November 20, 2018 Regular Meeting

Item # 7c

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Second Korbel Contract

MONO COUNTY DISTRICT ATTORNEY'S OFFICE

CONTRACT FOR

PROSECUTORbyKarpel®

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This agreement between Karpel Computer Systems Inc., a Missouri corporation, doing business as Karpel Solutions (hereinafter referred to as "Karpel Solutions") and Mono County, a political subdivision of the State of California (hereinafter referred to as "Client") is for the purposes of reviewing this proposal and to enter into this contract including the Master Terms and Conditions set forth below wherein Karpel Solutions agrees to sell licenses for its copyrighted software program known as PROSECUTORbyKarpel® (hereinafter referred to as "PbK").

1.   CONFIDENTIALITY STATEMENT

This document is the intellectual property of Karpel Solutions. Client agrees that the information contained within this proposal is proprietary information and that it shall not disclose, reproduce in any format, or use any of the terms, data, or any other material contained herein outside of Mono County or for any other purposes other than to evaluate this contract. If the Client is required by statute or case law to disclose any information in this agreement, then Client shall notify Karpel Solutions three (3) business days prior to the release. This agreement does not limit Client the right to use information contained within this contract if it is obtained from another source without restriction. Any subsequent revisions, addendums, or amendments to this document shall be covered under the terms of this confidentiality agreement by reference.

2.   SCOPE OF WORK

The following Scope of Work represents the services required to reach the proposed solution and a successful project. Karpel Solutions will perform all work in accordance with the descriptions, scopes and specifications hereafter described.

	Tasks and deliverables	-
	Final Contract & Implementation Agreement signed. Project Pre-Implementation Meeting scheduled. Minimum Server and Workstation requirements are explained to agency project manager.	
	Server & PC assessment completed and any necessary hardware or software ordered to meet PROSECUTORbyKarpel Installation Prerequisites.	
	4 hour Online pre-implementation meeting with project manager and System Administrators. Project Team is selected including Karpel Staff and Customer System Administrators. (One Customer System Administrator must be a Policy Setting Attorney). This meeting will begin with application overview, enhancement definitions and interface definitions. PROSECUTORbyKarpel Pre-load configuration is explained and initial Document Templates are received. Workflow pre-configuration is conducted.	
	Teleconference status meeting with Karpel and agency project manager will occur to review progress on hardware/software assessments, finalize pre-implementation meeting timeline agreement.	
	1st Data Conversion Webinar is reviewed on Karpel servers along with the PROSECUTORbyKarpel Pre-load worksheets. Agency Document Templates are received. Data validation spreadsheets will be explained and data validation will begin. System Administrator training begins. Workflow pre-configuration is conducted. System enhancements are completed and demonstrated. Interfaces are reviewed and analyzed to define testing procedures.	
	Teleconference status meeting with Karpel and agency project manager will occur to review progress and answer additional questions regarding pre-load spreadsheet.	
	Karpel Support installation and application testing on each workstation should begin at this time. Karpel Solutions or local IT support will schedule workstation application testing and follow Karpel testing procedures to thoroughly test browser functionality, document generation, Outlook Calendaring and email on each workstation if applicable.	
	The agency project manager will provide Karpel with any additional Legacy Data, additional Legacy Documents and a fully complete PROSECUTORbyKarpel Pre-Load Spreadsheet and completed data validation spreadsheets from the first data conversion. The agency project manager will notify agency IT support to coordinate the legacy data upload for final conversion with Karpel.	
	Training Schedule is completed with assignment of all office staff to specific training sessions. The Policy Setting Attorney must attend the initial Configuration, Case Initiation and Event Entry sessions at a minimum. Training room and equipment are verified.	

	2nd Data Conversion Review Webinar - Karpel will install the preliminary data conversion on the Agency's pre-production site for this Webinar including completed Document templates and Event Entry Configuration. Agency will begin validating the accuracy of Defendants, Co-Defendants, Cases, Court Dates, Events, Dispositions, and Financials. Application testing will begin. Agency project manager will report all inaccuracies to Karpel. All Custom Enhancements are tested and verified. Begin testing of all application interfaces.	
	Teleconference status meeting with Karpel and agency project manager to review current data validations and acceptance testing. Review of timeline to meet scheduled "go live" date.	
	Complete installation and testing of all workstations by Karpel Solutions or local IT support.	
	Final teleconference status meeting with Karpel and agency project manager to verify final data accuracy and training area is prepared for scheduled training.	
January 7, 2019	Final Data Conversion is loaded. Karpel trainers arrive at the training room. Final configuration of PROSECUTORbyKarpel is performed with all System Administrators present. User training begins. Customer begins using PROSECUTORbyKarpel in a live state.	**Go Live**

This schedule will be modified as mutually agreed upon by Client and Karpel Solutions.

Document conversion consists of Karpel Solutions converting existing Microsoft Word®, Microsoft Works® and Corel WordPerfect® documents provided by Client up to the time of training as outlined in the Project Timeline listed above into a format that can be utilized by PbK on a best effort basis. Karpel Solutions does not support nor will convert customized macros, auto-text files or other custom programming items not a part of the ordinary functionality of Microsoft Word®, Microsoft Works® and Corel WordPerfect®

Karpel Solutions will provide hosting of PbK subject to the terms and conditions set forth in the Agreement for PROSECUTORbyKarpel Hosting.

3.   OTHER INFORMATION

Any additional work requirements outside the scope of this proposal will be presented in the form of a change order and must be approved by client prior to start of such work. No additional charges will be incurred without prior written approval from client.

4.   GENERAL CLIENT RESPONSIBILITIES

In order for the project to be completed on time and on budget, Client shall provide at a minimum:

1. Access to client facilities, computers, servers, network infrastructure and software as deemed necessary by the Karpel Solutions project manager.
2. Access to systems and equipment as required by Karpel Solutions including:
   a. Unlimited access to all PbK production servers, 24 hours a day, 7 days a week for overnight and weekend data conversions
   b. PbK application access using Karpel Solutions laptops and clients network for training and application testing
   c. Installation of the Karpel Solutions remote support tool on all desktops executing the PbK application.
3. Access to client data along existing servers and systems containing data if such data is to be converted and populated by Karpel Solutions into PbK.
4. An authorized contact person to assist in the definition of any project unknowns and authorized to approve the completion of each task.

Failure of Client to provide the above access and assistance will render the Karpel Solutions support agreement null and void.

4.1   CLIENT VALIDATION

Client is responsible for the validation of their data prior to system go-live. Karpel will work with Client to ensure that data conversion has happened successfully and receive sign-off from Client indicating that the system is ready for go-live. If issues arise with converted data after go-live, Karpel will determine the appropriate fix and any fees necessary to complete the requested work.

5. INVESTMENT SUMMARY

Karpel Solutions will perform according to all descriptions, scopes, and specifications herein described, in consideration for payment as set forth below,

Software Products/Licensing	Qty.	Price		Total
PROSECUTORbyKarpel	9	$2,250		$20,250
Total Software				**$20,250**

Installation Services	Qty.	Price		Total
SQL Database configuration	1	$1,000		$1,000
‡ Client Support Tool/Scanning tool and system compatibility check	9	$50		$450
Total Installation Services				**$1,450**

Professional Services	Qty.	Price		Total
Project Management				$0
Online Pre-implementation Meetings (hours)	12	$150		$1,800
Data Conversion (Software Unlimited)	1	$7,500		$7,500
LaserFiche Document Conversion	1	$5,000		$5,000
Document Conversion (up to 100 documents)	1	$2,500		$2,500
Total Professional Services				**$16,800**

Onsite Training Services	Qty.	Price		Total
On Site Training (days)	5	$2,400	2 trainers	$12,000
Total Onsite Training Services				**$12,000**

Customization Services*	Qty.	Price		Total
Law Enforcement Interface - RIMS	1	$10,000		$10,000
Total Customization Services				**$10,000**

Annual Support Services	Qty.	Price		Total
PROSECUTORbyKarpel	9	$450		$4,050
Statewide Datasharing	9	$50		$450
eDiscovery	1	$1,125		$1,125
Interface Support	1	$2,000		$2,000
Hosted Services (per user/year)	9	$100		$900
Total Annual Support Services				**$8,525**

Total Project Cost	$69,025

Estimated Travel Expenses	**$3,600**

Total First Year Cost	$72,625

Optional Services/Cost	Price
Document conversion (per document)	$25
Court Interface (configuration/setup)	**$10,000**
Court Interface Annual Support Fee	*$2,000*
Post Implementation training- on site (min 1 day)	$1,200
Post Implementation training- on-line (min 2 hrs.)	$150
Hourly rate for personnel	$150

*Interfaces must conform to the appropriate PROSECUTORbyKarpel Information Exchange Package Documentation (IEPD) for that interface. Interfaces that do not conform to the appropriate PROSECUTORbyKarpel IEPD, will require Karpel development review before approval and will incur additional development and maintenance costs.

This fee does not include additional hardware, Microsoft licenses, or networking services that may be necessary to properly and legally operate PbK. Said expenses are the Client's sole responsibility.

On-premises installations will incur an implementation fee of $25,000. Additionally, there will be a $5,000 annual maintenance fee for on-going connection maintenance/support of the application and database. Hosted installations will have these fees waived as Karpel will be in control of all the infrastructure and monitoring.

Upon the request to begin an Optional Service, an official notice to begin the service must be received.

Server installation includes application SQL database and configuration of SQL Server for PbK® and shall be performed by Karpel Solutions due to the complexity of the configuration.

Travel expenses include airfare, lodging and ground transportation.

As with any project, all prices are subject to change as new information arises or as workload increases. Karpel Solutions will seek approval from Client if more work will be necessary to make the changes along the way, as described above.

5.1 Payment Terms

Payment schedule to be 50% of Software User Licenses due upon signed contract agreement and the remaining cost due upon completion of implementation and training.

6.   ANNUAL SUPPORT

6.1.1   TECHNICAL SUPPORT FEES

Client understands that technical support fees will be required annually, in order to receive software updates and technical support. The initial support period shall begin from the date of software installation as part of the initial licensing purchase. The Client may elect to purchase subsequent annual support, on a yearly basis at a fixed cost, and billed annually as referenced in Section 5 above. 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.

6.1.2   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.

6.1.3   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.

6.1.4   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.

6.1.5   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.

7.   LICENSE TERMS AND USE

This software, PbK 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 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.

3. 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. 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.

IN WITNESS WHEREOF, the parties have caused this Agreement subject to the Master Terms and Conditions set forth below to be executed on the date first above written. This proposal is offered as an all-inclusive turnkey solution and, unless noted otherwise, pricing is based on acceptance of both services and licenses. Any changes to this solution may result in additional costs. If not accepted within thirty (30) days, Karpel Solutions reserves the right to withdraw this proposal. Should any adjustments to this proposal become necessary; Karpel Solutions will draft and present a "Change Order" to Client for its review and approval.   This offer is entire agreement between the parties, and no oral agreements or other written documents, exclusive of the attached exhibits are part of the agreement.   Any modifications of this agreement must be in writing, and prior to acceptance of this offer, Karpel Solutions reserves the right to make modifications to this offer. The signatories warrant they have the authority to bind their respective party.

Mono County   **Karpel Solutions**

_____   _____
Name   Name

_____   _____
Title   Title

_____   _____
Date   Date

8. MASTER TERMS AND CONDITIONS

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

GENERAL TERMS

1. ACCEPTANCE TERM. The proposal attached to these Master Terms and Conditions is tendered for acceptance in its entirety within thirty (30) days from the date of the proposal, after which it is to be considered null and void.

2. 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.

3. 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

4. MODIFICATION AND WAIVER. Any modifications of this Agreement must be in writing and signed by both parties. Neither party will be deemed to have waived any of its rights under the Agreement by any statement or representation other than (i) by an Authorized Representative and (ii) in an explicit written waiver. No waiver of a breach of this agreement will constitute a waiver of any prior or subsequent breach of this Agreement.

5. FORCE MAJEURE. 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.

6. 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.

7. 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.

8. 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.

9. CLIENT ENVIRONMENT. Client is responsible for the application, operation and management of its information technology environment, including but not limited to: (a) purchasing, licensing and maintaining hardware and software; (b) following appropriate operating procedures; (c) following appropriate protective measures to safeguard the software and data from unauthorized duplication, modification, destruction or disclosure; (d) following adequate backup contingency plans; and (e) employing qualified personnel to obtain the desired results. Karpel is not responsible for the loss of data in PbK or security breaches that result in the unauthorized dissemination of data contained in PbK that is the result of Client not following appropriate operating procedures, security and protective measures and/or following adequate backup contingency plans.

10. MATERIALS. Client will pay Karpel Solutions for materials purchased for the client's use. Materials may include computer hardware, software, hosting, facility leases, other services, telecommunications charges, freight, shipping, mailing, document reproduction and any other such costs incurred in performance of services for client. Upon mutual agreement, client will reimburse Karpel Solutions for all out-of-town travel expenses, such as automobile/airline travel, hotel, meals, and cab fare. Billing for services rendered on-site on an as needed basis will include portal-to-portal time.

11. TERMINATION. Client may terminate the Annual Support portion of this Agreement thirty (30) business days after it is 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 ninety (90) days written notice.

12. COPYRIGHT. Karpel Solutions reserves the right to seek damages if Client is responsible for a subsequent violation of Karpel Solutions' copyright, and Client assumes responsibility for the acts and omissions of its agents acting in the course of their duties or otherwise with respect to the protection of Karpel Solutions' copyright.

<u>**LIMITED WARRANTIES, LIMITATION OF LIABILITY, INDEMNIFICATION**</u>

1. LIMITED WARRANTY. Karpel Solutions warrants it will perform all 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. No representations or warranties as to the use, functionality or operation of PbK are made by Karpel Solutions other than as expressly stated in this Agreement.

2. INTERNET AND NETWORK. Karpel Solutions makes PbK available to Client through the Internet and/or Client's own network and systems, to the extent commercially reasonable, and subject to outages, communication and data flow failures, interruptions and delays inherent in the Internet and network communications on the Client's own network and systems. Client recognizes that problems with the Internet, including equipment, software and network failures, impairments or congestion, or the configuration of Client's own computer systems and network, may prevent, interrupt or delay Client's access to PbK. Karpel Solutions is not liable for any delays, interruptions, suspensions or unavailability of PbK attributable to problems with the Internet or the configuration of Client's computer systems or network.

3. PASSWORD PROTECTION. Access to PbK is password-protected. Karpel Solutions provides multiple authentication alternatives for access to PbK. KARPEL SOLUTIONS STRONGLY ENCOURAGES THE USE OF STRONG PASSWORD AUTHENTICATION. Karpel Solutions is not responsible for Client's use of the PbK. 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 to PbK. Karpel Solutions is not liable for any unauthorized access to PbK and data or information contained therein, including without limitation access caused by failure to protect the login and password information of users.

4. SYSTEM REQUIREMENTS. Karpel Solutions provides PbK based upon the system requirements as specified by Karpel Solutions for Client. Karpel Solutions has no liability for any failure of PbK based upon Client's failure to comply with the system requirements of Karpel Solutions.

5. THIRD PARTY SOFTWARE. Karpel Solutions makes no express or implied warranties as to the quality of third party software or as to Karpel Solutions' ability to support such software on an on-going basis.

6. LIMITED ENGAGEMENT. Due to the limited nature of Karpel Solutions' engagement by client, Karpel Solutions makes no express or implied warranties as to the quality of, or the ability of software developed by Karpel Solutions to operate with, any hardware, network, software, systems and/or external data flows already in place at client's facilities or as may be added by the client.

7. 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 PBK WILL BE CONTINUOUS, ERROR-FREE OR UNINTERRUPTED, (ii) THAT THE RESULTS ARISING OUT OF CLIENT'S USE OF PBK WILL BE ACCURATE, COMPLETE OR ERROR-FREE, OR (iii) THAT THE SERVICE, SOFTWARE, DOCUMENTATION OR WEBSITE WILL MEET CLIENT'S NEEDS.

KARPEL SOLUTIONS EMPLOYEES

Karpel Solutions has spent substantial sums of money and invested large amounts of time in recruiting, supervising and training Karpel Solutions employees. Client further agrees that it has a unique opportunity to evaluate Karpel Solutions employees' performance, and has the potential to hire Karpel Solutions employees, and further agrees that such hiring away would substantially disrupt the essence of Karpel Solutions' business and ability to provide its services for others, and as such Karpel Solutions cannot agree to such a hiring. The Client acknowledges that Karpel Solutions employees work for Karpel Solutions under a non-competition agreement; therefore, Client agrees it shall not solicit for employment or contract as an independent contractor, or otherwise hire or engage a Karpel Solutions employee during the term of this Agreement or for a period of 2 years after the completion/termination of the project, whichever is longer.

CONFIDENTIALITY

1. CONFIDENTIALITY. Neither party shall disclose or use any confidential or proprietary information of the other party. The foregoing obligations shall not apply to information which: (i) is or becomes known publicly through no fault of the receiving party; (ii) is learned by the receiving party from a third party entitled to disclose it; or (iii) is already known to the receiving party.

2. PERSONALLY IDENTIFIABLE INFORMATION. The parties recognize that certain data Client or Karpel Solutions may use in conjunction with the PbK may be confidential personally identifiable information of third parties. Karpel Solutions shall use all best efforts to protect the confidentiality of personally identifiable information of third parties. Karpel Solutions shall have no liability for disclosure of personally identifiable information caused by Client's own negligence or misconduct.

3. DISCLOSURE REQUIRED BY LAW. In the event that any confidential or proprietary 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.

4. SIMILAR PROGRAMS AND MATERIALS. Provided Karpel Solutions does not violate the provisions of this section regarding confidentiality, the Agreement shall not preclude Karpel Solutions from developing for itself, or for others, programs or materials which are similar to those produced as a result of services provided to Client.

5. 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.

MARKETING

1. 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.

2. Provided Karpel Solutions does not violate the provisions of the foregoing section regarding confidentiality, Karpel Solutions shall have the right to demonstrate for other prospective clients any application developed by Karpel Solutions under this Agreement and shall have the right to include information about any such application in marketing materials and presentations.

MISCELLANEOUS

1. ELECTRONIC DOCUMENTS. To the extent possible, and under the terms required by Client, Client and Karpel Solutions may communicate by electronic means, including but not limited to facsimile documents. Both parties agree that: a signature or an identification code ("USERID") contained in an electronic document is legally sufficient to verify the sender's identity and the document's authenticity; an electronic document that contains a signature or USERID is a signed writing; and that an electronic document, or any computer printout of it, is an original when maintained in the normal course of business.

2. SEVERABILITY. If any portion of this Agreement is held to be void, invalid or otherwise unenforceable, in whole or in part, then the remaining portions of the Agreement shall remain in effect. This is the complete and exclusive statement of the Agreement between the parties which supersedes all proposals, oral or written, relating to the subject matter of this Agreement.

3. ENTIRE AGREEMENT. This Agreement constitutes the sole agreement between client and Karpel Solutions with respect to the subject matter hereof. It may not be modified or assigned except by written agreement of Client and Karpel Solutions.

4. 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 Dr., Suite 200
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5. GOVERNING LAW. The parties agree that **California** law applies to all matters of interpretation of this agreement. The parties further agree that the prevailing party shall be entitled to a judgment for its reasonable attorneys' fees and costs.