

# Data Processing Addendum based on BM PIPA

## Version 1.0 (January 2025)



This Data Processing Addendum (“**Addendum**”) will apply from **1 January 2025** 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 Bermuda provide their services (each of such agreement or contract being an “**Underlying Agreement**”).

### 1 Definitions

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

- (a) “**Breach of Security**” means any even which: (i) constitutes a ‘breach of security’ for the purposes of section 14 of PIPA; and (ii) is confirmed as affecting (or having affected) any Client Personal Information.
- (b) “**Client**” means the person or entity that has entered into an Underlying Agreement with Maples.
- (c) “**Client Personal Information**” means any information which: (i) constitutes ‘personal information’ under section 2 of PIPA; 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.
- (d) “**Client Group**” means the group of companies comprising affiliates and subsidiaries of Client.
- (e) “**Data Protection Law**” means any applicable statute, regulation, order, or any other legal instrument which pertains to the protection of privacy and confidentiality personal information, including: (i) PIPA; (ii) any regulation promulgated under section 48 of PIPA; (iii) any code of practice promulgated under section 32 of PIPA; and (iv) any binding decision of the courts and tribunals of Bermuda that relate to the application or interpretation of any of the foregoing.
- (f) “**Individual**” means any natural person to whom Client Personal Information relates.
- (g) “**Individual Request**” means any request made by any Individual pursuant to information rights he or she enjoys under part 3 of PIPA.
- (h) “**Maples**” means the relevant affiliate or subsidiary of the Maples Group which is domiciled in Bermuda and which has entered into the Underlying Agreement with Client.
- (i) “**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>.
- (j) “**PIPA**” means Bermuda’s Personal Information Protection Act 2016 (2016:43).
- (k) “**Processing**” means any action or set of actions taken (or to be taken) or operation or set of operations performed (or to be performed) by Maples with respect to any Client Personal Data which constitutes ‘use’ or ‘using’ as defined in section 2 of PIPA. Derivative terms such as “**Process**” and “**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, save for:
- (a) any Processing which Maples undertakes on its own accord for its own business purpose, for example Processing in connection with invoicing for Services, compliance with applicable laws, and development/maintenance of business relationship between Maples and Client Group; and
  - (b) any Processing which Maples undertakes in connection with the provision of Services and which requires Maples to exercise professional autonomy and discretion, for example Processing which Maples undertakes in acting as a trustee or director in respect of a trust or company established by Client.
- 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 Information remains under Maples's custody or control.

## **3 Authority in respect of Client Personal Data**

- 3.1 Before disclosing or otherwise making Client Personal Information 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 Purpose of Processing**

- 4.1 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 Information for any other purpose.

- 4.2 Where Maples is required under any applicable law of the jurisdiction to which Maples is subject to Process any Client Personal Information for any purpose inconsistent with Clause 4.1, 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.

## **5 Cooperation in respect of Processing**

- 5.1 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 Individual Request or any other inquiry regarding either party's compliance with the Data Protection Law;
  - (b) security safeguards measures to be implemented used in relation Client Personal Information pursuant to section 13 of PIPA; and
  - (c) any action to be taken in response to any Breach of Security (including, where applicable, any notification to be made pursuant to section 14 of PIPA).

## **6 Manner of Processing**

- 6.1 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.
- 6.2 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.
- 6.3 Where Maples subcontracts Processing to any third party (subject always to Clause 6.2), Maples shall ensure that the relevant third party undertakes Processing on terms equivalent to this Addendum and in compliance with the Data Protection Law.
- 6.4 Where Maples receives any Individual Request or any other inquiry regarding either party's compliance with the Data Protection Law with respect to Client Personal Information, Maples shall, to the extent it is legally permitted to do so, promptly notify Client and refrain from complying with such request or inquiry without first conferring with Client.
- 6.5 Where Maples considers that any instruction regarding Processing given by Client infringes the Data Protection Law in any way, Maples shall immediately notify Client and seek clarification regarding such instruction. Maples reserves the right to refuse to perform the relevant Processing fully as instructed if Maples considers the instruction to be wholly unwarranted in light of the materiality of the infringement.

## **7 Security of Processing**

- 7.1 For as long as Client Personal Information remains under Maples's custody or control, Maples shall implement and maintain appropriate technical and organisational security measures to protect Client Personal Information against Breach of Security in accordance with section 13 of PIPA.
- 7.2 Where Maples becomes aware of any Breach of Security, 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 Breach of Security; and
- (c) to the maximum extent permitted by the applicable law, refrain from communicating to any third party (including any Individual) about the Breach of Security without first conferring with Client (except where such communication with third party is necessary in order to contain and mitigate the consequences of the Breach of Security).

## **8 Audit of Processing**

8.1 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.

8.2 Each party shall bear its own cost in undertaking an audit pursuant to this Clause 8, save that where an audit conducted under this Clause 8 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.

## **9 Cross-border Processing**

9.1 Except where Clause 9.2 applies, Maples shall not allow Processing of Client Personal Information to take place outside Bermuda without Client's prior written consent (which consent Client shall not unreasonably withhold, condition, or delay).

9.2 Maples may allow Processing to take place outside Bermuda 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 6.2 above); and
- (b) Maples has taken steps to ensure that such Processing conforms to the requirements of section 15 of PIPA.

## **10 Cessation of Processing**

10.1 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 Information under the custody or control of Maples.
- 10.2 If and to the extent it is not technically feasible and/or commercially practicable for Maples to permanently and irreversibly comply with Clause 10.1(b), Maples shall ensure that any residual Client Personal Information 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 Information.
- 10.3 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 Information, in whole or in part, in accordance with Clause 10.1.
- 10.4 Subject to Clause 4.2, Maples may retain Client Personal Information if and to the extent it is obliged to do so under any applicable law of the jurisdiction to which Maples is subject to.

**11 Liability for Processing**

- 11.1 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.
- 11.2 Maples shall remain fully liable for any act or omission on the part of any third party to whom Maples:
- (a) discloses Client Personal Information 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 Information.

**12 Governing Law and Dispute Resolution**

- 12.1 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.

**Change Log**

Version	Date	Remark
1.0	October 2024	Original version prepared as part of PIPA implementation.