

Appendix B – Identifying Information Rider

Identifying Information Rider

(To supplement the City Standard Human Services Contract, the Discretionary Fund Contract for human services contracts less than \$100,000, other human services contracts and other contracts designated by the Chief Privacy Officer)

Section 1.01 Background.

Local Laws 245 and 247 of 2017 (codified at New York City Charter (“Charter”) Section 8 subdivision (h) and the Administrative Code of the City of New York (“Admin. Code”) Sections 23-1201 to -1205) are effective June 15, 2018. Such laws apply to human services contracts and other contracts designated by the Chief Privacy Officer that involve the collection, retention, or disclosure of “Identifying Information” in connection with services provided under a City contract. Accordingly, in connection with the services provided under this Agreement, Contractor may collect, retain, and disclose Identifying Information only in accordance with the requirements of this Identifying Information Rider, the policies and protocols adopted pursuant to Admin. Code Sections 23-1201 to -1205, the other provisions of this Agreement and as otherwise required by law.

Section 1.02 Definitions.

- A. “Agency” means the City agency or office through which the City has entered into this Agreement.
- B. “Agency Privacy Officer” means the person designated to exercise functions under Admin. Code Sections 23-1201 to -1205 by the Agency through which the City is a party to this Agreement.
- C. “Chief Privacy Officer” means the person designated by the Mayor pursuant to Charter Section 8 subdivision (h) as the City’s Chief Privacy Officer or such person’s designee.
- D. “Exigent Circumstances” means circumstances where collection or disclosure is urgently necessary, such that procedures that would otherwise be required cannot be followed.
- E. “Identifying Information” means any information provided by the City to Contractor or obtained by Contractor in connection with this Agreement that may be used on its own or with other information to identify or locate an individual. Identifying Information includes, but is not limited to: name, sexual orientation, gender identity, race, marital or partnership status, status as a victim of domestic violence or sexual assault, status as a crime victim or witness, citizenship or immigration status, eligibility for or receipt of public assistance or city services, all information obtained from an individual’s income tax records, an individual’s Social Security number, information obtained from any surveillance system operated by, for the benefit of, or at the direction of the New York City Police Department, motor vehicle information or license plate number, biometrics such as fingerprints and photographs, languages spoken, religion, nationality, country of origin, place of birth, date of birth, arrest record or criminal conviction, employment status, employer information, current and previous home and work addresses, contact information such as phone number and email address, information concerning social media accounts, date and/or time of release from the custody of the Administration for Children’s Services, the Department of Correction, or the New York City Police Department, any scheduled court appearances, any scheduled appointments with the City, the Contractor or its subcontractor that provides human services or other services designated by the Chief Privacy Officer, and any other category of information designated by the Chief Privacy Officer.

Section 1.03 Collection.

Absent Exigent Circumstances, Contractor shall not collect Identifying Information unless such collection (a) has been approved by the Agency Privacy Officer or the Chief Privacy Officer and the collection of such Identifying Information is in furtherance of Contractor's obligations under this Agreement; (b) is required by law or treaty; (c) is required by the New York City Police Department in connection with a criminal investigation; or (d) is required by a City agency in connection with the welfare of a minor or other individual who is not legally competent.

Section 1.04 Disclosure.

- A. Absent Exigent Circumstances, Contractor shall not disclose Identifying Information unless such disclosure (a) has been authorized in writing by the individual to whom such information pertains or, if such individual is a minor or is otherwise not legally competent, by such individual's parent, legal guardian, or other person with legal authority to consent on behalf of the individual; (b) has been approved by the Agency Privacy Officer or the Chief Privacy Officer and the disclosure of such Identifying Information is in furtherance of Contractor's obligations under this Agreement; (c) is required by law or treaty; (d) is required by the New York City Police Department in connection with a criminal investigation; or (e) is required by a City agency in connection with the welfare of a minor or other individual who is not legally competent.
- B. If Contractor discloses an individual's Identifying Information in violation of this Rider, Contractor shall notify the Agency Privacy Officer. In addition, if such disclosure requires notification to the affected individual(s) pursuant to the policies and protocols promulgated by the Chief Privacy Officer under subdivision 6 of Section 23-1203, in the discretion of the Agency Privacy Officer Contractor shall either (i) make reasonable efforts to notify such individual(s) in writing of the Identifying Information disclosed and to whom it was disclosed as soon as practicable or (ii) cooperate with the Agency's efforts to notify such individual(s) in writing. The City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any law, administrative or judicial order, or the Chief Privacy Officer to address the disclosure, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a disclosure by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Agency shall provide Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, Contractor shall pay directly for the costs, detailed above, if any.
- C. Section 1.04(B) shall not require any notification that would violate any law or interfere with an investigation or otherwise compromise public safety pursuant to subdivision e of Section 23-1204.

Section 1.05 Exigent Circumstances.

In the event Contractor collects or discloses Identifying Information due to Exigent Circumstances, with no other basis for collection or disclosure under subdivisions b or c of Section 23-1202, Contractor shall send to the Agency Privacy Officer information about such collection or request and disclosure, along with an explanation of why such Exigent Circumstances existed, as soon as practicable after such collection or disclosure. This section shall not require any such notification for collection or disclosure of Identifying Information that: (a) is required by the New York City Police Department in connection with an open criminal investigation; (b) is required by a City agency in connection with an open investigation concerning the welfare of a minor or other individual who is not legally competent; or (c) occurs in the normal course of performing Contractor's obligations under this Agreement and is in furtherance of law enforcement or public health or safety powers of the Agency under Exigent Circumstances.

Section 1.06 Retention.

Contractor shall retain Identifying Information as required by law or as otherwise necessary in furtherance of this Agreement, or as otherwise approved by the Agency Privacy Officer.

Section 1.07 Reporting.

Contractor shall provide the Agency with reports as requested by the Agency Privacy Officer or Chief Privacy Officer regarding the collection, retention, and disclosure of Identifying Information by Contractor. Each such report shall include information concerning Identifying Information collected, retained, and disclosed, including: (a) the types of Identifying Information collected, retained, or disclosed; (b) the types of collections and disclosures classified as “routine” and any collections or disclosures approved by the Agency Privacy Officer or Chief Privacy Officer; and (c) any other related information that may be reasonably required by the Agency Privacy Officer or Chief Privacy Officer.

Section 1.08 Coordination with Agency Privacy Officer.

The Agency may assign powers and duties of the Agency Privacy Officer to Contractor for purposes of this Agreement. In such event, Contractor shall exercise those powers and duties in accordance with applicable law in relation to the Agreement, and shall comply with reasonable directions of the Agency Privacy Officer and Chief Privacy Officer concerning coordination and reporting.

Section 1.09 Conflicts with Provisions Governing Records, Audits, Reports and Investigations.

To the extent allowed by law, the provisions of this Rider shall control if there is a conflict between any of the provisions of this Rider and, as applicable, either (i) Article 5 of Appendix A (General Provisions Governing Contracts for Consultants, Professional, Technical, Human, and Client Services); (ii) if the value of this Agreement is \$100,000 or less and the Agreement is funded by City Council Discretionary Funds, Article 7(E) and Rider 1, Article 1 of the Agreement; or (iii) if neither (i) nor (ii) apply, the Investigations Clause, and other provisions concerning records retention, inspections, audits, and reports designated elsewhere in the Agreement. The provisions of this Rider do not replace or supersede any other obligations or requirements of this Agreement.

Section 1.10 Subcontracts.

- A. Contractor shall include this Rider in all subcontracts to provide human services or other services designated in the policies and protocols of the Chief Privacy Officer.
- B. Contractor agrees that it is fully responsible to the Agency for the compliance with this Rider by its subcontractors that provide human services or other services designated by the City Chief Privacy Officer.

Section 1.11 Disclosures of Identifying Information to Third Parties.

Contractor shall comply with the Chief Privacy Officer’s policies and protocols concerning requirements for a written agreement governing the disclosure of Identifying Information to a third party.