

SOUTHWEST KEY PROGRAMS
SUPPLIER TERMS AND CONDITIONS

Southwest Key Programs, Inc. (“SWK”) desires to purchase certain services or goods from Contractor (the “Work”), as set forth in the applicable Purchase Order (“PO”).

Contractor desires to perform such services and/or provide such goods that Southwest Key has agreed to procure in the PO.

Contractor acknowledges that such services or goods may be in support of a government funded program or contract and that such governmental funding source (“Sponsor”) may require additional terms than those presented in these terms and conditions.

These terms and conditions, together with the purchase order, and statement of work constitute the entire agreement between the parties (the “Contract”). This Contract constitutes the parties' entire contractual agreement and supersedes any previous oral or written representations, including but not limited to provisions in Contractor’s quotations, proposals, acknowledgments, or other documents. The terms of this Contract may not be varied or modified in any manner, unless in a subsequent writing signed by an authorized representative of SWK legal department or executive management.

Contractor's written acknowledgment, commencement of work on the goods, shipment of such goods, performance of services, or receipt of payment of any goods and/or services, whichever occurs first, shall be deemed an effective mode of acceptance of these terms and conditions provided herein. All work is to be done and/or materials provided subject to an approved PO prior to commencement of any said work. Any proposal for additional or different terms or any attempt by Contractor to vary in any degree any of the terms of this herein is hereby objected to and rejected, except for variances in the description, quantity, price or delivery schedule of the goods, which must be agreed to by both parties in writing.

1. **PURCHASE ORDER**

- A. The Contractor shall perform, in a good and businesslike manner, the services set forth in each PO, which shall include the production of any described deliverables.

B. While this Contract aspires to include all terms and conditions applicable to the Work, notwithstanding the Changes Article of this Contract, SWK may impose additional reasonable conditions through a written notice on the Contractor unilaterally for SWK to achieve compliance with its obligations under its federal and state funding agreements.

C. Notwithstanding any other provision hereof, any decision of a governmental Sponsor that binds SWK will, upon being communicated to the Contractor in writing, bind the Contractor to the extent that it relates to this Contract or the Work hereunder.

4. **COMPENSATION**

A. Contractor shall invoice SWK not more than once per month for the proceeding month’s labor or charges. SWK shall pay any undisputed invoices within 60 days of SWK’s receipt. In the case of a disputed invoice, SWK will provide Contractor notice of any dispute within 30 days of receipt for correction and resubmission. All invoices must include: Contractor’s name; Invoice date and number; Total Contract/PO value; payment information; and Federal Tax I.D. number.

6. **EXPENSES**

A. **General**

- i. Expenses above and beyond the price schedule set forth in applicable PO are not permitted. In the event non-travel expenses are authorized in advance by SWK, the Contractor shall adhere to the requirements of this subsection.

- ii. All expenses must be reasonable and allowable pursuant to 2 C.F.R. Subpart E § 200.400-200.475.
- iii. For any expenses to be reimbursed, SWK must be provided with an original or legible copy of the receipt for such expense.

B. Travel

- i. If any non-local travel is needed, authorization from SWK must be obtained prior to undertaking. All requests shall be in writing and include the name(s) of the traveler(s), dates of travel, destination, estimated cost and justification to support the need for such travel.

7. PRICE

SWK is not liable for any payment in excess of the amount listed in the applicable PO without prior formal modification to this Contract or the applicable PO.

8. INSPECTION

- A. The Contractor shall tender for inspection and acceptance the Work that conforms to the requirements of this Contract.
- B. SWK has the right to reasonably inspect all Work called for by this Contract, to the extent practicable, at all reasonable times and places.
- C. If any portion of Work does not reasonably conform with the requirements of this Contract, then SWK, at no additional cost, may require Contractor to re-perform or re-deliver the nonconforming Work within a reasonable period of time.
- D. If the Contractor fails to re-perform or re-deliver the nonconforming Work in a reasonable period of time or to take the reasonably necessary action to ensure future

performance in conformity with the requirements of this Contract, SWK may: 1) proportionately reduce the compensation due to Contractor; and 2) terminate this Contract for default.

9. CHANGES

- A. Changes to this Contract or to the associated Work shall be subject to a mutually agreed upon written agreement executed by the Parties.
- B. In the event any agreement with a governmental entity mandates a change or alteration to this Contract, notwithstanding any other term herein, SWK may unilaterally change this Contract and/or the SOW hereunder to address and accommodate such change or alteration. Should such change materially impact the cost or schedule of the Contractor's Work, the Contractor may submit a request for equitable adjustment. The Parties shall work in good faith to agree to an equitable adjustment when merited.

10. CONFIDENTIAL OR PROPRIETARY INFORMATION

- A. Parties considers confidential information which (a) relates to the Disclosing Party's confidential information, including, but not limited to, past, present and future research, development, finances, business activities, products, systems, proprietary concepts, documentation, reports, data, pricing, software, services, clients, and/or technical knowledge, and (b) has been identified as confidential or would be understood to be confidential by a reasonable person under the circumstances ("Confidential Information").
- B. Confidential Information is the sole and exclusive property of the disclosing Party. The receiving Party shall take all reasonable measures to maintain the confidentiality of Confidential Information. Except for prior written

- authorization by the disclosing Party, the receiving Party shall not disclose any Confidential Information to any third party, provided that Contractor may disclose SWK's Confidential Information to its affiliates, subcontractors, contractors, consultants, and suppliers in furtherance of the Work under this Contract. The Parties acknowledge that all right, title, and interest in and to Confidential Information, including, but not limited to, the right to produce, extract, or exhibit to any third party, exist in the disclosing Party only. The receiving Party shall not use the disclosing Party's Confidential Information for planning, marketing, product development (except as specifically contemplated by this Contract) or any other purpose that may be deemed anti-competitive or otherwise injurious to the business of the disclosing Party.
- C. It is understood that the confidentiality provisions contained herein shall not apply to any information that the receiving Party can demonstrate by written evidence:
- i. was at the time of disclosure, or thereafter, through no act or failure to act on the part of receiving Party, part of the public domain; or
 - ii. was at the time of disclosure in the receiving Party's possession and was not acquired directly or indirectly from the disclosing Party; or
 - iii. becomes known to the receiving Party from another source, without an obligation of confidentiality and through no breach of this Contract; or
 - iv. has been independently developed or obtained by the receiving Party outside of, and through no breach of, this Contract; or
 - v. is required to be divulged because of subpoena or otherwise by law (in such circumstances, the receiving Party will provide reasonable notice of such disclosure and the reasons therefore to the disclosing Party) and will limit the disclosure to the minimum amount that is legally required.
- C. The Parties expressly agree that the disclosing Party shall be entitled to seek injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Article.
11. INTELLECTUAL PROPERTY
- A. With respect to any intellectual property that the Contractor relies upon or utilizes in the performance of this Contract, Contractor shall advise SWK in writing in advance of such use or reliance. Moreover, the Contractor shall issue an assignable and transferable license agreement to SWK setting forth all terms, conditions and rights of the Parties to such intellectual property for the duration of this Agreement.
12. TERMINATION
- A. SWK may terminate any or all portions of this Contract, including any Work hereunder, without cause by providing thirty (30) days' prior written notice to the Contractor.
- A. Upon the occurrence of any of the following enumerated circumstances, SWK may terminate this Contract effective upon receipt by Contractor of written notice of termination:
- i. Contractor is adjudged or becomes bankrupt or insolvent, is unable to pay its debts as they become due, or makes an assignment for the benefit of its creditors; or,
 - ii. Contractor voluntarily or involuntarily undertakes to dissolve or wind up its affairs; or

- iii. Contractor breaches any material terms of this Contract; or
- iv. In the event of suspension or debarment by any governmental entity of the Contractor, effective upon receipt by the Contractor of SWK's written notice of termination.

- B. If this Contract is terminated, in whole or in part, then SWK shall not be liable for any work that is not yet performed or was not performed in accordance with the Contract.
- C. If this Contract is terminated for cause, in whole or in part, SWK may acquire supplies or services similar to those terminated, and Contractor will be liable to SWK for any excess costs for those supplies or services.

13. DISPUTES

- A. Disputes Involving the Government
 - i. For any Government Dispute, the Contractor may submit a detailed claim to SWK. SWK may, upon receipt of adequate information from the Contractor, submit an appropriate corresponding claim to the governmental agency.
- B. Disputes Not Involving the Government
 - i. In the event a dispute arises out of or in connection with this Contract, the Parties will attempt to resolve the dispute through mediation.
 - ii. If the mediation does not successfully resolve the dispute, then either Party shall have the right to file suit in a court of competent jurisdiction in Travis County, TX.
 - iii. Contractor waives Contractor's right to request or demand a jury trial.

14. INDEMNIFICATION

- A. **IN THE EVENT CONTRACTOR'S BREACH OF CONTRACT, NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF ITS OFFICERS, EMPLOYEES, CONSULTANTS, SUBCONTRACTORS, AGENTS, REPRESENTATIVES OR AFFILIATES ("CONTRACTOR GROUP") ARISING FROM THE PERFORMANCE OF THIS CONTRACT CAUSES OR RESULTS IN (i) LOSS, DAMAGE TO, OR DESTRUCTION OF, REAL OR TANGIBLE PROPERTY THEN CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD SWK AND ITS OFFICERS, DIRECTORS, EMPLOYEES, PARENTS, SUBSIDIARIES, AFFILIATED PARTY, AND ANY FUNDING SOURCE BY A GOVERNMENT AGENCY ("SWK GROUP") HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS, SUITS, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES, RESULTING THERE FROM (COLLECTIVELY, "LOSS").**
- B. **TO THE EXTENT ALLOWED BY LAW, CONTRACTOR SHALL DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS SWK GROUP FROM AND AGAINST ANY LOSS, INCLUDING REASONABLE LEGAL FEES, BROUGHT AGAINST SWK GROUP BY REASON OF OR IN CONNECTION TO ANY BODILY INJURY OF, SICKNESS OF, OR DEATH OF CONTRACTOR GROUP.**
- C. **WITH RESPECT TO ANY SETTLEMENT OF A LOSS THAT THE CONTRACTOR IS RESPONSIBLE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS SWK GROUP, ALL SETTLEMENTS SHALL INCLUDE A**

FULL RELEASE ANY WAIVER FOR THE RECIEPTENT PARY, AND A COPY THEREOF SHALL BE PROVIDED TO RECEIPTENT, AT RECEIPTENT'S REQUEST.

- D. EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS AND WITH THE GOVERNMENT CONTRACTING OFFICER'S EXPRESS CONSENT, CONTRACTOR SHALL NOT ACQUIRE ANY DIRECT CLAIM OR DIRECT COURSE OF ACTION AGAINST THE US GOVERNMENT.**

15. LIMITATION OF LIABILITY

- E. SWK GROUP SHALL NOT HAVE ANY LIABILITY WITH RESPECT TO THEIR OBLIGATIONS HEREUNDER OR OTHERWISE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, COMPENSATORY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, LOST PROFITS, LOST SAVINGS, LOST OPPORTUNITY, OR OTHER FIANCIAL LOSS, IRRESPECTIVE OF THE REASON OR CAUSE OF SUCH DAMAGES, OR WHETHER SUCH CLAIM BE THROUGH BREACH OF CONTRACT, NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, MISREPRESENTATIONS, AND OTHER TORTS, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- F. IN ANY EVENT, THE LIABILITY OF SWK GROUP TO CONTRACTOR FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT PAYABLE TO THE CONTRACTOR FOR THE WORK PERFORMED GIVING RISE TO THE LIABILITY.**

16. INSURANCE

Contractor's shall procure insurance in the following amounts for the duration of the Work and three years thereafter,: (1) commercial automobile insurance - \$500,000 per occurrence; (2) commercial general liability (including applicable following form umbrella insurance) - \$1,000,000 per occurrence; and (3) workers compensation insurance at Statutory limits and employer's liability insurance of \$1,000,000 per occurrence. Contractor agrees to maintain professional liability insurance written for no less than \$1,000,000 per occurrence if Contractor is providing services as any of the following: attorney, clinician, health care provider, instructor or other professional service as identified by SWK. If Contractor fails to maintain workers compensation insurance, Contractor agrees to a workers compensation waiver of liability to the full extent allowed by law and shall sign any documents requested to formally document such waiver during and up to five years after the valid term of this agreement. Contractor hereby waives all rights to subrogation in favor of SWK and all relevant insurance policies shall be endorsed to reflect such waiver.

17. INDEPENDENT CONTRACTOR

- A.** The Contractor is an independent contractor and the employees, agents, representatives, or affiliates of the Contractor are not employees, agents, representatives, or affiliates of SWK for any purpose, including, but not limited to federal, state, and local tax obligations, unemployment and workers' compensation obligations, social security, or all other benefits.
- B.** Contractor Group shall have no claim against SWK and shall be excluded from participating in any benefit plans or employee programs of SWK, including, but not limited to, health, sickness, accident or dental coverage, life insurance, disability benefits, severance, accidental death and dismemberment coverage, unemployment insurance coverage, workers' compensation coverage, and pension or 401(k) benefit(s).
- C.** The Contractor will not represent itself as an agent of SWK and will not commit or

obligate SWK in any way to other parties. The Contractor also agrees not to act in any manner that implies SWK's endorsement of any service.

18. SPONSOR COMMUNICATIONS

Except as authorized by SWK, the Contractor shall not communicate with the any governmental agency regarding any matter which is within the scope of SWK's responsibility.

19. SUBCONTRACTS

Contractor must obtain SWK's prior written consent before entering into any lower tier subcontracts. Further, any such subcontract shall be in writing and shall be subject to these conditions.

Contractor shall include in each lower-tier subcontract the appropriate flow down clauses as required by FAR and DFARS.

20. FORCE MAJEURE

If the delivery of any Work is delayed by unforeseeable circumstances beyond the reasonable control of Contractor including, but not limited to, acts of God, war, acts of terrorism, explosions, energy blackouts, riots, fires, floods, freight embargos, strikes or unusually severe weather (any such delay being hereinafter referred to as "Excusable Delay") the delivery of such Work may be extended for a period equal to the deration of the Excusable Delay. If an Excusable Delay prevents SWK from accepting goods or services, making its facilities and/or personnel available, or otherwise necessitates the stoppage of Contractor's work under this agreement, new timelines and dates for the work will be determined by SWK with input from Contractor, and SWK will not be in breach of this agreement due to such delays or work stoppage.

21. NOTICE OF DELAY

In addition to any other notice requirements of this Contract, the Contractor shall immediately notify SWK in writing whenever the Contractor anticipates any delay in the performance of the Work or an inability to perform the Work.

22. PUBLICITY

Without written consent of SWK, Contractor shall not make any media releases, public announcements, or public disclosures (including, but not limited to, promotional, social media, or marketing material) relating to this Contract or its subject matter. This Article shall survive the expiration or termination of this Contract.

23. HEALTH, SAFETY, EVIRONMENT

A. Contractor shall cooperate with SWK and provide SWK with all information and/or documentation including driver's license information, social security number and completed background inquiry documents to allow for SWK to attain a criminal background check or run a national database screening regarding Contractor and/or Contractor's employees, consultants, subcontractors, agents, and representatives, if SWK requests such information.

B. Contractor and Contractor's employees, consultants, subcontractors, agents, and representatives must have completed a background check within the past year and/or provide the necessary information so that SWK may complete a background check before such person provides services at any SWK facilities. Upon request, Contractor must provide SWK a copy of such background check results. If SWK must run a background check on Contractor or any of Contractor's workers, Contractor is responsible for and will immediately reimburse upon demand SWK for any costs incurred.

C. Because SWK has a vital interest in maintaining a safe, healthy, and efficient work environment for all employees and Contractors, the parties agree and recognize that no one on any sexual offender registry may enter SWK facilities and that SWK's work environment should be free from the use of illegal drugs, alcohol, and the unauthorized use of prescription drugs.

D. Unless otherwise specifically agreed to in writing, Contractor is not authorized to drive on behalf of SWK.

E. Contractor agrees to comply with all applicable SWK policies and procedures and all applicable policies and procedures of the Office of Refugee Resettlement. This includes completing any training, such as training on the prevention of sexual abuse, that is required for contractors that have regular contact with children or youth in SWK's care.

F. Any employee or subcontractor of Contractor found ineligible to enter a SWK facility must immediately vacate the premises and must not return to a SWK facility.

any time if its funding contract is given to another care provider.

27. COMPLIANCE WITH LAWS

The Parties agree to comply with all laws, including but not limited to federal, state, and local laws, and statutes, regulations, ordinances, and license requirements.

28. WARRANTY

Contractor services shall be performed with that level of care and skill ordinarily exercised by members of Contractor's profession currently operating under similar conditions and circumstances, that Contractor is licensed or certified throughout the duration of the PO or contract, if required, and that Contractor knows and will follow any applicable code of ethics of Contractor's profession.

24. ETHICS REPRESENTATIONS

Contractor certifies by signing this Contract it has disclosed all perceived, potential, and actual conflicts of interest that it has read and agrees to comply with our Conflicts of Interest Policy and Vendor Code of Conduct.

29. FEDERAL FUNDING CONTRACTS

The [SWK's GENERAL TERMS AND CONDITIONS FOR CONTRACTS UNDER FEDERALLY FUNDED OR ASSISTED PROJECTS](#) shall apply as if set forth in this Contract in full for all Work partially or fully funded with federal grants or funds.

25. NOTICES

All notices under this Contract shall be in writing and shall be sent by United States Postal Service, Certified Mail, Return Receipt Requested, or any overnight delivery service such as FEDEX or UPS, postage prepaid and addressed to the following address, with copy to the below email:

Southwest Key Programs, Inc.
Attention: SWK Legal
6002 Jain Lane
Austin, TX 78721
Email: Contracts@swkey.org

30. SWK'S SYSTEM ACCESS

The [SOUTHWEST KEY GENERAL SYSTEM ACCESS TERMS AND CONDITIONS](#) shall apply as if set forth in full for all Work which requires access to SWK's computer systems, security monitoring systems, shared or private networks, or any other SWK data infrastructure.

31. SWK'S VENDOR CODE OF CONDUCT

Contractor shall adhere to [SWK's VENDOR CODE OF CONDUCT](#) as if set forth in full for all Work.

26. ASSIGNMENT

Neither Party shall sell, assign, or in any manner transfer this Contract or any of its rights or duties hereunder without first obtaining the written consent of the other Party. Any attempt to do so shall be null and void ab initio. However, SWK shall be able to assign at

32. INTERPRETATION AND CONSTRUCTION

A. Entire Agreement. These terms and conditions including the Sections hereto constitute the entire agreement between the Parties relating to the Contractor's role in supporting SWK and supersede all previous communications, representations, or

agreements, either oral or written, with respect to the subject matter hereof.

- B. Governing Law. This Contract will be governed in all respects by the substantive laws of the State of Texas without regard to its conflict of laws or choice of law provisions.
- C. No Waiver. The failure of a Party to insist upon the performance of any provision of this Contract or to exercise any right granted hereunder shall not be construed as waiving any such provision, and the same shall continue in force.
- D. Survival. The rights and obligations of this Contract which by their terms or nature extend beyond its expiration or termination shall remain in full force and effect and shall bind the Parties and their legal representatives, successors, heirs, and assigns.
- E. Severability. The invalidity of any part of this Contract shall not render invalid the remainder of this Contract. If any provision of this Contract is determined to be unenforceable, this Contract shall be reformed and construed so as to be valid, operative, and enforceable to the maximum extent permitted by law or equity while preserving its original intent.
- F. This Article shall survive the expiration or termination of this Contract.

33. GOVERNMENT RESEVATION OF RIGHTS.

Nothing in these Terms and Conditions shall be construed or interpreted to limit or in any way restrict the rights of the Government in regard to data, tooling and other information it owns or has a right to use, including the right to authorize the supplier's use of such data, tooling or other information in direct contracts between the supplier and the Government.