

**DeskOfficer Online Reporting System (DORS)
SOFTWARE SUBSCRIPTION,
SUPPORT AND MAINTENANCE AGREEMENT**

THIS SOFTWARE SUBSCRIPTION, SUPPORT AND MAINTENANCE AGREEMENT ("Subscription and Support Agreement") is made on this ~~22~~²¹ day of ~~April~~^{May} 2014, by and between the City of Glendale located at 5850 West Glendale Avenue, Glendale, AZ 85301, a municipal corporation under the laws of Arizona ("Customer") and Coplogic, Inc., an existing California corporation, whose address is 231 Market Place #520 San Ramon, CA 94583 ("Company").

RECITALS

Customer has obtained a license to use the DeskOfficer Online Reporting System ("Software") for the term of the Setup and License Agreement which is attached hereto as Exhibit 1 and incorporated into this Agreement by reference. Customer wishes to retain Company to provide software maintenance and support services for the Software.

SUBSCRIPTION AND SUPPORT SERVICES

1. Generally. During the duration of this Subscription and Support Agreement, Company shall provide to the Customer a subscription license, as well as support and maintenance for the Software purchased in accordance with the terms of this Subscription and Support Agreement, such support shall be provided in accordance with the response time described in Schedule A, attached hereto. Support includes an annual review of current outstanding questions and usage issues at customer request; the provision of new and upcoming releases of updates; and enhancements made to the Software that the Customer is licensed to use that are generally made available without additional charge to other users of the Software with similar support and maintenance contracts. The parties shall amend Schedule B from time-to-time in the event that the Customer requests customizations to the Software.
2. Hours of Support. Company will provide the support services during the hours as described in Schedule A attached hereto.
3. New Releases. Company will, from time-to-time, issue new releases of the software (Schedule B). When releases are issued, Company will provide a copy of the release documentation, and/or updated user or system documentation. If any part of the Customer's custom code is not part of the general release delivered by Company, then Company will assist and provide guidance for integrating the custom code into the new release. Any time taken to modify or repair unauthorized changes that may require Company assistance to modify may be billed at Company's then current pricing schedule.
4. Exceptions. Company is not responsible for maintaining unauthorized Customer modified portions of the Software, Customer data files or for maintaining portions of the Software affected by unauthorized Customer modified portions of the Software. The Customer agrees that the equipment on which the Software operates will be operating properly at all times and must have been and continue to be properly maintained by the manufacturer of the equipment or a properly

qualified service organization. Corrections for difficulties or defects caused by the Customer's errors or unauthorized changes, Customer's hardware, or conflicts with other software not identified by Company as compatible or part of the recommended operating environment may be subject to billing at Company's current standard time and material charges. The Customer will be responsible for properly testing and applying routine virus updates and security patches. Company will be responsible for testing Company's software updates prior to making them available to the Customer. The Customer acknowledges responsibility for testing Company's software updates before applying them to the Customer's production systems. For servers running Company's software, the Customer acknowledges responsibility for communicating with Company prior to installation of non- Company's software service packs, implementation of new releases or versions of third party software, or installation of new third party software products. Except for emergency replacement of a failing server, the Customer acknowledges responsibility for communicating with Company prior to replacing a server on which Company's software is being used. Company is not responsible for changes if related to or caused by software not provided by Company. For workstations running Company's software, the Customer acknowledges responsibility to test new workstation configurations, software service packs, new releases or versions of software, and new software products prior to implementation.

5. **Limitations.** Company may, in its sole discretion, limit or suspend Customer's access to support, pursuant to this Subscription and Support Agreement, where: (1) Customer is in material default under the terms of this Subscription and Support Agreement (non-payment is deemed to be a material default); or (2) Customer fails to provide adequately trained staff to administer the Software. Prior to limiting or suspending support, Company will give the Customer 45 days written notice of its intention to do so and actively participate with the Customer to remedy any such default or failure.
6. **Term.** This Subscription and Support Agreement commences at the earlier of: 1) Phase 1 Go-Live "Print Only" Configuration start date or 2) August 1, 2014. This Agreement expires one year after its commencement date. Within thirty (30) days prior to its expiration, Company shall send to the Customer an invoice for an annual subscription, support and maintenance fee ("Annual Fee"). The sending of any such invoice will constitute an irrevocable offer to extend the Subscription and Support Agreement for the period and fees set forth in the invoice, which may be accepted by the Customer in its sole discretion as hereinafter set forth. Termination of the Subscription and Support Agreement prior to its expiration shall not result in the refund of partial service fees.

The Customer's payment of an Annual Fee in response to an invoice prior to the expiration date of the Subscription and Support and Agreement, or within forty-five (45) days of Customer's receipt of Company's invoice, whichever is later, will extend the Subscription, Maintenance and Support Period for the period of one year from its previous expiration date.

7. **Adjustments to Terms and Conditions.** Company may change the Annual Fee and the terms and conditions of this Subscription and Support Agreement provided that written notice is given to the Customer thirty (30) days prior to the expiration of the current term, and Customer accepts those changes in a signed, written amendment.

8. A. Standard. Company must perform Services in accordance with the standards of due diligence, care and quality prevailing amongst other companies having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality and other criteria under the project and identified in this Agreement.

B. Licensing. Company warrants that:

- i) Company currently holds all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of the Software (“Approvals”); and
- ii) Company has not been debarred or otherwise legally excluded from contracting with any federal, state or local government entity (“Debarment”)
 - a. Customer is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Company’s contracting ability.
 - b. Company must notify Customer immediately of any Approvals or Debarment changes during the Agreement’s duration. The failure of Company to notify Customer as required will constitute a material default under the Agreement.

C. Compliance. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by Customer.

COST

9. Annual Fee. In the first year of this agreement, Company’s compensation for the Software (which includes the first year of Subscription, Support and Maintenance services) will not exceed \$35,000.00, as specifically detailed in Section 4, “Cost and Fees” of the Setup and License Agreement. Following the first year of this agreement, the Customer shall pay Company an Annual Fee for the Software license and support provided (see Schedule B for base Annual Fee). The Annual Fee for the first (1st) year is due on the terms as specifically detailed in Section 4, “Cost and Fees” of the Setup and License Agreement and the due date for the Annual Fee will then reoccur on the anniversary date of the execution of this agreement for each year thereafter, if the Customer decides to renew, and according to the timeframe provided in Paragraph 6 above. For a period of three (3) years following execution of this Subscription and Support Agreement, the Annual Fee shall not increase by more than 5% of the previous year’s Annual Fee. All requests by the Customer for additional features or functionality that fall outside of Company’s ongoing policy of upgrading the Software will be quoted separately.

Late Payments. All invoices will be sent at least thirty (30) days prior to their due date. Payments received sixty (60) days after their due date will be assessed a 3% late fee.

10. Change in Scope of Project. The compensation may be equitably adjusted if the originally contemplated scope of services as outlined in Exhibits A, B and C of the Setup and License Agreement (“Scope of Services”) is significantly modified.

- i) Adjustments to compensation require a written amendment to this Agreement and may require City Council approval.

- ii) Additional services which are outside the Scope of Services contained in this Agreement may not be performed by the Company without prior written authorization from the City.
 - iii) Notwithstanding the incorporation of the exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of Company and Customer.
11. Taxes. In addition to other amounts payable under this Subscription and Support Agreement, Customer shall pay any and all federal, state, municipal, or other taxes, duties, fees, or withholding currently or subsequently imposed on Customer's use of the Software or the payment of the Annual Fee to Company, other than taxes assessed against Company's net income. Such taxes, duties, fees, withholding, or other charges shall be paid by Customer or Customer shall provide the appropriate authority with evidence of exemption from such tax, duty, fee, withholding, or charge. If Company is required to pay any such tax, duty, fee, or charge, or to withhold any amount from monies due to Company from Customer pursuant to this Subscription and Support Agreement, Customer shall promptly reimburse Company any such amounts.
12. On Site Support. The Customer shall reimburse Company at the rate of USD\$2,500.00 per day for each Company employee or contractor required for any On-Site support incurred at the Customer's direct written request and authorization. This rate shall be paid for each day that Company personnel are required to be on the Customer's site. Customer will not pay for Company personnel travel time or travel expenses. In response to written Customer requests for Company to provide on-site routine non-emergency support, Company shall produce a written estimate of the time required to provide the requested support and state any requirements, such as the presence of Customer staff or other resources or materials. Any On-Site Support provided by Company shall only be invoiced by Company or paid by Customer if the problem arose due to something other than a defect in the Software.

CUSTOMER'S OBLIGATION

13. The Customer Agrees to:
- (a) Furnish descriptions of problem(s) in the form reasonably requested by Company Support representatives;
 - (b) Assist Company's efforts to reproduce the problem(s) in the applicable operating environment, and
 - (c) Make available qualified, trained staff on-site to carry out Company's instructions and/or provide remote access to system(s) as requested by Company.
14. The Customer shall designate a sole Support Contact to provide routine end user support for the Customer personnel concerning the Product.
15. The Customer shall take appropriate steps to educate its end users about the need to contact the Support Contact (rather than Company directly) when support is needed. The Customer shall appropriately publicize the name, telephone number, and/or fax number and/or electronic mail address if applicable, of the Support Contact.

16. Access to Data and System. The Customer agrees to provide Company with data dumps, as requested, remote access to the Software system, and with sufficient test time on the Customer's computer system to duplicate the problem, to certify that the problem is with the Software, and to certify that the problem has been corrected.
17. The Customer shall install and maintain for the term of this Subscription and Support Agreement, a reasonable and satisfactory method of direct remote computer access to the Software. The Customer shall pay for the installation and maintenance of such access. Company shall use this access service in connection with error correction, software updating and user support only, and only upon prior written or email notice to the Customer, and Customer's agreement to provide such access.
18. Company will not be obligated to provide support for release versions that are more than two release versions older than the current version unless the components of the Software have not changed from the older version or specified in this Subscription and Support agreement. Company agrees that all release versions will be tested for installation in a computer environment substantially similar to the Customer's and that all releases will be free of material defects that would affect the orderly continuation of Customer's use of the Product.
19. The Customer agrees that, subject to and in accordance with the Customer's internal policies and guidelines, it will upgrade the computer operating software, hardware and underlying database engines of the DeskOfficer Online Reporting System software as necessary to meet the changing requirements of the Software as specified by Company as part of a current release of the Software, or as the parties mutually agree. The Customer agrees that, subject to and in accordance with the Customer's internal policies and guidelines, it will maintain appropriate licenses for the computer operating software and underlying database engines required of the DeskOfficer Online Reporting System as necessary. The parties agree that Company is not obligated to ensure that its new release of the Software is compatible with outdated (as defined by third-party product lifecycle support) hardware, computer operating software or database engines.

CONFIDENTIALITY

20. Confidential Information.

- (a) The parties hereby acknowledge that they may have access to information that is confidential to one another (“Confidential Information”). “Confidential Information” includes, but is not limited to, the licensed products and enhancements, all related source and object codes, Documentation, customer and prospect lists, pricing proposals, financial and other business information, all data and information relating to Customer’s operation, and any other information designated as confidential or proprietary information by the disclosing party. “Confidential Information” shall not include any information which: (i) becomes part of the public domain through no act or omission of the other party; (ii) is lawfully acquired by the other party from a third party who is not in breach of an obligation of confidentiality; (iii) was in the other party’s lawful possession prior to disclosure of such information; (iv) is independently developed by the party without the benefit or use of the Confidential Information; or (v) is required to be disclosed under a court order or a valid subpoena, provided that the recipient of the Confidential Information promptly notifies the disclosing party in order for the disclosing party to have an opportunity to seek an appropriate protective order. The parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other party’s Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Each party agrees to maintain at least the same procedures regarding the other party’s Confidential Information that it maintains with respect to its own Confidential Information.
- (b) Company acknowledges that the Customer is a governmental agency and may be required to disclose certain information under requests made according to provisions of the Public Records Act. Customer shall give notice to Company of any request for the disclosure of any information set apart and marked “confidential,” “proprietary” or “trade secret” by Company. Company shall then have five (5) days from the date it receives such notice to enter into an agreement with Customer providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff’s attorney’s fees) incurred by Customer in any legal action to compel the disclosure of such information under the Public Records Act. Company shall have the sole responsibility for the defense of the actual proprietary or trade secret designation of such information. The parties understand and agree that any failure by Company to respond to the notice provided by Customer and/or to enter into an agreement with Customer, as set forth above, shall constitute a complete waiver by Company of any nondisclosure or confidentiality rights hereunder with respect to such information, and such information shall be disclosed by Customer pursuant to applicable procedures required by the Public Records Act.
- (c) Both parties acknowledge that any use or disclosure of the other party’s Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the non-disclosing party shall be entitled to receive from a court of competent jurisdiction injunctive or other equitable relief to restrain such use or

disclosure. The terms and provisions of this section shall survive any termination of this Subscription and Support Agreement.

TERMINATION

21. The Customer may terminate this Agreement at any time and for any reason upon thirty (30) days prior notice to Company.

In the event of a material default by the Customer under this agreement, Company may terminate this Agreement upon thirty (30) days prior notice to Customer, provided that Customer has been given thirty (30) days notice to cure the default.

LIMITATION OF LIABILITY

22. To the extent permitted by law, neither party's liability to the other party in connection with any cause of action, costs or damages relating to this Subscription and Support Agreement shall exceed the annual fee paid in the twelve month period preceding the event giving rise to the claim.

Notwithstanding the foregoing, for purposes of the services performed by Company under this Subscription and Support Agreement, Company agrees to fully defend, indemnify and hold harmless Customer, its officers, employees and agents from any damage, loss, liability, costs (including reasonable attorneys fees), claim or cause of action arising out of injury, loss or damage to real property or tangible personal property, or arising from personal injury or death, where such damage, loss, liability, costs, claim or cause of action is caused or incurred in whole or in part as a result of any negligent or wrongful act or omission or willful misconduct of Company, its officers, employees, agents, contractors and assigns. Company's obligation hereunder is contingent upon Customer providing Company prompt written notice of any such claim, action, lawsuit or other proceeding and Customer shall fully cooperate with Company in the defense and all related settlement negotiations. The existence of any insurance policies or coverage's shall not affect the parties' rights and obligations hereunder.

GENERAL

23. This Agreement shall be binding upon the successors and assigns of both parties, provided, however that no assignment, delegation or other transfer shall be made by Company without the prior written approval of the Customer, which approval shall not be unreasonably withheld.
24. This Agreement, together with Exhibit I, Schedule A and Schedule B, which are incorporated herein by reference, is the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter, except for the concurrently executed Setup and License Agreement. No modification or amendment of this Agreement will be valid or binding unless reduced to writing and duly executed by the party or parties to be bound. In the event any language, term or condition of any exhibit, schedule or attachment conflicts with any language, term or condition of this Agreement, the language, term or condition of this Agreement shall prevail.

25. Each party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party; provided that, in order to be excused from delay or failure to perform, such party must act diligently to remedy the cause or effect of such delay or failure to the extent the party is able. In the event of such delays, the timetables shall be extended by as many calendar days as the delay caused by forces outside the reasonable control of the parties.
26. This Subscription and Support Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. Any such counterpart may comprise one or more duplicates or duplicate signature pages, any of which may be executed by less than all of the parties provided that each party executes at least one such duplicate or duplicate signature page. The parties stipulate that a photocopy of an executed original will be admissible in evidence for all purposes in any proceeding as between the parties.
27. Any provision of this Subscription and Support Agreement or part thereof found to be illegal or unenforceable shall be deemed severed, and the balance of the Agreement shall remain in full force and effect.
28. This Subscription and Support Agreement shall be governed and construed in accordance with the laws of the State of Arizona. Venue of any action brought with regard to this Subscription and Support Agreement shall be in Maricopa County, Arizona.
- 29. Conflict.** Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

30. Immigration Law Compliance.

- 30.1 Contractor, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 30.2 Any breach of warranty under subsection 9.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 30.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 9.1 above.
- 30.4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 9.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.

30.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

30.6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

30.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

31. Notices.

31.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- a. The Notice is in writing; and
- b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and
- c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

31.2 Representatives.

- a. Contractor. Contractor's representative (the "Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is:

Coplogic, Inc.
c/o James Lee
231 Market Place, Suite 520 San Ramon, CA 94583

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale

c/o Dave Harvey
6210 West Myrtle Avenue, Suite #111
Glendale, Arizona 85301
623-930-2621

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

32. Disputes; Arbitration. If the parties are unable to resolve any dispute by negotiation within 30 days from the dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Agreement and to bind their respective party thereto.

Coplogic, Inc.



(Signature)

James Lee
Chief Operating Officer

05/09/2014

(Date)

**City of Glendale,
a Municipal Corporation**



(Signature)

Brenda S. Fischer

(Typed or Printed Name and Title)

5/21/14

(Date)

ATTEST:


City Clerk

Approved as to form



City Attorney

SCHEDULE A

Company Hours of Support and Maintenance Service are as follows:

Regular Hours of Service (Pacific Time):
0900 to 1700 hours, Monday to Friday
(excluding Holidays observed by the U.S.
Federal Govt.)

After Hours Service (Pacific Time):
1701 to 0859 hours, Monday to Friday
Saturdays & Sundays
Holidays

E-mail received by:
Company staff at support@coplogic.com

E-mail received by:
Company staff at support@coplogic.com

Incident/Request for Service Priority. All support and maintenance incidents/ requests for service will be prioritized on the following basis:

Priority	Definition
A	Work is stopped to the point that critical business activities cannot continue. e.g. Loss of use of major features, file system corruption, data loss, security issue, system outage.
B	Issues or features of the product are preventing normal operations.
C	Non-critical features, for which a convenient or reasonable work around exists, or a feature which functions unexpectedly. Slight inconvenience.

Response Time. The following table outlines the response times for each priority:

Priority	Response Time During Regular Hours of Service	Response Time During After Hours of Service
A	2 hours	6 hours from time of notifying the vendor contact(s) through voice mail or e-mail
B	(2) business days of Company receipt of verbal, written or electronic notice thereof and to correct the Priority B Issue by the Customer's reasonably requested date. If the Priority B Issue is not corrected within 2 business days of the original notification Company will provide the Customer with reports of its efforts to correct the Priority B Issue as requested by Customer.	Not available
C	As time permits basis or inclusion in the next scheduled update to the Licensed Product.	Not available

1. Incident/Request for Service Reporting Procedure

All problems, queries or requests for assistance must be made to Company at support@coplogic.com, during regular business hours of service.

Customer must be prepared to leave a contact name, phone number, workstations affected, screenshots, a description of the problem/service and the impact.

Company’s resources will work with the Customer to diagnose the problem. After investigating the issue, Company and the Customer will jointly categorize the problem into:

Type of Problem	Ownership
Customer Server Hardware Problem	Customer
Desktop Hardware Problem	Customer
Customer Network Communication	Customer
Isolated Workstation Issue	Customer
Customer Database Performance/storage	Customer
Application or software related	Company

Company will deal with problem/incident according to the priority assigned. In the case that a problem cannot be readily resolved, Company will attempt to identify a work around.

As soon as Company corrects an Issue, Company shall notify the Customer that the Issue has been corrected by sending an electronic mail.

SCHEDULE B

Coplogic DeskOfficer Online Reporting System version 7.4.0.3

Base Annual Fee: \$15,000 (for Year 1 License/Support)

On-site Support: \$2,500 per day per Company personnel (includes travel time and expenses)