

Reference: ADGM/RA/ODP/LET/052

To: Okadoc Technologies Limited (000003591)

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Date: 21 MAY 2024

ABU DHABI GLOBAL MARKET
DATA PROTECTION REGULATIONS 2021
PENALTY NOTICE ISSUED UNDER SECTION 55(1)

1. PENALTY NOTICE

- 1.1 The Commissioner of Data Protection (the “**Commissioner**”) of the Abu Dhabi Global Market (“**ADGM**”), in accordance with Section 55(1) of the Data Protection Regulations 2021 (the “**DPR 2021**”), has decided to serve Okadoc Technologies Limited (“**Okadoc**”) with a Penalty Notice (“**Penalty Notice**”) for failure to comply with Sections 10(1) to (5), 22(1) and (2) and 29 of the DPR 2021.
- 1.2 This Penalty Notice explains the Commissioner’s decision.

2. LEGAL FRAMEWORK

- 2.1 The DPR 2021 governs the Processing of Personal Data by Controllers established in ADGM.
- 2.2 Section 62(1) provides the following key definitions in the DPR 2021:
- a. ‘*Establishment*’ means any authority, body corporate, branch, representative office, institution entity, or project established, registered or licensed to operate or conduct any activity within the ADGM or exempt from being registered or licensed under the laws of the ADGM;
 - b. ‘*Personal Data*’ means any information relating to a Data Subject;
 - c. ‘*Data Subject*’ means an identified or identifiable living natural person; 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;

- d. *'Controller'* means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data;
- e. *'Processing'* means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- f. *'Penalty Notice'* has the meaning given in section 55(1) of the DPR 2021;
- g. *'Data Protection Officer'* has the meaning given in section 35.

2.3 Extracts of the DPR 2021 referred to in this Penalty Notice are attached in Annex I. A complete copy of the DPR 2021 is accessible on the ADGM website.

3. OKADOC TECHNOLOGIES LIMITED

- 3.1 Okadoc, a subsidiary of Okadoc Technologies FZ-LLC, was incorporated and licensed to operate in ADGM on 13 April 2020. It was noted that Okadoc was established in the ADGM as a condition of receiving start-up funding by Abu Dhabi Investment Office.
- 3.2 Okadoc's business activity falls under 6219 Innovation, Non-Financial (b) entity, and a tech start up.
- 3.3 As of 13 April 2020, Okadoc is a Controller, as defined in Section 62(1) of the DPR 2021, in respect of the Processing of Personal Data.

4. FACTS AND MATTERS RELIED UPON

- 4.1 On 20 February 2023, the ODP received a formal complaint filed by Mrs. [REDACTED] (the **"Data Subject"**) regarding the processing of her personal data by her employer, Okadoc, particularly regarding Okadoc's compliance with access rights under the DPR 2021. The Data Subject worked as [REDACTED] for Okadoc from [REDACTED].
- 4.2 The formal complaint filed with the ODP included attachments of email exchanges between the Data Subject and her employer Okadoc.
- 4.3 E-mail exchanges provided show that the Data Subject received a notice of termination of employment on 14 November 2022 and that her employment at Okadoc was terminated on [REDACTED]. It was further confirmed by Okadoc that the termination of the Data Subject was [REDACTED] which started in 2022.
- 4.4 On 16 November 2022, the Data Subject submitted via email a 'Data Subject Access Request' (**"DSAR"**) to Okadoc, requesting from Okadoc and its subsidiaries all personal data held about her since her employment began.
- 4.5 On 16 November 2022, receipt of the DSAR was acknowledged by Okadoc's Group Data Protection Officer, Mr. [REDACTED]. Mr. [REDACTED] confirmed that the DSAR would be responded to within a maximum of two months from the receipt of the request and also asked

Data Subject to indicate the manner in which she wished to receive the requested information.

- 4.6 In the Data Subject's response on 16 November 2022, the Data Subject requested provision of personal data in electronic format.
- 4.7 It is noted that several e-mail exchanges not specifically related to the DSAR took place between 21 November 2022 and 17 January 2023.
- 4.8 Based on the statements provided by the Data Subject, it is our understanding that during the two-month period from filing the DSAR on 16 November 2022, the Data Subject did not receive her personal data from Okadoc.
- 4.9 It is further noted that the Data Subject subsequently instructed her lawyer to follow-up on the DSAR, which the latter did on 17 January 2023.
- 4.10 The Data Subject's lawyer's follow-up email was responded to on 18 January 2023 at 8:33pm by Mr. ██████████, who appears to represent Okadoc as external counsel.
- 4.11 In his reply, Mr. ██████████ stated that the DSAR was "...a broad request for all personal data held about [the Data Subject]. Accordingly, the request is complex...". Mr. ██████████ further stated that he understands that his: "...client is in the process of collating such information and will aim to provide the same in due course..." and that he would "...revert as to timing...". Mr. ██████████ also stated that he was informed that the Data Subject: "...██████████, has access to her own personnel file, which constitutes the bulk of the personal data held in respect of [the Data Subject] ..."
- 4.12 On 19 January 2023, Okadoc's counsel emailed Data Subject's counsel confirming response to the DSAR shortly.
- 4.13 On 19 January 2023, Mr. ██████████ emailed the Data Subject stating:
- "...further to your Subject Access Request, dated 16.11.2022, we note you currently have access to your email and your Google Drive. Access will continue until 13.02.2023. You already have access to your information and for any additional information, please kindly contact the Head of HR on ██████████".*
- 4.14 On 19 January 2023, four emails were exchanged between Data Subject's counsel and Okadoc's external counsel regarding employment matters. In an email from Data Subject's counsel addressing various issues, including the DSAR, the counsel stated:
- "We have been forwarded the email that has been sent to our client and find it most bizarre that your client's response seems to be that our client has access to her 'own personnel filing' and that satisfies the DSAR".*
- 4.15 On 20 January 2023, Okadoc's external counsel responded to the Data Subject's counsel on various employment related issues including the DSAR. Okadoc's external counsel stated that: "...I understand that my client's data protection officer is satisfied that our client has complied with your client's request that "Okadoc Technologies and its subsidiaries for all personal data held about me since my employment began" in accordance with its legal obligations. With regard to the time taken to respond, your client's request is broad and general. Accordingly, it can take longer to comply with a broad request than [sic] a focused

request. Accordingly, you will note that the law allows an extension of one month taking into account the complexity of the request. In addition, your client, as [REDACTED], has always had access in this period to its personnel file. Please confirm whether or not your client has accessed this personnel file during this period. ... Furthermore, you will note that there is certain information which my client is entitled to not disclose...".

4.16 Between 02 February 2023 and 17 April 2023, it appears that many e-mails were exchanged between Okadoc's external counsel and Data Subject's external counsel, and Okadoc's HR and the Data Subject regarding HR matters, however none were related to the DSAR.

5. ODP INVESTIGATION OF THE COMPLAINT

5.1 On 07 March 2023, the ODP sent an email to the data protection contact person at Okadoc, Mr. [REDACTED], informing him of the complaint and inquiry thereof, and requested information about the circumstances of the case in relation to the requirements under Section 10 of the DPR 2021. The ODP set the deadline for responding to the questions by 16 March 2023.

5.2 On 13 March 2023, the ODP received a response from the email address dpo@okadoc.com. The response confirmed some timelines and provided partial information on some of the questions listed by the ODP. However, the responses did not provide sufficient information required by the Commissioner to fulfil its statutory duties.

5.3 The ODP sent a follow-up email to the responding e-mail address dpo@okadoc.com on 02 May 2023 addressed to Mr. [REDACTED] to request more information in order to progress with the investigation. The ODP set the deadline for Okadoc's responses by 16 May 2023.

5.4 The ODP did not receive any reply from Okadoc within the deadline.

5.5 On 26 May 2023, the ODP sent a follow-up email to Okadoc, requesting a response to the questions to be submitted by 1 June 2023.

5.6 The ODP did not receive a response from Okadoc within the extended deadline.

6. INFORMATION NOTICE

6.1 On 10 July 2023 the ODP served Okadoc with an Information Notice, i.e., Order No. 2/2023 ("**Information Notice**") to provide the requested information within 30 days from the date of the Information Notice.

6.2 On 04 August 2023, Okadoc responded within the deadline. Okadoc appended two documents to its response:

- Data Protection Policy for Okadoc Technologies (published 19 January 2023); and
- Curriculum vitae of the DPO for Okadoc group of companies, Mr. [REDACTED].

6.3 In its response, Okadoc confirmed the following timelines and information:

- I. Okadoc sent a notice of termination of employment to the Data Subject on 14 November 2022, whereas the actual termination of employment took effect on 15 February 2023.

- II. The Data Subject submitted a DSAR with the Controller on 16 November 2022.
- III. The Controller acknowledged receipt on 16 November 2022 and requested confirmation from the Data Subject on the desired format. The Data Subject confirmed electronic format.
- IV. Okadoc informed the Data Subject on 23 November 2022 that: *"... We are processing your data request and will revert in due course..."*
- V. On 21 December 2022, Data Subject's counsel sent an email to Okadoc where they mention the DSAR: *"...as will be evident in the Data Subject Access Request response from Okadoc with Mr. Benturquia's communications to our Client..."*.
- VI. On 18 January 2023 Okadoc emails Data Subject's counsel stating that:

"...With regard to the Data Subject request, I note that it is a broad request for all personal data held about your client. Accordingly, the request is complex. I understand that my client is in the process of collating such information and will aim to provide the same in due course. I will revert as to timing. I am also informed that your client, ██████████, has access to her own personnel file which I understand constitutes the bulk of the personal data held in respect of your client..."
- VII. Okadoc emails the Data Subject on 19 January 2023, stating that the Data Subject *"...currently has access to (her) email and (her) Google Drive. Access will continue until 13 February 2023..."*. Okadoc further stated: *"...You already have access to your information and for any additional information, please kindly contact the Head of HR on ██████████"*.
- VIII. Furthermore, on 19 January 2023, in response to Okadoc, the Data Subject's counsel states: *"We have been forwarded the email that has been sent to our client and find it most bizarre that your client's response seems to be that our client has access to her 'own personnel filing' and that satisfies the DSAR..."*
- IX. On 20 January 2023, Okadoc's email to Data Subject's counsel states: *"I understand that my client's data protection officer is satisfied that our client has complied with your client's request that "Okadoc Technologies and its subsidiaries for all personal data held about me since my employment began" in accordance with its legal obligations. With regard to the time taken to respond, your client's request is broad and general. Accordingly, it can take longer to comply with a broad request than a focused request. Accordingly, you will note that the law allows an extension of one month taking into account the complexity of the request. In addition, your client, as ██████████, has always had access in this period to its personnel file. Please confirm whether or not your client has accessed this personnel file during this period. ...Furthermore, you will note that there is certain information which my client is entitled to not disclose..."*.
- X. Between 02 February 2023 and 17 April 2023, there were 34 e-mail exchanges between Okadoc's external counsel and Data Subject's counsel, as well as between Okadoc's HR and the Data Subject regarding HR matters (not referring to the DSAR).
- XI. Between 08 May 2023 and 26 June 2023, a large number of e-mail exchanges and correspondence between Okadoc's external counsel, Okadoc and the Data Subject regarding an employment claim in the ADGM Court and a settlement of the same.

- XII. On 08 May 2023, Okadoc's external counsel e-mails the Data Subject's counsel regarding the employment claim in the ADGM Court.
- XIII. On 01 August 2023, e-mail exchanges and WhatsApp message exchanges were made between Okadoc's external counsel and the Data Subject regarding the status of the complaint made by the Data Subject to the ADGM ODP.
- XIV. On 02 August 2023 and 03 August 2023, WhatsApp communication between Okadoc external counsel and Data Subject's spouse regarding the status of complaint made by the Data Subject to ADGM ODP.

7. SETTLEMENT AGREEMENT AND WITHDRAWAL OF THE COMPLAINT

- 7.1 With an e-mail dated 01 August 2023, the ODP was notified by Mr. [REDACTED], that the follow-up emails sent by the ODP on 02 May 2023 and 26 May 2023, were not received by his client. Mr. [REDACTED] further requested ODP to provide a copy of these emails.
- 7.2 Furthermore, Mr. [REDACTED] informed ODP that Okadoc and the Data Subject have reached a settlement agreement regarding the employment claim filed in the ADGM Court. Mr. [REDACTED] requested an extension of the deadline for responding to the Information Notice.
- 7.3 On 02 August 2023, the ODP acknowledged receipt of the e-mail and highlighted that the scope of the investigation is an alleged contravention of the DPR 2021 by Okadoc. The statutory responsibilities of the ODP do not extend to employment-related matters, and the ODP is not concerned with the outcome of the employment dispute.
- 7.4 The ODP provided a copy of the follow-up e-mails sent to Okadoc on 02 May 2023 and 26 May 2023. In addition, ODP rejected the request of Okadoc's external counsel for extension of the aforementioned deadline. This rejection was made in view of the fact that Okadoc failed to respond to ODP's initial deadlines of 16 May 2023 to 1 June 2023.
- 7.5 On 04 August 2023, the ODP was notified by the Data Subject of her withdrawal of the complaint to the ODP dated 20 February 2023. She stated that she had: "*...reached a settlement agreement with Okadoc Technologies Limited, which has been recorded in a confidential agreement between the parties, under the guidance and direction of ADGM. She further added that she: "...confirms that she has no complaint in relation to the ... data subject access request..."*"
- 7.6 On 04 August 2023, the ODP took note of the email from Data Subject, and further clarified to her, after having informed Okadoc and Mr. [REDACTED], that the ODP is investigating Okadoc's compliance with the DPR 2021. The ODP further confirmed that whilst the complaints triggered the initial investigation, its findings will focus on Okadoc's compliance with the obligations of the DPR 2021.

8. CONTRAVENTION

- 8.1 The Commissioner finds that Okadoc did not comply with the following provisions of the DPR 2021:

8.2 RIGHT OF ACCESS BY THE DATA SUBJECT

8.2.1 Under Section 13(3) of the DPR 2021, a Data Subject has the right to obtain from the Controller: *“... a copy of the Personal Data undergoing Processing. For any further copies requested by the Data Subject, the Controller may charge a reasonable fee based on administrative costs. Where the Data Subject makes the request by electronic means, and unless otherwise requested by the Data Subject, the information must be provided in a commonly used electronic form.”*

8.2.2 Section 10(1) to (5) provides:

- (1) *The Controller must take appropriate measures to provide any information referred to in sections 11 and 12 and any communication under sections 13 to 20 and section 32 relating to Processing to the Data Subject:*
 - (a) *in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a Child; and*
 - (b) *in writing, electronically or, if requested by the Data Subject, orally as long as that Data Subject has provided proof of their identity.*
- (2) *The Controller must facilitate the exercise of Data Subject rights under sections 13 to 20. In the cases referred to in section 8(3), the Controller must not refuse to act on the request of the Data Subject to exercise their rights under sections 13 to 20, unless the Controller demonstrates that it is not in a position to identify the Data Subject.*
- (3) *Subject to section 10(4), the Controller must provide information on action taken on a request under sections 13 to 20 to the Data Subject without undue delay and in any event within two months of receipt of the request. Where the Data Subject makes the request by means of an electronic form, the information may be provided by electronic means where possible, unless otherwise requested by the Data Subject.*
- (4) *The period referred to in section 10(3) may be extended by one month, where necessary, taking into account the complexity and number of the requests including any related requests received by the Controller whether or not from the same Data Subject. The Controller must inform the Data Subject of any such extension within two months of receipt of the request, together with the reasons for the delay.*
- (5) *If the Controller does not take action on the request of the Data Subject, the Controller must inform the Data Subject without delay and at the latest within two months of receipt of the request of:*
 - (a) *the reasons for not taking action; and*
 - (b) *their right to lodge a complaint with the Commissioner of Data Protection and the possibility of seeking a judicial remedy.*

8.2.3 The Data Subject requested access to all the personal data held about her by Okadoc. The Controller confirmed that they would comply with the DSAR, and that they were processing the information. The Controller asked the Data Subject regarding her preferred format of the requested information. During the two-month period from the filing of the DSAR on 16 November 2022 until 16 January 2023, the Controller confirmed on two occasions, on 16 November 2022 and 23 November 2022, that they would respond to the DSAR within two months and that they were processing the DSAR and would revert in due course. During the

two-month period from the filing of the DSAR, the Controller did not indicate any difficulty with respect to processing the requested information, neither regarding its general nature, its breadth, nor its complexity. Moreover, the Controller did not mention that the Data Subject was already able to or capable of accessing the full personal data held about her by Okadoc.

8.2.4 After the expiration of the statutory deadline for responding to a DSAR, the Controller stated in their communication of 18 January 2023 that “...*With regard to the Data Subject request, I note that it is a broad request for all personal data held about your client. Accordingly, the request is complex...*”. Furthermore, the Controller stated in their communication of 20 January 2023 that the “...*request is broad and general...*” and that “...*Accordingly, you will note that the law allows an extension of one month taking into account the complexity of the request...*” The DPR 2021 provides in Section 10(4) as follows:

(4) The period referred to in section 10(3) may be extended by one month, where necessary, taking into account the complexity and number of the requests including any related requests received by the Controller whether or not from the same Data Subject. The Controller must inform the Data Subject of any such extension within two months of receipt of the request, together with the reasons for the delay.

Pursuant to the above provision, the Controller should have informed the Data Subject of any extension of the deadline within two months of receipt of the request. The Controller failed to do so, thus contravening the DPR 2021.

8.2.5 It was confirmed that the DSAR was not responded to by 17 January 2023, after the two-month deadline had passed and only after the Data Subject’s counsel had followed up with Okadoc. The timing of the subsequent communications between Okadoc and the Data Subject and/or her counsel following 16 January 2023 are still in breach of the provisions of Section 10 of the DPR 2021.

8.2.6 Furthermore, it is our understanding that the DSAR was not responded to by 20 February 2023 when the Data Subject filed a formal complaint with the ODP.

8.2.7 Okadoc maintained in their representations that “...*the DSAR was made solely and directly in connection to the Data Subject’s employment claim. This view is based predominantly on the proximity between the Data Subject’s notice of termination and the Data Subject’s submission of the DSAR and the broad scope of the DSAR (which covered all Personal Data held about the Data Subject since her employment began...*” which according to Okadoc “...*in part, informed the approach taken by Okadoc in response to the DSAR.*”

8.2.8 The ODP is not satisfied with this assertion. The DPR 2021 does not impose a condition on Data Subjects to state a reason in order to exercise their right to obtain a copy of their Personal Data. As such, the intention does not absolve Okadoc of its obligations under the DPR 2021.

8.2.9 Furthermore, Okadoc argued in their representations that “...*the approach adopted by Okadoc in relation to the DSAR was also influenced by the fact that the Data Subject had full, downloadable, electronic access to their Personal Data for the entirety of their termination notice period (i.e. for 12 weeks after the DSAR was submitted) ...*” As already dealt with in detail above, during the two-month period from the DSAR filing, the Controller did not mention that the Data Subject was already able to or capable of accessing the full personal data held about her by Okadoc. It is also noted that during the complaint, the Data Subject’s lawyer disagreed with Okadoc’s view that Okadoc had complied with the DSAR by referring the Data Subject to her email and Google Drive.

- 8.2.10 Subsection 10(2) of the DPR 2021 requires Controllers to facilitate the exercise of Data Subject rights. Had Okadoc fulfilled its obligations as Controller to ensure the Data Subject was given access to the information requested in the DSAR, it would not have needed to suggest that the Data Subject reach out to Okadoc's Human Resources department for any additional information, as highlighted in the e-mail dated 19 January 2023: "...*Thank you for your DSAR and further to your Subject Access Request, dated 16.11.2022, we note you currently have access to your email and your Googledrive. Access will continue until 13.02.2023. You already have access to your information and **for any additional information**, please kindly contact the Head of HR: [REDACTED] "...*" (emphasis added).
- 8.2.11 Moreover, Okadoc maintained in their representations that: "...*Okadoc's response to the DSAR was largely in line with timelines set under DPR 2021... and the response, based on the Data Subject having full, downloadable, access to her Personal Data was appropriate, and broadly compliant with the DPR 2021...*".
- 8.2.12 The ODP disagrees with Okadoc's assertion. The ODP recalls to the Controller that acknowledging receipt of a DSAR is not the same as providing the requested information of a DSAR pursuant to the provisions of the DPR 2021. The fact that Okadoc failed to respond to the DSAR in the time required was acknowledged in the representations received, which read as follows:
- "Paragraph 8.2.6 of the Notice states that the DSAR was not responded to until after the 2-month deadline set out in the DPR 2021 had passed. Okadoc notes that its substantive response was provided on 19 January 2023, just three days after the end of this two-month period. Okadoc respectfully submits that this is a minor contravention of the relevant deadline, and that no prejudice or harm was caused to the Data Subject as a result"*.
- 8.2.13 Furthermore, even Okadoc's claim that: "...*its substantive response was provided on 19 January 2023, just three days after the end of this two-month period.*" is undermined by the Data Subject counsel's response on 19 January 2023, which suggests that Okadoc's e-mail did not provide a suitable response to the DSAR: "...*We have been forwarded the email that has been sent to our client and find it most bizarre that your clients response seems to be that our client has access to her 'own personnel filing' and that satisfies the DSAR...*".
- 8.2.14 Okadoc further suggested in its communication of 20 January 2023 that it could rely on a statutory extension of one month taking into account the complexity of the request.¹ The ODP reminds the Controller that according to Section 10(4) of the DPR 2021, the statutory extension must be communicated to the Data Subject within two months of receipt of the DSAR, together with the reasons for the delay. In this instance, a response from Okadoc was due by 16 January 2023. Accordingly, Okadoc failed to communicate the extension and the reasons for the delay within the statutory timeline.

¹ Okadoc's email to the Data Subject's counsel dated 20 January 2023: "[...] understand that my client's data protection officer is satisfied that our client has complied with your client's request that "Okadoc Technologies and its subsidiaries for all personal data held about me since my employment began" in accordance with its legal obligations. With regard to the time taken to respond, your client's request is broad and general. Accordingly, it can take longer to comply with a broad request than a focused request. Accordingly, you will note that the law allows an extension of one month taking into account the complexity of the request. In addition, your client, as [REDACTED], has always had access in this period to its personnel file. Please confirm whether or not your client has accessed this personnel file during this period. ...Furthermore, you will note that there is certain information which my client is entitled to not disclose..."]

8.3 LACK OF COOPERATION

- 8.3.1 Section 29 of the DPR 2021 states that: *“The Controller and the Processor must cooperate, on request, with the Commissioner of Data Protection in the performance of their duties and functions.”*
- 8.3.2 During the course of the investigation, Okadoc did not provide sufficient information when requested to do so by the ODP. Okadoc was given opportunities to cooperate and provide sufficient information from initial contact on 07 March 2023.
- 8.3.3 The Commissioner had to serve Okadoc with an Information Notice to compel the provision of information.
- 8.3.4 The justification from Okadoc for the lack of response was that *“the email address of dpo@okadoc.com was an email established for Mr. [REDACTED] in his capacity as the Group DPO whose last day of service was [REDACTED]. After this date, and during the period the aforementioned request were sent, this email address was monitored by the IT team and your emails should have then been forwarded to Mr. [REDACTED] to be addressed by him. However, unfortunately this did not occur.”* The ODP finds such justification insufficient. It falls on the Controller to ensure efficient communication within its organisation.
- 8.3.5 Okadoc has maintained in their representations that: *“...it cooperated substantively with the ODP; that it provided adequate information on request from the ODP...”*. The ODP disagrees with this claim and reminds Okadoc that while they responded with very limited information to ODP’s questions via e-mail dated 07 March 2023, the ODP’s follow up questions sent via email dated 02 May 2023, as well as the e-mail reminder sent on 26 May 2023, were not responded to. As outlined in these communications, the follow-up questions were required in order to progress with the investigation of the case.
- 8.3.6 Okadoc has further argued in their representations that: *“...any delay in Okadoc responding to the ODP in relation to the DSAR was directly related to an unfortunate miscommunication between the ODP and Okadoc in relation to the Okadoc contact email address following the departure of Okadoc’s Data Protection Officer...”*.
- 8.3.7 ODP also notes in Okadoc’s representation that: *“...ODP response on 02 May 2023 was sent to the dpo@okadoc.com email address only. It did not copy in Mr. [REDACTED] (who was copied into the 13 March 2023 Okadoc response at [REDACTED]). Mr. [REDACTED] was the Okadoc recipient of the original ODP email of 07 March 2023 and was also the designated Okadoc contact person following the departure of the Okadoc Data Protection Officer. Okadoc respectfully notes that paragraph 5.3 of the Notice is incorrect, and the 02 May 2023 ODP email was not sent to Mr. [REDACTED] (and only to dpo@okadoc.com). Unfortunately, as a result of this contact person miscommunication, the ODP email of 02 May 2023 and the ODP follow-up email of 26 May 2023 were not received by the correct contact person at Okadoc and, as a result, were not actioned...”* The ODP reminds Okadoc that ODP’s initial e-mail was sent to the Data Protection Contact Person of Okadoc at [REDACTED], and subsequent follow-up communications were sent to the email address utilised by Okadoc to respond to the ODP’s correspondence (dpo@okadoc.com). The ODP views the lack of response from Okadoc as an indication of an underlying issue with regard to implementing appropriate technical and organisational measures in relation to business continuity.
- 8.3.8 Moreover, the DPR 2021 provides a clear obligation on Controllers to cooperate, by responding to its requests, with the Commissioner of Data Protection in the performance of their duties

and functions. As a result of Okadoc's lack of response, the ODP could not advance with the investigation for a significant period of time, which could reasonably lead to the conclusion that the delay may have had a potential deterrent effect on the expectation of the complainant (Data Subject) vis-à-vis her DSAR and her complaint filed with ODP.

8.3.9 The Commissioner is satisfied that Okadoc did not comply with Section 29 of the DPR 2021.

8.4 APPROPRIATE TECHNICAL AND ORGANISATION MEASURES

8.4.1 Section 22 of the DPR 2021 provides:

“(1) Taking into account the nature, scope, context and purposes of Processing as well as the risks of varying likelihood and severity for the rights of natural persons, the Controller must:

- (a) implement appropriate technical and organisational measures to ensure and to be able to demonstrate that Processing is performed in accordance with these Regulations;*
- and*
- (b) review and update those measures where necessary.*

(2) Where proportionate in relation to Processing activities, the measures referred to in section 22(1) must include the implementation of appropriate data protection policies by the Controller.”

8.4.2 It is confirmed that at the time of the filing of the DSAR, Okadoc did not have in place an internal Data Protection Policy. The Data Protection Policy (“Policy”) submitted by Okadoc on 04 August 2023 to the ODP was approved on 19 January 2023. Accordingly, the Controller published the Policy over two months after the DSAR.

8.4.3 Regarding the Policy's content, the only section dealing with DSARs is Section 5.1(h) – (o). These points are mostly copied from the DPR 2021 and do not appear to be tailored to the Controller's environment. In particular, the Policy does not provide for any procedure for handling DSARs. The ODP notes that Okadoc was established in ADGM since 2020, it is therefore reasonable to believe that Okadoc had enough time to draft and/or improve its internal Data Protection Policy in line with the DPR 2021.

8.4.4 Okadoc has submitted that they couldn't “...*identify the specific requirement in the DPR 2021 for a data protection policy to include procedures for handling DSARs...*”. The ODP recalls the provisions of Section 22(1) of the DPR 2021 which requires controllers implement technical and organisational measures to ensure that their processing complies with DPR 2021 requirements such as those provided under Part III of the DPR 2021, and to review and update those measures when necessary. The ODP has further elaborated the responsibility of Controllers to ensure accountability of their processing with the data processing principles of Section 4 of the DPR 2021 in its Guidance on the Data Protection Regulations 2021.

8.4.5 While admitting that the internal data protection policy was “...*under development for some time...but was delayed...*”. Okadoc has further submitted that they have developed a comprehensive ISO 27001:2013 framework, which meets the requirement to implement appropriate technical and organisational measures under Section 22 of the DPR 2021. The ODP recognises voluntary adherence to information security such as ISO as useful for organisations to help them manage risks related to the security of data. However, the ODP stresses that such standards add to, but do not replace statutory data protection standards and requirements, such as those provided under Part IV of the DPR 2021.

8.4.6 Okadoc further argued that risks of not having a formal internal policy in place were mitigated at a practical level by having a group Data Protection Officer. The ODP notes that appointing a DPO and having in place an appropriate Data Protection Policy are distinct statutory requirements in the DPR 2021, and not interchangeable. Accordingly, Section 22(2) of the DPR 2021 lays down the responsibility of Controllers to implement appropriate data protection policies, whereas the designation of the DPO is required in accordance with Section 35.

9. MONETARY PENALTY

- 9.1 The Commissioner is satisfied that the conditions from Section 55 have been met in this case.
- 9.2 The Commissioner in reaching this view has taken into account the representations made by Okadoc on this matter in response to the Notice of Intent Reference: ADGM/RA/ODP/LET/040 dated 08 December 2023, in which the Commissioner set out the basis and reasons for taking formal regulatory action.
- 9.3 The Commissioner has decided to serve Okadoc with a Penalty Notice under Section 55(1) of the DPR 2021 for its failure to comply with Sections 10(1) to (5), 22 and 29 of the DPR 2021.
- 9.4 The Commissioner considers that a monetary penalty is both necessary and proportionate to bring the Controller into compliance with the DPR 2021 by implementing appropriate technical and organisational measures to ensure that Processing at Okadoc is performed in accordance with the DPR 2021.
- 9.5 The Penalty Notice supports the ODP regulatory objectives, including:
- a. Upholding the privacy related rights afforded to individuals under DPR 2021;
 - b. Promoting compliance; and
 - c. Deterring other Controllers from committing similar contraventions.
- 9.6 In deciding to impose the monetary penalty amount, the Commissioner has considered:
- a. The options available to him under the DPR 2021;
 - b. Okadoc's failure to respond to the DSAR in compliance with the DPR 2021;
 - c. The nature of the contraventions;
 - d. Okadoc's lack of appropriate data protection policies and procedures; and
 - e. Okadoc's failure to fully cooperate with the ODP in the course of the Data Subject Complaint investigation.
- 9.7 The Commissioner has taken into account the following mitigating features of this case:
- a. There are no relevant previous infringements of the DPR 2021 that the Commissioner is aware of.
- 9.8 The Commissioner has considered the facts, matters and circumstances of the contraventions above, and has given careful consideration to the representations made by Okadoc. The Commissioner has decided to impose on Okadoc a monetary penalty in the total amount of **USD 20,000**.

10. PROCEDURAL MATTERS

- 10.1 Pursuant to Section 55(7)(a) of the DPR 2021, payment of the monetary penalty before **21 June 2024** shall exclude Okadoc from commencement by the Commissioner of proceedings against it regarding the contravention set out in this Penalty Notice. Failure to pay the monetary penalty by the stated deadline may lead to legal proceedings being brought against Okadoc before the ADGM Courts for payment of the monetary penalty, including legal costs and expenses of such proceedings.
- 10.2 Pursuant to Section 58 of the DPR 2021, Okadoc may refer this Penalty Notice to the ADGM Courts for review within three months of this Penalty Notice being issued.
- 10.3 If the Commissioner receives full payment of the monetary penalty by **20 June 2024** the Commissioner will reduce the monetary penalty by 20% to **USD 16,000**. However, the early payment discount will not be available if Okadoc exercises its right to refer this Penalty Notice to the ADGM Courts.
- 10.4 The Commissioner may publish this Penalty Notice at its discretion.

Dated: 21 May 2024

Office of Data Protection
Abu Dhabi Global Market

Signed:



ANNEX I

Extracts of DPR 2021 referred to in the Penalty Notice

Section 10(1) to (6)

(1) The Controller must take appropriate measures to provide any information referred to in sections 11 and 12 and any communication under sections 13 to 20 and section 32 relating to Processing to the Data Subject:

(a) in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a Child; and

(b) in writing, electronically or, if requested by the Data Subject, orally as long as that Data Subject has provided proof of their identity.

(2) The Controller must facilitate the exercise of Data Subject rights under sections 13 to 20. In the cases referred to in section 8(3), the Controller must not refuse to act on the request of the Data Subject to exercise their rights under sections 13 to 20, unless the Controller demonstrates that it is not in a position to identify the Data Subject.

(3) Subject to section 10(4), the Controller must provide information on action taken on a request under sections 13 to 20 to the Data Subject without undue delay and in any event within two months of receipt of the request. Where the Data Subject makes the request by means of an electronic form, the information may be provided by electronic means where possible, unless otherwise requested by the Data Subject.

(4) The period referred to in section 10(3) may be extended by one month, where necessary, taking into account the complexity and number of the requests including any related requests received by the Controller whether or not from the same Data Subject. The Controller must inform the Data Subject of any such extension within two months of receipt of the request, together with the reasons for the delay.

(5) If the Controller does not take action on the request of the Data Subject, the Controller must inform the Data Subject without delay and at the latest within two months of receipt of the request of:

(a) the reasons for not taking action; and

(b) their right to lodge a complaint with the Commissioner of Data Protection and the possibility of seeking a judicial remedy.

(6) Information provided under sections 11 and 12 and any communication and any actions taken under sections 13 to 20 and section 33 must be provided free of charge. Where requests from a Data Subject are unreasonable or excessive, in particular because of their repetitive character, the Controller may either:

(a) charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the action requested; or

(b) refuse to act on the request.

Section 13(3)

(3) The Controller must provide a copy of the Personal Data undergoing Processing. For any further copies requested by the Data Subject, the Controller may charge a reasonable fee based on administrative costs. Where the Data Subject makes the request by electronic means, and unless otherwise requested by the Data Subject, the information must be provided in a commonly used electronic form.

Section 22(1) and (2)

(1) Taking into account the nature, scope, context and purposes of Processing as well as the risks of varying likelihood and severity for the rights of natural persons, the Controller must:

(a) implement appropriate technical and organisational measures to ensure and to be able to demonstrate that Processing is performed in accordance with these Regulations; and

(b) review and update those measures where necessary.

(2) Where proportionate in relation to Processing activities, the measures referred to in section 22(1) must include the implementation of appropriate data protection policies by the Controller.

Section 29

The Controller and the Processor must cooperate, on request, with the Commissioner of Data Protection in the performance of their duties and functions.

Section 54(1)

If the Commissioner of Data Protection is satisfied, after duly conducting all reasonable and necessary inspections and investigations, that a Controller or Processor has contravened or is contravening these Regulations or any rules made under these Regulations, the Commissioner of Data Protection may issue a direction requiring the Controller or Processor to do any of the measures referred to in sections 50(5)(a) to 50(5)(h) and section 50(5)(j) (a 'Direction').

Section 54(4)

A Controller or Processor may ask the Commissioner of Data Protection to review the Direction within 21 days of receiving a Direction under this section. The Commissioner of Data Protection may receive further submissions and amend or discontinue the Direction.

Section 55 (1) and (2)

(1) Where a Controller or Processor (i) does an act or thing that it is prohibited from doing; or (ii) omits to do an act or thing that it must do by or under:

(a) any Direction issued by the Commissioner of Data Protection under section 54;

(b) these Regulations; or

(c) any rules made pursuant to these Regulations,

the Commissioner of Data Protection, by written notice (a 'Penalty Notice') to the Controller or Processor, may impose a fine in respect of the contravention of such amount as the Commissioner of Data Protection determines to be appropriate, taking into account the factors in section 55(3). The amount determined by the Commissioner of Data Protection must not exceed USD 28 million.

(2) Any fine imposed by the Commissioner of Data Protection under section 55(1) may, depending on the circumstances of each individual case, be imposed in addition to, or instead of, measures referred to in sections 50(5)(a) to 50(5)(h) and section 50(5)(j).

Section 55(3)

When deciding whether to impose a fine and deciding on the amount of the fine in each individual case, the Commissioner of Data Protection may consider the following factors:

(a) the nature, gravity and duration of the contravention taking into account the nature scope or purpose of the Processing concerned as well as the number of Data Subjects affected, and the level of damage suffered by them;

(b) the intentional or negligent character of the contravention;

(c) any action taken by the Controller or Processor to mitigate the damage suffered by Data Subjects;

(d) the degree of responsibility of the Controller or Processor taking into account technical and organisational measures implemented by them pursuant to sections 23 and 30;

(e) any relevant previous contraventions of these Regulations or the Data Protection Regulations 2015 by the Controller or Processor;

(f) degree of cooperation with the Commissioner of Data Protection, in order to remedy the contravention and mitigate its possible adverse effects;

(g) the categories of Personal Data affected by the contravention;

(h) the manner in which the contravention became known to the Commissioner of Data Protection, in particular whether, and if so to what extent, the Controller or Processor notified the Commissioner of Data Protection of the contravention;

(i) where measures referred to in section 50(5) have previously been ordered against the Controller or Processor concerned in relation to the same subjectmatter, compliance with those measures;

(j) adherence to approved codes of conduct pursuant to section 38 or approved certification mechanisms pursuant to section 39; and

(k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the contravention.

Section 55(4)

Before giving a Controller or Processor a Penalty Notice the Commissioner of Data Protection must, by written notice (a 'Notice of Intent') inform the Controller or Processor that the Commissioner of Data Protection intends to give a Penalty Notice.

Section 55(5)(c) and (d)

(5) The Notice of Intent must set out:

(c) the period in which a Controller or Processor may make written representations about the Commissioner of Data Protection's intention to issue a Penalty Notice (which must be at least 21 days from the date of the Notice of Intent); and

(d) whether the Commissioner of Data Protection considers it appropriate for the person to have an opportunity to make oral representations about the Commissioner of Data Protection's intention to issue a Penalty Notice.

Section 55(7)

A Controller or Processor may ask the Commissioner of Data Protection to review the Direction within 21 days of receiving a Direction under this section. The Commissioner of Data Protection may receive further submissions and amend or discontinue the Direction.