southwest key programs

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VENDOR NONDISCLOSURE AGREEMENT

This VENDOR NONDISCLOSURE AGREEMENT (this "Agreement") is made and entered by and between Southwest Key Programs, Inc. ("SWK"), and the entity or person identified on the signature block below ("Contractor"), and governs the disclosure of Confidential Information (as defined below) between the parties. Discloser shall mean the party disclosing the Confidential Information. Recipient shall mean the party receiving the Confidential Information.

Recipient understands that Discloser has disclosed or may disclose, either directly or indirectly in writing, orally, or by inspection of tangible objects, to Recipient information relating to Discloser's business that is confidential or proprietary in nature, whether explicitly designated as such or which in good faith ought to be treated as such given its nature and/or the nature of the disclosure (which to the extent previously, presently or subsequently obtained by Recipient is hereinafter referred to as "Confidential Information").

Confidential Information may include, but shall not be deemed to be not limited to, the following:

i. non-published patent applications and the information contained therein, trade secrets, inventions (whether patentable or not), discoveries and improvements;

ii. (ii) concepts, know-how, ideas, inventions, products, techniques, processes, methodologies, testing procedures, design and functional specifications, analysis and performance information, sketches, drawings, models, apparatus, equipment, user documentation, internal documentation, engineering information, hardware configuration information, technical or other representations, documentation, diagrams, schematics, flow charts, features, mode of operation and other details of products and services, and information concerning research, experimental work, development, design documents, details and specifications;

iii. (iii) software design and architecture, software programs, source code, object code and other computer code, modules, software source documents, specifications, algorithms, formulas, scripts, data, databases, and formulas related to the current, future and proposed products and services;

iv. (iv) names and expertise of directors, officers, employees and consultants;

v. (v) procurement requirements, purchasing, customer data, customer lists, customer names, suppliers and strategic partners, and lists thereof; and

vi. (vi) technical, business, financial, marketing, customer, supplier and product development plans, schedules, forecasts, strategies, analysis, budgets, materials sales, merchandising, promotional and marketing plans and information.

Without limiting the foregoing, Confidential Information also may include proprietary or confidential information of any third party who may disclose such information to Discloser in the course of Discloser's business, and for purposes of this Agreement, as between the parties such third-party confidential information shall be deemed Discloser's Confidential Information.

In consideration of any access Recipient may have to Confidential Information and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recipient agrees:

i. to hold any Confidential Information in strict confidence and to take all reasonable precautions to protect such Confidential Information;

ii. not to divulge any Confidential Information or any information derived therefrom to any third party, including, but not limited to, any affiliated entity (even if owned or controlled by Recipient);

iii. not to make any use whatsoever at any time of any Confidential Information except solely as needed to evaluate whether to enter into a business relationship with Discloser or as otherwise specifically agreed in writing (the "Purpose," which in no case shall be deemed to extend to allow any use by Recipient that might reasonably cause current or future commercial damage to Discloser);

iv. not to copy or create derivative works of any Confidential Information without prior written approval by Discloser;

v. not to alter or delete any proprietary legends or markings on any Confidential Information; and

vi. not to decompile, disassemble, reverse engineer or otherwise attempt to derive the composition or underlying information, structure or ideas of any Confidential Information.

2. Discloser agrees that the foregoing clauses (i), (ii), (iii), (iv), (v) and (vi) shall not apply or shall cease to apply (as applicable) with respect to any information Recipient can show as a matter of contemporaneous record and otherwise by clear and convincing evidence:

   i. (a) was already in Recipient's possession prior to disclosure by Discloser;

   ii. (b) was developed by Recipient without reference to any Confidential Information;

   iii. (c) was obtained from a third party who is not prohibited from transmitting the information to Recipient by a contractual, legal or fiduciary obligation to Discloser; or

   iv. (d) is or becomes generally available to the public other than as a result of any action or inaction by Recipient;

   Provided, however, that should any information come within any circumstance listed in the foregoing clauses (i), (ii), (iii), and (iv) it does not authorize Recipient to infringe any proprietary rights of Discloser.

   Recipient may make disclosures of Confidential Information required by court order, provided Recipient promptly notifies Discloser of the disclosure requirement and cooperates with Discloser's reasonable efforts to resist or narrow the disclosure and to obtain an order or other reliable assurance that confidential treatment will be afforded the Confidential Information.

3. Recipient agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, Recipient shall take at least those measures that Recipient takes to protect its own most highly confidential information and shall have its employees, if any, who have access to Confidential Information sign a non-use and non-disclosure agreement in content substantially similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees.

4. Recipient shall reproduce Discloser's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.

5. Recipient shall immediately notify Discloser in the event of any unauthorized use or disclosure of the Confidential Information.
6. No terms in this section shall prohibit or restrict Recipient's ability to report, in accordance with applicable law, any fraud, waste, or abuse of government funds to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.
7. Recipient is prohibited from requiring its employees or contractors to agree to confidentiality agreements or statements that prohibit or restrict the reporting of fraud, waste, or abuse.
8. Recipient agrees not to remove or export from the United States or re-export any Confidential Information or any direct product thereof except in compliance with, and with all licenses and approvals required under, applicable export laws and regulations, including without limitation, those of the United States Department of Commerce.
9. Immediately upon (i) the decision by either party not to enter into a business relationship or (ii) the request of Discloser, Recipient will turn over to Discloser all Confidential Information and all documents or media containing any Confidential Information and any and all copies or extracts thereof. Upon Discloser's request, Recipient will provide Discloser with a certificate attesting that all Confidential Information has been returned to Discloser. Recipient shall not be required to return or destroy any Confidential Information housed in automated backup system or if required under law to maintain records. Such Confidential Information shall continue to be controlled under this Agreement.
10. Recipient understands and agrees that nothing herein requires Discloser (i) to disclose any Confidential Information, which shall be disclosed, if at all, solely at the option of Discloser, or (ii) to proceed with a business relationship or any relationship in connection with which Confidential Information may be disclosed.
11. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." DISCLOSER MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE TIMELINESS, ACCURACY OR COMPLETENESS OF ANY CONFIDENTIAL INFORMATION.
12. This Agreement does not grant any rights to Recipient under any patent, copyright or other intellectual property right of Discloser, nor shall this Agreement grant Recipient any rights in or to Confidential Information except as expressly set forth herein. As between Recipient and Discloser, all Confidential Information and any derivatives thereof, whether created by Discloser or Recipient, shall remain the sole property of Discloser.
13. Recipient's obligations under this Agreement will continue until such time as and only to the extent that Confidential Information is publicly known and made generally available through no action or inaction of Recipient.
14. Recipient acknowledges and agrees that due to the unique nature of the Confidential Information, there may be no adequate remedy at law for any breach of Recipient's obligations hereunder and that any such breach may allow Recipient and/or third parties to unfairly compete with Discloser resulting in irreparable harm to Discloser. Recipient agrees that upon any such breach or any threat thereof, Discloser shall be entitled to seek appropriate equitable and/or injunctive relief in addition to whatever remedies it might have at law (without being required to post a bond or other security) and to be indemnified by Recipient from any loss or harm, including, without limitation, reasonable attorneys' fees, in connection with any breach or enforcement of Recipient's obligations hereunder or the unauthorized use or release of any Confidential Information. Recipient shall notify Discloser in writing immediately upon the occurrence of any

such unauthorized release or other breach of which it is aware and shall cooperate with Discloser in every reasonable way to help Discloser regain possession of such Confidential Information and prevent its further unauthorized use or disclosure.

15. In the event any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect and the illegal, invalid or unenforceable provision shall be modified so as to be fully enforceable and to achieve to the maximum extent possible the business and economic purposes of the provision as originally drafted.
16. This Agreement shall be governed by the laws of the State of Texas without regard to the conflicts of law provisions thereof, and the parties consent to the exclusive jurisdiction and venue of the state and federal courts located in Travis County, Texas and agree to waive all objections to personal jurisdiction, venue and forum non conveniens.
17. This Agreement supersedes all prior discussions and writings and constitutes the entire agreement between the parties with respect to the Confidential Information disclosed pursuant to this Agreement.
18. This Agreement shall bind the respective officers, agents, employees and representatives of the parties and shall inure to the benefit of the parties, their successors and permitted assigns.
19. No waiver, modification or amendment of this Agreement will be binding upon either party unless made in writing and signed by a duly authorized representative of such party, and no failure or delay in enforcing any right will be deemed a waiver thereof.
20. Notices hereunder will be effective only if in writing and upon receipt if delivered personally or by overnight mail carrier or facsimile transmission confirmed by mailing, or three (3) days after deposit in the United States mail, first class postage prepaid.
21. Any ambiguous language in this Agreement shall be interpreted as to its fair meaning, and not strictly for or against either party, regardless of whether either party drafted the Agreement.
22. The prevailing party in any action to enforce this Agreement shall be entitled to costs and fees (including reasonable attorneys' fees and expert witness fees) incurred in connection with such action.

SOUTHWEST KEY PROGRAMS, INC.	**CONTRACTOR**
By: _____	**By:** _____
Name: _____	**Name:** _____
Title: _____	**Title:** _____
Date: _____	**Date:** _____