

**RESOLUTION  
CITY OF SAINT PAUL, MINNESOTA**

Presented by \_\_\_\_\_

- 1 WHEREAS, the City of Saint Paul, Police Department wishes to enter into a Master Subscription  
2 Agreement with Kanopy, LLC which includes an indemnification clause and a 30 day cancellation notice  
3 by both parties without penalty; and  
4  
5 WHEREAS, this agreement will allow for access to streaming digital video for essential law enforcement  
6 training; and  
7  
8 THEREFORE BE IT RESOLVED, that the council approves entering into and authorizes Chief Thomas  
9 Smith to implement the agreement with Kanopy, LLC which includes an indemnification clause in a form  
10 and content substantially as set forth in the attached.

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Requested by Department of: **POLICE**

By:  \_\_\_\_\_  
Thomas E. Smith, Chief of Police

# KANOPY MASTER SUBSCRIPTION AGREEMENT

<b>Institution Name and Address:</b> City of St Paul 15 W. Kellogg Blvd Saint Paul, MN 55102	<b>Effective Date:</b> 25 Sept 2015 <b>Institution Contact:</b> Jesse Zimmerman <b>Phone:</b> (651) 266-8597 <b>Email:</b> jesse.zimmerman@ci.stpaul.mn.us
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This KANOPY MASTER SUBSCRIPTION AGREEMENT is by and between Kanopy LLC, a Delaware limited liability company, with a notice address of Level 4, 781 Beach St, San Francisco, CA, 94109 ("Kanopy") and The City of St. Paul ("Institution"). Kanopy and The City of St. Paul hereby agree as follows:

Kanopy streams digital video content (and associated audio, graphics, text, images and other data) to universities, colleges, schools, and other educational institutions which use such content for viewing purposes only within their institution. Kanopy can also host and stream digital video content uploaded by such institutions where the institutions own the streaming rights for such content and this Agreement includes provisions to permit the use of this hosting service if purchased hereunder. This Agreement is intended to provide the basis for an ongoing relationship between Kanopy and Institution, establishing the terms of use for any films licensed from or hosted with Kanopy over the Term of the Agreement. The terms of any purchases that Institution may make over the course of the Term - including Products, Price, Subscription Terms, and Territorial and/or Authorized Use restrictions (if applicable) - are governed by the specific Orders made by Institution and Kanopy.

Kanopy's online digital video content for which licenses are available for purchase are provided by Kanopy via the online platform at <http://www.kanopystreaming.com/shop> and/or other designated websites ("Website"). Institution may order and purchase a license to such content (such content for which a license has been purchased and their associated data and accompanying search and retrieval software (as updated from time to time) are the "Products"). When an order is received from the Institution (via mail, email, online purchase request, phone, fax, or otherwise) Kanopy will generate an invoice and send it to Institution, and such invoice is an "Order" hereunder. Institution may also order and purchase the right to upload the Institution's digital video content to the Website for hosting by Kanopy for access and viewing by Institution and its Authorized Users (each such content defined in an Order is "Institution Content") through Orders. Access will be given to the Products and Institution Content (as applicable) via the following URL: [citstpaul.kanopystreaming.com](http://citstpaul.kanopystreaming.com) ("URL")

This Master Subscription Agreement is comprised of (in order of preference) (a) this signature page, (b) Exhibit A (General Terms and Conditions), (c) Orders, (d) the Terms of Use (available at [www.kanopystreaming.com/terms](http://www.kanopystreaming.com/terms), which govern Institution's use of the Website and URL), (e) the Privacy Policy (located at [www.kanopystreaming.com/privacy](http://www.kanopystreaming.com/privacy), which governs the registration data and other information Kanopy collects when Institution uses the Website and URL), and (f) any documents incorporated by reference into any of the foregoing; (collectively, the "Agreement"). Notwithstanding the foregoing, to the extent of any conflict or inconsistency between this Agreement and Kanopy's Privacy Policy and Terms of Use for the Website and URL through which Institution accesses the Products and Institution Content, the terms of Kanopy's Privacy Policy and Terms of Use shall prevail for the subject matter covered therein.

IN WITNESS WHEREOF, Kanopy and Institution have caused this Agreement to be executed by their respective, duly authorized officers or representatives, effective as of the Effective Date.

**KANOPY LLC**

By



\_\_\_\_\_  
**Authorized Signature**

Olivia Humphrey

\_\_\_\_\_  
**Name (type or print)**

CEO

\_\_\_\_\_  
**Title**

**INSTITUTION**

By

## Exhibit A General Terms and Conditions

### 1. Licenses; Services.

1.1 License to Institution. Subject to the terms and conditions of this Agreement, for the applicable Subscription Term, Kanopy grants to Institution a nonexclusive, nontransferable, limited license, without right of sublicense, to access and exhibit the Product(s) and Institution Content (as applicable) on a streaming-only basis via the URL and through Kanopy's search and retrieval software (which forms part of the Product) only in the Territory to the Authorized Users for the Authorized Use and in compliance with all applicable laws in the Territory ("License"). "Authorized Users" means Institution's currently enrolled students, employees, faculty, staff, affiliated researchers, distance learners, authorized attendees at educational classes hosted by the Institution, and visiting scholars authorized to view the Product(s) and Institution Content including by remote access through an authentication (proxy) server that guarantees access only by Authorized Users. Certain Products (e.g. Hollywood titles) may have Territory-restrictions on viewership, in which case these restrictions will be made known to the Institution at the time of purchase in the Order. "Authorized Use" means real-time viewing of a digital transmission or another Authorized Use as stated in an Order. "Subscription Term" means the term specified in the Order. "Territory" means the geographical area specified in the Order, if none is specified, the Territory is the United States,

1.2 Restrictions on Use. Kanopy reserves all rights not granted herein. Institution shall not, and shall not permit any third party to: (a) copy, store, upload or download, or otherwise reproduce the Product(s) or the software or systems supporting the Products (collectively, the "Kanopy IP"); (b) use the license to access products for which a subscription has not been purchased; or (c) decompile or reverse engineer, reverse compile, disassemble, or access the source code for, stream capture, archive, download, broadcast, transmit, retransmit, circumvent content protections of, scrape, use any data mining, data gathering or extraction method on, modify or create a derivative work of, remove, obscure, or modify copyright notices for, sell, rent, lease, loan, market, distribute, commercially exploit, transfer, assign, or sublicense, recreate, display (except as permitted), perform, post, use, replicate, frame, mirror, disclose, publish, or translate the Kanopy IP, or any component thereof.

1.3 Services. Kanopy shall use commercially reasonable efforts to stream the Products (and to host and stream the Institution Content where applicable), including scanning for viruses; to provide sufficient capacity and rate of connectivity to provide the Institution with a quality service; and to make the Products and Institution Content available with an average of 28 days of up-time per month and to perform scheduled downtime at low-usage times. Kanopy will offer reasonable levels of continuing support via email, phone or fax, during normal business hours in California, for feedback, problem-solving, or general questions. Any technical assistance that Kanopy may provide to the Institution is provided at the sole risk of the Institution.

1.4 Ownership. The Products and Kanopy IP and any other materials, processes, know-how and the like utilized by and created by Kanopy in the provision of the services are owned by or licensed to Kanopy and are subject to copyright and

other intellectual property rights under United States and foreign laws and international conventions.

1.5 Indemnification. With the approval of the St. Paul City Council, the Institution shall indemnify and hold Kanopy harmless from any claims, damages, liabilities and losses (including reasonable attorney's fees and expenses) arising out of any inaccuracy or incompleteness of information provided by Institution hereunder, breach of Institution's representations, warranties or obligations under this agreement, or misuse or breach of any License by or via Institution.

2. Institution Content License. This Section 2 shall apply only if Institution is hosting Institution Content with Kanopy via the URL. Where Institution Orders hosting services for the Institution Content, Institution grants to Kanopy a nonexclusive, sublicensable, royalty-free, license in the Territory to upload, host, store, transmit, stream, reproduce, display and exhibit the Institution Content for Institution during the Subscription Term. Institution shall deliver the Institution Content to Kanopy in the format determined by Kanopy at Institution's expense. Institution retains ownership rights to Institution Content. Institution represents and warrants that: (a) Institution owns or has the necessary rights and licenses (including intellectual property rights) to grant the license set forth in this Agreement; (b) Institution has procured all written consents, releases, and/or permissions to enable inclusion and use of the Institution Content in the manner contemplated herein, including the consent, release and/or permission of every identifiable individual person in the Institution Content to use the name or likeness of such identifiable individual person; (c) Institution Content shall not contain any malware, unlawful or tortious material, including material that violates privacy rights; and (d) Institution shall comply with Kanopy's acceptable use policy ([www.kanopystreaming.com/aup](http://www.kanopystreaming.com/aup)). Institution acknowledges that it is solely responsible for all Institution Content and its use and that Kanopy shall make no independent assessment or evaluation thereof. Institution shall indemnify and hold Kanopy harmless from any claims, damages, liabilities and losses (including reasonable attorney's fees and expenses) relating to the Institution Content.

### 3. Price and Term.

3.1 Price. Institution shall pay the fees as specified on the applicable Order for the license to the Products or hosting/streaming of the Institution Content during each Subscription Term ("Price"). The Price is quoted and payable in the currency as stated based on Products purchased, and payment obligations are non-cancelable and fees paid are not refundable. Fees and charges may change periodically and Products may cease to be available for renewal in subsequent Subscription Terms. Kanopy will use all reasonable endeavors to keep the Website up to date with changes to the content and cost of the Licenses for the Products. The Price is exclusive of all taxes, which are Institution's responsibility. Institution is responsible for all internet/wireless access charges.

3.2 Term of Agreement. This Agreement will commence on the Effective Date and remain in effect until terminated by Kanopy or Institution in accordance with Section 3.3. Subscriptions are for the applicable Subscription Term as specified in the Orders, unless earlier terminated as set forth

herein.

3.3 **Termination.** The City of Saint Paul may terminate this agreement for any reason on 30-days written notice. If either party breaches any of the terms or conditions of this Agreement and fails to cure such breach within 14 days after written notice thereof, the other party shall have the right to terminate this Agreement (including all Orders) with written notice. If all Orders are terminated or not renewed, this Agreement shall terminate. Kanopy may suspend access for late payment, or if Kanopy, in its reasonable discretion, believes the Kanopy IP is at risk. On termination of this Agreement, all amounts past due shall be due, all licenses shall end, Institution shall cease use of the Products, Kanopy shall return to Institution, or destroy, the Institution Content, each party shall return other Confidential Information, and the following terms shall survive: 1.2, 1.4, 1.5, 2 (last sentence only), 3.1, 3.3, 5, 6 and 7.

4. **Warranty and Disclaimer.** Kanopy warrants that it has the right to grant the License to the Products. THIS WARRANTY IS IN LIEU OF ANY AND ALL OTHER WARRANTIES HEREUNDER, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, SATISFACTORY QUALITY, SECURITY, VIRUSES, DELAYS, AND ACCURACY, ALL OF WHICH KANOPY AND ITS LICENSORS DISCLAIM.

5. **LIMITATION OF LIABILITY.** In no event shall Kanopy or its licensors be liable under or as a result of this Agreement to Institution, Authorized Users or any other third party for any indirect, special, incidental, punitive, consequential or exemplary damages (including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, lost or corrupted data, lost profits, loss of use, lost business or lost opportunity), or any other similar damages even if Kanopy has been informed of the possibility thereof. In no event shall Kanopy's total, cumulative liability under or as a result of this Agreement exceed the amount of fees actually paid by Institution to Kanopy during the twelve (12) months prior to the first event giving rise to such loss, cost, claim, legal action or damages. The limitations of liability set forth in this Section 5 and exclusion of certain damages shall apply regardless of the theory of liability (contract, tort, strict liability or otherwise) or success or effectiveness of any of the exclusive remedies provided for under this Agreement.

6. **Confidentiality.** This Agreement and all other nonpublic information furnished hereunder by either party are the proprietary and confidential information of the disclosing party. Each party as a recipient shall hold such proprietary information in confidence (using at least a reasonable standard of care), shall not use such proprietary information except for the fulfillment of this Agreement, and may only disclose such proprietary information to those of its employees and subcontractors (and for Institution, only its Authorized Users) who have a need to know and who are bound by obligations of confidentiality similar to the terms set forth in this Section 6. The parties agree to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations and standards established by any agency of such governmental units, including the Minnesota Government Data Practices

Act, insofar as they relate to the performance of the provisions of this Agreement

7. **Miscellaneous.** Kanopy will not be responsible for any delay or failure to perform resulting from any cause beyond Kanopy's control, including any force majeure event, or any termination of a third party supplier agreement. The parties agree to use their best endeavors to resolve any disputes under this Agreement promptly. The laws of the State of Minnesota govern this Agreement and, to the extent permitted by law the parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Minnesota. The UN Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Kanopy may freely subcontract. Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party (not to be unreasonably withheld), except to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. This Agreement shall inure to the benefit of the parties, their respective successors and permitted assigns. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings, and agreements whether written or oral relating to the subject matter of this Agreement. No amendment or waiver of any provision of this Agreement shall be valid or binding unless agreed to in writing by the parties. If a term or condition of this Agreement is invalid or unenforceable, the remaining terms and conditions shall remain in full force and effect and shall be enforceable to the maximum extent permitted by law. If an electronic version of this Agreement has or is agreed to by Institution's user(s) separately, then this Agreement shall supersede such electronic version(s). In this Agreement headings are for convenience only and do not effect interpretation. Kanopy and Institution are independent contractors. Neither party will represent that it has any authority to assume or create any obligation, expressed or implied, on behalf of the other party. All notices shall be in writing and shall be delivered personally or by fax or mailed by registered or certified mail, first class, postage prepaid, to the parties hereto at their addresses specified herein, subject to the right of either party to change its address by written notice. Any communication required or permitted hereunder shall be deemed delivered upon personal delivery, and faxing (with fax conformation sheet), or 48 hours after deposit in any official post box.