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9717 Landmark Parkway Dr. • Suite 200 • St. Louis, MO 63127 • 314-892-6300 •

Jackson County Prosecuting Attorney's Office  
Jackson County, Missouri

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**HOSTED by Karpel eDiscovery Agreement**

**PROSECUTOR** by **KARPEL**

**FILED**  
AUG 16 2018  
MARY JO SPINO  
COUNTY CLERK

## **AGREEMENT FOR eDISCOVERYbyKarpel**

This agreement between Karpel Computer Systems Inc., a Missouri corporation, doing business as Karpel Solutions (hereinafter referred to as "Karpel Solutions") and Jackson County, a political subdivision of the State of Missouri (hereinafter referred to as "Client") is for the purposes of reviewing this proposal and to enter into the contract below wherein Karpel Solutions agrees to provide eDISCOVERYbyKarpel, a service for the delivery of electronic discovery (eDiscovery) through the copyrighted software program known as PROSECUTORbyKarpel® that been licensed to Client.

### **1. DEFINITIONS**

- a. "Confidential Information" means information of either Karpel Solutions or Client which is disclosed under this Agreement in oral, written, graphic, machine recognizable, electronic, sample or any other visually perceptible form by one of us to the other, and which is considered to be proprietary or trade secret by the disclosing party. Confidential Information of Karpel Solutions expressly includes, without limitation, the Software and Documentation. The Confidential Information of Client includes, without limitation, Personally Identifiable Information and Client Content. Confidential Information shall not include information which the party receiving the information can document: (i) was in the possession of or known by it without an obligation of confidentiality prior to receipt of the information, (ii) is or becomes general public knowledge through no act or fault of the party receiving the information, (iii) is or becomes lawfully available to the receiving party from a third party without an obligation of confidentiality, or (iv) is independently developed by the receiving party without the use of any Confidential Information.
- b. "Client Content" means all data, information, documents, and file Client uploads or inputs into PbK, including, without limitation, Personally Identifiable Information.
- c. "eDiscovery" means Client Content electronically transmitted from inside PbK through the eDISCOVERYbyKarpel hosting platform for dissemination by a third party identified and selected by the Client in PbK.
- d. "Enhancements" means any specific configurations or customizations to the Software, which Client may request and Karpel Solutions agrees in writing to provide.
- e. "Documentation" means any operating instructions, specifications and other documentation related to the operation, description and function of PbK, or the Service provided by Karpel Solutions whether supplied in paper or electronic form.
- f. "Intellectual Property" means any patents, patent applications, copyrights, mask works, trademarks, service marks, trade names, domain names, inventions, improvements (whether patentable or not), trade secrets, Confidential Information, moral rights, and any other intellectual property rights.
- g. "Personally Identifiable Information" means any information that may be used to identify specific persons or individuals, which is collected by either Karpel Solutions or Client for use in conjunction with the use of PbK, HOSTEDbyKarpel, or eDISCOVERYbyKarpel. Personally Identifiable Information shall be considered Confidential Information.

- h. "PbK" means the PROSECUTORbyKarpel criminal case management system and specifically the Client's licensed copy of PROSECUTORbyKarpel.
- i. "Service" means the eDISCOVERYbyKarpel hosting and notification platform provided by Karpel Solutions which allows a secure delivery and notification mechanism for eDiscovery from the Client's licensed copy of PbK.
- j. "Service Level Requirements" means the technical service levels Karpel Solutions shall meet for Services as set forth below in the Service Level Commitments for the delivery of the Services.
- k. "Software" means the Client's licensed copy of the PbK application, and includes any and all updates, enhancements, underlying technology or content, law enforcement transfer interfaces, other Enhancements and any Documentation as may be provided the Client by Karpel Solutions.

## **2. FEES AND TERMS**

- a. FEES. Client will pay Karpel Solutions \$8,000 annually for eDiscovery transmission to eDISCOVERYbyKarpel from PbK. Client will be billed annually for unlimited number of electronic transmissions of eDiscovery from PbK at the stated fee for a term of four (4) years for a total amount of \$32,000.
- b. TERM. The term of this Agreement shall be four (4) years and will begin upon Karpel Solutions' receipt of this signed contract. Prior to the expiration of the four (4) year term, Karpel Solutions will send Client a renewal for subsequent terms as agreed upon by the Client. Pricing of transmissions of eDiscovery during subsequent terms may be subject to change at the sole discretion of Karpel Solutions.
- c. INTEREST AND LATE FEES. Past due accounts will be charged interest on a monthly basis, calculated at one and one-half percent (1.5%) per month of the unpaid balance or the maximum rate allowable by law.

## **3. SERVICE LEVEL COMMITMENT**

- a. UPTIME. Karpel Solutions is committed to providing the Service in a consistent and reliable manner. Karpel Solutions will provide the Service to Client with a stated minimum uptime of 99.5% to Client.
- b. SCHEDULED MAINTENANCE. Karpel Solutions periodically performs scheduled maintenance including but not limited to outline, preventative or emergency maintenance of the Software and/or Service. Client understands that schedule maintenance may affect availability of the Service and/or Software. If schedule maintenance is to be performed Karpel Solutions will provide notice to Client three (3) days prior to the scheduled maintenance. Karpel Solutions will make every effort to schedule maintenance outside of normal business hours of the client between the hours of ten (10) p.m. and five (5) a.m. Central Standard Time.
- c. AUDITS AND SECURITY. Karpel Solutions is committed to maintaining the security of Client Content, Confidential Information, and Software on Karpel Solutions' Service. Karpel

Solutions will maintain the Service in a secure manner subject to the Customer Obligations outlined below. Karpel Solutions will perform annual security audits of the Service to ensure the integrity and security of the Service. Results of the Audits and Security Policy for Karpel Solutions will be made available to Client upon written request.

- d. **DATA TRANSMISSION.** Karpel Solutions ensures that all data transmitted to and from the Service is transmitted at a minimum level of 128-bit SSL encryption using digital certificates issued by an internationally-recognized domain registrar and certificate authority.
- e. **DATA LOCATION.** Karpel Solutions will maintain the Service in a SAS 70/SSAE 16 certified data facility.

#### **4. CUSTOMER OBLIGATIONS**

- a. **PASSWORD PROTECTION.** Access to the Software and the Service is password-protected. Karpel Solutions provides multiple authentication alternatives for access to the Software. **KARPEL SOLUTIONS STRONGLY ENCOURAGES THE USE OF STRONG PASSWORD AUTHENTICATION.** Karpel Solutions is not responsible for Client's use of the Service or Software. Only the number of users set forth above may access the Service. Client must inform their users that they are subject to, and must comply with, all of the terms of this Agreement. Client is fully responsible for the activities of Client's employees and authorized agents who access the Service Karpel Solutions is not liable for any unauthorized access to the Software and Service, including without limitation access caused by failure to protect the login and password information of users.
- b. **RESTRICTIONS ON USE.** Client agrees to conduct all activities on the Service in accordance with all applicable laws and regulations. Access to the Service, Software and Documentation must be solely for Client's own internal use. Client may not (and may not allow any third party to) (i) decompile, mirror, translate, disassemble or otherwise reverse engineer any part of the Software, source code, algorithms, or underlying ideas of the Software; (ii) provide, lease, lend, subcontract, sublicense, re-publish or use for timesharing, service bureau or hosting purposes any or all of the Software, Service or Documentation; or (iii) reproduce, modify, copy, distribute, publish, display or create derivative works of any or all of the Software, Service or Documentation or (iv) alter, remove, or obscure any copyright, trademark or other proprietary notices or confidentiality legends on or in the Software, Service or Documentation.
- c. **SUSPENSION.** Karpel Solutions reserves the right to immediately suspend access to Service without notice and at any time that Karpel Solutions suspects or has reason to suspect a security, data breach or if suspension is necessary to protect its rights, Client's rights or the rights of a third party. Karpel Solutions will immediately contact Client upon suspension of the Service.

#### **5. CONFIDENTIALITY**

- a. **CONFIDENTIALITY.** Confidential Information may not be, directly or indirectly, copied, reproduced, or distributed by the party receiving the Confidential Information except to the extent necessary for the receiving party to perform under the terms of this Agreement and only for the sole benefit of the party disclosing the Confidential Information. The party receiving Confidential Information may not, directly or indirectly, sell, license, lease, assign,

transfer or disclose the Confidential Information of the disclosing party, except as allowed under the terms of this Agreement or upon written consent of the disclosing party.

- b. **PERSONALLY IDENTIFIABLE INFORMATION.** The parties recognize that certain data Client or Karpel Solutions may use in conjunction with the Service may be confidential Personally Identifiable Information. Karpel Solutions shall use all best efforts to protect the confidentiality of Personally Identifiable Information. Karpel Solutions shall have no liability for disclosure of Personally Identifiable Information caused by Client's own negligence or misconduct.
- c. **DISCLOSURE REQUIRED BY LAW.** In the event that any Confidential Information is required to be disclosed pursuant to any law, code, regulation or court order from a court of competent jurisdiction, the receiving party shall give the disclosing party immediate written notice of such requirement and shall use its best efforts to seek or to cooperate with the disclosing party in seeking a protective order with respect to the Confidential Information requested.
- d. **INJUNCTIVE RELIEF.** Any breach of the confidentiality provisions of this Section will cause irreparable harm to the other party. The parties agree that the non-breaching party may enforce the provisions of this Section by seeking an injunction, specific performance, criminal prosecution or other equitable relief without prejudice to any other rights and remedies the non-breaching party may have.

## **6. OWNERSHIP OF INTELLECTUAL PROPERTY**

- a. **KARPEL SOLUTIONS OWNERSHIP.** Karpel Solutions retains all right, title and interest in and to the Software, Documentation, and Service and related Intellectual Property. Any suggestions, solutions, improvements, corrections or other contributions Client provides regarding the Software, Documentation, or Services will become the property of Karpel Solutions and Client hereby assigns all such rights to Karpel Solutions without charge.
- b. **CLIENT OWNERSHIP.** Client retains all rights, title and interest in and to the Client Content, and all related Intellectual Property. Client hereby grants to Karpel Solutions and Karpel Solutions hereby accepts a non-exclusive, non-transferable, worldwide, fully-paid license to use, copy, and modify the Client Content solely to the extent necessary and for the sole purposes of providing access to the Software, Documentation, and Services or otherwise complying with its obligations under this Agreement.

## **7. WARRANTY**

- a. **LIMITED WARRANTY.** Karpel Solutions warrants it will provide the Services in a professional manner by qualified personnel. Karpel Solutions warrants it has the requisite power and authority to enter into and perform its obligations under this Agreement. Karpel Solutions warrants that the performance by Karpel Solutions of any services described in the Agreement shall be in compliance with all applicable laws, rules and regulations. Karpel Solutions warrants it will provide access to and use of the Service in material accordance with the Service Level Commitment outlined above. No representations or warranties as to the use, functionality or operation of the Software, or Service are made by Karpel Solutions other than as expressly stated in this Agreement.

- b. INTERNET. Karpel Solutions makes the Service available to Client through the internet to the extent commercially reasonable, and subject to outages, communication and data flow failures, interruptions and delays inherent in Internet communications. Client recognizes that problems with the Internet, including equipment, software and network failures, impairments or congestion, or the configuration of Client's computer systems, may prevent, interrupt or delay Client's access to the Service. Karpel Solutions is not liable for any delays, interruptions, suspensions or unavailability of the Service or Software attributable to problems with the Internet or the configuration of Client's computer systems or network.
- c. SYSTEM REQUIREMENTS. Karpel Solutions provides the Services and Software based upon the system requirements as specified by Karpel Solutions for Client. Karpel Solutions has no liability for any failure of the Service or the Software based upon Client's failure to comply with the system requirements of Karpel Solutions.
- d. WARRANT LIMITATION. The warranties set forth in this Agreement do not apply if non-compliance is caused by, or has resulted from (i) Client's failure to use any new or corrected versions of the Software or Service made available by Karpel Solutions, (ii) use of the Software or Service by Client for any purpose other than that authorized in this Agreement, (iii) use of the Software or Service in combination with other software, data or products that are defective, incompatible with, or not authorized in writing by Karpel Solutions for use with the Software or Service, (iv) misuse of the Software or Service by, (v) any malfunction of Client's software, hardware, computers, computer-related equipment or network connection, (vi) any modification of the Software not performed by or otherwise authorized by Karpel Solutions in writing, or (vii) an event of Force Majeure.
- e. DISCLAIMER. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESS AND IMPLIED, WHICH ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING OUT OF A USE IN TRADE OR COURSE OF DEALING OR PERFORMANCE. KARPEL SOLUTIONS DOES NOT WARRANT (i) THAT ACCESS TO OR USE OF ALL OR ANY PART OF THE SERVICE, SOFTWARE, OR DOCUMENTATION WILL BE CONTINUOUS, ERROR-FREE OR UNINTERRUPTED, (ii) THAT THE RESULTS ARISING OUT OF CLIENT'S USE OF THE SOFTWARE, DOCUMENTATION OR SERVICE WILL BE ACCURATE, COMPLETE OR ERROR-FREE, OR (iii) THAT THE SERVICE, SOFTWARE, OR DOCUMENTATION WILL MEET CLIENT'S NEEDS.
- f. EXCLUSIVE REMEDIES. If the Service provided under this Agreement does not materially comply with the requirements stated in the Limited Warranty Section outlined above, Karpel Solutions sole obligation shall be to correct or modify the Service, at no additional charge. If Karpel Solutions determines it is unable to correct what is non-conforming, Client's sole remedy will be to receive a refund of the fees paid for the term of non-conforming Service, even if such remedy fails of its essential purpose. You may also terminate this Agreement as set forth in the termination provision of this Agreement.

## **8. LIMITATION OF LIABILITY**

KARPEL SOLUTIONS IS NOT RESPONSIBLE FOR ANY LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY BREACH OF THIS AGREEMENT, EVEN IF

KARPEL SOLUTIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION, WHETHER ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), STATUTE OR OTHERWISE. UNLESS OTHERWISE SPECIFICALLY STATED, ALL REMEDIES AVAILABLE UNDER THIS AGREEMENT AND ALL REMEDIES PROVIDED BY LAW, WILL BE DEEMED CUMULATIVE AND NOT EXCLUSIVE. REGARDLESS OF THE FORM OF ANY CLAIM CLIENT MAY HAVE ARISING UNDER OR RELATING TO THIS AGREEMENT, KARPEL SOLUTIONS LIABILITY FOR ANY DAMAGES SHALL NOT EXCEED THE FEES CLIENT HAS PAID TO KARPEL SOLUTIONS PURSUANT TO THIS AGREEMENT IN THE PRIOR TWELVE (12) MONTHS.

## 9. INDEMNIFICATION

- a. CLIENT'S INDEMNIFICATION. Client will indemnify, defend, and hold harmless Karpel Solutions from and against any and all liability, damage, loss or expense (including reasonable attorneys' fees) arising out of (i) any claim, demand, action or proceeding, statutory or otherwise, based on allegations arising as a result of use of the Software or Service in a manner not expressly described or permitted by this Agreement, (ii) use of the Software or Services in any unlawful manner or for any unlawful purpose, (iii) Karpel Solutions' use of Client Content that infringes any third party Intellectual Property, or (iv) Karpel Solutions' use of Client Content as permitted by this Agreement that violates the privacy rights or the rights to Personally Identifiable Information of a third party.
- b. KARPEL SOLUTIONS' INDEMNIFICATION. Karpel Solutions will at its own expense (including payment of attorneys' fees) defend Client in the event that any suit is brought against Client based on a claim that the Software directly infringes any valid U.S. Intellectual Property right and shall indemnify Client from any amounts assessed against Client in a resulting judgment or settlement of such claims. Karpel Solutions will not be liable for any cost or expense of defense Client incurs in connection with any such suit or claim, without Karpel Solutions' prior and specific authorization and consent.

Notwithstanding the foregoing, Karpel Solutions has no obligations under this Section in the event any infringement claim is solely or in part based upon or arising out of any modification or alteration to the Software not made by Karpel Solutions, (ii) any combination or use of the Software with products, hardware or services not supplied by Karpel Solutions or approved in writing by Karpel Solutions in advance of such combination, (iii) Client's continuance of allegedly infringing activity after being notified of such activity, or after being informed of modifications that would have avoided the alleged infringement, (iv) Client's failure to use corrections or enhancements made available by Karpel Solutions, (v) use of the Software not in accordance with the applicable Documentation or outside the scope of this Agreement, or (vi) the use of the Software in a manner for which it was neither designed nor contemplated.

Karpel Solutions' aggregate liability and obligation under this Section will be will not exceed the fees Client has paid to Karpel Solutions under this Agreement in the previous twelve (12) months. The foregoing remedies constitute Client's sole and exclusive remedies, and Karpel Solutions' entire liability and obligation, with respect to any suit or claim for infringement or misappropriation of third party Intellectual Property or other right by the license and/or use of the Software.

- c. NOTIFICATION. The indemnification obligations set forth above will apply only if and to the extent (i) the indemnified party gives prompt written notice to the indemnifying party of the assertion of any such claims, demands, action or proceeding, (ii) the indemnifying party has the right to select counsel and control the defense and all negotiations for settlement thereof and (iii) the indemnified party provides all reasonable information, assistance and cooperation required to defend such claim, demand, action or proceeding. The indemnifying party shall not settle or dispose of any such claim, demand, action or proceeding without written notification to the indemnified party provided the settlement or disposal materially adversely impacts the indemnified party.

## **10. TERMINATION**

- a. TERMINATION. Client may terminate this Agreement thirty (30) business days after it has provided Karpel Solutions with written notice that it believes that Karpel Solutions has failed to perform under, or materially breaches, this Agreement and of the Client's intent to terminate the Agreement. Thereafter, Karpel Solutions will have thirty (30) business days from the receipt of such notice to correct the stated problem. If at the end of such thirty (30) business day period, Karpel Solutions has not corrected the stated problem, then client may terminate this Agreement. Karpel Solutions may terminate this Agreement on thirty (30) days written notice. Either party may immediately terminate this Agreement in the event the other party (i) files for, or has filed against it, a bankruptcy petition, and such petition is not dismissed within sixty (60) days of the filing date; or (ii) ceases to conduct business in the normal course, (iii) makes an assignment for the benefit of its creditors, (iv) is liquidated or otherwise dissolved, (v) becomes insolvent or unable to pay its debts in the normal course, or (vi) has a receiver, trustee or custodian appointed for it.
- b. RIGHTS AFTER EXPIRATION OR TERMINATION. Upon expiration or termination of this Agreement, Karpel Solutions will immediately terminate Client's access to and use of the Services. Upon expiration or termination of this Agreement, each party shall immediately cease to make use of any Confidential Information received from the other party. Termination is not an exclusive remedy.

## **11. MARKETING**

Client agrees that Karpel Solutions may identify Client as a customer of Karpel Solutions in Karpel Solutions' written promotional and marketing materials, as well as in any oral or visual presentations regarding the business of Karpel Solutions. Karpel Solutions may use any non-Confidential Information, such as aggregate statistical information as part of Karpel Solutions overall statistics for marketing or promotional efforts.

## **12. GENERAL PROVISIONS**

- a. ASSIGNMENT. This Agreement will inure to the benefit of and be binding upon Karpel Solutions and Client and Karpel Solutions' respective successors and assigns. Notwithstanding the foregoing, Client may not assign or otherwise transfer this Agreement or Client's rights and obligations under this Agreement without the prior written consent of Karpel Solutions, and any purported assignment or other transfer without such consent will be void and of no force or effect. Karpel Solutions may assign and /or transfer this Agreement or Karpel Solutions' rights and obligations under this Agreement at any time.



- b. **MODIFICATION AND WAIVER; SEVERABILITY.** Any modifications of this Agreement must be in writing and signed by both parties. A waiver by either party of a term or condition will not be deemed a waiver of any other or subsequent term or condition. Should any court of competent jurisdiction determine that any term or provision of this Agreement is unenforceable, or otherwise invalid, the offending term or provision will be modified to the minimum extent necessary to render it enforceable. If such modification is not possible, the term or provision will be severed from this Agreement with the remaining terms to be enforced to the fullest extent possible under the law.
- c. **FORCE MAJEURE.** Except for a party's payment obligations hereunder, neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach thereof are delay or prevented by reason of any act of God, government, fire, natural disaster, accident, terrorism, network or telecommunication system failure, sabotage or any other cause beyond the control of such party ("Force Majeure"), provided that such party promptly gives the other party written notice of such Force Majeure.
- d. **INDEPENDENT CONTRACTORS.** The parties will be deemed to have the status of independent contractors, and nothing in this Agreement will be deemed to place the parties in the relationship of employer-employee, principal-agent, or partners or joint ventures. Neither party has the authority to bind, commit or make any representations, claims or warranties on behalf of the other party without obtaining the other party's prior written approval.
- e. **NOTICES.** Any notices provided under this Agreement will be in writing in the English language and will be deemed to have been properly given if delivered personally or if sent by (i) a recognized overnight courier, (ii) certified or registered mail, postage prepaid, return receipt requested, or (iii) facsimile, if confirmed by mail. Karpel Solutions' address for such notices is set forth below. Client's address for such notices will be the address on file with Karpel Solutions as provided by Client. Such address or contact information may be revised from time to time by provision of notice as described in this Section. All notices sent by mail will be deemed received on the tenth (10th) business day after deposit in the mail. All notices sent by overnight courier will be deemed given on the next business day after deposit with the overnight courier. All notices sent by facsimile will be deemed given on the next business day after successful transmission.

Karpel Solutions  
9717 Landmark Parkway, Suite 200  
St. Louis, MO 62127  
(314) 892-6300  
[mziemianski@karpel.com](mailto:mziemianski@karpel.com)

- f. **GOVERNING LAW AND DISPUTE RESOLUTION.** This Agreement is to be construed and governed by the laws of the United States and the State of Missouri, without regard to conflict of laws provisions. Any dispute arising out of or in connection with this Agreement, which cannot be settled amicably between the parties must be brought exclusively in the appropriate court located in Missouri, and Client expressly waives any and all objections regarding jurisdiction and forum non conveniens. If either Karpel Solutions or Client employs

attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and costs.

**13. ENTIRE AGREEMENT**

By signing below, Client hereby agrees to the above Agreement. This document constitutes the entire agreement between Client and Karpel Solutions with respect to the subject matter discussed above. Any waiver of any provision of this Agreement will be effective only if in writing and signed by Karpel Solutions. This Agreement supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding this subject matter. This Agreement will inure to the benefit of Karpel Solutions successors, assigns and licensees.

**JACKSON COUNTY**

[Signature]  
Name  
Jackson County Executive  
Title  
8.15.2018  
Date

**KARPEL SOLUTIONS**

[Signature]  
Name  
CEO  
Title  
8-7-18  
Date

APPROVED AS TO FORM

[Signature]  
W. Stephen Nixon

ATTEST:

[Signature]  
Mary Jo Spino, Clerk of the Legislature

**REVENUE CERTIFICATE**

There is a balance otherwise unencumbered to the credit of the appropriation to which this contract is chargeable, and a cash balance otherwise unencumbered in the treasury from which payment is to be made, each sufficient to meet the obligation of \$8,000.00 which is hereby authorized.

8/14/18

Date



Chief Administrative Officer  
Account No. 008-4152-56662

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