



Aclarian Software as a Service (SaaS) Agreement

This Software as a Service (SaaS) Agreement (“Agreement”) is made and entered into between Aclarian LLC, a Florida limited liability company (“Licensor” or “Aclarian”), and City of Margate, Florida (“Licensee” or “City”). Either party may be referred to individually as the “Party” or collectively as “the Parties.”

WHEREAS:

Licensor owns all right, title, and interest in the Software (as defined below); and

Licensee desires a license to use the Software.

NOW, THEREFORE:

The Parties have agreed to the following terms and conditions:

I. Definitions. Terms used in this Agreement have the following meaning:

- a. “Proprietary Information” shall be defined as all proprietary or non-public information owned or created by Licensor, including the Software, and any know-how, trade secrets, data, materials, inventions, copyrights, trademarks, or discoveries that are necessary or substantially related to the Software.
- b. “Software” shall be defined as the accounting program known as “Aclarian,” and any software products related thereto provided by its affiliated subcontractors or third-party vendors, including but not limited to human resources, payroll, and utility billing related software, as well as any technical information or documentation relating thereto.

II. Grant of License.

- a. **Scope of License.** Licensor grants to Licensee a non-exclusive, limited license to use the Software solely for the internal business purposes of employees of Licensee that are involved in the accounting, financials, and operations of Licensee. Licensee’s rights in the Software shall be limited to those expressly granted in this Agreement. Licensee shall not distribute, rent, resell, lease, sublicense, or otherwise disclose or transfer the Software to any third party (including but not limited to competitive businesses) without Licensor’s express written consent, and subject to additional license fees. Licensee shall not modify, reverse engineer, decompile, or create derivative works of the Software. Any use which exceeds the scope of the license grant shall constitute a breach of this Agreement, and shall be subject to emergency injunctive relief and the payment of any related attorneys’ fees and court costs incurred by Licensor. Licensor acknowledges that Licensee shall be the sole and exclusive owner of the financial, accounting and customer information input into the Software for Licensee’s use.
- b. **Maintenance and Support.** For the duration of this Agreement, Licensor will provide, at no charge to Licensee, maintenance and support. Maintenance refers to modifications, such as patches, corrections, and updates, as needed to ensure the software is functioning as intended. With regard to Support, Licensor shall use commercially reasonable efforts, commensurate with the severity level, to achieve its support response and resolution targets with respect to resolving errors. An error is defined as a verifiable and reproducible failure of the Licensor’s software product to operate as intended under normal use, and where the error is directly attributable to the Licensor’s software product as updated with current modifications. Support is available through the interactive “Help” feature within the Licensor’s software.

- c. Support does not include implementation of the Licensor's standard software product, onsite or remote training, adding, deleting or modifying data entered into the Software due to error or omission by the Licensee, or development and installation of custom enhancements specifically requested by the Licensee in addition to the standard software product. Pricing for implementation services, onsite and remote training, custom enhancements, and correction of errors initiated by Licensee is disclosed in *Exhibit A – Pricing Schedule*.

III. Public Records.

- a. The Parties acknowledge and agree that the statement and provisions below are required by Florida Statute to be included in this contract for services. The inclusion of this statement and provisions below shall not be construed to imply that the Licensor has been delegated any governmental decision-making authority, governmental responsibility or governmental function or that the Licensor is acting on behalf of the City as provided under Section 119.011(2), Florida Statutes, or that the statement or provisions are otherwise applicable to the Licensor. As stated below, the Licensor may contact the City's Custodian of Public Records with questions regarding the application of the Public Records Law; however, the Licensor is advised to seek independent legal counsel as to its legal obligations. The City cannot provide the Licensor advice regarding its legal rights or obligations.
- b. IF LICENSOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LICENSOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, AT 5790 MARGATE BOULEVARD, MARGATE, FLORIDA, 33063. PHONE: (954) 972-6454. EMAIL: recordsmanagement@margatefl.com
- c. If under this Contract, the Licensor is providing services and is acting on behalf of the City as provided under Section 119.011(2), Florida Statutes, the Licensor will comply with public records law, and agrees to:
 - i. Maintain all records pertaining to the services and the contract for these services and make them available to the City for a period of seven (7) years following receipt of final payment for the services referenced herein. In the event litigation ensues, then Aclarian shall retain all records hereunder for a period of seven (7) years after conclusion of the litigation, including any and all appeals. Upon completion of this retention period, Aclarian shall, at no cost to the City, transfer all public records in possession of Aclarian, or keep and maintain public records required by the City to perform the service. If Aclarian transfers all public records to the City upon completion of the retention period, Aclarian shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Aclarian keeps and maintains public records upon completion of the retention period, Aclarian shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City. This requirement applies to the prime Contractor and all sub-contractor's project records. However, it is the responsibility of the prime Contractor to provide all of the records, both for the prime Contractor and sub-contractor's records.
 - ii. Upon request from the City's custodian of public records, provide the City with a

copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law.

- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract if the Licensor does not transfer the records to the City.
- iv. During the term of the contract, the Contractor shall maintain all books, reports, and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The form of all records and reports shall be subject to the approval of the City's Auditor. The Contractor agrees to make available to the City's Auditor, during normal business hours and in Broward, Dade or Palm Beach Counties, all books of account, reports and records relating to this contract.

III. Term and Termination.

- a. Term. The Licensee's initial subscription period of three (3) years ("Initial Term") will occur on the date that one or more modules of the Software becomes available for use ("Effective Date") and may renew on the three (3) year anniversary of the Effective Date, and on the anniversary of the Effective Date each year thereafter, for subsequent one (1) year term(s) ("Renewal Term" and collectively with Initial Term, the "Term") upon written amendment executed by both parties; *provided, however* that Licensor or Licensee may provide written notice of termination at least sixty (60) calendar days prior to the anniversary of the Effective Date of the Initial Term or any subsequent Renewal Terms, with such termination effective on the anniversary of the Effective Date.
- b. Termination. A party may terminate this Agreement upon the other party's material breach which is not cured within thirty (60) days of receipt of written notice reasonably describing the breach. Upon termination, Licensor shall disable Licensee's account on the Licensor's web-based software application.
- c. Fees for Termination without Cause during Initial Term. If Licensee terminates this Agreement during the Initial term for any reason other than cause, or if Licensor terminates this Agreement during the Initial term for failure to pay annual subscription fees, Licensee shall pay Licensor the following early termination fees:
 - i. 100% of the subscription fees through the date of termination plus 20% of annual subscription fees for the remainder of the Initial Term
- d. Licensor may increase the Fees pursuant to this Agreement during the Initial Term by an amount not to exceed 3% annually. Licensor may increase the Fees at the start of each Renewal Term at the discretion of the Licensor by providing at least one hundred twenty (120) calendar days' written notice to Licensee. If Licensee does not exercise its right to terminate the Agreement within 60 calendar days in accordance with Section III (a), the Fees increase is deemed accepted by Licensee. Licensor shall not refund or prorate the Fees if Licensee earlier terminates this Agreement.

IV. Payment.

- a. In exchange for the grant of license to use the Software as outlined herein, Licensee agrees to pay the subscription fees and implementation costs ("Fees") outlined on attached ***Exhibit A – Pricing Schedule***. Implementation shall not begin until a non-refundable deposit payment for implementation services is received, which shall be equivalent to twenty percent (20%) of the total estimated cost of implementation, or based on an amount agreed to by Licensee and Licensor.

Software subscription fees will be invoiced on or around the Effective Date and then each year thereafter, subsequent to the Effective Date. If Licensee desires to increase its subscription package to allow for additional users, the resulting increase in the subscription cost will be prorated based on the number of months elapsed and number of months remaining within the annual subscription term. Implementation fees will be billed monthly based on time incurred at the rate disclosed in Exhibit A. If implementation fees are based on a fixed payment schedule, then such fees will be billed in accordance with the payment schedule agreed to by Licensee and Licenser.

- b. All payments shall be made in accordance with the Local Government Prompt Payment Act, Florida Statute § 218.70 et.seq., which states the Contracting Party's rights and the City's responsibilities concerning interest, penalties, and time limits for payment of undisputed invoices.
- c. To the extent onsite involvement is necessary, additional travel and per diem reimbursement expenses will apply to this Agreement in accordance with IRS mileage reimbursement. Per diem rate is \$55 per Aclarian consultant per day. If hotel accommodations are needed, the City will reimburse Aclarian based on actual costs incurred, not to exceed \$250 for each overnight stay per consultant.

V. Data Security and Privacy.

- a. In the course of providing the Software and related services under this Agreement, Licenser will employ information security and physical security safeguards, procedures and practices to protect the privacy and security of Licensee's data that Licenser receives, accesses, uses, creates, or discloses. Such safeguards shall be at least equal to industry standards and be reasonably appropriate to protect against accidental or unlawful destruction, loss, alteration or unauthorized third party disclosure or access of Licensee's data. Licenser shall make a good faith effort to detect, respond to, and mitigate data security incidents, and to notify Licensee of any such incidents involving Licensee's data as soon as reasonably practicable and in accordance with applicable laws.

VI. Scrutinized Companies

- a. In accordance with s. 287.135, Florida Statutes, as amended, a company is ineligible to, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services if any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or
- b. One million dollars or more, if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:
 - i. Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.73, Florida Statutes; or
 - ii. Is engaged in business operations in Syria
- c. By submitting a bid, proposal or response, the company, principals or owners certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations in Syria.
- d. The City shall reserve the right to terminate any contract resulting from this solicitation if the awarded Contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

VII. General.

- a. Modifications and Additions. No modifications or additions to the terms and conditions of this Agreement shall be binding unless in writing and acknowledged by both Parties.
- b. Indemnification. To the extent permitted by Florida law, Licensors agree to indemnify, defend, save, and hold harmless Licensee, their officers and employees, from or on account of all damages, losses, liabilities, including but not limited to reasonable attorneys' fees, and costs to the extent caused by the negligence, recklessness or intentional wrongful misconduct of Licensors and persons employed or utilized by Licensors in the performance of this Agreement. Nothing contained in the foregoing indemnification shall be construed to be a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.
- c. Limitation of Remedies. The exclusive remedy available to Licensors shall be the right to pursue claims for actual damages that are directly caused by acts or omissions that are breaches by duties owed by Licensee under this Agreement. Licensee's total liability to Licensors from all causes of action and under all theories of liability shall be limited to the total amount of the Fees paid pursuant to this Agreement. This provision shall survive termination of this Agreement.
- d. Enforcement of Agreement. In the event that either Licensors or Licensee is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution, or appellate proceedings.
- e. Governing Law. This Agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of this Agreement shall be litigated only in the courts of the Seventeenth Judicial Circuit in and for Broward County, Florida.
- f. Assignment. Either Party may transfer and assign this Agreement to a successor entity or assignee in the event of the purchase of all or substantially all of the assets or ownership interests of the Party. Written notice shall be provided to the other Party in the event of a sale or merger. The terms, conditions, and specifications of the Agreement in effect prior to an Assignment shall remain unchanged unless mutually agreed to by both parties at the time of Assignment or a scheduled renewal period.
- g. Piggybacking. It is understood and agreed by Licensors and Licensee that any governmental entity may purchase the services specified herein in accordance with the prices, terms, and conditions of the Agreement. It is also understood and agreed that each local entity will establish its own contract with Aclarian, be invoiced therefrom and make its own payments to Aclarian in accordance with the terms of the contract established between the new governmental entity and Aclarian. It is also hereby mutually understood and agreed that Licensee is not a legally bound party to any contractual agreement made between Licensors and any entity other than Licensee.
- h. Notices. All notices provided in connection with this Agreement will be in writing and will be delivered by (i) certified or registered mail, postage prepaid and return receipt requested or (ii) courier and will be deemed effective upon receipt at the address set forth above, or (iii) by e-mail with return receipt requested.

To Licensee:

5790 Margate Boulevard
Margate, FL 33063
idiaz@margatefl.com

To Licensor:

Aclarian LLC, Attn: Andrew Laflin
4240 W Morrison Ave, Tampa, FL 33629
alaflin@aclarian.com

- i. IN WITNESS WHEREOF, each of the Parties have caused its duly authorized representatives to execute this Agreement as of the date below.

Licensor

Licensee

Name: Andrew Laflin

Name:

Title: President

Title:

Date: _____

Date: _____

EXHIBIT A - PRICING SCHEDULE



ACLARIAN

ACLARIAN SOFTWARE STANDARD PRICING MODEL

SUBSCRIPTION & IMPLEMENTATION FEES

Name	Description	NASPO Contract Pricing	City of Margate Discounted Pricing
Annual User Package	Up to 100 Users	\$ 71,540.00	\$ 62,500.00
Implementation Services - Hourly Rate	Executive Lead	\$ 337.50	\$ 175.00
Implementation Services - Hourly Rate	Project Manager	\$ 247.50	\$ 175.00
Implementation Services - Hourly Rate	Senior Consultant	\$ 225.00	\$ 175.00
Implementation Services - Hourly Rate	Consultant	\$ 202.50	\$ 175.00
Implementation Services - Hourly Rate	Senior Software Engineer	\$ 247.50	\$ 175.00
Implementation Services - Hourly Rate	Software Engineer	\$ 202.50	\$ 175.00

ESTIMATED IMPLEMENTATION FEES BY MODULE - PHASE I IMPLEMENTATION

Name	Estimated # of Hours	Discounted Hourly Rate	Estimated Cost
Environment, User, Workflow Setup	105	\$ 175.00	\$ 18,375.00
General Ledger	165	\$ 175.00	\$ 28,875.00
Purchasing	146	\$ 175.00	\$ 25,550.00
Payments	146	\$ 175.00	\$ 25,550.00
Misc Billing & A/R	138	\$ 175.00	\$ 24,150.00
Projects & Grants	107	\$ 175.00	\$ 18,725.00
Cashiering	98	\$ 175.00	\$ 17,150.00
Treasury Management	102	\$ 175.00	\$ 17,850.00
Budgeting	142	\$ 175.00	\$ 24,850.00
Capital Assets	138	\$ 175.00	\$ 24,150.00
Reporting & Transparency	108	\$ 175.00	\$ 18,900.00
interfaces	220	\$ 175.00	\$ 38,500.00
Contingency	242	\$ 175.00	\$ 42,350.00
Total:			\$ 324,975.00

POST-IMPLEMENTATION SERVICES

Maintenance & Support	Cost	Other Software Services*	Cost
Helpdesk Support Team	Included in Subscription	Software Engineer & Consultant	\$225 per hour
Outsourced Services (Optional)	Cost	Outsourced Services (Optional)	Cost
Senior Accountant & Consultant	\$202.50 per hour	Accountant & Consultant	\$135 per hour
Optional Services & Fees	Description	Cost	
Auto-Pay Processing - Mailed Checks	Print & Mail Service for Paper Checks	\$0.75 plus postage**	
Auto-Pay Processing - Direct ACH	Direct ACH File Transmission to Designated Bank	No Charge	
Form 1099 Processing	Form Generation & Federal Filing	\$0.95 / Form	
Form 1099 Processing	State Filing	\$0.95 / Form	
Form 1099 Processing	Mail Copies to Recipients	\$1.95 / Form	

* Post-implementation Other Software Services includes onsite or remote training, adding, deleting or modifying data entered into the Software due to error or omission by the Licensee, or development and installation of custom enhancements specifically requested by the Licensee in addition to the standard software product

** Postage currently \$0.64 per parcel