

The City of New York
Client Information Terms of Use
(“NYC COVID SAFE App Terms of Use”)

Last Updated on 12/27/22

1. What are these Terms of Use?

These Terms of Use constitute an agreement between the City of New York (the "City" or “we”) and any person who downloads and uses the mobile application software owned by the City called “NYC COVID SAFE” (“App”). By downloading and using the App, you are acknowledging and agreeing to these Terms of Use.

We encourage you to check frequently to see if there are any changes to the Terms of Use.

2. What does the App do?

The App allows you to upload and store, within your mobile device, digital versions of your photo ID, proof of COVID-19 vaccination, and negative COVID-19 PCR test information (“Content”), which can be presented as evidence of your vaccination status and a negative COVID-19 PCR test result.

The App simply stores your Content, and therefore does not—and cannot—be used to verify your Content against any other source.

3. What are the general requirements to use the App?

If you agree to comply with these Terms of Use, the City grants you a license to download, install, and use the App. This license is non-exclusive and limited, consistent with these Terms of Use.

You must have internet access to download the App to your mobile device, and to receive updates, patches, or bug fixes. All data or access charges incurred due to your use of the App are subject to your agreed terms with your mobile network provider, and any such charges will not be paid or reimbursed by the City.

4. For how long can I use the App?

Your license to use the App will terminate when you remove the App from your mobile device, or if the City terminates the license, whichever occurs first. The City’s right to terminate is entirely in its discretion and it may do so at any time and without notice.

If you violate these Terms of Use or are making an illegal or unauthorized use of the App, your license to use the App is deemed terminated. This means you immediately and automatically have no further right to use the App and must delete the App from your mobile device. In the case of illegal use, the City may commence legal proceedings, as the City determines appropriate.

5. What are the privacy considerations in using the App?

Your Content: The App collects and stores the Content provided by you. Your Content remains stored on your phone until you delete it. Your Content is not transmitted to other entities.

Your Mobile Device Information: The App collects the following information about your mobile device (“Device Information”):

- Device id and operating system type
- IP address
- The date(s) and time(s) you open the App

Your Device Information, which may be collected on behalf of the City by a third-party contractor, will be shared with the City. The City will use your Device Information to improve the App and to report aggregate statistics on App usage. The City will not use any Device Information that could identify or locate a person in any reporting.

6. Is my Content secure?

The App only stores your Content on your mobile device and does not transmit it to other entities. You are responsible for ensuring that you have appropriate security protections on your mobile device. Many mobile devices include an encryption feature that may encrypt Content when not shown on the screen. You are encouraged to configure your device accordingly. The App contains a password feature that you may wish to activate to protect your Content, in case your device is lost or stolen.

7. How will the App be kept updated?

We may make updates, bug fixes, or patches to the App available from time to time. We reserve the right to make any changes to the App or to discontinue any aspect or feature of the App without notice to you. The City is not, however, obligated to create or deliver updates, bug fixes, or patches. You are responsible for periodically checking to see whether there are updates, bug fixes or patches available.

8. Do you provide any warranties with respect to the App?

No. You are provided with access to the App without charge by the City. To the maximum extent permitted by law, the City will not be liable for any loss, injury or damage of whatever kind caused in whole or in part by use of the App or the Content, or by any failure, delay, interruption or otherwise incurred in the provision of the App, or by the City’s failure to perform any of the City’s obligations under these Terms of Use. THE APP IS PROVIDED AS-IS. WE MAKE NO EXPRESS OR IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR THAT THE APP WILL WORK PROPERLY OR BE FIT FOR ANY PARTICULAR PURPOSE.

In no event will the City be liable to you for any special, indirect, incidental, or consequential damages, including loss of profits and goodwill, business, business benefit or loss of data, and the Content.

The City does not intend or agree to assume any obligation or liabilities in connection with the App and your use of the App.

You agree that the City, its employees, and officers will be released from liability including all costs or damages arising, either directly or indirectly, from your use of the App. Additionally, you hold harmless the City of New York and their employees and officers, for the loss of any file, data or other information

while using the App, and for any unauthorized access to or utilization by any third party of your Content, including any financial or health information.

EXCEPT AS PROVIDED BY LAW, THE TOTAL LIABILITY OF THE CITY ARISING OUT OF THE APP UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO, TORT, BREACH OF CONTRACT, BREACH OF WARRANTY, INTELLECTUAL PROPERTY INFRINGEMENT, OR NEGLIGENCE, WILL NOT EXCEED ONE HUNDRED DOLLARS (\$100).

9. What are my additional obligations under these Terms of Use?

You will use the App solely for your personal, non-commercial, and lawful use. You will not duplicate, transfer, give access to, copy, or distribute any part of the App in any medium without the City's prior written consent. You will not attempt to reverse engineer, alter, or modify any part of the App. You will otherwise comply with the terms and conditions of these Terms of Use.

You agree that any representations you make regarding the Content will be accurate to the best of your knowledge, and you agree not to misrepresent that the App verifies the Content.

You agree to defend, indemnify and hold harmless the City, its employees and officers, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the App; (ii) your violation of any term of these Terms of Use; (iii) your violation of any third party's rights, including without limitation any copyright, property, or privacy right. This defense and indemnification obligation will survive these Terms of Use and your use of the App.

10. Additional Terms.

You may print and keep a copy of these Terms of Use, but the most up to date version published at <https://www1.nyc.gov/assets/oti/downloads/pdf/nycCOVIDsafe-app-terms-of-use.pdf> is the entire agreement between you and the City regarding the App and supersedes any earlier versions, other communications, or advertising.

The City may alter or amend these Terms of Use at any time, with immediate effect and without notice. By continuing to use the App after such modification, you will be deemed to have accepted any amendment to these Terms of Use.

These Terms and their performance will be governed by and construed in accordance with the laws of the State and City of New York. The courts of New York will be the exclusive jurisdiction.

You agree that because of the unique nature of the App and the City's proprietary rights, a demonstrated breach of these Terms by you may irreparably harm the City, and in this circumstance, monetary damages would be inadequate compensation. Therefore, you agree that the City shall be entitled to preliminary and permanent injunctive relief, as determined by any court of competent jurisdiction to enforce the provisions of these Terms.

If any provision of these Terms is declared void, illegal, or unenforceable, the remainder of these Terms will be valid and enforceable to the extent permitted by applicable law. In such event, the parties agree to use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision.

Any failure by the City to enforce any term or condition under these Terms of Use will not be considered a waiver of the City's right to enforce each and every term and condition of these Terms of Use.

END OF TERMS OF USE