

Privacy Protection Rider

1. Purpose.

The WDC Privacy Officer has determined that an important privacy risk is implicated by the services provided under this Agreement. Contractor agrees to comply with this Privacy Protection Rider (“Rider”) and the Identifying Information Law, as applicable, in the performance of this Agreement.

2. Definitions.

- A. “Access” to Identifying Information means gaining the ability to read, use, copy, modify, process, or delete any information whether or not by automated means.
- B. “Authorized Users” means employees, officials, subcontractors, or agents of Contractor whose collection, use, disclosure of, or access to Identifying Information is necessary to carry out the Permitted Purpose.
- C. “Chief Privacy Officer” means the City’s Chief Privacy Officer.
- D. “City” means the City of New York.
- E. “Collection” means an action to receive, retrieve, extract, or access Identifying Information. Collection does not include receiving information that Contractor did not ask for.
- F. “Contractor” means an entity entering into this Agreement with WDC.
- G. “Disclosure” means releasing, transferring, disseminating, giving access to, or otherwise providing Identifying Information in any manner outside Contractor. Disclosure includes accidentally releasing information and access to Identifying Information obtained through a potential unauthorized access to Contractor’s systems or records.
- H. “Exigent Circumstances” means cases where following this Rider would cause undue delays.
- I. “Identifying Information” means any information provided by WDC 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.
- J. “Identifying Information Law” means §§ 23-1201 – 1205 of the Administrative Code of the City of New York.
- K. “Permitted Purpose” means a use of Identifying Information that is necessary to carry out the Contractor’s obligations under this Agreement.

- L. “Sensitive Identifying Information” means Identifying Information that poses a higher risk of harm to an individual or members of an individual’s household. Examples of harm are identity theft, danger to health and safety, severe financial loss, reputational harm, or other harms dependent upon any protected status of an individual.
- M. “Use” of Identifying Information means any operation performed on Identifying Information, whether or not via automated means, such as collection, storage, transmission, consultation, retrieval, disclosure, or destruction.
- N. “WDC” means the Workforce Development Corporation.
- O. “WDC Privacy Officer” means the position delegated authority by the WDC Board of Directors to coordinate and oversee privacy matters, including but not limited to the collection and disclosure of Identifying Information and Sensitive Identifying Information by third parties.

3. General Requirements.

- A. Contractor will use appropriate physical, technological, and procedural safeguards to protect the security of Identifying Information and will take reasonable measures to prevent harm to WDC, the City, and the individuals whose Identifying Information is subject to this Agreement.
- B. Contractor will restrict collection, use, disclosure of, or access to Identifying Information to Authorized Users for a Permitted Purpose.
- C. Contractor will comply with the Citywide Cybersecurity Requirements for Vendors and Contractors set forth by the New York City Office of Technology and Innovation and its Office of Cyber Command as they appear at <https://nyc.gov/infosec> as applicable. Contractor will ensure that Authorized Users understand and comply with the provisions of this Agreement applicable to Identifying Information.
- D. Contractor and Authorized Users will not use Identifying Information for personal benefit or the benefit of another, nor publish, sell, license, distribute, or otherwise reveal Identifying Information outside the terms of this Agreement.

4. Collection.

- A. Absent Exigent Circumstances (Section 7), Contractor may collect Identifying Information if the collection:
 - i. has been approved by the WDC Privacy Officer;
 - ii. is required by law or treaty;
 - iii. is required by the New York City Police Department in connection with a criminal investigation; or

- iv. 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.

5. Disclosure.

- A. Absent Exigent Circumstances (Section 7), Contractor may disclose Identifying Information if the disclosure:
 - i. has been approved by the WDC Privacy Officer;
 - ii. is required by law or treaty;
 - iii. is to the New York City Police Department in connection with a criminal investigation;
 - iv. is required by a City agency in connection with an open investigation concerning the welfare of a minor or an individual who is not legally competent; or
 - v. 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. If Contractor is required by law to disclose Identifying Information, it will: (a) as soon as practicable, but not later than one business day after it learns of the required disclosure, notify WDC; and (b) disclose the Identifying Information only to the extent allowed under a protective order or as necessary to comply with the law.

6. Disclosures of Identifying Information to Third Parties.

Unless prohibited by law, Contractor will promptly notify the WDC Privacy Officer of any third-party requests for Identifying Information, cooperate with the WDC Privacy Officer to handle such requests, and comply with the Citywide Privacy Protection Protocols of the Chief Privacy Officer concerning requirements for a written agreement governing the disclosure of Identifying Information to a third party.

7. Exigent Circumstances.

- A. Notwithstanding Section 4 (Collection) and 5 (Disclosure), if 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, then as soon as practicable after the collection or disclosure but not to exceed 24 hours, Contractor will send to the WDC Privacy Officer in writing:
 - i. The name, e-mail address, phone number, and title of a Contractor point of contact with sufficient knowledge and authority who will respond promptly to and collaborate with the WDC Privacy Officer;

- ii. A description of the Exigent Circumstances, including a detailed timeline, all involved parties, the types of Identifying Information disclosed or collected, and Contractor's estimate of the likelihood of the Exigent Circumstances reoccurring.
- B. If the WDC Privacy Officer determines the collection or disclosure was not made under Exigent Circumstances, the collection or disclosure will be deemed in violation of this Rider and subject to Section 8 (Unauthorized Collection, Use, Disclosure of, or Access to Identifying Information).

8. Unauthorized Collection, Use, Disclosure of, or Access to Identifying Information.

- A. If Contractor collects, uses, discloses, or accesses Identifying Information in violation of this Rider, Contractor will:
 - i. notify the WDC Privacy Officer in writing as soon as practicable but no later than 24 hours after discovery, including a description of the collection, disclosure, use, or access, the types of Identifying Information that may have been involved or compromised, the names and affiliations of the parties (if known) who gained access to Identifying Information without authorization, and a description of the steps taken, if any, to mitigate the effects of the collection, disclosure, use, or access;
 - ii. provide the name, e-mail address, phone number, and title of a Contractor point of contact with sufficient knowledge and authority who will respond promptly to and collaborate with the WDC Privacy Officer and relevant City officials, including the Chief Privacy Officer, Office of Cyber Command, and the City's Law Department, to investigate the occurrence and scope of the collection, disclosure, use, or access, and make any required or voluntary notices;
 - iii. take all reasonably necessary steps, as determined by the WDC Privacy Officer, to prevent or mitigate the effects of the unauthorized collection, use, disclosure, or access.
- B. If there is an alleged collection, use, disclosure, or access violation, WDC may investigate the alleged violation. Contractor will cooperate with the investigation, which may include prompt:
 - i. provision to the City of information related to security controls and processes, such as third-party certifications, policies and procedures, self-assessments, independent evaluations and audits, view-only samples of security controls, logs, files, incident reports or evaluations;
 - ii. verbal interviews of individuals with knowledge of Contractor's security controls and processes or the unauthorized collection, use, disclosure, or access;
 - iii. an evaluation or audit by the City of Contractor's security controls and processes, and the unauthorized collection, use, disclosure, or access;
 - iv. an evaluation or audit by Contractor of its security controls and processes and the

unauthorized collection, use, disclosure, or access, and provision of any attendant results to the City; or,

- v. an independent evaluation or audit to be provided to the City of Contractor's security controls and processes, and the unauthorized collection, use, disclosure, or access.
- C. If the WDC Privacy Officer or the Chief Privacy Officer determine that an unauthorized collection, use, disclosure, or access requires notification to individuals pursuant to any law or the policies and protocols promulgated by the Chief Privacy Officer under subdivision 6 of Section 23- 1203, then the WDC Privacy Officer will inform Contractor whether WDC or the Contractor will issue the notification. If the WDC Privacy Officer directs Contractor to issue the notification, the notification will be issued in writing as soon as practicable and will conform to the WDC Privacy Officer's instructions as to form, content, scope, and recipients.
- D. Monies and Set-off.
 - i. Contractor will pay for services deemed necessary by the WDC Privacy Officer to address the collection, use, disclosure, or access to Identifying Information in violation of this Rider. Services may include: (a) notifications; (b) credit monitoring services; (c) payment of any fines or disallowances imposed by the State or federal government related to the violative collection, use, disclosure, or access; (d) other actions mandated by any law, administrative or judicial order, WDC Privacy Officer, or the Chief Privacy Officer.
 - ii. At the WDC Privacy Officer's discretion, WDC may pay for services deemed necessary to address Contractor's collection, disclosure, use, or access of Identifying Information in violation of this Rider. If the WDC pays for any of these services, it may submit invoices to Contractor and Contractor will promptly reimburse WDC.
 - iii. Should Contractor refuse to pay for services deemed necessary by the WDC Privacy Officer, then for the purpose of set-off in sufficient sums and without waiver of any other rights and remedies, WDC may:
 - a. withhold further payments under this Agreement to cover the costs of notifications or other actions mandated by any law, administrative or judicial order, or the Chief Privacy Officer, including any related fines or disallowances imposed by the State or federal government; and,
 - b. withhold further payments to cover the costs of credit monitoring services by a national credit reporting agency and any other commercially reasonable preventive measure.
- E. Contractor is not required to make any notification that would compromise public safety, violate any law, or interfere with a law enforcement investigation or other investigative activity by WDC.

9. Retention.

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

10. Destruction of Identifying Information.

If WDC instructs Contractor to destroy Identifying Information, Contractor will destroy it within 30 days after receiving the instruction in a way it cannot be reconstructed, subject to any litigation holds. Contractor will provide written confirmation to the WDC Privacy Officer that it has destroyed the Identifying Information within 30 days after receiving the instruction. If it is impossible for Contractor to destroy the Identifying Information, Contractor will promptly explain in writing why it is impossible, and will, upon receiving the destruction request, immediately stop accessing or using the Identifying Information, and will maintain the Identifying Information in accordance with this Rider.

11. Reporting and Coordination with WDC Privacy Officer.

- A. Contractor will provide WDC with reports as requested by the WDC Privacy Officer or Chief Privacy Officer regarding Contractor's collection, use, retention, disclosure of, and access to Identifying Information including: (i) the types of Identifying Information collected, retained, disclosed, or accessed; (ii) the types of collections and disclosures classified as "routine" and any collections or disclosures approved by the WDC Privacy Officer or Chief Privacy Officer; and (iii) any other related information that may be reasonably required by the WDC Privacy Officer or Chief Privacy Officer.
- B. WDC may assign powers and duties of the WDC Privacy Officer to Contractor for purposes of this Agreement. In such event, Contractor will exercise those powers and duties in accordance with applicable law in relation to this Agreement and will comply with directions of the WDC Privacy Officer and Chief Privacy Officer concerning coordination and reporting.

12. Subcontracts.

- A. Contractor will include this Rider in all subcontracts to provide services in connection with this Agreement.
- B. Contractor will be responsible to WDC for compliance with this Rider by its subcontractors in connection with this Agreement.

13. Conflicts with Provisions Governing Records, Reports, and Investigations.

To the extent allowed by law, the provisions of this Rider will control if there is a conflict between any of the provisions of this Rider and, as applicable, Article 5 of Appendix A (WDC General Provisions Governing Contracts for Consultants, Professional, Technical, Human, and Client Services); if Article 5 of Appendix A does not apply, the Investigations Clause, and other provisions concerning records retention and reports designated elsewhere in this Agreement.

14. Construction.

Notwithstanding any contrary provision in this Agreement, to the extent allowed by law, the more restrictive provision concerning collection, use, disclosure of, or access to Identifying Information will control. The provisions of this Rider do not replace or supersede any other obligations or requirements of this Agreement.