



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

**YAMHILL COUNTY DISTRICT ATTORNEY'S OFFICE
YAMHILL COUNTY, OREGON**

**HOSTEDbyKarpel
AGREEMENT FOR**



HOSTEDbyKarpel®

B.O. 21-138

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This agreement ("Agreement") between Karpel Computer Systems Inc., a Missouri corporation, doing business as Karpel Solutions (hereinafter referred to as "Karpel Solutions") and Yamhill County, a political subdivision of the State of Oregon (hereinafter referred to as "Client") is for the purposes of reviewing this proposal and to enter into the Agreement below wherein Karpel Solutions agrees to provide internet based software hosting through HOSTEDbyKarpel of the copyrighted software program known as PROSECUTORbyKarpel® that has 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 on the Service through the website, including, without limitation, Personally Identifiable Information.
- c. "Enhancements" means any specific configurations or customizations to the Software, which Client may request and Karpel Solutions agrees in writing to provide.
- d. "Documentation" means any operating instructions, specifications and other documentation related to the operation, description and function of PbK, the Service or Website provided by Karpel Solutions whether supplied in paper or electronic form.
- e. "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.
- f. "Hosted" or "Hosting" means the act of providing service and access to Client Content by the Internet.
- 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 or DbK on HOSTEDbyKarpel. 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 HOSTEDbyKarpel hosting platform provided by Karpel Solutions which allows internet-based hosting of the Client's licensed copy of PbK through the Website.
- j. "Service Level Requirements" means the technical service levels Karpel Solutions shall meet for Services as set forth below in the "Service Level Commitments;Client Service" for the delivery of the Services.
- k. "Software" means the Client's licensed copy of the PbK application, and includes any and all updates, upgrades, enhancements, underlying technology or content, law enforcement transfer interfaces, other Enhancements and any Documentation as may be provided the Client by Karpel Solutions.
- l. "Website" means the content and functionality currently located at the domain www.hostedbykarpel.com on the internet, or any successor or related domain that provides access to the Software and Service

2. FEES AND TERMS

- a. FEES. Client will pay Karpel Solutions \$100 per year for each user that has access to the Software through the Service and Website. A total of twenty-seven (27) users of Client are authorized access to the Service under this Agreement and the aggregate document / file storage space for all users included with the hosted fee is two terabytes (2TB) of storage. Additional users can be added at any time by Client at a rate of \$100 per year. If storage exceeds 2TB, any additional storage above 2TB will be billed at a flat rate of \$1,000 per 1TB, per year with no additional notice provided to the Client. Client will be billed on an annual basis.

In the event Client or Karpel terminates this Agreement, Client understands and agrees to pay \$1,000 to Karpel Solutions for work in connection with the return of Client Content and Confidential Information.

Client will pay Karpel Solutions a flat one-time fee of \$1,000.00 for the migration of their PbK licensed copy to the Service accessible through the Website.

- b. TERM. The term of this Agreement shall be for (1) year and will begin upon Karpel Solutions' receipt of Client's full payment of the applicable fees for a year. Such term shall be perpetual and automatically renew for subsequent terms of equal length, unless either Karpel Solutions or Client gives notice to the other party thirty (30) days prior to the expiration of the then-current term of intent not to renew. Prior to the expiration of the term, Karpel Solutions will send Client a renewal invoice, which must be paid in full within thirty (30) days from the date of receipt, review and approval of the invoice. Pricing of subsequent annual terms may be subject to change at the sole discretion of Karpel Solutions.
- c. INTEREST AND LATE FEES. Past due undisputed 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; CLIENT SERVICE

- a. **UPTIME.** Karpel Solutions is committed to providing the Software, Website and Service in a consistent and reliable manner. Karpel Solutions will provide the Software, Website and 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, Website, and/or Service. Client understands that scheduled maintenance may affect availability of the Service, Website, and/or Software. If scheduled maintenance is to be performed Karpel Solutions will provide notice to Client three (3) business 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. **DATA RETENTION AND BACKUPS.** As a part of the Service and Website, Karpel Solutions will maintain under this Agreement consistent, regular and validated backup both onsite and offsite of the Client Content, Confidential Information and Software. Backups occur and will be maintained pursuant to Karpel Solutions internal backup policies. Upon written request, Karpel Solutions will make available to Client a copy of Karpel Solutions' current backup policies and procedures.
- d. **AUDITS AND SECURITY.** Karpel Solutions is committed to maintaining the security of Client Content, Confidential Information, and Software on Karpel Solutions' Service and Website. Karpel Solutions will maintain the Software, Website and Service in a secure manner subject to the Customer Obligations outlined below. Karpel Solutions will perform annual security audits of the Website and Service to ensure the integrity and security of the Website and Service. Results of the Audits and Security Policy for Karpel Solutions will be made available to Client upon written request.
- e. **DATA TRANSMISSION.** Karpel Solutions ensures that all data, including but not limited to Client Content, transmitted to and from the Service and Website is transmitted at a minimum level of 128-bit SSL encryption using digital certificates issued by an internationally-recognized domain registrar and certificate authority.
- f. **DATA LOCATION.** Karpel Solutions will maintain the Service, Software, Client Content and Confidential Information of Client in a SAS 70/SSAE 16 certified data facility.
- g. Karpel Solutions agrees to provide customer service and support in accordance with Exhibit A, which is attached hereto and incorporated herein by this reference.

4. CUSTOMER OBLIGATIONS

- a. **PASSWORD PROTECTION.** Access to the Software through the Service and Website is password-protected. Karpel Solutions provides multiple authentication alternatives for access to the Website and Software. **KARPEL SOLUTIONS STRONGLY ENCOURAGES THE USE OF STRONG PASSWORD AUTHENTICATION.** Karpel Solutions is not responsible for Client's

use of the Service, Website or Software. Only the number of users set forth above may access the Service and Website. 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 and Website. Karpel Solutions is not liable for any unauthorized access to the Service and Website, 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 and Website in accordance with all applicable laws and regulations. Access to the Service, Website, 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 or Documentation; or (iii) reproduce, modify, copy, distribute, publish, display or create derivative works of any or all of the Software or Documentation or (iv) alter, remove, or obscure any copyright, trademark or other proprietary notices or confidentiality legends on or in the Software or Documentation.
- c. **SUSPENSION.** Karpel Solutions reserves the right to immediately suspend access to Software 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 and Website.

5. CONFIDENTIALITY

CONFIDENTIALITY. Confidential Information may not be, directly or indirectly, copied, reproduced, or distributed by either party to the Agreement 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 to the Agreement 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.

- a. **PERSONALLY IDENTIFIABLE INFORMATION.** The parties recognize that certain data Client or Karpel Solutions may use in conjunction with the Software 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.
- b. **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.

- c. **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; LICENSE

- a. **KARPEL SOLUTIONS OWNERSHIP.** Karpel Solutions retains all right, title and interest in and to the Software, Documentation, Website, Service and related Intellectual Property. Any suggestions, solutions, improvements, corrections or other contributions Client provides regarding the Software, Documentation, Website 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 Client with access to the Software, Documentation, Website, and Services or otherwise complying with its obligations under this Agreement.
- c. KARPel Solutions hereby grants Client a license to use PROSECUTOR by Karpel in accordance with the Updated Licensing Agreement, Exhibit A.

7. WARRANTY

- a. **LIMITED WARRANTY.** Karpel Solutions warrants it will provide the Software, Services and Website 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 Software, Service and Website in material accordance with the Service Level Commitment and Client Service outlined above. No representations or warranties as to the use, functionality or operation of the Website, Software, or Service are made by Karpel Solutions other than as expressly stated in this Agreement.
- b. **INTERNET.** Karpel Solutions makes the Website, Software and Services 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, Website or Software. Karpel Solutions is not liable for any delays, interruptions, suspensions or unavailability of the Website 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 Website based upon the system requirements as specified by Karpel Solutions for Client. Karpel Solutions has no liability for any failure of the Services 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 Documentation made available by Karpel Solutions, (ii) use of the Software or Documentation by Client for any purpose other than that authorized in this Agreement, (iii) use of the Software or Documentation 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 Documentation, (iv) misuse of the Software or Documentation 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 NON-INFRINGEMENT, 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, DOCUMENTATION OR WEBSITE WILL BE CONTINUOUS, ERROR-FREE OR UNINTERRUPTED, (ii) THAT THE RESULTS ARISING OUT OF CLIENT'S USE OF THE SOFTWARE, DOCUMENTATION OR WEBSITE WILL BE ACCURATE, COMPLETE OR ERROR-FREE, OR (iii) THAT THE SERVICE, SOFTWARE, DOCUMENTATION OR WEBSITE WILL MEET CLIENT'S NEEDS.**
- f. **EXCLUSIVE REMEDIES.** If the Software, Website, or Services 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 Software, Website or Services, 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 non-conforming Software, Website or Services, 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. Subject to Article 11, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act, 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 brought against Karpel, based on allegations arising as a result of Client's use of the Website, Software, Documentation or Services in a manner not expressly described or permitted by this Agreement, or (ii) Client's use of the Website, Software, Documentation or Services in any unlawful manner or for any unlawful purpose.
- b. KARPEL SOLUTIONS' INDEMNIFICATION. Karpel Solutions will at its own expense (including payment of attorneys' fees) indemnify, defend, and hold harmless Client in the event that any claim, demand, action, proceeding or suit, statutory or otherwise, is brought against Client based on a claim (i) arising as a result of Karpel's operation or use of the Website, Software, Documentation or Services in a manner not expressly described or permitted by this Agreement, (ii) Karpel's operation or use of the Website, Software, Documentation or Services in any unlawful manner or for any unlawful purpose, or (iii) 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, which authorization and consent is hereby provided for the above listed indemnification purposes.

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 made by Client and that is not an Enhancement or not otherwise authorized by Karpel Solutions, (ii) any combination or use of the Software by Client 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 after being notified of such corrections and enhancements by Karpel Solutions, (v) use of the Software by Client not in accordance with the applicable Documentation or outside the scope of this Agreement, or (vi) the use of the Software by Client 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. In addition, in the event Client no longer receives funds adequate to enable it to continue this Agreement, it will provide written notice of immediate termination of this Agreement to Karpel Solutions.
- 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 Website, Documentation, and 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. Within thirty (30) days of written request following termination or expiration of this Agreement, Karpel Solutions shall coordinate with Client a mutual agreeable manner for the return of Client Content and Confidential Information obtained or shared during the course of the Agreement. Client understands that upon any termination or expiration of this Agreement, Client must return to Karpel Solutions (or destroy and certify such destruction in writing) any Documentation or other materials provided by Karpel Solutions, whether in written or electronic form, regarding the Website, Software or Services provided under this Agreement. Termination is not an exclusive remedy.

11. 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, neither party may assign or otherwise transfer this Agreement or their rights and obligations under this Agreement without the prior written consent of the other party, and any purported assignment or other transfer without such consent will be void and of no force or effect.
- 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, pandemic 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 63127
(314) 892-6300
mziemianski@karpel.com

- f. **GOVERNING LAW AND DISPUTE RESOLUTION; ATTORNEY FEES.** This Agreement is to be construed and governed by the laws of the United States and the State of Oregon, without regard to conflict of law's 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 circuit courts located in Yamhill County, Oregon, and Client and Karpel Solutions 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, each party shall be responsible for their own attorneys' fees and costs.
- g. **STATUTORY AND REGULATORY COMPLIANCE:** Karpel Solutions shall comply with all federal, state and local laws, orders, ordinances and regulations applicable to the work under this Agreement, including, without limitation, the applicable provisions of ORS chapters 279A, B, and C, particularly 279C.500, 279C.510, 279C.515, 279C.520 and 279C.530, as amended. In addition, Karpel Solutions expressly agrees to comply with Title VI of the CIVIL RIGHT ACT of 1964 and comparable state and local laws. Karpel Solutions shall also comply with Section V of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (Pub. Law No. 101-336), ORS 30.670 to ORS 30.685, ORS 659A.142, ORS 659A.145, and all regulations and administrative rules established pursuant to those laws. Karpel Solutions shall comply with all applicable federal, state and local laws, rules, and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, disability, sexual orientation, gender identity or source of income. The requirements of Article XI, Section 10, of the Oregon Constitution are incorporated into this Agreement by reference. Furthermore, Karpel Solutions certifies compliance with the tax laws of the State of Oregon or a political subdivision of the state, including ORS 305.620 and ORS Chapters 316, 317 and 318.
- h. **INSURANCE:**
- i. Karpel Solutions shall maintain during the entire term of this Agreement (A) workers compensation insurance in compliance with statutory requirements, (B) commercial general liability insurance (including personal injury liability, products and completed operations coverage), on an occurrence basis, with not less than \$2,000,000 per occurrence for bodily injury, death and property damage, with an annual aggregate limit of \$3,000,000, and (C) professional liability insurance, including errors and omissions coverage, with not less than \$2,000,000 per occurrence and \$3,000,000 in the aggregate, to protect against all loss suffered by Client or third parties, including financial and consequential lost, caused by error, omission or negligent acts related to the performance of Services under this Agreement.
 - ii. The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) reasonably acceptable to Client. At Client's request, Karpel Solutions shall furnish Client with certificates of insurance for the required insurance coverages, that indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to Client.

12. 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 and Client. This Agreement supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding this subject matter..

Yamhill County

Karpel Solutions



Signature



Signature

Marcy Starrett

Printed Name

Matt Ziemianski

Printed Name

Chair-Board of Commissioners

Title

CEO

Title

4/22/21

Date

5/3/2021

Date

Accepted by Yamhill County
Board of Commissioners on
4/22/2021 by Board Order
21-138

Initials _____

**YAMHILL COUNTY DISTRICT ATTORNEY
YAMHILL COUNTY, OR**

**UPDATED LICENSING AGREEMENT
MARCH 8, 2021**



PROSECUTORbyKarpel®

B.O. 21-138
Exhibit "A"



9717 Landmark Parkway | St. Louis, MO 63127 | (314) 892-6300

1. LICENSE TERMS AND USE

This software, PROSECUTORbyKarpel® ("PbK" or "software") is a proprietary product of Karpel Solutions. It is licensed (not sold) and is licensed to Client for its use only by the terms set forth below.

1. In consideration of payment of a sublicense fee, Karpel Solutions hereby grants Client a non-exclusive and non-transferable sublicense to use PbK and any associated manuals and/or documentation furnished.
2. Client cannot distribute, rent, sublicense or lease the software. A separate license of PbK is required for each user or employee. Each license of PbK may not be shared by more than one full time employee or user (40 hours per week), nor more than two (2) part-time employees or users, working no more than 40 hours per week together. The Client agrees that Karpel Solutions will suffer damages from the Client's breach of this term and further agrees that as such Karpel Solutions shall be entitled to the cost of the license, installation and training costs associated for each violation, including Karpel Solutions' reasonable attorneys' fees and costs.
3. License does not transfer any rights to software source codes, unless Karpel Solutions ceases to do business without transferring its duties under this agreement to another qualified software business. Karpel Solutions will, at client's expense, enter into escrow agreement for the storage of the source codes.
4. PbK and its documentation are protected by copyright and trade secret laws. Client may not use, copy, modify, or transfer the software or its documentation, in whole or in part, except as expressly provided for herein. Karpel Solutions retains all rights in any copy, derivative or modification to the software or its documentation no matter by whom made. PbK is licensed for a single installation of one full time employee. A separate license is required for each installation of PbK. Client shall not provide or disclose or otherwise make available PbK or any portion thereof in any form to any third party. Client agrees that unauthorized copying and distribution will cause great damage to Karpel Solutions and this damage is far greater than the value of the copies involved.
5. PbK was developed exclusively at private expense and is Karpel Solutions' trade secret. Except as required under Oregon public records law, for all purposes of the Freedom of Information Act or any other similar statutory right of "open" or public records the Software shall be considered exempt from disclosure. PbK is "commercial computer software" subject to limited utilization "Restricted Rights." PbK, including all copies, is and shall remain proprietary to Karpel Solutions or its licensors.

2. ANNUAL SUPPORT

2.1.1 TECHNICAL SUPPORT FEES

Client understands that technical support fees will be required annually, in order to receive software updates and technical support. The support period shall begin from the date of go-live as part of the initial first year costs. The Client may elect to purchase subsequent annual support, on a yearly basis at a fixed cost, and billed annually. The option to purchase annual support is solely at the Client's discretion. The Client's license to use PbK is not dependent upon the Client purchasing annual support; however, if the Client discontinues annual support it will not be provided with updated versions of the software, unless it is purchased. Provided Client's computers, network and systems meet recommended specifications set for by Karpel Solutions and the Client is current with annual support payments then Karpel Solutions shall provide updated versions of their system and/or software as they become available during the terms of the contract. If the option for renewal is exercised, Karpel has the right to increase current pricing.

2.1.2 SUPPORT PROVIDED

Karpel Solutions will provide support (e.g. software updates, general program enhancements and technical support) for all software provided, including ongoing unlimited telephone technical support problem determination, and resolution.

2.1.3 HOURS OF OPERATION

Karpel Solutions will provide technical support Monday through Friday, at a minimum of eight (8) hours a day. Technical support services shall be available between the hours of 7:00 a.m. through 9:00 p.m. Central time, via a toll-free telephone number provided. After-hours support is available as well via the same toll-free number which will reach the on-call support group.

2.1.4 INCLUDED SUPPORT

Support services include the detection and correction of software errors and the implementation of all PbK program changes, updates and upgrades. Karpel Solutions shall respond to the inquiries regarding the use and functionality of the solution as issues are encountered by Authorized Users. Support to users will be provided through the remote support tool installed on the end user's computer. This tool was installed at the time of go-live allowing Karpel to provide the needed support to meet the service level agreement. If this access is not allowed support will be delayed and the service level agreement (severity levels) are no longer in place.

2.1.5 RESPONSE TIMES

Karpel Solutions shall be responsive and timely to technical support calls/inquires made by the Client. The Client will first make support inquires through their qualified system administrators to assure the policies and business practices of the Client are enforced prior to contacting Karpel Solutions. The timeliness of the response is dependent upon the severity of the issue/support problem, as defined below:

The severity* of the issue/support problem shall determine the average problem resolution response time in any calendar month of the contract as follows:

**If the remote support tool is not installed or available all issues will fall into the general assistance and the severity levels are no longer applicable.*

Severity Level 1 shall be defined as urgent situations, when the Client's production system is down and the Client is unable to use PbK, Karpel Solutions' technical support staff shall accept the Client's call for assistance at the time the Client places the initial call; however, if such staff is not immediately available, Karpel Solutions shall return the customer's call within one (1) business hour. Karpel Solutions shall resolve Severity Level 1 problems as quickly as possible, which on average should not exceed two (2) business days, unless otherwise authorized in writing by the Client.

Severity Level 2 shall be defined as critical software system component(s) that has significant outages and/or failure precluding its successful operation, and possibly endangering the customer's environment. PbK may operate but is severely restricted. Karpel Solutions' technical support staff shall accept the customer's call for assistance at the time the customer places the initial call; however, if such staff is not immediately available, Karpel Solutions shall return the Client's call within four (4) business hours. Karpel Solutions shall resolve Severity Level 2 problems as quickly as possible, which on average should not exceed three (3) business days, unless otherwise authorized in writing by the customer.

Severity Level 3 shall be defined as a minor problem that exists with PbK but the majority of the functions are still usable and some circumvention may be required to provide service. Karpel Solutions' technical support staff shall accept the Client's call for assistance at the time the customer places the initial call; however, if such staff is not immediately available, Karpel Solutions shall return the Client's call on average no later than the next business day. Karpel Solutions shall resolve Severity Level 3 problems as quickly as possible, which should not exceed the next available release of software, unless otherwise authorized in writing by the Client.

General Assistance: For general software support/helpdesk calls not covered by the above severity level descriptions, Karpel Solutions' technical support staff shall accept the Client's call for assistance at the time the Client places the initial call; however, if such staff is not immediately available, Karpel Solutions shall return the Client's call on average no later than the next business day.

3. MASTER TERMS AND CONDITIONS

**KARPEL COMPUTER SYSTEMS, INC. (dba "Karpel Solutions"),
MASTER TERMS AND CONDITIONS**

GENERAL TERMS

1. **PAYMENT TERMS.** A statement for services rendered will be submitted by Karpel Solutions at the completion of the service. The invoice is payable upon receipt. Terms are Net thirty (30) days. Interest shall be applied at the rate of one and one half percent (1.5%) per month on any amounts not received by Karpel Solutions within the due date. Karpel Solutions reserves the right to discontinue performing services for client in the event of nonpayment of services by client, and client agrees to reimburse Karpel Solutions for reasonable collection expenses on delinquent accounts, including attorney's fees and costs.
2. **SOFTWARE ANOMALIES.** New commercial software releases or upgrades, or any hardware and/or software owned by or licensed to Client, used in connection with Karpel Solutions services may have anomalies, performance or integration issues unknown to Karpel Solutions which can impact the timely, successful implementation of information systems. Karpel Solutions will inform the client promptly if this occurs and will attempt to analyze, correct and/or work around the anomalies or performance issues on a "best effort" basis. Karpel Solutions is not responsible for any delay or inability to complete its services if such anomalies or performance issues occur. Client is responsible for payment for all of Karpel Solutions' services at the rate stated in the proposal whether or not a successful solution is achieved.
3. **SOFTWARE AUDIT.** Client agrees to allow Karpel Solutions the right to audit Client's use of PbK and licenses of PbK at any time. Client will cooperate with the audit, including providing access to any books, computers, records or other information that relate to the use of PbK. Such audit will not unreasonably interfere with Client's activities. In the event that an audit reveals unauthorized use, reproduction, distribution, or other exploitation of PbK, Client will reimburse Karpel Solutions for the reasonable cost of the audit, in addition to such other rights and remedies that Karpel Solutions may have. Karpel Solutions will not conduct an audit more than once per year.
4. **TERMINATION.** Client may terminate the Annual Support portion of 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, the Annual Support portion of this Agreement and of the Client's intent to terminate the Annual Support portion of this Agreement. Such written notice is to be sent Certified US Mail to Karpel Solutions at 9717 Landmark Parkway Dr., Suite 200, St. Louis, MO 63127. 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 the Annual Support portion of this Agreement. Karpel Solutions may terminate the Annual Support portion of this Agreement on thirty (30) days written notice.