

## FIREHOUSE Software License Agreement

ACS FIREHOUSE Software

2900 100<sup>th</sup> St

Urbandale, Iowa 50322

Software License Agreement

Serial Number: \_\_\_\_\_

Customer: Williamson County, Texas, a political subdivision of the State of Texas

Number of Users: \_\_\_\_\_

Carefully read the following terms and conditions before opening the package. Only an Authorized Representative of the purchaser should open the package. Opening this package indicates acceptance of these terms and conditions. ACS Government Systems, Inc. (ACS) and the party who opens this package hereby agree as follows:

- 1). **Materials:** This package contains program diskette(s) and/or CDs and applicable manual(s).
- 2). **License:** ACS hereby grants a revocable, non-exclusive, non-transferable license to use the materials on a single microcomputer or on a predetermined number of network workstations, in the United States of America, subject to the terms hereof. You agree not to (a) rent, lease, sublicense, or otherwise transfer any of the materials or your rights thereunder, (b) remove or obscure our proprietary notices, (c) translate, alter, decompile or disassemble any of the materials, (d) copy any of the materials without our prior written consent, (e) use the software for other agencies. You shall have no right to access, copy or otherwise use the source code for software licensed under this license. You are prohibited from causing or permitting the reverse engineering, disassembly or decompilation of the software licensed under this license. You are prohibited from modifying, improving or otherwise enhancing the software licensed under this license. ACS understands and agrees Customer operates a consolidated Public Safety Answering Point (PSAP). As such, Customer may use the materials in conjunction with the agencies, jurisdictions, or political subdivisions of the State of Texas serviced by Customer, and listed in Exhibit 1 hereto, as needed to provide emergency services.
- 3). **Terms:** This license is effective until terminated (the evaluation is effective for 90 days from the date of installation). You may terminate it at any time by destroying the materials and all copies of any material made from the original materials and notify ACS immediately. This license terminates automatically upon breach of any of the conditions of this license. Upon termination you agree to destroy all copies of the materials. Use of the materials without a valid license of the materials is unauthorized and may subject you to monetary penalties.
- 4). **Confidentiality:** By accepting this license you receive the right to use the materials as specified herein, but you do not become the owner of the materials. The materials are protected by trade secret, copyright, and trademark law. You acknowledge that the materials are ACS property and contain valuable, confidential, unpublished information developed by ACS at a great expense. You agree to protect the materials from unauthorized reproduction, distribution, disclosure, or use of publication. You may not transfer any materials or software to anyone or entity without the written consent of ACS authorized personnel. To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that Customer, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to Customer as to whether or not the same are available to the public. It is further understood that Customer's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that Customer, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to Customer by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.
- 5). **U.S. Government Restricted Rights:** The software and documentation were developed at private expense and are provided with "RESTRICTED RIGHTS". Use, duplication, or disclosure by the Government is subject to restrictions as set forth in FAR 52.227-14 and DFAR 252.227-7013 et seq. or its successor.
- 6) **Export Laws:** You agree that the distribution and export/reexport of the software is in compliance with laws, regulations, orders or other restrictions of the U.S. Export Administration Regulations.
- 7). **Warranty:** We warrant the enclosed diskette(s) and/or CDs and printed materials to be free from material defect in normal use for 90 days from the date of installation. We do not warrant the error free operation of the software contained on the diskette or that such software will meet your requirements. The software is developed "as is". We will however attempt to correct or bypass any actual reproducible and significant error in the software described to us in writing within 90 days from the date of installation of the materials by providing to you at our option either a corrected copy or work around instructions within a reasonable time. This does not cover altered software or require us to customize our software to meet your hardware or operating system requirements. Section 8 is your exclusive remedy for any breach by us of this section. No dealer, company, or person is authorized to expand, alter this section or any other provision of this agreement. Any such agreement will not bind ACS. **ACS MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE ENCLOSED SOFTWARE LICENSED UNDER THIS LICENSE, IN WHOLE OR IN PART. ACS EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. ACS EXPRESSLY DOES NOT WARRANT THAT THE LICENSED SOFTWARE, IN WHOLE OR IN PART, WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE OTHER THAN THE EQUIPMENT. LICENSEE WAIVES ANY CLAIM THAT THE LIMITED WARRANTY SET FORTH IN THIS SECTION OR THE REMEDY FOR BREACH OF SUCH LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE.**

8). **Limitation of Liability:** ACS' LIABILITY IN CONNECTION WITH THE SOFTWARE LICENSED UNDER THIS LICENSE, OR ANY OTHER MATTER RELATING TO THIS LICENSE WILL NOT EXCEED THE FEE THAT YOU ACTUALLY PAID TO ACS FOR THE SOFTWARE GIVING RISE TO THE LIABILITY. REGARDLESS WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL ACS BE LIABLE TO YOU FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT ACS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. YOU ACKNOWLEDGE THAT ACS HAS SET ITS FEES AND ENTERED INTO THIS LICENSE IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS LICENSE, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

9). **Remedy:** In the event that ACS breaches this agreement, your sole remedy is to notify us of such breach within the applicable warranty period and we will at our sole option, either cure the breach or refund the license fee paid to us for the materials. In no event will ACS be responsible for any damage beyond the amount of the license fee or for any indirect, special, incidental, consequential or similar damages or profits to you or any other person, or entity, regardless of the legal basis. Even if ACS has been advised of the possibility of such damages, except to the extent applicable state law specifically prohibits such exclusion.

10.) **General (System Only):** This license shall be governed by Texas laws. All prior correspondence oral or written including without limitation, all understandings with respect to materials are hereby superseded. This license constitutes your and our agreement and understanding regarding the materials. **General (Evaluation Only):** This evaluation program is provided free of charge to the registered requestor of the evaluation software and is to be used solely as an evaluation copy.

11.) **Software Maintenance Agreement.** 90 days free phone support is provided with purchase of FIREHOUSE Software. A separate software maintenance contract is available for an additional charge. This contract is not mandatory but highly recommended. The annual maintenance contract includes phone support and program updates. The cost of the software maintenance contract is based on the type and number of modules installed. After the 90 days of free support has expired and no software maintenance contract has been established, per call fee will be billed to the customer for telephone technical support.

A primary contact person will be designated for departments with 5 user licenses and higher. This primary contact person will collect user questions and problems and direct them to ACS technical support department for resolution.

12.) **Indemnity by ACS.** SUBJECT TO THE LIMITATION OF LIABILITY PROVISION CONTAINED IN SECTION 8 OF THIS AGREEMENT, ACS WILL DEFEND, INDEMNIFY AND HOLD CUSTOMER HARMLESS FROM AND AGAINST ANY LOSS, COST AND EXPENSE THAT CUSTOMER INCURS BECAUSE OF A CLAIM THAT USE OF THE SOFTWARE AND MATERIALS INFRINGES ANY UNITED STATES COPYRIGHT OF OTHERS. ACS' OBLIGATIONS UNDER THIS INDEMNIFICATION ARE EXPRESSLY CONDITIONED ON THE FOLLOWING: (I) CUSTOMER MUST PROMPTLY NOTIFY ACS OF ANY SUCH CLAIM; (II) CUSTOMER MUST IN WRITING GRANT ACS SOLE CONTROL OF THE DEFENSE OF ANY SUCH CLAIM AND OF ALL NEGOTIATIONS FOR ITS SETTLEMENT OR COMPROMISE (IF CUSTOMER CHOOSES TO REPRESENT ITS OWN INTERESTS IN ANY SUCH ACTION, CUSTOMER MAY DO SO AT ITS OWN EXPENSE, BUT SUCH REPRESENTATION MUST NOT PREJUDICE ACS' RIGHT TO CONTROL THE DEFENSE OF THE CLAIM AND NEGOTIATE ITS SETTLEMENT OR COMPROMISE); (III) CUSTOMER MUST COOPERATE WITH ACS TO FACILITATE THE SETTLEMENT OR DEFENSE OF THE CLAIM; (IV) THE CLAIM MUST NOT ARISE FROM MODIFICATIONS OR (WITH THE EXPRESS EXCEPTION OF THE OTHER COMPONENT SYSTEMS AND THIRD PARTY HARDWARE AND SOFTWARE SPECIFIED BY ACS IN WRITING AS NECESSARY FOR USE WITH THE SOFTWARE) FROM THE USE OR COMBINATION OF PRODUCTS PROVIDED BY ACS WITH ITEMS PROVIDED BY CUSTOMER OR OTHERS. IF ANY OF THE SOFTWARE AND MATERIALS IS, OR IN ACS' OPINION IS LIKELY TO BECOME, THE SUBJECT OF A UNITED STATES COPYRIGHT INFRINGEMENT CLAIM, THEN ACS, AT ITS SOLE OPTION AND EXPENSE, WILL EITHER: (A) OBTAIN FOR CUSTOMER THE RIGHT TO CONTINUE USING THE SOFTWARE AND MATERIALS UNDER THE TERMS OF THIS AGREEMENT; (B) REPLACE THE SOFTWARE AND MATERIALS WITH PRODUCTS THAT ARE SUBSTANTIALLY EQUIVALENT IN FUNCTION, OR MODIFY THE SOFTWARE AND MATERIALS SO THAT IT BECOMES NON-INFRINGEMENT AND SUBSTANTIALLY EQUIVALENT IN FUNCTION; OR (C) REFUND TO CUSTOMER THE PORTION OF THE LICENSE FEE PAID TO ACS FOR THE SOFTWARE AND MATERIAL(S) GIVING RISE TO THE INFRINGEMENT CLAIM, LESS A CHARGE FOR USE BY CUSTOMER BASED ON STRAIGHT LINE DEPRECIATION ASSUMING A USEFUL LIFE OF FIVE (5) YEARS. THE FOREGOING IS ACS' EXCLUSIVE OBLIGATION WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

13.) **Notices:** All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: Delivered personally; sent by United States registered or certified mail, return receipt requested; transmitted by facsimile confirmed by United States first class mail; or sent by overnight courier. Notices must be sent to a party at its address shown below, or to such other place as the party may subsequently designate for its receipt of notices.

ACS Government Systems, Inc.:

ACS Government Systems, Inc.  
c/o: Sanjay Kalasa, VP  
2900 100<sup>th</sup> Street  
Suite 309  
Urbandale, IA 50322



CUSTOMER:

Williamson County, TX  
c/o: Williamson County ITS  
301 S.E. Inner Loop Rd, Suite 105  
Georgetown, TX 78626

14.) **Force Majeure:** Neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including Acts of God, acts of war, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance.

15.) **No Waiver:** A party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

16.) **Choice of Law and Venue; Severability:** Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Williamson County, Texas or in the Austin Division of the Western Federal District of Texas, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

17.) **Compliance with Laws:** Each party to this Agreement shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, salary and wage statutes and regulations, licensing laws and regulations.

18.) **Gender, Number and Headings:** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

19.) **Incorporation of Exhibits and Attachments:** All of the Exhibits and Attachments, and Appendices referred to in this Agreement, if any, are incorporated by reference as if set forth verbatim herein.

20.) **Entity Status:** By signature below, Vendor certifies that Vendor is duly authorized to transact and do business in the State of Texas.

21.) **Relationship of the Parties:** Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

22.) **No Waiver of Immunities:** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to Customer, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. Customer does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

23.) **Appropriation of Funds by Customer:** Customer believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. Vendor understands and agrees that the Customer's payment of amounts under this Agreement is contingent on the Customer receiving appropriations or other expenditure authority sufficient to allow the Customer, in the exercise of reasonable administrative discretion, to continue to make payments under this Agreement.

24.) **Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns.

25.) **Remedies:** Notwithstanding any provision herein to the contrary, either party to this Agreement may avail itself of any and all remedies available at law or in equity and neither party hereto waives its right to do so.

26.) **Entire Agreement:** This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document which may be issued by Customer in connection with this Agreement does not modify this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement.

By the signatures of their duly authorized representatives below, ACS and Customer, intending to be legally bound, agree to all of the provisions of this Agreement and all Exhibits, Supplements, Schedules, Appendices, and/or Addenda to this Agreement.

Williamson County, TX

ACS Government Systems, Inc.

BY: 

BY: 

PRINT NAME: DAN A. GATTI

PRINT NAME  
AND TITLE: Sanjay Kalasa, VP

PRINT TITLE: County Judge

DATE SIGNED: 05-12-2010

DATE SIGNED: 5/11/10

## EXHIBIT I

Customer may use the materials in conjunction with the following agencies, jurisdictions, or political subdivisions of the State of Texas serviced by Customer:

Williamson County  
Williamson Cities and County Health District  
Bartlett Volunteer Fire Department  
City of Cedar Park  
Coupland Volunteer Fire Department  
Florence Volunteer Fire Department  
Granger Volunteer Fire Department  
Hutto Volunteer Fire Department  
Jarrell Volunteer Fire Department  
Jollyville Volunteer Fire Department  
City of Leander  
Liberty Hill Volunteer Fire Department  
Sam Bass Volunteer Fire Department  
City of Taylor  
Taylor Volunteer Fire Department  
Thrall Volunteer Fire Department  
Weir Volunteer Fire Department  
City of Hutto  
City of Granger  
City of Florence  
City of Liberty Hill  
City of Thrall  
City of Bartlett  
City of Jarrell  
City of Weir