

## Data Processing Terms

## 1. SCOPE

- 1.1. These data processing terms (the **Declaration**) are deemed to be incorporated into all agreements, engagement letters and contracts where we are acting as a data processor (meaning that the services require us to process personal data on the instruction of another entity which is the data controller). To the extent that such processing falls within the scope of Data Protection Laws, the Declaration shall govern all processing undertaken in connection with that agreement, engagement letter or contract.
- 1.2. Services which we provide by acting as a data processor include acting as agent for service of process, safekeeping of documents and other like services where the role we perform does not require us to determine the purposes and means of the processing.
- 1.3. For the avoidance of doubt, this Declaration does not apply where we have entered into a specific processing agreement with you in respect of the Services or where we act as a data controller:
  - 1.3.1. Examples of services we provide as a data controller include AML/compliance services, liquidator services, trustee services and other services where the role performed by us requires us to determine the purposes and means of the processing;
  - 1.3.2. Even where we are a data processor for a particular service, we may also be a data controller for certain purposes relating to that same service. For example, we always act as a data controller when we obtain and process personal data for the purposes of performing our own anti-money laundering checks or filing suspicious activity reports; and
  - 1.3.3. The Mourant Group Privacy Notice (available at [www.mourant.com](http://www.mourant.com)) (the **Privacy Notice**) provides details of how we process data where we act as a data controller, whether individually or jointly with another.
- 1.4. When we act as a data processor, we will undertake processing only if and to the extent it is necessary to provide Services or otherwise fulfil our obligations under the Relevant Contract and this Declaration. Further details relating to our processing activities are set out in the Schedule to this Declaration.

## 2. DEFINITIONS

Unless otherwise defined in this Declaration, capitalised and other terms used in this Declaration have the same meaning as set out in our General Terms available at [www.mourant.com](http://www.mourant.com). In addition:

- 2.1. **C2P Clauses** means the standard contractual clauses between controllers and processors for data transfers, as approved by the European Commission Implementing Decision (EU) 2021/914 of 4 June 2021 (and as supplemented by the UK's International Data Transfer Addendum for any data transfer outside the UK).
- 2.2. **Data Protection Laws** mean any statute, regulation, order or other legal instrument which is applicable to the protection of privacy and confidentiality personal information, including:
  - 2.2.1. 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 (known as the General Data Protection Regulation);
  - 2.2.2. the Data Protection Act, 2017 and the Data Protection Regulations, 2018 (and any other regulation or code of practice promulgated under the Data Protection Act, 2017) of the Cayman Islands;
  - 2.2.3. the Data Protection (Bailiwick of Guernsey) Law, 2017 and the Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations (and any other ordinance or regulation promulgated under sections 108 or 109 of the Data Protection (Bailiwick of Guernsey) Law, 2017);
  - 2.2.4. the Data Protection (Jersey) Law 2018 and the Data Protection Authority (Jersey) Law 2018;
  - 2.2.5. Hong Kong's Personal Data (Privacy) Ordinance (Ch.486) (and any code of practice promulgated under it);
  - 2.2.6. the Data Protection Act 2017 (and any regulation or code of practice promulgated under it) of Mauritius; and
  - 2.2.7. the Data Protection Act 2018 (and any regulation or code of practice promulgated under it) of the United Kingdom.
- 2.3. **Data Transfer** has the meaning given to it in Clause 6.1 below.
- 2.4. **P2P Clauses** means the standard contractual clauses between processors for data transfers, as approved by the European Commission Implementing Decision (EU) 2021/914 of 4 June 2021 (and as supplemented by the UK's International Data Transfer Addendum for any data transfer outside the UK).
- 2.5. **personal data** means any information which:
  - 2.5.1. constitutes 'personal data' under applicable Data Protection Laws; and
  - 2.5.2. is disclosed or otherwise made available to us by you or on your behalf or by any of your Connected Persons or Representatives in connection with a Relevant Contract.
- 2.6. **Relevant Contract** means each agreement, engagement letter or contract within the scope of Clause 1.1 above.
- 2.7. **SCC** means the C2P Clauses or the P2P Clauses, as applicable in accordance with Clause 6 below.
- 2.8. **Services** means the services which we have agreed to provide pursuant to the Relevant Contract.
- 2.9. **Third Country** means a country outside the European Economic Area that the European Commission does not recognise as providing an adequate level of protection for personal data.

## 3. INTERPRETATION

Unless the context requires otherwise, any interpretation provisions in the Relevant Contract (including in our General Terms) apply to this Declaration. In addition:

- 3.1. the term **processing** means 'processing' as defined in applicable Data Protection Law insofar as it affects personal data. Derivative terms such as **process**, **processes** and **processed** will be construed accordingly;
- 3.2. the terms **data controller**, **data processor**, **data subject** and **personal data breach** each have the meanings given to them in applicable Data Protection Law subject to Clause 3.3; and
- 3.3. where personal data is processed or transferred in accordance with Hong Kong's Personal Data (Privacy) Ordinance (Ch.486):
  - 3.3.1. the term data controller means data user (as defined in that ordinance); and
  - 3.3.2. data breach means any incident involving an accidental, unlawful, or unauthorised access to, or destruction, loss, alteration, or disclosure of information which is confirmed as affecting (or having affected) any personal data.

## 4. DECLARATIONS BY MOURANTGS

We provide the following binding declarations in respect of processing we undertake as data processor on behalf of you as data controller under any Relevant Contract:

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- 4.1. We guarantee that we have implemented technical and organisational measures in such a manner that the processing carried out by us will meet the requirements of the Data Protection Laws and ensure the protection of the rights of any data subject.
- 4.2. We will not engage another processor without prior specific or general written authorisation from you as data controller, in respect of which:
  - 4.2.1. specific authorisation is deemed to have been given in respect of the appointment of any third party to whom we are permitted under the Relevant Contract to sub-contract or delegate any part of the Services (including any other MourantGS Group member); and
  - 4.2.2. in an instance of general authorisation, we will inform you of any intended changes concerning the addition or replacement of another processor and give you the opportunity to object to those changes.
- 4.3. Where we engage another processor, we will ensure that the processor provides sufficient guarantees consistent with those provided in this Declaration.
- 4.4. We will process personal data relevant to the Services only on documented instructions from you as data controller, unless we are required to do that processing by applicable laws and rules. If this applies, we will inform you of the relevant legal requirement before processing, unless that legal requirement prohibits such information being given to you.
- 4.5. Persons authorised by us to process personal data have committed themselves to confidentiality obligations and are subject to appropriate policies implemented by us to ensure against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data proportionate to the risk of harm posed to the rights of data subjects by such events.
- 4.6. We will take reasonable steps to ensure the proper performance of duties by any person processing personal data relevant to the Services under our authority;
- 4.7. We will (taking into account the nature of the processing) assist you by appropriate technical and organisational measures, insofar as possible, to fulfil any obligations you may have as data controller to respond to requests for exercising any data subject's rights under the Data Protection Laws.
- 4.8. Taking into account the nature of the processing and the information available to us, we will assist you in ensuring compliance with your obligations under the Data Protection Laws to:
  - 4.8.1. carry out any data protection impact assessment required for high risk processing;
  - 4.8.2. deal with any notification obligations in respect of any personal data breach; and
  - 4.8.3. implement technical and organisational measures to ensure the security of personal data, proportionate to the risk of harm posed to the rights of data subjects.
- 4.9. We will, at your choice, delete or return all personal data to you at the end of the provision of the Services and delete existing copies unless applicable laws and rules require storage of the personal data.
- 4.10. We will make available to you all information necessary to demonstrate compliance with obligations in relation to data processors laid down in the Data Protection Laws or the SCC, and allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by you. Such an audit or inspection may be conducted:
  - 4.10.1. only if and to the extent the Relevant Contract fails to make provisions for such an audit or inspection;
  - 4.10.2. by instructing us to carry out the audit or inspection on your behalf;
  - 4.10.3. (to the extent you do not instruct us under Clause 4.10.2 above) only if you, or any auditor mandated by you:
    - (a) give us 30 Business Days' notice;
    - (b) conduct, or ensure such audits are conducted, during normal business hours (unless the audit or inspection needs to be conducted on an emergency basis) in a manner that avoids or minimises disruption to our day-to-day business activities; and
    - (c) ensure that appropriate confidentiality provisions are agreed with any third party or auditor involved in any audit or inspection; and
    - (d) not more than once in any given twelve (12) month period, unless:
      - (1) you, or any auditor mandated by you, considers an additional audit to be necessary because of genuine concerns as to our compliance with this Declaration; or
      - (2) you are required or requested to carry out an additional audit by a supervisory or regulatory authority responsible for the enforcement of data protection law in any country or territory.
- 4.11. Taking into account the nature of the processing, you agree that it is unlikely that we can form an opinion on whether an instruction from you infringes the Data Protection Laws. Despite this, if we do form such an opinion:
  - 4.11.1. we will immediately inform you; and
  - 4.11.2. you will be entitled to withdraw or modify that instruction.
5. **AUTHORITY IN RESPECT OF PERSONAL DATA**
  - 5.1. By engaging us and continuing to engage us under the Relevant Contract, you instruct us to process and transfer personal data relevant to the Services.
  - 5.2. Before collecting and disclosing or otherwise making personal data available to us, you must ensure that you, your Representatives and/or your Connected Persons, as applicable, are satisfied that there is a lawful basis to do so under the Data Protection Laws to allow us to undertake processing in accordance with the Relevant Contract and this Declaration.
6. **DATA TRANSFERS**
  - 6.1. The SCC will only apply to personal data that is transferred, either directly or via onward transfer, to a Third Country (each a **Data Transfer**) and to the extent that we have not adopted another recognised compliance standard for lawful Data Transfers.
  - 6.2. If we act as a data processor and you act as a data controller, the C2P Clauses will apply to a Data Transfer.
  - 6.3. If both you and us act as a data processor, the P2P Clauses will apply to a Data Transfer. You agree (taking into account the nature of the processing) that it is unlikely that we would know the identity of your data controller(s) in such a case because we have no direct contractual relationship with them. As such, you will fulfil our obligations to your data controller(s) under the P2P Clauses.

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6.4. You agree (taking into account the nature of the processing) that it is unlikely that we would become aware that personal data transferred under the SCC is inaccurate or outdated. Despite this, if we become aware that personal data transferred under the SCC is inaccurate or outdated, we will:

- 6.4.1. inform you without undue delay; and
- 6.4.2. co-operate with you to rectify inaccurate or outdated personal data transferred under the SCC.

### 7. CONFLICT

- 7.1. If a conflict arises between this Declaration and any provision of any Relevant Contract, the provisions of this Declaration will prevail over the conflicting provision of the Relevant Contract. This Declaration is deemed to amend the Relevant Contract to the extent necessary to resolve any such conflict provided always that such amendment is only in relation to matters concerning processing. Except as amended by this Declaration, the Relevant Contract will remain in full force and effect.
- 7.2. This Declaration incorporates the SCC by reference. Nothing in this document varies or modifies the SCC.

### 8. COSTS

We may require you to reimburse our costs and expenses in complying with our obligations under Clauses 4.7, 4.8 and 4.10, save that where an audit or inspection conducted under Clause 4.10 reveals any material instances of our non-compliance with this Declaration then we will, at our own cost, take any steps that you may reasonably request to remedy that non-compliance.

### 9. LIABILITY

- 9.1. Any breach of this Declaration is a breach of the Relevant Contract. The consequence and liability for such breach will be treated in accordance with the applicable terms of the Relevant Contract.
- 9.2. We remain liable for any act or omission on the part of any third party to whom we:
  - 9.2.1. disclose personal data otherwise than in accordance with your instructions; or
  - 9.2.2. subcontract processing (regardless of whether or not such subcontracting takes place with your consent),  
insofar as such third party's act or omission affects personal data.

### 10. SEVERANCE

If any part of this Declaration is declared invalid or unenforceable, the remainder of this Declaration remains valid and in force. The invalid or unenforceable provision will either be:

- 10.1. amended as necessary to ensure its validity and enforceability while preserving the intentions of the parties as closely as possible; or, if this is not possible,
- 10.2. construed in a manner as if the invalid or unenforceable part had never been contained therein.

### 11. CHANGES TO THIS DECLARATION

- 11.1. We may make changes to this Declaration, which we consider reasonably necessary or desirable to address the requirements of the Data Protection Laws. Any changes to this Declaration will be published at [www.mourant.com](http://www.mourant.com) by way of public notice.
- 11.2. We will not change this Declaration in a way that defeats or avoids our obligations under the Declaration or materially prejudices your compliance with the Data Protection Laws.
- 11.3. We last updated this Declaration on the date stated below.

### 12. GOVERNING LAW

- 12.1. Without prejudice to applicable Data Protection Laws, this Declaration is governed by and construed in accordance with the governing law specified in the Relevant Contract.
- 12.2. Any dispute arising under or in connection with this Declaration will be resolved in accordance with the relevant provisions of the Relevant Contract.

### 13. CONTACT DETAILS

All enquiries in respect of this Declaration should be directed to the relevant Data Protection Officer of the Mourant Group (whose contact details are set out in the Privacy Notice).

Date: 24 October 2022

## Schedule

## Processing Activities

The table below sets out details of our processing activities in cases where we act as a data processor.

Details of our processing activities	Description
Subject matter	Our performance of the Services as set out in the Relevant Contract.
Duration	Our processing continues until the later of: (a) the Relevant Contract ending in line with its terms; and (b) you and/or a person acting on your behalf and/or us no longer being subject to a requirement under applicable laws and rules to continue to retain custody or control of personal data.
Nature and purpose of processing	We will process personal data in line with this Declaration for the purposes of performing the Services under the Relevant Contract.
Categories of data subjects	Depending on the nature of the Services, data subjects may include: (a) (if you are an individual) you, your family members and any individual mentioned in (b) below to the extent relevant to you; and (b) (if you are not an individual) your beneficial owners, controllers, investors, members, partners, agents, directors, officers, employees and other personnel acting on your behalf or connected to you or included on a transaction involving you and/or the Services.
Type of personal data processed	Depending on the nature of the Services, the type of personal data processed by us may include: (a) general demographic information including name, title, marital status, gender, date and place of birth, age and nationality; (b) photographic identification including passport, driver's licence or national identity card; (c) governmental identification including passport number, national insurance or social security number, income tax number or other national identifier; (d) contact details including personal and work landline and mobile phone numbers, postal addresses and email addresses; (e) professional information including job title, employment status, employer details, employment history, qualifications and memberships of professional bodies; and (f) financial data including bank account details, investment details, source of wealth, source of funds and other personal assets.
Your rights and obligations (as data controller)	Your rights and obligations in your capacity as data controller are described in this Declaration and under the Relevant Contract.