

**COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE CITY OF LEE'S SUMMIT  
AND  
TURN-KEY MOBILE, INC.**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into between the City of Lee's Summit, a Missouri municipal corporation (the "City"), and Turn-Key Mobile, Inc. a Corporation (the "Vendor"). The City and the Vendor are sometimes referred to individually as the "Party" and collectively as the "Parties".

RECITALS

A. After a competitive procurement process, Jasper County Sheriff's Office entered into a Prime Vendor Contract dated March 15, 2021 (the "Turn-Key Contract"), for the Vendor to provide Computer and Network Technology. The Turn-Key Contract is incorporated herein by reference as though fully set forth, to the extent not inconsistent with this Agreement.

B. The City is permitted to purchase such services under the Turn-Key Contract, at its discretion and with the agreement of the awarded Vendor, and so long as the Turn-Key Contract permits its cooperative use by other public entities, including the City.

C. The City and the Vendor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the Turn-Key Contract and this Agreement, and (ii) establishing the terms and conditions by which the Vendor may provide the City with Computer and Network Technology as more particularly set forth in Section 2 below (the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Vendor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the Effective Date set forth below and shall remain in full force and effect until the end of the term of Turn-Key Contract, unless terminated as otherwise provided in this Agreement.

2. Scope of Work. Vendor shall provide the Materials and Services as set forth in the Vendor's contract with the Jasper County Sheriff's Office as attached.

3. Work Authorization/E-verify. Pursuant § 285.530, RSMo., if this Agreement exceeds five thousand dollars (\$5,000.00), Vendor warrants and affirms to the City that (i) Vendor is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services and (ii) Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

Vendor shall swear to and sign an affidavit declaring such affirmation, and provide the City with supporting documentation of its enrollment and participation in a federal work authorization program

with respect to the employees working in connection with this Agreement. The required documentation must be from the federal work authorization program provider (e.g. the electronic signature page from the E-Verify program's Memorandum of Understanding); a letter from Vendor reciting compliance is not sufficient.

4. Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in the Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The Parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which the Agreement is executed and delivered. Vendor hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this section.

5. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Missouri and suit pertaining to this Agreement may be brought only in courts in Jackson County, Missouri.

6. Anti-Discrimination Against Israel Act. If this Contract has a total potential value of \$100,000 or more and Vendor has 10 or more employees, the following applies. Pursuant to Section 34.600, RSMo and to the fullest extent permitted by law, Vendor certifies that Vendor is not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel as defined in Section 34.600, RSMo

7. Rights and Privileges. To the extent provided under the Turn-Key Contract, the City shall be afforded all of the rights and privileges afforded to Jasper County Sheriff's Office and shall be the "Buyer" (as defined in the Turn-Key Contract) for the purposes of the portions of the Turn-Key Contract that are incorporated herein by reference.

8. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 7 above, the City shall be afforded all of the insurance coverage and indemnifications afforded to Jasper County Sheriff's Office to the extent provided under the Turn-Key Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the City under this Agreement including, but not limited to, the Vendor's obligation to provide the indemnification and insurance.

9. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, and counterparts may be exchanged by electronic transmission (including by email), each of which will be deemed an original, but all of which together constitute one and the same instrument.

10. Effective Date. This Agreement shall not be effective until the date signed by the City Manager of the City ("Effective Date").

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates listed below /is \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date").

CITY OF LEE'S SUMMIT

\_\_\_\_\_  
Stephen A. Arbo, City Manager

Date \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Trisha Fowler Arcuri, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Daniel R. White,  
Chief Counsel of Management and Operations

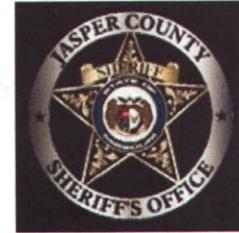
TURN-KEY MOBILE, INC

By Dana Southard

Print Name Mrs Dana Southard

Title Vice President

Date 4-22-21



## CONTRACT FOR COMPUTER AND NETWORK TECHNOLOGY PRIME VENDOR

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THIS **Contract for Computer and Network Technology Prime Vendor Agreement**, (Agreement) is entered into by and between the Jasper County Sheriff Office (Buyer) and Turn-Key Mobile, Inc., (Seller), effective upon execution by the Jasper County Sheriff Office.

WHEREAS, Seller has bid to provide Computer and Network Technology in response to Request for Bid/Proposal No. 2021-001 ("RFP"), which RFP includes the required scope of work and all specifications and which RFP and the Seller's bid or proposal response, as applicable, are incorporated by reference in this Agreement, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, BUYER and Seller agree as follows:

1. **Buyer** issued an RFP to which the Seller responded, JCSO 2021-001, including in its entirety the catalog listings for requirements in the RFP as requested.
2. **Seller** delivered their answer to the RFP on February 11, 2021 under sealed bid as required by the RFP.
3. **Buyer** has selected Seller's Response to RFP and now desires to contract with Seller to provide Buyer with the Computer and Network Technology set forth in Seller's Contract.
4. **Buyer and Seller** desire to enter into this Contract to set forth in writing their respective rights, duties, and obligations hereunder.
5. **Term.** This Agreement is for five years, subject to appropriations., performance commencing upon the 15<sup>th</sup> day of March, 2021.

**NOW, THEREFORE, WITNESSETH** that for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

## **SECTION 1. DEFINITIONS:**

As used herein, the terms set forth below shall have meanings set forth below.

- A. **"Acceptance"** shall mean acceptance of the System as set forth in Section 13 hereof.
- B. **"Acceptance Date"** shall mean the date the System is accepted or deemed accepted as set forth in Section 13 hereof.
- C. **"Acceptance Tests"** shall mean the testing procedures either described in Seller's Proposal or mutually agreed upon by Buyer and Seller to be performed to determine whether the System has met the acceptance criteria either set forth in Seller's Proposal or as mutually agreed upon in writing by Buyer and Seller.
- D. **"Certificate of Insurance"** shall mean the certificate to be provided by Seller evidencing the insurance coverage of Seller and the form of which certificate is set forth in Exhibit B attached hereto.
- E. **"Documentation Deliverables"** shall mean the standard commercial quality manuals to be furnished by the Seller to the Buyer pursuant to the terms set forth in Seller's Proposal and this Contract.
- F. **"Effective Date of the Contract"** shall be the date designated by the parties or, if no date is designated, shall be the date on which the Contract is signed by the last of the parties to sign the Contract. The "Effective Date" shall be the date inserted on the first page of the Contract.
- G. **"Hardware"** shall mean the equipment, parts, and materials to be provided by Seller for the System as listed in Seller's Proposal.
- H. **"Installation Schedule"** shall mean the schedule either set forth in Seller's Proposal or otherwise mutually agreed upon by Seller and Buyer in writing for the delivery of the Hardware and the performance of the Services described in the Statement of Work.
- I. **"Seller"** shall mean Turn-Key Mobile, Inc. with offices at 210 Prodo Drive, Jefferson City, Missouri 65109.
- J. **"Seller's Proposal"** shall mean the proposal provided by Seller to Buyer as described in the recitals of this Contract.
- K. **"Services"** shall mean the services to be provided by Seller to Buyer as set forth in Seller's Proposal.
- L. **"Software"** shall mean the proprietary computer software of Seller as owned exclusively by Seller or Seller's suppliers, as appropriate, and as further defined in and licensed to Buyer pursuant to the terms of the Software License Agreement.
- M. **"System"** shall mean the Mobile Data system comprised of the Hardware and Installation to be furnished by Seller to Buyer pursuant to the terms set forth in Seller's Proposal and this Contract.
- N. **"Total Contract Price"** shall mean the price of the Hardware, the Software license, and the Services to be furnished by Seller to Buyer pursuant to the terms set forth in Seller's Proposal and this Contract.

## **SECTION 2. SCOPE OF WORK:**

Seller shall furnish, deliver, and install the Hardware and Software for the System and provide the Documentation Deliverables and Services in accordance with the terms of Seller's Proposal and this Contract.

## **SECTION 3. BUYER'S OBLIGATIONS:**

- A. The Buyer's obligations set forth in Seller's Proposal and this Contract shall be performed by Buyer in a timely and proper fashion in accordance with the Installation Schedule, or as otherwise agreed upon by Buyer and Seller, to allow Seller to timely perform its obligations under this Contract.

B. In addition to the obligations specifically identified in Seller's Proposal, Buyer shall also have the following additional obligations.

- (1) Buyer shall designate a project manager to act as Buyer's primary contact with the Seller.
- (2) Buyer shall provide access as needed, to all sites owned, leased, or otherwise controlled by Buyer.

#### **SECTION 4. FACILITIES SITES:**

Any sites where Seller is to operate and perform System installation under the terms of this Contract must be approved by Buyer, whose approval shall not be unreasonably withheld, delayed, or conditioned. Buyer shall be responsible, at Buyer's expense, for obtaining all rights to use sites including, but not limited to, all permits and licenses necessary to perform work on the site. Buyer shall be responsible for paying all utility charges to the appropriate utility for providing utility services to the System installation areas.

#### **SECTION 5. DELIVERY, TITLE AND RISK OF LOSS:**

- A. Seller shall ship the Hardware to Buyer at Seller's expense on or before the dates set forth in the Installation Schedule. Partial deliveries shall be permitted. Upon delivery to the carrier, title to each portion of the Hardware and all risk of loss or damage shall pass to Buyer; provided, however, that Seller shall remain responsible until Acceptance of the System for loss or damage resulting from the willful misconduct or negligent acts or omissions of Seller, its employees, agents, and subcontractors. Buyer shall keep the Hardware fully insured for the total amount of all monies then due, or yet to become due, to Seller with respect to this Contract.
- B. If Buyer fails to take delivery of any of the Hardware, Seller may place such Hardware in storage at the place of manufacture or elsewhere. In such event: (1) Seller shall notify Buyer of the placement of any Hardware in storage; (2) Seller's delivery obligations shall be deemed fulfilled and title and all risk of loss or damage shall thereupon pass to Buyer; (3) any amounts otherwise payable to Seller upon delivery shall be payable upon presentation of Seller's invoices therefore; and (4) promptly upon submission of Seller's invoices therefore Buyer shall reimburse Seller for all expenses incurred by Seller such as preparation for and placement into storage, handling, storage, demurrage, inspection, preservation and insurance.

#### **SECTION 6. PRICE:**

The Total Contract Price to be paid by Buyer to Seller is as stated in the Response to RFP, a Manufacturers Stated Retail Price (MSRP). Said MSRP pricing shall be discounted per the pricing sheet attached and referred to in this document as Exhibit A and includes MSRP Discounts for each Manufacturer listed. The individual prices for the units of Hardware, Installation, and Services to be performed are as set forth in Seller's Contract Proposal.

## **SECTION 7 TAXES:**

In addition to any price specified herein, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale or any Products or services furnished hereunder or to their use by Seller or Buyer, or Buyer shall otherwise furnish Seller with tax exemption certificates acceptable to all applicable taxing authorities.

## **SECTION 8. CHANGES AND ADDITIONS:**

- A. In the event of any change in the Hardware as a result of the imposition after the Effective Date of this Contract of any requirements by any federal, state, or local government, an equitable adjustment in the price shall be made to reflect any added cost and expense of such change and the Contract shall be modified in writing accordingly.
- B. Notwithstanding any other provision hereof to the contrary, if the performance by Seller of all or any part of this Contract, through and including completion of System testing and Acceptance, is delayed or interrupted, for any reason other than the fault of Seller, for a consecutive period exceeding seven (7) days in any instance or a cumulative period exceeding thirty (30) days for all instances then, upon written notice from Seller to Buyer, an equitable adjustment in the price shall be made to reflect any increase in the cost of performance of this Contract and the Contract shall be modified in writing accordingly.

## **SECTION 9. PAYMENTS:**

- A. The Total Contract Price for the Hardware, Installation and the Services shall be paid by the Buyer to Seller as follows:
  - 1. **Hardware**

One Hundred percent (100%) of the total price of all Hardware shall be due within 30 Days after receipt of Hardware at buyers designated location. Seller has the right for partial shipments/deliveries and billings. This will be avoided as much as necessary by seller by requesting "Ship Completes" from Distributors of Hardware.
  - 2. **Final Payment**

The final payment of the remaining Contract Value for all Hardware, Installation, and Services shall be due upon final Acceptance of the System.
- B. **Payment Dates**

The Payment(s) associated with the event(s) above shall be due thirty (30) days following the date of Seller's invoice.

**C. Other Amounts**

Any other amounts due Seller hereunder shall be due upon Buyer's receipt of Seller's invoice.

**D. Late Payments**

All amounts past due over thirty (30) days shall accrue interest from their due date at the rate of one and one-half percent (1-1/2%) per month (or such lesser rate as may be the maximum permissible rate under applicable law).

**SECTION 10. SUBCONTRACTING:**

Seller may subcontract any portion of work to be performed by Seller hereunder provided Seller shall be responsible for the performance and work of any such subcontractors.

**SECTION 11. EXCUSABLE DELAYS:**

- A.** Seller shall not be liable for delays in delivery or failure to perform due directly or indirectly to: (1) causes beyond Seller's reasonable control, (2) Acts of God, acts (including failure to act) of any governmental authority (de jure or de facto), wars (declared or undeclared), riots, revolutions, strikes or other labor disputes, fires, floods, sabotage, nuclear incidents, earthquakes, storms, epidemics, (3) Seller's inability to timely obtain necessary materials, items, components or services from suppliers who are affected by the foregoing circumstances, or (4) the failure of the Buyer to perform its obligations hereunder in a timely manner (5) Delays resulting from actions from the Buyer or their Agency. The foregoing shall apply even though any of such causes exists at the time of signature of the Contract by Seller or occurs after delays in Seller's performance of its obligations due to other reasons.
- B.** In the event of any delay or failure excused by this Section, Seller shall as soon as practical notify Buyer and shall at the same time, or at the earliest practical date after such notice, specify the revised delivery and performance dates. In the event of such delay, the time of delivery or of performance shall be extended for a reasonable time period to compensate for the time lost by Seller by reason of the delay. If delay is due to actions of the Buyer, all storage and moving cost of already acquired or purchased equipment shall be the responsibility of the Buyer.

**SECTION 12. SELLER'S INSURANCE**

- A.** Seller shall maintain in force at all times during Seller's performance under the Contract not less than the following insurance coverage with insurers authorized to do business in the state(s) in which work hereunder is to be performed by Seller:

- (1) workers' compensation insurance as required by law;
  - (2) general liability insurance with limits of liability of not less than \$1,000,000 combined single limits for bodily injury and property damage per occurrence; and
  - (3) motor vehicle liability insurance with limits of liability of not less than \$500,000 combined single limits for bodily and property damage per occurrence.
- B. Within ten (10) business days of execution of this Contract, Seller shall provide Buyer with a Certificate of Insurance in the form set forth in Exhibit B evidencing the insurance coverage.

**SECTION 13. TESTING AND ACCEPTANCE:**

- A. Seller shall notify Buyer that the System is ready for Acceptance Tests at least five (5) days before commencement of the Acceptance Tests. Buyer and Seller shall jointly commence the Acceptance Tests on the date specified in Seller's notice (or other mutually agreeable date) and a representative of Seller and a representative of Buyer shall sign off on the form provided as part of the test procedure whether each item of the test was passed or failed. If Buyer does not have a representative attend the Acceptance Tests, Seller shall proceed with those tests and immediately forward the test results to Buyer. If the System does not fulfill the requirements of the Acceptance Tests, Seller shall correct the defects at no additional cost to Buyer as soon as practicable. Upon correction of the defects the Acceptance Tests for the applicable part of the System shall be repeated in accordance with the procedures set forth in this Section. Successful completion of the Acceptance Test is the sole criterion for technical system acceptance and the initiation of the warranty period. Final system acceptance shall occur when the Hardware and Software for the System, Documentation Deliverables and Services have been furnished, delivered, installed, and tested.
- B. Notwithstanding the acceptance testing of the System set forth in Section 13.A above, if Buyer commences use of any portion of the System for its intended purpose, other than for the express purpose of training or testing as mutually agreed upon by Seller and Buyer in writing, prior to System Acceptance, the applicable portion of the System shall be deemed accepted by Buyer. The final payment for the applicable portion of the System shall be due and payable upon such acceptance. The Warranty Period for the applicable portion of the System put into use together with the associated installation Services shall be deemed to have commenced concurrently with the use of the applicable portion of the System for its intended purpose. The use of the applicable portion of the System for its intended purpose shall be deemed to have occurred when Buyer commences to use and rely primarily on the applicable portion of the System for its communications.
- C. As used in the Contract, the term "Acceptance Date" shall mean and "Acceptance" of the System shall be deemed to occur upon the earlier of: (1) the date on which the System is deemed accepted pursuant to subsection (A) above, or (2) the date on which the System is deemed accepted pursuant to subsection (B) above.

#### **SECTION 14. WARRANTIES:**

##### **A. Hardware and Services**

Seller warrants for a period of twelve (12) months from the Acceptance Date (hereinafter referred to as the "Warranty Period"), that the installation Services furnished by Seller under this Contract shall be free from defects in material and workmanship and shall conform to the Contract specifications. All claims for breach of this warranty are conclusively deemed waived unless made within the Warranty Period. Hardware shall carry the manufacturers 3 year limited warranty for parts and labor. Panasonic's "Protection Plus" warranty for parts and labor may be purchased at an additional cost. All computer hardware issues shall be directed to Panasonic, at 1-800-Laptop5 and work shall be done at Panasonic's National Repair Center, Leawood, Kansas.

##### **B.** During the Warranty Period if any component of the Hardware or portion of the installation Services fails to meet the foregoing warranties, Seller's sole obligation and Buyer's exclusive remedy under this warranty shall be the correction by Seller of the failure at Seller's option:

Seller shall research the issue and if required will correct the faulty installation. Any such failure, or the repair or replacement of the defective component or the redoing of any installation, shall not extend the Warranty Period. All warranty labor must be performed by an authorized service group approved by Seller either at its place of business, for mobile or portable equipment, or at the Buyer's location for fixed location equipment should Seller determine that it is not feasible to return the fixed location equipment to Seller's authorized service group.

##### **C.** Seller's obligations shall not apply to: (1) Hardware or components thereof which are normally consumed in operation, or (2) Hardware or components thereof which have a normal life inherently shorter than the Warranty Period, or (3) defects which are the result of improper storage, use, or installation performed by other than Seller, maintenance performed by other than Seller, or repair performed by other than Seller, or (4) Hardware which has been subjected to any other kind of misuse or detrimental exposure or has been involved in an accident, or (5) Hardware or installations altered or repaired by any party other than Seller without Seller's prior written consent.

#### **SECTION 15. INDEMNIFICATION:**

##### **A.** Seller shall be responsible for and agrees to indemnify Buyer and hold Buyer harmless from and against all third-party claims, demands and causes of action for direct damages (including reasonable legal fees) for personal injuries or damage to tangible property to the extent directly resulting from the willful misconduct or negligent acts or omissions of Seller, Seller's officers, agents, employees, or subcontractors. Buyer agrees to notify Seller as soon as practical of any third-party claim, demand, or cause of action for which Buyer will request indemnification from Seller. Buyer will provide Seller with the necessary information and assistance to defend such claim, demand, or cause of action.

##### **B.** Buyer shall be responsible for and agrees to indemnify Seller and hold Seller harmless from and against all third-party claims, demands and causes of action for direct damages (including reasonable legal fees) for personal injuries or damage to tangible property to the extent directly resulting from the willful misconduct or negligent acts or omissions of Buyer, Buyer's officers, officials, agents,

employees, or subcontractors. Seller agrees to notify Buyer as soon as practical of any third-party claim, demand, or cause of action for which Seller will request indemnification from Buyer. Seller will provide Buyer with the necessary information and assistance to defend such claim, demand, or cause of action.

**SECTION 16. PATENTS:**

- A. Seller warrants that the System furnished hereunder shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If Buyer notifies Seller promptly of the receipt of any claim that the System infringes a United States patent or copyright and gives Seller information, assistance, and exclusive authority to settle and defend such claim, Seller at its own expense shall defend, or may settle, any suit or proceeding against Buyer so far as based on a claimed infringement which breaches this warranty. If, in any such suit arising from such claim, the continued use of the System for the purpose intended is enjoined by any court of competent jurisdiction, Seller shall, at its expense and option, either: (1) procure for Buyer the right to continue using the System, or (2) modify the System so that it becomes non-infringing, or (3) replace the System or portions thereof so that it becomes non-infringing, or (4) remove the System and refund the purchase price (less reasonable depreciation for use). The foregoing states the entire liability of Seller for patent or copyright infringement by the System and is subject to any limitation of total liability set forth in this Contract.
- B. The preceding subsection (A) shall not apply to: (1) any portion of the System, which is manufactured to Buyer's design, or (2) the use of the System in conjunction with any other apparatus or material not supplied by Seller to the extent that such conjoined use causes the alleged infringement. As to any portion of the System or use described in the preceding sentence, Seller assumes no liability whatsoever for patent infringement.
- C. THE PATENT AND COPYRIGHT WARRANTY AND INDEMNITY OBLIGATIONS RECITED ABOVE ARE IN LIEU OF ALL OTHER PATENT AND COPYRIGHT WARRANTIES AND INDEMNITIES WHATSOEVER, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY.

**SECTION 17. LIMITATION OF LIABILITY:**

- A. Except for Seller's liability to third parties for its willful misconduct or negligent acts or omissions as more particularly described in the Indemnification Section of this Contract, the total liability of Seller, including its subcontractors or suppliers, for all claims of any kind for any loss or damage, whether in contract, warranty, tort (including negligence or infringement), strict liability or otherwise, arising out of, connected with, or resulting from the performance or non-performance of this Contract or from the manufacture, sale, delivery, installation, technical direction of installation, resale, repair, replacement, licensing or use of any Hardware, Software or the furnishing of any Service, shall not exceed the amount paid by Buyer allocable to the particular item of Hardware, Software or Service which gives rise to the claim. Except as to title, any such liability shall terminate upon the expiration of the Warranty Period.

- B. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR INFRINGEMENT), STRICT LIABILITY OR OTHERWISE, SHALL SELLER, OR ITS SUBCONTRACTORS OR SUPPLIERS, BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE HARDWARE OR ANY OTHER EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR DOWNTIME COSTS.
- C. Any action for any claim of any kind for any loss or damages arising out of, connected with, or resulting from the performance, non-performance, or breach of the Contract, or from the manufacture, sale, delivery, installation, technical direction of installation, resale, repair, replacement, licensing or use of any Hardware, Software, or the furnishing of any Services, shall be commenced within one (1) year after the cause of action accrued or it shall be deemed waived or barred.
- D. The provisions of this Section, LIMITATION OF LIABILITY, shall apply notwithstanding any other provisions of this Contract or any other agreement.
- E. The provisions of this Section, LIMITATION OF LIABILITY, shall survive the expiration or termination of this Contract.

#### **SECTION 18. REMEDIES:**

- A. In the event of a material breach of this Contract by Seller which shall continue for one hundred twenty (120) or more days after written notice of such breach (including a reasonably detailed statement of the nature of such breach) shall have been given to Seller by Buyer, Buyer shall be entitled to avail itself cumulatively of any and all remedies available at law or in equity (provided such remedies are not otherwise limited under the terms of this Contract) and either: (1) suspend performance of its payment obligations under the Contract for as long as the breach continues uncorrected; or (2) terminate this Contract by written notice to Seller if the breach remains uncorrected.
- B. In the event of: (1) any failure by Buyer for thirty (30) or more days to make any payment when due, or (2) any other material breach of this Contract by Buyer which shall continue for one hundred twenty (120) or more days after written notice of such breach (including a reasonably detailed statement of the nature of such breach) shall have been given to Buyer by Seller, Seller shall be entitled to avail itself cumulatively of any and all remedies available at law or in equity (provided such remedies are not otherwise limited under the terms of this Contract) and either: (1) suspend performance of its obligations under this Contract for as long as the breach remains uncorrected; or (2) terminate this Contract by written notice to Buyer if the breach remains uncorrected.

#### **SECTION 19. CONFIDENTIALITY:**

- A. During the term of this Contract, it is anticipated that one party (hereafter the "Disclosing Party") may disclose to the other party (hereafter the "Receiving Party") information which the Disclosing Party considers proprietary and confidential. Accordingly, with respect to any specification, drawings, sketches, models, samples, tools, technical information, confidential business information or data, in written or other tangible form which: (1) has been designated in writing by the Disclosing Party as confidential or proprietary, or (2) is of the type that the Receiving Party customarily treats as

confidential or proprietary, and which is furnished by the Disclosing Party to the Receiving party in contemplation of or under this Contract (hereinafter "Information"), the Receiving Party shall treat such Information, for a period of ten (10) years after the Effective Date of this Contract, as confidential information with the same degree of care as the Receiving Party affords to confidential information of its own of a similar nature and shall not reproduce any such Information, in whole or in part, except as specifically authorized in writing by the Disclosing Party.

- B.** The provisions of the preceding subsection shall not apply to any Information which:
- (1) is or shall become publicly available without breach of this Section 19 Confidentiality, on the part of the Receiving Party;
  - (2) is already known by the Receiving Party prior to receipt from the Disclosing Party;
  - (3) is independently developed by the Receiving Party;
  - (4) is rightfully obtained by the Receiving Party from third parties without restriction; or
  - (5) is required to be disclosed by appropriate governmental or judicial order provided that Receiving Party gives Disclosing Party prior written notice of such order and assists Disclosing Party in taking reasonable actions to restrict such order.
- C.** The provisions of this Section, CONFIDENTIALITY, shall survive the expiration or termination of this Contract.
- D.** The confidentiality obligations of this Section, CONFIDENTIALITY, shall not apply to Software, the confidentiality and other rights and obligations with respect to which are set forth in the Software License Agreement.

**SECTION 20. COMPLIANCE:**

Seller agrees to comply with all federal, state, and local laws, ordinances, codes, rules, and regulations in effect as of the Effective Date of this Contract that may in any way affect the work by Seller hereunder. Any Hardware or Software furnished by Seller under this Contract shall comply in all material respects with federal, state and local laws and regulations applicable to the manufacture, packing, sale and shipment of such Hardware or Software as of the Effective Date of this Contract and shall comply with any amendments thereto which may have come into effect prior to the time such Hardware or Software are delivered provided that the price and, if necessary, delivery of such Hardware or Software shall be equitably adjusted to compensate Seller for the effect of compliance with any such amendments.

**SECTION 21. NOTICES:**

Notices and other communications between the parties shall be transmitted by facsimile or in writing to the parties at the addresses set forth below and shall be deemed effective upon receipt by the receiving party. Either party may change its address by giving notice in writing thereof to the other party.

**IF TO BUYER:**

Jasper County Sheriff  
Attn: Randee Kaiser, Sheriff  
Fax Number: 417-358-5566

**IF TO SELLER:**

Turn-Key Mobile, Inc.  
Attn: Michael Southard  
Fax Number: 314-754-9794

**WITH A COPY TO:**

Turn-Key Mobile, Inc.  
210 Prodo Drive  
Jefferson City, MO 65109  
Attn: Mike Southard

**SECTION 22. ORDER OF PRECEDENCE:**

The Seller's Proposal and the following Exhibits are expressly incorporated herein by reference and, together with this Contract, constitute the Contract Documents. In the event of a conflict among or between the Contract Documents, the documents shall control in the order of precedence set forth below:

1. Amendments to this Contract
2. This Contract
3. Exhibit A – MSRP Discount Pricing List
4. Exhibit B – Certificate of Insurance
5. Exhibit C – Warranty
6. This Contract

**SECTION 23. TERM:**

The term of this Contract shall commence upon the Effective Date of this Contract for a period of five (5) years, if not disputed by either party. Contract may be terminated 90 days following written notice by either party.

**SECTION 24. ENTIRE AGREEMENT:**

This Contract together with all Exhibits and Seller's Proposal which is incorporated herein by reference constitute the entire understanding and agreement between Buyer and Seller concerning the subject matter hereof and any negotiations, prior discussions, representations, promises, understandings, proposals, agreements, warranties, course of dealing or trade usage not expressly contained or referenced herein shall not be binding on either party. SELLER DOES NOT ASSUME ANY OBLIGATIONS OR LIABILITIES IN CONNECTION WITH THE SALE OF THE SYSTEM OTHER THAN THOSE EXPRESSLY STATED IN THIS CONTRACT AND DOES NOT AUTHORIZE ANY PERSON (INCLUDING SELLER'S MANUFACTURER'S REPRESENTATIVES AND SALES AGENTS) TO ASSUME FOR SELLER ANY OTHER OBLIGATIONS OR LIABILITIES.

**SECTION 25 AMENDMENT:**

No modification or amendment or other change to this Contract shall be binding on either party unless set forth in a writing signed by both Buyer and the Project Manager or other authorized representative of Seller.

**SECTION 26. SEVERABILITY:**

The invalidity, in whole or in part, of any Section or part of any Section of this Contract shall not affect the validity of the remainder of such Section or the Contract.

**SECTION 27. WAIVER:**

No term of this Contract may be waived except in a writing signed by the party waiving enforcement. No term of this Contract shall be deemed to be waived by reason of any failure to previously enforce such term.

**SECTION 28. HEADINGS:**

Section headings are inserted for convenience only and shall not be used in any way to construe the meaning of terms used in this Contract.

**SECTION 29. GOVERNING LAW:**

The validity, performance and all matters relating to the interpretation and effect of this Contract and any amendment thereto shall be governed by the laws of the State of Missouri, County of Cole, excluding its rules with respect to conflict of laws.

**SECTION 30. ASSIGNMENT; SUCCESSORS AND ASSIGNS:**

This Contract may not be assigned by either Seller or Buyer without the prior written consent of the other party whose consent shall not be unreasonably withheld. The terms and provision of this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**SECTION 31. COOPERATIVE PURCHASING AGREEMENT:**

In accordance with RSMo. 34.046, Buyer and Seller each agree to allow other governmental entities the option to purchase directly from this contract.

**Missouri Revised Statutes, Chapter 34, Section 34.046**

**Contract directly with other governmental entities for purchase of supplies.**

34.046. The commissioner of administration may contract directly with other governmental entities for the purchase of supplies. The commissioner of administration may also participate in, sponsor, conduct or administer a cooperative purchasing agreement whereby supplies are procured in accordance with a contract established by another governmental entity provided that such contract was established in accordance with the laws and regulations applicable to the establishing governmental entity.

**IN WITNESS WHEREOF**, Buyer and Seller have executed this Contract.

**BUYER**

JASPER COUNTY SHERIFF'S OFFICE

By: *[Signature]*

Name: RANDEE KALIBA

Title: SHERIFF

Date: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

Witness Name: \_\_\_\_\_

SELLER

TURN-KEY MOBILE, INC.

By: *[Signature]*

Name: Michael Southard

Title: owner

Date: 3/15/21

WITNESS:

*[Signature]*

Witness Name: Amy Colley