written agreement or arrangement regarding the sharing of such personal data.

**PARAGRAPH 7
INFORMATION SHARED BY THE OAIC**

1. Section 29 of the AIC Act makes unauthorised dealing with information an offence where information is acquired in the course of performing functions or exercising powers for the purposes of an information commissioner function, a freedom of information function or a privacy function.
2. Further to the framework permitting the sharing of information by the Australian Commissioner with the PDPC, sections 10(2), 11(3) and 12(3) of the AIC Act state the Australian Commissioner has the power to do 'all things necessary and convenient to be done' for or in connection with the performance of her functions.
3. Section 29(2) of the AIC Act sets out the circumstances in which it is not an offence to share information. The OAIC may share information with the PDPC in circumstances, where:
 - a) a person records, discloses or otherwise uses the information in the course of performing the same functions or exercising the same powers as those in the course of which the information was acquired; or
 - b) the person acquires the information for any other lawful purpose; or
 - c) the person to whom the information relates consents to the recording, disclosure or use of the information.
4. Provided the Australian Commissioner acts pursuant to the powers and functions set out in the AIC Act and has due regard to the objects of the AIC Act (and any

other relevant law) the Australian Commissioner can share information as intended by this MoU.

PARAGRAPH 8
INFORMATION SHARED BY THE PDPC

1. Section 59 of the PDPA provides that the PDPC is required to preserve the secrecy of confidential information that may come into its knowledge in the performance of its functions and duties under the PDPA. Section 59 further provides that the PDPC will not communicate any confidential information to the OAIC except in so far as such communication:
 - a) is necessary for the performance of any such function or discharge of any such duty;
 - b) is lawfully required by any Court;
 - c) is necessary to comply with any provision of a co-operation agreement entered into under section 10 of the PDPA where the following conditions are satisfied:
 - i. the information or documents requested by the OAIC are in the possession of the PDPC;
 - ii. unless the Singapore Government otherwise allows, the OAIC undertakes to keep the information confidential at all times; and
 - iii. disclosure of the information is not likely to be contrary to public interest; or
 - d) is lawfully required or permitted under Singapore's domestic legislation.
2. For the purposes of sharing confidential information with OAIC, the PDPC will not furnish any information unless it requires, and obtains from, the OAIC an undertaking in writing that the OAIC will comply with the terms specified by the PDPC, including terms that correspond to the provisions of any written law concerning the disclosure of that information by the PDPC.

PARAGRAPH 9
COSTS AND EXPENSES

Without prejudice to any separate written arrangement under Paragraph 3 or unless otherwise mutually decided upon in writing by the Participants, each Participant will bear its own costs and expenses in implementing this MOU.

PARAGRAPH 10
SECURITY AND DATA BREACH REPORTING

1. The Participants will jointly determine the appropriate security measures to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the sender of that information.
2. Where confidential material is shared between the Participants it will be marked with the appropriate security classification.
3. Where one Participant has received information from the other Participant, it will seek and obtain consent from the other Participant before passing the information to a third party or using the information in any law enforcement proceedings or any court case.
4. Where confidential material obtained from, or shared by the originating Participant is wrongfully disclosed or used by the receiving Participant, the receiving Participant will bring this to the attention of the originating Participant without delay.

PARAGRAPH 11
AMENDMENTS

Either Participant may make a request in writing for a revision or amendment of any provision of this MOU. Any revision or amendment which has been mutually decided upon in writing by the Participants will come into effect on such date as may be mutually decided upon by the Participants.

PARAGRAPH 12
COMMENCEMENT, DURATION AND TERMINATION

1. This MOU will take effect on the date of signature and will remain effective for a period of twenty-four (24) months from the date of signature. The terms of this MOU may be extended for such period or periods as the Participants may mutually decide upon in writing.
2. Notwithstanding sub-paragraph 1 of this Paragraph, either Participant may terminate this MOU by giving six (6) months' written notice to the other Participant before the intended date of termination.

3. The termination of this MOU will not affect the validity, duration, implementation and completion of any project or activity undertaken or decided upon under this MOU prior to the date of termination unless the Participants otherwise mutually decide in writing.

PARAGRAPH 13

NON-BINDING EFFECT OF THIS MOU AND DISPUTE SETTLEMENT

1. Nothing in this MOU is to be construed as establishing or implying a partnership, joint venture, agency or other legal relationship between the Participants. This MOU is a statement of intent that does not give rise to legally enforceable rights or binding obligations on either Participant.
2. The Participants will settle any disputes or disagreements relating to or arising from this MOU amicably through consultations and negotiations in good faith without reference to any international court, tribunal or other forum.

PARAGRAPH 14

DESIGNATED CONTACT POINTS

1. The following positions shall be the designated contact points for the Participants for matters under this MOU:

Office of the Australian Information Commissioner	The Personal Data Protection Commission, Singapore
Position: Deputy Commissioner	Position: Director (Policy and Technology)
Current Officer: Elizabeth Hampton	Current Officer: Evelyn Goh

2. The contact points will maintain an open dialogue between each other in order to ensure that this MOU remains effective and fit for purpose. They will also seek to identify any difficulties in the working relationship, and proactively seek to minimise the same.
3. Each Participant may change its designated contact point for the purposes of this MOU upon notice in writing to the other Participant.

SIGNED in duplicate in the English language.

For the Office of the Australian
Information Commissioner:

For the Personal Data Protection
Commission of the Republic of
Singapore:



Angelene Falk

Date: 20/03/2020

Place: Australia



Tan Kiat How

Date: 11/03/2020

Place: Singapore