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**CITY OF COLUMBIA
PROSECUTING ATTORNEY'S OFFICE
COLUMBIA, MO**

HOSTEDbyKarpel

DATA HOSTING AGREEMENT FOR



HOSTEDbyKarpel®

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THIS DATA HOSTING AGREEMENT (hereinafter "Agreement") is by and between Karpel Computer Systems Inc., a Missouri corporation, doing business as Karpel Solutions (hereinafter referred to as "Karpel Solutions") and the City of Columbia, Missouri, a political subdivision of the State of Missouri (hereinafter referred to as "Client") and is entered into as of the date of the last signatory below (hereinafter "Effective Date"). Karpel Solutions and Client are each individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, Client and Karpel Solutions have entered into a separate Master Licensing & Services Contract for administrative software to assist Client's operations in Prosecutor's Office;

WHEREAS, 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 and the terms of the hosting services are set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

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 Client Content, Personally Identifiable Information, or a closed record as defined under Chapter 610 of the Missouri Revised Statutes. 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, (iv) is independently developed by the receiving party without the use of any Confidential Information, or (v) any open record as defined under Chapter 610 RSMo.
- 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. "Master Licensing & Services Contract" means the separate contract entered into by the Parties which controls the terms and conditions of the PbK licenses and support services.
- h. "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 on HOSTEDbyKarpel. Personally Identifiable Information shall be considered Confidential Information.
- i. "PbK" means the PROSECUTORbyKarpel criminal case management system and specifically the Client's licensed copy of PROSECUTORbyKarpel
- 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. An initial total of eight (8) 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. Both Parties agree and understand that the number of users may change through the term of this Agreement. 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.

The fees described herein may be subject to change at the sole discretion of Karpel Solutions.

- b. **TERM.** The term of this Agreement shall be for one (1) year and will begin upon Effective Date. Such term shall be perpetual and automatically renew for subsequent terms of equal length, unless otherwise terminated as provided for herein.
- c. **BILLING AND PAYMENT.** Both Parties agree and understand that the terms and conditions for the billing and payment of the hosting fees as described herein shall be included in, and controlled by, the Master Licensing & Services Contract between the Parties. Client agrees and understands that any failure to timely pay the hosting fees per the terms of the Master Licensing & Services Contract will result in a material default of this Agreement.

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 warrants it will provide the Software, Website and Service to Client with a stated minimum uptime of 99.5% to Client per term.
- 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 scheduled maintenance is to be performed, then Karpel Solutions shall provide notice to Client at least 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.** Both Parties agree and understand Client will be transferring sensitive and private data for Karpel Solutions to host on its Service and Website. Karpel Solutions is committed to maintaining the security of Client Content, Confidential Information, and Software on Karpel Solutions' Service and Website. Karpel Solutions shall be responsible for maintaining the Software, Website and Service in a secure manner, subject to the Customer Obligations outlined below. Karpel Solutions shall exercise reasonable skill, care and diligence in securing the Karpel Solutions' Service and Website, and to carry out its responsibilities under this Agreement in accordance with the generally accepted standards of good professional practice at the time of performance. Karpel Solutions further agrees to conduct all activities on the Service and Website in accordance with all applicable laws and regulations. Karpel Solutions agrees to 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. If either Party believes or suspects that security has been breached or Client Content or Personally Identifiable Information has been compromised, whether it be from harmful code or otherwise, the Party shall notify the other Party of the issue or possible security breach within forty-eight (48) hours. The notifying Party also has a responsibility to exercise good faith and due diligence to use any efforts available to end or mitigate any security breaches once they happen.

- 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 and covenants that all Client Content shall be stored in the United States of America at all times throughout the length of this Agreement.
- g. **DATA ACCESS.** Karpel Solutions' access to Client Content and Personally Identifiable Information shall be limited to the purpose of hosting, maintaining and securing the Service and Website; any access for purposes beyond the scope described herein is not authorized and against the terms of this Agreement. Karpel Solutions' is fully responsible for the activities of Karpel Solutions' employees and authorized agents who access Client Content and Personally Identifiable Information. Karpel Solutions' must inform their employees and authorized agents that this is Confidential Information and they are subject to, and must comply with, all of the terms of this Agreement. Further, Karpel Solutions' shall require its subcontractors or third party software providers to comply at all times with the requirements of this section.

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 licensed by Karpel 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 that was caused by Client's 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) 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, 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, in good faith, reasonably 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 exercise reasonable skill, care and diligence in protecting the confidentiality of Personally Identifiable Information and will carry out its responsibilities in accordance with the generally accepted standards of good professional practice in effect at the time of performance. Karpel Solutions is not liable for disclosure of Personally Identifiable Information that was caused by Client's own negligence or misconduct.
- b. **KARPEL DISCLOSURE OF CONFIDENTIAL INFORMATION WHEN REQUIRED BY LAW.** In the event that any Confidential Information is required to be disclosed by Karpel pursuant to any law, code, regulation or court order from a court of competent jurisdiction, then Karpel shall give the Client immediate written notice of such requirement and shall use its best efforts to seek or to cooperate with the Client in seeking a protective order with respect to the Confidential Information requested.
- c. **MISSOURI SUNSHINE LAW AND CLIENT DISCLOSURE.** Client is subject to the provisions of Missouri Revised Statutes Chapter 610, Government Bodies and Records (hereinafter, "Missouri Sunshine Law"). The Parties agree and understand that the Agreement shall be interpreted in accordance with the provisions of the Missouri Sunshine Law, as amended, and that Client cannot, and does not, agree to keep anything confidential which is an open record under the Missouri Sunshine Law. **CLIENT STRONGLY ENCOURAGES KARPEL SOLUTIONS TO KEEP AND MAINTAIN ANY OF ITS OWN RECORDS WHICH IT BELIEVES ARE NOT SUBJECT TO PUBLIC DISCLOSURE UNDER THE MISSOURI SUNSHINE LAW.** In the event disclosure of records by Karpel to Client is absolutely required in order to perform its obligations under this Agreement, and Karpel Solutions reasonably believes in good faith that the written information is a closed record under the Missouri Sunshine Law, then Karpel Solutions shall conspicuously mark such records as "CONFIDENTIAL". Records not

appropriately marked by Karpel Solutions' will not be considered Confidential Information under the terms of this Agreement. If Client receives an open records request for any such records marked by Karpel Solutions as "Confidential", then Client will endeavor to notify Karpel Solutions as soon as practical to provide Karpel Solutions with an opportunity to protect such documents from public disclosure. Both Parties agree and understand that this Agreement is a public record under the Missouri Sunshine Law and is not Confidential Information.

- d. INJUNCTIVE RELIEF. Any breach of the confidentiality provisions of this Section will cause irreparable harm to the other party. The parties agree that the non-breaching party may enforce the provisions of this Section by seeking an injunction, specific performance, criminal prosecution or other equitable relief without prejudice to any other rights and remedies the non-breaching party may have.

6. OWNERSHIP OF INTELLECTUAL PROPERTY

- a. **KARPEL SOLUTIONS OWNERSHIP.** Karpel Solutions retains all right, title and interest in and to the Software, Documentation, 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, and subject to the confidentiality provisions provided for herein.

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 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. **NO HARMFUL CODE.** Karpel Solutions warrants that the Services and Website do not contain Harmful Code. For purposes of this Agreement, "Harmful Code" is any code containing any program, routine, or device which is designed to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, including without limitation, any time bomb, virus, drop dead device, malicious logic, worm, Trojan horse or trap or back door.
- f. **DISCLAIMER. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES. 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.**

8. INSURANCE

KARPEL SOLUTIONS shall maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as the CLIENT'S review or acceptance of insurance maintained by KARPEL SOLUTIONS is not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by KARPEL SOLUTIONS under this Agreement. Coverage to be provided as follows by a carrier with A.M. Best minimum rating of A- VIII.

- a. **Workers' Compensation & Employers Liability.** KARPEL SOLUTIONS shall maintain Workers' Compensation in accordance with Missouri State Statutes or provide evidence of monopolistic state coverage. Employers Liability with the following limits: \$500,000 for each accident, \$500,000 for each disease for each employee, and \$500,000 disease policy limit.

- b. Commercial General Liability. KARPEL SOLUTIONS shall maintain Commercial General Liability at a limit of \$2,000,000 Each Occurrence, \$3,000,000 Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
- c. Business Auto Liability. KARPEL SOLUTIONS shall maintain Business Automobile Liability at a limit of \$2,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event KARPEL SOLUTIONS does not own automobiles, KARPEL SOLUTIONS agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
- d. KARPEL SOLUTIONS may satisfy the liability limits required for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability. KARPEL SOLUTIONS agrees to endorse CITY as an Additional Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance state the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- e. The City of Columbia, its elected officials and employees are to be Additional Insured with respect to the Project to which these insurance requirements pertain. A certificate of insurance evidencing all coverage required is to be provided at least ten (10) days prior to the Effective Date of the Agreement between the KARPEL SOLUTIONS and CITY. KARPEL SOLUTIONS is required to maintain coverages as stated and required to notify CLIENT of a Carrier Change or cancellation within two (2) business days. CITY reserves the right to request a certificate of insurance.
- f. The Parties hereto understand and agree that CITY is relying on, and does not waive or intend to waive by any provision of this Agreement, any monetary limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to CITY, or its elected officials or employees.
- g. Failure to maintain the required insurance in force may be cause for termination of this Agreement. In the event KARPEL SOLUTIONS fails to maintain and keep in force the required insurance or to obtain coverage from its subcontractors, CITY shall have the right to cancel and terminate this Agreement without notice.
- h. The insurance required by the provisions of this article is required in the public interest and Client does not assume any liability for acts of KARPEL SOLUTIONS and/or KARPEL SOLUTIONS's employees and/or KARPEL SOLUTIONS's subcontractors in the performance of this Agreement.

KARPEL SOLUTIONS LIABILITY FOR ANY DAMAGES SHALL NOT EXCEED TWO MILLION DOLLARS (\$2,000,000).

9. INDEMNIFICATION

- a. **KARPEL INTELLECTUAL PROPERTY INDEMNIFICATION.** Karpel Solutions will at its own expense (including payment of attorneys' fees) defend Client in the event that any suit is brought against Client based on a claim that the Software directly infringes any valid U.S. Intellectual Property right and shall indemnify Client from any amounts assessed against Client in a resulting judgment or settlement of such claims. Karpel Solutions will not be liable for any cost or expense of defense Client incurs in connection with any such suit or claim, without Karpel Solutions' prior and specific authorization and consent.

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

Karpel Solutions' liability and obligation under this Section will be will not exceed two million dollars (\$2,000,000). 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.

- b. **KARPEL GENERAL HOLD HARMLESS.** For all claims not already covered by the Intellectual Property Indemnification provided for in this Agreement and to the fullest extent provided by law, Karpel Solutions shall indemnify and hold harmless Client, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise of Karpel Solutions, of any subcontractor (meaning anyone including but not limited to consultants having a contract with Karpel Solutions or a subcontractor for part of the services), of anyone directly or indirectly employed by Karpel Solutions or by any subcontractor, or anyone for whose acts Karpel Solutions or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Karpel Solutions to indemnify, hold harmless, or defend Client from its own negligence.
- 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 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, and any settlement shall not be finalized without the written consent of the Client.

10. TERMINATION

- a. **TERMINATION FOR DEFAULT.** If either Party fails to perform its duties and obligations provided for herein, then that Party shall be in default. The non-defaulting Party may provide notice of the default in writing with reasoning provided. If the default is not cured within thirty (30) calendar days from receipt of the written notice of default, then the non-defaulting Party may terminate this Agreement in whole or in part for failure to perform by providing written notice of termination. The written notice of termination will be effective immediately upon its receipt. In such event, the defaulting Party shall be liable for all damages (including all costs and attorney's fees) arising out of or related to the default.
- b. **TERMINATION FOR CONVENIENCE.** Client may terminate this Agreement for convenience at any time by providing written notice of termination for convenience. This termination goes into effect upon Contractor's receipt of written notice. Karpel Solutions may terminate this Agreement for convenience at the end of a term, provided Karpel Solutions provides at least sixty (60) days advance notice to Client in writing.
- c. **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. 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, Client and Karpel Solutions may not assign or otherwise transfer this Agreement or 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. No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any other third party, so as to constitute any such person a third-party beneficiary of this Agreement.
- b. **AMENDMENT, MODIFICATION AND WAIVER; SEVERABILITY.** Any amendment or modifications of any provision of this Agreement shall not be binding on either Party unless it is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties. A waiver by either party of a term or condition will not be deemed a waiver unless it is in writing and signed by a duly authorized officer or representative of the applicable Party, and shall 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 is due to an event of Force Majeure. For purposes of this Agreement, "Force Majeure" means any event that is a result of the elements of nature which delays or prevents a Party's performance of its obligations, but only to the extent that (i) such event of Force Majeure is not attributable to fault or negligence on the part of that Party, (ii) such event of Force Majeure is caused by factors beyond that Party's reasonable control, and (iii) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences. A Party claiming Force Majeure shall provide prompt notice of such event to the other Party.
- 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, or (ii) certified or registered mail, postage prepaid, return receipt requested. The address for such notices is set forth below. 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.

Karpel Solutions
9717 Landmark Parkway, Suite 200
St. Louis, MO 63127
(314) 892-6300
mziemianski@karpel.com

City of Columbia, MO
ATTN: Purchasing Agent
P.O. Box 6015
Columbia, MO 65205

WITH A COPY TO:
City of Columbia, MO
ATTN: City Prosecutor
P.O. Box 6015
Columbia, MO 65205

- f. **GOVERNING LAW AND DISPUTE RESOLUTION.** This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District

of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri.

- g. **NO WAIVER OF IMMUNITIES.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or laws.
- h. **MISSOURI ANTI-DISCRIMINATION AGAINST ISRAEL ACT.** Pursuant to Missouri Revised Statute Section 34.600, Karpel Solutions certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.
- i. **GENERAL NONDISCRIMINATION.** Pursuant to Chapter 12 of the Code of Ordinances of the City of Columbia, Karpel Solutions, and any subcontractor thereof, agrees to comply with all state, federal and local regulations regarding unlawful discrimination.
- j. **AMERICAN WITH DISABILITIES ACT.** Karpel Solutions shall comply with all applicable provisions of the Americans with Disabilities Act and the regulations implementing the Act, including those regulations governing employment practices. If this Agreement involves Karpel Solutions providing services directly to the public, Karpel Solutions shall make the services, programs, and activities governed by this Agreement accessible to persons with disabilities as required by the Americans with Disabilities Act and its implementing regulations. Payment of funds under this Agreement are conditional upon Karpel Solutions certifying to Client Manager in writing that it and the completed Project complies with the Americans with Disabilities Act and 28 CFR Part 35.
- k. **EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED.** Karpel Solutions shall comply with Missouri Revised Statute Section 285.530 in that Granicus shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. Karpel Solutions shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Karpel Solutions shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Karpel Solutions shall require all subcontractors to observe the requirements of this section.
- l. **GENERAL LAWS.** Karpel Solutions shall comply with all federal, state and local laws, rules, regulations and ordinances.

12. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the Parties relative to the contracted services herein. All previous or contemporaneous contracts, representations, promises and conditions relating to the contracted services herein are superseded.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the date of the last signatory to this Agreement.

CITY OF COLUMBIA, MISSOURI

By: _____
John Glascock, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor *AK*

CERTIFICATION: I hereby certify that this Agreement is within the purpose of the appropriation to which it is to be charged, Account No. _____, and there is an unencumbered balance to the credit of such appropriation, sufficient to pay therefor.

By: _____
Matthew Lue, City Director of Finance

KARPEL COMPUTER SYSTEMS, INC.

By:  _____

Printed Name: MATT ZIEMANSKI

Title: CEO

Date: 11/9/2020