

## **CPI MAINTENANCE AGREEMENT**

This agreement (“Agreement”) is entered into as of this first day of July, 2019 (“Effective Date”) by and between Computer Projects of Illinois, Inc., an Illinois corporation, with offices at 400 Quadrangle Drive, Suite F, Bolingbrook, Illinois 60440 (hereinafter referred to as “CPI”), and the Iowa Department of Public Safety, (hereinafter referred to as CUSTOMER), with offices at 215 SE 7<sup>th</sup> St. Des Moines, IA 50319. CPI and CUSTOMER are referred to collectively in this Agreement as “Parties.”

### **BACKGROUND**

CPI shall maintain its OpenFox® software, which for this CUSTOMER includes the OpenFox® Message Switch, Configurator, Operator Aid, Archive Retrieval, Hotfiles and Criminal History Applications (“System”). By separate agreement, CPI shall license CUSTOMER to access and use CPI’s System. The Parties also desire CPI to provide maintenance to CUSTOMER in connection with use of the licensed System. CPI has done and will continue to do further development to the current features utilized on the System. CUSTOMER desires to use CPI’s maintenance services for the System in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the Background, which is incorporated into and made a part of the Agreement, and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows.

#### **1. DEFINITIONS**

“Business Day” means 8:30 AM – 5:00 PM Monday through Friday, United States Central Time, excluding federal public holidays.

“System” means (i) a combination of hardware, software and networking elements that comprise an information technology system.

“Maintenance Services” means (a) support to address any problems CUSTOMER may experience with the System for all components supplied or owned by CPI (“CPI Components”), (b) online technical system documentation available to the CUSTOMER for CPI Components (c) telephone technical support 24/7 via toll-free phone number for CPI Components (d) email technical system support with a maximum 24-hour turnaround with respect to email inquiries from CUSTOMER for all CPI Components, (e) maintenance and support of existing communication interfaces for all CPI Components (f) escalation process, as defined in schedule B, for technical support of emergency issues for all CPI Components (g) response to the telephone requests for maintenance service, within two (2) hours for all CPI Components (h) remedial maintenance off-site via telephone or secure connection to the CUSTOMER’S system for CPI Components, (i) All maintenance will be performed by qualified personnel who are familiar with the system, (j) backup maintenance resources, (k) remote diagnostic capabilities if CUSTOMER provides reasonable notice (l) one point of contact to report system malfunction (m) Help Desk services within certain designated hours where matters are handled on a priority basis as determined in the sole discretion of CPI, and (n) the following System services, commencing upon installation of the System:

- (i) Error Correction: Upon reasonable notice by CUSTOMER of a problem with the System (that can be verified), CPI shall use response times as described in Schedule B. to correct or provide a working solution for the problem.
- (ii) Material Defects: CPI shall notify the CUSTOMER of any material errors or defects in the System known to CPI, or made known to CPI from any source during the Contract term that could cause the production of inaccurate or otherwise materially incorrect, results.
- (iii) CPI shall initiate actions to provide corrections of errors or defects by any means CPI in its sole discretion deems appropriate.
- (iv) Updates: All new releases and bug fixes obtained by CPI without charge (“Free Updates”) will be made available to CUSTOMER at no charge. However, CPI will charge for the implementation of any new releases in accordance with its “Banked Hours” policy specified in Section 2 of this Agreement.

“Support” means (i) the management of the System by a CPI team, (ii) availability of live support as described in Maintenance Services, and (iii) any other additional support services described in writing and signed by the Parties.

“Confidential Information” means all information disclosed by one party to another, whether before or after the Effective Date, that (i) the recipient should reasonably understand to be confidential, including but not limited to (a) for CUSTOMER, all information transmitted to or from or stored on CUSTOMER’S system and (b) for CPI, unpublished prices and other terms of service, audit and security reports, product development plans, data designs, and other proprietary information or technology, or (ii) that which is marked or otherwise designated as confidential by either party. Information that is independently developed by one of the Parties, without reference to the other party’s Confidential Information, or that becomes available to one Party other than through violation of this Agreement, a similar agreement between CPI and a third party, or applicable law, shall not be “Confidential Information” of the other party.

“Supplementary Services” means services CUSTOMER purchases from CPI under a description of services other than the Maintenance Services described in this Agreement. Such Supplementary Services shall be agreed upon by both parties in writing. Examples of Supplementary Services include but are not limited to: providing architecture, design, network topology documents, or network consultation services or security assessments or audit documentation.

## **2. BANKED HOURS**

2.1 CPI will reserve and make available to CUSTOMER twenty (20) hours of Programmer Services per month for each month this Agreement is in effect. “Programmer Services” are (1) consultation services, (2) implementation of Free Updates or enhancements to the System as requested by the CUSTOMER, or (3) software development, installation or maintenance of third party hardware or software. Customer acknowledges that if CUSTOMER

seeks CPI's assistance with the software development, installation or maintenance of third party hardware or software, CUSTOMER is solely relying on the representations and warranties of the third party and not CPI with respect to the third party's hardware or software.

2.2 In the event that the number of hours for Programmer Services defined above is not required in a given month, the unused hours can be applied to subsequent months with a maximum accrual being eight (8) months, or a maximum accrual of one hundred and sixty (160) hours.

### **3. TERM OF AGREEMENT**

3.1 The term of this Agreement shall be equal to one (1) year subject to the cancellation rights set forth in Paragraph 3.2 below. This Agreement shall automatically renew for a separate successive one year term, unless agreed by the Parties otherwise, provided that neither Party has given its timely notice of cancellation or non-renewal. The length of the original or successive terms may not be less than one year without the prior written consent of CPI. Any additions to or deletions from this Agreement, which the parties hereto may negotiate for any succeeding term, shall become part of this Agreement and binding when reduced to writing and signed by both parties.

3.2 CUSTOMER shall have the right to not renew this Agreement as long as CUSTOMER provides CPI with notice of non-renewal at least 60 days prior to the end of the term. CPI shall have the right to cancel this Agreement at any time upon thirty (30) day's prior written notice.

3.3 CUSTOMER may not terminate this Agreement within the first year of service, and shall notify CPI in accordance with Section 15 if CUSTOMER seeks to not renew. CPI shall be paid for services completed prior to termination and upon notification and acceptance of termination, no further work will be performed.

### **4. FEES**

4.1 CUSTOMER shall pay CPI the following amounts for twelve (12) months term of this agreement:

Term	Invoice Date	Amount
07/01/2019 – 06/30/2020	Monthly	\$13,316.82

The AMOUNT is payable on a yearly basis over the term of this Agreement. Included in the fee is the amount for the standard maintenance as well as the charges for participation in the annual CPI OpenFox® user conference, including all expenses for up to two (2) CUSTOMER representatives. Cost of airfare shall be limited to coach class. Any payment, which becomes past due more than sixty (60) days, shall be increased by a finance charge as allowed by law, but not in excess of 1% per month.

4.2 CUSTOMER agrees to pay CPI the expenses incurred by CPI in accordance with the provisions of Schedule A. attached to this Agreement.

4.3 Compensation received by CPI as specified above does not include taxes or other applicable duties. Taxes and other applicable duties shall be added to the total amount for which CUSTOMER is responsible.

4.4 If CUSTOMER seeks Supplementary Services, CUSTOMER may use their Banked Hours as described in Section 2 of this Agreement for such Supplementary Services. If no Banked Hours are available, CUSTOMER shall retain CPI for additional services at \$240/hour subject to CPI's agreement, in writing. CPI reserves the right to change the hourly rate upon renewal.

## **MAINTENANCE**

### **5. MAINTENANCE SERVICES**

Subject to CUSTOMER'S payment of the applicable fees described in Section 4 and its compliance with all other obligations under this Agreement, CPI will provide CUSTOMER on a timely basis with backup services specifically limited to backups of source code and configuration files for the System, in accordance with the terms of this Agreement.

Third-party maintenance and support, such as IBM hardware and Operating Systems, Oracle Database Software, etc., are subject to the terms of the third-party support. Clients may be required to sign paperwork originating from the third-party. Any required changes to, and testing of, the CPI applications for third-party changes are not included in the costs of the third-party maintenance and support.

### **6. SYSTEM MAINTENANCE AND WARRANTIES**

6.1 CPI has the right and capacity to enter into this Agreement and fully perform all of its obligations thereunder.

6.2 Notwithstanding the above paragraphs, ALL MAINTENANCE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT ARE PROVIDED OR PERFORMED ON AN "AS IS" BASIS AND CUSTOMER'S USE OF THE SERVICES IS SOLELY AT ITS OWN RISK. CUSTOMER'S EXCLUSIVE REMEDY IS NON-RENEWAL AS SET FORTH IN PARAGRAPH 2.2 OF THIS AGREEMENT. CPI DOES NOT WARRANT THAT THE MAINTENANCE SERVICES PROVIDED HEREUNDER WILL BE UNINTERRUPTED, ERROR-FREE, WITHOUT SLOW RESPONSE TIME OR COMPLETELY SECURE. IN NO EVENT SHALL CPI BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSSES, LOST PROFITS, LOST OR STOLEN DATA, DAMAGES, DELAYS, INTERRUPTIONS, OR VIRUSES ARISING OUT OF OR RELATED TO THIS AGREEMENT REGARDLESS OF THE BASIS OF THE CLAIM. NOTWITHSTANDING ANYTHING TO THE CONTRARY, CPI'S AGGREGATE LIABILITY TO THE CUSTOMER (INCLUDING ATTORNEYS' FEES) IF ANY, SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID TO CPI.

## **7. USAGE RIGHTS**

It is understood and agreed that System improvements and enhancements to the System provided by CPI under this Agreement are proprietary to CPI, and are subject to the following restrictions:

7.1 All services, improvements and enhancements provided, as defined herein, or any part thereof may only be installed or modified for the benefit of CUSTOMER or any of its wholly owned subsidiaries, and CUSTOMER will have unlimited usage rights; and

7.2 CUSTOMER will not copy, distribute or make available any part of the services, improvements or enhancements to any third party; and

7.3 Specifically excluded from Maintenance Services as described in this Agreement are issues arising from CUSTOMER enhancements or improvements, which is outside the scope of CPI's Maintenance Services. CPI shall have no responsibility or liability arising out of changes, enhancements or problems introduced to the System by CUSTOMER.

## **8. CUSTOMER OBLIGATIONS**

8.1 CUSTOMER is solely responsible for content of CUSTOMER databases. CUSTOMER must provide CPI access to its databases and content as reasonably requested by CPI from time to time for purposes of providing CUSTOMER with the Services.

8.2 In the event that any virus or destructive element is found in or furnished with any CUSTOMER Content, CUSTOMER will use best efforts upon learning of the situation, to eliminate the virus or destructive element. CPI shall have the right to take any steps it deems necessary to eliminate the virus or destructive element and to be reimbursed by CUSTOMER for its costs relating to the same.

## **GENERAL TERMS**

### **9. CUSTOMER REPRESENTATIONS AND WARRANTIES**

CUSTOMER represents and warrants to CPI that:

9.1 It has the right and capacity to enter into this Agreement and fully perform all of its obligations hereunder;

9.2 All CUSTOMER Content provided hereunder shall be wholly original to CUSTOMER or CUSTOMER has acquired the necessary rights from third parties to contribute such CUSTOMER Content and include it in the System, and CUSTOMER Content shall not violate any laws of any country and shall not infringe any other party's copyright, patent, trademark or other intellectual property right.

9.3 CUSTOMER shall not re-license or re-sell the System or Services to unauthorized third parties.

## **10. CUSTOMER INDEMNIFICATION**

CUSTOMER agrees to indemnify, defend and hold harmless CPI, its officers, directors, employees and any of its respective successors, licensees and assigns from any and all losses, costs, liabilities, damages and expenses (including reasonable attorneys' fees) arising out of any proceeding, claim, or lawsuit resulting from third party claims of infringement of intellectual property, other than CPI intellectual property, or third party claims of breach or disclosure of personal information.

## **11. INDEMNIFICATION**

11.1 Each of the Parties hereto agree to indemnify, defend and hold harmless the other, its officers, directors, employees and any of its respective successors, licensees and assigns, from any and all losses, costs, liabilities, damages and expenses (including reasonable attorneys' fees) arising out of any breach of any representation, warranty and/or covenant under this Agreement.

## **12. LIMITATION OF LIABILITY**

**Other than claims relating to CPI's intellectual property rights, CPI, including its officers, directors, employees, agents, affiliates or suppliers) is not liable to CUSTOMER for any lost profits or any other indirect, special, incidental, or consequential loss or damages of any kind, or for any loss that could have been avoided through use of reasonable diligence, even if CPI was advised or should be aware of the possibility of such damages. In no event shall CPI be liable to CUSTOMER for any punitive damages.**

**CPI is not liable to CUSTOMER for lost data. It is CUSTOMER'S sole responsibility to ensure that any backup performed by CPI on CUSTOMER'S behalf is restorable.**

**Notwithstanding any of the above, the maximum monetary liability of CPI and any of its officers, directors, employees, agents, suppliers, or affiliates, in connection with the services relating to the System including any act or omission shall not exceed the lesser of the amount of fees paid to CPI under the Services relating to the claim in the 12 months preceding the claim, or (\$250,000), whichever is lower.**

## **13. CONFIDENTIAL INFORMATION**

CUSTOMER will not disclose to any third party any Confidential Information of CPI or any technical information relative to the System unless disclosure is approved in writing by CPI.

## **14. COMPLIANCE**

With Equal Employment and Affirmative Action Provisions. The CUSTOMER shall comply with all provisions of federal, state and local laws, rules and executive orders to insure that no employee or applicant for employment is discriminated against because of race, religion, color, age, sex, national origin, or disability. The CUSTOMER, if requested, shall provide state or federal agencies with appropriate reports as required insuring compliance with equal opportunity laws and regulations. The CUSTOMER shall insure that all authorized subcontractors assigned to the project comply with the provisions of this clause

## **15. NOTICE**

Routine communications regarding the System and Services associated therewith, including but not limited to any notice of non-renewal or notice regarding termination of the Agreement for breach, indemnification or other matter should be sent to your CPI account team via e-mail to: [ksawatzky@openfox.com](mailto:ksawatzky@openfox.com), and US Mail to:

Computer Projects of Illinois (CPI)  
Attn: Mr. Kevin Sawatzky, CEO  
400 Quadrangle Drive, Suite F  
Bolingbrook, Illinois 60440

With a copy to:

Joseph A. Ginsburg  
LEVIN GINSBURG  
180 N. LaSalle St., Suite 3200  
Chicago, Illinois 60601  
Email: [jginsburg@lgattorneys.com](mailto:jginsburg@lgattorneys.com)

A Notice given in accordance with this Agreement will be effective upon receipt by the party to which it is given or, if mailed, upon the earlier of receipt and the fifth Business Day following mailing. Notices must be given in the English language.

## **16. NON-WAIVER**

Waiver by either Party of any breach of failure to comply with any provision of this Agreement by the other Party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

## **17. FORCE MAJEURE**

CPI shall not be liable for any losses or damages to CUSTOMER occasioned by delays in the performance or non-performance of any of its obligations under this Agreement when caused by Acts of God, strike, acts of war, terrorism, inability of supplies or material or labor or any other cause beyond the reasonable control of CPI.

## **18. LAW GOVERNING**

The terms of this Agreement shall be governed by applicable laws of the State of Illinois.

## **19. DISPUTE RESOLUTION**

19.1 If any obligation to compensate CPI arising out of this Agreement is not paid when due and CPI engages an attorney to collect that indebtedness, CUSTOMER will be liable to pay CPI its reasonable attorneys' fees as well as all other costs and expenses incurred with respect to the collection of that indebtedness. If any legal action other than for the collection of



compensation due CPI is commenced to necessary to enforce or interpret the terms of this Agreement, the Parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its mediation rules before resorting to arbitration, litigation or some other dispute resolution procedure. Mediation administrative fees are to be divided equally between the parties. In the event of any action beyond mediation, the prevailing party will be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which that party may be entitled.

[NOTE: ALTERNATIVE PARAGRAPH: If the CUSTOMER defaults, CPI shall have all rights and remedies available to it in law or in equity.]

## **20. INDEPENDENT CONTRACTORS**

CPI and CUSTOMER are independent contractors and neither shall act as the other's agent, or be deemed an agent or employee of the other, not shall this Agreement be interpreted as creating a partnership or joint venture or otherwise.

## **21. SEVERABILITY**

21.1 In the event any portion of this Agreement is deemed to be invalid or unenforceable, such portion shall be deemed severed and the parties agree that the remaining portions of this Agreement shall remain in full force and effect.

## **22. ASSIGNMENT**

22.1 Only CPI may assign this Agreement.

22.2 CUSTOMER may not assign its rights and obligations under this Agreement. However, CUSTOMER may assign its rights and obligations under this Agreement to a successor.

## **23. AMBIGUITIES**

23.1 Each Party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement. The language in this Agreement will be interpreted as to its fair meaning and not strictly for or against any Party.

## **24. COUNTERPARTS**

24.1 This Agreement may be executed in counterparts in the same form and such parts so executed shall together form one original document and be read and construed as if one copy of the Agreement had been executed.

## **25. TITLES / HEADINGS**

25.1 Titles and headings to sections herein are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.



## **26. HOSTING ADDENDUM**

26.1 If Hosting is provided in addition to the Maintenance Services described in this Agreement, a Hosting Addendum shall be attached hereto as Exhibit 26.1. If a Hosting Addendum is not attached hereto, then CPI shall not provide Hosting Services.

**27. ENTIRE AGREEMENT**

This document constitutes the entire agreement of the parties known as the CPI MAINTENANCE AGREEMENT. No amendment to this Agreement shall be valid and binding on the parties unless reduced to writing and signed by both parties.

ACCEPTED AND AGREED TO:

Computer Projects of Illinois Inc.

CUSTOMER

\_\_\_\_\_

\_\_\_\_\_

Name: Kevin Sawatzky

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

Title: CEO

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

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

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

**SCHEDULE A**

**COMPUTER PROJECTS OF ILLINOIS, INC.  
POLICY ON ADDITIONAL CHARGES AND EXPENSES**

**HOURLY RATE:** **\$240.00**

**DAILY RATE MINIMUM CHARGE:** **\$2,500.00**

**TRAVEL AND LIVING EXPENSES:**

**Transportation:** **Actual per trip cost - coach class business airfare**

**Lodging:** **Actual cost of accommodations not to exceed \$175.00  
per day**

**Daily Travel Per Diem:** **\$65.00**

**SCHEDULE B**

**COMPUTER PROJECTS OF ILLINOIS, INC.  
POLICY ON TECHNICAL SUPPORT PRIORITIES  
AND ESCALATION PROCEEDURE**

**Issue priorities & service levels**

Each issue logged with the Support Center will be assigned a priority to the discretion of the Support Center team or requested by customer and agreed upon. This will provide customers with some indication as to how quickly the issue will be dealt with and allows us to plan the Support Center workload. Issues will have a targeted response and fix time associated with it according to its priority illustrated in the following table.

**Table - Priority definitions**

<b>Priority</b>	<b>Description</b>	<b>Target response time</b>	<b>Target fix/work around time</b>
Highest	System failure, customer unable to work <b>Call the Support Center</b>	Immediate or within 15 minutes to respond to call	4 hours to resolve or provide a workaround solution
		1 hour allowed for time to respond	
High	Software or peripheral failure, customer unable to perform some key tasks <b>Call the Support Center</b>	Immediate or within 30 minutes to respond to call	8 hours to resolve or provide a workaround solution
		2 hours allowed for time to respond	
Medium	Intermittent hardware/software problem, customer still able to perform key tasks	Immediate or within 30 minutes to respond to call	3 working days to resolve or provide a workaround solution
		6 working hours allowed for time to respond	

Low	Information request, no impact on the customer	Immediate or within 30 minutes to respond to call	1 working week to provide information or advice
		10 working hours allowed for time to respond	

*Priority Table - Issue priority & definitions*

Responding to an issue involves the assigned employee or Support Center member contacting the customer to acknowledge the issue and to indicate to the customer the likely timescale for dealing with the request.

A workaround solution provides a temporary fix when additional time is required to implement a permanent fix. If the problem re-occurs, the ticket should be reopened and updated to reflect the multiple resolutions that have been tried.

**Issue escalation**

During the normal business workday, the support center staff is augmented by CPI programmers and software engineers on-site. These calls are assigned a priority and then assigned to an engineer to contact the customer and find resolution within the designated time frame of the priority.

After normal business hours there is an on-call process in place to provide after-hours assistance. If the Support Center staff is unable to resolve a client issue, he/she then calls the appropriate engineer for the issue. If the engineer on-call is unable to resolve the client issue, the call is further escalated to a senior engineer or manager of the particular department responsible for resolution.

**Support Center process**

A flowchart in Diagram 1 shown on the next page illustrates the processes that will be followed when handling issues made to the CPI Support Center.

# Support Center Process Flow Chart

August 8, 2016

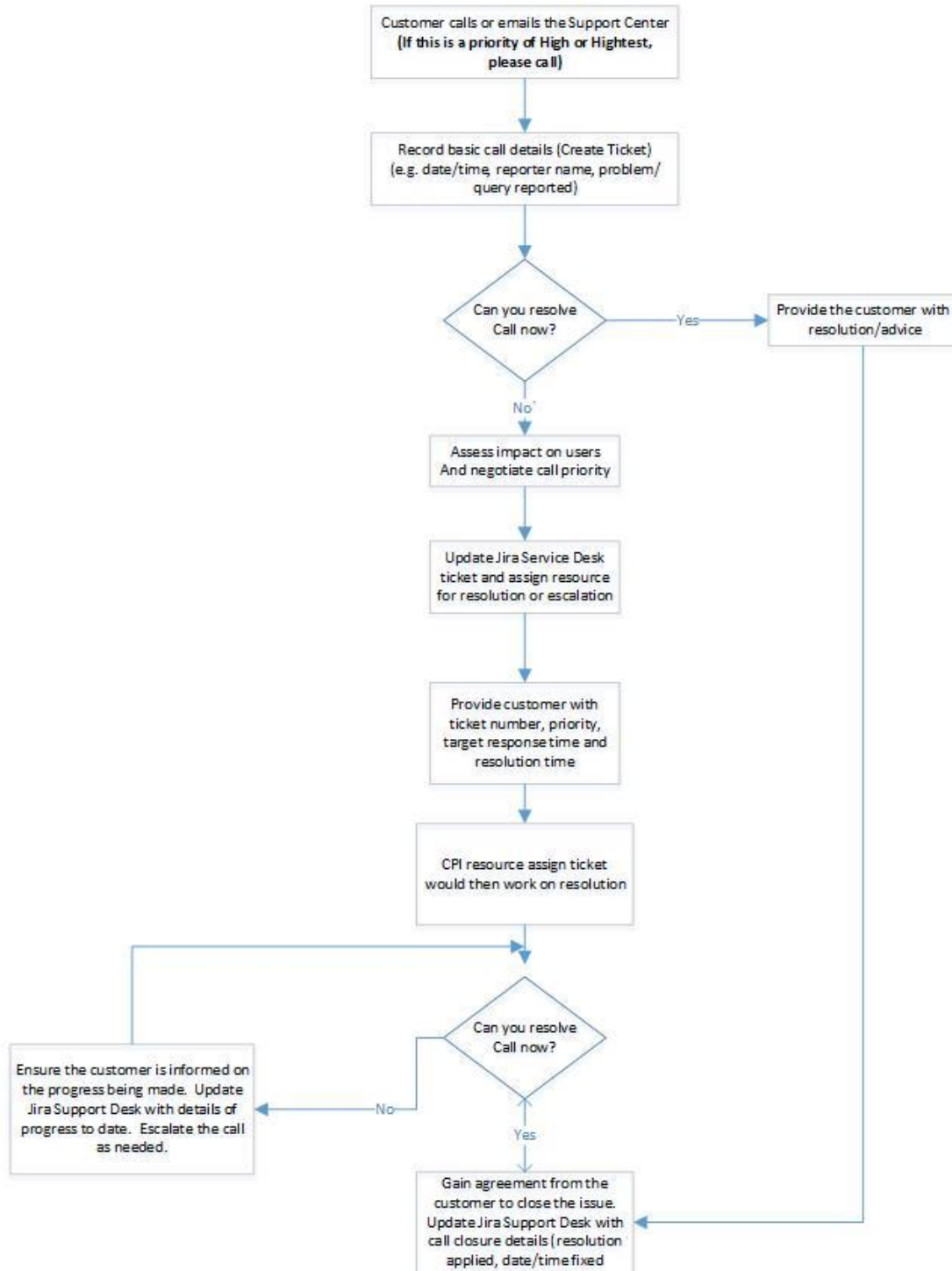


Diagram 1 – Support Center Process Flow Chart