



State of Oklahoma  
Office of Management and Enterprise Services

---

**ADDENDUM 1 TO  
STATE OF OKLAHOMA CONTRACT WITH ACISS SYSTEMS, INC.  
RESULTING FROM STATE WIDE CONTRACT NO. 1059**

This Addendum 1 (“Addendum”) is an Amendment to the Contract awarded to ACISS Systems, Inc. (“ACISS”) in connection with Solicitation 0900000376 (“Solicitation”) and is effective June 26<sup>th</sup>, 2019 (“Effective Date”).

**Recitals**

Whereas, the State issued a Solicitation for proposals to provide information systems that meet the cost effective operational needs of law enforcement agencies to include records and case management tools for managing and tracking law enforcement activity. Operational needs could include incident and investigation records management, civil processing and data reporting and sharing with other law enforcement agencies, as more particularly described in the Solicitation;

Whereas, ACISS submitted a proposal which contained various other Contract Documents; and

Whereas, the State and ACISS have negotiated the final terms under which ACISS will perform the Services under the Contract.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

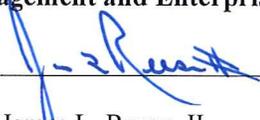
1. **Addendum Purpose.**

This Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to ACISS as of even date with execution of this Addendum. The parties agree that Supplier has not yet begun performance of work contemplated by the Solicitation.

2. **Negotiated Documents of the Contract.**

- 2.1. The parties have negotiated certain terms of the Contract as follows:
- i. revisions to the subscriber agreement initially proposed by ACISS Systems Inc. as contained in Attachment A to this Addendum titled, "Subscriber Agreement";
  - ii. revisions to the software support and licensing agreement initially proposed by ACISS Systems Inc. as contained in Attachment B to this Addendum titled "Software Support and Licensing Agreement"; and
  - iii. revisions to the hosting agreement initially proposed by the State as contained in Attachment C to this Addendum titled "Hosting Agreement."
- 2.2. Accordingly, any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.
- 2.3. ACISS Systems affirmatively acknowledges it takes no exception to the Solicitation and that it will not ask the State, any agency, or Customer to execute additional documents not listed above in connection with this Contract.

**State of Oklahoma by and through the Office  
of Management and Enterprise Services**

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

Name: James L. Reese, II

Title: Chief Information Officer

Date: 6-26-19

**ACISS Systems, Inc.**

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

Name: Chad Hawkinson

Title: President

Date: 06/25/2019

**Attachment A to  
Addendum 1 to  
STATE OF OKLAHOMA CONTRACT WITH ACISS SYSTEMS INC.  
RESULTING FROM STATE WIDE CONTRACT NO. 1059**

The **Subscriber Agreement** (“Subscriber Agreement”) is hereby amended as set forth below and supersedes all prior documents submitted by **ACISS Systems Inc.** or discussed by the parties.

This Contract is made between the State of Oklahoma by and through the Office of Management and Enterprise Services (“State”) on behalf of State or Interlocal Entities (“Customer” or “Subscriber”) and ACISS Systems Inc. (“Provider,” or “Vendor”).



## ACISS Subscriber Agreement

Current Version 1.102  
Supersedes Version 1.101  
Effective October 31, 2018

# Contents

1. Terms.....	4
2. Definitions .....	4
3. Privacy .....	4
4. Compliance with Laws .....	5
5. Security Incident Notification .....	6
6. Subscriber Content .....	6
7. Subpoena and Legal Requests .....	6
8. Data Retention and Deletion .....	7
9. Using the Services & Support .....	7
a. System Administration .....	7
b. Additional Equipment/Data Plans .....	7
c. Service Notifications .....	7
d. Support Contact.....	7
e. Ending Subscriber Services .....	8
10. Service Availability.....	8
11. Updates to the Services and Changes to Terms .....	8
a. Software Updates .....	8
12. Indemnification .....	9
a. Intellectual Property Claims.....	9
b. ACISS Options to Resolve Claims .....	9
c. Modifications to Services.....	9
d. Mutual Indemnification .....	10
e. Indemnification Procedures.....	10
f. Default .....	10
g. Effect of Termination .....	11
13. Software License.....	11
14. Payment Terms.....	12
a. Charges .....	12
b. Billing .....	12

c.	Recurring Payments.....	12
d.	Automatic Renewal.....	13
e.	Billing Statement and Errors.....	13
f.	Refund Policy.....	13
g.	Canceling the Services.....	13
h.	Trial-Period Offers.....	14
i.	Price Changes.....	14
j.	Payments to Subscriber.....	14
15.	Law and Venue.....	14
16.	Warranties.....	15
17.	Limitation of Liability.....	15
18.	Miscellaneous.....	15
19.	Reservation of Rights.....	16
<b>Appendix A.....</b>		<b>18</b>
1.	Services Description.....	18
2.	Minimum Operating Environment.....	19
3.	Start Date and End Date.....	19
4.	Authorized Users and Services Fees.....	19
5.	Storage Threshold(s).....	20
6.	Storage Fees and Data Format.....	20
7.	ACISS Hosting Provider.....	20
8.	Technical Support Description.....	20
9.	Software Maintenance.....	21
10.	Customization / Integration Services.....	21
11.	Training Services.....	21
12.	Service Levels.....	22
13.	Subscriber Contacts.....	23

## 1. Terms

- a. These terms (“Terms”) cover the use of those ACISS products, websites, and services listed here (the “Services” and/or “Online Services”). Subscriber herein accepts these Terms.
- b. The parties agree that these Terms govern Subscriber’s use of the Services and set forth their obligations with respect to the processing and security of Subscriber Data by the Services. The parties also agree that, unless a separate Professional Services agreement exists, these Services Terms govern the provision of Professional Services and the processing and security of Support Data in connection with that provision.

## 2. Definitions

- a. “Online Services” means those Online Services listed in Appendix A.
- b. “Subscriber Data” means all data, including all text, sound, video, or image files, and software, that are provided to ACISS by, or on behalf of, Subscriber through use of the Service. Subscriber Data does not include Support Data.
- c. “External User” means a user of a Service that is not an employee, on-site contractor, or on-site agent of Subscriber.
- d. “Instance” means an active, live application of an Online Service provided by ACISS.
- e. “Licensed Device” means a single physical hardware system to which a license may be assigned.
- f. “Non-ACISS Product” means any third-party-branded software, data, service, website, or product, unless incorporated by ACISS in a Service.
- g. “Service” means an ACISS-hosted service to which Subscriber subscribes under an ACISS licensing agreement.
- h. “Operating System Environment” (OSE) means all or part of an operating system Instance, or all or part of a virtual (or otherwise emulated) operating system Instance, that enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and Instances of applications, if any, configured to run on all or part of that operating system Instance.
- i. “Professional Services” means ACISS technical support and consulting services (e.g., for data migration) related to any Service.
- j. “Support Data” means all data, including all text, sound, video, image files, or software, that are provided to ACISS by or on behalf of Subscriber (or that Subscriber authorizes ACISS to obtain from an Online Service) through an engagement with ACISS to obtain technical support for Online Services covered under this Subscriber Agreement.
- k. “Subscriber” means any State or Interlocal Entity as defined in the Solicitation.
- l. “Customer Data” shall mean all data supplied by or on behalf of Customer or Subscriber in connection with the Contract, excluding any confidential information of Vendor.
- m. “CJIS” means the U.S. Department of Justice, Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Division. This incorporates the CJIS Security Policy.

## 3. Privacy

- a. ACISS collects data from Subscriber, through ACISS’ interactions with Subscriber and through ACISS’ products. Subscriber provides some of this data directly, and ACISS obtains some of it by collecting data about Subscriber’s interactions, use, and experiences with ACISS Services. The data ACISS collects depends on the context of Subscriber’s interactions with Services. ACISS

does not sell or market this data. Data collected by ACISS is used for several objectives including updating, securing, and troubleshooting, as well as providing support. It also includes sharing data, when it is required to provide the service or carry out the transactions Subscriber requests. ACISS uses the data to:

- i. Improve and develop ACISS' products.
  - ii. Adapt ACISS' products and make recommendations for Subscriber's use.
  - iii. Operate ACISS' business, which includes analyzing ACISS' performance, meeting ACISS' legal obligations, developing ACISS' workforce, and doing research.
- b. In carrying out these purposes, ACISS combines data collected from different contexts (for example, from Subscriber's use of two ACISS products) or obtained from third parties to give Subscriber a more seamless, consistent, and personalized experience, and to make informed decisions.
  - c. ACISS may automatically check the version of any of its software for license compliance. Devices on which the software is installed may periodically provide information to enable ACISS to verify that the software is properly licensed. This information includes the software version, the end user's user account, product ID information, a machine ID, and the internet protocol address of the device. If the software is not properly licensed, its functionality will be affected. By using the software, Subscriber consents to the transmission of the information described in this section. ACISS may recommend or download to Subscriber's devices updates or supplements to this software, with or without notice. Some Online Services may require, or may be enhanced by, the installation of local software (e.g., agents, device management applications) ("Apps"). The Apps may collect data about the use and performance of the Apps, which may be transmitted to ACISS and used for the purposes described above.
  - d. Cookies are small text files placed on Subscriber device to store data that can be recalled by a web server in the domain that placed the cookie. ACISS may use cookies and similar technologies for storing and honoring Subscriber preferences and settings, enabling Subscriber to sign in, combating fraud, and analyzing how ACISS' products perform.

#### 4. Compliance with Laws

- a. ACISS will comply with all laws and regulations applicable to its provision of the Services. However, ACISS is not responsible for compliance with any laws or regulations applicable to Subscriber or Subscriber's industry that are not generally applicable to information technology service providers. ACISS does not determine whether Subscriber Data includes information subject to any specific law or regulation.
- b. Subscriber must comply with all laws and regulations applicable to its use of Services, including laws related to privacy, personal data, biometric data, data protection, and confidentiality of communications. Subscriber is responsible for determining whether the Services are appropriate for storage and processing of information subject to any specific law or regulation and for using the Online Services in a manner consistent with Subscriber's legal and regulatory obligations.
- c. Notwithstanding anything to the contrary, ACISS shall at all times:
  - i. maintain compliance with the FBI CJIS Security Policy;
  - ii. ensure its employees maintain CJIS security training certificates;
  - iii. ensure its employees undergo background checks acceptable to the state's CSO; and
  - iv. allow the state's CSO to vet its employees at will.

## 5. Security Incident Notification

- a. If ACISS becomes aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Subscriber Data while processed by ACISS (each a "Security Incident"), ACISS will promptly and without undue delay (1) notify Subscriber of the Security Incident; (2) investigate the Security Incident and provide Subscriber with detailed information about the Security Incident; (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.
- b. Notification(s) of Security Incidents will be delivered to one or more of Subscriber's administrators identified in Appendix A. It is Subscriber's sole responsibility to ensure Subscriber's administrators maintain accurate contact information with ACISS. Subscriber is solely responsible for complying with its obligations under incident notification laws applicable to Subscriber and fulfilling any third-party notification obligations related to any Security Incident.
- c. ACISS's obligation to report or respond to a Security Incident under this section is not an acknowledgement by ACISS of any fault or liability with respect to the Security Incident.
- d. This section is to be read in conjunction with Section V. Security Incident or Data Breach Notification in Attachment C of the Hosting Agreement, attached hereto. In the event of a conflict of these two sections, Section V in the Hosting Agreement will control.

## 6. Subscriber Content

- a. ACISS Services may allow Subscriber to store content or receive material from others. ACISS does not claim ownership of Subscriber content.
- b. Subscriber content remains Subscriber content and Subscriber is responsible for it.

## 7. Subpoena and Legal Requests

- a. Should ACISS receive a subpoena for Subscriber Data, ACISS shall promptly notify Subscriber with enough time to respond. Unless Subscriber files an objection to the subpoena and obtains either an order quashing the subpoena or stay from a court of competent jurisdiction, ACISS shall timely comply with the subpoena.
- b. ACISS will have access to information and private or confidential data maintained by Subscriber, to the extent necessary to carry out ACISS's responsibilities under this contract. ACISS agrees that all Subscriber data shall be considered strictly confidential and ACISS may not disclose any Subscriber data at any time to any person or entity. ACISS agrees to comply with all state and federal confidentiality laws in providing services under this contract.

## 8. Data Retention and Deletion

- a. At all times during the term of Subscriber's subscription, Subscriber will have the ability to access, extract and delete Subscriber Data stored in Service.
- b. ACISS shall provide data extraction for Subscriber in the format designated in Appendix A.
- c. At all times during the term of Subscriber's subscription, ACISS shall maintain regular data backups at no additional cost to Subscriber.

## 9. Using the Services & Support

### a. System Administration

- i. ACISS will assign an administrator role to one or more users designated by Subscriber. Users in the administrator role may control in-part or in-whole, user access, Subscriber Data and user assignments under the terms of this Subscriber Agreement.

### b. Additional Equipment/Data Plans

- i. To use many of the Services, Subscriber will need an internet connection and/or data/cellular plan. Subscriber might also need additional equipment, like a headset, camera, or microphone.
- ii. Subscriber is responsible for providing all connections, plans, and equipment needed to use the Services and for paying the fees charged by the provider(s) of Subscriber connections, plans, and equipment.
- iii. Those fees are in addition to any fees Subscriber pays ACISS for the Services and ACISS will not reimburse Subscriber for such fees.
- iv. Equipment and connections required for the Services are defined in Appendix A.

### c. Service Notifications

- i. When there's information ACISS needs to relay to Subscriber about a Service Subscriber uses, ACISS will send Subscriber Service notifications. If Subscriber gave ACISS Subscriber's email address or phone number in connection with Subscriber ACISS account, then ACISS may send Service notifications to Subscriber via email or via SMS (text message), including to verify Subscriber identity before registering Subscriber mobile phone number. ACISS may also send Subscriber Service notifications by other means (for example by in-product messages). Data or messaging rates may apply when receiving notifications via SMS.

### d. Support Contact

- i. Subscriber support for some Services is available via:
  1. Web: <https://www.aciss.com/support>
  2. Email: [support@aciss.com](mailto:support@aciss.com)
  3. Phone: (727) 786-5450
- ii. Certain Services may offer separate or additional Subscriber support, subject to the terms enumerated in Appendix A.
- iii. Support may not be available for preview or beta versions of features or Services.

### e. Ending Subscriber Services

- i. If Subscriber Services are canceled (whether by Subscriber or ACISS), first Subscriber's right to access the Services stops immediately and Subscriber's license to the software related to the Services ends.
- ii. Second, ACISS will work with Subscriber to return Subscriber Data in accordance with Attachment C – Hosting Agreement Section X. After which time, Subscriber may no

longer be able to access any of the Services (or Subscriber content that Subscriber stored on those Services).

## 10. Service Availability

The Services may be unavailable from time to time. ACISS strives to keep the Services up and running; however, all online services suffer occasional disruptions and outages, and ACISS is not liable for any disruption or loss Subscriber may suffer as a result. ACISS Services are hosted on the platform and configuration enumerated in Appendix A. ACISS maintenance windows and downtime credits are enumerated in Appendix A.

## 11. Updates to the Services and Changes to Terms

When Subscriber renews or purchases a new subscription to a Service, the then-current Services Terms will apply and will not change during the subscription for that Service. When ACISS introduces features, supplements, or related software that are new (i.e., that were not previously included with the subscription).

### a. Software Updates

- i. Sometimes Subscriber will need software updates to keep using the Services. ACISS may automatically check Subscriber version of the software and download software updates or configuration changes. Subscriber may also be required to update the software to continue using the Services. Such updates are subject to these Terms.

## 12. Indemnification

### a. General

- i. Notwithstanding anything to the contrary in this Contract, ACISS shall indemnify and hold harmless the State of Oklahoma and Subscribers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES that a court finally awards or that are included in a settlement approved in writing by ACISS arising out of, or resulting from any acts or omissions of ACISS or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY ACISS WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN OKLAHOMA STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND ACISS MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. ACISS AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

### b. Intellectual Property Claims

- i. ACISS agrees to defend and indemnify the State of Oklahoma and Subscriber, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all losses related to, arising from, or in connection with any actual or threatened third-party liability, claims, demands, actions, or suits, and all related costs, attorney fees, and expenses that the license of the Services or ACISS' performance hereunder:

1. infringe upon any patent rights, copyright, or trademark rights or any other intellectual property rights of any third-party; or
  2. contain confidential or proprietary material misappropriated by ACISS from any third-party.
- ii. Notwithstanding the foregoing, ACISS shall have no liability for any infringement arising from (i) use of Services in combination with other items not provided by ACISS, unless ACISS sold, made, or specifically recommended or approved them all as a combination, the combination is with an item in the software and hardware operating environment for the Services, or the combination occurs in the course of the use by Subscriber of the Services for their intended purpose, or unless liability for infringement is still attributable to ACISS and the combination with other items is irrelevant to said infringement, or (ii) modification of the Services by Subscriber unless ACISS specifically recommended or approved the modification (provided, however that any infringement caused by the base Services that is the starting point for such modification by Subscriber shall be covered under ACISS' infringement indemnity obligations hereunder).

#### c. ACISS Options to Resolve Claims

- i. If the Services become, or in ACISS' reasonable opinion are likely to become, the subject of an infringement or misappropriation claim or proceeding, ACISS shall, in the following order of priority and in addition to defending and indemnifying Subscriber as provided in this Subscriber Agreement and to the other rights Subscriber may have, promptly at ACISS' expense (a) modify the Services to avoid the infringement but in a manner that still permits them to perform as promised under this Subscriber Agreement; (b) replace the Services with compatible, functionally equivalent, and non-infringing products; or (c) obtain a license for Subscriber to continue to use the Services at ACISS' sole cost and expense.

#### d. Modifications to Services

- i. If ACISS' modifications to the Services pursuant to clause above result in a change in the hardware and software operating environment specified by ACISS for the Subscriber or ACISS replaces the Services with different product(s) and Subscriber needs to acquire additional hardware and/or software in order to use such replacement product(s), then in each case ACISS shall provide such additional hardware and software to Subscriber at ACISS' sole cost and expense. If none of these actions can be accomplished by ACISS, and only in such event, ACISS, upon termination of access to Services, will refund to Subscriber a pro rata portion of the license fees paid by Subscriber based on an amortization over a twelve (12) month period on a straight-line basis.

#### e. Indemnification Procedures

- i. With respect to any claim for which the State or Subscriber seeks indemnification under this Subscriber Agreement, State and Subscriber will follow the following indemnification procedures. After receipt by any entity entitled to indemnification of notice of the commencement or threatened commencement of any Claim, the indemnitee shall use reasonable efforts to promptly notify the indemnitor of such Claim in writing. THE DEFENSE SHALL BE COORDINATED BY ACISS WITH THE OFFICE OF THE

ATTORNEY GENERAL WHEN OKLAHOMA STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND ACISS MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. ACISS AND THE SUBSCRIBER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

f. Effect of Termination

- i. Upon termination of this Subscriber Agreement due to Subscriber's breach of the licensing restrictions for the Service, or non-payment, or upon expiration of the term of Subscriber's license, where such license is not perpetual, unless renewed (but, in such case, only as to the Service whose licenses have expired), Subscriber's license and access to the Service will terminate. In the event of termination before natural expiration of the term, ACISS will refund to Subscriber a pro rata portion of any and all fees paid by Subscriber based on an amortization over a twelve (12) month period on a straight-line basis.

### 13. Software License

- a. Unless accompanied by a separate ACISS license agreement, any software provided by ACISS to Subscriber as part of the Services is subject to these Terms.
  - i. If Subscriber complies with these Terms, ACISS grants Subscriber the right to access the Service on a worldwide basis on a per-named-user basis. The Service may include third-party code. Any third-party scripts or code, linked to or referenced from the Service, are licensed to Subscriber by the third parties that own such code, not by ACISS. Notices, if any, for the third-party code are included for Subscriber information only.
  - ii. The Services are licensed, not sold, and ACISS reserves all rights to the Services and the software that enables them not expressly granted by ACISS, whether by implication, estoppel, or otherwise. This license does not give Subscriber any right to, and Subscriber may not:
    1. circumvent or bypass any technological protection measures in or relating to software or Services;
    2. disassemble, decompile, decrypt, hack, emulate, exploit, or reverse engineer any software or other aspect of the Services that are included in or accessible through the Services, except and only to the extent that the applicable copyright law expressly permits doing so;
    3. separate components of the software or Services for use on different devices;
    4. publish, copy, rent, lease, sell, export, import, distribute, or lend the software or the Services, unless ACISS expressly authorizes Subscriber to do so;
    5. transfer the software, any software licenses, or any rights to access or use the Services;
    6. use the Services in any unauthorized way that could interfere with anyone else's use of them or gain access to any service, data, account, or network;
    7. enable access to the Services or modify any ACISS authorized device by unauthorized third-party applications.

## 14. Payment Terms

If Subscriber purchases a Service, then these payment terms apply to Subscriber purchase and Subscriber agrees to them.

### a. Charges

- i. If there is a charge associated with a portion of the Services, Subscriber agrees to pay that charge. ACISS may suspend or cancel the Services if ACISS does not receive an on time, full payment from Subscriber, provided Subscriber first received notice and 20 days to cure. Suspension or cancellation of the Services for non-payment could result in a loss of access to and use of Subscriber account and its content.

### b. Billing

- i. By providing ACISS with a payment method, Subscriber (i) represents that Subscriber is authorized to use the payment method Subscriber provided and that any payment information Subscriber provides is true and accurate; (ii) authorizes ACISS to charge Subscriber for the Services or available content using Subscriber payment method; and (iii) authorizes ACISS to charge Subscriber for any paid feature of the Services Subscriber chooses to sign up for or use while these Terms are in force. ACISS may bill Subscriber (a) in advance; (b) at the time of purchase; (c) shortly after purchase; or (d) on a recurring basis for subscription Services as enumerated in Appendix A.
- ii. Also, ACISS may charge Subscriber up to the amount Subscriber has approved ACISS may bill Subscriber at the same time for more than one of Subscriber prior billing periods for amounts that have not previously been processed.
- iii. In the event cancellation, termination, expiration, lapse, suspension, or discontinuation of this Subscriber Agreement for any other reason ACISS shall refund any and all prepaid fees for subscription services.

### c. Recurring Payments

- i. When Subscriber purchases the Services on a subscription basis (e.g., monthly, every 3 months or annually), Subscriber agrees that Subscriber is authorizing recurring payments, and payments will be made to ACISS by the method and at the recurring intervals Subscriber has agreed to, until the subscription for that Service is terminated by Subscriber or by ACISS. By authorizing recurring payments, Subscriber is authorizing ACISS to store Subscriber payment instruments and process such payments as either electronic debits or fund transfers, or as electronic drafts from Subscriber designated accounts (for Automated Clearing House or similar payments), or as charges to Subscriber designated account (for credit card or similar payments) (collectively, "Electronic Payments").

### d. Billing Statement and Errors

- i. ACISS will provide Subscriber with a billing statement. If ACISS makes an error on Subscriber bill, Subscriber must tell ACISS within ninety (90) days after the error first appears on Subscriber's bill. ACISS will then promptly investigate the charge. If Subscriber does not tell ACISS within that time, Subscriber releases ACISS from all liability and claims of loss resulting from the error and ACISS will not be required to correct the error or provide a refund. If ACISS has identified a billing error, ACISS will correct that error within ninety (90) days.

#### e. Refund Policy

- i. Unless otherwise provided by law or by a particular Service offer, all purchases are final and non-refundable. If Subscriber believes that ACISS has charged Subscriber in error, Subscriber must contact ACISS within ninety (90) days of such charge. No refunds will be given for any charges more than ninety (90) days old. If ACISS issues a refund or credit, ACISS is under no obligation to issue the same or similar refund in the future. This refund policy does not affect any statutory rights that may apply.
- ii. In the event of cancellation, termination, expiration, lapse, suspension, or discontinuation of this Subscriber Agreement for any other reason ACISS shall issue a pro-rated refund for all fees paid in advance, including fees for subscription services.

#### f. Canceling the Services

- i. Subscriber may cancel a Service at any time, with or without cause. To cancel a Service and request a refund, Subscriber must send the request to [support@aciss.com](mailto:support@aciss.com). Subscriber should refer back to the offer describing the Services as (i) Subscriber may be obligated to pay all charges made to Subscriber's billing account for the Services before the date of cancellation; and (ii) Subscriber may lose access to and use of Subscriber account when Subscriber cancels the Services. If Subscriber cancels, Subscriber's access to the Services ends at the end of Subscriber's current Service period or, if ACISS bills Subscriber's account on a periodic basis, at the end of the period in which Subscriber canceled.

#### g. Price Changes

- i. ACISS may not change the price of the Services at any time. If there is a fixed term and price for a Subscriber Service contract, the original price will remain in force for the fixed term, and new pricing will only be applicable upon the next contract renewal.

#### h. Payments to Subscriber

- i. If ACISS owes Subscriber a payment, then Subscriber agrees to timely and accurately provide ACISS with any information ACISS needs to get that payment to Subscriber.
- ii. If Subscriber receives a undisputed payment in error, ACISS may reverse or require return of the payment. Subscriber agrees to cooperate with ACISS in ACISS' efforts to do this. ACISS may reduce the payment to Subscriber without notice to adjust for any previous overpayment.

## 15. Law and Venue

**Contracting Entity.** Subscriber is contracting with ACISS Systems, Inc., 640 Brooker Creek Blvd., Suite 400, Oldsmar, Florida 34677, U.S.A.

**Choice of Law.** The law of Oklahoma and the 10<sup>th</sup> Circuit Court of Appeals govern all claims, regardless of conflict of laws principles.

**Venue.** Subscriber and ACISS irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in Oklahoma County, Oklahoma.

## 16. Warranties

- a. ACISS, AND ACISS' AFFILIATES, RESELLERS, DISTRIBUTORS, AND VENDORS, MAKE NO WARRANTIES, EXPRESSED OR IMPLIED, GUARANTEES OR CONDITIONS WITH RESPECT TO SUBSCRIBER'S USE OF THE SERVICES. SUBSCRIBER UNDERSTANDS THAT USE OF THE SERVICES IS AT SUBSCRIBER'S OWN RISK AND THAT ACISS PROVIDES THE SERVICES ON AN "WITH ALL FAULTS" AND "AS AVAILABLE" BASIS.
- b. ACISS DOESN'T GUARANTEE THE ACCURACY OR TIMELINESS OF THE SERVICES. TO THE EXTENT PERMITTED UNDER LAW, ACISS EXCLUDES ANY IMPLIED WARRANTIES, INCLUDING FOR MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, AND NON-INFRINGEMENT SUBJECT TO PROVISIONS HEREIN.
- c. SUBSCRIBER ACKNOWLEDGES THAT COMPUTER AND TELECOMMUNICATIONS SYSTEMS ARE NOT FAULT-FREE AND OCCASIONAL PERIODS OF DOWNTIME OCCUR. ACISS DOES NOT GUARANTEE THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR THAT CONTENT LOSS WON'T OCCUR, NOR DOES ACISS GUARANTEE ANY CONNECTION TO OR TRANSMISSION FROM THE COMPUTER NETWORKS.

## 17. Limitation of Liability

- a. Neither party's total liability under this Contract will exceed the amount payable for the term per claim.
- b. Neither party can recover any, lost profits, special, indirect, incidental, or punitive.
- c. To the maximum extent permitted by law, these limitations and exclusions apply to anything or any claims related to these Terms, the Services, or the software related to the Services.
- d. Notwithstanding anything to the contrary in the Contract, the foregoing provisions of the Section shall not apply to or limit damages, expenses, costs, actions, claims and liabilities arising from or related to property damage, bodily injury or death caused by ACISS; the indemnification obligations set forth in this Contract; ACISS' confidentiality obligations set forth in this Contract; data security and breach notification obligations set forth in in the Contract; the bad faith, gross negligence or intentional misconduct of ACISS or its employees agents and subcontractors; or other acts for which applicable law does not allow exemption from liability.

## 18. Miscellaneous

- a. This section, and those that by their terms apply after the Terms end will survive any termination or cancellation of these Terms.
- b. This Subscriber Agreement, the Hosting Agreement, and the Solicitation, make up the entire agreement between Subscriber and ACISS for Subscriber use of the Services. It supersedes any prior agreements between Subscriber and ACISS regarding Subscriber use of the Services. All parts of these Terms apply to the maximum extent permitted by relevant law.

## 19. Reservation of Rights

- a. Except as expressly provided under these Terms, ACISS does not grant Subscriber a license or any other rights of any type under any patents, know-how, copyrights, trade secrets, trademarks or other intellectual property owned or controlled by ACISS or any related entity, including but not limited to any name, trade dress, logo, or equivalents.

## 20. Force Majeure

- a. Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. In the event that a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable. Subject to the conditions set forth above, such non-performance shall not be deemed a default. However, a Customer may terminate a purchase order if Vendor cannot cause delivery of products or services in a timely manner to meet the business needs of the Customer.
- b. Exclusions: Non-suspended Obligations: Notwithstanding the foregoing or any other provisions in the Contract, (1) in no event will any of the following be considered a force majeure event: (a) shutdowns, disruptions or malfunctions in ACISS' systems or any of ACISS' telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to ACISS' systems; or (b) the delay or failure of ACISS or subcontractor personnel to perform any obligation of ACISS hereunder unless such delay or failure to perform is itself by reason of a force majeure event; and (2) no force majeure event modifies or excuses ACISS confidentiality, indemnification or data security and breach notification obligations set forth herein.

## 21. Confidentiality

- a. By virtue of the Subscriber Agreement, Customer may be exposed to or be provided with certain confidential and proprietary information of the ACISS. ACISS shall clearly mark any such information as confidential ("Confidential Information"). Customer is a state agency and subject to the Oklahoma Open Records Act and ACISS acknowledges information marked Confidential Information will be disclosed to the extent permitted under Customer's Open Records Act and in accordance with this section. Customer agrees to use the same degree of care that each such party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Customer will not use ACISS's Confidential Information for purposes other than those necessary to directly further the purposes of the Subscriber Agreement.
- b. Exceptions. Information shall not be considered Confidential Information to the extent such information (i) is or becomes generally known or available to the public through no fault of the Customer; (ii) was in the Customer's possession before receipt from the ACISS; (iii) is lawfully obtained from a third party who has the right to make such disclosure; or (iv) has been independently developed by Customer reference to any Confidential Information..
- c. Compelled Disclosure. In the event that Customer is requested or required by legal or regulatory authority to disclose any Confidential Information, Customer shall promptly notify the ACISS of such request or requirement so that the ACISS may seek an appropriate protective order. In the event that a protective order or other remedy is not obtained, Customer agrees to furnish only

that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand.

- d. Customer Data. The Customer will be responsible for the accuracy and completeness of all Customer Data provided to ACISS. Customer Data shall mean all data supplied by the Customer in connection with the Contract. The Customer shall retain exclusive ownership of all Customer Data and such Customer Data shall be deemed to be the Customer's Confidential Information, as set forth in the Contract. ACISS shall restrict access to Customer Data to Customer's employees and agents as necessary to perform the Services, and to ACISS and its employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein). ACISS will protect the Customer Data from unauthorized dissemination and use with the same degree of care that it uses to protect its own Confidential Information and, in any event, will use no less than a reasonable degree of care in protecting Customer Data. ACISS shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the Service. ACISS shall notify the Customer at the contact set forth in the Notice Section herein by the fastest means available and also in writing. In no event shall ACISS provide such notification more than 24 hours after ACISS receives the request. Except to the extent required by law, ACISS shall not respond to subpoenas, service or process, FOIA requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of ACISS's proposed responses. ACISS agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.

## 22. Notice

- a. Notice to either party to this Subscriber Agreement shall be deemed given (1) when mailed by certified or registered mail, postage prepaid, or (2) when sent via courier, overnight delivery (such as Federal Express). Mail shall be addressed as follows:

ACISS Systems, Inc.  
640 Brooker Creek Blvd, Suite 400  
Oldsmar, Florida 34677

Agency Name:  
Project Manager:  
Address:  
Address:

And

Chief Information Officer  
3115 N. Lincoln Blvd  
Oklahoma City, OK 73105

With a copy, which does not constitute notice, to:  
Information Services Deputy General Counsel  
3115 N. Lincoln Blvd.  
Oklahoma City, OK 73105

# Appendix A

This Appendix A shall be incorporated in and governed by the terms of that certain Service Agreement by and between (“Subscriber”) and ACISS Systems, Inc. (“ACISS”). Unless expressly provided for in this Appendix A, in the event of a conflict between the provisions contained in the Subscriber Agreement and those contained in this Appendix A, the provisions contained in this Appendix A shall prevail.

## 1. Services Description

Services provided to Subscriber shall include the following ACISS modules:

- a) **Case Management/Intelligence:** Module includes report routing & workflow, supervisory approval process, hidden cases & core entities, hours, mileage & expense tracking, seized/stolen property, case routing & assignment, workload reassignment (bulk record transfer), and additional reports.
- b) **Arrest:** Module includes Arrest Reporting and Arrestee Disposition Reports.
- c) **Expenses:** Module includes reconciliation of investigative expenses, expense account management, and expense summary reporting.
- d) **Incident/Offense:** Module includes Incident/Offense Reporting, Patrol Supplement, Mental Health Assessment, Sex Offender Analysis, and auto case routing (based on offense hierarchy).
- e) **UCR:** Module includes UCR/NIBRS data input validation, automated UCR statistics generation, electronic NIBRS submission. Applies to Offense and Arrest Reports. Currently supports Florida UCR and Federal NIBRS standards.
- f) **Citation:** Module includes Citation Reports.
- g) **Crash:** Module includes Accident Report.
- h) **FIR:** Module includes Field Interview Report.
- i) **Forensics:** Module includes Forensics, Crime Scene, and Latent Comparison Reports.
- j) **Gangs:** Module includes automatic statutory gang membership calculation, automatic creation of gang to member relationships, additional gang related data elements and custom settings, Gang Criterion Report, Expanded Gang Report (Based on Expanded Intel), and Flat Gang Entry Form.
- k) **Critical Infrastructure:** Module includes Vulnerability Assessment Reporting and additional critical facility related data elements.
- l) **Fire Investigation:** Module includes Fire Investigation Reporting.
- m) **Telephone Analysis Package (TAP):** Module includes intercept data management, DNR analysis reports, DNR device interfaces, import tolls, Title III wire taps, call audio support, and wire Analysis Reports.
- n) **Tips & Tasks:** Module includes complete lead management with Tip/Task security, Quick Tips, and integration with Case Management.
- o) **P&E:** Module includes complete property and evidence inventory and disposal management. Using standard barcoding technology, track property from initial intake all the way through release/disposal.
- p) **ACISS Fusion:** Module includes transmittal of reports and tips, and Core Entity searches against external systems, ACISS XML file drop of reports and tips, SAR file drop, FBI eGuardian, N-DEx, and NSI SAR submissions, and ICOTS notification intake.

## 2. Minimum Operating Environment

Supported Browsers:	Microsoft Edge Microsoft Internet Explorer 9 or above Google Chrome* Apple Safari*
Supported OSes:	Windows 7 and above Any OS which runs a Supported Browser*
Free OS RAM:	1 GB
Bandwidth:	Minimum 56Kbps

\*While the vast majority of the application is accessible to any OS with a Supported Browser, Microsoft Windows with Edge or Internet Explorer is required for access to supplemental controls within the application that rely on Microsoft ClickOnce for deployment. These controls include ACISS Words (integrated word processor), ACISS DocLoader (control for simplified editing of attachments), ACISSLinks (visual link analysis tool), and the ACISS Query Designer (integrated ad hoc reporting tool).

## 3. Start Date and End Date

Access to Services enumerated above in the Service Description shall be provided along the following timeline:

Setup and integration:	10 days from agreement execution.
Start date of Service access:	15 days from agreement execution.
End date of initial Service term:	12 months from Effective Date.

## 4. Authorized Users and Services Fees

Service Subscription	Per User Monthly Fee	Initial Users
ACISS Web per user licensing	\$125.00/monthly/user	TBD

Optional Service Fees	Hourly Rate
New feature development	\$185/hour
Database integration and extraction (Subscriber-requested)	\$185/hour
Security audits and testing (Subscriber-requested)	\$185/hour
Administrative legal compliance (e.g., subpoena responses)	\$125/hour

## 5. Storage Threshold(s)

Service Subscription	Storage max/instance	Additional 1 TB/month
ACISS Web base system	1 TB	\$400

## 6. Storage Fees and Data Format

ACISS shall provide Subscriber Data in the form of a Microsoft SQL Server Database backup file. Subscriber may request delivery of such backup file by any technically reasonable means but is responsible for the reasonable and actual out-of-pocket costs of such delivery.

## 7. ACISS Hosting Provider

ACISS Services are currently hosted by Microsoft Azure Government, which is a cloud platform designed specifically for U.S. government use. Azure Government services handle data that is subject to certain government regulations and requirements, such as FedRAMP, NIST 800.171 (DIB), ITAR, IRS 1075, DoD L4, and CJIS, and uses physically isolated datacenters and networks (located in U.S. only).

ACISS reserves the right to move hosting to a comparable platform with thirty (30) days' notice to Subscriber. Should Subscriber, upon knowledge of such location, object to the change in data location, ACISS shall, within thirty (30) days, work with the Subscriber in good faith to find a commercially reasonable change to Subscriber's configuration or use of the Services to avoid handling of Customer Data from the objected to location without unreasonably burdening the Subscriber. If said change is not determined within thirty (30) days (or any other reasonable period agreed upon between the parties) Subscriber may terminate this Contract, without further liability, but shall remain responsible for all fees for Services rendered and shall solely be permitted a pro-rata refund of any pre-paid unused fees for the remainder of the then-current term.

## 8. Technical Support Description

Standard (non-emergency) technical support services are provided during its normal business hours, which are currently Monday through Friday from 9:00 AM to 6:00 PM EST. Support Staff shall promptly respond to questions in each case in such time and manner as is reasonable in light of the question or problem and its impact on Subscriber's operations; however, Support Services provided herein do not assure uninterrupted operation of the Subscribed Services.

ACISS shall provide a telephone number for Subscriber personnel to use to request technical support services. ACISS shall also provide a means of requesting Support Services via ACISS' website, and via email.

Upon receipt of a request for technical support services, ACISS shall provide one or more of the following to Subscriber:

1. Telephone/email consultation with Subscriber support staff;
2. Remote support with Subscriber support staff; or
3. ACISS support staff may refer the Subscriber Personnel requesting assistance to other ACISS staff.

After-hours Emergency technical support services may be escalated to an emergency service line 24 hours a day, 7 days a week. An on-call representative will respond to the call within 60 minutes and contact the Subscriber with confirmation of the call and emergency details.

## 9. Software Maintenance

- a) **Platform Updates:** ACISS will periodically apply updates to the hosted operating system environment to ensure platform reliability and security. These updates include patches and/or service packs for Microsoft Windows and Microsoft SQL Server. Platform updates are typically applied without notice but are scheduled within a mutually agreed upon recurring maintenance window. In the event a critical platform update is required outside

- of the agreed upon maintenance window, Subscriber will be notified immediately to coordinate application of the update at the earliest mutually agreed upon opportunity.
- b) **Software Application Updates:** ACISS will periodically release newer versions of the ACISS software application which can include defect fixes, as well as new features or functions. ACISS will notify Subscriber of such releases up general availability by supplying Subscriber with a detailed change log for review and approval. Upon Subscriber approval of a release change log, the application upgrade will be scheduled for mutually agreed upon upcoming maintenance window.

## 10. Customization / Integration Services

Customization and integration of existing data shall be governed by a separate agreement.

## 11. Training Services

ACISS training shall be governed by a separate agreement.

## 12. Service Levels

ACISS shall use all reasonable commercial efforts, being no less than accepted industrial standards in this regard, to ensure that Services are available to Subscriber 99.9% of the time in any calendar month. If it is not, Subscriber may be eligible to receive the Service Credits described below. The following definitions shall apply:

**Downtime** means, for a server, if there is more than a five percent user error rate. User error is calculated using server monitoring software, based on results from ping tests, web server tests, TCP port tests, and website tests. Downtime is measured based on server-side error rate.

**Emergency Downtime** means those times where ACISS becomes aware of a vulnerability which, based on a risk assessment of the vulnerability, ACISS deems to require immediate remediation and, as a result, the Service is made temporarily unavailable in order for ACISS to address the vulnerability. Emergency Downtime is not considered Downtime for purposes of this agreement, and will not be counted towards any Downtime Periods

**Monthly Uptime Percentage** means the total number of minutes in the calendar month minus the number of minutes of Downtime suffered from all Downtime Periods in the calendar month, divided by the total number of minutes in the calendar month.

**Scheduled Downtime** means those times where ACISS notifies Subscriber five (5) days prior to the commencement of such Downtime or during an agreed upon recurring maintenance window. Scheduled Downtime is not considered Downtime for purposes of this agreement and will not be counted towards any Downtime Periods.

**Service Credit** is provided according to the following schedule:

- **One-week Credit:** Includes Seven (7) days of Services added to the end of Subscriber's billing cycle, at no charge to Subscriber, if the Monthly Uptime Percentage for any calendar month is between 99.9% and 97.0%;
- **Two-week Credit:** Includes Fourteen (14) days of Services added to the end of Subscriber's billing cycle, at no charge to Subscriber, if the Monthly Uptime Percentage for any calendar month is between 97.0% and 95.0%;

- **One-month Credit:** Includes Thirty (30) days of Services added to the end of Subscriber’s billing cycle, at no charge to Subscriber, if the Monthly Uptime Percentage for any calendar month is less than 95.0%.
- **Right to terminate:** In the event the Monthly Uptime Percentage for any calendar month is less than 90.0%, Subscriber will have a right to terminate ACISS Service plan with seven (7) days written notice to ACISS, or alternatively Subscriber can opt to procure the One-month Credit outlined above. This right to terminate is not exclusively triggered by this provision.

**Maximum Service Credit.** The aggregate maximum number of Service Credits Subscriber can claim for any and all Downtime Periods that occur in a single calendar month shall not exceed thirty days of Services added to the end of Subscriber’s billing cycle. Service Credits may not be exchanged for, or converted to, monetary compensation.

**Uptime Exclusions.** These provisions do not apply to any performance issues: (i) caused by factors outside of ACISS’ control; (ii) that resulted from any actions or inactions of Subscriber or any third parties; or (iii) that resulted from Subscriber’s equipment and/or third-party equipment (not within the primary control of ACISS).

### 13. Subscriber Contacts

**Security Incidents.** The following Subscriber contacts shall be designated to receive notifications regarding security incidents.

Name	Email	Phone

Subscribing Organization: {AGENCY NAME} (Subscriber)

\_\_\_\_\_ Date: \_\_\_\_\_  
Authorized Person  
Title: \_\_\_\_\_  
Contract Administrator: \_\_\_\_\_  
Contract Email Contact: \_\_\_\_\_  
Contract Telephone Contact: \_\_\_\_\_

{Legal Entity}  
{Address}

Provider: ACISS SYSTEMS, INC. (Provider)

\_\_\_\_\_ Date: \_\_\_\_\_  
Chad Hawkinson  
Title: President  
Contract Administrator: Chad Hawkinson, President  
Contract Email Contact: [chawkinson@aciss.com](mailto:chawkinson@aciss.com)  
Contract Telephone Contact: 727-786-5450

ACISS Systems, Inc.  
640 Brooker Creek Blvd.  
Suite 400  
Oldsmar FL 34677

**Attachment B to  
Addendum 1 to  
STATE OF OKLAHOMA CONTRACT WITH ACISS SYSTEMS INC.  
RESULTING FROM STATE WIDE CONTRACT NO. 1059**

The **Software Support and Licensing Agreement** is hereby amended as set forth below and supersedes all prior documents submitted by **ACISS Systems Inc.** or discussed by the parties.

This Contract is made between the State of Oklahoma by and through the Office of Management and Enterprise Services (“State”) on behalf of State or Interlocal Entities (“Customer,” “Subscriber,” or “Licensee”) and ACISS Systems Inc. (“Provider,” “Vendor,” or “Licensor”).



## Software Support and Licensing Agreement

Current Version 1.6  
Supersedes Version 1.5  
Effective November 6, 2018

# Software Support & Update Agreement

---

WITNESSETH:

WHEREAS, Licensee has obtained from Licensor a limited right and license in and to certain "Licensed Programs" as provided in the Software Licensing Agreement of even date (the "Software Agreement"); and

WHEREAS, Licensee wishes to obtain from Licensor and Licensor wishes to provide to Licensee certain additional services with respect to such Licensed Programs on the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, intending to be legally bound, Licensor and Licensee agree as follows:

## Section 1

### DEFINITIONS

Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Software Agreement.

**1.1 Error.** A reported and verifiable failure of the Licensed Programs to operate in substantial conformity with the Documentation. An Error shall not include any such failure resulting from changes or additions not made or approved by Licensor, errors of Licensee Personnel, or malfunctions or defects of third-party software when solely the cause of malfunction or defect, hardware, or operating environment. Licensor agrees that the Licensed Programs shall operate on hardware platforms and operating environments that Licensor certifies for operation of the Licensed Programs, but Licensor shall not otherwise be responsible for integration or configuration of third-party software, hardware, or operating environments.

**1.2 Enhancement.** Changes or additions to Licensed Programs or Documentation requested by Licensee outside the scope of the basic license granted under the Software Agreement. Licensor reserves the right to decide whether or not to undertake development of Enhancements. If Licensor agrees to undertake development of Enhancements, it does so on the basis of reasonable efforts in the nature of professional services. Fees and costs for delivery of such professional services shall be as agreed in writing in connection with the applicable Enhancement Request. Enhancements carry no warranty (other than title) unless expressly agreed otherwise by Licensor. Enhancements expressly designated as "Alpha" or "Beta" versions (or similar indication) are subject to testing, revision, or replacement as necessary under the circumstances, and installation and use of such versions are at Licensee's risk.

**1.3 Revisions and New Releases.** Any work that includes, derives from, or combines some or all of an existing work, including any revision, modification, translation, abridgement, condensation, expansion, or any other form in which such preexisting work or any part thereof may be recast, transformed, or adapted. Revisions and New Releases include Enhancements.

**1.4 Software Maintenance.** Software Maintenance shall have the definition set forth in Section 4 hereof and shall be provided in consideration of the payment of the fee specified in the Fee Schedule attached hereto.

**1.5 Support Services.** The services set forth in Section 3 hereof shall be provided in consideration of the payment of the fee specified in the Fee Schedule attached hereto.

**1.6 Support Staff.** The staff of support engineers and other individuals assigned by Licensor to provide Software Support Services.

**1.7 Workstation.** A personal computer-based terminal or server.

**1.8 Term.** The term set forth in section 6 hereof.

1.9 CJIS. Means the U.S. Department of Justice, Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Division. This incorporates the CJIS Security Policy.

## **Section 2**

### **LICENSEE RESPONSIBILITIES**

**2.1** Software Maintenance and Support Services shall be performed solely in accordance with the terms and conditions of this Agreement and the terms and conditions of the Software Agreement.

**2.2** Software Maintenance and Support Services extend only to the Licensed Programs free of additions or changes that have not been made or approved by Licensor. Further, Software Maintenance and Support Services extend only to the most recent version of the Licensed Programs and/or any revision levels released in the most recent 24 month period, provided by Licensor to Licensee designated for operation on Licensee's equipment, and, unless otherwise agreed by Licensor, Enhancements and Error Corrections shall be provided only as part of the upcoming release.

**2.3** Software Maintenance and Support Services extend only to platforms certified by Licensor for use with the Licensed Programs. Licensor shall not be required to provide Software Maintenance and Support Services to Licensee Equipment using operating environments materially different from those certified by Licensor.

**2.4** Licensee shall be responsible for having remote communications capabilities sufficient to transmit data files to Licensor as necessary to support Software Maintenance and Support Services. Licensee shall provide Licensor with the equipment and/or software necessary to establish and operate both a remote connection to Licensee's network and terminal services on the servers supporting the Licensed Programs. Licensor shall only use the remote access connection to deliver Software Maintenance and Support Services described in this Agreement. The remote access connection need not be a permanent connection, but shall be at least a connection enabled upon request of Licensor.

**2.5** Licensee shall provide Licensor with access to licensee equipment and licensee personnel as needed to provide Software Maintenance and Support Services.

**2.6 Reserved**

**2.7 Reserved**

**2.8** Licensee shall use all reasonable efforts to ensure that all Licensee Equipment operating the Licensed Programs and receiving Support Services have installed a recent release of the Licensed Programs.

**2.9 Reserved**

**2.10** Upon discovery of any Error being reported by Licensee, Licensee shall promptly provide Licensor with a comprehensive written description of the Error. As requested, Licensee shall provide as much information as reasonably possible to assist with the verification and resolution of the Error. Licensee shall provide reasonably requested assistance to allow Licensor to verify the Error and develop a solution. This Section is not intended to preclude informal communications and cooperation, including escalation via support procedures, but the provisions of this Section provide definitive procedures for ensuring proper reporting and response measures.

**2.11** All Revisions and New Releases provided to Licensee hereunder (as well as any other programming or materials delivered to Licensee hereunder) shall be subject to the terms and conditions of the Software Agreement.

## Section 3

### LICENSOR OBLIGATIONS – SOFTWARE SUPPORT SERVICES

**3.1 Services Provided.** Subject to the payment of the annual Support & Update Fees set forth in the Fee Schedule attached hereto and during the term of this Agreement, Licensor shall provide to Licensee the following "Support Services":

- A.** System Administration level technical support of the Licensed Programs. Licensee shall be responsible for providing a primary agency point of contact for fielding end-user support issues and communicating those issues to Licensor Support Staff.
- B.** Software Support Services shall be available on Licensee's Equipment located at Licensee's Premises that is operating the Licensed Programs.
- C.** Licensor shall provide Software Support Services during its normal business hours, which are currently Monday through Friday from 9:00 AM to 6:00 PM EST. Support Staff shall promptly respond to questions in each case in such time and manner as is reasonable in light of the question or problem and its impact on the Licensee's operations; however, Support Services provided herein do not assure uninterrupted operation of the Licensed Programs or Licensee's Equipment.
- D.** Licensor shall provide a telephone number for Licensee Personnel to use to request Software Support Services. Licensor shall also provide a means of requesting Support Services via Licensor's website, and via email.
- E.** Upon receipt of a request for Software Support Services, Licensor shall provide one or more of the following to Licensee:
  - i.** Telephone consultation with Licensee support staff;
  - ii.** VPN (or other remote access means) support by Licensee support staff; or
  - iii.** Licensor support staff may refer the Licensee Personnel requesting assistance to other staff of Licensor.
- F.** Maintain a staff of knowledgeable, trained, and qualified personnel for operation of the Support Center. Such staff may be employees, agents, or independent contractors of Licensor.

**3.2 Limitations of Software Support Services.** The following services are specifically excluded under this Agreement:

- A.** Software modifications, other than those modifications that Licensor deems necessary to correct problems with the Licensed Programs;
- B.** On-site services, unless Licensor deems such on-site services necessary to correct problems with the Licensed Programs; and
- C.** Direct end-user support, other than support that Licensor deems necessary to troubleshoot and/or correct problems with the Licensed Programs. Licensee shall be responsible for providing general technical support services to Licensee's own end-users. Should an issue arise with any of the Licensed Programs that cannot be resolved by Licensee's internal technical support staff, the primary agency point of contact would be responsible for communicating the unresolvable issues to Licensor Support Staff.

## **Section 4**

### **SOFTWARE MAINTENANCE**

As provided more specifically through the procedures and practices described in this Agreement, Software Maintenance shall provide assurance to Licensee that the Licensed Programs operate in a commercially reasonable manner. Licensor shall provide to Licensee the following "Software Maintenance":

**4.1** Provide Revisions and New Releases, including program fixes and related documentation. Licensor will notify Licensee within thirty (30) days of the availability of the new release. Upon written request of Licensee, Licensor shall deliver to Licensee such revisions and new releases (as such versions have been released by Licensor for general use) of the System in the same form and quantity as originally delivered. Upon written request of Licensee, Licensor shall install such revisions via remote access.

**4.2** Program defect problem resolution and consultation services necessary to verify and resolve Errors reported by Licensee.

## **Section 5**

### **CHARGES**

**5.1** Licensee shall be responsible for the payment of the annual Support & Update Fee specified in the Fee Schedule attached hereto.

**5.2** Licensor shall invoice Licensee annually in advance for the Support & Update Fee. Licensee shall remit payment within forty-five (45) days of receipt of the invoice.

**5.3** If the first year's Support & Update Fee is prepaid, such fees do not apply until the thirteenth month following installation.

**5.4** Licensor may, upon written notice to Licensee not less than sixty (60) days prior to the beginning of the next renewal year, increase the fee for Software Maintenance and Help Desk Services, effective at the beginning of that renewal year or thereafter at such time as Licensor may indicate. The amount of such increase shall not exceed four percent (4%) per annum.

**5.5** If payment is not received by Licensor within sixty (60) days of the due date, then all rights of Licensee under this Agreement shall terminate and may only be reinstated by renewed application and re-enrollment. Any such reinstatement or re-enrollment may be retroactive.

**5.6** Annual Support & Update Fees are based on the availability of Licensee-provided remote access to Licensee's Equipment as set forth in section 2.4 herein. If no remote access is provided, Licensee shall be responsible for a five percent (5%) surcharge plus any associated costs for expenses, postage, or shipping required to provide upgrades and support. Additionally, should Licensor's Web Application be installed in a non-dedicated operating system environment which also hosts applications not belonging to Licensor, a three percent (3%) surcharge will be added for the additional support incurred as a result of the shared environment.

## **Section 6**

### **TERM**

**6.1** This Agreement is effective as of the Effective Date specified in Addendum 1 and shall remain in effect for one year. Licensor agrees to provide services pursuant to this Agreement until at least the Termination Date.

## **Section 7**

### **LIMITATION OF LIABILITY AND WARRANTY**

**7.1** Licensor warrants that (1) subject to Licensee's cooperation as provided in the procedures and practices described in this Agreement, the services that Licensor provides hereunder shall be sufficient to correct Errors in the Licensed Programs, and (2) the services that Licensor provides hereunder shall be workmanlike and within reasonable industry standards. As the sole and exclusive remedy of Licensee for any proper warranty claim, Licensor shall correct the nonconformity in such time and in such manner as is reasonable in light of the nonconformity, and its impact on Licensee's operations. Licensor shall not be responsible for claims resulting from changes or additions not made or approved by Licensor, errors of Licensee Personnel or contractors, or defects or malfunctions solely of third-party software, hardware, or operating environments.

**7.2** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.1 HEREOF, AND EXCEPT AS OTHERWISE PROVIDED IN ANY OTHER SIGNED AND WRITTEN AGREEMENT BETWEEN THE PARTIES, LICENSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS, OR IMPLIED, WITH REGARD TO THE LICENSED PROGRAMS, DOCUMENTATION, AND SERVICES PROVIDED BY LICENSOR, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **Section 8**

### **LIMITATION OF LIABILITY AND DAMAGES**

**8.1** Except as provided in Section 8.3 and 8.4 hereof, the cumulative liability of Licensor to Licensee for all claims whatsoever related to the Licensed Programs, Documentation, and services provided by Licensor, under this document, shall not exceed the total amount of all fees payable to Licensor during the term by Licensee in accordance with this Agreement.

**8.2** Except as provided in Section 8.3 and 8.4 hereof, in no event shall Licensor be liable for any special, indirect, incidental, or consequential damages in connection with any claim whatsoever related to the Licensed Programs, Documentation, and services provided by Licensor, or otherwise arising out of the performance or nonperformance of this Agreement, or any act, event, or circumstance affecting Licensee or the Affiliates, including any cause of action sounding in contract, tort, or strict liability.

**8.3** Notwithstanding anything to the contrary in the Software Support and Licensing Agreement, the foregoing provisions of the Section shall not apply to or limit damages, expenses, costs, actions, claims and liabilities arising from or related to property damage, bodily injury or death caused by ACISS; the indemnification obligations set forth in this Software Support and Licensing Agreement; ACISS' confidentiality obligations set forth in this Software Support and Licensing Agreement; data security and breach notification obligations set forth in in the Software Support and Licensing Agreement; the bad faith, gross negligence or intentional misconduct of ACISS or its employees agents and subcontractors; or other acts for which applicable law does not allow exemption from liability. The indemnification obligations hereunder shall not be limited by any limitation on the amount, type of damages, compensation or benefits payable by or for the Licensor or any subcontractor under any contract or agreement or under worker's compensation acts; disability benefit acts, other employee benefit acts or any statutory bar. Any cost of expenses, including attorney's fees, appellate, bankruptcy or defense counsel fees incurred by the Licensee to enforce this Indemnification clause shall be borne by the Licensor. The obligations contained in this Indemnification Clause shall continue

indefinitely and survive the cancellation, termination, expiration, lapse or suspension of this Agreement. This provision shall not be deemed to waive any of the rights or immunities accorded to Licensee by section 768.28, Florida Statutes, or any other applicable law.

**8.4** Notwithstanding anything to the contrary in the Contract Documents, the foregoing provisions of the Section shall not apply to or limit damages, expenses, costs, actions, claims and liabilities arising from or related to property damage, bodily injury or death caused by Licensor; the indemnification obligations set forth in this Contract; Licensor's confidentiality obligations set forth in this Contract; data security and breach notification obligations set forth in in the Contract; the bad faith, gross negligence or intentional misconduct of Licensor or its employees agents and subcontractors; or other acts for which applicable law does not allow exemption from liability.

## **Section 9**

### **RESERVED**

## **Section 10**

### **GENERAL**

**10.1** Licensor, in performance of this Agreement, is acting as an independent contractor and shall have the exclusive control of the manner and means of performing the work. Personnel supplied by Licensor hereunder are not employees or agents of Licensee.

**10.2** The headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

**10.3** No delay or omission by either party to exercise any right or power occurring upon any noncompliance or default with respect to any terms of this Agreement shall impair any such right or power, or be construed as a waiver thereof. A waiver by either party of any of the covenants, conditions, or agreements to be performed by a party shall not be construed as a waiver of any succeeding breach or default in the same or any other term or condition hereof.

**10.4** Notice to either party to this Agreement shall be deemed given (1) when mailed by certified or registered mail, postage prepaid, or (2) when sent via courier, overnight delivery (such as Federal Express). Mail shall be addressed as follows:

ACISS Systems, Inc.  
640 Brooker Creek Blvd, Suite 400  
Oldsmar, Florida 34677

Agency Name:  
Project Manager:  
Address:  
Address:

And

Chief Information Officer  
3115 N. Lincoln Blvd  
Oklahoma City, OK 73105

With a copy, which does not constitute notice, to:  
Information Services Deputy General Counsel

3115 N. Lincoln Blvd.  
Oklahoma City, OK 73105

or to either party at such other address as it shall have notified the other pursuant to the provisions of this Section 10.4.

**10.5** The validity, construction, and performance of this Agreement shall be governed by the laws of the State of Oklahoma, exclusive of choice-of-law provisions.

**10.6** Any litigation arising out of this Agreement shall be brought in a court of competent jurisdiction in Oklahoma County, Oklahoma.

**10.7 Reserved**

**10.8** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

**10.9 Reserved**

**10.10** This Agreement, together with the Software Agreement, the Solicitation, ACISS' response, and the exhibits and documentation referred to herein and therein, supersede all prior agreements, oral or written, and all other communications regarding the subject matter hereof. No amendment or modification of any provision of this Agreement shall be effective unless set forth in writing that purports to amend this Agreement and that is executed by the party against whom such amendment is sought to be enforced.

**10.11** Applicable provisions of this Agreement shall survive following termination of this Agreement as necessary to give effect thereto.

## **Section 11**

### **FORCE MAJEURE AND EXCUSABLE DELAYS**

11.1 Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. In the event that a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable. Subject to the conditions set forth above, such non-performance shall not be deemed a default. However, a Licensee may terminate a purchase order if Licensor cannot cause delivery of products or services in a timely manner to meet the business needs of the Licensee.

11.2 Exclusions: Non-suspended Obligations: Notwithstanding the foregoing or any other provisions in the Contract, (1) in no event will any of the following be considered a force majeure event: (a) shutdowns, disruptions or malfunctions in Licensor's systems or any of Licensor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Licensor's systems; or (b) the delay or failure of Licensor or subcontractor personnel to perform any obligation of Licensor hereunder unless such delay or failure to perform is itself by reason of a force majeure event; and (2) no force

majeure event modifies or excuses Licensor confidentiality, indemnification or data security and breach notification obligations set forth herein.

## **Section 12**

### **CRIMINAL JUSTICE INFORMATION SERVICES**

12.1 Vendor agrees to comply with all relevant CJIS requirements, including but not limited to:

- A. the FBI CJIS Security Policy;
- B. ensure its employees maintain CJIS security training certificates;
- C. ensure its employees undergo background checks acceptable to the state's CSO; and
- D. allow the state's CSO to vet its employees at will.

# Software Licensing Agreement

---

This SOFTWARE LICENSING AGREEMENT (this "Licensing Agreement") is made between the State of Oklahoma by and through the Office of Management and Enterprise Services ("State") on behalf of State or Interlocal Entities ("Customer," "Subscriber," or "Licensee") and ACISS Systems Inc. ("Provider," "Vendor," or "Licensor").

Licensor and Licensee, intending to be legally bound, hereby covenant and agree as follows:

## Section 1

### DEFINITIONS

In addition to terms elsewhere defined in this Licensing Agreement, the following terms shall have the meanings set forth in this Section 1 for purposes of this Licensing Agreement:

**1.1 "Licensed Programs."** The machine executable object code in machine readable form, and any updates or portions thereof for the following program(s): ACISS Web.

**1.2 "Documentation."** The user documentation and help files integrated in Licensed Programs and the printed "System Administrator's" manual.

**1.3 "System."** Licensed Programs and Documentation, modifications thereto, and updates thereof furnished by Licensor pursuant to the terms hereof.

**1.4 "Licensee Premises."** Those premises occupied by Licensee at ADDRESS.

**1.5 "Licensee Equipment."** Network Servers, including all terminals, and other components thereof, situated at Licensee Premises on which the System will be installed, operated, and maintained.

**1.6 "Licensee Personnel."** All persons engaged from time to time as officers, employees, agents, or independent contractors of Licensee.

**1.7 "Designated Users."** Licensee Personal who have an assigned password and who are permitted to use Licensed Programs.

**1.8 "Stored Data."** Information input by Licensee or its authorized agents and stored on Licensee Equipment.

## Section 2

### GRANT OF LICENSE TO LICENSEE

**2.1 Scope of License.** Upon payment by Licensee of the System Fees due Licensor under Section 5.1 hereof, Licensor shall grant to Licensee, and Licensee shall receive from Licensor, without further action by Licensee or Licensor, a personal, non-transferrable, nonexclusive, and non-assignable license to install, execute, and use the System (including modifications and updates of the System furnished pursuant to the terms hereof) for Designated Users on Licensee Equipment at Licensee's Premises for its own internal data processing and computing needs, and to make copies required for archival and backup purposes, all in accordance with terms and conditions hereof.

**2.2 Limitations on Usage.** Designated Users are permitted full access and use of the System. The maximum number of Designated Users permitted to access the Licensed Programs is equal to the number of concurrent licenses granted to Licensee under this Licensing Agreement. Those who are not Designated Users are not authorized or permitted to use the System.

**2.3 Equipment Designation.** Licensor grants Licensee a license to use the System (and all System updates and modifications furnished by Licensor) in conjunction with the Licensee Equipment at Licensee Premises. If the Licensee alters, modifies, or replaces Licensee Equipment, Licensor must be notified in writing of the changes within fifteen (15) days of the changes being implemented.

**2.4. Termination of License Rights.** Notwithstanding the foregoing, the license rights granted hereunder and all use of the System shall terminate upon termination of this Licensing Agreement.

**2.5 Documentation, Installation and Training.** In connection with its installation of the System, Licensor shall provide Licensee with the Documentation to the Licensed Programs, and the license granted herein shall authorize the use of the Documentation by Licensee in accordance with the terms hereof. Licensor will provide systems administrator training during the initial installation of the System. This Licensing Agreement does not entitle Licensee to any additional training on use of the Licensed Programs. The Parties may agree on one or more training programs under a separate agreement. The terms and conditions of this Licensing Agreement shall control any other agreement regarding training.

**2.7 Conditions Precedent to Licensor Performance.** The obligations of Licensor under this Licensing Agreement, including without limitation, Licensor's obligations regarding delivery of the System as set forth in section 6, new releases as set forth in section 3.2, and maintenance and support as set forth in section 3.3, are subject to and conditioned upon the timely performance of Licensee's obligations under this Licensing Agreement.

### Section 3

#### OBLIGATIONS OF LICENSOR

In addition to obligations otherwise set forth in Licensing Agreement, Licensor shall perform the obligations detailed in this Section 3.

**3.1 Obligation for Property Damage.** Licensor shall repair, replace, or, at Licensee's election, reimburse Licensee for the cost of repairing or replacing equipment, programs, data, or other property of Licensee damaged through the negligent act or omission of Licensor; provided, however, that Licensee shall have the obligation of maintaining and having available backup copies of all such programs and data. Licensor's obligations hereunder are conditioned on the availability of such backup copies, and Licensor shall have no obligation to rewrite or recompile programs or data not preserved through backup procedures.

**3.2 New Releases.** Unless Licensee enters into a Software Support and Update Agreement offered by Licensor and such Software Support and Update Agreement provides for new releases, Licensee will not be entitled to any new versions of the System released by Licensor.

**3.3 System Maintenance and Support.** Licensor shall supply all maintenance and support necessary for Licensor to comply with its initial warranty as set forth in section 8 of this Licensing Agreement. Upon expiration of the initial warranty period, Licensor's responsibility to maintain the System, except as specifically provided herein, shall end unless Licensee enters into a Software Support and Update Licensing Agreement offered by Licensor. In the event that Licensee requests consulting services that are beyond the scope of this Licensing Agreement and the Software Support and Update Agreement, Licensor may provide such services or recommend appropriate outside consultants. In all cases, fees for such services will be charged at the rates set forth in the pricing proposal and Licensee will be responsible for paying such fees.

**3.4 Confidentiality of Proprietary Information.** Licensor acknowledges that the Licensed Programs will be utilized by Licensee in connection with information, including Stored Data, which is confidential to Licensee. Licensor recognizes that it may receive from Licensee in connection with this Licensing Agreement, information, data and material of a confidential and/or proprietary nature relating to Licensee or Licensee's business. Licensor acknowledges that disclosure of such information to third parties would be damaging to Licensee and/or individuals represented by the Stored Data. Licensor, therefore, agrees to hold such information in strictest confidence, not to make use thereof outside the performance of its duties in connection with this Licensing Agreement, and to

release such information only to employees of Licensor requiring such information in the performance of their duties hereunder or to employees of the sub-contractor or authorized agent retained by Licensor for installation of the System. Licensor further agrees not to disclose or release such information to any other party. Licensor additionally agrees to abide by the Confidentiality terms set forth in the Solicitation at Section A.28. Confidentiality, and Section 15 herein. In the event of a conflict the terms in the Solicitation and Section 15 herein shall prevail.

## Section 4

### OBLIGATIONS OF LICENSEE

In addition to obligations otherwise set forth in this Licensing Agreement, Licensee shall perform the obligations detailed in this Section 4.

**4.1 Testing of System; Notification of Material Deficiencies.** Licensee shall test and inspect all portions of the Licensed Programs installed on the Licensee Equipment and review and evaluate the Documentation. Licensee shall give Licensor prompt notice of any material deficiencies. Notice of any material deficiencies must be given to Licensor no later than ninety (90) days after the Licensed Programs have been initially installed on Licensee Equipment.

**4.2 Availability of Equipment.** Licensee shall furnish and make available such Licensee Equipment specified in the Documentation and as required for installation, operation, or maintenance of the System and take such action as may be necessary to ensure that all Licensee Equipment required for operation of the System are completed and operable in accordance with the System Requirements set forth in Exhibit B at least seven (7) days prior to the date scheduled for delivery of the system to the Licensee Premises.

**4.3 Access to Licensee Premises.** Licensee shall grant to Licensor such access to Licensee Premises, all parts of the System situated thereon, and all Licensee Equipment as may be necessary or appropriate for Licensor to perform its obligations under this Agreement. Such access shall only be granted during normal business hours and with reasonable advanced notice. Licensor shall abide by, and be subject to, all policies, procedures, and guidelines related to Licensee's premises.

**4.4 Required Access.** For the purposes of supporting the system, Licensee agrees to provide Licensor access to the Licensed Software through a Virtual Private Network (VPN) or equivalent remote access technology. Other communications equipment and telecommunications channels may be specified in the Documentation.

**4.5 Confidentiality of Proprietary Information.** Licensee recognizes that it may receive from Licensor in connection with this Agreement, information, data and material of a confidential and proprietary nature relating to Licensor, the System or the Licensed Programs. Licensee acknowledges that disclosure of such information to third parties would be damaging to Licensor. Licensee, therefore, agrees to hold such information in strictest confidence, not to make use thereof outside the performance of its duties in connection with this Agreement, and to release such information only to employees requiring such information in the performance of their duties hereunder. Licensee further agrees not to disclose or release such information to any other entity. Notwithstanding the Confidentiality terms set forth in the Solicitation at Section A.28. Confidentiality. and Section 21. Confidentiality in the Subscriber Agreement. In the event of a conflict the terms in the Solicitation and Section 21. of the Subscriber Agreement shall prevail.

## Section 5

### LICENSEE PAYMENTS TO LICENSOR

**5.1 System Fees.** In consideration of the undertakings of Licensor and the grants of license herein, Licensee shall pay to Licensor license fees and installation fees in accordance with the Fees Schedule attached hereto.

## **5.2 Reserved.**

**5.3 Delays.** If the installation of the System or any component thereof is delayed as a result of the unavailability, non-completion, or improper installation or operation of Licensee Equipment, due in no part to Licensor, and such delay continues for more than seven (7) business days after Licensor gives Licensee notice of such delay, Licensee shall reimburse Licensor for all reasonable costs and expenses (including, without limitation, Licensor's reasonable personnel expenses) incurred by Licensor as a result of any such delay in installation; provided, however, that Licensee shall not be liable for any cost or expense attributable to (1) errors or omissions of Licensor, (2) Licensee's determination that delay in installation is required pursuant to Section 6.2 hereof, or (2) an Event of Force Majeure as set forth in Section 11.1 hereof.

**5.4 Interest on Late Payments.** All amounts due to Licensor hereunder not paid within forty-five (45) days after the date such amounts are due and payable shall bear interest at the lesser of 1.15 percent per annum or the maximum rate allowed by Oklahoma law, whichever is lower, from the date such amount first became due.

## **Section 6**

### **SYSTEM DELIVERY**

**6.1 Delivery; Expenses for Delivery.** Delivery of the System shall be at Licensee's expense. Licensor will arrange for delivery of the System on or before the date set forth in Exhibit A attached hereto.

**6.2 Dates of Delivery and Installation.** Licensee shall have the right to specify delivery and installation dates for the System later than those specified in Exhibit A attached hereto, by written notice to Licensor at least thirty (30) days prior to such delivery or installation date, if Licensee reasonably determines that Licensee will be unable to prepare and/or install Licensee Equipment prior to the scheduled date for installation for the System and if such delay will not extend beyond ninety (90) days after the original delivery or installation date, absent an Event of Force Majeure as set forth in Section 11.1 hereof.

**6.3** Notwithstanding any contrary provision of this agreement, each payment obligation of the licensee created by this agreement is conditioned upon the availability of funds that are appropriated or allocated for the payment of the Software Support & Update Services. If such funds are not allocated and available, this agreement may be terminated by the Licensee at the end of the period for which funds are available. The licensee shall notify the licensor the earliest possible time before such termination. No penalty shall accrue to the Licensee in the event this provision is exercised, and the Licensee shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed so as to permit the licensee to terminate this agreement in order to purchase, lease, or rent similar software or services from another party.

## **Section 7**

### **INSTALLATION AT LICENSEE PREMISES**

**7.1 Installation.** Licensee, with the assistance of Licensor as reasonably required, will install the Licensed Programs on Licensee Equipment at Licensee Premises in accordance with the Documentation on or before the date set forth in Exhibit A. If the assistance of Licensor requires access to Licensee Equipment or Licensee Premises, Licensee shall take such actions as Licensor informs Licensee are reasonably necessary to provide access to Licensee Equipment and Licensee Premises for installation of the System. Such access shall only be granted during normal business hours and with reasonable advanced notice. Licensor shall abide by, and be subject to, all policies, procedures, and guidelines related to Licensee's premises.

## Section 8

### LIMITED WARRANTY; LIMITATION OF REMEDIES

**8.1 Limited Warranty.** Licensor warrants, solely for the benefit of Licensee, that for a period of ninety (90) days after the initial installation date that the System will operate in a commercially reasonable manner. Licensee shall notify Licensor of any material deficiency within the 90-day period, whereupon Licensor shall, in its sole discretion, either repair the material deficiency within a commercially reasonable time period, reinstall that portion of the Licensed Program, or refund a portion of the System Fees proportionate to the materially deficient System module or subroutine; provided however, that Licensor shall be relieved from any obligations under this Section 8.1 if Licensee does not give Licensor prompt written notice of any deficiency claimed hereunder upon Licensee's first observation of such deficiency and if such delay causes additional degradation of the System.

**8.2 Warranty of Right to License; Infringement.** Licensor warrants that it is owner or licensee of the System, that it has the right to convey the licenses set forth in Section 2 hereof, and that the Licensee's use of such System in accordance with the terms of this Licensing Agreement shall not infringe any third-party rights in patent, copyright, or trade secret in the United States. Licensor makes NO WARRANTY regarding the rights of third parties outside of the U.S.

**8.3 Warranty Service Terms.** Warranty service shall be performed during normal weekday business hours, excluding holidays.

**8.4 Licensor Obligations Under Warranty.** Licensor's sole obligation under the aforesaid warranties shall be to either utilize commercially reasonable efforts to correct or modify such portion of the System that contains a material deficiency that has been reported by Licensee to Licensor in writing during the aforesaid initial warranty period, repair such material deficiency within a commercially reasonable time period, reinstall that portion of the Licensed Program affected by the material deficiency, or refund a portion of the System Fees proportionate to the materially deficient System module or subroutine. These are Licensee's exclusive remedies for material deficiencies as it relates to warranty in the Licensing Agreement.

**8.5 Conditions Precedent to Licensor Obligations.** All of the warranties made by Licensor hereunder are, and all obligations of Licensor under this Section 8 shall be, contingent upon Licensee's use of the System in accordance with the provisions of this Agreement and specific instructions relating thereto furnished by Licensor consistent with the terms of the Agreement, and, to the extent that any of the following cause warranty failure, no such warranties or obligations shall apply to any portion of the System that has been:

1. Installed or operated by Licensee in a manner inconsistent with the provisions of this Licensing Agreement or modified by a party other than Licensor without the written approval of Licensor;
2. Damaged by negligence or misuse by other than Licensor or by fire, casualty, or other external causes;
3. Subjected to conditions beyond normal environmental and operating constraints, or subjected by parties other than Licensor to unusual physical or electrical stress; or
4. Moved from its original place of installation, or moved from Licensee Equipment, or moved from Licensee Premises, without Licensee providing at least fifteen (15) days advanced written notice to Licensor of the move and without objection from the Licensor within fifteen (15) days from the date of receipt of Licensee's written notice.

**8.6 Disclaimer; Limitation on Liability Under Warranty in the Licensing Agreement.** EXCEPT FOR THE EXPRESS WARRANTIES AND UNDERTAKINGS SET FORTH IN THIS AGREEMENT, LICENSOR DISCLAIMS ALL WARRANTIES RESPECTING THE SYSTEM AND ALL SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR OTHERWISE RELATING TO THE USE OR PERFORMANCE OF THE SYSTEM OR ANY COMPONENTS THEREOF, HOWEVER CAUSED, EVEN IF LICENSOR HAS

BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. IN ANY EVENT, LICENSOR'S LIABILITY SHALL NEVER EXCEED THE AMOUNT SET FORTH AS LICENSE FEES IN THE SYSTEM FEES.

## Section 9

### LICENSEE'S USE AND PROTECTION OF TRADE SECRETS

**9.1 Acknowledgment of Proprietary Materials; Limitations on Use.** Licensee acknowledges that the System, including both the Licensed Programs and the Documentation, and all associated intellectual property rights, are the property of Licensor and that Licensor holds the copyright interests and any potential patent rights therein, the Licensed Programs and the Documentation being treated as unpublished works. Licensee further acknowledges that the System, including both the Licensed Programs and the Documentation, is treated by Licensor as secret and proprietary information of Licensor of substantial value, and Licensee shall treat such information so received in confidence and shall not use, modify, copy, disclose, nor permit Licensee, or any of Licensee's employees, agents or contractors to use, modify, copy, or disclose the same for any purpose that is not specifically authorized under this Licensing Agreement; provided, however, that should Licensee and Licensor be unable to reach an accord on an agreement for the continued maintenance of the System, such covenant shall not be interpreted to prohibit Licensee from retaining reputable expert third-party entities to maintain the System and from disclosing to such entities such information as is necessary to allow them to maintain the System, so long as such maintenance entities shall undertake in writing to observe all applicable restrictions set forth in this Section 9 with respect to such information as may be so furnished to them by Licensee. In no event shall Licensee, its agents, or its contractors reverse assemble, reverse compile, or otherwise translate the Licensed Programs. Unless a separate escrow agreement exists naming Licensee as a beneficiary, the source code of Licensed Programs shall not be provided to Licensee and will remain the sole property of the Licensor.

**9.2 Proprietary Legends.** Licensee shall not remove any copyright notice or other proprietary or restrictive notice or legend contained or included in any material provided by Licensor, and Licensee shall reproduce and copy all such information on all copies made hereunder, including such copies as may be necessary for archival or backup purposes

**9.3 Obligations of Parties Having Access.** Licensee shall limit use of and access to the System to Designated Users and such Licensee Personnel as are directly involved in the operation or maintenance of the System by Licensee. Licensee shall use its best efforts to (1) disclose such materials only to such Licensee Personnel whom Licensee has no reason to believe are untrustworthy or may violate the provisions of this Section 9, and (2) prevent all use of the System by persons who are not Designated Users, and (3) prevent Licensee Personnel from having access to any such information that is not required in the performance of their duties for Licensee; provided, however, that Licensee shall be permitted to convey the same to maintenance entities in accordance with Section 9.1 hereof.

**9.4 Assistance of Licensee.** At the request and expense of Licensor, Licensee shall use reasonable efforts to assist Licensor in identifying any use, copying, or disclosure of any portion of the System by any present or former personnel of Licensee in any manner that is contrary to the provisions of this Licensing Agreement, so long as Licensor shall have provided Licensee with information reasonably justifying the conclusion of Licensor that such contrary usage may have occurred. Licensee shall also allow Licensor to enter Licensee Premises in order to inspect the System during regular business hours and with reasonably advanced notice to verify compliance with the terms of this Licensing Agreement.

**9.5 Rights to Injunctive Relief.** Recognizing and acknowledging that any use or disclosure of the System by Licensee or Licensee's personnel in a manner inconsistent with the provisions of this Licensing Agreement may cause Licensor or Licensee irreparable damage for which other remedies may be inadequate, the Parties agree that each other shall have the right to petition for injunctive or other equitable relief from a court of competent jurisdiction as may be necessary and appropriate to prevent any unauthorized use or disclosure of any such information and that, in connection therewith, the party sought to be enjoined shall not oppose such injunction on the grounds that an adequate remedy is available at law.

**9.6 Limitations on Confidentiality.** The restrictions set forth in this Section 9 respecting confidentiality of the System shall be subject to Section A.28 Confidentiality in the Solicitation, and Section 15 herein.

**9.7 Survival of Terms.** The provisions of this Section 9 shall survive termination of this Agreement for any reason.

## Section 10

### LICENSOR INDEMNIFICATION FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

**10.1 Scope of Indemnification.** Licensor agrees to defend, indemnify and hold harmless the State of Oklahoma and Licensee, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from and against any and all claim, suit, demand, third party liability, or action alleging that the System or any component thereof infringes a U.S. patent, copyright, trade secret, or any other proprietary right of any third-party, and Licensor shall indemnify Licensee against all costs, expenses, attorney fees, and damages arising from any such claim, suit, demand, or action that a court finally awards or that are included in a settlement approved in writing by Licensor arising out of, or resulting from any acts or omissions of the Licensor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY LICENSOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN OKLAHOMA STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND LICENSOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. LICENSOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**10.2 Licensee Remedy Upon Injunction of System Use.** If a temporary or a final injunction is obtained against Licensee's use of the System or any portion thereof by reason of an infringement of a U.S. patent, copyright, trade secret, or other proprietary right, Licensor will, at its option and expense, either

1. Procure for Licensee the right to continue using the System;
2. Replace or modify for Licensee the System or such infringing portion thereof so that it no longer infringes such patent, copyright, trade secret, or other proprietary right, so long as the utility or performance of the System is not adversely affected by such replacement or modification; or

**10.3 Exclusion of Liability.** Licensor shall have no liability to Licensee for any infringement action or claim that is based upon or arises out of the use of the System or any component thereof in combination with any other system, equipment, or software in the event that, but for such use, the claim of infringement would not lie. Further, Licensor shall have no liability for any infringement arising from either of the following:

1. use of the System or any component thereof in combination with other items not provided by Licensor, unless Licensor sold, made or specifically recommended or approved them all as a combination, the combination is with an item in the software and hardware operating environment for the System or any component thereof, or the combination occurs in the course of the use by Licensee of the System or any component thereof for their intended purpose, unless infringement due to Licensor would have occurred regardless of combination, or
2. modification of the System or any component thereof by Licensee unless Licensor specifically recommended or approved the modification (provided, however that any infringement caused by the base Program that is the starting point for such modification by Licensee shall be covered under Licensor's infringement indemnity obligations hereunder).

**10.4 Survival.** This Section 10 shall survive any termination of this Agreement.

## Section 11

### FORCE MAJEURE AND EXCUSABLE DELAYS

11.1 Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. In the event that a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable. Subject to the conditions set forth above, such non-performance shall not be deemed a default. However, a Licensee may terminate a purchase order if Licensor cannot cause delivery of products or services in a timely manner to meet the business needs of the Licensee.

11.2 Exclusions: Non-suspended Obligations: Notwithstanding the foregoing or any other provisions in the Contract, (1) in no event will any of the following be considered a force majeure event: (a) shutdowns, disruptions or malfunctions in Licensor's systems or any of Licensor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Licensor's systems; or (b) the delay or failure of Licensor or subcontractor personnel to perform any obligation of Licensor hereunder unless such delay or failure to perform is itself by reason of a force majeure event; and (2) no force majeure event modifies or excuses Licensor confidentiality, indemnification or data security and breach notification obligations set forth herein.

**11.3 Reserved**

**11.4 Reserved**

**11.5 Exculpation.** Neither party shall be liable for any delay or failure in the performance of its obligations under this Agreement that directly results from any failure of the other party to perform its obligations as set forth in this Agreement.

## Section 12

### TERMINATION

**12.1 Reserved**

**12.2 Reserved**

**12.3 Reserved**

**12.4 Reserved**

**12.5 Termination Prior to Installation.** In the event that either party rightfully terminates this Agreement prior to installation of the System, Licensee shall at its expense return the System to Licensor and Licensor shall refund all amounts previously paid by Licensee to Licensor.

**12.6 Termination of Licenses.** Upon termination of this Agreement for any reason, all licenses granted hereunder shall terminate and Licensee shall immediately cease use of the System. Licensee shall, immediately

upon such termination, return to Licensor all copies of the Licensed Programs, Documentation, and related materials then in Licensee's possession. Licensee shall certify to Licensor that it has retained no copies of such System.

## Section 13

### AD-HOC REPORTING DISCLAIMER

**13.1 Unrestricted Access.** As part of the Licensed Programs, the ACISS Query Module is installed for ad-hoc reporting capabilities. This module allows users who are granted access by the agency System Administrator, to develop ad-hoc reports/queries to be stored within the System and then enabled in the ACISS Web user interface for use/execution, potentially, by anyone with login access to the agency's ACISS Web software. Licensee fully understands that ad-hoc query developers have unregulated and undocumented, free access to the ACISS Web database, without any security constraints or monitoring mechanisms, including all Case, Report, and Tip data, as well as all hidden entities within the database.

**13.2 System Performance.** Licensor makes no claims or guarantees of system performance should the execution of a user defined ad-hoc query negatively impact the normal operation of the system. Licensee understands that improperly designed ad-hoc queries have the potential of negatively impacting system performance, causing interruption of service for end users.

## Section 14

### MISCELLANEOUS

#### 14.1 Reserved

**14.2 Notice.** Notice to either party to this Licensing Agreement shall be deemed given (1) when mailed by certified or registered mail, postage prepaid, or (2) when sent via courier, overnight delivery (such as Federal Express). Mail shall be addressed as follows:

ACISS Systems, Inc.  
640 Brooker Creek Blvd, Suite 400  
Oldsmar, Florida 34677

Agency Name:  
Address:  
Address:

And

Chief Information Officer  
3115 N. Lincoln Blvd  
Oklahoma City, OK 73105

With a copy, which does not constitute notice, to:  
Information Services Deputy General Counsel  
3115 N. Lincoln Blvd.  
Oklahoma City, OK 73105

or to either party at such other address as it shall have notified the other pursuant to the provisions of this Section 14.2.

**14.3 Governing Law** This Licensing Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Oklahoma, without resort to its choice of law provisions.

**14.4 Venue.** Any litigation arising out of this Agreement shall be brought in a court of competent jurisdiction in Oklahoma County, Oklahoma.

**14.5 Independent Contractors.** The parties hereto are and shall remain independent contractors. Nothing herein shall be deemed to establish a partnership, joint venture, or agency relationship between the parties. Neither party shall have the right to obligate or bind the other party in any manner to any third-party.

**14.6 Authority to Contract.** Each party represents that it has the full power and authority to enter into this Licensing Agreement and to convey the rights herein conveyed. Each party further represents that it has not entered, nor will it enter, into any agreements that would conflict with its obligations hereunder or would render it incapable of satisfactorily performing hereunder.

**14.7 No Waiver.** Neither party shall, by mere lapse of time, without giving notice thereof, be deemed to have waived any breach by the other party of any terms or provisions of this Agreement. The waiver by either party of any such breach shall not be construed as a waiver of subsequent breaches or as a continuing waiver of such breach.

## Section 15

### CONFIDENTIALITY

15.1 By virtue of the Agreement, Customer may be exposed to or be provided with certain confidential and proprietary information of the ACISS. ACISS shall clearly mark any such information as confidential ("Confidential Information"). Customer is a state agency and subject to the Oklahoma Open Records Act and ACISS acknowledges information marked Confidential Information will be disclosed to the extent permitted under Customer's Open Records Act and in accordance with this section. Customer agrees to use the same degree of care that each such party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Customer will not use ACISS's Confidential Information for purposes other than those necessary to directly further the purposes of the Agreement.

15.2 **Exceptions.** Information shall not be considered Confidential Information to the extent such information (i) is or becomes generally known or available to the public through no fault of the Customer; (ii) was in the Customer's possession before receipt from the ACISS; (iii) is lawfully obtained from a third party who has the right to make such disclosure; or (iv) has been independently developed by Customer reference to any Confidential Information.

15.3 **Compelled Disclosure.** In the event that Customer is requested or required by legal or regulatory authority to disclose any Confidential Information, Customer shall promptly notify the ACISS of such request or requirement so that the ACISS may seek an appropriate protective order. In the event that a protective order or other remedy is not obtained, Customer agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand.

15.4 **Customer Data.** The Customer will be responsible for the accuracy and completeness of all Customer Data provided to ACISS. Customer Data shall mean all data supplied by the Customer in connection with the Contract. The Customer shall retain exclusive ownership of all Customer Data and such Customer Data shall be deemed to be the Customer's Confidential Information, as set forth in the Contract. ACISS shall restrict access to Customer Data to Customer's employees and agents as necessary to perform the Services, and to ACISS and its employees with a need to know (and advise such employees of the confidentiality and non-disclosure

obligations assumed herein). ACISS will protect the Customer Data from unauthorized dissemination and use with the same degree of care that it uses to protect its own Confidential Information and, in any event, will use no less than a reasonable degree of care in protecting Customer Data. ACISS shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the Service. ACISS shall notify the Customer at the contact set forth in the Notice Section herein by the fastest means available and also in writing. In no event shall ACISS provide such notification more than 24 hours after ACISS receives the request. Except to the extent required by law, ACISS shall not respond to subpoenas, service or process, FOIA requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of ACISS's proposed responses. ACISS agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized corporate officers as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**[AGENCY]**  
(Licensee)

**ACISS Systems, Inc.**  
(Licensor)

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

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

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

Name: Chad Hawkinson

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

Title: President

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

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

EXHIBIT A

DELIVERY & INSTALLATION DATES

Date of delivery of the System: \_\_\_\_\_

Date of installation of the System: \_\_\_\_\_

## SYSTEM REQUIREMENTS

### Server Hardware

#### Enterprise:

- At least one Pentium PC Server (virtualization supported)
- Multiple servers may be recommended depending on load
- Working Network Connections
- Network connections no less than 56K to Server
- RAM: 4GB for application server, 8GB for database server (minimum 8GB if both tiers are combined on same server)
- Disk space and partitions:
  - Application Server/Tier: 50GB for primary Windows operating System partition and 50GB for ACISS Web partition
  - Database Server/Tier: Minimum 100GB for ACISS Web database growth. If both tiers combined, minimum 250GB disk space. Will vary depending on agency database size and anticipated growth

### Server Software

#### Enterprise:

- Windows 2012 R2/2016 Server Operating System
  - IIS 7.0 or higher
- Microsoft Internet Explorer 9.0 or higher including Windows Updates
- Microsoft .NET Runtime 4.5.2 including Windows Updates
- Microsoft SQL 2008 R2/2012/2014/2016 Database Server
  - Administration Tools installed
- SMTP Email Capabilities
- HTTP/HTTPS Network Access between clients and servers

### Client Hardware

- 1 GHz Pentium or above
- 512MB RAM
- Network or dial-up connection of no less than 56K

### Client Software

- Windows 7/8/10
- Microsoft Internet Explorer 9.0 or higher
- Microsoft .NET Runtime 4.5.2 or higher
- All Microsoft Service Packs and patches installed and up-to-date

**Attachment C to  
Addendum 1 to  
STATE OF OKLAHOMA CONTRACT WITH ACISS SYSTEMS INC.  
RESULTING FROM STATE WIDE CONTRACT NO. 1059**

**HOSTING AGREEMENT**

This Hosting Agreement (“Hosting Agreement”) is a Contract Document in connection with the Contract issued as a result of state wide contract number 1059 (the “Contract”) and entered into between ACISS Systems Inc. (“Vendor”) and the State of Oklahoma by and through the Office of Management and Enterprise Services (“State” or “Customer”), the terms of which are incorporated herein. This Hosting Agreement is applicable to any Customer Data stored, accessed, processed, or hosted by Vendor in connection with the Contract. Unless otherwise indicated herein, capitalized terms used in this Hosting Agreement without definition shall have the respective meanings specified in the Contract.

**I. Definitions**

- a. “Customer Data” shall mean all data supplied by or on behalf of Customer or Subscriber in connection with the Contract, excluding any confidential information of Vendor.
- b. “Data Breach” shall mean the unauthorized access by an unauthorized person that results in the access, use, disclosure or theft of Customer Data.
- c. “Non-Public Data” shall mean Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.
- d. “Personal Data” shall mean Customer Data that contains 1) any combination of an individual’s name, social security numbers, driver’s license, state/federal identification number, account number, credit or debit card number and/or 2) contains electronic protected health information that is subject to the Health Insurance Portability and Accountability Act of 1996, as amended.
- e. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the hosted environment used to perform the services.

## **II. Customer Data**

- a. Customer will be responsible for the accuracy and completeness of all Customer Data provided to Vendor by Customer. Customer shall retain exclusive ownership of all Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Vendor shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).
- b. Vendor shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the hosted environment. Vendor shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Vendor shall not respond to subpoenas, service or process, FOIA requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Vendor's proposed responses. Vendor agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.
- c. Vendor will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Vendor. Vendor will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Vendor will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Vendor as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Vendor's negligence or willful misconduct, Vendor, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

## **III. Data Security**

- a. Vendor will use commercially reasonable efforts, consistent with industry standards, to provide security for the hosted environment and Customer Data and to protect against both unauthorized access to the hosting environment, and unauthorized communications between the hosting environment and the Customer's browser. Vendor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice

and not less stringent than the measures the Vendor applies to its own personal data and non-public data of similar kind.

- b. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Vendor is responsible for encryption of Personal Data.
- c. Vendor represents and warrants to the Customer that the hosting equipment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Vendor will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Vendor will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Vendor, Vendor will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Vendor has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Vendor is responsible for costs incurred by Customer for Customer to remediate the virus.
- d. Vendor shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Vendor shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Vendor shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Vendor's obligations under the Contract.
- e. Vendor shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.
- f. Vendor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. Vendor may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
- g. The Vendor also agrees to be subject to a CJIS Security Audit.
- h. Vendor shall comply with the Federal Bureau of Investigations CJIS Security Policy.

#### **IV. Security Assessment**

- a. The State requires any entity or third-party vendor hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Vendor submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards during the term of the Contract, including renewals, constitutes a material breach.
- b. To the extent Vendor requests a different sub-contractor than the third-party hosting vendor already approved by the State, the different sub-contractor is subject to the State's approval. Vendor agrees not to migrate State's data or otherwise utilize a different third-party hosting vendor in connection with key business functions that are Vendor's obligations under the Contract until the State approves the third-party hosting vendor's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party hosting vendor does not meet the State's requirements under the State Certification and Accreditation Review, Vendor acknowledges and agrees it may not utilize such third-party vendor in connection with key business functions that are Vendor's obligations under the Contract, until such third party meets such requirements.

#### **V. Security Incident or Data Breach Notification:** Vendor shall inform Customer of any Security Incident or Data Breach

- a. Vendor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Vendor will coordinate with Customer prior to making any such communication.
- b. Vendor shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e. HIPAA requires notice to be provided within 24 hours).
- c. Vendor shall: (i) maintain processes and procedures to identify, respond to and analyze Security Incidents; (ii) make summary information regarding such procedures available to Customer at Customer's request, (iii) mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Vendor; and (iv) documents all Security Incidents and their outcomes.
- d. If Vendor has reasonable belief or actual knowledge of a Data Breach, Vendor shall (1) promptly notify the appropriate Customer identified contact set forth herein

within 2 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

**VI. Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Vendor.

- a. Vendor, unless stipulated otherwise, shall promptly notify the Customer identified contact within 2 hours or sooner, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach. Vendor shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- b. Unless otherwise stipulated, if a Data Breach is a direct result of Vendor's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – (2), (3) and (4) not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) complete all corrective actions as reasonably determined by Vendor based on root cause.
- c. If a Data Breach is a direct result of Vendor's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor shall indemnify and hold harmless the Customer against all penalties assessed to indemnified parties by governmental authorities in connection with the Data Breach.

**VII. Notice:** Contact information for Customer for notifications pursuant this Hosting Agreement are consistent with the Contract with a copy sent to:

Chief Information Officer  
3115 N. Lincoln Blvd  
Oklahoma City, OK 73105

And

Chief Information Security Officer  
3115 N. Lincoln Blvd  
Oklahoma City, OK 73105

And

OMES Information Services General Counsel  
3115 N. Lincoln Blvd  
Oklahoma City, OK 73105

For immediate notice which does not constitute written notice:

OMES Help Desk  
405-521-2444

[helpdesk@omes.ok.gov](mailto:helpdesk@omes.ok.gov)

Attn: Chief Information Security Officer

**VIII. Vendor Representations and Warranties:** Vendor represents and warrants the following

- a. The product and services provided under this Hosting Agreement do not infringe a third party's patent or copyright or other intellectual property rights.
- b. Vendor will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.
- c. The execution, delivery and performance of the Contract, the Hosting Agreement and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Vendor will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Vendor and any third parties retained or utilized by Vendor to provide goods or services for the benefit of the Customer.
- d. Vendor shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting Environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

## **IX. Indemnity**

- a. Vendor's Duty of Indemnification. Vendor agrees to indemnify and shall hold the State of Oklahoma and State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees) (collectively "Damages") (other than Damages that are the fault of Customer) arising from or in connection with Vendor's breach of its express representations and warranties or other obligations in this Hosting Agreement and the Contract. If a third party claims that any portion of the products or services provided by Vendor under the terms of the Contract or this Hosting Agreement infringes that party's patent or copyright, Vendor shall defend and indemnify the State of Oklahoma and Customer against the claim at Vendor's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State of Oklahoma and/or Customer. The State of Oklahoma and/or Customer shall promptly notify Vendor of any third party claims and to the extent authorized by the Attorney General of the State, allow Vendor to control the defense and any related settlement negotiations. If the Attorney General of the State of Oklahoma does not authorize sole control of the defense and settlement negotiations to Vendor, Vendor shall be granted authorization to equally participate in any proceeding related to this section but Vendor shall remain responsible to indemnify Customer and the State of Oklahoma for all associated costs, damages and fees incurred by or assessed to the State of Oklahoma and/or Customer. Should the software become, or in Vendor's opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated under this Hosting Agreement, Vendor may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

## **X. Termination and Suspension of Service:**

- a. In the event of a termination of the Contract, Vendor shall implement an orderly return of Customer Data in a mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of Customer Data.
- b. During any period of service suspension, Vendor shall not take any action to intentionally erase any Customer Data.
- c. In the event of termination of any services or agreement in entirety, Vendor shall not take any action to intentionally erase any Customer Data for a period of:
  - i. 10 days after the effective date of termination, if the termination is in accordance with the contract period

- ii. 30 days after the effective date of termination, if the termination is for convenience
- iii. 60 days after the effective date of termination, if the termination is for cause

After such period, Vendor shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

- d. The State shall be entitled to any post termination assistance generally made available with respect to the services.
- e. Vendor shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer.