

CITY CLERK ORIGINAL

C-10114
07/06/15



SERVICE AND SUPPORT AGREEMENT for Glendale Regional Public Safety Training Center 11550 W. Glendale Avenue Glendale, AZ 85307

This software support agreement ("The Agreement") dated 07/15, by which we, Occupational Marketing, Inc. ("OMI"), a Texas corporation having our principal office at 19424 Park Row, Suite 110 Houston, TX 77084, agree to provide service and support to the below listed software product(s).

1. OMI Spirometry Software

I. Description of Support Service:

OMI will provide the following support services to you for a period of 12 months, beginning on the first day following the expiration of your current support agreement. If this is your initial agreement or your previous agreement has expired support will begin on the first business day following the receipt of payment or acceptable company purchase order.

- A. OMI will consult with you by telephone during our normal business hours to assist you in the use and operation of the Software.
- B. OMI will supply Software upgrades at no additional cost during the term of the Agreement.
- C. OMI will provide you with all enhancements to the Software which we develop and generally make available at no charge to other licensee of the Software.
- D. OMI will provide updates to correct any errors in the Software which cause it to deviate from the specifications for the Software which are contained in the operator's manual.

II. Limitations to Support Coverage:

- A. This Agreement is of limited duration and coverage.
- B. This agreement extends only to the original purchasers of OMI Software products.
- C. This Agreement extends only to uses for which the Software was designed.
- D. This Agreement does not extend to computer hardware being used to operate the Software. OMI is not obligated to provide support or repair services to computer hardware not purchased from OMI.

III. Limitation of Remedy:

- A. OMI's entire liability and your exclusive remedy for damages to you from any work under this agreement, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including negligence, shall be as follows:
1. If the Software does not perform as warranted, our obligation will be to modify the Software to make it perform as warranted; or, if after repeated efforts, we are unable to make the Software operate as warranted, you will be entitled to recover your actual money damages to the limits set forth in this section.
 2. Damages shall not exceed the total fees received by us under this Agreement.
 3. Under no circumstances, arising in tort (including negligence) or otherwise, will OMI be liable to you for any indirect, incidental, special, or consequential damages, expenses, cost, profits, lost savings, or earnings, lost or corrupted data, or other damages arising out of, or related to this Agreement.
 4. Neither party may institute any action in any form arising out of this Agreement more than one year after the cause of the action has arisen, or in the cause of nonpayment, more than one year from the date of last payment.

IV. General:

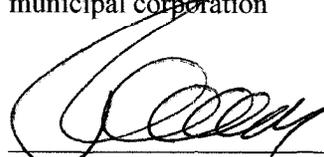
- A. This Agreement is governed by the laws of the state of Texas.
- B. OMI reserves the right to assign its rights and obligations under this Agreement to a qualified assignee. To effect any such assignment, the assignee must notify you in writing that it has assumed all of the rights and obligations of OMI under this Agreement.
- C. This Agreement is the complete and exclusive statement of the Agreement between the parties and supersedes all prior oral and written proposals and communications pertaining to the subject matter hereof. This agreement may be amended to add additional software products or components by execution of additional schedules.

Occupational Marketing, INC.

By: Ally D. Sella

Date: June 18, 2015

CITY OF GLENDALE, an Arizona
municipal corporation



Richard A. Bowers, Acting City Manager

ATTEST:

Pamela Hanna
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
Michael D. Bailey, City Attorney