

## Sanchez, Rodzandra (COE)

---

**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Wednesday, August 22, 2018 12:53 PM  
**To:** Sanchez, Rodzandra (COE)  
**Subject:** FW: INQ 18-207, Julian Manduley, IT Contracts and Procurement Manager, Miami-Dade County Information Technology Department (Gifts)  
**Attachments:** Athenian Project ToS\_ (002) Rev 2\_JM 8\_17\_18 (002).docx

INQ 18-207 Manduley

---

**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Tuesday, August 21, 2018 3:51 PM  
**To:** Manduley, Julian R. (ITD) <Julian.Manduley@miamidade.gov>  
**Cc:** Embil, Lawrence (ITD) <Lawrence.Embil@miamidade.gov>; Schmekel, Lars (ITD) <Lars.Schmekel@miamidade.gov>; Rosenthal, Oren (CAO) <Oren.Rosenthal@miamidade.gov>; Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>  
**Subject:** INQ 18-207, Julian Manduley, IT Contracts and Procurement Manager, Miami-Dade County Information Technology Department (Gifts)

Dear Mr. Manduley:

You inquired whether the gift provisions of the County Ethics Code would apply to a proposed Agreement between Miami-Dade County and Cloudflare Inc. (attached) for licensing of Cloudflare's elections security software. Section 2-11.1(e)(1) of the County Ethics Code defines a gift as "...the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration."

The CAO has reviewed the Agreement and advises that it is a *quid pro quo* agreement between the County and Cloudflare Inc. and therefore does not constitute a gift. Thus, the County Ethics Code's gift provisions would not apply in this instance. This matter is a contractual agreement that will be presented to the Board of County Commissioners for approval.

Please contact us if you have any further questions.

Regards,

Gilma (Mimi) Diaz-Greco  
Staff Attorney



Miami-Dade Commission on Ethics and Public Trust  
19 W. Flagler Street, Suite 820  
Miami, FL 33130  
Tel: (305) 579-2594  
Fax: (305) 579-0273  
[gdiazgr@miamidade.gov](mailto:gdiazgr@miamidade.gov)  
[www.facebook.com/MiamiDadeEthics](http://www.facebook.com/MiamiDadeEthics)

---

**From:** Rosenthal, Oren (CAO)  
**Sent:** Tuesday, August 21, 2018 2:50 PM  
**To:** Diaz-Greco, Gilma M. (COE) <[Gilma.Diaz-Greco@miamidade.gov](mailto:Gilma.Diaz-Greco@miamidade.gov)>; Manduley, Julian R. (ITD) <[Julian.Manduley@miamidade.gov](mailto:Julian.Manduley@miamidade.gov)>  
**Cc:** Embil, Lawrence (ITD) <[Lawrence.Embil@miamidade.gov](mailto:Lawrence.Embil@miamidade.gov)>; Schmekel, Lars (ITD) <[Lars.Schmekel@miamidade.gov](mailto:Lars.Schmekel@miamidade.gov)>  
**Subject:** RE: Cloudflare for Elections

I'm sorry I misunderstood. In my opinion, this is not a gift. This is a quid pro quo contractual arrangement that needs commission approval.

---

**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Tuesday, August 21, 2018 2:47 PM  
**To:** Rosenthal, Oren (CAO); Manduley, Julian R. (ITD)  
**Cc:** Embil, Lawrence (ITD); Schmekel, Lars (ITD)  
**Subject:** RE: Cloudflare for Elections

I think the inquiry to the COE is whether this is a permissible gift under the Ethics Code. The code would not apply if the contract does not envision a gift, but instead contains consideration for the agreement. Then it is a regular contractual matter that would not be covered by the Ethics code.

Please advise and thanks-

---

**From:** Rosenthal, Oren (CAO)  
**Sent:** Tuesday, August 21, 2018 2:43 PM  
**To:** Diaz-Greco, Gilma M. (COE) <[Gilma.Diaz-Greco@miamidade.gov](mailto:Gilma.Diaz-Greco@miamidade.gov)>; Manduley, Julian R. (ITD) <[Julian.Manduley@miamidade.gov](mailto:Julian.Manduley@miamidade.gov)>  
**Cc:** Embil, Lawrence (ITD) <[Lawrence.Embil@miamidade.gov](mailto:Lawrence.Embil@miamidade.gov)>; Schmekel, Lars (ITD) <[Lars.Schmekel@miamidade.gov](mailto:Lars.Schmekel@miamidade.gov)>  
**Subject:** RE: Cloudflare for Elections

I have already opined that this will need to go to the Board for approval either as a ratification of a summer recess contract or for adoption.

---

**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Tuesday, August 21, 2018 2:39 PM  
**To:** Manduley, Julian R. (ITD)  
**Cc:** Embil, Lawrence (ITD); Schmekel, Lars (ITD); Rosenthal, Oren (CAO)  
**Subject:** RE: Cloudflare for Elections

Oren:

While the license is provided at no cost, would the data mining rights that the County is granting to Cloudflare (Section 2.2 of the Agreement) constitute consideration for the agreement? In that case, the gift section of the County Ethics Code would not seem to apply.

Please let me know what you think and thanks,

Mimi

Gilma (Mimi) Diaz-Greco  
Staff Attorney



Miami-Dade Commission on Ethics and Public Trust  
19 W. Flagler Street, Suite 820  
Miami, FL 33130  
Tel: (305) 579-2594  
Fax: (305) 579-0273  
[gdiazgr@miamidade.gov](mailto:gdiazgr@miamidade.gov)  
[www.facebook.com/MiamiDadeEthics](https://www.facebook.com/MiamiDadeEthics)

---

**From:** Manduley, Julian R. (ITD)  
**Sent:** Tuesday, August 21, 2018 1:51 PM  
**To:** Diaz-Greco, Gilma M. (COE) <[Gilma.Diaz-Greco@miamidade.gov](mailto:Gilma.Diaz-Greco@miamidade.gov)>  
**Cc:** Embil, Lawrence (ITD) <[Lawrence.Embil@miamidade.gov](mailto:Lawrence.Embil@miamidade.gov)>; Schmekel, Lars (ITD) <[Lars.Schmekel@miamidade.gov](mailto:Lars.Schmekel@miamidade.gov)>; Rosenthal, Oren (CAO) <[Oren.Rosenthal@miamidade.gov](mailto:Oren.Rosenthal@miamidade.gov)>  
**Subject:** FW: Cloudflare for Elections

Hi Gilma:

Oren's approval is contained in his email below. The highlighted sections were made to address Oren's comments. Unless you have any comments, I will submit to Cloudflare for their review and approval. **Time is of the Essence** since we are trying to protect our upcoming elections. The plan is to have the Mayor's Office approve during recess period and go before the Board for approval afterwards.

Please advise.

Julian R. Manduley, C.P.M.  
IT Contracts & Procurement Manager  
Miami-Dade County Information Technology Department  
5680 S.W. 87th Avenue  
Miami, FL 33173  
Tel: 305.596.8610  
Fax: 305.275.7696  
[jmandul@miamidade.gov](mailto:jmandul@miamidade.gov)

***Delivering Excellence Every Day***

Visit our website at: [www.miamidade.gov/itd](http://www.miamidade.gov/itd)

*Miami-Dade County is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and are subject to disclosure.*

---

**From:** Rosenthal, Oren (CAO)  
**Sent:** Tuesday, August 21, 2018 11:56 AM  
**To:** Manduley, Julian R. (ITD) <[Julian.Manduley@miamidade.gov](mailto:Julian.Manduley@miamidade.gov)>  
**Subject:** RE: Cloudflare for Elections

From what I can see, and subject to our prior discussions, it is approved.

---

**From:** Manduley, Julian R. (ITD)  
**Sent:** Tuesday, August 21, 2018 11:46 AM  
**To:** Rosenthal, Oren (CAO)  
**Cc:** Schmekel, Lars (ITD)  
**Subject:** RE: Cloudflare for Elections

See attached.

Julian R. Manduley, C.P.M.  
IT Contracts & Procurement Manager  
Miami-Dade County Information Technology Department  
5680 S.W. 87th Avenue  
Miami, FL 33173  
Tel: 305.596.8610  
Fax: 305.275.7696  
[jmandul@miamidade.gov](mailto:jmandul@miamidade.gov)

***Delivering Excellence Every Day***

Visit our website at: [www.miamidade.gov/itd](http://www.miamidade.gov/itd)

*Miami-Dade County is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and are subject to disclosure.*

---

**From:** Rosenthal, Oren (CAO)  
**Sent:** Tuesday, August 21, 2018 11:25 AM  
**To:** Manduley, Julian R. (ITD) <[Julian.Manduley@miamidade.gov](mailto:Julian.Manduley@miamidade.gov)>  
**Subject:** RE: Cloudflare for Elections

Do you have a redline so I can see the changes? If not I can do a compare when I am back at SPCC.

---

**From:** Manduley, Julian R. (ITD)  
**Sent:** Monday, August 20, 2018 5:59 PM  
**To:** Rosenthal, Oren (CAO)  
**Cc:** Schmekel, Lars (ITD); Embil, Lawrence (ITD)  
**Subject:** FW: Cloudflare for Elections

Hi Oren:

The W document contains the changes as discussed during last week's conference call. The PDF contains your previous comments.

Please review and let us know your thoughts.

Julian R. Manduley, C.P.M.  
IT Contracts & Procurement Manager  
Miami-Dade County Information Technology Department  
5680 S.W. 87th Avenue  
Miami, FL 33173  
Tel: 305.596.8610  
Fax: 305.275.7696  
[jmandul@miamidade.gov](mailto:jmandul@miamidade.gov)

***Delivering Excellence Every Day***

Visit our website at: [www.miamidade.gov/itd](http://www.miamidade.gov/itd)

*Miami-Dade County is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and are subject to disclosure.*

---

**From:** Rosenthal, Oren (CAO)

**Sent:** Monday, August 13, 2018 2:57 PM

**To:** Embil, Lawrence (ITD) <[Lawrence.Embil@miamidade.gov](mailto:Lawrence.Embil@miamidade.gov)>

**Cc:** Manduley, Julian R. (ITD) <[Julian.Manduley@miamidade.gov](mailto:Julian.Manduley@miamidade.gov)>; Schmekel, Lars (ITD) <[Lars.Schmekel@miamidade.gov](mailto:Lars.Schmekel@miamidade.gov)>

**Subject:** Re: Cloudflare for Elections

Julian,

Please see the attached notes.

Oren

## CLOUDFLARE ATHENIAN PROJECT TERMS OF SERVICE

THESE TERMS OF SERVICE (“**TERMS**”), CLOUDFLARE’S PRIVACY AND SECURITY POLICY (“**PRIVACY POLICY**”), AS WELL AS ALL OTHER APPLICABLE POLICIES OR ATTACHMENTS REFERENCED HEREIN (COLLECTIVELY, THE “**AGREEMENT**”) GOVERN MIAMI-DADE COUNTY’S (COUNTY) USE OF CLOUDFLARE SERVICES. MIAMI-DADE COUNTY IS A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 111 N.W. 1<sup>ST</sup> STREET, MIAMI, FLORIDA 33128. **By signing these Terms or using the Service, County indicates its assent to be bound by the Agreement.**

**1. DEFINITIONS.** Capitalized terms will have the meanings set forth in this **Section 1**, or in the section where first used in these Terms.

**1.1 “Athenian Project”** means Cloudflare’s project to provide certain Cloudflare services at no cost to state and local governments that own or administer websites related to elections.

**1.2 “Authorized Users”** means County’s employees, subcontractors and agents who are authorized to administer County’s use of the Service.

**1.3 “Cloudflare”** means Cloudflare, Inc.

**1.4 “Cloudflare Technology”** means the Service, the Documentation, and any of Cloudflare’s proprietary technology, including, without limitation, any software, hardware, products, processes, algorithms, user interfaces, know-how, technologies, designs, and/or other tangible or intangible technical material or information that Cloudflare makes available to during the course of providing the Service, together with all updates thereto and all Intellectual Property Rights therein.

**1.5 “County”** means Miami-Dade County, or such government’s employees, subcontractors and agents, that are using Cloudflare services as part of Cloudflare’s Athenian Project.

**1.6 “County Content”** means any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects originating or transmitted from any website owned or operated by County and routed to, passed through and/or cached on or within, Cloudflare’s network or otherwise transmitted or routed using the Service.

**1.7 “County Data”** means collectively, County Log Files and County-specific Aggregations.

**1.8 “County Log Files”** means the raw logs of interactions that Cloudflare processes on behalf of County during the course of providing the Service. By way of illustration, County Log Files may include items such as: hostname; client IP; timestamp; HTTP request-line; HTTP status code; content-length; referrer; user agent; and Cloudflare request ID.

**1.9 “County-specific Aggregations”** means aggregated information derived from the County Log Files (including, without limitation, usage analytics, bandwidth consumption, availability performance, County-specific IP-trust scores, rules, and settings) which Cloudflare uses to provide the Service.

**1.10 “Documentation”** means all then-current user manuals and other technical materials published by Cloudflare that relate to the Service.

**1.11 “Intellectual Property Rights”** means any and all now known or hereafter existing worldwide: (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e)

layout design rights, design rights, and other proprietary rights of every kind and nature other than trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing.

**1.12 “Operational Metrics”** means: (a) all traffic data, cryptographically-hashed samples of County Log Files, clickstream information, logged snippets of transmitted County Content, IP-trust scores, and other server activity data collected by Cloudflare in the course of performing the Service; and (b) all analytical products derived therefrom. Operational Metrics are not County-identifiable.

**1.13 “Party” or “Parties”** means Cloudflare and/or County, as applicable.

**1.14 “Service”** means Cloudflare’s global services to improve website performance, security, and availability, with such features and specifications as may be further described in the Documentation.

**1.15 “Service Data”** means, collectively, County Data and Operational Metrics.

## 2. LICENSE GRANT AND RESTRICTIONS

**2.1 License Grant.** Subject to County’s compliance with the terms and conditions of this Agreement, Cloudflare hereby grants County a no cost, non-exclusive, non-transferable, and non-sublicensable perpetual license, to use and access the Service during the Term. Except as expressly set forth in this Agreement, no express or implied license or right of any kind is granted to County regarding the Cloudflare Technology or any part thereof, including any right to obtain possession of any source code, data or other technical material relating to the Cloudflare Technology. All rights not expressly granted to County herein are reserved to Cloudflare.

### 2.2 County Content.

**(a)** County will retain all right, title and interest in and to any County Content that it transmits to or through the Services in the form provided to Cloudflare. Subject to the terms of this Agreement, County hereby grants Cloudflare a non-exclusive, fully sublicenseable, worldwide, royalty-free right to (a) collect, use, copy, store, transmit, modify and create derivative works of the County Content, in each case solely to the extent necessary to provide the Project Athenian Services including distributed denial of service protection, Domain Name Service (DNS) protections, Web Application Firewall protections, Internet Protocol (IP) reputation protections, Content Delivery Network (CDN) providing website caching to meet peak traffic demand for County web services to the County.

Formatted: Highlight

**(b)** County represents and warrants that: (i) it has obtained all necessary rights, releases and permissions to provide the County Content to Cloudflare and to grant the rights granted to Cloudflare in this Agreement and (ii) the County Content and its transfer to and use by Cloudflare as authorized by County under this Agreement does not violate any applicable local, state, federal and international laws and regulations (including without limitation those relating to export control and electronic communications), and any use, collection and disclosure authorized herein is not inconsistent with the terms of any applicable privacy policies.

**(c)** As between County and Cloudflare, County will be solely responsible for the maintenance and creation of the County Content (including, without limitation, updating, deleting, editing and archiving such County Content). County agrees to adhere to generally accepted industry best practices for encrypting all sensitive County Content transmitted to or through the Service.

**2.3 Limitations.** County agrees that it may not: (a) permit any person to access and/or use the Service other than the Authorized Users; (b) rent, lease, loan, export or sell access to the Service to any third party; (c) interfere with, disrupt, alter, translate, or modify the Service or any part thereof, or create an undue burden on the Service or the networks or services connected to the Service; (d) reverse-engineer or access the Service in order to: (i) build a competitive product or service; (ii) build a product using similar ideas, features, functions or graphics to the Service; or (iii) copy any ideas, features, functions or graphics of the Service; (e) introduce software or

automated agents or scripts into the Service so as to produce multiple accounts, generate automated searches, requests or queries, or to strip or mine data from the Service; (f) perform or publish any performance or benchmark tests or analyses relating to the Service or the use thereof, other than solely for County's internal use; or (g) cover or obscure any page or part of the Service via HTML/CSS, scripting, or any other means.

**2.4 Usernames and Passwords.** At County's request, Cloudflare will provide each Authorized User a unique username and password to enable such Authorized User to access the Service pursuant to this Agreement. Cloudflare reserves the right to change or update these usernames and passwords in Cloudflare's sole discretion from time to time, and will inform County of such changes or updates as soon as is practicable. Each Authorized User's username and password may only be used to access the Service during one (1) concurrent login session. County acknowledges and agrees that: (a) only Authorized Users are entitled to access the Service with their assigned usernames and passwords provided by Cloudflare; (b) it will provide to Cloudflare any information and other assistance as necessary to enable Cloudflare to establish usernames for all Authorized Users, and will verify all Authorized User requests for account passwords; (c) it will ensure that each username and password issued to an Authorized User will be used only by that Authorized User; (d) it is responsible for maintaining the confidentiality of all Authorized Users' usernames and passwords, and is solely responsible for all activities that occur under such usernames and passwords; and (e) it will notify Cloudflare promptly of any actual or suspected unauthorized use of any Authorized User's account, username, or password, or any other breach or suspected breach of this Agreement. Cloudflare reserves the right to terminate any Authorized User's username or password that Cloudflare reasonably determines may have been used by an unauthorized third party, and will provide immediate notice of such to County. Usernames and passwords cannot be shared or used by more than one individual Authorized User, but may be reassigned from time to time to a new Authorized User replacing a former Authorized User who has terminated employment (or otherwise changed job function) and who no longer uses the Service. For County's own security, Cloudflare strongly encourages County to enable two-factor authentication in conjunction with all usernames and passwords.

**2.5 Ownership and Feedback.** The Cloudflare Technology is the exclusive property of Cloudflare or its licensors. County hereby assigns in whole to Cloudflare, without the need for remuneration, any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by County related to the Cloudflare Technology (collectively, "**Feedback**"). Cloudflare recognizes that Feedback is provided "AS IS" and will be used solely at its discretion.

### **3. TRADEMARKS USAGE RESTRICTIONS**

All indicia, trademarks, service marks, trade names, logos, symbols, business names and/or brand names and associated goodwill (collectively "**Marks**") appearing on, or incorporated into, the County Content are and will remain, as between Cloudflare and County, the exclusive property of County or its licensors (except to the extent that such Marks are Cloudflare Marks). All Marks appearing on or incorporated in the Cloudflare Technology are and will remain, as between Cloudflare and County, the exclusive property of Cloudflare or its licensors (except to the extent that such Marks are County Marks). Other than as provided in this Agreement, neither Party grants any rights in or to its Marks to the other Party, and neither Party may remove, destroy or alter the other Party's Marks used in connection with the Service. Each Party agrees that it will not challenge, or assist others to challenge, the rights of the other Party (or its suppliers or licensors) in such Party's Marks, the registration of such Marks, or attempt to register any Marks confusingly similar to such Marks. Other than as set forth in this Agreement, all use by a Party of the other Party's Marks will require the other Party's prior written approval and will be subject to the other Party's logo and trademark usage guidelines.

### **4. SUPPORT AND OPERATIONAL METRICS**

**4.1 Support.** During the Term, Cloudflare will provide technical support for the Service through Cloudflare's online support portal currently accessible at <https://support.cloudflare.com/hc/en-us>. County will be solely responsible for supporting and maintaining the availability of its website(s), the connectivity of its website(s) to the Internet, and all County Content, IP addresses, domain names, hyperlinks, databases, applications and other



resources as necessary for County to operate and maintain its website(s) to meet County's business requirements and to utilize the Service.

#### 4.2 Use of Service Data by Cloudflare.

(a) County agrees and acknowledges that in the ordinary operation of the Service, the Service collects and transmits Service Data from County's network environment and/or the Internet to Cloudflare's servers and that Cloudflare uses such Service Data for all reasonable and necessary purposes required to provide the Service. County agrees and acknowledges that Cloudflare acts as its **authorized contractor** pursuant to the terms and conditions of this Agreement, for the purpose of providing Internet data and optimization services. County acknowledges its responsibility to ensure that its use of the Service is permitted under the laws of its jurisdiction. County grants to Cloudflare a perpetual, irrevocable right to use, reproduce, modify, and otherwise exploit the Operational Metrics metadata, both during and after the Term, for the purpose of improving and enhancing the Service, monitoring the performance of the Service, and performing internal research and development for the provisioning of Cloudflare products and services. This grant is essential to the provision of the Service. Cloudflare may retain County-specific Aggregations solely for internal research and development, audit, and anti-fraud purposes.

Formatted: Highlight

(b) Cloudflare will not assign, transfer, sell, license, sublicense, or grant any rights to any County Data to any third party without County's explicit written permission. Cloudflare acknowledges that the County Data constitutes Confidential Information of County or its suppliers that may be protected by U.S. copyright, trade secret and similar laws and certain international treaty provisions. This Agreement does not transfer or convey to Cloudflare or any third party any right, title or interest in or to the County Data, or any associated Intellectual Property Rights, but only a limited right of use revocable in accordance with the terms of this Agreement.

Commented [SL(1)]: This is Defined in Section 1.12. It is non county identifiable data. Added Metadata for clarity

#### 5. THIRD PARTY APPS AND ADDITIONAL FEATURES

County agrees and acknowledges that County may install or utilize certain third party apps ("Apps") with the Service. These Apps are provided to County "AS IS" and are governed by their own terms of service and privacy policies as set forth by the third parties that provide them. Cloudflare does not endorse and is not responsible or liable, directly or indirectly, for the services or features provided by any Apps that County may choose to install, or for any damage or loss alleged or caused in connection with the use of, or reliance upon, any Apps.

#### 6. WARRANTY DISCLAIMERS

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED "AS IS," AND CLOUDFLARE MAKES NO (AND HEREBY DISCLAIMS ALL) WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, PAST OR PRESENT, OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, OR INABILITY TO USE THE SERVICE (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO COUNTY BY CLOUDFLARE. CLOUDFLARE CANNOT AND DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

#### 7. LIMITATION OF LIABILITY

**7.1 Types of Damages.** TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL CLOUDFLARE, ITS LICENSORS OR LICENSORS BE LIABLE TO COUNTY OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, USE, GOODWILL, PERSONAL OR PROPERTY DAMAGE, OR THE COST OF

PROCURING SUBSTITUTE PRODUCTS OR SERVICES) RESULTING FROM OR IN CONNECTION WITH THIS AGREEMENT OR COUNTY'S USE, OR INABILITY TO USE THE SERVICE, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF CLOUDFLARE HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.

**7.2 Amount of Damages.** THE MAXIMUM LIABILITY OF A PARTY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT WILL BE LIMITED TO AND WILL NOT EXCEED IN THE AGGREGATE \$100. THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THIS AGREEMENT WILL NOT INCREASE A PARTY'S LIABILITY. IN NO EVENT WILL A PARTY'S SUPPLIERS OR LICENSORS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. WITH RESPECT TO CLOUDFLARE, THE FOREGOING LIMITATION OF LIABILITY WILL NOT APPLY TO ANY CLAIMS ARISING UNDER PROVISIONS HEREIN CALLING FOR INDEMNIFICATION FOR THIRD PARTY CLAIMS AGAINST COUNTY FOR (I) INTELLECTUAL PROPERTY INFRINGEMENT OR (II) BODILY INJURY TO PERSONS OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY CLOUDFLARE'S NEGLIGENCE OR WILLFUL MISCONDUCT.

## **8. INDEMNIFICATION**

**8.1 By Cloudflare.** Cloudflare will defend, indemnify and hold harmless County, its affiliates, licensors, suppliers, officers, directors, employees and agents from any third party claim to the extent that such claim (a) results from Cloudflare's willful misconduct or negligent acts or omissions; or (b) is based on an allegation that County's use of the Service misappropriates any trade secret recognized under the Uniform Trade Secrets Act or infringes any other United States Intellectual Property Right, and Cloudflare will pay all damages and costs (including reasonable legal fees) finally awarded by a court of competent jurisdiction attributable to such a claim. If any portion of the Service becomes, or in Cloudflare's opinion is likely to become, the subject of a claim of infringement, Cloudflare may, at Cloudflare's option: (w) procure for County the right to continue using the Service; (x) replace the Service with non-infringing services which do not materially impair the functionality of the Service for County; (y) modify the Service so that it becomes non-infringing; or (z) terminate the Service, and upon such termination, County will immediately cease all use of the Service. Notwithstanding the foregoing, Cloudflare will have no obligation under this **Section 8** or otherwise with respect to any infringement claim based upon: (w) any use of the Service not in accordance with this Agreement or the Documentation; (x) Cloudflare's conformance to County's unique specifications performed at County's request; (y) any use of the Service in combination with third party products, equipment, software or content not supplied by Cloudflare; or (z) any modification of the Service by any person other than Cloudflare or its authorized agents. THIS SUBSECTION SETS FORTH CLOUDFLARE'S SOLE AND EXCLUSIVE OBLIGATIONS, AND COUNTY'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

**8.2 Procedure.** Cloudflare's obligations as set forth above are expressly conditioned upon each of the following: (a) County promptly notifying Cloudflare in writing of any threatened or actual claim or suit; *provided*, that failure to provide such prompt notice will not release Cloudflare from its indemnity obligations except to the extent that Cloudflare is materially prejudiced thereby; (b) Cloudflare will have sole control of the defense or settlement of any claim or suit, provided that County may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (c) County will cooperate with the Cloudflare (at the Cloudflare's expense) to facilitate the settlement or defense of any claim or suit; and (d) Cloudflare will not settle any claim or suit in a manner which results in an admission of liability by the indemnified Party, without the indemnified Party's prior written consent.

## 9. TERMINATION OF USE; DISCONTINUATION AND MODIFICATION

**9.1** If County violates any provision of this Agreement, County's permission to use the Service will terminate automatically. Additionally, Cloudflare, in its sole discretion may suspend or terminate County's access to the Service at any time, with or without notice for any reason or no reason at all. Cloudflare also reserves the right to modify or discontinue the Services at any time (including, without limitation, by limiting or discontinuing certain features of the Service) with 15 days prior notice to County. Cloudflare will have no liability whatsoever on account of any change to the Service or any suspension or termination of access to or use of the Service. County may terminate its account at any time by contacting Cloudflare County service at atheniansupport@cloudflare.com.

**9.2 Effect of Termination.** Upon termination of this Agreement: (a) County's right to use and access the Service will be terminated; (b) all usernames and passwords associated with County's Authorized Users will be deactivated; (c) County will immediately discontinue use of the Service; and (d) each Party will promptly return to the other Party (or, if the other Party requests it, destroy) all Confidential Information of such Party.

## 10. CONFIDENTIAL INFORMATION

For the purposes of this Agreement and subject to Florida Law, "**Confidential Information**" means any information disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") which: (a) if disclosed in writing or electronically, is labeled as proprietary or confidential at the time of disclosure; (b) if disclosed orally, is identified as proprietary or confidential at the time of such disclosure, and is then summarized in a writing provided to the Receiving Party within one (1) month of the date of such disclosure; or (c) by its nature is confidential and would be judged so under a reasonable standard, or is disclosed or provided under circumstances reasonably indicating it is confidential or proprietary. The terms and conditions of this Agreement, non-public information regarding the Service (including, without limitation, any source code), and any Feedback, is the Confidential Information of Cloudflare. Confidential Information will remain the sole property of the Disclosing Party. Except for the specific rights granted by this Agreement, the Receiving Party will not use any Confidential Information of the Disclosing Party for its own account. The Receiving Party will use the same standards to protect the Confidential Information of the Disclosing Party as it affords its own such information, but in no event less than the highest commercially reasonable degree of care. The Receiving Party will not disclose any Confidential Information of the Disclosing Party to any third party without the express written consent of the Disclosing Party (except solely for Receiving Party's internal business needs, to employees or consultants who have a need to know such information and who are bound by a written agreement or professional obligation to restrict the disclosure and use of such Confidential Information in a manner consistent with this Agreement). The foregoing obligations will not restrict a Party from disclosing Confidential Information of the other Party pursuant to the order or requirement of a court, administrative agency, or other governmental body; *provided*, that the Party required to make such disclosure provides reasonable notice to the other Party to enable them to contest such order or requirement, unless such Party is prevented from doing so by force of law. The restrictions set forth in this **Section 10.1** will not apply to the identities of the Parties, or to any Confidential Information that: (i) was or becomes available to the public other than by a breach of this Agreement by the Receiving Party; (ii) was rightfully received by Receiving Party without confidential or proprietary restriction from a third party who has a right to disclose it; (iii) was independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information; (iv) was known to the Receiving Party at the time of disclosure, without confidential or proprietary restriction; (v) was produced in compliance with applicable law or a court order; *provided*, that the Disclosing Party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production; or (vi) was approved by the Disclosing Party for disclosure without restriction in a written document which is signed by a duly authorized representative of the Disclosing Party.

County is subject to Florida's Public Records law as codified in Chapter 119 of the Florida Statutes, and the County's compliance with Florida Public Records laws, or good faith attempt to comply with Florida's Public Records law will not be considered a breach of this Agreement.

**11. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY**

Formatted: Highlight

The Contractor shall comply with the Public Records Laws of the State of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1<sup>ST</sup> STREET, SUITE 1300, MIAMI, FLORIDA 33128**

**12. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

**13. GENERAL**

**13.1 Governing Law.** This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

**13.2 Local Laws.** Cloudflare and its suppliers make no representation that the Service is appropriate or available for use in locations other than the United States. County is solely responsible for compliance with all laws applicable to its purchase and use of the Service, including without limitation, the export and import regulations of other countries.

**13.3 Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

**13.4 Waiver.** Any waiver or failure by a Party to enforce any provision of this Agreement on one occasion will not be deemed a waiver of that or any other provision on that occasion, nor any other occasion.

**13.5 No Assignment.** County will not assign, subcontract, delegate, or otherwise transfer this Agreement or its rights and obligations herein, in whole or in part, by operation of law or otherwise, without obtaining the prior written consent of Cloudflare, which consent may be withheld at Cloudflare's sole discretion, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void, *ab initio*. Notwithstanding the foregoing, however, either Party may assign this Agreement in its entirety, upon written notice to the other Party but without the requirement to obtain consent, in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets of that Party. This Agreement will be binding upon the Parties and their respective successors and permitted assigns.

**13.6 Audits.** The County, or its duly authorized representatives and governmental agencies, shall until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to Section 2-481 of the Code of Miami-Dade County, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

**13.7 Notices.** County is responsible for updating its information with Cloudflare, including providing Cloudflare with an up-to-date e-mail address for the provision of notices under this Agreement. In the event that the latest e-mail address provided to Cloudflare by County is not valid, or for any reason is not capable of delivering any notice required by this Agreement, County acknowledges and agrees that Cloudflare's dispatch of an e-mail to such address will nonetheless constitute effective notice. The services hereunder are offered by Cloudflare, Inc., located at 101 Townsend Street, San Francisco, California 94116. Any legal notice provided to Cloudflare must be sent to the foregoing address or by emailing [legal@Cloudflare.com](mailto:legal@Cloudflare.com).

All notices to the County required or permitted under this Agreement shall be delivered via e-mail as follows:

(1) **to the County**

a) to the Project Manager:

Miami-Dade County  
Information Technology Department, Security Division  
5680 SW 87 Ave.  
Attention: Mr. Lawrence Embil  
E-mail:

and,

b) to the Contract Manager:

Miami-Dade County  
Information Technology Department, Procurement Section  
5680 SW 87 Ave.  
Miami, FL 33173  
Attention: Julian Manduley  
Email: jmandul@miamidade.gov

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**END OF TERMS**

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Cloudflare, Inc.

Miami-Dade County

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Corporate Seal/Public Notary

Approved as to form  
and legal sufficiency

---

Assistant County Attorney

