

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is made and entered into by and between Azavar Audit Solutions, Incorporated, an Illinois corporation having its principal place of business at 234 South Wabash Avenue, Sixth Floor, Chicago, Illinois 60604 (“Azavar”), and the Village of Lombard, an Illinois municipal corporation having its principal place of business at 255 East Wilson Avenue, Lombard, Illinois 60148 (“Customer”).

### 1. SCOPE OF SERVICES

- 1.1 Subject to the following terms and conditions, Azavar shall provide professional computer, data audit, compliance management, and management consulting services (“Services”) in accordance with the below statement of work. Azavar will render the services provided under this Agreement in a workmanlike manner in accordance with industry standards. The services and work provided shall be provided in accordance with the below statements:
- (a) Azavar shall separately audit each utility tax, taxpayer, franchise fee, and utility service fee imposed within the Customer’s corporate boundaries including, but not limited to the Electric (Commonwealth Edison and others as applicable), Gas (Nicor and others as applicable), Telecommunications (AT&T and other providers and telecommunications resellers including mobile and data service providers as applicable), and Cable (Comcast and others as applicable) utility taxpayers on behalf of the Customer;
  - (b) The purpose of each audit is to determine past, present, and future taxes, franchise fees, service fees, or any other monies or revenue owed to the Customer that were not properly attributed to the Customer or were not properly paid or collected and to determine future taxes, franchise fees, and other monies owed to the Customer not previously counted so that Customer can collect these past, present, and future monies. Federal and Illinois state law, the Customer’s own local ordinances and databases, and the franchise agreements and contracts between Customer and utility taxpayers and franchisees are used to conduct these audits and make final audit and tax determinations.
  - (c) Azavar will require full access to Customer records and utility taxpayer records to complete these audits and Customer will use its authority as necessary to provide information and procure data from taxpayers;
  - (d) Customer agrees to cooperate with Azavar, provide any necessary documentation, and will engage in necessary meetings with utilities;
  - (e) During the course of each audit, Azavar may find that rather than being owed past due funds, the Customer owes funds erroneously paid to the Customer. In this case, Azavar will immediately terminate its participation for that specific utility audit at no cost to the Customer and will document the error and provide the Customer with information necessary to correct the error. Azavar shall have no liability for these errors or actions arising from knowledge thereof. Should the Customer want Azavar to continue the audit after such disclosure and notice of termination, the Customer will pay all Azavar expenses and fees on a time and materials basis for that utility audit to date and for future work related to that audit;
  - (f) Customer understands that each utility taxpayer is a separate entity that is not controlled by Azavar and therefore Azavar cannot predict all the steps or actions that a utility taxpayer will take to limit its responsibility or accountability during the audit. Should Customer decide to waive by any means all or a portion of funds identified as payable to Customer during an audit, the Customer shall pay all Azavar expenses and fees on a time and materials basis for that audit in addition to any applicable contingency fees of any audit determination;
  - (g) The first audit start date is expected to be within approximately 60 days unless changed and approved by the Customer Primary Contact and Liaison;
  - (h) Each audit is expected to last at least six (6) months. Each subsequent audit will begin after payment terms and obligations have been met from previously completed audits however overlapping audit work may take place at the discretion of Azavar. Audit timelines are set at the discretion of Azavar and Azavar reserves the right to terminate any audit at its discretion;
  - (i) Audit status updates/meetings will be held regularly via phone, email, or in person throughout the course of the audits between Azavar and the Customer Audit Primary Contact (as defined below) and will occur approximately every month;
  - (j) Jason Perry, Program Manager, and the Azavar Municipal Utility Tax Audit Program staff will be Auditors under this agreement. All Azavar staff shall be supervised by the Azavar Program Manager.
- 1.2 Customer agrees to provide reasonable facilities, space, desks, chairs, telephone and reasonably necessary office supplies for Azavar staff working on Customer’s premises as may be reasonably required for the performance of the Services set forth in this Agreement and in any Exhibit hereto. Customer will assign and designate an employee to be the Audit Primary Contact. The Customer’s Audit Primary Contact will be the final decision maker for the Customer as it relates to this audit and will meet with Azavar staff on a regular basis as necessary. Lack of participation of Customer staff, especially at critical milestones during an audit, will adversely affect the audit timeline and successful recovery of funds. While Azavar strives to provide audit programs as turn key as possible that require little Customer staff time as possible, it is important that the Customer’s staff be available for meetings and participation with utilities to properly verify tax records and recover funds.
- 1.3 Azavar shall be responsible for providing the Services in accordance with the above Scope of Services. Azavar will render the services provided in a workmanlike manner.

2. **INDEPENDENT CONTRACTOR.** Azavar acknowledges and agrees that the relationship of the parties hereunder shall be that of independent contractor and that neither Azavar nor its employees shall be deemed to be an employee of Customer for any reason whatsoever. Neither Azavar nor Azavar's employees shall be entitled to any Customer employment rights or benefits whatsoever.

3. **PAYMENT TERMS.**

3.1 Customer shall compensate Azavar the fees set forth in this Agreement on a professional services and contingency basis. If applicable, Azavar shall submit an invoice to Customer on a monthly basis detailing the amounts charged to Customer pursuant to the terms of this Agreement. Customer shall remit payment to Azavar in accordance with the Illinois Local Government Prompt Payment Act. Failure to pay any fee or part thereof when due will incur finance charges, interest fees (12% per annum), and collection action. Azavar is entitled to recover all costs of collection including reasonable attorney's fees for all successful efforts to collect fees from the Customer. Contingency payment terms are outlined below. If Customer cancels or abates any tax determination that was allowed under the law at the time the tax determination was made, Customer shall pay to Azavar applicable contingency fees for said tax determination at the rates set forth below and for the following sixty (60) months. If Customer later implements during the subsequent sixty (60) months any recommended action Customer declined for Azavar programs, including overall utility audits included herein, Azavar will be entitled to its portion of the savings and/or recoveries over the following sixty (60) months at the contingency fee rates set forth below.

3.2 The Customer will pay Azavar fifty (50) percent of actual funds recovered per account, per utility for sixty (60) months following when funds on an individual account begin to be properly remitted by the utility to the Customer. In the event Azavar is able to recover any retroactive funds, any additional savings or revenue increases, or any credits at any time, Customer will pay Azavar fifty (50) percent of any retroactive funds, savings, and fair market value for any other special consideration or compensation recovered for and/or by the Customer from any audited utility taxpayer. All contingency fees paid to Azavar are based on determinations of recovery by Azavar and are due in accordance with the Illinois Local Government Prompt Payment Act and only upon actual receipt of any funds by the Customer from any taxpayer. All revenue after the subsequent sixty (60) month period for each account individually will accrue to the sole benefit of the Customer.

4. **CONFIDENTIAL INFORMATION**

4.1 Each party acknowledges that in the performance of its obligations hereunder, either party may have access to information belonging to the other which is proprietary, private and highly confidential ("Confidential Information"). Each party, on behalf of itself and its employees, agrees not to disclose to any third party any Confidential Information to which it may have access while performing its obligations hereunder without the written consent of the disclosing party which shall be executed by an officer of such disclosing party, unless otherwise required to provide disclosure in accordance with applicable law. Confidential Information does not include: (i) written information legally acquired by either party prior to the negotiation of this Agreement, (ii) information which is or becomes a matter of public knowledge, and (iii) information which is or becomes available to the recipient party from third parties and such third parties have no confidentiality obligations to the disclosing party.

4.2 Azavar agrees that any work product or any other data or information that is provided by Customer in connection with the Services shall remain the property of Customer, and shall be returned promptly upon demand by Customer, or if not earlier demanded, upon expiration of the Services provided under the above Scope of Services.

5. **INTELLECTUAL PROPERTY**

5.1 No work performed by Azavar or any Consultant with respect to the Services or any supporting or related documentation therefore shall be considered to be a Work Made for Hire (as defined under U.S. copyright law) and, as such, shall be owned by and for the benefit of Azavar. In the event that it should be determined that any of such Services or supporting documentation qualifies as a "Work Made for Hire" under U.S. copyright law, then Customer will and hereby does assign to Azavar, for no additional consideration, all right, title, and interest that it may possess in such Services and related documentation including, but not limited to, all copyright and proprietary rights relating thereto. Upon request, Customer will take such steps as are reasonably necessary to enable Azavar to record such assignment. Customer will sign, upon request, any documents needed to confirm that the Services or any portion thereof is not a Work Made for Hire and/or to effectuate the assignment of its rights to Azavar, unless the Customer is obligated to do so pursuant to applicable law.

5.2 Under no circumstance shall Customer have the right to distribute any software containing, or based upon, Confidential Information of Azavar to any third party without the prior written consent of Azavar which must be executed by a senior officer of Azavar.

6. **DISCLAIMER**

**EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AZAVAR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED UNDER THIS AGREEMENT OR THE RESULTS OBTAINED FROM AZAVAR'S WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL AZAVAR BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR INDIRECT DAMAGES, OR FOR ACTS OF NEGLIGENCE THAT ARE**

**NOT INTENTIONAL OR RECKLESS IN NATURE, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT AZAVAR'S LIABILITY HEREUNDER FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE TOTAL AMOUNT PAID FOR THE SERVICES GIVING RISE TO THE DAMAGES UNDER THE APPLICABLE ESTIMATE OR IN THE AUTHORIZATION FOR THE PARTICULAR SERVICE IF NO ESTIMATE IS PROVIDED.**

7. **TERMINATION**

7.1 Unless earlier terminated in accordance with Section 7.2 below, this Agreement shall be effective from the date first written above and shall continue thereafter until terminated upon 90 days written notice by Customer or Azavar.

7.2 Termination for any cause or under any provision of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

7.3 The provisions set forth above in Section 3 (Payment Terms), Section 4 (Confidential Information), and Section 5 (Intellectual Property) and below in Section 9 (Assignment), Section 10 (Nonsolicitation of Employees), and Section 11 (Use of Customer Name) shall survive termination of this Agreement.

8. **NOTICES.** Any notice made in accordance with this Agreement shall be sent by certified mail or by overnight express mail:

If to Azavar  
Azavar Audit Solutions, Inc.  
234 South Wabash Avenue, Sixth Floor  
Chicago, Illinois 60604

If to Customer (List Address Below)  
Village of Lombard  
255 East Wilson Avenue  
Lombard, Illinois 60148  
Attention: Finance Director

9. **ASSIGNMENT.** Neither party may assign this Agreement or any of its rights hereunder without the prior written consent of the other party hereto, except Azavar shall be entitled to assign its rights and obligations under this Agreement in connection with a sale of all or substantially all of Azavar's assets.

10. **NONSOLICITATION OF EMPLOYEES.** During the period in which this Agreement is in effect and for a period of six (6) months thereafter, each party agrees it will not, without the prior written consent of the other party, solicit the employees of the other party for the purpose of offering them employment; provided, however, that good faith solicitations by way of mass media (i.e., newspapers) shall not be deemed to be a violation of this Section 10.

11. **USE OF CUSTOMER NAME.** Customer hereby consents to Azavar's use of Customer's name in Azavar's marketing materials; provided, however, that Customer's name shall not be so used in such a fashion that could reasonably be deemed to be an endorsement by Customer of Azavar unless such an endorsement is provided by Customer.

12. **COMPLETE AGREEMENT.** This Agreement contains the entire Agreement between the parties hereto with respect to the matters specified herein. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof. This Agreement shall not be amended except by a written amendment executed by the parties hereto. No delay, neglect or forbearance on the part of either party in enforcing against the other any term or condition of this Agreement shall either be, or be deemed to be, a waiver or in any way prejudice any right of that party under this Agreement. This Agreement shall be construed in accordance with the laws of the State of Illinois and the parties hereby consent to the jurisdiction of the courts of the State of Illinois, but only in DuPage County, Illinois.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives as of the date set forth below.

AZAVAR TECHNOLOGIES CORPORATION

CUSTOMER \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_