

RESOLUTION CITY OF SAINT PAUL, MINNESOTA

Presented by _____

1 WHEREAS, the City of Saint Paul, Police Department is requesting authorization to enter into two
 2 agreements with Coplogic, Inc. both including an indemnification clause; and
 3
 4 WHEREAS, these agreements are for the DeskOfficer Online Reporting System (DROS); and
 5
 6 WHEREAS, these agreements include the Set Up and Subscription License Agreement and the
 7 Support and Maintenance Agreement; and
 8
 9 THEREFORE BE IT RESOLVED, the Saint Paul City Council authorizes the City of Saint Paul to enter
 10 into, and Chief Thomas E. Smith to implement the attached agreements, which include an
 11 indemnification clause, with Coplogic, Inc.
 12

	Yeas	Nays	Absent
Bostrom			
Brendmoen			
Lantry			
Stark			
Thao			
Thune			
Tolbert			

Requested by Department of: **POLICE**

By: 
Thomas E. Smith, Chief of Police

Form Approved by City Attorney

By: _____

Adopted by Council: Date _____

Adoption Certified by Council Secretary

By: _____

Approved by Mayor: Date _____

By: _____

Form Approved by Mayor for Submission to Council

By: _____

DeskOfficer Online Reporting System (DORS) SUPPORT AND MAINTENANCE AGREEMENT

THIS SUPPORT AND MAINTENANCE AGREEMENT (“Support and Maintenance Agreement”) is made on this 3rd day of February, 2014, by and between the City of St. Paul located at 15 West Kellogg Boulevard, Room 280, City Hall, Saint Paul, MN 55102, a municipal corporation under the laws of the state of Minnesota ("Licensee") and Coplogic, Inc., an existing California corporation, whose address is 231 Market Place #520 San Ramon, CA 94583 (“Licensor”).

RECITALS

Licensee has obtained a nonexclusive, nontransferable enterprise license to use the DeskOfficer Online Reporting System (“Software”) for the term of that agreement, more particularly described in the Setup and Subscription License Agreement (“License Agreement”), of the same date. As a part of the Support and Maintenance Agreement, Licensor shall provide support and maintenance services for the Software.

SUPPORT AND MAINTENANCE SERVICES

1. Generally. During the duration of this Support and Maintenance Agreement, Licensor shall provide to the Licensee a subscription license, as well as support and maintenance for the purchased Software, in accordance with the terms of the License Agreement, this Support and Maintenance Agreement and the response time described in Schedule A, attached hereto. Support includes an annual review of current outstanding questions and usage issues at Licensee’s request; the provision of new and upcoming releases of updates; and enhancements made to the licensed Software 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 Licensee requests customizations to the Software.
2. Hours of Support. Licensor will provide the support services during the hours as described in Schedule A attached hereto.
3. New Releases. Licensor will, from time-to-time issue new releases of the software (Schedule B), and when it does, it will provide a copy of the release documentation, and/or updated user or system documentation. If any part of the Licensee’s custom code is not part of the general release delivered by Licensor, then Licensor 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 Licensor assistance to modify may be billed at Licensor’s then current pricing schedule.
4. Exceptions. Corrections for difficulties or defects traceable to the Licensee's errors or unauthorized changes, Licensee's hardware, or conflicts with other software not identified by Licensor as compatible or part of the recommended operating environment may be subject to billing at Licensor’s current standard time and material charges.

5. Limitations. Licensor may, in its sole discretion, limit or suspend Licensee's access to support, pursuant to this Support and Maintenance Agreement if Licensee fails to pay maintenance fees according to this Agreement or fails to meet Licensee's Obligations as described in section 11, 12, 13 and 14 of this Agreement. Prior to limiting or suspending support, Licensor will give the Licensee thirty (30) days written notice of its intention to do so and actively participate with the Licensee to remedy any such default or failure.
6. Term. This Support and Maintenance Agreement commences upon the earlier of 1) 30-days after Licensee's Final Acceptance or 2) May 1, 2014 and expires one year after its commencement date. Within thirty (30) days prior to its expiration, Licensor shall send to the Licensee an invoice for an annual license, support and maintenance fee ("Annual Fee"). The sending of any such invoice will constitute an irrevocable offer to extend the Support and Maintenance Agreement for the period and fees set forth in the invoice, which may be accepted by the Licensee in its sole discretion as hereinafter set forth. Termination of the Support and Maintenance Agreement prior to its expiration shall not result in the refund of partial service fees.

The Licensee's payment of an Annual Fee in response to an invoice prior to the expiration date of the Support and Maintenance and Agreement, or within thirty (30) days after the date of Licensor's invoice, whichever is later, will extend the License, Support and Maintenance Period for the period of one year from its previous expiration date, or for the period set forth in the invoice if different.

7. Adjustments to Terms and Conditions. Licensor may change the Annual Fee and the terms and conditions of this Support and Maintenance Agreement provided that written notice is given to the Licensee thirty (30) days prior to the expiration of the current term.

COST

8. Annual Fee. The Licensee shall pay Licensor an Annual Fee for which the Software license and support is being provided (see Schedule B for base Annual Fee). The Annual Fee for the first (1st) year is due upon the earlier of 1) Final Acceptance of the Software or 2) May 1, 2014 and will then reoccur on the anniversary date of the execution of this agreement for each year thereafter. For a period of three (3) years following execution of this Support and Maintenance Agreement, the Annual Fee shall not increase by more than 5% of the previous year's Annual Fee. All requests by the Licensee for additional features or functionality that fall outside of Licensor'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 forty-five (45) days after their due date will be assessed a 10% late fee.

9. Taxes. In addition to other amounts payable under this Support and Maintenance Agreement, Licensee shall pay any and all federal, state, municipal, or other taxes, duties, fees, or withholding currently or subsequently imposed on Licensee's use of the Software or the payment of the Annual Fee to Licensor, other than taxes assessed against Licensor's net income. Such taxes, duties, fees, withholding, or other charges shall be paid by Licensee or Licensee shall provide the appropriate authority with evidence of exemption from such tax,

duty, fee, withholding, or charge. If Licensor is required to pay any such tax, duty, fee, or charge, or to withhold any amount from monies due to Licensor from Licensee pursuant to this Support and Maintenance Agreement, Licensee shall promptly reimburse Licensor any such amounts.

10. On Site Support. No on site support is anticipated under this Agreement. Licensee may contract for on site support at the rate of USD\$2,500.00 per day for each Licensor employee or contractor required for any On-Site support incurred at the Licensee's direct written request and authorization. This rate shall be paid for each day that Licensor personnel are required to be on the Licensee's site. Licensee will not pay for Licensor personnel travel time or travel expenses. In response to written Licensee requests for Licensor to provide on-site routine non-emergency support, Licensor shall produce a written estimate of the time required to provide the requested support and state any requirements, such as the presence of Licensee staff or other resources or materials. Any On-Site Support provided by Licensor shall only be invoiced by Licensor or paid by Licensee if the problem arose due to something other than a defect in the Software.

LICENSEE'S OBLIGATION

11. The Licensee Agrees to:

- (a) Furnish descriptions of problem(s) in the form reasonably requested by Licensor Support representatives;
- (b) Assist Licensor's efforts to reproduce the problem(s) in the applicable operating environment, and
- (c) Make available qualified, trained staff on-site to carry out Licensor's instructions and/or provide supervised remote access to the exporter.

12. The Licensee shall designate a sole Support Contact to provide routine end user support for the Licensee personnel concerning the Product.

13. The Licensee shall take appropriate steps to educate its end users about the need to contact the Support Contact (rather than Licensor directly) when support is needed. The Licensee shall appropriately publicize the name, telephone number, and/or fax number and/or electronic mail address if applicable, of the Support Contact.

14. Access to Data and System. The Licensee agrees to provide Licensor with data dumps, as requested, supervised remote access to the exporter, sufficient test time to duplicate the problem, to certify that the problem is with the Software, and to certify that the problem has been corrected.

The Licensee shall install and maintain for the term of this Support and Maintenance Agreement, a reasonable and satisfactory method of supervised remote computer access to the exporter. The Licensee shall pay for the installation and maintenance of such access. Licensor 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 Licensee, and Licensee's acknowledgment of that notice. All access must be for limited and defined time periods and must be supervised by Licensee's personnel.

15. Licensor agrees that all release versions will be tested for installation in a computer environment substantially similar to the Licensee's and that all releases will be free of material defects that would affect the orderly continuation of Licensee's use of the Product.
16. The parties agree that Licensor is not obligated to ensure that its new release of the Software is compatible with outdated (exceeding 4 years from date of initial release) hardware, computer operating software or database engines).

CONFIDENTIALITY

17. Confidential Information.

- (a) The term "Confidential Information" shall mean any and all information, which is disclosed by either party to the other verbally, electronically, visually, or in a written or other tangible form, which either is identified as confidential or proprietary. Confidential Information includes, but is not limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Licensor's business, as Licensor has conducted it or as it may conduct itself in the future, confidential information concerning any of Licensor's past, current, or possible future products or manufacturing or operational methods, including information about Licensor's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling or leasing, and any software (including third party software) provided by Licensor. Licensor's Confidential Information shall be treated as nonpublic or private by Licensee and shall not be disclosed by Licensee except to those third parties with a need to know and that are operating under a confidentiality agreement with non-disclosure provisions no less restrictive than those set forth herein. This Agreement imposes no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (i) was in the possession of, or was rightfully known by the Licensor without an obligation to maintain its confidentiality prior to receipt from other party; (ii) is or becomes generally known to the public without violation of this Agreement; (iii) is obtained by Licensee in good faith from a third party having the right to disclose it without an obligation of confidentiality; (iv) is independently developed by Licensee without the participation of individuals who have had access to the Confidential Information or (v) is required to be disclosed by court order or applicable law. The Licensee shall not obtain, by virtue of this Agreement, any rights title or interest in any Confidential Information of the Licensor. Within fourteen (14) days after termination of this Agreement, each party shall certify in writing to Licensor that all copies of Licensor's Confidential Information in any form, including partial copies, have been destroyed or returned to Licensor.
- (b) Licensor acknowledges that the Licensee is a governmental agency and is required to disclose certain information under requests made according to provisions of the Minnesota Government Data Practices Act, codified at Minnesota Statutes chapter 13 ("MGDPA"). Licensee shall give notice to Licensor of any request for the disclosure of any information set apart and marked "confidential," "proprietary" or "trade secret" by Licensor. Licensor shall then have five (5) days from the date it receives such notice to enter into an agreement with Licensee providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney's fees)

incurred by Licensee in any legal action to compel the disclosure of such information under the MGDPA. Licensor 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 Licensor to respond to the notice provided by Licensee and/or to enter into an agreement with Licensee, as set forth above, shall constitute a complete waiver by Licensor of any nondisclosure or confidentiality rights hereunder with respect to such information, and such information shall be disclosed by Licensee pursuant to applicable procedures required by the MGDPA.

- (c) The parties agree to strictly abide by the MGDPA, and all other applicable federal or state laws and regulations pertaining to law enforcement data. All data created, collected, received, stored, used, maintained, or disseminated in the performance of this Agreement is subject to the requirements of the Minnesota Government Data Practices Act. If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota laws, state law will control.
- (d) Licensor will take all reasonable measures to secure the computers or any other storage devices in which Licensee's data is contained or which are used to access Licensee's data for this Agreement. Additionally, access to Licensee's data must be limited to those persons with a need to know for the provision of services by Licensor. These measures include, but are not limited to, authenticated access to network data storage, use of up-to-date anti-virus software, controlled access to the physical location of the hardware, and the encryption of computers and storage devices. In the event Licensor ceases services or operations, or at the conclusion or termination of all agreements between Licensee and Licensor, within fourteen (14) days, all Licensee data will be returned to Licensee in a Licensee-approved format and then purged from Licensor's computers and storage devices. Licensor will give Licensee written verification that the data has been purged.
- (e) Licensee shall protect the deliverables resulting from Services with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which Licensee utilizes for Licensee's protected information.
- (f) The terms of this Section 17 shall survive termination of this Agreement.

TERMINATION

18. The Licensee may terminate this Agreement at any time and for any reason upon thirty (30) days prior notice to Licensor.

In the event Licensee fails to pay Licensor according to this Agreement, Licensor may terminate this Agreement upon thirty (30) days prior notice to Licensee, provided that Licensee has been given thirty (30) days notice to cure the default.

LIMITATION OF LIABILITY

19. 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 Support and Maintenance 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 Licensor under this Support and Maintenance Agreement, Licensor agrees to fully defend, indemnify and hold harmless Licensee, 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 Licensor, its officers, employees, agents, contractors and assigns. Licensor's obligation hereunder is contingent upon Licensee providing Licensor prompt written notice of any such claim, action, lawsuit or other proceeding and Licensee shall fully cooperate with Licensor 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

20. 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 Licensor without the prior written approval of the Licensee, which approval shall not be unreasonably withheld.
21. This Agreement, together with 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.
22. 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.
23. This Support and Maintenance 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.
24. Any provision of this Support and Maintenance 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.

25. This Support and Maintenance Agreement shall be governed and construed in accordance with the laws of the State of Minnesota. Venue of any action brought with regard to this Support and Maintenance Agreement shall be in Ramsey County, Minnesota.

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

**Coplogic, Inc.
(LICENSOR)**

**City of St. Paul,
a Municipal Corporation (LICENSEE)**

(Signature)

James Lee Chief Operating Officer

Mayor

Chief of Police

(Date)

Director, Office of Financial Services

As to Form:

Assistant City Attorney

SCHEDULE A

Licensors 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: Licensors staff at
support@coplogic.com

E-mail received by: Licensors 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 Licensors receipt of verbal, written or electronic notice thereof and to correct the Priority B Issue by the Licensee’s reasonably requested date. If the Priority B Issue is not corrected within 2 business days of the original notification Licensors will provide the Licensee with reports of its efforts to correct the Priority B Issue as requested by Licensee.	Not available

C	As time permits basis or inclusion in the next scheduled update to the Licensed Product.	Not available
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1. Incident/Request for Service Reporting Procedure

All problems, queries or requests for assistance must be made to Licensor at support@coplogic.com.

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

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

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

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

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

SCHEDULE B

Coplogic DeskOfficer Online Reporting System version 6.2.0.3, including all updates, modifications, and releases provided by Licensor.

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

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

DeskOfficer Online Reporting System (DORS)

SETUP AND SUBSCRIPTION LICENSE AGREEMENT

THIS SETUP AND SUBSCRIPTION LICENSE AGREEMENT is made on this 3rd day of February, 2014, by and between the City of St. Paul located at 15 West Kellogg Boulevard, Room 280, City Hall, Saint Paul, MN 55102, a municipal corporation under the laws of the State of Minnesota and hereafter referred to as "Licensee" and Coplogic Inc., an existing California corporation with a principal place of business at 231 Market Place, Suite #520, San Ramon, CA 94583 and hereafter referred to as "Licensor".

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

- (a) "**Documentation**" means technical manuals, training manuals, user guides, workbooks, marketing materials, and release notes, as updated and amended from time to time, provided by Licensor to assist Licensee with the use of Software.
- (b) "**Software**" means all or any portion of the global version of the binary computer software programs and updates and enhancements thereto, and Documentation hosted by Licensor on behalf of Licensee or delivered by Licensor to Licensee. Software includes any third-party software delivered by Licensor and modifications made to the Software. Software does not include source code to third party software. Unless specifically stated otherwise, all Software is delivered to Customer only if and when generally commercially available.
- (c) "**Install**" means placing the Software on a computer's hard disk.
- (d) "**Use**" means (i) executing or loading the Software into computer RAM or other primary memory, and (ii) copying the Software for archival or emergency restart purposes.
- (e) "**Final Acceptance**" means the Licensee's final written acceptance of the Software following an uninterrupted 30 days of use after Go Live with no Software defects or errors.
- (f) "**Go Live**" means the event that occurs when Licensee first uses the Software in live production for the purposes and benefits set out in the Documentation.

2. GRANT OF RIGHTS AND SCOPE OF SERVICES

Licensor hereby grants to Licensee a nonexclusive, nontransferable enterprise license to use the Software on Licensor's servers for the term of this Agreement. Licensor also agrees to provide the services listed in the Scope of Services attached hereto as Exhibit "A" and made a part hereof. All requests by the Licensee for additional features or functionality that fall outside of Exhibit "A" Scope of Services shall be addressed following the "go-live" date of

the Software and shall be quoted separately.

3. LICENSE TERM

4. This Agreement and this license are effective when the Agreement is executed by both parties and the license granted to the Software remains in force until terminated in accordance with paragraph 6 of this Agreement.

5. COST AND FEES

Licensee agrees to pay Licensor a one-time setup and implementation fee in the amount of USD\$20,000.00, upon execution of this Agreement.

Licensee further agrees to pay Licensor license and maintenance fees for the first year licensing, maintenance, and support in the amount of USD\$15,000.00, as outlined in the Support and Maintenance Agreement. The Support and Maintenance period will commence upon the earlier of a) 30 days after Licensee's Final Acceptance or b) May 1, 2014, and payment of the license and maintenance fees shall be due at that time. All payments shall be made within thirty-five (35) days from the date of invoice by electronic funds transfer to the Licensor's account specified in writing, or by check made payable to "Coplogic, Inc." and delivered to 231 Market Place, Suite #520, San Ramon, CA 94583

Taxes. In addition to other amounts payable under this Agreement, Licensee shall pay any and all federal, state, municipal, or other taxes, duties, fees, or withholding currently or subsequently imposed on Licensee's use of the Software or the payment of the License Fee to Licensor, other than taxes assessed against Licensor's net income. Such taxes, duties, fees, withholding, or other charges shall be paid by Licensee or Licensee shall provide the appropriate authority with evidence of exemption from such tax, duty, fee, withholding, or charge. If Licensor is required to pay any such tax, duty, fee, or charge, or to withhold any amount from monies due to Licensor from Licensee pursuant to this Agreement, Licensee shall promptly reimburse Licensor any such amounts.

6. TERMINATION

Licensee may terminate this Agreement at any time on thirty (30) days written notice to Licensor. Licensor shall have the right to terminate this License on thirty (30) days written notice to Licensee if Licensee fails to pay any amount due to Licensor under this Agreement or the Support and Maintenance Agreement, fails to identify a designated point of contact, fails to provide Licensor with adequate data to perform services under the Agreement, or if Licensee fails to perform any obligation required of Licensee under this License, as more fully described in the section "LICENSEE'S OBLIGATION" in the accompanying DESKOFFICER ONLINE REPORTING SYSTEM SUPPORT AND MAINTENANCE AGREEMENT, or if Licensee becomes bankrupt or insolvent.

On termination, Licensee will promptly return all copies of the Software to Licensor or destroy all of Licensee's copies of the Software and so certify to Licensor in writing within fourteen (14) days of termination.

7. RIGHTS UPON TERMINATION

Licensor has and reserves all rights and remedies that it has by operation of law or otherwise to enjoin the unlawful or unauthorized use of Software or Documentation. Upon termination

of this License, all rights granted to Licensee under this Agreement cease and Licensee will promptly cease all use and reproduction of the Software and Documentation, and Licensee shall return to Licensor or destroy the original and all copies of the Software and Documentation including partial copies and modifications.

Sections 9, 10, 11, and 12 will survive termination or expiration of this Agreement as will any cause of action or claim of either party, whether in law or in equity, arising out of any breach or default.

8. TITLE TO SOFTWARE

Licensor retains title to and ownership of the Software and Documentation and all enhancements, modifications and updates of the Software or Documentation. Licensee shall not distribute the Software to any persons or entities other than Licensee's employees as designated solely by Licensee. Licensee may not sell the Software to any person or make any other commercial use of the software. Licensee shall retain all copyright and trademark notices on the Software and Documentation and shall take other necessary steps to protect Licensor's intellectual property rights.

9. MODIFICATION AND ENHANCEMENTS

Licensee will make no efforts to reverse engineer the Software, or make any modifications or enhancements or derivative works based on the Software without Licensor's express written consent.

10. WARRANTY

9.1. Title. Licensor warrants that it owns or has the right to license to City all of the Software licensed under this Agreement.

9.2. Software and Functionality Warranty. At the time of delivery of the Software, Licensor warrants that: (a) the Software will be free of material defects, (b) Licensor will have timely used up-to-date, commercially available virus scanning and cleaning, and will not deliver Software containing viruses, time bombs, drop dead device, Trojan horse, work, harmful code, or other software routines designed to permit unauthorized access; to disable, erase, or otherwise harm software, hardware, or data; to disable a computer program automatically with the passage of time; or to perform any other such actions that inhibit Software use, (c) the Software does not contain malicious code; (d) the Software is complete and stable and City is not a beta test site or early adopter for any part of the Software, and (e) the Software will operate materially and substantially in accordance as described in the Documentation, this Agreement, and Appendices to this Agreement in the City's environment as configured on the Effective Date of this Agreement.

9.3. Illicit and Embedded Code Warranty. Licensor warrants that the Software contains no illicit code. Illicit code includes, but is not limited to anything not required to perform the functions that City contracts for under this Agreement. Licensor warrants that the Software does not contain any keys that could include any locks, time-outs or similar devices that restrict City's access. Licensor warrants that the Licensed Software does not contain any illicit code that would allow Licensor unauthorized access to City's systems or software. If any illicit code is found, Licensor will be considered to be automatically in default and violation of this Agreement.

Licensor further warrants against unauthorized use of embedded code at any time.

9.4. Patent and Copyright Warranty. Licensor warrants that the Software does not and will not infringe on any patent, copyright, trade secret, trademark, or any other third party proprietary rights.

9.5. Compliance Warranty. Licensor warrants that the Licensed Software complies with all applicable state and federal laws and regulation.

9.6. Ability to Perform. Licensor warrants that they are financially capable of fulfilling all requirements of this Agreement, that there are no legal proceedings that could threaten performance of this Agreement, and that Licensor is a validly organized entity with authority to enter into this Agreement. Licensor is not prohibited by any loan, contract, financing arrangement, or similar restriction from entering into and performing this Agreement. Licensor further warrants that it will immediately notify City if Licensor becomes aware of any action, suit, proceeding, or decision, pending or threatened, that will have a material adverse effect on its ability to fulfill this Agreement.

9.7. Pass-Through of Warranties. Licensor hereby passed through the benefits of any third-party warranties that Licensor receives in connection with the Software and will promptly identify all such warranties to City.

THE WARRANTY GRANTED HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Licensor's entire liability and Licensee's sole and exclusive remedy for breach of the foregoing warranty shall be, at Licensor's option, to:

- Return to Licensee the license and maintenance fee for the period in which the Software did not perform according to this warranty, or
- Repair the defects, or
- Replace the Software, or
- Direct damages for violation of any of these warranties up to the limit of Licensor's insurance coverage under this Agreement.

11. INDEMNITY

Licensor shall indemnify, hold harmless, and defend, with counsel acceptable to Licensee, the Licensee (including its elected officials, officers, agents and employees) from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees) resulting or arising from performance, or failure to perform, under this Agreement.

Claims which trigger Licensor's responsibility under this Section 10 shall include any claims that the Software resulting from the provision of Services pursuant to the attached Exhibit A Scope of Services infringes any patent, trademark, service mark, copyright, or accidental or intentional violation of a trade secret or other intellectual property of a third party not

included in this Agreement. Licensor shall, in its reasonable judgment and at its option and expense: (i) obtain for the Licensee the right to continue using the Software; or (ii) replace or modify the Software so that it becomes non-infringing while giving equivalent performance. Licensor shall not have any liability for a claim alleging that any Software infringes a patent or copyright if the alleged infringement was developed based on information furnished by the Licensee or if the alleged infringement is the result of a modification made by the Licensor, at the direction of the Licensee or with Licensee approval. Licensee shall be responsible for maintaining appropriate licenses for software not provided by Licensor.

Licensee shall indemnify, hold harmless, and defend, with counsel acceptable to Licensor, the Licensor (including its officers, agents and employees) from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees) resulting or arising from or incurred in connection with, Licensee's use or reproduction of the Software pursuant to this Agreement.

Should any claim subject to indemnity be made against Licensor or Licensee, the party against whom the claim is made agrees to provide the other party with prompt written notice of the claim. The indemnifying party will control the defense and settlement of any claim with respect to which it has a duty to indemnify under this section 10. The indemnified party agrees to cooperate with the indemnifying party and provide reasonable assistance in the defense and settlement of such claim. The indemnifying party is not responsible for any costs incurred or compromise made by the indemnified party unless the indemnifying party has given prior written consent to the cost or compromise.

12. ATTORNEY FEES

Each party will pay (without reimbursement) its own legal fees and expenses incurred in any disputes.

13. CONFIDENTIAL INFORMATION

(a) The term "Confidential Information" shall mean any and all information, which is disclosed by either party to the other verbally, electronically, visually, or in a written or other tangible form, which is identified as confidential or proprietary. Confidential Information includes, but is not limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Licensor's business, as Licensor has conducted it or as it may conduct itself in the future, confidential information concerning any of Licensor's past, current, or possible future products or manufacturing or operational methods, including information about Licensor's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling or leasing, and any software (including third party software) provided by Licensor. Licensor's Confidential Information shall be treated as nonpublic or private by Licensee and shall not be disclosed by Licensee except to those third parties with a need to know and that are operating under a confidentiality agreement with non-disclosure provisions no less restrictive than those set forth herein. This Agreement imposes no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (i) was in the possession of, or was rightfully known by the Licensor without an obligation to maintain its confidentiality prior to receipt from other party; (ii) is or becomes generally known to

the public without violation of this Agreement; (iii) is obtained by Licensee in good faith from a third party having the right to disclose it without an obligation of confidentiality; (iv) is independently developed by Licensee without the participation of individuals who have had access to the Confidential Information or (v) is required to be disclosed by court order or applicable law. The Licensee shall not obtain, by virtue of this Agreement, any rights title or interest in any Confidential Information of the Licensor. Within fourteen (14) days after termination of this Agreement, each party shall certify in writing to Licensor that all copies of Licensor's Confidential Information in any form, including partial copies, have been destroyed or returned to Licensor.

- (b) Licensor acknowledges that the Licensee is a governmental agency and is required to disclose certain information under requests made according to provisions of the Minnesota Government Data Practices Act, codified at Minnesota Statutes chapter 13 ("MGDPA"). Licensee shall give notice to Licensor of any request for the disclosure of any information set apart and marked "confidential," "proprietary" or "trade secret" by Licensor. Licensor shall then have five (5) days from the date it receives such notice to enter into an agreement with Licensee providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney's fees) incurred by Licensee in any legal action to compel the disclosure of such information under the MGDPA. Licensor 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 Licensor to respond to the notice provided by Licensee and/or to enter into an agreement with Licensee, as set forth above, shall constitute a complete waiver by Licensor of any nondisclosure or confidentiality rights hereunder with respect to such information, and such information shall be disclosed by Licensee pursuant to applicable procedures required by the MGDPA.
- (c) The parties agree to strictly abide by the MGDPA, and all other applicable federal or state laws and regulations pertaining to law enforcement data. All data created, collected, received, stored, used, maintained, or disseminated in the performance of this Agreement is subject to the requirements of the Minnesota Government Data Practices Act. If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota laws, state law will control.
- (d) Licensor will take all reasonable measures to secure the computers or any other storage devices in which Licensee's data is contained or which are used to access Licensee's data for this Agreement. Additionally, access to Licensee's data must be limited to those persons with a need to know for the provision of services by Licensor. These measures include, but are not limited to, authenticated access to network data storage, use of up-to-date anti-virus software, controlled access to the physical location of the hardware, and the encryption of computers and storage devices. In the event Licensor ceases services or operations, or at the conclusion or termination of all agreements between Licensee and Licensor, within fourteen (14) days, all Licensee data will be returned to Licensee in a Licensee-approved format and then purged from Licensor's computers and storage devices. Licensor will give Licensee written verification that the data has been purged.
- (e) Licensee shall protect the deliverables resulting from Services with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which Licensee utilizes for Licensee's protected information.

(f) The terms of this Section 13 shall survive termination of this Agreement.

14. RELATIONSHIP BETWEEN THE PARTIES

Licensor is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or sub consultants, including any negligent acts or omissions. Licensor is not Licensee's agent, and shall have no authority to act on behalf of the Licensee, or to bind the Licensee to any obligation whatsoever, unless the Licensee provides prior written authorization to Licensor. Licensor is not an officer or employee of Licensee and Licensor shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

15. CONFLICTS OF INTEREST PROHIBITED

Licensor (including its employees, agents, and sub Licensors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement.

16. COMPLIANCE WITH LAW AND STANDARD OF CARE

Licensor shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Licensor shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Licensor, performing under circumstances similar to those required by this Agreement. Licensor certifies that its employees have the training and experience to perform and complete all services mentioned herein and outlined in Exhibit A.

17. INSURANCE

Licensor shall, throughout the duration of this Agreement, maintain insurance to cover Licensor (including its agents, representatives, sub-consultants, and employees) in connection with the performance of services under this Agreement. This Agreement identifies the minimum insurance levels with which Licensor shall comply; however, the minimum insurance levels shall not relieve Licensor of any other performance responsibilities under this Agreement (including the indemnity requirements), and Licensor may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by the Licensor, and prior to the commencement of any services, the Licensor shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the Licensee. Licensor shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.

16.1. Minimum Insurance Levels. Licensor shall maintain insurance at the following minimum levels:

- (a) Commercial General Liability coverage in an amount not less than USD\$2,000,000 general aggregate and USD\$1,500,000 per occurrence for general liability, bodily injury, personal injury, and property damage. Policy must include an "all services, products, or completed operations" endorsement when appropriate.

- (b) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (c) Errors and Omissions Liability Insurance in amounts of not less than USD\$2,000,000 general aggregate and USD\$1,000,000 per occurrence appropriate to the Licensor's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.
- (d) Licensor agrees to maintain excess liability coverage in an amount of not less than USD \$1,000,000 general aggregate and USD\$1,000,000 per occurrence
- (e) It is not anticipated that Licensor, its agents, employees, or contractors will travel to Minnesota to service this contract. Licensor agrees that if its agents, employees, or contractors do travel to Minnesota to service this contract, it will provide proof of automobile insurance acceptable to the City and will submit a complete State of Minnesota Certificate of Compliance Form 04 with respect to Workers' Compensation insurance.

16.2. Endorsements. The insurance policies shall be endorsed as follows:

- (a) For the commercial general liability insurance, the Licensee (including its elected officials, employees, and agents) shall be named as additional insured.
- (b) Licensor's insurance is primary to any other insurance available to the Licensee with respect to any claim arising out of this Agreement. Any insurance maintained by the Licensee shall be excess of the Licensor's insurance and shall not contribute with it.

16.3. Qualifications of Insurers. All insurance companies providing coverage to Licensor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A.M Best's rating of not less than "A:VII."

18. REPORTING DAMAGES

If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Licensor shall immediately notify the Licensee Risk Manager's office and Licensor shall promptly submit to the Licensee's Risk Manager and the Licensee's Authorized Representative, a written report (in a form acceptable to the Licensee) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Licensor's insurance company, and (d) a detailed description of the damage and whether any Licensee property was involved.

19. GENERAL PROVISIONS

- (a) **Complete Agreement.** This License together with Exhibit "A", which is
- (b) 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 Software Support and Maintenance Agreement.
- (c) **Modifications to License.** Modifications and amendments to this License, including any

exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

- (d) **Applicable Law.** This License will be governed by the laws of the State of Minnesota. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in Ramsey County, Minnesota.
- (e) **Notices.** All notices and other communications given in connection with this License shall be in writing and shall be deemed given as follows:
- When delivered personally to the recipient's address as appearing in the introductory paragraph to this License;
 - Three days after being deposited in the United States mails, postage prepaid to the recipient's address as appearing in the introductory paragraph to this License; or
 - When transmitted to the last E-Mail address of the recipient known to the party giving notice. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first-class or certified mail or the recipient delivers a written confirmation of receipt.

Any party may change its address appearing in the introductory paragraph to this License by giving notice of the change in accordance with this paragraph.

- (f) **No Agency.** Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.
- (g) **Assignment.** The rights conferred by this License shall not be assignable by either party without the other party's prior written consent.
- (h) **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- (i) **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- (j) **Headings.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- (k) **Severability.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
- (l) **Limitation on Liability.** In no event will either party be liable for indirect, incidental, punitive, exemplary, special or consequential damages, or damages for loss of profits or revenue. Neither party will seek or apply for such damages. No litigation or other legal action may be brought if the injured party has known of the cause of action for more than two years.

19. SIGNATURES

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Licensor and the Licensee. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

This 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

IN WITNESS WHEREOF, the Licensee and Licensor do hereby agree to the full performance of the terms set forth herein.

Coplogic, Inc. (LICENSOR)	City of St. Paul, a Municipal Corporation (LICENSEE)
(Signature)	Mayor
	Date)
James Lee Chief Operating Officer	
	(Chief of Police
	Date)
	Director, Office of Financial Services
	Date)
	As to Form:
	Assistant City Attorney
(Date)	(Date)

Exhibit A: Scope of Services

Licensors has designed and built an Online Reporting System for Police Departments that provides data to a specified database structure. The Online Reporting System uses the J2EE standard. The system is designed to gather information on crimes from a member of the general public (user) via an SSL connection. The application will issue a temporary report number to the user and place the temporary report into an administrative holding area for review and modification by appropriate administrator. An email is generated to the user that the report has been submitted. The administrator logs in via an SSL connection and approves, rejects, edits or prints reports as appropriate. Rejecting a report deletes it from the system and sends an appropriate email to the user. Approving the report issues a number, places it in a queue to be exported, and sends an appropriate email to the user. The administrator can download the approved report or print the report out. Licensors will provide the Software as a hosted service, with the exception of the exporter agent which will be hosted locally by the Licensee.

A. SETUP AND CUSTOMIZATION

Licensee Responsibilities:

1. Coordinate with Licensors to establish schedule for deployment.
2. Provide website header image and one small image for temporary citizen report and one small image for final printed PDF report, which is automatically emailed to citizen after report approval.
3. Load provided HTML pages onto City server which links to Licensors's servers for the application.
4. Provide Licensors with the schema for the desired file format and/or Database schema and account with read /write access and test environment with current configuration.
5. Provide Licensors with VPN access to the exporter under Licensee's supervision. Provide timely responses to Licensors's questions, which may arise during the setup and customization process.

Licensors's Responsibilities:

1. Coordinate with Licensee to establish schedule for deployment.
2. Load provided images onto the Licensors's secure, redundant network and register Licensee within the network.
3. Provide Licensee with Administrator password and credentials for the program.
4. Provide sample operational directives, deployment strategies and sample press release.
 - a. Licensors will provide contact personnel at other cities currently using the system as well as provide suggestions for the deployment of the system.
 - b. Licensors will provide instructions on the easy setup of a kiosk for City Police Department Headquarters lobby, etc.

Completion Criteria:

This task is considered complete after Licensors has delivered listed materials and the software is active and accessible on the Licensee's website.

B. SOFTWARE CONFIGURATION

Licensee's Responsibilities:

1. Coordinate with Licensor for web training session on administering the program, using the dynamic creation tools, "Triple Lock" login features, user account including deploying the "Secure side filing feature".
2. Using the administrator account, login in and configure the code tables, crime types, user account, and dynamic content for Licensee.
3. Test the optional interface with the RMS application.
4. Review resulting files with Licensor, document any problems, and collaborate with Licensor on a plan for corrective action(s).

Licensor's Responsibilities:

1. Coordinate with Licensee for web training session on administering the program, using the dynamic creation tools, "Triple Lock" login features, user account including deploying the "Secure side filing feature".
2. Configure export routine for the optional RMS Interface.
3. Review resulting files with Licensee, document any problems, and collaborate with Licensee on a plan for corrective action(s).

Completion Criteria:

This task is considered complete when the DeskOfficer Online Reporting System is accessible on the web server, reports can be filed and interfaced into the RMS.

C. CONTINUING MAINTENANCE.

Licensee's Responsibilities:

During the term of this Agreement and subject to approval by Licensee, Licensee agrees to serve as a reference for the Software. Such references may include reference calls with mutually acceptable prospects..

Licensor's Responsibilities:

Licensor will provide remote application support and updates in accordance with the Support and Maintenance Agreement.