

Data Processing Addendum based on ADGM DPR 2021 and DIFC DPL 2020 Version 1.1 (April 2021)



This Data Processing Addendum ("**Addendum**") will:

- (a) apply from **1 July 2020** 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 Dubai International Financial Centre ("**DIFC**") provide their services by acting as a 'Processor' as defined in Section 3, Schedule 1 of the DIFC's Data Protection Law (DIFC Law No. 5 of 2020) ("**DPL**") (each of such agreement or contract being an "**Underlying Agreement**"); and
- (b) apply from **1 April 2021** 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 Abu Dhabi Global Markets ("**ADGM**") provide their services by acting as a 'Processor' as defined in Section 62 of the ADGM's Data Protection Regulations 2021 ("**DPR**") (each of such agreement or contract being an "**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 does not act as a 'Processor' in providing the service, for example where Maples provides legal services, fund management services, compliance/MLRO services, director 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' as defined in Section 62 of DPR or Section 3, Schedule 1 of DPL; 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 Section 62 of DPR or Section 3, Schedule 1 of DPL, which is confirmed as affecting (or having affected) any Client Personal Data.
- (e) "**Data Protection Law**" means any applicable statute, regulation, order, or any other legal instrument which pertains to the protection of privacy and confidentiality of personal information, including: (i) DPR and DPL; (ii) any regulation promulgated under DPR or DPL; and (iv) any binding decision of the courts and tribunals of the ADGM or the DIFC that relate to the application or interpretation of any of the foregoing.
- (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 information rights he or she enjoys under DPR or DPL, including the rights granted under Part III of DPR or Part 6 of DPL.
- (h) **“DPL”** means the DIFC’s Data Protection Law (DIFC Law No. 5 of 2020).
- (i) **“DPR”** means the ADGM’s Data Protection Regulations 2021.
- (j) **“Maples”** means the relevant affiliate or subsidiary of the Maples Group which is domiciled in the ADGM or the DIFC, and which has entered into the Underlying Agreement with Client.
- (k) **“Maples Group”** means all direct and indirect subsidiaries of Maples International Holdings Limited as well as Maples and Calder (Cayman) LLP and The Maples Group Partnership, and all the other entities and undertakings using the name ‘Maples and Calder’, ‘MaplesFS’, or ‘Maples’ including any derivations thereof, listed at <https://maples.com/legalnotices>.
- (l) **“Processing”** means any action that can be performed in relation to Client Personal Data, including, without limitation, collection, access, analysis, alteration, consultation, use, disclosure, transfer, deletion, destruction, storage, or retention, insofar as such action affects Client Personal Data, and derivatives such as **“Process”** or **“Processed”** shall be construed accordingly.
- (m) **“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 actually falls within the scope of DPR or DPL; and
- (b) Maples undertakes Processing in its capacity as a 'Processor' (as defined in Section 62 of DPR or Section 3, Schedule 1 of DPL),

and for the avoidance of any doubt, this Addendum shall not apply to any Processing which Maples undertakes in its capacity as a 'Controller' (as defined in Section 62 of DPR or Section 3, Schedule 1 of DPL) who is directly subject to DPR or DPL.

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 Section 26 of DPR or Article 24(5)(a) of DPL.

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 as set out in Sections 1, 3, and 4 of 'Maples Group Client Privacy Notice – Fund & Fiduciary Services (ADGM+DIFC)' (which can be found online at <https://maples.com/privacy>), as qualified by the description of Services contained in the Underlying Agreement.

4.4 The obligations and rights of Client in its capacity as the 'Controller' (as defined in Section 62 of DPR or Section 3, Schedule 1 of DPL) 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 to any Data Subject, and/or the ADGM's Office of Data Protection or the Commissioner of Data Protection of the DIFC Authority); and
- (d) any data protection impact assessment to be performed pursuant to Section 34 of DPR or Article 20 of DPL.

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 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.
- 7.3 Where Maples subcontracts Processing to any third party (subject always to Clause 7.2), Maples shall ensure that the relevant third party undertakes Processing on terms equivalent to this Addendum and in compliance with the Data Protection Law.
- 7.4 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, 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.
- 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 the Data Protection Law, 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 ADGM or the DIFC, as applicable, 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 ADGM or the DIFC, as applicable, without Client's prior written consent provided that Maples has taken steps to ensure that such Processing takes place in a manner that appropriately addresses any restriction which might otherwise apply to such Processing under DPR or DPL.

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.