

## NYL - SUPPLIER DATA PROCESSING TERMS

### 1. BACKGROUND, DEFINITIONS, AND INTERPRETATION.

**1.1 Background.** In providing Services, Supplier may process the personal data of individuals located outside the United States. These Data Processing Terms (“**Terms**”) confirm the data protection provisions relating to the Services and the Parties’ mutual obligation to meet the requirements of the Data Protection Legislation (as defined in **Section 1.2** of these Terms) or the Agreement.

**1.2 Definitions.** For purposes of these Terms:

(A) “**Adequacy Decision**” means any regulatory decision, including those of the European Commission based on Article 45(3) of the GDPR (as defined below) that the laws of a country, or a data transfer compliance mechanism, ensures an adequate level of protection as required by the Data Protection Legislation.

(B) “**Agreement**” means any written contract, agreement, or order entered into by NYL and Supplier for the procurement of products, goods, and services. Agreements include, without limitation, (i) framework/master/governing agreements, (ii) orders made to a framework/master/governing agreement, (C) single-use or stand-alone agreements, and (D) purchase orders, direct to source orders, or any similar type of ordering documents.

(C) “**Applicable Law**” means, as applicable to NYL and Supplier (directly and as service providers to NYL), or the subject matter of these Terms or the Agreement, for all countries, all then-current national, federal, state, provincial, or local: (A) laws (including common law), ordinances, regulations, and codes; (B) Data Protection Legislation; (C) binding court orders, judgments, or decrees (including consent agreements); (D) regulatory orders, requirements, directives, policies, rules, decisions, judgments, interpretive letters, guidance, and other official releases; and (E) anti-corruption laws including the U.K. Bribery Act and the U.S. Foreign Corrupt Practices Act.

(D) “**Data Protection Legislation**” means, as amended, revised, or replaced from time to time: all applicable data protection legislation including (1) the Electronic Communications Data Protection Directive (2002/58/EC) and the General Data Protection Regulation (EU) 2016/679 (the “GDPR”), and all related implementing legislation, regulations, or guidelines, such as those adopted by members of the European Economic Area (“EEA”) (“EU Privacy Law”); (2) Japan’s Act on the Protection of Personal Privacy; (3) the Republic of Korea’s Personal Information Protection Act; (4) Canada’s Personal Information Protection and Electronic Documents Act; (5) the United Kingdom’s Data Protection Act (2018) and retained EU GDPR; (6) Australia’s Privacy Act 1998; and (7) the Cayman Islands Data Protection Act. For the avoidance of doubt, where non-EU Privacy Law imposes requirements that differ from EU Privacy Law, such requirements will be set forth in the Agreement.

(E) “**NYL**” means New York Life Insurance Company, its affiliates, and their respective personnel.

(F) “**NYL Personal Data**” means all personal data processed by Supplier on behalf of NYL for the purposes of supplying the Services.

(G) **Incorporated Terms.** The terms “data controller”, “data processor”, “data subject”, “personal data”, “processing”, and “personal data breach” or their non-EU Privacy Law functional equivalents have the meanings given in the relevant Data Protection Legislation.

(H) “**Supplier**” means, for the general purposes of these Terms, an entity (including its affiliates and personnel) that has entered into an Agreement with NYL for the provision of products, goods and services.

**1.3 Interpretation.** In the event of any conflict or inconsistency between these Terms and the Agreement, these Terms will take precedence in interpretation with respect to their subject matter.

Unless otherwise specified in the Agreement, in the event of any conflict or inconsistency between sources of Data Protection Legislation, EU Privacy Law will take precedence.

## **2. CONTROLLER AND PROCESSOR; NYL PERSONAL DATA.**

**2.1 Controller and Processor.** To the extent that Supplier processes NYL Personal Data on behalf of NYL, Supplier acknowledges that NYL is the data controller and Supplier is the data processor in respect of NYL Personal Data unless the Agreement provides otherwise.

**2.2 NYL Personal Data.** Supplier further acknowledges that NYL Personal Data:

**(A) Data Subjects.** Relates to data subjects who are customers, employees, investors, or business contacts of NYL, as more fully identified in the Agreement;

**(B) Categories.** Comprises one or more of the following with respect to data subjects, as more fully identified in the Agreement: personal identification and address details; communication means and contact details; education and training details; employment-related details; family, lifestyle and social circumstances; financial, economic and insurance details; or business contact details; commercial (contractual, financial or bank) data of such data subjects; and digital identifiers including IP addresses and cookies (where the content of such cookies includes Personal Data); and

**(C) Limited Use.** Must be processed by Supplier to supply the products, goods and services, and only for the duration of the Agreement or for such further time as the Parties agree in writing.

**3. DATA PROCESSING OBLIGATIONS.** In connection with **Section 2** of these Terms, as a data processor, Supplier must:

**3.1 Instructions.** Carry out processing only in accordance with NYL's written instructions set out in these Terms or the Agreement, and as specifically notified in writing to Supplier by NYL from time to time, unless Supplier is required to do otherwise by Applicable Law in which case, where not prohibited by law, Supplier must inform NYL of any legal requirement before processing;

**3.2 Personnel.** Ensure that all Supplier personnel authorized to process NYL Personal Data are subject to a binding duty of confidentiality in respect of such data;

**3.3 Controls.** Implement appropriate technical and organizational measures to protect NYL Personal Data against unauthorized or unlawful processing and accidental destruction, damage, or loss, including the measures taken in accordance with the Data Protection Legislation, to allow NYL to comply with its obligations under the Data Protection Legislation;

**3.4 Limited Subprocessing.** Not subcontract any processing of NYL Personal Data without NYL's prior written consent, which may be granted or withheld in NYL's sole and absolute discretion within 30 days after receiving notice. NYL will not give consent unless Supplier has a written agreement with each subprocessor containing obligations for the processing of NYL Personal Data that are the same as, or more protective of NYL Personal Data than, those imposed on Supplier under this Agreement. NYL may, at its sole discretion, audit Supplier's agreements with subprocessors for compliance with this requirement. Supplier must promptly provide NYL with all information requested or required by NYL about any proposed sub-processor, including the proposed sub-processor's identity and propriety. Supplier remains fully liable to NYL for any processing of NYL Personal Data conducted by a sub-processor appointed by Supplier in accordance with this **Section 3.4**;

**3.5 Reasonable Assistance.** Provide all information and assistance to NYL as NYL may reasonably require, within the timeframes reasonably specified by NYL, and at Supplier's sole expense, to allow NYL to comply with the Data Protection Legislation, including assisting NYL to: (A) comply with its own security obligations; (B) discharge its obligations to respond to requests for exercising data subjects' rights; (C) comply with its obligations to inform data subjects about personal data

breaches which are likely to result in a high risk to their rights and freedoms; (D) carry out privacy impact assessments and audit privacy impact assessment compliance; and (E) consult with applicable supervisory authorities following a privacy impact assessment;

**3.6 Exit Duties.** On expiry or termination of the Agreement, at NYL’s choice, either: (A) promptly and securely return NYL Personal Data to NYL, or (B) promptly and securely delete NYL Personal Data, unless (1) Applicable Law requires Supplier to retain NYL Personal Data, (2) Supplier continues to maintain the confidentiality of NYL Personal Data for so long as it is retained, and (3) Supplier does not retain or use NYL Personal Data for any purpose other than the purpose specified in Applicable Law requiring retention;

**3.7 Records.** Keep or cause to be kept, at Supplier’s sole expense, all information necessary to demonstrate Supplier’s compliance with its obligations under these Terms including full and accurate records relating to the processing of NYL Personal Data, and at NYL’s reasonable request, make available to NYL or grant to NYL and its auditors and agents, a right of access to and to take copies of all corresponding information or records kept by Supplier;

**3.8 Advisement.** Inform NYL immediately if, in Supplier’s opinion, any instruction issued by NYL under this **Section 3** breaches any provision of the Data Protection Legislation;

**3.9 Geographic Limitation.**

**(A) Consent Required.** Not transfer any NYL Personal Data outside of the jurisdiction in which it was processed without NYL’s prior written consent. Where NYL does consent to the transfer of NYL Personal Data to another jurisdiction, Supplier must comply with all Data Protection Legislation relating to that transfer; and

**(B) Enhanced Measures.** With respect to the EEA, the United Kingdom, and other jurisdictions adopting similar measures, Supplier (or, where applicable, Supplier’s Affiliates, subprocessors, Subcontractors, or other relevant third parties) may need to enter into standard contractual clauses with NYL in the form set out in the European Commission’s Implementing Decision of 04 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 for the transfer of NYL Personal Data to processors established in third countries (“Standard Contractual Clauses”) or their replacements (as may be amended by agreement of the Parties for compliance with the Data Protection Legislation). If the validity of the Standard Contractual Clauses, or any other legal basis for transfer used by Supplier, is invalidated or suspended, or any supervisory authority requires transfers of personal data pursuant to such Standard Contractual Clauses to be suspended, then NYL may, at its discretion, require Supplier to: (1) cease data transfers immediately, and implement an alternative adequacy mechanism (as authorized in writing by NYL); or (2) return all NYL Personal Data previously transferred, and ensure that a senior officer or director of Supplier certifies to NYL that this has been done;

**3.10 Notice of Breach.** Notify NYL immediately after becoming aware of any personal data breach in respect of NYL Personal Data, or notify NYL without undue delay in writing of any actual or suspected breach of this **Section 3**, and provide full and prompt information and assistance to NYL and any applicable supervisory authority in relation to such breach at its cost;

**3.11 Other Notices.** Notify NYL without undue delay in writing if it receives:

**(A)** any communication from any regulator relating to the Data Protection Legislation; or

**(B)** any communication from a data subject whose personal data forms part of NYL Personal Data that (1) seeks to exercise rights conferred on the data subject by the Data Protection Legislation, or (2) constitutes a complaint or claim for compensation arising from or relating to the processing of NYL Personal Data;

- 3.12 Response to Notice.** Not respond to, or communicate with, the applicable regulator or data subject identified in **Section 3.11 (Other Notices)** of these Terms following receipt of such communication, complaint, or claim without obtaining NYL’s prior written consent; and
- 3.13 Compliance.** Always comply, and assist NYL in complying, with the Data Protection Legislation, including performing its obligations under the Agreement in a way that avoids causing NYL to breach its obligations under the Data Protection Legislation.
- 4. LIABILITY.** Supplier is liable for, and will defend and indemnify NYL against, all claims, actions, liabilities, losses, damages and expenses (including legal expenses) incurred by NYL which arise directly or indirectly out of or in connection with Supplier’s acts or omissions under **Section 3** of these Terms, including those arising out of any third party (including any data subject) demand, claim, or action, or any breach of contract, negligence, fraud, willful misconduct, breach of statutory duty, or non-compliance with any part of the Data Protection Legislation of or by Supplier.