

## **License Agreement**

This Agreement is made between the City of Overland Park located at 8500 Santa Fe Drive Overland Park, KS 66212 hereafter referred to as "Licensee" and Coplogic Inc., hereafter referred to as "Licensor" with a principal place of business at 231 Market Place Suite #520 San Ramon, Ca. 94583.

**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, and workbooks, 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, (including corresponding source code, unless specifically excluded herein) and Documentation delivered by Licensor to Licensee. Software includes any third-party software delivered by Licensor as specified in the Schedule, 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.

## **2. GRANT OF RIGHTS AND SCOPE OF SERVICES**

Licensor hereby grants to Licensee a nonexclusive nontransferable license to install and use the Software on a computer/server in Licensee's possession. Licensee has elected to maintain the application on Licensor's servers. Licensor also agrees to provide the services listed in the Scope of Services attached hereto as Exhibit "A" and made a part hereof.

## **3. LICENSE TERM**

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 5 of this Agreement.

## **4. LICENSE FEE**

Licensee agrees to pay Licensor the following one time license fee of \$16,500.00 plus maintenance fees, as outlined in the Support and Maintenance Agreement, upon execution of this agreement. All payments shall be made within thirty (30) 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.

**4.1 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.

## **5. TERMINATION**

Licensee may terminate this Agreement at any time on 90 days written notice to Licensor. Licensor shall have the right to terminate this License on 14 days written notice to Licensee if Licensee fails to pay any amount due to Licensor under this Agreement or if Licensee fails to perform any obligation required of Licensee under this License or if Licensee becomes bankrupt or insolvent.

- 5.1** 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.

## **6. 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.

## **7. 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.

## **8. 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.

## **9. WARRANTY**

Licensor warrants that from the date of this License, the Software will function given the original configuration is not replaced or changed by Licensee. Licensor warrants that to the best of its knowledge, information, and belief, the Software does not contain any known viruses, back-doors or time bombs, (or similar malicious code), or undocumented security codes that could prevent Licensee's perpetual use of the Software.

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

- Repair the defects or
- Replace the Software or
- Return to Licensee the maintenance fee for the period in which the Software did not perform according to this warranty, or
- If the Licensor cannot remedy the breach of the warranty within the first year of service with the preceding remedies, Licensor will return to Licensee the entire purchase price upon return of the software.

## **10. 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 infringe 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.

Subject to the immunities set forth in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, and to the extent allowed by the Kansas Cash Basis Law, K.S.A. 10-1101 *et seq.*, 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.

## **11. ATTORNEY FEES**

If any legal action is necessary to enforce this License, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses in addition to any other relief to which it may be entitled.

## **12. CONFIDENTIAL INFORMATION**

(a) The term “Confidential Information” shall mean any and all information, which is disclosed by either party (“Licensor”) to the other (“Licensee”) verbally, electronically, visually, or in a written or other tangible form, which either is identified or should be reasonably understood to be 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 strictly confidential 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 Owner; (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 on 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, provided reasonable prior notice is given to the Licensor. The Licensee shall not obtain, by virtue of this Agreement, any rights title or interest in any Confidential Information of the Licensor. Within fifteen (15) 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 may be required to disclose certain information under requests made according to provisions of the Public Records Act. 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 Public Records Act. 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 Public Records Act.
- (c)** 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 Confidential Information.
- (d)** The terms of this Section 12 shall survive termination of this Agreement. Licensor and Licensee acknowledge that any breach of this Section 12 by Licensee will irreparably harm Licensor. Accordingly, in the event of a breach, Licensor is entitled to promptly seek injunctive relief in addition to any other remedies that the disclosing party may have at law or in equity.

### **13. RELATIONSHIP BETWEEN THE PARTIES**

Licensors are, and at all times shall remain, independent contractors solely responsible for all acts of their employees, agents, or sub-consultants, including any negligent acts or omissions. A licensor is not a 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 the licensor. A licensor is not an officer or employee of the licensee and shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

### **14. CONFLICTS OF INTEREST PROHIBITED**

A 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.

### **15. COMPLIANCE WITH LAW AND STANDARD OF CARE**

A 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. A 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 the licensor, performing under circumstances similar to those required by this Agreement. A licensor certifies that its employees have the training and experience to perform and complete all services mentioned herein and outlined in Exhibit "A".

### **16. INSURANCE**

A licensor shall, throughout the duration of this Agreement, maintain insurance to cover the 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 the licensor shall comply; however, the minimum insurance levels shall not relieve the 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. None of the coverages required herein shall have a deductible or self-insured retention of greater than \$25,000 per claim, unless approved by the Licensee.

**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 \$1,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- (b) Automobile Liability coverage in an amount not less than \$1,000,000 combined single limit, bodily injury and property damage. Coverage is to include all owned (if any), hired and non-owned vehicles.
- (c) Workers' Compensation insurance (statutory limits) and Employer's Liability Insurance in amounts not less than \$100,000 / \$500,000 / \$100,000.
- (d) Errors and Omissions Liability Insurance appropriate to the consultant's profession, in an amount of no less than \$1,000,000 per wrongful act / annual aggregate. Coverage is to be endorsed to include contractual liability.

**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 and the state of Kansas to transact the business of insurance in the State of California and the State of Kansas, and shall have an A.M Best's rating of not less than "A:VII."

## **17. 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.

## **18. GENERAL PROVISIONS**

- (a) **Complete Agreement.** This License together with Exhibit "A", which is 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.
- (b) **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.
- (c) **Applicable Law.** This License will be governed by the laws of the State of Kansas. 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 the County of Johnson.

(d) **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 sent by fax or telex to the last fax, telex number or 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.

- (e) **No Agency.** Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.
- (f) **Assignment.** The rights conferred by this License shall not be assignable by the Licensee without Licensor's prior written consent. Licensor may impose a reasonable license fee on any such assignment
- (g) **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- (h) **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.
- (i) **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.
- (j) **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.

## **19. AFFIRMATIVE ACTION AND OTHER LAWS**

A. Licensor agrees that:

1. Licensor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, color, religion, age, disability, sex, ancestry, national origin or veteran status.
2. in all solicitations or advertisements for employees, Licensor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
3. if Licensor fails to comply with the manner in which the contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Licensor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by Licensee;
4. if Licensor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, Licensor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by Licensee; and
5. Licensor shall include the provisions of subsections (A)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by Licensor:

- (a) who employs fewer than four employees during the term of such contract; or
- (b) whose contracts with Customer cumulatively total \$5,000 or less during the fiscal year of the Licensee.

B. Licensor further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to agreement and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

**20. 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.

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

Licensor:

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

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

Randy D. Burkhammer  
Vice President, Coplogic, Inc.

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

Licensee:

\_\_\_\_\_  
(Signature)

## Exhibit A

### Scope of Work

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 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 cue to be exported, and sends an appropriate email to the user. The administrator can download the approved report or print the report out.

#### A. Setup and Customization

##### **Licensee Responsibilities:**

1. Coordinate with Licensor 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 Licensor's servers for the application.
4. Provide Licensor 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 Licensor with VPN access to the exporter and RMS application(s).

6. Provide timely responses to Licensor's questions, which may arise during the setup and customization process.

**Licensor's Responsibilities:**

1. Coordinate with Licensee to establish schedule for deployment.
2. Load provided images onto the Licensor'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. Licensor will provide contact personnel at other cities currently using the system as well as provide suggestions for the deployment of the system.
  - b. Licensor 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 Licensor 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 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 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 Desk Officer Online Reporting System is accessible on the web server, reports can be filed and interfaced into the RMS.

- C. Continuing Maintenance:** Licensor will provide remote application support and updates in accordance with the Support and Maintenance Agreement.



## **Coplogic, Inc. SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT**

THIS SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT ("Support Agreement") is made on this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between City of Overland Park, 8500 Santa Fe Drive Overland Park, KS 66212, a municipal corporation under the laws of the State of Kansas ("Customer") and Coplogic, Inc., an existing U.S. corporation, whose address is 231 Market Place #520 San Ramon, Ca. 94583 ("Company")

### **RECITALS:**

Customer has obtained a license to use the Desk Officer Online Reporting System ("Software"), more particularly described in the Software License Agreement of the same date. Customer wishes to retain Company to provide software maintenance and support services for the Software.

### **Support Services**

1. Generally. During the duration of this Support Agreement, Company shall provide to the Customer support and maintenance for the Software purchased in accordance with the terms of this Support Agreement and the response time described in Schedule A, attached hereto. Support includes, without limitation, periodic review of current outstanding questions and usage issues, the provision of new and upcoming releases of updates, and customizations and enhancements made to the Software that the Customer is licensed to use that are generally made available without additional charge to other users of the Software with similar support and maintenance contracts. The parties shall amend Schedule B from time-to-time in the event that the Customer purchases or is granted the right to use additional modules of the Software.
2. Hours of Support. Company will provide the support services during the hours as described in Schedule A attached hereto.
3. New Releases. Company will, from time-to-time issue new releases of the software (Schedule B), and when it does, it will immediately provide a copy of the release documentation, and updated user or system documentation. If any part of the Customer's custom code is not part of the general release delivered by Company, then Company will assist and provide guidance for integrating the custom code into the new release. Any time taken to modify or repair unauthorized changes that may require Company assistance to modify may be billed at Company's then current pricing schedule.
4. Exceptions. Company is not responsible for maintaining unauthorized Customer modified portions of the Software, Customer data files or for maintaining portions of the Software affected by unauthorized Customer modified portions of the Software. The Customer agrees that the equipment on which the Software operates will be operating properly at all times and must have been and continue to be properly maintained by the manufacturer of the equipment or a properly qualified service organization. Corrections for difficulties or defects traceable to the Customer's errors or unauthorized changes, Customer's hardware, or conflicts with other software not identified by Company as compatible or part of the recommended operating environment may be

subject to billing at Company's current standard time and material charges. The Customer will be responsible for properly testing and applying routine virus updates and security patches without the need for additional Company's notification. Company will be responsible for testing Company's software updates prior to making them available to the Customer. The Customer acknowledges responsibility for testing Company's software updates before applying them to the Customer's production systems. For servers running Company's software, the Customer acknowledges responsibility for communicating with Company prior to installation of non- Company's software service packs, implementation of new releases or versions of non- Company's software, or installation of new non- Company's software products. Except for emergency replacement of a failing server, the Customer acknowledges responsibility for communicating with Company prior to replacing a server on which Company's software is being used. Company is not responsible for changes if related to or caused by software not provided by Company. For workstations running Company's software, the Customer acknowledges responsibility to test new workstation configurations, software service packs, new releases or versions of software, and new software products prior to implementation.

5. **Limitations.** Company may, in its sole discretion, limit or suspend Customer's access to support, pursuant to this Support Agreement, where (1) Customer is in material default under the terms of this Support Agreement (non-payment is deemed to be a material default), or (2) Customer fails to provide adequately trained staff to administer the Software. Prior to limiting or suspending support, Company will give the Customer 45 days written notice of its intention to do so and actively participate with the Customer to remedy any such default or failure.
6. **Term.** This Support Agreement expires one year after its execution. However, within thirty (30) days prior to its expiration, Company shall send to the Customer an invoice for an annual "Support and Maintenance 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 Customer in its sole discretion as hereinafter set forth. Termination of the support agreement prior to its expiration shall not result in the refund of partial service fees.

The Customer's payment of an annual Support and Maintenance Fee in response to an invoice prior to the expiration date of the Support and Maintenance Agreement, or within forty-five (45) days after the date of Company's invoice, whichever is later, will extend the Support 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.** Company may change the Annual Support and Maintenance Fee and the terms and conditions of this support agreement provided that written notice is given to the Customer thirty (30) days prior to the expiration of the current term.

## **Cost**

8. **Annual Fee.** The Customer shall pay Company an Annual Support and Maintenance Fee for which support is being provided (see Schedule B for base Annual Support and Maintenance Fee). Annual Support and Maintenance Fee for the first (1<sup>st</sup>) year is due upon execution of this agreement 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 Agreement, the Annual Fee shall not increase by more than 5% of the previous year's Annual Support and Maintenance Fee. All requests by the Customer for additional features or functionality that fall outside of Company's ongoing policy of upgrading the Software will be quoted separately.

Late Payments. All invoices will be sent at least thirty (30) days prior to their due date. Payments received forty five (45) days after their due date will be assessed a ten (10) percent late fee.

9. **Taxes.** In addition to other amounts payable under this Support Agreement, Customer shall pay any and all federal, state, municipal, or other taxes, duties, fees, or withholding currently or subsequently imposed on Customer's use of the Software or the payment of the License Fee to Company, other than taxes assessed against Company's net income. Such taxes, duties, fees, withholding, or other charges shall be paid by Customer or Customer shall provide the appropriate authority with evidence of exemption from such tax, duty, fee, withholding, or charge. If Company is required to pay any such tax, duty, fee, or charge, or to withhold any amount from monies due to Company from Customer pursuant to this Support Agreement, Customer shall promptly reimburse Company any such amounts
10. **On Site Support.** The Customer shall reimburse Company at the rate of \$1,500.00 per day for any On-Site Support incurred at the Customer's direct written request and authorization. This rate shall prevail regardless of the number of Company support personnel dispatched to the Customer's site, and shall be paid for each day that Company personnel are required to be on the Customer's site. Customer will not pay for Company personnel travel time or travel expenses. In response to written Customer requests for Company to provide on-site routine non-emergency support, Company shall produce a written estimate of the time required to provide the requested support and state any requirements, such as the presence of Customer staff or other resources or materials. Any On-Site Support provided by Company shall only be invoiced by Company or paid by Customer if the problem arose due to something other than a defect in the Product.

### **Customer's Obligation**

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

address if applicable, of the Support Contact.

14. Access to Data and System. The Customer agrees to provide Company with data dumps, as requested, remote access to the Software system, and with sufficient test time on the Customer's computer system to duplicate the problem, to certify that the problem is with the Software, and to certify that the problem has been corrected.
15. The Customer shall install and maintain for the term of this Support Agreement, a reasonable and satisfactory method of direct remote computer access to the Software. The Customer shall pay for the installation and maintenance of such access. Company shall use this access service in connection with error correction, software updating and user support only, and only upon prior written or email notice to the Customer, and Customer's acknowledgment of that notice.
16. The Customer must upgrade the Software in its entirety to the most recent version within seven business days of the release of any updates or modifications of the Software unless otherwise mutually agreed. Company will not be obligated to provide support for release versions that are more than two release versions older than the current version unless specified in this support agreement. Company agrees that all release versions will be tested for installation in a computer environment substantially similar to the Customer's and that all releases will be free of material defects that would affect the orderly continuation of Customer's use of the Product.
17. The Customer agrees that, subject to and in accordance with the Customer's internal policies and guidelines, it will upgrade the computer operating software, hardware and underlying database engines of the Desk Officer Online Reporting System software as necessary to meet the changing requirements of the Software as specified by Company as part of a current release of the Software, or as the parties mutually agree. The Customer agrees that, subject to and in accordance with the Customer's internal policies and guidelines, it will maintain appropriate licenses for the computer operating software and underlying database engines required of the Desk Officer Online Reporting System as necessary. The parties agree that Company is not obligated to ensure that its new release of the Software is compatible with outdated (exceeding 4 years from date of initial release) hardware, computer operating software or database engines).

## **Confidentiality**

### 18. Confidential Information.

- (a) The parties hereby acknowledge that they may have access to information that is confidential to one another ("Confidential Information"). "Confidential Information" includes, but is not limited to, the licensed products and enhancements, all related source and object codes, Documentation, customer and prospect lists, pricing proposals, financial and other business information, all data and information relating to Customer's operation, and any other information designated as confidential or proprietary information by the disclosing party. "Confidential Information" shall not include any information which (i) becomes part of the public domain through no act or omission of the other party; (ii) is lawfully acquired by the other party from a third party who is not in breach of an obligation of confidentiality; (iii) was in the other party's lawful possession prior to disclosure of such information; (iv) is

independently developed by the party without the benefit or use of the Confidential Information; or (v) is required to be disclosed under a court order or a valid subpoena, provided that the recipient of the Confidential Information promptly notifies the disclosing party in order for the disclosing party to have an opportunity to seek an appropriate protective order. The parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Each party agrees to maintain at least the same procedures regarding the other party's Confidential Information that it maintains with respect to its own Confidential Information.

(b) Company acknowledges that the Customer is a governmental agency and may be required to disclose certain information under requests made according to provisions of the Public Records Act. Customer shall give notice to Company of any request for the disclosure of any information set apart and marked "confidential," "proprietary" or "trade secret" by Company. Company shall then have five (5) days from the date it receives such notice to enter into an agreement with Customer providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney's fees) incurred by Customer in any legal action to compel the disclosure of such information under the Public Records Act. Company shall have the sole responsibility for the defense of the actual proprietary or trade secret designation of such information. The parties understand and agree that any failure by Company to respond to the notice provided by Customer and/or to enter into an agreement with Customer, as set forth above, shall constitute a complete waiver by Company of any nondisclosure or confidentiality rights hereunder with respect to such information, and such information shall be disclosed by Customer pursuant to applicable procedures required by the Public Records Act.

(c) Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the non-disclosing party shall be entitled to receive from a court of competent jurisdiction injunctive or other equitable relief to restrain such use or disclosure. The terms and provisions of this section shall survive any termination of this Support Agreement.

### **Termination.**

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

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

## **Limitation of Liability**

20. 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 agreement shall not exceed the annual fee paid in the twelve month period preceding the event giving rise to the claim.

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

## **Insurance**

21. Company shall, throughout the duration of this Agreement, maintain insurance to cover Company (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 Company shall comply; however, the minimum insurance levels shall not relieve Company of any other performance responsibilities under this Agreement (including the indemnity requirements), and Company may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by the Company, and prior to the commencement of any services, the Company shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the Customer. Company 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. None of the coverages required herein shall have a deductible or self-insured retention of greater than \$25,000 per claim, unless approved by the Customer.

Company shall maintain insurance at the following minimum levels:

- (a) Commercial General Liability coverage in an amount not less than \$1,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- (b) Automobile Liability coverage in an amount not less than \$1,000,000 combined single limit, bodily injury and property damage. Coverage is to include all owned (if any), hired and non-owned vehicles.
- (c) Workers' Compensation insurance (statutory limits) and Employer's Liability Insurance in amounts not less than \$100,000 / \$500,000 / \$100,000.

(d) Errors and Omissions Liability Insurance appropriate to the consultant's profession, in an amount of no less than \$1,000,000 per wrongful act / annual aggregate. Coverage is to be endorsed to include contractual liability.

The insurance policies shall be endorsed as follows:

(a) For the commercial general liability insurance, the Customer (including its elected officials, employees, and agents) shall be named as additional insured.

(b) Company's insurance is primary to any other insurance available to the Customer with respect to any claim arising out of this Agreement. Any insurance maintained by the Customer shall be excess of the Company's insurance and shall not contribute with it.

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

### **General**

22. This Agreement shall be binding upon the successors and assigns of both parties, provided, however that no assignment, delegation or other transfer shall be made by Company without the prior written approval of the Customer, which approval shall not be unreasonably withheld.

23. 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.

24. 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.

25. This Support Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. Any such counterpart may comprise one or more duplicates or duplicate signature pages, any of which may be executed by less than all of the parties provided that each party executes at least one such duplicate or duplicate signature page. The parties stipulate that a photocopy of an executed original will be admissible in evidence for all purposes in any proceeding as between the parties.

26. Any provision of this Support Agreement or part thereof found to be illegal or unenforceable shall be deemed severed, and the balance of the Agreement shall remain in full force and effect.

27. This Support Agreement shall be governed and construed in accordance with the laws of the State of Kansas. Venue of any action brought with regard to this Support Agreement shall be in Johnson County, Kansas.

### **28. AFFIRMATIVE ACTION AND OTHER LAWS**

A. Company agrees that:

1. Company shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, color, religion, age, disability, sex, ancestry, national origin or veteran status.
2. in all solicitations or advertisements for employees, Company shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
3. if Company fails to comply with the manner in which the contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Company shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by Customer;
4. if Company is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, Company shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by Customer; and
5. Company shall include the provisions of subsections (A)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by Company:

- (a) who employs fewer than four employees during the term of such contract; or
- (b) whose contracts with Customer cumulatively total \$5,000 or less during the fiscal year of the Licensee.

B. Company further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to agreement and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

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

**City of Overland Park**  
A Municipal Corporation

**Coplogic, Inc.**

By \_\_\_\_\_

By Randy Burkhammer\_\_\_\_\_

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

\_\_\_\_\_  
Title: Vice President



**SCHEDULE “A”**

Company Hours of Support and Maintenance Service are as follows:

Regular Hours of Service (pacific time) 0900 to 1700 hours	After Hours Service (pacific time) 1700 hours to 0900 hours Monday to Friday
Monday to Friday - excluding Holidays observed by the U.S. Federal Govt.	Saturdays & Sundays Holidays
e-mail received by: Company staff at support@coplogic.com	e-mail received by: Company staff at support@coplogic.com

**Incident/Request for Service Priority**

All support and maintenance incidents/ requests for service will be prioritized on the following basis:

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

Response Time

The following table outlines the response times for each priority.

Priority	Response Time During regular hours of service	Response Time During After Hours of Service
A	2 hours	6 hours from time of notifying the vendor contact(s) through voice mail or e-mail
B	(2) business days of Company receipt of verbal,	Not available

	written or electronic notice thereof and to correct the Priority B Issue by the Customer's reasonably requested date. If the Priority B Issue is not corrected within 2 business days of the original notification Company will provide the Customer with reports of its efforts to correct the Priority B Issue as requested by Customer.	
C	As time permits basis or inclusion in the next scheduled update to the Licensed Product.	Not available

**1. Incident/Request for Service Reporting Procedure**

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

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

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

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

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

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

**SCHEDULE “B”**

Coplogic Desk Officer Online Reporting System version 5.6.7.3

Base Annual Support and Maintenance Fee: \$4,400.00

On-site Support: \$1500 per day (includes travel time and expenses)