



MARIPOSA COUNTY

District Attorney · (209) 966-3626



RESOLUTION - ACTION REQUESTED 2021-133

MEETING: March 16, 2021
TO: The Board of Supervisors
FROM: Walter Wall, District Attorney
RE: Approve the Host Agreement with Karpel Computer Systems, Inc. for E-Discovery

RECOMMENDATION AND JUSTIFICATION:

Approve the Host Agreement with Karpel Computer Systems, Inc. DBA: Karpel Solutions to Provide Defender by Karpel to Local Indigent Defense; and Authorize the Board of Supervisors Chair to Sign the Agreement

The Mariposa County Board of Supervisors approved Resolution number 21-39 on January 26, 2021 for Mariposa County to enter a contract with Karpel Computer Systems (Karpel Solutions) to provide case management software to local indigent defense counsel. The contract was subsequently routed for signatures and completed on February 04, 2021.

It is requested by Karpel Solutions that a Hosting Agreement outlining the terms and scope of service be signed by the same parties before implementation of the case management software can begin. The Hosting Agreement outlines the following: Definitions, Fees and Terms, Service Level Commitment, Customer Obligations, Confidentiality, Ownership of Intellectual Property, Warranty, Limitation of Liability, Indemnification, Termination, and General Provisions.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board approved Resolution number 21-39 on January 26, 2021 to purchase and provide case management software for local indigent defense through Karpel Solutions. When this contract was approved and routed for signature, the Hosting Agreement was omitted. The Hosting Agreement works in conjunction with the contract itemizing more specific details of the services provided and liabilities.

The District Attorney's Office has been in an agreement with Karpel Solutions since 2014 to provide comparable software services.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Should the board choose not to approve the Hosting Agreement, the implementation of Defender by Karpel as outlined in Resolution number 21-39 will not take place. The

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District Attorney staff and local indigent defense will continue to navigate a system that is inefficient, outdated, and paper heavy. Staff will be less efficient and effective in preparing discovery and legal documents. Consequently, the operating budget would continue to increase on a yearly basis to pay for the costs of creating maintaining and storing hard files as well as producing copies of all required documents and evidence that could be easily accessible through this case management system.

FINANCIAL IMPACT:

Financial impact covered in Resolution number 21-39. No financial impact to be incurred when approving the Hosting Agreement.

ATTACHMENTS:

2020-10-20 CA Mariposa County Public Defender HOSTEDbyKarpel Agreement (PDF)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Miles Menetrey, District V Supervisor

SECONDER: Wayne Forsythe, District IV Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey



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**MARIPOSA COUNTY PUBLIC DEFENDERS
MARIPOSA COUNTY, CA**

**HOSTEDbyKarpel
AGREEMENT FOR**



HOSTEDbyKarpel®

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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 Mariposa 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 the contract below wherein Karpel Solutions agrees to provide internet based software hosting through HOSTEDbyKarpel of the copyrighted software program known as DEFENDERbyKarpel® 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

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- i. "DbK" means the DEFENDERbyKarpel public defender case management system and specifically the Client's licensed copy of DEFENDERbyKarpel.
- j. "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.
- k. "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.
- l. "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.
- m. "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 three (3) 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 the invoice. Pricing of subsequent annual terms may be subject to change at the sole discretion of Karpel Solutions.

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- 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 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 schedule maintenance may affect availability of the Service, Website, 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. 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 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.

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

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- 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

- 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 access to the Software, Documentation, Website, and Services or otherwise complying with its obligations under this Agreement.

7. WARRANTY

- a. LIMITED WARRANTY. Karpel Solutions warrants it will provide the 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 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

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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 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, 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 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 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 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.** Client will indemnify, defend, and hold harmless Karpel Solutions from and against any and all liability, damage, loss or expense (including

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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 63127
(314) 892-6300
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 California, 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 appropriate court located in California, 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.

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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. 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.

Mariposa County

Karpel Solutions

Marshall Long

zorrosign 46845AA5C2F

Signature

~~Marshall Long~~

Marshall Long

Printed Name

~~Marshall Long~~

Board of Supervisors Chair

Title

~~Chairman, District 3 Supervisor~~

Mariposa County Board of Supervisors

03/18/2021

Date

Matt Ziemianski

zorrosign 70D5C49C89

Signature

Matt Ziemianski

Printed Name

Matt Ziemianski

Title

Chief Executive Officer

Karpel Solutions

03/19/2021

Date

Approval as to Legal Form:

Steven W. Dahlem

zorrosign 46845AA577F

Steven W. Dahlem

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