

Data Processing Addendum based on GDPR Article 28

Version 1.0 (May 2018)



MAPLES

This Data Processing Addendum (“**Addendum**”) will apply from **25 May 2018** and will be deemed to be incorporated into all agreements and contracts pursuant to which affiliates and subsidiaries of the Maples Group that are domiciled in the UK, the Channel Islands, or the EU provide their services by acting as a ‘processor’ as defined in Article 4(8) of GDPR (“**Underlying Agreement**”).

Services which Maples provides by acting as a ‘processor’ encompasses entity formation/registration services, liquidation services, corporate administration and secretarial services, registered office services, fund administration (accounting/NAV calculation service and investor service), and other like services where the role performed by Maples can be characterised as an outsourced function which Maples fulfils by exercising relatively little autonomy or discretion.

For the avoidance of doubt, this Addendum will not apply where the relevant Maples entity acts as a ‘controller’ (as defined in Article 4(7) of GDPR) in providing the service. Examples of services which Maples provides by acting as a ‘controller’ encompasses legal services, fund management services, compliance/MLRO services, and other like services where the role performed by Maples requires Maples to exercise a good degree of autonomy and discretion.

1 Definitions

1.1 In this Addendum, unless the context dictates otherwise, the following capitalised terms shall have the following meanings:

- (a) “**Client**” means the person or entity that has entered into an Underlying Agreement with Maples.
- (b) “**Client Personal Data**” means any information which: (i) constitutes ‘personal data’ under Article 4(1) of GDPR; and (ii) is disclosed to or otherwise made available to Maples by or on behalf of Client or any other member of the Client Group in connection with the Underlying Agreement.
- (c) “**Client Group**” means the group of companies comprising affiliates and subsidiaries of Client.
- (d) “**Data Breach**” means any ‘personal data breach’ as defined in Article 4(12) of GDPR which is confirmed as affecting (or having affected) any Client Personal Data.
- (e) “**Data Protection Law**” means any statute, regulation, order, decree, or any other legal instrument which pertains to the protection of privacy and confidentiality personal information, including: (i) GDPR; (ii) any binding decision of the European Commission or the European Data Protection Board adopted pursuant to GDPR; (iii) any local law of any jurisdiction which implements those provisions of GDPR which do not have direct effect in the EEA; and (iv) any local law of any jurisdiction outside the EEA which implements legal requirements equivalent or analogous to GDPR.
- (f) “**Data Subject**” means any identified or identifiable natural person to whom Client Personal Data relates.
- (g) “**Data Subject Request**” means any request made by any Data Subject pursuant to rights he or she enjoys under GDPR.
- (h) “**EEA**” means European Economic Area.
- (i) “**GDPR**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the

processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

- (j) **“Maples”** means the relevant affiliate or subsidiary of the Maples Group which is domiciled in the UK, the Channel Islands, or the EU and which has entered into the Underlying Agreement with Client.
- (k) **“Processing”** means ‘processing’ as defined in Article 4(2) of GDPR insofar as it affects Client Personal Data, and derivatives such as **“Process”** or **“Processed”** shall be construed accordingly.
- (l) **“Services”** means the services which Maples has contracted to provide pursuant to the Underlying Agreement.

1.2 Any reference to a statute, regulation, order, decision, or any other legal instrument in this Addendum shall be construed as including a reference to:

- (a) any subordinate legislation made thereunder; and
- (b) such statute, regulation, order, decision, or other legal instrument as the same is amended, consolidated, re-enacted, or replaced from time to time.

2 Scope of this Addendum

2.1 This Addendum shall govern all Processing undertaken in connection with the Underlying Agreement, but only if and to the extent:

- (a) Processing falls within the scope of GDPR under Articles 2 and 3 of GDPR; and
- (b) Maples undertakes Processing in its capacity as a 'processor' (as defined in Article 4(8) of GDPR). For the avoidance of doubt, this Addendum shall not apply to any Processing which Maples undertakes in its capacity as a 'controller' (as defined in Article 4(7) of GDPR).

2.2 Should a conflict arise between any provision of this Addendum and any provision of the Underlying Agreement, the provision of this Addendum shall take precedence over the conflicting provision of the Underlying Agreement, and this Addendum shall be deemed to amend the Underlying Agreement to the extent of such conflict (but only in relation to matters concerning Processing).

2.3 This Addendum shall be deemed have become effective and shall be deemed to be incorporated into the Underlying Agreement:

- (a) on the date on which the Underlying Agreement becomes effective, if the Underlying Agreement incorporates this Addendum by making express reference to this Addendum from the outset; or
- (b) the date on which this Addendum is brought to the attention of Client, where Client has continued to accept Services from Maples under the Underlying Agreement after the date on which this Addendum is brought to the attention of Client.

2.4 This Addendum shall survive (together with any other relevant provision of the Underlying Agreement) any termination or expiry of the Underlying Agreement for as long as any Client Personal Data remains under Maples’s custody or control.

3 Authority in respect of Client Personal Data

3.1 Before disclosing or otherwise making Client Personal Data available to Maples, Client shall ensure that it and the relevant members of the Client Group are authorised to do so under the

Data Protection Law so that Maples may undertake Processing lawfully in accordance with the Underlying Agreement and this Addendum.

4 Details of Processing

- 4.1 This Clause 4 sets out the details pertaining to the Processing of Client Personal Data as required by Article 28(3) of GDPR.
- 4.2 The subject-matter and duration of the Processing are as set out in the Underlying Agreement and this Addendum.
- 4.3 The type of Client Personal Data, categories of Data Subjects, and the nature and purpose of the Processing are more particularly described in the Underlying Agreement.
- 4.4 The obligations and rights of Client in its capacity as the 'controller' (as defined in Article 4(7) of GDPR) are as set out in the Underlying Agreement and this Addendum.

5 Purpose of Processing

- 5.1 Processing may be undertaken by Maples only if and to the extent it is necessary to provide Services, or otherwise fulfil Maples's obligations under the Underlying Agreement and this Addendum. Unless agreed otherwise in writing with Client, Maples shall not Process any Client Personal Data for any other purpose.
- 5.2 Where Maples is required under any applicable law of the jurisdiction to which Maples is subject to Process any Client Personal Data for any purpose inconsistent with Clause 5.1, Maples shall, to the extent it is legally permitted to do so, promptly notify Client and refrain from complying with such requirement without first conferring with Client.

6 Cooperation in respect of Processing

- 6.1 Without prejudice to the other provisions of this Addendum, Maples shall provide all such information, assistance, and cooperation as Client may reasonably require in ensuring or demonstrating that Processing meets the requirements of Data Protection Law. Maples shall provide such information, assistance, and cooperation in respect of all relevant matters pertaining to Processing, including, without limitation, the following:
 - (a) any Data Subject Request or any other inquiry regarding either party's compliance with the Data Protection Law;
 - (b) technical or organisational security measures to be used in safeguarding Client Personal Data;
 - (c) any action to be taken in response to any Data Breach (including, where applicable, any notification to be made pursuant to Article 33 or 34 of GDPR); and
 - (d) any data protection impact assessment to be performed pursuant to Article 35 of GDPR.

7 Manner of Processing

- 7.1 Maples shall ensure that Processing is undertaken only on documented instructions given by Client. Such instructions include the Underlying Agreement, this Addendum, and any specific instruction which Client (or the relevant member of the Client Group) may from time to time give to Maples pursuant to this Addendum and/or the Underlying Agreement.
- 7.2 Maples shall immediately notify Client if, in Maples's opinion, any instruction Maples received from Client or any other member of Client Group materially infringes GDPR or any other Data Protection Law. Maples shall not be required to comply with such instruction unless Maples is

satisfied that the instruction in question does not materially infringe GDPR or any other Data Protection Law.

- 7.3 Maples shall not subcontract or delegate Processing to any third party without Client's prior written consent (which consent Client shall not unreasonably withhold, condition, or delay). Such consent shall be deemed to be given in respect of any third party (including any other member of the Maples Group) to whom Maples is, under the Underlying Agreement, permitted to subcontract or delegate part or whole of Services.
- 7.4 Maples shall not conduct any Processing (or make any change to Processing) which triggers a need for a data protection impact assessment under Article 35 of GDPR, unless Client has expressly instructed Maples to undertake such Processing or make such changes to Processing.
- 7.5 Where Maples subcontracts Processing to any third party (subject always to Clause 7.3), Maples shall ensure that the relevant third party undertakes Processing on terms equivalent to this Addendum and in compliance with the Data Protection Law.
- 7.6 Where Maples receives any Data Subject Request or any other inquiry regarding either party's compliance with the Data Protection Law with respect to Client Personal Data, Maples shall:
- (a) promptly notify Client of such request; and
 - (b) to the maximum extent it is permitted under the applicable law, refrain from directly responding to such request or inquiry without first conferring with Client.

8 Security of Processing

- 8.1 For as long as Client Personal Data remains under Maples's custody or control, Maples shall implement and maintain appropriate technical and organisational security measures to protect Client Personal Data against Data Breach in accordance with Article 32 of GDPR, including by ensuring that all of its agents, personnel, and permitted subcontractors who become involved in Processing are legally or contractually required to maintain the confidentiality of Client Personal Data.
- 8.2 Where Maples becomes aware of any Data Breach, Maples shall:
- (a) notify Client as soon as reasonably practicable and without undue delay;
 - (b) take all such steps as are reasonably necessary to contain and mitigate the consequences of the Data Breach; and
 - (c) to the maximum extent permitted by the applicable law, refrain from communicating to any third party (including any Data Subject) about the Data Breach without first conferring with Client (except where such communication with third party is necessary in order to contain and mitigate the consequences of the Data Breach).

9 Audit of Processing

- 9.1 Maples shall provide all such information, assistance, and cooperation as Client may reasonably require to audit or inspect Maples's compliance with this Addendum. Such an audit or inspection may be conducted:
- (a) only if and to the extent the Underlying Agreement fails to make provisions for such an audit or inspection;

- (b) by a third party auditor acting on behalf of Client, the appointment of which shall be subject to Maples' consent (which consent Maples shall not unreasonably withhold, condition, or delay);
- (c) only upon Client giving reasonable prior notice in writing;
- (d) during normal business hours in a manner that avoids or minimises disruption to Maples's day-to-day business activities; and
- (e) no more than once in any given twelve (12) months period.

9.2 Each party shall bear its own cost in undertaking an audit pursuant to this Clause 9, save that where an audit conducted under this Clause 9 reveals any material non-compliance with this Addendum by Maples (or any of its subcontractor), Maples shall, at its own cost, take all such steps as Client may reasonably specify to remedy such non-compliance.

10 Cross-border Processing

10.1 Except where Clause 10.2 applies, Maples shall not allow Processing of Client Personal Data to take place outside the EEA without Client's prior written consent (which consent Client shall not unreasonably withhold, condition, or delay).

10.2 Maples may allow Processing to take place outside the EEA without Client's prior written consent provided that:

- (a) such Processing is necessary to provide or facilitate the provision of Services and is undertaken by Maples itself (and/or by a subcontractor of Maples in accordance with Clause 7.3 above); and
- (b) Maples has taken steps to ensure that such Processing meets the requirements of Article 45, Article 46, or Article 49 of GDPR.

11 Cessation of Processing

11.1 If the Underlying Agreement expires or is terminated for any reason whatsoever, Maples shall:

- (a) cease all Processing which is not strictly necessary to enable Maples to comply with any obligation under the Underlying Agreement or this Addendum which is applicable after the expiry or termination of the Underlying Agreement; and
- (b) at Client's option, permanently and irreversibly return, transfer, destroy, or delete (to the extent technically feasible and commercially practicable) all Client Personal Data under the custody or control of Maples.

11.2 If and to the extent it is not technically feasible and/or commercially practicable for Maples to permanently and irreversibly comply with Clause 11.1(b), Maples shall ensure that any residual Client Personal Data which is retained under its custody or control is permanently put beyond use and not Processed any further save for the mere unavoidable retention of such residual Client Personal Data.

11.3 Client may, at its option and at any time during the term of the Underlying Agreement, require Maples to return, transfer, destroy, or delete Client Personal Data, in whole or in part, in accordance with Clause 11.1.

11.4 Subject to Clause 5.2, Maples may retain Client Personal Data if and to the extent it is obliged to do so under any applicable law of the jurisdiction to which Maples is subject to.

12 Liability for Processing

12.1 Any breach of this Addendum shall be treated as a breach of the Underlying Agreement, and the consequence and liability for such breach shall be treated in accordance with the relevant provisions of the Underlying Agreement.

12.2 Maples shall remain fully liable for any act or omission on the part of any third party to whom Maples:

- (a) discloses Client Personal Data otherwise than in accordance with Client's instruction;
or
- (b) subcontracts Processing (regardless of whether or not such subcontracting takes place with Client's consent),

insofar as such third party's act or omission affects Client Personal Data.

13 Governing Law and Dispute Resolution

13.1 This Addendum shall be governed by and construed in accordance with the same governing law the parties have chosen to apply to the Underlying Agreement. Any dispute arising under or in connection with this Addendum shall be resolved in accordance with the relevant provisions of the Underlying Agreement.