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JOIC
JERSEY OFFICE OF THE INFORMATION COMMISSIONER

MEMORANDUM OF UNDERSTANDING

between the

Jersey Data Protection Authority/Information Commissioner

and

The Gibraltar Regulatory Authority as the Information Commissioner for Gibraltar

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Definitions

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

"applicable law"	means any law (statutory, common or customary) applicable to Jersey or to Gibraltar respectively to a matter covered by this MoU;
"Controller"	means the natural or legal person, public authority, agency or other body that, whether alone or jointly with others, determines the purposes and means of the processing of personal data.
"DPJL 2018"	means the Data Protection (Jersey) Law 2018 (as may be amended from time to time);
"DPAJL 2018"	means the Data Protection Authority (Jersey) Law 2018 (as may be amended from time to time);
"FOI Law"	means the Freedom of Information (Jersey) Law 2011 (as may be amended from time to time);
"GDPR"	means the General Data Protection Regulation (EU) 2016/679;
"Gibraltar Commissioner"	means the Information Commissioner for Gibraltar (appointed pursuant to section 123 of the Gibraltar DPA);
"Gibraltar DPA"	means Gibraltar's Data Protection Act 2004;
"Gibraltar GDPR"	means the Gibraltar General Data Protection Regulation;
"GRA"	means the Gibraltar Regulatory Authority;
"JDPA"	means the Jersey Data Protection Authority;
"Jersey Commissioner"	means the Information Commissioner for Jersey (appointed pursuant to Article 5 of the DPAJL 2018);
"JOIC"	means the Jersey Office of the Information Commissioner, which is the operating name of the JDPA;
"MoU"	means this memorandum of understanding;
"Parties"	means the JDPA and the GRA;

"Person"	means a natural person, legal entity, partnership, or unincorporated association;
"Personal Data"	means any information relating to an identified or identifiable natural person **("Data Subject")**; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
"Receiving Party"	means either party receiving information from the other under this MoU;
"Sending Party"	means either party when sending information to the other under this MoU;

Memorandum of Understanding ("MoU")

between the

Jersey Data Protection Authority ("JDPA")/Information Commissioner	**-and-**	**The Gibraltar Regulatory Authority as the Information Commissioner for Gibraltar**

Recitals

A. The JDPA is a statutory body established under the Jersey DPAJL 2018 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 Jersey Commissioner and the staff of the office. The operational name for the Jersey 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 DPAJL 2018 and by the Jersey Commissioner in respect of the FOI Law.

C. Part 4 of the DPAJL 2018 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 (and Jersey Commissioner's) regulatory and enforcement powers include:

   a. conducting assessments of compliance with the DPJL 2018, the DPAJL 2018 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 DPAJL 2018;
   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. Article 15 of the DPAJL 2018 requires the JDPA, amongst other things, to:
   a. develop international cooperation mechanisms to facilitate the effective enforcement of legislation for the protection of personal data;
   b. provide international mutual assistance in the enforcement of legislation for the protection of personal data, including through notification, complaint referral, investigative assistance, and information exchange, subject to appropriate safeguards for the protection of personal data and the significant interests of data subjects;
   c. engage relevant stakeholders in discussion and activities aimed at furthering international co-operation in the enforcement of legislation for the protection of personal data; and
   d. promote the exchange and documentation of personal data protection legislation and practice, including on jurisdictional conflicts with third countries.

F. The GRA is established by statute as Gibraltar's Information Commissioner, functioning as an independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals.

G. The GRA is empowered to take a range of regulatory actions for breaches of, amongst other things, the following legislation (as may be amended from time to time);

   a. Gibraltar DPA;
   b. Gibraltar GDPR;
   c. Data Protection (Search and Seizure) Regulations 2006;
   d. Communications (Personal Data and Privacy) Regulations 2006 (the **Privacy Regs**);
   e. Freedom of Access to Information on the Environment Regulations 2005 (the **Gibraltar EIR**);
   f. Freedom of Information Act 2018 (the **Gibraltar FOI**).

H. Article 57 of the Gibraltar GDPR and Section 124 of the Gibraltar DPA place a broad range of statutory duties on the GRA, including monitoring and enforcement of the Gibraltar GDPR and Gibraltar DPA, promotion of good practice and adherence to the data protection obligations by those who process personal data in Gibraltar.

I. The GRA's regulatory and enforcement powers include:

   a. conducting assessments of compliance with the Gibraltar DPA and Gibraltar GDPR;

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 section 162 of the Gibraltar DPA;
e. issuing decision notices detailing the outcome of an investigation under the Gibraltar FOI and Gibraltar EIR; and
f. prosecuting criminal offences relating to the protection of Personal Data before the courts.

J. Regulation 31 of the Privacy Regs, also provides the GRA with the power to serve enforcement notices and issue monetary penalty notices as above to organisations who breach the Privacy Regs. This includes, but is not limited to, breaches in the form of unsolicited marketing which falls within the ambit of the Privacy Regs, including automated telephone calls made without consent, telephone calls which have not been screened against the Opt-Out Register[1], and unsolicited electronic messages (Regulations 22, 23 and 24 of the Privacy Regs respectively.)

K. In relation to third countries and organisations, Article 50 of the Gibraltar GDPR requires the GRA to take appropriate steps to:

a. develop international co-operation mechanisms to facilitate the effective enforcement of legislation for the protection of personal data;
b. provide international mutual assistance in the enforcement of legislation for the protection of personal data, subject to appropriate safeguards for the protection of personal data and other fundamental rights and freedoms;
c. engage relevant stakeholders in discussion and activities aimed at furthering international co-operation in the enforcement of legislation for the protection of personal data;
d. promote the exchange and documentation of legislation and practice for the protection of personal data, including legislation and practice relating to jurisdictional conflicts with third countries.

[1] This service is provided by the GRA, as the Gibraltar Information Commissioner, for fixed line and mobile subscribers who do not want to receive unsolicited direct marketing calls and/or faxes. This service is based on the provisions found in the Privacy Regs.

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Purpose and Principles

1. This MoU establishes a framework for cooperation and information sharing between the Parties. It sets out the broad principles of collaboration and the legal framework governing the sharing of relevant information and intelligence between the parties. The shared aims of this MoU are to enable closer working between the Parties, including the exchange of appropriate information, to assist them in discharging their regulatory functions.

2. This MoU is a statement of intent that does not give rise to legally binding obligations on the part of either the JDPA or the GRA. The Parties confirm that nothing in this MoU should be interpreted as imposing a requirement on the Parties to co-operate with each other. In particular, there is no obligation to co-operate in circumstances which would breach their legal responsibilities. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying in, Jersey and/or Gibraltar, respectively. This MoU does not affect any arrangements under other MoUs.

3. The Parties acknowledge that they have similar functions and duties for the protection of Personal Data in their respective jurisdictions.

4. The Parties acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations, and/or requirements. Whilst this MoU sets out the legal framework for information sharing, it is for each Party to determine for themselves that any proposed disclosure is compliant with the law applicable to them.

5. The Parties have determined that they do not exchange enough Personal Data to warrant entering into a separate data sharing agreement, but this will be kept under review.

Scope of co-operation

6. The Parties acknowledge that it is in their common interest to collaborate in accordance with this MoU in order to:

    a. ensure the Parties are able to deliver the regulatory co-operation necessary to underpin their data-based economies and protect the fundamental rights of citizens of Jersey and Gibraltar respectively, in accordance with applicable laws of the Parties' respective jurisdictions;

    b. co-operate with respect to the enforcement of their respective applicable data protection and privacy laws;

    c. keep each other informed of developments in their respective jurisdictions having a bearing on this MoU;

d. recognise parallel or joint investigations or enforcement actions by the Parties as priority issues for co-operation.

7. The Parties may jointly identify one or more areas for co-operation. Such co-operation may include;

   a. sharing of experiences and exchange of best practices on data protection policies, education, and training programmes;

   b. implementation of joint research projects;

   c. co-operation in relation to specific projects of interest, including regulation of children's privacy, regulatory sandboxes, and artificial intelligence;

   d. exchange of information involving potential or on-going investigations of organisations in the Parties' respective jurisdictions in relation to a contravention of data protection legislation, with the exception any information that is subject to an obligation of secrecy. For the GRA, section 21 of the Gibraltar Regulatory Authority Act 2000 and/or any other relevant legislation giving rise to obligations of secrecy and/or confidentiality;

   e. joint investigations into cross-border Personal Data incidents involving organisations in both jurisdictions;

   f. convening bilateral meetings annually or as mutually decided by the Parties;

   g. any other areas of co-operation as mutually decided by the Parties.

8. Information exchange will normally be responsive and will specifically relate to concerns as they arise. The Parties may also wish to proactively share emerging themes or trends.

9. There will be a two-way sharing of information, which may be volunteered by one Party to the other or provided in response to a particular request.

10. This MoU does not impose on either the JDPA or the GRA any obligation to co-operate with each other or to share any information. Where a Party chooses to exercise its discretion to co-operate or to share information, it may limit or impose conditions on that request. This includes where a) it is outside the scope of the MoU, or b) compliance with the request would breach the Parties' legal responsibilities.

Legal basis for sharing information

Information shared by the GRA to the JDPA

11. The GRA, during the course of their activities, will receive information from a range of sources, including Personal Data. The GRA will process all Personal Data in accordance with the principles of the Gibraltar DPA, the Gibraltar GDPR, and all other applicable legislation. The GRA may identify that information held, which may include Personal Data, ought to be shared with the JDPA as it would assist in performing the functions and responsibilities of the JDPA.

12. Section 140 of the Gibraltar DPA states that information obtained by the GRA in the course of, or for the purposes of, discharging their functions can only be shared with others if there is lawful authority to do so. Section 140 of the Gibraltar DPA sets out the circumstances in which the GRA will have lawful authority to share that Personal Data with the JDPA.

13. The GRA will be permitted to share information with the JDPA in circumstances where they have determined that it is reasonably necessary to do so in furtherance of one of the grounds outlined in para.7. In doing so, the GRA will identify the function of the JDPA with which that information may assist and assess whether that function could reasonably be achieved without access to the particular information in question. In particular, where the information proposed for sharing with the JDPA amounts to Personal Data, the GRA will consider whether it is necessary to provide it in an identifiable form in order for the JDPA to perform their functions, or whether disclosing it in an anonymised form would suffice. The GRA will also be permitted to share information in matters where the GRA and JDPA both have jurisdiction as a result of cross-border processing, where there has been a request for mutual assistance and where there is a joint investigation being conducted.

14. Unless otherwise stated, information exchanged between the GRA and the JDPA under the provisions of this MoU is for intelligence purposes only and should it be required formally as evidence or for use in an investigation then the appropriate formal request must be made.

15. Where information is to be disclosed for law enforcement purposes under section 44(3)(a) or (b) of the Gibraltar DPA, then the GRA will only disclose such information in accordance with an appropriate policy document as outlined by section 51 of the Gibraltar DPA.

16. Where a request for information is received by the GRA from a third-party under data protection laws, the GRA will seek the views of the JDPA where the information being sought by the third-party includes information obtained from, or shared with the GRA by, the JDPA. However, the decision to disclose or withhold information (and therefore any liability arising out of that decision) remains with the GRA as Data Controller in respect of that data.

Information shared by the JDPA to the GRA

17. The JDPA, during the course of its activities, will receive information from a range of sources, including Personal Data. It processes all Personal Data in accordance with the principles of the DPJL 2018 and all other applicable legislation. The JDPA may consider that certain of the information it holds, which may include Personal Data, ought to be shared with the GRA as it would assist them in performing their functions and responsibilities and acting in the public interest.

18. Art.8 of the DPAJL 2018 states that the JDPA can only share confidential information with others if there is lawful authority to do so. In this context, the information will be considered confidential if it has been obtained, or provided to the JDPA, in the course of, or the purposes of, discharging its functions, relates to an identifiable individual or business, and is not otherwise available to the public from other sources. This therefore includes, but is not limited to, Personal Data. Art.8(2) of the DPAJL 2018 sets out the circumstances in which the JDPA will have the lawful authority to share that confidential information with GRA.

19. The JDPA will therefore be permitted to share information with the GRA in circumstances where it has determined that it is reasonably necessary to do so in furtherance of one of those grounds outlined at paragraph 7. In doing so, the JDPA will identify the function of the GRA with which that information may assist and assess whether that function could reasonably be achieved without access to the information in question. Where the information proposed for sharing with the GRA amounts to Personal Data the JDPA will consider whether it is necessary to provide it in an identifiable form for the GRA to perform its functions, or whether disclosing it in an anonymised form would suffice. The JDPA will also be permitted to share information in matters where the JDPA and GRA both have jurisdiction as a result of cross-border processing, where there has been a request for mutual assistance and where there is a joint investigation being conducted.

20. Unless otherwise stated, information exchanged between the JDPA/Jersey Commissioner and the GRA under the provisions of this MoU is for intelligence purposes only and should it be required formally as evidence or for use in an investigation then the appropriate formal request must be made.

21. Where a request for information is received by the JDPA under data protection laws the JDPA will seek the views of the GRA where the information being sought under the request includes information obtained from, or shared by, the GRA. However, the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the JDPA as Data Controller in respect of that data.

Procedure for Assistance

22. Requests for the provision of information or other assistance will be made in writing or – in urgent cases – made orally and, unless otherwise agreed, confirmed in writing within five business days. To facilitate assistance, the Requesting Party should specify in any written request:

    a. a description of the information or other assistance requested;
    b. if information is provided by the Requesting Party for confirmation or verification, the information and the kind of confirmation or verification sought;
    c. the purpose for which the information or other assistance is sought; and
    d. to whom, if anyone, onward disclosure of information provided to the Requesting Party is likely to be necessary and the purpose such disclosure would serve.

23. The Parties will notify each other without delay, if they become aware that information shared under this MoU is not accurate, complete, and up-to-date.

24. The Parties 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 Jersey Commissioner and the CEO of the GRA.

Investigation and enforcement

25. The Parties recognise that there are areas in which they have complementary functions and powers. They will therefore endeavour to ensure that in these cases, the most appropriate body or bodies will commence and lead investigations. 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 Parties will notify each other of significant developments where the other is likely to have an interest. Where appropriate, the Parties will 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.

26. Subject to paragraph 27, the Parties 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. Where the other Party determines not to proceed, an explanation will be provided, where possible.

27. Where a matter is received by way of a Data Subject complaint, the Party receiving such complaint (the **Complaint Recipient**) will only refer it to the

other Party (the **Competent Party**) in the event that the Complaint Recipient has obtained the explicit consent of the Data Subject who had filed the complaint.

28. Subject to receiving the consent of the Data Subject, the Complaint Recipient which refers a complaint to the Competent Party should provide the Competent Party with all the documents submitted by the Data Subject filing the complaint and with all information in its possession concerning the complaint.

29. Once the Complaint Recipient refers a complaint to the Competent Party pursuant to the procedure set out herein, it shall cease to handle the complaint so transferred, inform the Data Subject who filed the complaint. and provide them with the contact details of the Competent Party.

30. In case the Data Subject who filed the complaint withdraws his or her explicit consent previously given to the Complaint Recipient to refer the complaint to the Competent Party, the Complaint Recipient should inform the Competent Party without delay.

31. After being informed about the withdrawal of consent by the Data Subject, the Competent Party should stop processing the Data Subject's Personal Data and erase such Personal Data with immediate effect, unless it has another valid legal ground to continue to process the Personal Data. If so, the Competent Party should inform the Complaint Recipient about the grounds relied on to continue processing the Personal Data.

32. Where the data is erased, the Competent Party should confirm with the Complaint Recipient to have stopped processing the Data Subject's Personal Data and to have erased the data.

33. Where the Parties 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 others.

34. Where information exchanged between the JDPA/Jersey Commissioner and the GRA indicates that the subject of the information is of interest to both Parties (for example where regulatory breaches under both sets of regulatory laws are suspected) a case conference may be called to ensure that the maximum, and appropriate, use of the information is made. In relevant cases, the JDPA/Jersey Commissioner may seek the involvement of a representative of Jersey's prosecuting authority – His Majesty's Attorney General – in the case conference.

35. 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.

36. If a decision is made by either Party to take action against a subject, the JDPA/Jersey Commissioner and the GRA should consider whether it is possible and would be appropriate to co-ordinate publication of applicable enforcement announcements so that both Parties publish the outcome of their investigations simultaneously. In any event, the JDPA/Jersey Commissioner and the GRA 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, no later than 24 hours prior to publication unless there are overriding reasons which prevent or delay such notice.

37. Relevant JDPA and GRA staff will, where appropriate, seek to maintain general awareness and understanding of each other's functions and needs and will liaise with each other to ensure that issues are appropriately identified.

Assessing requests

38. Each request for assistance will be assessed on a case-by-case basis by the Receiving Party to determine whether assistance can be provided under the terms of this MoU. In any case where the request cannot be fulfilled in part or whole, the Receiving Party may be asked to provide the reasons for not granting the assistance and consider whether there may be other assistance which can be given by itself.

39. In deciding whether and to what extent to fulfil a request, the Sending Party 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 Sending Party'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 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 Sending Party of its functions; and
    f. the security arrangements, including cyber defences, that will apply to information disclosed under this MoU.

40. The Parties recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 33 in the discretion of the Sending Party.

Contact points

41. The JDPA and GRA will designate a primary contact for the purposes of any communications under the MoU. Those individuals will maintain an open dialogue between each other in order to ensure that the MoU remains effective and fit for purpose. They will also seek to identify any difficulties in the working relationship and proactively work to minimise same.

Costs

42. If the cost of fulfilling a request is likely to be substantial, the Sending Party may, as a condition of agreeing to give assistance under this MoU, require the Receiving Party to make a contribution to costs, although the Parties will work to ensure information is disclosed to the other in the public interest.

Confidentiality and breach reporting

43. Appropriate security measures shall be agreed to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the Sending Party.

44. Material shall be considered confidential when it is identified as such under applicable law or in case the risk of its disclosure is likely to create harm of any nature and degree to any of the Parties and to other stakeholders such as data subjects. Where confidential material is shared between the Parties, the Sending Party shall mark it as "CONFIDENTIAL". The Parties shall maintain this marking to any further re-use and adaptation of the material.

45. All non-public information shared under this MoU will be marked as such by the Sending Party and marked with the appropriate security classification.

46. Where one Party has received information from the other Party, they may use the information solely for the purposes set out in the relevant request for information or as otherwise agreed in writing between the Parties.

47. Where one Party has received information from the other, it will consult (where permissible) with the other Party before passing the information to a third party or using the information in an enforcement proceeding or court case and notify the Sending Party if it anticipates a legally enforceable demand for disclosure of the information.

48. Similarly, the Receiving Party will notify the Sending Party if any legally enforceable demand for disclosure of the information is received, unless this is not practicable because of urgency or prohibited by law.

49. If requested by the Sending Party in relation to a legally enforceable demand for disclosure of the information, the Receiving Party shall assert any legal exemptions or privileges against disclosure on behalf of the Sending Party.

50. If it is not practicable to notify the Sending Party of the receipt of a legally enforceable demand for disclosure of the information, the Receiving Party shall assume the Sending Party will wish to assert any legal exemptions or privileges against disclosure.

51. Where confidential material obtained from, or shared by, the Sending Party is wrongfully disclosed by the Receiving Party holding the information, this party will bring this to the attention of the Sending Party immediately. This is in addition to obligations to report a personal data breach under the DPJL 2018 and/or the Gibraltar GDPR where Personal Data is contained in the information disclosed.

52. In accordance with relevant legislation, the JDPA and GRA will protect the confidentiality and sensitivity of all unpublished and other confidential information received from the other, and maintain effective controls designed to minimise the risk of inappropriate disclosures.

53. The JDPA and GRA 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

54. The JDPA and GRA 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 permitted under applicable data protection legislation. As soon as practicable after any information supplied under this MoU is no longer required, the relevant Party will dispose of it in a secure manner.

Consultation

55. The Parties 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.

56. Both Parties will consult in matters relating to any difficulties that may arise in relation to specific requests made pursuant to this MoU (e.g., where a request may be denied, or if it appears that responding to a request will involve a substantial cost).

57. Any issues arising in relation to this MoU will be notified to the key contact for each Party.

58. The Parties will settle any disputes or disagreement relating to or arising from this MoU amicably through consultations and negotiations in good faith without reference to any international court or other forum.

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Commencement, and Termination

59. This MoU will take effect once both Parties have signed it.

60. This MoU will continue to have effect until terminated by either Party giving 30 days' advance written notice to the other Party. It may be amended by agreement, in writing.

61. In the event of the termination of this MoU, information shared under this MoU will remain subject to paragraphs 43 to 54.

Publication

62. Either, or both, or the Parties may make a copy of this MoU or the text of it, publicly available.

For the JDPA

Paul Vane
Information Commissioner
31 October 2024

For GRA

John Paul Rodriguez
Information Commissioner
31 October 2024