

## **FIREHOUSE Software: Software Maintenance Agreement**

THIS AGREEMENT (hereinafter "Agreement") is made, and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between ACS, located at 2900 100<sup>th</sup> Street, Suite 309, Urbandale, IA 50322 (hereinafter "ACS" or "Vendor"), and Williamson County, Texas, a political subdivision of the State of Texas, located at 301 S.E. Inner Loop Rd, Suite 105 Georgetown, TX 78626 (hereinafter "Customer").

WHEREAS, Vendor and Customer have entered into a certain license agreement (the "License Agreement") pursuant to which Vendor agrees to license to Customer a software system known as FIREHOUSE Software (the "System") as specified in the License Agreement; and

WHEREAS, Vendor desires to maintain, and Customer desires to obtain the maintenance of, the System on the terms and conditions hereinafter provided.

NOW, THEREFORE, Vendor and Customer agree as follows:

### **1. Maintenance Services**

The maintenance services to be hereunder (the "Maintenance Services") shall consist of: (a) technical or operation assistance provided by Vendor to Customer relating to the System (FIREHOUSE) or enhancements thereto and (b) distribution by Vendor to Customer at no charge of enhancements to the System which may be developed from time to time by Vendor.

### **2. Term and Maintenance Fees**

During the term commencing on the Acceptance Date, as defined in the License Agreement, and continuing as long as all software maintenance agreement fees are current, Vendor shall provide the Maintenance Services to Customer for a fee payable annually on each Anniversary Date in advance. At least thirty (30) days prior to each Anniversary Date, Vendor shall notify Customer of the yearly maintenance fee to be charged by Vendor for the next succeeding year, whereupon, if Customer pays such yearly maintenance fee prior to the upcoming Anniversary Date, this Agreement shall be extended and renewed for an additional period of one year at the fee so specified by Vendor and paid by Customer.

**Termination for Convenience:** The Customer may terminate this Agreement for convenience and without cause or further liability upon thirty (30) days written notice to Vendor. In the event of such termination, it is understood and agreed that only the amounts due to Vendor as of and including the date of termination, will be due and payable. No penalty will be assessed for Customer's termination of this Agreement for convenience.

### **3. Additional Services**

At the request of Customer, and with the consent of Vendor, Vendor may also provide technical, operational or other assistance or consulting to Customer in excess of the amount included as the Maintenance Services at Vendor's standard hourly rates then in effect.

### **4. Conditions**

The termination of the License Agreement, or of the license granted therein, shall automatically result in the termination of this Agreement. VENDOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OF ANY KIND WHATSOEVER, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED BY VENDOR AND WAIVED BY CUSTOMER. VENDOR SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT VENDOR'S MAXIMUM LIABILITY TO CUSTOMER HEREUNDER SHALL BE LIMITED TO THE ACTUAL AND DIRECT DAMAGES ACTUALLY INCURRED BY CUSTOMER AS A RESULT OF THE ERRORS, ACTS AND/OR OMISSIONS OF VENDOR.

#### 5. Confidentiality

Vendor acknowledges that in the course of providing the Maintenance Services or other services provided hereunder, Vendor, or its employees or consultants, may be supplied with or come into possession of information which is proprietary to Customer including information as to customers, methods of doing business or operations. Vendor hereby agrees that it will keep all such information confidential, and will disclose such information to no other person. In addition, Vendor agrees to take such action as may be necessary or appropriate by way of agreement with, and instruction to, its employees so as to maintain the confidentiality of such information of Customer. 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.

#### 6. Indemnity

FURTHERMORE, ACS SHALL ALSO INDEMNIFY, DEFEND, PROTECT, AND SAVE HARMLESS CUSTOMER, ITS OFFICIALS AND EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LIABILITY, LOSS, DAMAGE, REASONABLE ATTORNEY'S FEES, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO EXPENSES RELATED TO EXPERT WITNESSES) OF ANY KIND WHATSOEVER, TO THE EXTENT ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF ACS OR ANY OF ITS EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES IN CONNECTION WITH THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT.

#### 7. 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.:

2900 100th St. Ste 309  
Urbandale IA 50322

CUSTOMER:

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

#### 8. 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.

#### 9. Assignment

Neither party may assign any of its rights or obligations under this Agreement, and any attempt at such assignment will be void without the prior written consent of the other party. For purposes of this Agreement, "assignment" will include use of the Software for benefit of any third party to a merger, acquisition and/or other consolidation by, with or of Customer, including any new or surviving entity that

results from such merger, acquisition and/or other consolidation. However, the following will not be considered "assignments" for purposes of this Agreement: Vendor's assignment of this Agreement or of any Vendor rights under this Agreement to Vendor's successor by merger or consolidation or to any person or entity that acquires all or substantially all of its capital stock or assets; and Vendor's assignment of this Agreement to any person or entity to which Vendor transfers any of its rights in the Software.

#### 9. 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.

#### 10. 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.

#### 11. Compliance with Laws

Each party to this Agreement shall comply with all 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.

#### 12. 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.

#### 13. Incorporation of Exhibits and Attachments

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

#### 14. Entity Status

By signature below, Vendor certifies that Vendor is duly authorized to transact and do business in the State of Texas.

#### 15. 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.

#### 16. 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.

17. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns.

18. 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.

19. 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. Gattis

PRINT NAME  
AND TITLE: Sanjay Kalasa, VP

PRINT TITLE: County Judge

DATE SIGNED: 05-12-2010

DATE SIGNED: April 15<sup>th</sup> 2010