

**Memorandum of Cooperation
between
The Personal Information Protection Commission of Japan
and
The Privacy Commissioner of Canada
for Cooperation in the Protection of Personal Information**

This Memorandum of Cooperation (“MOC”) establishes a framework for cooperation between:

(I) The Personal Information Protection Commission of Japan (the “PPC”)

and

(II) The Privacy Commissioner of Canada (the “Commissioner”),

hereinafter referred to individually as a “Participant” and collectively as the “Participants”.

The Participants;

Recognising the nature of the modern global economy, the increase in circulation and exchange of personal information across borders, the increasing complexity of information technologies, and the resulting need for increased cross-border enforcement cooperation;

Recognising that the OECD Recommendation on Cross-Border Co-operation in the Enforcement of Laws Protecting Privacy, the Global Privacy Enforcement Network’s Action Plan, the Global Privacy Assembly’s Resolution on exploring future options for International Enforcement Cooperation, and the APEC Privacy Framework call for the development of cross-border information-sharing mechanisms and enforcement-cooperation arrangements;

Recognising that s. 23.1 of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (“*PIPEDA*”) authorizes the Commissioner to share information with authorities from other countries that have responsibilities relating to the protection of personal information in the private sector;

Recognising that Article 172, paragraph (1) of the *Act on the Protection of Personal Information* (“*APPI*”) authorizes the PPC to share information with foreign enforcement authorities that enforce foreign laws and regulations equivalent to *APPI* pursuant to the same Article;

Acknowledging that the Participants have similar functions and duties for the protection of

personal information in their respective countries;

Reaffirming the intent of the Participants to deepen their existing relations and to promote exchanges to assist each other in the enforcement of laws protecting personal information;

Emphasizing that one of the most important and fundamental functions of the Participants is to investigate suspected violations of individuals' privacy and thereby help prevent such violations; and

Believing that bilateral cooperation between the Participants may assist them in enforcing the laws protecting personal information in their respective jurisdictions,

Will cooperate under this MOC as follows:

1. General Matters

- (a) "Applicable Law" means the laws and regulations of a Participant's country, the enforcement of which has the effect of protecting personal information. In the case of the Commissioner, "Applicable Law" means Part 1 of *PIPEDA* and any associated regulations and, in the case of the PPC, it means *APPI* and any associated regulations; as well as any amendments to the Participants' Applicable Laws, and such other laws or regulations as the Participants may from time to time jointly decide in writing to be an Applicable Law for purposes of this MOC.
- (b) "Covered Contravention" means conduct that would be in contravention of the Applicable Laws of a Participant's country and that is the same or substantially similar to conduct that would be in contravention of the Applicable Laws of the other Participant's country.
- (c) "Requesting Participant" means the Participant that requests information or assistance.
- (d) "Requested Participant" means the Participant from which information or assistance is requested.

2. Non-Binding Effect of This MOC

- (a) This MOC is a statement of intent that does not give rise to legal rights or legally binding obligations, or affect existing legal rights or obligations, under international law or under the laws of the Participants' respective countries.
- (b) For greater certainty, nothing in this MOC is intended to:
 - (i) Prevent a Participant from seeking information or assistance from or providing

information or assistance to the other Participant pursuant to other agreements, treaties, arrangements, or practices;

- (ii) Affect any right of a Participant to seek information on a lawful basis from a person located in the territory of the other Participant's country, nor is it intended to preclude any such person from voluntarily providing legally obtained information to a Participant; or
- (iii) Create obligations or expectations of cooperation that would exceed a Participant's jurisdiction.

3. Scope of Cooperation

- (a) In implementing the measures mentioned in this MOC, the Participants will do so in accordance with the Applicable Laws of the Participants' respective countries and within the limits of each Participant's jurisdiction, competence, and available resources.
- (b) Each Participant will cooperate with the other with respect to the enforcement of the Applicable Laws, including by sharing, either on its own initiative or on request, information that the Participant believes would be relevant to ongoing or potential investigations or proceedings in respect of Covered Contraventions.

4. Information Exchange

- (a) In order to facilitate information exchange, each Participant will designate a primary contact for the purposes of requests and other communications related to this MOC. The Participants will keep such contact information up to date. The Participants will exchange information through the designated primary contacts. Each Participant may change its designated primary contact for the purposes of this MOC upon notice in writing to the other Participant.
- (b) On request, the Requested Participant will, within the limits of its country's laws, regulations and its available resources, provide the following information to the Requesting Participant:
 - (i) contact information of entities that the Requesting Participant needs to communicate with for purposes of investigating Covered Contraventions;
 - (ii) past enforcement records which the Requested Participant believes are relevant to and helpful for the Requesting Participant's investigation of Covered Contraventions, provided that such enforcement records will not contain any personal information; and
 - (iii) any other information which the Requested Participant believes to be relevant to and helpful for the Requesting Participant's investigation of Covered Contraventions.
- (c) Requests under this MOC will be made in writing in English and will include sufficient

information to enable the Requested Participant to execute such requests, including sufficient information to enable the Requested Participant to determine whether a request relates to a Covered Contravention. When the urgency of the situation so requires, oral requests may also be made and accepted, but will be promptly confirmed in writing.

- (d) For greater certainty, requests under this MOC will include the following information:
- (i) the nature of the proceedings in respect of which the request is made;
 - (ii) the purpose for which any requested information will be used and the reason for the request;
 - (iii) contact information of the person(s) to whom the request relates, if known; and
 - (iv) a brief description of the matter under consideration and the legal elements involved, including the conduct or suspected conduct giving rise to the request.
- (e) Despite paragraph 4(b), the Requested Participant may decline a request or impose restrictions on the use of any information it shares with the Requesting Participant.
- (f) Personal information will not be shared, including under subparagraphs (b)(i) and (d)(iii) of this paragraph, except to the extent necessary for fulfilling the purposes of this MOC. The Participants will, wherever possible, use best efforts to obtain the consent of the person(s) concerned before doing so.
- (g) If the Requested Participant declines a request, delays providing information to the Requesting Participant in response to a request, or imposes restrictions on the use of any information it shares with the Requesting Participant, the Requested Participant will explain the reasons why.
- (h) The Participants may provide non-confidential information to each other on their own initiative. Non-confidential information includes but is not limited to methods, practices, and guidance documents that may be useful for the other Participant in fulfilling its duties and functions under the Applicable Laws.
- (i) The Participants will notify each other promptly if they become aware that information shared under this MOC is not accurate, complete, and up to date.

5. Use, Confidentiality, Disclosure, and Retention of Information

- (a) When a Requesting Participant receives information from a Requested Participant under this MOC, such information will be used solely for the purpose identified under subparagraph 4(d)(ii) of this MOC. If the Requesting Participant wishes to use such

information for other purposes, it will obtain the prior written consent of the Requested Participant that provided the information. The Requested Participant may impose restrictions on the use of the information for other purposes.

- (b) When the Requesting Participant receives information from the Requested Participant under this MOC, any use of that information will comply with any restrictions imposed by the Requested Participant under paragraphs 4(e) or 5(a) of this MOC.
- (c) Subject to the laws of the Participants' respective countries, any information provided under this MOC will not be used in criminal investigations or proceedings, except with the prior written consent of the Participant that provided the information.
- (d) The Requested Participant will apply appropriate confidentiality classification markings to any information shared under this MOC. The Requesting Participant will use best efforts to safeguard the security of confidential information shared under this MOC, including by implementing and respecting any security measures agreed to by the Participants. Security measures will be implemented by the Requesting Participant for the storage, use, disclosure, or other processing of information shared under this MOC in line with the sensitivity of the information and any classification marking that is applied by the Requested Participant.
- (e) Where confidential information shared under this MOC is wrongfully accessed or disclosed, the Participants will promptly notify the other Participant of the occurrence and take all reasonable steps to mitigate the consequences of the wrongful access or disclosure and prevent its recurrence.
- (f) Where one Participant has received information from the other Participant under this MOC, it will consult with the other Participant before disclosing the information to a third party, such as another relevant competent authority, or using the information in an enforcement proceeding or court case. For greater certainty, a Participant that has received information from the other Participant under this MOC will not disclose that information to a third party without the prior written consent of the other Participant. Each Participant will oppose, to the fullest extent possible consistent with the laws of its country, any application by a third party for disclosure of information received under this MOC, unless the other Participant provides prior written consent for such disclosure. A Participant that receives such an application will promptly notify the other Participant of the application.

- (g) Each Participant will retain information shared by the other Participant under this MOC for no longer than is required to fulfill the purpose identified under subparagraph 4(d)(ii) or such other purpose consented to by the other Participant in writing under paragraph 5(a), or than is required by the laws of the Participant's country. The Participants will use best efforts to return any information that is no longer required if the Requested Participant makes a written request that such information be returned at the time it is shared. If no request for return of the information is made, the Requesting Participant will dispose of the information using methods prescribed by the Requested Participant or, if no such methods have been prescribed, by other secure methods, as soon as practicable after the information is no longer required.

6. Further Cooperation

- (a) The Participants may jointly identify one or more areas or initiatives for cooperation. Such cooperation may include:
- (i) sharing of experiences and exchange of best practices on data protection policies and relevant technologies, including privacy-enhancing technologies;
 - (ii) implementation of joint research projects;
 - (iii) cooperation on specific projects of interest;
 - (iv) training and education in the field of data protection and privacy; and
 - (v) any other areas of cooperation as mutually decided by the Participants.
- (b) The Participants may convene bilateral meetings annually or as mutually decided between the Participants.

7. Cost. Expenses incurred by the Requested Participant in executing a request from the Requesting Participant under this MOC will be borne by the Requested Participant within their budgetary appropriations. If the execution of a request requires expenses of a substantial or extraordinary nature, the Requested Participant may consult the Requesting Participant to determine the manner in which the request will be executed and the expenses will be borne.

8. Review and Modification

- (a) The Participants will monitor the operation of this MOC and review it if either Participant so requests.
- (b) In the event of significant modification to the Applicable Laws of a Participant's country falling within the scope of this MOC, the Participants will consult promptly and, if possible, prior to the commencement of such enactments, determine whether to modify this MOC.

- (c) Each Participant will notify the other Participant's designated primary contact of any issues that arise in relation to this MOC.
- (d) Should any problem arise as to the implementation of this MOC, the Participants will use best efforts to resolve the problem amicably between the Participants through discussion between their designated primary contacts and, failing resolution in a reasonably timely manner, through discussion between the signatories to this MOC.
- (e) This MOC may be modified by mutual consent of the Participants. Any such modification will be in writing and signed by each Participant.

9. Commencement and Discontinuation

- (a) This MOC will commence upon signature by the Participants and will continue indefinitely. Either Participant may discontinue this MOC at any time, but a Participant will notify the other Participant in writing of its intention to discontinue this MOC at least three months in advance of the discontinuation date.
- (b) On discontinuation of this MOC, each Participant will maintain the confidentiality of any information provided by the other Participant under this MOC, and return or destroy, under paragraph 5(g) of this MOC, all information provided by the other Participant.
- (c) The discontinuation of this MOC will not affect the duration of any ongoing programs or activities made under this MOC.

This MOC will be signed in the English language.

**For the Personal Information
Protection Commission of Japan**

**For the Privacy Commissioner of
Canada**

Name: Dr. Satoru Tezuka

Name: Mr. Philippe Dufresne

**Title: Chairperson, Personal
Information Protection Commission
of Japan**

**Title: Privacy Commissioner of
Canada**

Date:

Date: