

REQUEST FOR PROPOSAL

by

**The University of Texas System,
acting through The University of Texas System Supply Chain Alliance,**

for

selection of

PREFERRED SUPPLIER(S)

of

CHARTER AIRCRAFT- RELATED SERVICES

RFP No. UTS/A48

**Submittal Deadline: May 29 2015
@ 3:00 PM, CST**

Issued: April 27, 2015

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SECTION 1

INTRODUCTION

1.1 Description of The University of Texas System

The University of Texas System is comprised of System Administration and 15 institutions of higher education with campuses across the State of Texas whose missions are devoted to world class healthcare, teaching, research, and public service (collectively, “**UT System**”). Also included within UT System is UTIMCO, a 501(c)(3) entity that oversees investments for UT System and the Texas A&M System. UT System currently has six health institutions and nine academic facilities, making it one of the larger education systems in the United States. With an operating budget of \$14.6 billion, UT System has a current student enrollment exceeding 216,000. UT System employs more than 87,000 faculty and staff, making UT System one of the largest employers in the State of Texas.

UT System is comprised of the following institutions:

- The University of Texas Southwestern Medical Center (UTSW)
- The University of Texas Medical Branch at Galveston (UTMB)
- The University of Texas Health Science Center at Houston (UTHSCH)
- The University of Texas Health Science Center at San Antonio (UTHSCSA)
- The University of Texas MD Anderson Cancer Center (UTMDACC)
- The University of Texas Health Science Center at Tyler (UTHSCT)
- The University of Texas at Arlington (UTA)
- The University of Texas at Austin (UT Austin)
- The University of Texas at Brownsville (UTB)
- The University of Texas at Dallas (UTD)
- The University of Texas at El Paso (UTEP)
- The University of Texas – Pan American (UTPA)
- The University of Texas of the Permian Basin (UTPB)
- The University of Texas at San Antonio (UTSA)
- The University of Texas at Tyler (UTT)
- The University of Texas Rio Grande Valley (UTRGV)

UT System has established the University of Texas System Supply Chain Alliance (the “**Alliance**”) to conduct and coordinate strategic purchasing initiatives across UT System. The Alliance is also affiliated with various Texas institutions of higher education. Through collaborative relationships, the Alliance seeks to combine supply chain and contracting activities and obtain best value goods and services while reducing total acquisition costs. The Alliance has created a team of supply chain professionals (the “**Strategic Services Group**”) that has been tasked with executing Alliance purchasing initiatives. The Strategic Services Group assembles a team of subject matter experts (“**SMEs**”) from participating institutions to assist in the development of each sourcing event and the evaluation of suppliers during the procurement process. The SMEs may include aircraft, travel, risk, athletic, legal and purchasing staff. SMEs are involved from the sourcing event’s inception and work with the Alliance and UT System to select the best value supplier(s). Any agreement resulting from this Request for Proposal, UTS/A48 (this “**RFP**”) will be extended and marketed to all UT System institutions. Various non-UT System institutions that are affiliated with the Alliance may participate, too, in any agreement resulting from this RFP, although participation by Alliance affiliates will be limited to business charters (with athletic charters being excluded, due to limits on capacity in the marketplace).

By participating in this RFP, proposer(s) (collectively, “**Proposer**”) agrees to extend all goods, services and pricing to any Alliance member or affiliate, including UT System Administration (collectively, “**Institutional Participant**”) that wishes to participate in any contract entered into with Proposer.

1.2 Objective of this Request for Proposal

UT System, acting through the Alliance, is soliciting proposals in response to this RFP from qualified suppliers to provide charter aircraft-related services. UT System anticipates contracting with at least one air charter broker and two commercial air charter operators. The services may include the procurement, delivery and management of air charter services and may encompass (1) passenger services (for individuals, groups and team travel); (2) compliance with quality and safety requirements; (3) accessorial services; and (4) reporting obligations, all as more specifically described in **Section 5.4 (“Scope of Work”)** of this RFP (collectively, the “**Services**”). The successful Proposer(s) to whom business may be awarded is sometimes referred to in this RFP as the “**Preferred Supplier**.”

IMPORTANT: PLEASE REFER TO SECTION 4.1 OF THIS RFP FOR AN OVERVIEW OF THE AGREEMENTS LIKELY TO RESULT FROM THIS RFP, AND OF THE ROLES OF THE VARIOUS PARTIES.

UT System is seeking to identify a Preferred Supplier that will provide the most practical and cost-effective business model to serve the needs of Institutional Participants. The goal of this RFP is to work toward solutions that will minimize cost, while maintaining or improving current service levels for all participating UT System institutions. Proposer should provide solutions involving HUB suppliers, where possible (ref. **Section 2.5** of this RFP).

Proposer is invited to submit a proposal to establish a strategic business alliance with UT System that will maximize the resources of both organizations to most effectively meet the requirements specified in this RFP. Specifically this RFP process should:

- Provide a comprehensive and guaranteed pricing structure for the Services;
- Leverage the aggregate purchasing volumes of Institutional Participants;
- Achieve cost savings for Institutional Participants;
- Improve overall customer satisfaction; and
- Enhance relationships between Preferred Supplier and Institutional Participants.

UT System is seeking to reduce the total acquisition cost of the Services while creating synergies between Institutional Participants and Preferred Supplier. UT System hopes to conclude an agreement that will provide Institutional Participants with access to the Services at cost-effective prices and permit all parties to reduce procurement and transaction costs and improve business processes.

Proposer should propose charges for the Services that will be guaranteed to be best value when compared to the then-current market rates for comparable services available from other reputable service providers. UT System will work through the Alliance to team with the Preferred Supplier to develop business processes that will foster a strong working relationship and produce a win-win for all parties.

The Preferred Supplier will be enrolled in the Alliance's Supplier Relationship Management Program ("SRM") to monitor Preferred Supplier's performance and pricing. UT System expects Preferred Supplier to work closely with the Alliance and each Institutional Participant and produce benefits for all parties involved in the relationship.

Proposers should realize that what is written in their final proposals submitted to UT System may become part of the successful Proposer's final contract.

UT System may ask Proposer(s) to provide a formal presentation, prior to contract award, with additional information to SMEs or the Strategic Services Group. This presentation will allow the Alliance to clarify any technical, quality, or price-based questions that may arise from Proposer's response.

1.3 Background and Scope of Opportunity

On an annual basis, UT System and its institutions expend funds totaling over \$5 million for charter aircraft-related services. To date, UT Austin, UTSA and UTMB have been the primary users of UT System charter contracts. **APPENDIX EIGHT** to this RFP provides an overview of the air charter-related services typically required by UT System and its institutions.

THE INFORMATION REFERENCED ABOVE IS AN ESTIMATE ONLY. VOLUMES PURCHASED UNDER ANY AGREEMENT RESULTING FROM THIS RFP MAY INVOLVE MORE OR LESS THAN THE ESTIMATE PROVIDED. UT SYSTEM DOES NOT REPRESENT, WARRANT OR GUARANTY THAT UT SYSTEM OR INSTITUTIONAL PARTICIPANTS WILL PURCHASE ANY PARTICULAR DOLLAR VALUE OR ANY PARTICULAR QUANTITY, AND UT SYSTEM SPECIFICALLY DISCLAIMS ANY SUCH REPRESENTATIONS, WARRANTIES AND GUARANTIES.

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

UT System will accept proposals submitted in response to this RFP until **3:00 PM**, Central Standard Time, on **May 29, 2015** (the “**Submittal Deadline**”).

2.2 UT System Contact Person

Proposers will direct all questions or concerns regarding this RFP to the following UT System contact person (the “**UT System Contact**”):

Kyle Barton
Manager, Contracts
UT System Supply Chain Alliance
Phone: (713) 745-8339
Email: kdbarton@mdanderson.org

UT System specifically instructs all interested parties to restrict all contact and questions regarding this RFP to written communications forwarded to the UT System Contact. The UT System Contact must receive all questions or concerns no later than **5:00 PM**, Central Standard Time, on **May 14, 2015**. The UT System Contact will confer with institution SMEs and will use a reasonable amount of time to respond to questions or concerns. It is UT System’s intent to respond to all appropriate questions and concerns; however, UT System reserves the right to decline to respond to any question or concern.

2.3 Criteria for Selection

Successful Proposer, if any, selected by UT System in accordance with the requirements and specifications set forth in this RFP will be the Proposer that submits a proposal in response to this RFP, on or before the Submittal Deadline, that is most advantageous to UT System.

Proposer is encouraged to propose terms and conditions offering the maximum benefit to UT System in terms of (1) products and services to be provided and (2) total overall cost to participating institutions. Proposers should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available.

An evaluation team from UT System will evaluate proposals. The evaluation of proposals and the selection of Preferred Supplier will be based on the information provided by Proposer in its proposal. UT System may give consideration to additional information if UT System deems such information relevant.

The criteria to be considered by UT System in evaluating proposals and selecting Preferred Supplier, will be those factors listed below:

2.3.1 Threshold Criteria Not Scored

- 2.3.1.1 Ability of UT System to comply with laws regarding Historically Underutilized Businesses;

- 2.3.1.2 Ability of UT System to comply with laws regarding purchases from persons with disabilities; and
- 2.3.1.3 General criteria evaluated on a “pass/fail” basis, including the following, as applicable:

Available aircraft and accessorial services meet specified requirements
Applicable certificate provided (121/125/135) – reference Sect. 5.4.4.4 of this RFP
Required insurance coverage is provided
Broker experience level is verified
Pilot experience level is verified
Absence of FAA sanctions is verified (past 5 years)
Acceptable accident history is verified for entire organization (past 5 years)
Acceptable incident history is verified for entire organization (past 5 years)

2.3.2 Scored Criteria

- 2.3.2.1 cost of the goods and services;
- 2.3.2.2 reputation of Proposer and of Proposer's goods or services;
- 2.3.2.3 quality of Proposer's goods or services;
- 2.3.2.4 extent to which the goods or services meet UT System's needs;
- 2.3.2.5 Proposer's past relationship with UT System;
- 2.3.2.6 the total long-term cost of acquiring Proposer's goods or services ; and
- 2.3.2.7 Proposer's exceptions to the terms and conditions referenced in **Section 4** of this RFP.

2.4 Key Events Schedule

Issuance of RFP	April 27, 2015
Pre-Proposal Conference (ref. Section 2.6 of this RFP)	May 7, 2015 (in Houston, TX) 10:00 AM, Central Standard Time
Deadline for Questions/Concerns (ref. Section 2.2 of this RFP)	5:00 PM, Central Standard Time on May 14, 2015
Submittal Deadline (ref. Section 2.1 of this RFP)	3:00 PM, Central Standard Time on May 29, 2015
Selection of Finalists	June 2015
Finalists Interviews	July 2015
Anticipated Contract Award(s)	July 2015

IMPORTANT NOTICE: The Key Events Schedule represents many sourcing and contracting activities occurring within a short period of time. Proposer is asked in advance to make the following resources available to expedite the selection and contracting process:

1. If selected as a finalist, Proposer may be required to attend an interview session that includes a face-to-face meeting with an advance notice of no more than one week. The anticipated location of this activity is either Austin or Houston, Texas.
2. If selected for contract award, Proposer should have its chief legal and business officers available for commencement of contract negotiations with 72 hours of notice of award. Such negotiations may take place face-to-face in order to expedite the contracting phase. The anticipated location of this activity is either Austin or Houston, Texas. Proposer is requested to reference **Section 4.1** of this RFP and provide any exceptions as part of Proposer's RFP response.

Proposer should not underestimate the necessity of complying with the Key Events Schedule and critical activities listed above. UT System reserves the right to revise the Key Events Schedule at any time.

2.5 Historically Underutilized Businesses

- 2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a "**HUB**") in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Preferred Supplier subcontracts any of its performance hereunder, Preferred Supplier must make a good faith effort to utilize HUBs certified by the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency. Proposals that fail to comply with the requirements contained in this **Section 2.5** will constitute a material failure to comply with advertised specifications and will be rejected by UT System as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by UT System, its obligation to make a good faith effort to utilize HUBs when subcontracting hereunder will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting hereunder by Proposer is subject to review by UT System to ensure compliance with the HUB program.
- 2.5.2 UT System has reviewed this RFP in accordance with Title 34, *Texas Administrative Code*, Section 20.13 (a), and has determined that subcontracting opportunities are probable under this RFP.
- 2.5.3 A HUB Subcontracting Plan ("**HSP**") is required as part of Proposer's proposal. The HSP will be developed and administered in accordance with UT System's Policy on Utilization of Historically Underutilized Businesses attached as **APPENDIX TWO** and incorporated herein for all purposes.

*Each Proposer must complete and return the HSP in accordance with the terms and conditions of this RFP, including **APPENDIX TWO**. Proposals that fail to do so will be considered non-responsive to this RFP in accordance with Section 2161.252, Texas Government Code.*

Preferred Supplier will not be permitted to change its HSP unless: (1) Preferred Supplier completes a newly modified version of the HSP in accordance with the terms of **APPENDIX TWO** that sets forth all changes requested by Preferred Supplier, (2) Preferred Supplier provides UT System with such modified version of the HSP, (3) UT System approves the modified HSP in writing, and (4) all agreements or contractual arrangements resulting from this RFP are amended in writing by UT System and Preferred Supplier to conform to the modified HSP.

- 2.5.4 Proposer must submit one (1) signed copy of the HSP to UT System at the same time as it submits its proposal to UT System (ref. **Section 3.1** of this RFP). The signed copy of the HSP (the “**HSP Packet**”) must be submitted electronically utilizing the SciQuest e-sourcing tool as more particularly described in **Section 3.1** of this RFP. Proposer must ensure that the HSP Packet is submitted according to the electronic instructions provided in this RFP.

Any proposal submitted in response to this RFP that is not accompanied by an HSP Packet meeting the above requirements will be rejected by UT System and remain unopened, as that proposal will be considered non-responsive due to material failure to comply with advertised specifications. Furthermore, UT System will open a Proposer’s HSP Packet prior to opening the proposal submitted by Proposer, in order to ensure that Proposer has submitted a signed copy of the Proposer’s HSP Packet as required by this RFP. A Proposer’s failure to submit a signed copy of the completed HSP Packet as required by this RFP will result in UT System’s rejection of the proposal submitted by that Proposer as non-responsive, due to material failure to comply with advertised specifications; such a proposal will remain unopened and will be disqualified and not reviewed by UT System (ref. **Section 1.5** of **APPENDIX ONE** to this RFP).

Note: The requirement that Proposer provide a signed and completed HSP Packet under this **Section 2.5.4** is separate from and does not affect Proposer’s obligation to provide UT System with its proposal as specified in **Section 3.1** of this RFP.

Questions regarding the submission of the required HSP may be directed to Stephanie Park, HUB Coordinator (Phone: 512-499-4378 / Email: spark@utsystem.edu).

2.6 Pre-Proposal Conference

UT System will hold a pre-proposal conference at **10:00 AM**, Central Standard Time, on **May 7, 2015**. Proposers may attend the conference in one of the following two formats:

in person attendance in Conference Room TBD, 7007 Bertner Ave., Houston, TX 77030;
or

webinar broadcast via the Internet utilizing the “Go-to-Meeting” webinar conference service.

The Pre-Proposal Conference will allow all Proposers an opportunity to ask the Alliance, the Strategic Services Group, and UT System HUB representatives relevant questions and clarify provisions of this RFP. Proposer should notify the UT System Contact **by no later than May 1, 2015**, whether it will attend the Pre-Proposal Conference, by emailing the UT System Contact at kdbarton@mdanderson.org. Proposer must clearly state in which format it will attend. If the Proposer elects to attend the Pre-Proposal Conference in the webinar format, UT System will

provide complete details and instructions (including personal computer requirements). If Proposer elects to attend the Pre-Proposal Conference in person, there will be a strict limit of two (2) individuals per Proposer.

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Electronic Submission Notice

Submittal of proposals in response to this RFP will be conducted entirely electronically, utilizing the SciQuest e-sourcing tool. To register for participation in this RFP, please email or call the UT System Contact for further instructions. An original signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) and electronically uploaded as instructed. Proposals must be completed and received by UT System on or before the Submittal Deadline (ref. **Section 2.1** of this RFP).

3.2 Proposal Validity Period

Each proposal must state that it will remain valid for UT System's acceptance for a minimum of one hundred eighty (180) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

3.3 Terms and Conditions

3.3.1 Proposer must comply with the requirements and specifications contained in this RFP, the General Terms and Conditions (ref. **Section 4** of this RFP), the Notice to Proposer (ref. **Section 2** of this RFP), Proposal Requirements (ref. **APPENDIX ONE**) and the Specifications, Additional Questions and Scope of Work (ref. **Section 5** of this RFP). If there is a conflict among the provisions in this RFP, the provision requiring Proposer to supply the better quality or greater quantity of goods and services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

- 3.3.1.1 Specifications, Additional Questions and Scope of Work (ref. **Section 5** of this RFP);
- 3.3.1.2 General Terms and Conditions (ref. **Section 4** of this RFP);
- 3.3.1.3. Proposal Requirements (ref. **APPENDIX ONE**); and
- 3.3.1.4 Notice to Proposer (ref. **Section 2** of this RFP).

3.4 Submittal Checklist

Proposer is instructed to complete, sign, and upload into the SciQuest e-Sourcing tool, the following documents as a part of its proposal. If Proposer fails to return each of the following items with its proposal, UT System may reject the proposal:

- 3.4.1 Signed and Completed Execution of Offer (ref. **Section 2** of **APPENDIX ONE**).
- 3.4.2 Responses to questions and requests for information in the Specifications, Additional Questions and Scope of Work Section (ref. **Section 5** of this RFP).

- 3.4.3 Signed and Completed Pricing Affirmation (ref. **Section 6** of this RFP).
- 3.4.4 Signed and completed copy of the HUB Subcontracting Plan or other applicable documents (ref. **Section 2.5** of this RFP and **APPENDIX TWO**).
- 3.4.5 Responses to Proposer's Survey (ref. **Section 5.5** of this RFP).
- 3.4.6 Proposer's Price Schedule (ref. **Section 6** of this RFP).

SECTION 4

GENERAL TERMS AND CONDITIONS

4.1 Information regarding Structure of Transaction and Terms and Conditions

The structure of any transaction that UT System enters into as a result of this RFP is anticipated to be substantially similar to the following:

- (1) UT System will enter into a Preferred Supplier Agreement (“**PSA**”) with each Preferred Supplier. The form of the Preferred Supplier Agreement that will be used will depend on whether Preferred Supplier is a Charter Broker (ref. **APPENDIX THREE**) or a Charter Operator (ref. **APPENDIX FOUR**). The terms “Charter Broker” and “Charter Operator” are defined in **Section 5.4** of this RFP (Scope of Work).
- (2) Each Alliance member or affiliate that elects to participate in a PSA (an “**Institutional Participant**”) will sign a simple Institutional Participation Agreement (each an “**IPA**”), agreeing to be bound by the terms of the PSA. The form of the IPA that will be used will depend on whether Preferred Supplier is a Charter Broker (ref. **APPENDIX THREE-100**) or a Charter Operator (ref. **APPENDIX FOUR-100**).
- (3) Throughout the term of the relevant PSA, an Institutional Participant from time to time may use the PSA to purchase charter broker and charter operator services relating to specific charter flights.
 - (a) If an Institutional Participant has signed an IPA under UT System’s PSA with a Charter Operator, Institutional Participant may purchase air charter services from that Charter Operator. This would require the Institutional Participant to sign an Engagement Letter with the Charter Operator. The Engagement Letter would specify all the business details of the charter flights (flight times, related fees, etc.). All the other terms and conditions would be those set forth in UT System’s PSA with the Charter Operator.
 - (b) UT System anticipates, however, that its PSA with one or more UT System-appointed Charter Operators will not meet all of the needs of Institutional Participants. In such case, and if Institutional Participant has signed an IPA under UT System’s PSA with a Charter Broker, Institutional Participant may use the UT System-appointed Charter Broker to identify other airlines to supply air charter services required by the Institutional Participant, and to negotiate the terms of those services. In this scenario, the terms and conditions that would apply to the Charter Broker’s supply of brokerage services to the Institutional Participant would be those set forth in UT System’s PSA with the Charter Broker.

With assistance from the Charter Broker, the Institutional Participant then would enter into a three-party agreement, involving a Charter Broker-identified airline (charter operator) and the Charter Broker, using a pre-agreed form (ref. **APPENDIX THREE-300**). The business details of the charter flights (flight times, related fees, etc.) would be specified in an Engagement Letter signed by the Institutional Participant, the airline and the Charter Broker. All the other terms and conditions would be those set forth in the Institutional Participant’s agreement with the Charter Broker and the airline.

The terms and conditions contained in the forms of agreement appended to this RFP or, in the sole discretion of UT System, terms and conditions substantially similar, will constitute and govern the agreements that result from this RFP. **Each Proposer should review the forms applicable to it, depending on whether Proposer submits a proposal as a Charter Broker or a Charter Operator.**

If Proposer takes exception to any terms or conditions set forth in the appended agreement forms, Proposer must submit a list of the exceptions as part of its proposal in accordance with **Section 5.3** of this RFP. Proposer's exceptions will be reviewed by UT System and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of the proposal, UT System may consider Proposer's exceptions when UT System evaluates the proposal.

The agreements resulting from execution of applicable forms described in this Section are sometimes collectively referred to in this RFP as the "**Agreement.**"

SECTION 5
SPECIFICATIONS, ADDITIONAL QUESTIONS AND SCOPE OF WORK

5.1 General

The requirements and specifications for the Services, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below.

5.2 Minimum Requirements

Each proposal must include information clearly indicating that Proposer meets each of the following minimum qualification requirements:

- 5.2.1 **Each Preferred Supplier** (including each Charter Broker-identified supplier of charter airline services to an Institutional Participant) must pay to the Alliance, on a quarterly basis, an administrative fee of 1% of the Total Net Sales of Services made by Preferred Supplier during that quarter to UT System and/or Institutional Participants under the Agreement (ref. **Section 6.2** of this RFP).
- 5.2.2 If Preferred Supplier is a **Charter Broker** (as defined below), Preferred Supplier must meet the additional minimum requirements specified in **Section 5.4.3.2** of this RFP.
- 5.2.3 If Preferred Supplier is a **Charter Operator** (as defined below), Preferred Supplier must meet the additional minimum requirements specified in **Section 5.4.4.2** of this RFP.

5.3 Additional Questions Specific to this RFP and Scope of Work

Proposer must submit the following information as part of Proposer's proposal:

- 5.3.1 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the "Access by Individuals with Disabilities" language that is set forth in **APPENDIX FIVE**, Access by Individuals with Disabilities. If Proposer objects to the inclusion of the "Access by Individuals with Disabilities" language in the Agreement, Proposer must, as part of its proposal, specifically identify and describe in detail all of the reasons for Proposer's objection. NOTE THAT A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.
- 5.3.2 If Proposer takes exception to any terms or conditions referenced in **Section 4** of this RFP, Proposer must submit a list of the exceptions.
- 5.3.3 Proposers will provide answers to the questions listed in the Proposer's Survey ("**Proposer's Survey**") (ref. **Section 5.5** of this RFP) to the best of Proposer's knowledge, as responses may be incorporated into the Agreement. The questions in the Proposer's Survey will provide UT System with additional information about Proposer and various efficiencies and economies of scale that Proposer may provide to participating institutions.

- 5.3.4 In its proposal, Proposer must respond to each item listed in **APPENDIX SIX**, Electronic and Information Resources (“EIR”) Environment Specifications. **APPENDIX SIX** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide. Responses to **APPENDIX SIX** will be incorporated into the Agreement and will be binding on Proposer.
- 5.3.5 In its proposal, Proposer must respond to each item listed in **APPENDIX SEVEN**, Security Characteristics and Functionality of Contractor’s Information Resources. **APPENDIX SEVEN** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide. Responses to **APPENDIX SEVEN** will be incorporated into the Agreement and will be binding on Proposer.

5.4 Scope of Work

The details noted below may form the basis for additional provisions to be included in the Agreement between UT System and any Preferred Supplier. The following outlines the essential requirements for the supply of Services. The Proposer acknowledges and understands that this RFP provides a general description of the work to be performed and is not intended to be all inclusive. Proposer must be familiar with the requirements and general conditions that are essential to provide the Services consistent with industry best practices and in accordance with all licensing, regulations, and professional standards.

Services within the scope of this RFP include, but are not limited to, the following:

5.4.1 General Description.

UT System and its institutions secure a wide array of charter aircraft-related services, including but not limited to group, athletic, staff, faculty and guest travel. It is imperative that UT System demonstrate due diligence in selecting service providers that meet both Federal Aviation Administration and UT System requirements.

As indicated earlier, UT System anticipates contracting with at least one air Charter Broker and two commercial air Charter Operators (as such terms are defined below). The Services may include the procurement, delivery and management of air charter services and may encompass (1) passenger services (for individuals, groups and team travel); (2) compliance with quality and safety requirements; (3) accessorial services; and (4) reporting obligations, all as more specifically described in this **Section 5.4**.

UT System intends to secure agreements with Services providers that will: 1) develop standardized processes for working with a charter broker as well as a commercial carrier; 2) resolve inconsistencies in charter contracting procedures, and; 3) improve risk assessment and mitigation.

Any agreement(s) resulting from this RFP are anticipated to have an initial term of five years, with UT System having the option to renew for three additional one-year periods.

Note: UT System will not contract with a broker requiring a retainer for services. Broker fees must be proposed as a percentage or flat fee per confirmed charter flight or grouping of flights.

5.4.2 Definitions.

14 CFR Part 119: Title 14 of the Code of Federal Regulations Part 119, issued by the Federal Aviation Administration (FAA), prescribes the certification requirements an operator must meet in order to obtain and hold a certificate authorizing operations under Parts 121, 125, or 135, and operation specifications for each kind of operation to be conducted in each class and size of aircraft.

14 CFR Part 121: Title 14 of the Code of Federal Regulations Part 121 issued by the FAA prescribes operating requirements governing the domestic, flag, and supplemental operations of each person who holds or is required to hold an Air Carrier certificate or operating certificate under Federal Aviation Regulations Part 119.

14 CFR Part 125: Title 14 of the Code of Federal Regulations Part 125 issued by the FAA prescribes rules governing the certification and operations of airplanes having a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more; and rules governing persons on board such aircraft. Part 125 is referred to as “**Private Carriage.**”

14 CFR Part 135: Title 14 of the Code of Federal Regulations Part 135 issued by the FAA prescribes rules governing commuter and on-demand operations of each person who holds or is required to hold an Air Carrier Certificate or Operating Certificate under FAA Part 119. Part 135 is referred to as “**Commuter and On-Demand Operations.**”

Charter Broker: individual or corporation that attempts to find the best match between a client and charter operator. A charter provider may be a broker that matches an Institutional Participant's needs with third-party charter operators.

Charter Operator: a company or individual that holds aircraft charter certificates and provides charter services to retail and wholesale customers.

Civil Aviation Authority (CAA): the name for the national body governing civil aviation in a number of countries. In the United States of America, the CAA is the FAA.

Code of Federal Regulations (CFR): the codification of general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the federal government of the United States. The CFR is published by the Office of the Federal Register, an agency of the National Archives and Records Administration.

Federal Aviation Regulations (FARs): rules prescribed by the FAA governing all aviation activities in the United States. The FARs are part of Title 14 of the CFR.

International Air Transport Association (IATA): international trade organization promoting cooperation among the world's scheduled airlines to ensure safe, secure, reliable, and economical air services. IATA represents some 230 airlines comprising 93% of scheduled international air traffic. The organization acts as an international standard-setting body for the aviation and travel industries with the goal of continually improving safety standards through its safety audit program.

Landing Fee: charges paid by an aircraft to an airport company for landing at a particular airport.

Long-Term Agreement: a long-term agreement between the client and a charter operator defining but not limited to the following categories: contract documents, price and payment, services, legal status of the carrier, certifications, licenses, manuals, aircraft/crew and other personal, insurance, mandatory clearances required of charter operator, scheduling of flights, facilities for carrier's operations (if applicable), reporting and accidents, notices and other communications required, dates and duration of the contract.

On-Demand Charter: any air charter operation in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative when a need for utilizing air services surfaces. For example, a client may go directly to the airport or make arrangements by phone to make arrangements for a specific trip. Usually, on-demand charter is a one-time trip with high probability that the trip will not be repeated with high frequency.

Operational Control: with respect to flight, means the exercise of authority over initiating, conducting or terminating a flight. It is the responsibility of a direct air carrier or commercial operator (certificate holder) certificated by the FAA and includes any person or entity that provides or offers to provide transportation by air and who maintains control over the operational functions performed in providing that transportation. To legally act as a direct air carrier, a person or entity must hold an FAA Title 14 of a CFR Part 119 certificate and comply with applicable regulations.

Point of Sale: a traditional charter format where each trip is bid separately. There are no guarantees on pricing or availability until the charter is booked. The offeror may charge explicitly for all aspects of the flight (including non-occupied flights to position the plane).

Private Carriage: the carriage of persons or property for compensation or hire with limitations on the number of contracts. The carriage of persons or property for compensation or hire under a contractual business arrangement between the operator and another person or organization which did not result from the operator's offering service is considered to be private carriage. (In this situation, the customer seeks an operator to perform the desired service and enters into an exclusive, mutual agreement as opposed to the operator seeking customers.) Private carriage operations require the issuance of an operating certificate. Operations would be conducted under Part 125 or 135, depending on the type of aircraft, seating, and payload capacity.

Unscheduled Operation: any private carriage operation for compensation or hire, conducted by an air carrier for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative. This includes any passenger-carrying supplemental operation conducted under 14 CFR Part 121 and any passenger-carrying public charter operation conducted under 14 CFR Part 380.

The terms "air carrier," "certificate holder," or "operator" will mean the holder of either an Air Carrier Certificate or Operating Certificate issued with operation specifications

(OpsSpecs), authorizing operations under Parts 121, 125, or 135, including those authorized operations under both Parts 121 and 135.

NOTE: This solicitation applies to both Charter Brokers and Charter Operators. Charter Brokers should refer primarily to **Section 5.4.3**, and Charter Operators should refer primarily to **Section 5.4.4**.

5.4.3 Charter Broker.

5.4.3.1 Overall Description of Charter Broker Services.

The Charter Broker will find the best match between an Institutional Participant's needs and a Charter Operator. The Charter Broker will provide reasonable oversight of Charter Operators, along with other value-added services. Examples of Charter Broker oversight and value-added services include:

- Researching Charter Operators and obtaining competitive bids, using legally required procurement criteria identified to the Charter Broker by the Institutional Participant.
- Organizing the specific logistics of a trip.
- Contingency planning for unexpected equipment problems which may result in cancellation of a trip.
- Practicing due diligence to select a charter operator with the best safety standards and audit results.

The Charter Broker may not act on behalf of both the Institutional Participant and a Charter Operator. The Charter Broker must provide quality services and engage in business practices that not only ensure good service to Institutional Participants, but also incorporate an appropriate level of safety. UT System has established a set of Charter Broker quality and safety requirements that reflect the type of programs and practices that UT System seeks from Charter Brokers. The Charter Broker must be capable of meeting all the broker aspects of service needs specified in this RFP, with particular focus on applicable requirements specified in this **Section 5.4** and **APPENDIX EIGHT**, Overview of Air Charter-Related Services Typically Required By UT System and Its Institutions.

5.4.3.2 Additional Minimum Requirements.

In addition to the minimum requirement specified in **Section 5.2.1** of this RFP, each Proposal for Charter Broker services must include information clearly indicating that Proposer meets each of the following minimum qualification requirements:

- (a) Must agree to utilize umbrella / standardized contracts, within the timeframe requested by individual Institutional Participants, substantially similar to **APPENDIX THREE – 300**, in arranging for the services of a Charter Operator.
- (b) Must demonstrate compliance with the broker standards and requirements detailed in **Section 5.4.3.3** of this RFP.

5.4.3.3 Charter Broker Standards and Requirements.

In order to receive a contract award as a Charter Broker, Proposer must demonstrate compliance with the following standards and requirements:

(1) Experience requirements.

Proposer must have at least one year of experience providing charter brokerage services for executive passenger operations.

Proposer must have at least five years of experience providing charter brokerage services for group, athletic and team travel. Experience must be similar in size and scope to requirements outlined in this RFP.

Proposer must have access to and ability to secure aircraft of the type noted in **APPENDIX EIGHT**, Overview of Air-Charter Related Services Typically Required By UT System and Its Institutions. Preference may be given to a Proposer that can secure all types of aircraft listed, including VIP-configured aircraft.

UT System strongly recommends, and Proposer must agree to first consider, Charter Operators meeting a minimum of ARGUS Gold or Wyvern Standard Pass criteria. These criteria should be noted in bid responses.

(2) Documented policies and procedures.

Proposer must agree to:

- maintain a written vendor selection and booking policy that includes Proposer's safety standards.
- maintain a written emergency response plan with sections appropriate to Proposer's role in responding to an emergency.
- have a manager that oversees compliance with Proposer's standards.
- provide flight following / tracking services for its flights.
- have at least two contacts designated for Institutional Participants' travel needs.
- ensure that each Charter Operator whose services it procures for an Institutional Participant meets the requirements listed in **Sections 5.4.4.4** and **5.4.4.5** of this RFP. Also, in procuring the services of charter operators for Institutional Participants, Proposer, acting as the Charter Broker, will:
 - solicit at least three bids for each requested engagement of the services of a charter operator and comply with other procurement

instructions provided to Charter Broker by an Institutional Participant.

- consider price, but more importantly the quality and safety of the operator. Proposer must first consider and offer the services of Charter Operators meeting a minimum of ARGUS Gold or Wyvern Standard Pass criteria. Proposer must ensure that these criteria are noted in responses to Proposer's solicitations.
- verify that insurance is carried by the Charter Operator for the type of charter being conducted, as specified in Sect. 19 of **APPENDIX THREE – 300** to this RFP.
- provide coordination of all trip details as specified in Section 5.4.4.6 (Accessorial Services) of this RFP, and provide a written, firm quote for each of the options being considered, within the time frame requested by the Institutional Participant.
- commensurate with DOT mandates, act only as the agent of Institutional Participant, unless the Institutional Participant agrees in a signed writing that Charter Broker may act as the Charter Operator's agent (cannot do both).
- commensurate with all applicable laws, including the requirements in FAA document A008, "Operational Control," clearly provide to the Institutional Participant the identity of the Charter Operator having operational control of each flight booked.
- serve as an intermediary to safeguard the Institutional Participant's best interests in the event of an aircraft mechanical failure and/or flight itinerary change.
- maintain an updated emergency response plan that outlines the Proposer's role in the event of an emergency involving any charter operator flight coordinated via the Proposer. Appropriate broker actions in an emergency situation would include but not be limited to: immediate communication with Institutional Participant's emergency contact; making reasonable effort to provide constant updates to emergency contact as information is received; coordinating flight arrangements for travel to emergency site; and finding and establishing reasonable lodging and meal accommodations at the emergency site.

It is understood and agreed that, in procuring the services of a Charter Operator for an Institutional Participant, Proposer will deliver to the Institutional Participant all the relevant information about the three, competitively procured proposals, and the Institutional Participant will be responsible for selecting the winning proposal, on the basis of Institutional Participant's legally required procurement criteria. Further, while the Charter Broker will be responsible for negotiating the terms of the agreement

between the Institutional Participant and the Charter Operator selected as the winning proposer, the agreement will be binding on the Institutional Participant (notwithstanding any signature by Charter Broker) only when the Institutional Participant executes the agreement. Once the agreement is fully negotiated, the Charter Broker will review all the terms of the agreement with the Institutional Participant, and the Institutional Participant will decide in its sole discretion whether to sign the agreement and legally bind itself to the charter operator. All three signatures (by the Charter Operator, the Charter Broker and the Institutional Participant) will be required before the agreement will be legally effective.

5.4.4 Charter Operator.

5.4.4.1 Overall Description of Charter Operator Services.

The Charter Operator will provide passenger air charter service and related services to assist Institutional Participants to meet their needs for various types of travel. The Charter Operator must be capable of meeting all the service needs specified in this RFP, with particular focus on applicable requirements specified in this **Section 5.4** and **APPENDIX EIGHT**, Overview of Air Charter-Related Services Typically Required By UT System and Its Institutions.

5.4.4.2 Additional Minimum Requirements.

In addition to the minimum requirement specified in **Section 5.2.1** of this RFP, each Proposal for Charter Operator Services must include information clearly indicating that Proposer meets each of the following minimum qualification requirements:

- (a) Must be capable of complying with all applicable requirements of UT System Regents Rule 20601, including the requirement that all flights must include a minimum of two qualified/certified pilots in the cockpit.
- (b) Must demonstrate compliance with requirements as detailed in **Sections 5.4.4.4** and **5.4.4.5** of this RFP.

5.4.4.3 Scope and Complexity.

This solicitation applies to unscheduled operations of air transportation conducted under:

- (a) 14 CFR Part 121 (“**Supplemental Operations**”)
http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgFAR.nsf/MainFrame?OpenFrameSet
- (b) 14 CFR Part 125 (“**Private Carriage**”)
http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgFAR.nsf/MainFrame?OpenFrameSet
- (c) 14 CFR Part 135 (“**Commuter and On-Demand Operations**”)
http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgFAR.nsf/MainFrame?OpenFrameSet

5.4.4.4 Regulatory Compliance. In order to receive an award, Proposer must demonstrate compliance with the regulatory requirements outlined below:

- A. Must be IOSA (IATA Operational Safety Audit Program) registered. This applies to 121 and 125 Proposers only. Proposer must provide proof of certificate and must be placed on IATA registry website.

NOTE: Exception to requirement above: in lieu of Proposer meeting Charter Operator requirements of this Section, an award may be made to carrier that has passed a safety audit conducted by an accredited FAR Part 121/125/135 audit services provider within the last twelve (12) months. Satisfactory proof of audit is required.

- B. Proposer must have approval from the FAA in order to carry Institutional Participant personnel and must be in compliance with all requirements in **Section 5.4.4.5** (Air Carrier Quality and Safety) of this RFP.
- C. Part 135 Proposers must be in compliance with applicable regulations as outlined in Federal Aviation Regulations Part 135: Operating Requirements: Commuter & On-Demand Operations & Rules Governing Persons on Board Such Aircraft.
- D. Part 121 Proposers must be in compliance with applicable regulations as outlined in Federal Aviation Regulations Part 121: Operating Requirements: Domestic, Flag, and Supplemental Operations.
- E. Part 125 Proposers must be in compliance with applicable regulations as outlined in Federal Aviation Regulations Part 125: Certification and Operations: Airplanes having a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more; and rules governing persons on board such aircraft ("**Private Carriage**").

5.4.4.5 Air Carrier Quality and Safety. In order to receive a contract award, Proposer must demonstrate compliance with the necessary quality and safety standards outlined below:

- A. Must possess 24 months of continuous service equivalent to the Charter Operator Services solicited by this RFP. In applying this requirement, the following guidance will be used:

"**24 months**" refers to the 24 calendar months immediately preceding the issuance of this RFP.

"**Continuous Service**" means Proposer must have performed revenue-generating services of the nature solicited by this RFP, as an FAA Part 121, 125, or 135 (14 CFR 121, 125, or 135) air carrier on a recurring, substantially uninterrupted basis. The services must have occurred with such frequency and regularity as to clearly demonstrate Proposer's ability to perform and support sustained, safe, reliable, and regular services of the type sought by this RFP.

“Equivalent to the Charter Operator Services solicited by this RFP”

means services substantially equivalent to the type of Charter Operator Services sought by UT System. The prior experience must be equivalent in difficulty and complexity with regard to the distances flown, weather systems encountered, national procedures, the same or similar aircraft, schedule demands, aircrew experience, number of passengers handled, frequency of operations, and management required. There is not a set formula for determining whether a particular type of service qualifies. The performance of cargo services is not considered to be equivalent to the performance of passenger services.

- B. Management of Safety and Quality Requirements. Since safety is UT System's number one priority, and safety is never sacrificed to passenger concern, convenience, or cost, Proposer must have established and implemented policies, procedures, and goals that enhance the CAA's minimum operations and maintenance standards. A cooperative response to CAA inspections, critiques, or comments must be demonstrated. Proper support infrastructure, including facilities, equipment, parts, and qualified personnel, must be provided at the certificate holder's primary facility and *en route* stations. Personnel with aviation credentials and experience must occupy key management positions. An internal quality audit program or other method capable of identifying in-house deficiencies and measuring Proposer's compliance with its stated policies and standards must have been implemented. Audit results must have been analyzed in order to determine the cause, not just the symptom, of any deficiency. The result of sound fiscal policy must be evident throughout Proposer's organization. Comprehensive disaster response plans must be in place.
- C. Quality and Safety Requirements in Operations. Proposer must have the following:
- (1) Flight safety. Established policies that promote flight safety. All aircrew and operational personnel must translate these policies into practice. Revised safety-related data must be promptly disseminated to affected personnel who understand that deviation from any established safety policy is unacceptable. An audit system that detects unsafe practices must be in place, along with a feedback structure that informs management of possible safety problems. Management must ensure that corrective actions resolve every unsafe condition.
 - (2) Flight operations. Established flight operations policies and procedures that are up-to-date, reflect the current scope of operations, and are clearly defined to employees. These procedures must be further supported by a flow of current, management-generated safety and operational communications. Managers must ensure that the risk associated with all flight operations is reduced to the lowest acceptable level. Flight crews must be free from undue management pressure and comfortable with exercising their professional judgment during flight activities, even if such actions do

not support the flight schedule. Effective lines of communication must permit feedback from line crews to operations managers. Personnel records must be maintained and reflect such data as experience, qualifications, and medical status.

- (3) Flight crew hiring. Established procedures must ensure that applicants are carefully screened, including a review of the individual's health and suitability to perform flight crew duties. Consideration must be given to the applicant's total aviation background, appropriate experience, and the individual's potential to perform safely. Freedom from alcohol abuse and illegal drugs must be required. If new-hire cockpit crewmembers do not meet industry standards for experience and qualification, then increased training and management attention to properly qualify these personnel must be required prior to assignment to any flight involving an Institutional Participant.
- (4) Aircrew training. Training, including recurrent training, which develops and refines skills designed to eliminate mishaps and improve safety is essential to a quality operation. Crew coordination training that facilitates full cockpit crew training and full crew interaction using standardized procedures and including the principles of Crew Resource Management (CRM) is required. Programs involving the use of simulators or other devices that can provide realistic training scenarios are desired. Captain and First Officer training objectives cultivate similar levels of proficiency. Appropriate emergency procedures training (e.g., evacuation procedures) must be provided to flight deck and flight attendant personnel as a total crew whenever possible; such training focuses on cockpit and cabin crews functioning as a coordinated team during emergencies. Crew training must be appropriate to the level of risk and circumstances anticipated for the trainee. Training programs have the flexibility to incorporate and resolve recurring problem areas associated with day-to-day flight operations.
- (5) Captain upgrade training. A selection and training process that considers proven experience, decision making, crew resource management, and response to unusual situations, including stress and pressure, is required. Also important is emphasis on captain responsibility and authority.
- (6) Aircrew scheduling. A closely monitored system that evaluates operational risks, experience levels of crewmembers, and ensures the proper pairing of aircrews on all flights is required. New captains are scheduled with highly experienced first officers, and new or low-time first officers are scheduled with experienced captains. Except for aircraft new to the company, captains and first officers assigned to charter passenger missions possess at least 250 hours combined experience in the type aircraft being operated. The scheduling system involves an established flight duty time program for aircrews, including flight attendants, carefully managed so as to ensure proper crew rest and considers quality-of-life factors.

- (7) In-flight performance. Aircrews, including flight attendants, must be fit for flight duties and trained to handle normal, abnormal, and emergency situations. They must demonstrate crew discipline and knowledge of aviation rules; use company-developed standardized procedures; adhere to checklists; and emphasize safety, including security considerations, throughout all preflight, in-flight, and post-flight operations. Qualified personnel must evaluate aircrews and analyze results, and must eliminate known performance deficiencies. Evaluations must ensure aircrews demonstrate aircraft proficiency in accordance with company established standards. Flight crews must be able to determine an aircraft's maintenance condition prior to flight and use standardized methods to accurately report aircraft deficiencies to the maintenance activity.
 - (8) Operational control/support. Effective mission control must include communications with aircrews and the capability to respond to irregularities or difficulties. Clear written procedures for mission preparation must be provided. There must be access to weather, flight planning, and aircraft maintenance data. There must be personnel available who are knowledgeable in aircraft performance and mission requirements and can correctly respond to emergency situations. There must be close interface between operations and maintenance, ensuring a mutual awareness of aircraft operational and maintenance status. Procedures to notify Institutional Participants in case of an accident or serious incident must have been established. Flight crews involved in such accidents or incidents must report the situation to company personnel who, in turn, must have procedures to evaluate the flight crew's capability to continue the mission. Aircraft involved in accidents or incidents must be inspected in accordance with Civil Aviation Regulations and a determination made as to whether or not the aircraft is safe for continued operations.
 - (9) Charter procedures. Complete route planning and airport analyses must be accomplished, and actual passenger and cargo weights must be used in computing aircraft weight and balance.
- D. Quality and Safety Requirements—Maintenance. Proposer must demonstrate that passenger and employee safety is the paramount management concern; nonconformance to established maintenance practices is not tolerated; maintenance supervisors routinely ensure all personnel understand that, in spite of scheduling pressure or other factors, the airplane must be airworthy prior to flight; management ensures that contracted maintenance, including repair and overhaul facilities, is performed by maintenance organizations acceptable to the CAA. In particular:
- (1) Maintenance personnel. Air carriers are expected to hire and train the number of employees required to safely maintain the company aircraft and support the scope of the maintenance operations. These personnel must ensure that all maintenance tasks, including required

inspections and airworthiness directives, are performed; maintenance actions are properly documented; and discrepancies identified between inspections are corrected. Mechanics must be fit for duty and properly certificated. Proposer must verify the certification, and these personnel must possess the knowledge and the necessary aircraft-specific experience to accomplish maintenance tasks. Freedom from alcohol abuse and illegal drugs must be required.

- (2) Quality assurance. A system that continuously analyzes the performance and effectiveness of maintenance activities and maintenance inspection programs is required. This system must evaluate such functions as reliability reports, audits, component tear-down reports, inspection procedures and results, tool calibration program, real-time aircraft maintenance actions, warranty programs, and other maintenance functions. The extent of this program must be directly related to the Proposer's size and scope of operation. The cause of any recurring discrepancy or negative trend must be researched and eliminated. Action must be taken to prevent recurrence of these discrepancies and preventive actions must be monitored to ensure effectiveness. The results of preventive actions must be provided to appropriate maintenance technicians.
- (3) Maintenance inspection activity. A process to ensure required aircraft inspections are completed and the results properly documented is required. Also required is a system to evaluate contract vendors, suppliers, and their products. The extent of this program must be directly related to Proposer's size and scope of operation. Inspection personnel must be identified, trained, and provided guidance regarding inspector responsibility and authority. The inspection activity is normally a separate entity within the maintenance department.
- (4) Maintenance training. Training must be conducted commensurate with the size and type of maintenance function being performed. Continuing education and progressive experience must be provided for all maintenance personnel. Orientation, familiarization, on-the-job, and appropriate recurrent training for all full and part-time personnel are expected. The use of such training aids as mockups, simulators, and computer-based training enhances maintenance training efforts and is desired. Training documentation is required; it must be current, complete and well-maintained, and it must correctly identify any special authorization such as inspection and airworthiness release. Trainers must be fully qualified in the subject manner.
- (5) Maintenance control. A method to control maintenance activities and track aircraft status is required. Qualified personnel must monitor maintenance preplanning, ensure completion of maintenance actions, and track deferred discrepancies. Deferred maintenance actions must be identified to supervisory personnel and corrected in accordance with the criteria provided by the manufacturer or regulatory agency. Constant and effective communications between maintenance and

flight operations must occur to ensure an exchange of critical information.

- (6) Aircraft maintenance program. Aircraft must be properly certified and maintained in a manner that ensures they are airworthy and safe. The program must include the use of manufacturer's and CAA information, as well as company policies and procedures. Airworthiness directives must be complied with in the prescribed time frame, and service bulletins must be evaluated for applicable action. Approved reliability programs must be proactive, providing management with visibility into the effectiveness of the maintenance program; attention must be given to initial component and older aircraft inspection intervals and to deferred maintenance actions. Special tools and equipment must be calibrated.
- (7) Maintenance records. Maintenance actions must be well documented and provide a complete record of maintenance accomplished and, for repetitive actions, maintenance required. Such records as aircraft log books and maintenance documentation must be legible, dated, clean, readily identifiable, and maintained in an orderly fashion. Inspection compliance, airworthiness release, and maintenance release records, etc., must be completed and signed by approved personnel.
- (8) Aircraft appearance. Aircraft exteriors, including all visible surfaces and components, must be clean and well maintained. Interiors must also be clean and orderly. Required safety equipment and systems must be available and operable.
- (9) Fueling and servicing. Aircraft fuel must be free from contamination, and company fuel facilities (farms) must be inspected and results documented. Procedures and instructions pertaining to servicing, handling, and storing fuel and oil must meet established safety standards. Procedures for monitoring and verifying vendor servicing practices must be included in this program.
- (10) Maintenance manuals. Company policy manuals and manufacturer's maintenance manuals must be current, available, clear, complete, and adhered to by maintenance personnel. These manuals must provide maintenance personnel with standardized procedures for maintaining company aircraft. Management policies, lines of authority, and company maintenance procedures must be documented in company manuals and kept in a current status.
- (11) Maintenance facilities. Well-maintained, clean maintenance facilities, adequate for the level of aircraft repair authorized in the company's CAA certificate are expected. Safety equipment must be available in hangars, shops, etc., and must be serviceable. Shipping, receiving, and stores areas must likewise be clean and orderly. Parts must be correctly packaged, tagged, segregated, and shelf life must be properly monitored.

- E. Quality and Safety Requirements—Security. Proposer must demonstrate that Proposer's personnel receive training in security responsibilities and practice applicable procedures during ground and in-flight operations. Compliance with provisions of the appropriate standard security program established by the Transportation Security Administration is required.
- F. Quality and Safety Requirements—Specific Equipment Requirements. Proposer must be prepared to satisfy equipment and other requirements as specified in the Agreement resulting from this RFP.

5.4.4.6 Accessorial Services. Depending on the needs of the specific trip flown, an Institutional Participant may request a Charter Operator to provide common air charter accessorial services. These items are optional and do not have to be offered by Proposer. **Proposer should specify which services it CANNOT offer.** The following is a sample of common air charter accessorial services that an Institutional Participant may wish to secure:

- (1) Catering services, which may offer customized event solutions for the particular trip requirements. Examples may include pre-packaged menu items or the flexibility of a “build your own” selection, and specialized menus.
- (2) Ability to have access to camera and photo equipment while in-flight.
- (3) Ground transportation (origin and destination) to/from point of departure/arrival, which may offer point-to-point timely service via limousine, van or bus to/from airport to hotel.
- (4) Hotel & other lodging accommodations.
- (5) Lounge & conference room services with flexibility to accommodate various party sizes, presentation facilities, bar and adjoining television and viewing area.
- (6) Aircraft/passenger/cargo security, ability to will work closely with the client to select the appropriate risk management service. For each personal protection assignment, qualifications, experience, personality and working style of agents will be matched to the profile and needs of the individual or group.
- (7) Group check-in and streamlined baggage/cargo handling procedures.
- (8) TSA plane-side security processes for team/group travel.
- (9) Flight dispatch staffing services with individuals who have preferably received FAA training in the area of Federal Aviation Regulations, aviation weather, navigation, air space & air traffic control, aerodynamics, weight & balance, dangerous goods, and manual flight plan.

- (10) Communication services that allow crew members, traveling party, and other involved parties to keep abreast of any changing information regarding a trip.
- (11) Mechanic to accompany flight if requested (limited to high-profile flight request).
- (12) Flight/trip concierge.
- (13) Dedicated contact for charter scheduling and account management.

5.4.4.7 Reporting and Performance Measure Requirements. Reporting requirements are classified as either upfront or ongoing data. Upfront data, as applicable, must be submitted as part of any response to this RFP, and may serve as one criterion in determining whether Proposer is given an initial contract award. Additionally, Proposer is expected to furnish ongoing data under the Agreement resulting from this RFP, at the request of UT System.

(1) Upfront Data Reporting Requirements:

- Aircraft accident history (5 year safety history)*
- FAA Sanctions (past 5 years)
- Safety ratings from third-party auditors
- Operational control of aircraft
- Aircraft insurance levels
- Fleet data (age of aircraft, location)
- Pilot roster (covers pilot certifications and experience levels such as type ratings)
- Referrals of clients served to determine customer satisfaction levels
- Copy of operating certificate

(2) Ongoing Data Reporting Requirements:

- Provide safety reports as requested*
- Provide pilot experience and historical safety ratings as requested
- Total number of flights and fees charged per institution
- City pair distance and time data
- Type of aircraft assigned
- Total number of passengers on assigned flight
- Name of Pilot in Command (PIC), Second in Command (SIC), and relief pilot (if applicable) **

* Accidents, incidents, and/or violations (must be reported upon occurrence)

** Relief is required if pilot duty periods exceed FAR 135, Subpart F.

(3) Ongoing Performance Measures

UT System requires each of its institutions to request this information from the Charter Operator prior to performing each trip:

Minimum Crew: (minimum number of crewmembers for operation of aircraft)

- Pilot in Command's (PIC's) Total Time (hours)
- PIC's Time as PIC
- PIC's Time in Type as PIC
- Second In Command (SIC's) Total Time
- SIC's Time as PIC

Industry best practice crewmember minimum standards:

	Category 1: Jet	Category 2: Turboprop	Category 3: Rotorcraft
Minimum Number of Crewmembers	2	2	2
PIC's Total Time (hours)	3,000	3,000	3,000
PIC's Time as PIC	1,500	1,500	1,500
PIC's Time in Type of Aircraft as PIC	100	100	100
SIC's Total Time	1,000	1,000	1,000
SIC's Time as PIC	500	500	500

(4) Other Factors:

Medical Standards – refer to Federal Aviation Regulations (FAR) Part 61.23, Subpart A: “Medical Certificates: Requirement and Duration”
 Medical Class (1st, 2nd, or 3rd)
 Medical Date (FAA certified physician check)
 Pilot Aircraft Type Rating qualification

For PIC and SIC – refer to Federal Aviation Regulations (FAR) Part 61: Certification: Pilots, Flight Instructors, and Ground Instructors; Parts 61.55, 61.56, 61.57, and 61.58.

Pilot in Command (PIC) In-Type
 Second In Command (SIC) In-Type
 Simulator Training Date
 Simulator Training Vendor
 Federal Aviation Regulation (FAR) Compliance Standards
 FAR 135.293 – Initial and recurrent pilot testing requirements (sub-paragraphs a1, a2-3, and b).
 FAR 135.297 – Pilot in command: Instrument proficiency check requirements

5.4.5 Preferred Supplier-Alliance Account Support Team.

Preferred Supplier will provide a Senior Management Account Representative with the authority and responsibility for the overall success of the Agreement within the Preferred Supplier's organization. The Preferred Supplier will also designate a Program Manager assigned to the Alliance account responsible for: (i) receiving and providing ongoing

communications by and between the Preferred Supplier and UT System; (ii) monitoring all interactions with UT System and/or Institutional Participants and providing updates to the UT System Contract Administrator; (iii) identifying and fostering process improvements; (iv) serving as the liaison to engage resources with the Preferred Supplier's organization to troubleshoot and resolve problems; (v) organizing Quarterly Business Reviews (**QBR**); monitoring Key Performance Indicators (**KPIs**) and providing early warning notices to Preferred Supplier's management team and the UT System Contract Administrator.

5.4.6 Invoicing.

Preferred Supplier will invoice each Institutional Participant for Services requested and initiated by the Institutional Participant.

Each Institutional Participant will be solely responsible for the payment of its own requests for Services. Neither UT System nor any other Institutional Participant will have any liability whatsoever relating to Services provided to another Institutional Participant.

Preferred Supplier will resolve all order and invoice discrepancies within five (5) business days after written notification or, if because of their nature, the discrepancies cannot be resolved within that time frame, Preferred Supplier will take all of the steps the Institutional Participant's purchasing department deems necessary.

5.4.7 Relationship Management.

Preferred Supplier and the UT System Contract Administrator will meet once each quarter to conduct a QBR, as further described in **APPENDIX THREE – 400**.

5.4.8 Pricing Schedule

Pricing established in Proposer's response to this RFP (**ref. Section 7 of the Proposer's Survey**) will remain firm and fixed through at least August 31, 2016. Thereafter, for each subsequent UT System fiscal year (September 1 through August 31), Preferred Supplier and the UT System Contract Administrator will agree in writing on the pricing for such year in advance.

5.4.8.1 All prices quoted will be inclusive of all fees and charges due and payable to Preferred Supplier.

5.4.8.2 Preferred Supplier and the UT System Contract Administrator will review all price structures for the Services on a quarterly basis during each QBR. Preferred Supplier's initial and subsequent pricing will be benchmarked by the Strategic Services Group for market competitiveness. Preferred Supplier agrees to negotiate in good faith to adjust pricing if necessary to remain competitive. Should pricing or configuration for products listed in the Agreement change during such quarterly reviews, such changes will be documented in a written, signed amendment to the Agreement agreed to by Preferred Supplier and the UT System Contract Administrator.

5.4.9 Institutional Participant Requirements

- 5.4.9.1 Each Institutional Participant will have its own unique set of rules and regulations for conducting business on its campuses. Preferred Supplier will be responsible for compliance with each Institutional Participant's rules and regulations, including any and all requirements for background checks, badging/credentialing, and security.
- 5.4.9.2 As applicable, Preferred Supplier will cause its representatives, agents, employees and permitted subcontractors (if any) to become aware of, fully informed about, and in full compliance with all applicable UT System's and Institutional Participants' rules and policies, including, without limitation, those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions; consideration for students, patients and their families as well as employees; parking; and security.

5.5 Proposer's Survey

Proposer must complete the Proposer's Survey.

The Proposer's Survey contains a list of additional questions the Proposer will answer when responding to this RFP. If Proposer needs to submit additional supporting information, refer to the supporting information in responses to the Proposer's Survey and attach supporting materials in a logical and clear manner. Any supporting information must be included in electronic form via the SciQuest e-Sourcing tool and must follow the following naming convention: (<Proposer Name> - <Question Number> - Response - <File Name>).

Finally, Proposer is encouraged to specify any special certifications, awards, or other industry recognizable achievements that might set it apart from its competitors.

SECTION 6
PRICING SCHEDULE AND AFFIRMATION

6.1 Pricing Schedule

Proposer must submit its rate structure in **Section 7 of the Proposer's Survey**, as part of its proposal, for the Services described in **Section 5.4** (Scope of Work) of this RFP. The prices must include all charges associated with providing the full scope of work.

6.2 Pricing Affirmation

THE FOLLOWING FORM MUST BE COMPLETED, SIGNED AND SUBMITTED WITH THE PROPOSER'S PROPOSAL. FAILURE TO DO SO WILL RESULT IN THE REJECTION OF YOUR PROPOSAL.

Proposal of: _____
(Proposer Company Name)

To: The University of Texas System
Ref.: Charter Broker Services / Charter Operator Services (*choose one, as applicable*)
RFP No. UTS/A48

Ladies and Gentlemen:

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the subject Services upon the pricing terms quoted below.

[Proposer to insert pricing terms]

[Proposer should note that, in responding to this RFP, it is not bidding on specific or scheduled charter requests, but rather is proposing general, base pricing terms for future charter needs. The pricing terms included in this pricing affirmation will be Proposer's guaranteed pricing. Proposer must outline a pricing methodology and, in addition, complete the pricing exercise which is part of the Proposer's Survey.]

In quoting its pricing terms, Proposer should take into account:

General Types of Pricing:

- Hourly rate round-trip (applies to charter operator)*
- Hourly rate one-way (applies to charter operator)*
- Alternate Operator proposed pricing model (detail required)*

Additional costs that may be included in charter pricing when required:

- *Landing/ramp/hangar fees*
- *Repositioning fees*
- *Fuel surcharge*
- *Minimum flight time requirement*

- *Limo/taxi fee*
- *Catering*
- *Federal Excise Tax*
- *Applicable fees for international charters*
- *Cancellation penalties*
- *Other – operator/broker to detail*

Requirement for Charter Broker: *Charter Broker should outline in detail its fee for services, excluding operator cost, such as a percentage of the total air charter operator cost, or a flat fee per charter. Please note that UT System will not contract with a broker requiring a retainer for services.]*

Proposer agrees that if Proposer is awarded an agreement under this RFP, it will pay to UT System, on a quarterly basis, an administrative fee of 1% of the Total Net Sales. “**Total Net Sales**” means the total dollar amount of all sales of the subject Services during that quarter, less credits, returns, taxes, and unpaid invoices. The administrative fee will be used by UT System to provide support for implementation, administration, monitoring, and management of the Agreement.

Subject to the requirements of the Texas Prompt Payment Act (Chapter 2251, *Texas Government Code*), UT System’s standard payment terms are “Net 30 days.” Proposer will provide the following prompt payment discount:

Prompt Payment Discount: _____% _____ days/net 30 days.

Proposer certifies and agrees that all prices proposed in Proposer’s proposal have been reviewed and approved by Proposer’s executive management.

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX ONE

PROPOSAL REQUIREMENTS

SECTION 1 GENERAL INFORMATION

1.1 Purpose

UT System is soliciting competitive sealed proposals from Proposers having suitable qualifications and experience providing goods and services in accordance with the terms, conditions and requirements set forth in this RFP. This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by UT System.

By submitting a proposal, Proposer certifies that it understands this RFP and has full knowledge of the scope, nature, quality, and quantity of the goods and services to be performed, the detailed requirements of the goods and services to be provided, and the conditions under which such goods and services are to be performed. Proposer also certifies that it understands that all costs relating to preparing a response to this RFP will be the sole responsibility of Proposer.

PROPOSER IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

1.2 Inquiries and Interpretations

UT System may in its sole discretion respond in writing to written inquiries concerning this RFP and post its response as an Addendum to all parties recorded by UT System as participating in this RFP. Only UT System's responses that are made by formal written Addenda will be binding on UT System. Any verbal responses, written interpretations or clarifications other than Addenda to this RFP will be without legal effect. All Addenda issued by UT System prior to the Submittal Deadline will be and are hereby incorporated as a part of this RFP for all purposes.

Proposers are required to acknowledge receipt of each Addendum by selecting "acknowledge" in the Addendum section of the RFP in SciQuest. Each Addendum must be acknowledged by Proposer prior to the Submittal Deadline and should accompany Proposer's proposal.

1.3 Public Information

Proposer is hereby notified that UT System strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

UT System may seek to protect from disclosure all information submitted in response to this RFP until such time as a final agreement is executed.

Upon execution of a final agreement, UT System will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act (Government Code, Chapter 552.001, et seq.)*. Proposer will be

advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.110, 552.113, and 552.131, *Government Code*.

1.4 Type of Agreement

Preferred Supplier, if any, will be required to enter into an agreement with UT System in a form that (i) includes terms and conditions substantially similar to those set forth in **Section 4** of this RFP, and (ii) is otherwise acceptable to UT System in all respects.

1.5 Proposal Evaluation Process

UT System will select Preferred Supplier by using the competitive sealed proposal process described in this Section. UT System will open the HSP Packet submitted by a Proposer prior to opening Proposer's proposal in order to ensure that Proposer has submitted the completed and signed HUB Subcontracting Plan (also called the HSP) that is required by this RFP (ref. **Section 2.5.4** of the RFP). All proposals submitted by the Submittal Deadline accompanied by the completed and signed HSP required by this RFP will be opened. Any proposals that are not submitted by the Submittal Date **or that are not accompanied by the completed and signed HSP required by this RFP will be rejected by UT System as non-responsive due to material failure to comply with advertised specifications.** After the opening of the proposals and upon completion of the initial review and evaluation of the proposals, UT System may invite one or more selected Proposers to participate in oral presentations. UT System will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of Preferred Supplier.

UT System may make the selection of Preferred Supplier on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, UT System may make the selection of Preferred Supplier on the basis of negotiation with any of Proposers. In conducting such negotiations, UT System will avoid disclosing the contents of competing proposals.

At UT System's sole option and discretion, UT System may discuss and negotiate all elements of the proposals submitted by selected Proposers within a specified competitive range. For purposes of negotiation, UT System may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, UT System will defer further action on proposals not included within the competitive range pending the selection of Preferred Supplier; provided, however, UT System reserves the right to include additional proposals in the competitive range if deemed to be in the best interests of UT System.

After submission of a proposal but before final selection of Preferred Supplier is made, UT System may permit a Proposer to revise its proposal in order to obtain Proposer's best and final offer. In that event, representations made by Proposer in its revised proposal, including price and fee quotes, will be binding on Proposer. UT System will provide each Proposer within the competitive range with an equal opportunity for discussion and revision of its proposal. UT System is not obligated to select Proposer offering the most attractive economic terms if that Proposer is not the most advantageous to UT System overall, as determined by UT System.

UT System reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the best interests of UT System. Proposer is hereby notified that UT System will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by UT System.

1.6 Proposer's Acceptance of Evaluation Methodology

By submitting a proposal, Proposer acknowledges (1) Proposer's acceptance of [a] the Proposal Evaluation Process (ref. **Section 1.5 of APPENDIX ONE**), [b] the Criteria for Selection (ref. **2.3** of this RFP), [c] the Specifications, Additional Questions and Scope of Work (ref. **Section 5** of this RFP), [d] the terms and conditions set forth in **Section 4** of this RFP, and [e] all other requirements and specifications set forth in this RFP; and (2) Proposer's recognition that some subjective judgments must be made by UT System during this RFP process.

1.7 Solicitation for Proposal and Proposal Preparation Costs

Proposer understands and agrees that (1) this RFP is a solicitation for proposals and UT System has made no representation written or oral that one or more agreements with UT System will be awarded under this RFP; (2) UT System issues this RFP predicated on UT System's anticipated requirements for the related goods and services, and UT System has made no representation, written or oral, that any particular goods or services will actually be required by UT System; and (3) Proposer will bear, as its sole risk and responsibility, any cost that arises from Proposer's preparation of a proposal in response to this RFP.

1.8 Proposal Requirements and General Instructions

- 1.8.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.
- 1.8.2 Proposals and any other information submitted by Proposer in response to this RFP will become the property of UT System.
- 1.8.3 UT System will not provide compensation to Proposer for any expenses incurred by Proposer for proposal preparation or for demonstrations or oral presentations that may be made by Proposer, unless otherwise expressly agreed in writing. Proposer submits its proposal at its own risk and expense.
- 1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by UT System, at UT System's sole discretion.
- 1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.
- 1.8.6 UT System makes no warranty or guarantee that an award will be made as a result of this RFP. UT System reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete

any requirement or specification from this RFP when deemed to be in UT System's best interest. UT System reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to UT System, at UT System's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.

- 1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by UT System, in UT System's sole discretion.

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

Proposals must include responses to the questions referenced in Specifications, Additional Questions and Scope of Work (ref. **Section 5** of this RFP).

1.9.2 Execution of Offer

Proposer must complete, sign and return the attached Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) as part of its proposal. The Execution of Offer must be signed by a representative of Proposer duly authorized to bind Proposer to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by UT System, in its sole discretion.

1.9.3 Pricing Affirmation

Proposer must complete and return the Pricing Affirmation (ref. **Section 6** of this RFP), as part of its proposal.

UT System will not recognize or accept any charges or fees that are not specifically stated in the Pricing Affirmation.

1.9.4 Submission

Proposer should submit all proposal materials via the SciQuest e-sourcing tool. Proposer should ensure that all documents are submitted electronically in accordance with the instructions in **Section 3.1** of this RFP.

Proposer must also submit the HUB Subcontracting Plan (also called the HSP) as required by this RFP (ref. **Section 2.5** of the RFP.)

UT System will not, under any circumstances, consider a proposal that is received after the Submittal Deadline or which is not accompanied by the completed and signed HSP that is required by this RFP.

UT System will not accept proposals submitted by telephone, proposals submitted by Facsimile ("**FAX**") transmission, or proposals submitted by hard copy (i.e., paper form) in response to this RFP.

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to UT System. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without UT System's consent, which will be based on Proposer's submittal of a written explanation and documentation evidencing a reason acceptable to UT System, in UT System's sole discretion.

By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) and submitting a proposal, Proposer certifies that any terms, conditions, or documents attached to or referenced in its proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP and (b) do not place any requirements on UT System that are not set forth in this RFP or in the Appendices to this RFP. Proposer further certifies that the submission of a proposal is Proposer's good faith intent to enter into the Agreement with UT System as specified herein and that such intent is not contingent upon UT System's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.

SECTION 2
EXECUTION OF OFFER

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED WITH PROPOSER'S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.

- 2.1 By signature hereon, Proposer represents and warrants the following:
- 2.1.1 Proposer acknowledges and agrees that (1) this RFP is a solicitation for a proposal and is not a contract or an offer to contract; (2) the submission of a proposal by Proposer in response to this RFP will not create a contract between UT System and Proposer; (3) UT System has made no representation or warranty, written or oral, that one or more contracts with UT System will be awarded under this RFP; and (4) Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
 - 2.1.2 Proposer is a reputable company that is lawfully and regularly engaged in providing the subject goods and services.
 - 2.1.3 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform under the Agreement.
 - 2.1.4 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
 - 2.1.5 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in Section 4 of this RFP, under which Proposer will be required to operate.
 - 2.1.6 If selected by UT System, Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
 - 2.1.7 If selected by UT System, Proposer will maintain any insurance coverage as required by the Agreement during the term thereof.
 - 2.1.8 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. Proposer acknowledges that UT System will rely on such statements, information and representations in selecting Preferred Supplier. If selected by UT System, Proposer will notify UT System immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
 - 2.1.9 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UT SYSTEM, INDEMNIFY, AND HOLD HARMLESS UT SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY

NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.

2.1.10 Pursuant to Sections 2107.008 and 2252.903, *Government Code*, any payments owing to Proposer under any contract or agreement resulting from this RFP may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

2.2 By signature hereon, Proposer offers and agrees to comply with all terms, conditions, requirements and specifications set forth in this RFP.

2.3 By signature hereon, Proposer affirms that it has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its submitted proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting contracts, and Proposer may be removed from all proposal lists at UT System.

2.4 By signature hereon, Proposer certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, *Tax Code*, or that Proposer is exempt from the payment of those taxes, or that Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at UT System's option, may result in termination of any resulting contract or agreement.

2.5 By signature hereon, Proposer hereby certifies that neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et seq., *Business and Commerce Code*, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

2.6 By signature hereon, Proposer certifies that the individual signing this document and the documents made a part of this RFP, is authorized to sign such documents on behalf of Proposer and to bind Proposer under any agreements and other contractual arrangements that may result from the submission of Proposer's proposal.

2.7 By signature hereon, Proposer certifies as follows:

"Under Section 231.006, *Family Code*, relating to child support, Proposer certifies that the individual or business entity named in Proposer's proposal is not ineligible to receive the specified contract award and acknowledges that any agreements or other contractual arrangements resulting from this RFP may be terminated if this certification is inaccurate."

2.8 By signature hereon, Proposer certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture or the members or managers of any Proposer

that is a limited liability company, on one hand, and any member of the Board of Regents of the University of Texas System or an employee of any component of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to UT System in writing; (ii) Proposer has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline; and (iii) no person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. Section 669.003, *Government Code*). All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before UT System enters into a contract or agreement with Proposer.

- 2.9** By signature hereon, Proposer certifies that in accordance with Section 2155.004, *Government Code*, no compensation has been received for its participation in the preparation of the requirements or specifications for this RFP. In addition, Proposer certifies that an award of a contract to Proposer will not violate Section 2155.006, *Government Code*, prohibiting UT System from entering into a contract that involves financial participation by a person who, during the previous five years, has been convicted of violating federal law or assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Pursuant to Sections 2155.004 and 2155.006, *Government Code*, Proposer certifies that Proposer is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if these certifications are inaccurate.
- 2.10** By signature hereon, Proposer certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.11** By signature hereon, Proposer represents and warrants that all products and services offered to UT System in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the *Texas Hazard Communication Act*, Chapter 502, *Health and Safety Code*, and all related regulations in effect or proposed as of the date of this RFP.
- 2.12** Proposer will and has disclosed, as part of its proposal, any exceptions to the certifications stated in this Execution of Offer. All such disclosures will be subject to administrative review and approval prior to the time UT System makes an award or enters into any contract or agreement with Proposer.
- 2.13** If Proposer will sell or lease computer equipment to UT System under any agreements or other contractual arrangements that may result from the submission of Proposer's proposal then, pursuant to Section 361.965(c), *Health & Safety Code*, Proposer certifies that it is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Chapter 361, Subchapter Y, *Health & Safety Code* and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in Title 30, Chapter 328, Subchapter I, *Texas Administrative Code*. Section 361.952(2), *Health & Safety Code* states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.
- 2.14** **Proposer should complete the following information:**

If Proposer is a Corporation, then State of Incorporation: _____

If Proposer is a Corporation then Proposer's Corporate Charter Number: _____

RFP No.: UTS/A-_____

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER SECTIONS 552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED WITH PROPOSER'S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.

Submitted and Certified By:

(Proposer Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name/Title)

(Date Signed)

(Proposer's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

APPENDIX TWO

UT SYSTEM POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES

[Note: the Alliance should include the most recent edition, obtained from the UT System HUB Office, of the System's Policy on Utilization of Historically Underutilized Businesses.]

[The Alliance also should include on a separate page as part of this section the following:]

Questions regarding the submission of the required HSP may be directed to Stephanie Park, HUB Coordinator (Phone: 512-499-4378 / Email: spark@utsystem.edu).

APPENDIX THREE

FORM OF PREFERRED SUPPLIER AGREEMENT

for

CHARTER BROKER SERVICES

between

THE UNIVERSITY OF TEXAS SYSTEM

and

University of Texas Agreement Number: _____

This Preferred Supplier Agreement, dated effective as of _____, 20__ (“**Effective Date**”), is made by and between **The University of Texas System** (“**UT System**”), a state agency and institution of higher education authorized under the laws of the State of Texas, and _____ (“**Broker**”), a _____ corporation, Federal Tax Identification Number _____, with its principal offices located at _____.

This Agreement specifies the terms and conditions applicable to the supply by Preferred Supplier of certain air charter broker services, all as further described below.

Now, therefore, the parties, intending to be legally bound, agree as follows:

Definitions

“**Alliance**” means The University of Texas System Supply Chain Alliance, a group purchasing organization established by UT System to conduct and coordinate strategic purchasing initiatives across UT System. UT System health and academic institutions are members of the Alliance. The Alliance is also affiliated with other institutions of higher education that have executed an Alliance affiliate agreement.

“**Institutional Participant**” means an Alliance member or affiliated institution of higher education, as designated by the Alliance, that has executed an Institutional Participation Agreement in connection with this Agreement.

“Institutional Participation Agreement” or **“IPA”** means the Institutional Participation Agreement attached to this Agreement as **Rider 300** and incorporated for all purposes, to be executed by each Institutional Participant.

“Services” means the supply by Broker of certain air charter broker services, as described throughout this Agreement.

“UT Party” means, as applicable, UT System and/or the Institutional Participants.

“UT System Contract Administrator” means the Director of the Alliance, who will be the initial contact for all contractual concerns related to this Agreement.

SECTION 1 – Scope of Work:

1.1 Institutional Participant appoints Broker to act as its agent in negotiating agreements with charter operators certified in accordance with 14 CFR Part 135 or Part 121 for Single Entity charter flights for Institutional Participant on the terms and conditions set forth in this Agreement. Broker will identify air charter operators and negotiate air charter flight agreements with such operators on behalf of Institutional Participant.

1.2 Each Institutional Participant will have charter coordinator(s). The coordinator(s) will initiate contact with Broker, communicate travel needs, and authorize Broker to solicit offers from charter operators (air carriers) to meet those needs. After reviewing the offers, the coordinator(s) will arrange for Institutional Participant’s acceptance of a specific offer, which will be accomplished by Institutional Participant’s execution of an agreement with the charter operator, containing the particular details.

1.3 Broker will maintain a written vendor selection and booking policy, which must include safety standards, and will maintain access to and ability to secure aircraft of the types required by the Institutional Participant.

1.4 Broker will perform commercially reasonable due diligence in securing charter operator services for Institutional Participant, and in particular will do the following:

- Solicit at least three bids for each requested charter
- Consider price, quality and safety of the charter operator
- Verify that the charter operator meets Institutional Participant’s requirements
- Secure written, firm quotes for all the services being considered
- Commensurate with Department of Transportation mandates, act as agent only for Institutional Participant, unless Institutional Participant agrees otherwise in a signed writing
- Provide coordination of all trip details and accessorial services
- Provide flight tracking
- Act as intermediary in the event of an aircraft mechanical failure or flight itinerary change
- Strongly consider ARGUS Gold or Wyvern Standard Pass criteria for selection. Criteria should be noted in each bid response.
- Provide no less than two contacts dedicated to the travel needs of Institutional Participants.

1.5 Broker will maintain a written emergency response plan with contents appropriate to its role in responding to an emergency and coordinating with UT System.

1.6 Broker's fee for its charter broker services, in addition to actual charter costs, must be listed as a separate line item in any bid or invoice for payment. Broker will define its fee as a percentage, flat fee or other calculation, as applicable. The Institutional Participant that requests any particular air charter-related services will be solely responsible for specifying those services and paying for them, including all applicable broker fees. The agreement entered into between the Institutional Participant, Broker, and the charter operator will specify the terms and costs of the charter services, and the payments to be delivered to Broker on the dates specified in that agreement.

1.7 Before each flight, Broker will confirm with the charter operator that the Air Carrier Certificate required by federal regulations is still in good standing with the FAA and that both the aircraft and personnel meet FAA standards. Broker will furnish a copy of the Air Carrier Certificate, to Institutional Participant not less than thirty (30) days prior to the scheduled departure date of the related flight. The agreement that Broker negotiates with the charter operator must provide that, if such certificate is not furnished as required, Institutional Participant may cancel the contract with the charter operator without penalty.

1.8 Institutional Participant and Broker acknowledge that:

- (a) the charter operator will have operational control of the aircraft at all times.
- (b) all flights are subject to cancellation, interruption or deviation in the charter operator's sole discretion because of mechanical difficulties, damage to the aircraft, adverse weather conditions, force majeure occurrences, and similar circumstances which, in the charter operator's opinion, require such action.
- (c) the charter operator may operate a flight with substitute equipment for safety or operational reasons.
- (d) the departure and arrival times listed in any agreement between Institutional Participant, Broker, and the charter operator are indications of approximate times, and that flight delays may be caused by weather, air traffic control or airport conditions, mechanical problems or force majeure occurrences.
- (e) Institutional Participant will provide a manifest, a required name list, of every passenger on board the flight, and a copy will be given to the captain (pilot in command) prior to the flight departing. For flight planning purposes as well as FAA security guidelines, the manifest is required 72 hours in advance of departure to determine weight and balance for safety, as well as a security check of all proposed passengers. The full name and correct spelling will be listed on the manifest. Actual passenger and cargo weights may be required as well as a list of all cargo items with dimensions. If a manifest is not received 72 hours prior, the parties acknowledge that there is a possibility of a delay in departure of the flight.
- (f) If a passenger is added less than 72 hours prior to departure, the passenger may be refused boarding if a proper security check cannot be conducted per FAA security regulations governing charter operations. All passengers must present approved photo identification in order to board the charter aircraft. Security screening is required of all passengers prior to boarding the aircraft.
- (g) the charter operator will determine the time of boarding and departure from the point of origin and all intermediate points on each charter flight. If Institutional Participant does not have the passengers or cargo ready for boarding, or if individual passenger(s) fail to present

themselves at the time specified by the carrier or within thirty (30) minutes thereafter, the aircraft may depart without such passenger or cargo.

- (h) the charter operator will have the right to utilize any unused passenger or cargo space in the aircraft for the transportation of the carrier's own personnel necessary for operation of the flight.
- (i) the charter operator may refuse to transport and may remove at any point any passengers or property who or which might involve a hazard or risk to passengers, crew, other persons or property or is otherwise deemed unsuitable for transportation.

1.9 Institutional Participant will make the advance payments (the “**Advance Payments**”) and residual payments (the “**Residual Payments**”) described in the relevant schedule to the agreement between Institutional Participant, Broker and the charter operator to reserve the related charter flights, and those payments will be credited against the total payment due under such schedule. The total payment includes flight charges, ground handling fees, accessorial services and all government-imposed taxes, security fees and similar government charges assessed for the charter flights. Institutional Participant will deliver the Advance Payments and the Residual Payments to Broker (or, if applicable, Broker’s designated depository bank) in accordance with the instructions in such schedule. This Agreement is conditioned upon the Advance Payments and the Residual Payments being delivered to Broker on the dates specified in such schedule. The parties acknowledge that Department of Transportation (“**DOT**”) regulations (14 Code of Federal Regulations, Section 212.3(e)) require Institutional Participant either to post a satisfactory bond or make arrangements for full payment for charter flights prior to flight departure. Broker will maintain a surety bond, letter of credit or escrow agreement as protections for Advance Payments, in accordance with DOT regulations. Broker will furnish to Institutional Participant in writing, in advance of departure of any charter flight, the name and address of the surety company or bank whose bond, letter of credit or escrow agreement secures the Advance Payments, pending the completion of the related charter flights.

1.10 The parties acknowledge that, if a particular charter flight is to be operated with a large aircraft as defined in relevant DOT regulations, the charter operator must maintain an escrow account and/or a security agreement in conformity with DOT regulations. If the charter operator uses an escrow account to comply with the regulation, Broker will deposit in that account the amounts due to the charter operator under the agreement between Institutional Participant, Broker and charter operator, to be withdrawn by Broker only as permitted under the DOT regulations.

1.11 Institutional Participant may request a change in the aircraft, departure dates or arrival/departure times for flights listed in the relevant schedule to the agreement between Institutional Participant, the Broker and charter operator, with the understanding that all such requests are subject to the availability of charter operator’s aircraft and crew members, and that any mutually agreed adjustments may result in increased prices for the related flights.

1.12 If Institutional Participant cancels a charter flight for reasons other than (a) a force majeure occurrence, (b) a material breach by of this Agreement by Broker, or (c) a material breach by Broker or charter operator of the agreement between Institutional Participant, the Broker and charter operator then Institutional Participant will pay to Broker the following cancellation charges:

For cancellation of charter flights less than ____ days but not less than ____ days prior to scheduled departure, the cancellation charge will be ___% of the total charter price for the said flight(s).

For cancellation of charter flights less than ____ days but not less than ____ days prior to scheduled departure, the cancellation charge will be ___% of the total charter price for the said flight(s).

For cancellation of charter flights less than ____ days prior to scheduled departure, the cancellation charge will be ___% of the total charter price for the said flight(s).

The parties have negotiated the above cancellation charges as a reasonable estimate of the anticipated damages resulting from Institutional Participant's cancellation of a charter flight. The parties agree that (a) such charges constitute "liquidated damages" for such cancellation; (b) Broker will accept such charges as compensation in full for damages suffered as a result of the cancellation; and (c) Institutional Participant will not contest such amounts as a "penalty" or otherwise.

1.12 Institutional Participant will pay the following additional amounts to Broker, as necessary to reimburse the charter operator, within 30 days of receipt of invoice from Broker:

- Non-TSA costs incurred by the charter operator for security screening.
- Aircraft de-icing expense incurred as required to ensure safety of flight.
- Additional charges by charter operator for flight schedule changes made by Institutional Participant.
- Charges for meal and beverage service beyond the standard beverage service included in Total Payment
- Fuel surcharges applied by the charter operator to all customers when fuel costs escalate above fuel base rate.
- Other relevant charges as mutually agreed by Broker and Institutional Participant in advance.

SECTION 2 – Term:

The term of this Agreement will begin on the Effective Date and expire _____ [*initial fixed term of five years*], unless earlier terminated in accordance with the provisions of this Agreement. UT System will have the option to extend the term of this Agreement for three additional one-year periods, upon written notice given to Broker at least 90 days in advance of the renewal term.

The Parties acknowledge that, prior to any scheduled expiration of this Agreement, UT System may conduct a competitive procurement for the purchase of products and services comparable to the Services, for the period following expiration. If Broker is not selected as the source for the succeeding period, Institutional Participants may need to transition over a period of time to purchasing the products and services primarily from the new source, rather than from Broker. In such event, in order to allow for an orderly transition, Institutional Participants may wish to continue purchasing from Broker for a limited period of time after the anticipated expiration of this Agreement. As a result, Broker agrees that, notwithstanding any other provision of this Agreement:

- Broker will make the Services available for purchase by Institutional Participants after _____, 20__ (or the anticipated expiration date under any extended term of this Agreement), for a transitional period of six months (the "**Transition Period**"), on the same terms and conditions set forth in this Agreement.
- The Administrative Fee provided for in **Rider 200** (Price Schedule) will apply to all Services purchased hereunder during the Transition Period, and all related obligations of Broker under

this Agreement (such as to report sales volumes to UT System) will continue during such period.

- The Administrative Fee will apply to all future payments made by Institutional Participants for purchases of Services initiated during this Agreement, including the Transition Period, even if such payments are made following expiration of this Agreement.
- All incentive / rebate trigger amounts that may be established in this Agreement for any calendar year will be pro-rated automatically on a straight-line basis, to account for partial calendar years during which this Agreement exists, including the Transition Period.

SECTION 3 – Amendment:

No change, modification, alteration, or waiver of this Agreement will be effective unless it is set forth in a written agreement that is signed by UT System and Broker.

SECTION 4 – Performance by Broker:

Broker will perform its obligations under this Agreement to the satisfaction of UT Party. Time is of the essence in connection with this Agreement. UT Party will not have any obligation to accept late performance or waive timely performance by Broker. Broker will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local laws, regulations or ordinances, for its performance hereunder.

SECTION 5 – Family Code Child Support Certification:

Pursuant to Section 231.006, *Family Code*, Broker certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

SECTION 6 – Eligibility Certifications:

Pursuant to Sections 2155.004 and 2155.006, *Texas Government Code*, Broker certifies that it has not received compensation for participation in the preparation of the Request for Proposal related to this Agreement and is not ineligible to receive the award of or payments under this Agreement; and acknowledges that this Agreement may be terminated and payment withheld if these certifications are inaccurate.

Pursuant to Section 361.965, *Texas Health and Safety Code*, Broker also certifies that it is in full compliance with the State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Chapter 361, Subchapter Y, *Texas Health and Safety Code*, and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in Title 30, Chapter 328, Subchapter I, *Texas Administrative Code*. Broker acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

SECTION 7 – Tax Certification:

If Broker is a taxable entity as defined by Chapter 171, Texas Tax Code (“**Chapter 171**”), then Broker certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Broker is exempt from the payment of those taxes, or that Broker is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

SECTION 8 – Payment of Debt or Delinquency to the State:

Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Broker agrees that any payments owing to Broker under this Agreement may be applied directly toward any debt or delinquency that Broker owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

SECTION 9 – Loss of Funding:

Performance by UT Party under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”) and/or allocation of funds by the Board of Regents of The University of Texas System (the “**Board**”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then UT Party will issue written notice to Broker and UT Party may terminate this Agreement without further duty or obligation hereunder, other than payment for goods and services already delivered or provided to Institutional Participant. Broker acknowledges that appropriation, allotment, and allocation of funds are beyond the control of UT Party.

SECTION 10 – Force Majeure:

None of the parties to this Agreement will be liable or responsible to another for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (“**force majeure occurrence**”). Provided, however, in the event of a force majeure occurrence, Broker agrees to use its best efforts to mitigate the impact of the occurrence so that UT Party may continue to provide healthcare services during the occurrence.

SECTION 11 – Notices:

Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via registered or certified mail, overnight courier, confirmed facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one business day after delivery to the courier, (iii) if sent by facsimile (to the extent a facsimile number is set forth below), when transmitted, and (iv) if sent by email (to the extent an email address is set forth below), when received:

If to UT System:

Office of Business Affairs
The University of Texas System
201 W. 7th Street
Attn: Executive Vice Chancellor for Business Affairs
Austin, Texas 78701-2982
Fax: 512-499-4289

Email: Lloyd@utsystem.edu

with copy to:

The University of Texas System Supply Chain Alliance
Mid Campus Building
7007 Bertner Ave., Suite 11.2339
Houston, TX 77030
Attention: Director
Fax : 713-792-8084
Email:jfjoshua@mdanderson.org

If to Broker:

Attn: _____
Fax: _____
Email: _____

If to an Institutional Participant: The contact information for Institutional Participant as set forth in its IPA.

with copy to:

Office of Business Affairs
The University of Texas System
201 W. 7th Street
Attn: Executive Vice Chancellor for Business Affairs
Austin, Texas 78701-2982
Fax: 512-499-4289
Email: LegalNotices@utsystem.edu

and

The University of Texas System Supply Chain Alliance
Mid Campus Building
7007 Bertner Ave., Suite 11.2339
Houston, TX 77030
Attention: Director
Fax: 713-792-8084
Email:jfjoshua@mdanderson.org

or such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

SECTION 12 – Broker's Obligations.

12.1 Broker represents that it has the knowledge, ability, skills, and resources to perform its obligations hereunder.

12.2 Broker will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance hereunder. Broker will cause all persons connected with the Broker directly in charge of performance hereunder to be duly registered and/or licensed under all applicable federal, state and municipal, laws, regulations, codes, ordinances and orders, including the rules, regulations and procedures promulgated by the Board or Institutional Participants, and those of any other body or authority having jurisdiction (collectively, "**Applicable Law**").

12.3 Broker represents, warrants and agrees that (a) it will use commercially reasonable efforts to perform hereunder, in a good and workmanlike manner and in accordance with commercially reasonable standards of Broker's profession or business, and (b) all good and services provided hereunder will be of the quality that prevails among similar businesses engaged in providing similar products and services in major United States urban areas under the same or similar circumstances.

12.4 Broker warrants and agrees that all Services supplied under this Agreement will be accurate and free from any material defects. Broker's performance hereunder will at no time be in any way diminished by reason of any approval by UT Party nor will Broker be released from any liability by reason of any approval by UT Party, it being agreed that UT Party at all times is relying upon Broker's skill and knowledge in performing hereunder. Broker will, at its own cost, correct all material defects in Services supplied under this Agreement, as soon as practical after Broker becomes aware of the defects. If Broker fails to correct such material defects within a reasonable time, then UT Party may correct the defect at Broker's expense. This remedy is in addition to, and not in substitution for, any other remedy for the defect that UT Party may have at law or in equity.

12.5 Broker will call to the attention of UT Party, in writing, all information in any materials supplied to Broker (by UT Party or any other party) that Broker regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.

12.6 Broker represents that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Broker has been duly authorized to act for and bind Broker; or (ii) if it is a partnership, limited partnership, limited liability partnership, or limited liability company then it has all necessary power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder, and the individual executing this Agreement on behalf of Broker has been duly authorized to act for and bind Broker.

12.7 Broker represents and warrants that neither the execution and delivery of this Agreement by Broker nor Broker's performance hereunder will (a) result in the violation of any provision [i] if a corporation, of Broker's articles of incorporation or by-laws, [ii] if a limited liability company, of its articles of organization or regulations, or [iii] if a partnership, of any partnership agreement by which Broker is bound; (b) result in the violation of any provision of any agreement by which Broker is bound; or (c) to the best of Broker's knowledge and belief, conflict with any order or decree of any court or other body or authority having jurisdiction.

12.8 Broker acknowledges that, with respect to any agreement that Broker helps Institutional Participant put in place with a charter operator, Institutional Participant may remit funds to Broker as its agent, with the understanding that the funds will be used to satisfy Institutional Participant's payment obligations to the charter operator in fulfillment of the agreement. These remittances will include appropriate escrow or surety provisions to protect Institutional Participant. Broker warrants that all charter operator agreements that it helps to put in place will be only with FAA-certificated carriers selected by Broker following due diligence into their good standing and their safety records. Broker warrants that all such charter operators will be, at the time Institutional Participant executes its agreement with them, in compliance with all federal and state aviation regulations and will not have had their certification suspended within the immediately preceding three years. Broker also will ensure that, under each charter operator agreement, the charter operator will be required to comply with the provisions governing U.S. air carriers, as defined and regulated by Part 208 of the Economic

Regulations of the U.S. Department of Transportation, 14 CFR Part 208, Part 372 and Part 380 of the Special Regulations and all other applicable laws, rules, and regulations governing FAA "Air Carriers," collectively referred to as "Charter Regulations."

12.9 Broker will provide to Institutional Participant a copy of the rules and limitations on liability for checked baggage issued by any charter operator with which Institutional Participant concludes a charter operator agreement with Broker's assistance. Institutional Participant will distribute a copy of these rules and limitations to all charter passengers. Institutional Participant acknowledges that charter operator's rules typically contain liability limitations for all checked baggage and list items that are considered unacceptable for transportation in checked baggage, including photographic and cinematographic equipment, projectors, computers, electronic devices and similar items. Institutional Participant acknowledges that such equipment should be carried by charter flight passengers in the passenger compartment of the aircraft, and that the charter operator typically assumes no responsibility for delay, damage, loss, or destruction of photographic or cinematographic equipment, projectors, computers, electronic devices and similar items if they are included in checked baggage by charter flight passengers.

SECTION 13 – State Auditor's Office:

Broker understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "**Auditor**"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), Education Code. Broker agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Broker will include this provision in all contracts with permitted subcontractors.

SECTION 14 –Governing Law:

Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties thereto and all of the terms and conditions thereof will be construed, interpreted and applied in accordance with and governed by and enforced under the internal laws of the State of Texas.

SECTION 15 – Breach of Contract Claims:

15.1 To the extent that Chapter 2260, Texas Government Code, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other Applicable Law, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by UT Party and Broker to attempt to resolve any claim for breach of contract made by Broker:

15.1.1 Broker's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Broker will submit written notice, as required by subchapter B of Chapter 2260, to UT Party in accordance with the notice provisions in this Agreement. Broker's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that UT Party allegedly breached, the amount of damages Broker seeks, and the method used to calculate the damages. Compliance by Broker with subchapter B of Chapter 2260 is a required prerequisite to Broker's filing of a contested case proceeding under subchapter C of Chapter 2260. The UT Party's chief business officer, or another officer of UT Party as may be designated from time to

time by UT Party by written notice thereof to Broker in accordance with the notice provisions in this Agreement, will examine Broker's claim and any counterclaim and negotiate with Broker in an effort to resolve the claims.

15.1.2 If the parties are unable to resolve their disputes under Section 4.11.1.1, the contested case process provided in subchapter C of Chapter 2260 is Broker's sole and exclusive process for seeking a remedy for any and all of Broker's claims for breach of this Agreement by UT Party.

15.1.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by UT Party nor any other conduct, action or inaction of any representative of UT Party relating to this Agreement constitutes or is intended to constitute a waiver of UT Party's or the state's sovereign immunity to suit and (ii) UT Party has not waived its right to seek redress in the courts.

15.2 The submission, processing and resolution of Broker's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.

15.3 UT Party and Broker agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

SECTION 16 – Compliance with Law:

Broker will perform hereunder in compliance with all Applicable Law. Broker represents and warrants that neither Broker nor any firm, corporation or institution represented by Broker, nor anyone acting for such firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Broker's response to UT System's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process.

SECTION 17 – UT Party's Right to Audit:

At any time during the term of this Agreement and for a period of four (4) years thereafter UT System or a duly authorized audit representative of UT System, or the State of Texas, at its expense and at reasonable times, reserves the right to audit Broker's records and books directly related to charges paid for all products and services provided under this Agreement. The right will not extend to any fixed fee component of the charges or to any services performed more than one year prior to the date of request for review. In the event such an audit by UT System reveals any errors or overpayments by UT System which error or overpayment is confirmed by Broker, Broker will refund UT System the full amount of such overpayments within thirty (30) days of such audit findings, or UT System, at its option, reserves the right to deduct such amounts owing to UT System from any payments due Broker

SECTION 18 – Access to Documents:

To the extent applicable to this Agreement, in accordance with Section 1861(v)(I)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Broker agrees to allow, during and for a period of not less than four (4) years after this Agreement term, access to this Agreement and its books, documents, and records; and contracts between Broker and its

subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

SECTION 19 – Insurance:

19.1 Broker, consistent with its status as an independent contractor, will carry at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-VII or better, and in amounts not less than the following minimum limits of coverage:

Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000.

Employers Liability – Each Accident	\$1,000,000
Employers Liability – Each Employee	\$1,000,000
Employers Liability – Policy Limit	\$1,000,000

Workers' Compensation policy must include states where contractor's employees will be performing operation for University.

Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 50,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000

The required Commercial General Liability policy will be issued on a form that insurers Broker's and subcontractor's liability and bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for bodily injury and property damage.

19.2 With respect to any air charter operator with which UT System executes an agreement with the assistance of Broker in its role as a charter broker, Broker will ensure that such operator provides at its sole expense, coverage corresponding to that outlined elsewhere in this **Section 19**, and all related waivers, subrogations and certificates, as well as an Aircraft Hull and Liability Policy including coverage for:

19.2.1 Liability for Bodily Injury (including passengers) and property damage with minimum limits of liability insurance set at \$25 million for light turboprop aircraft, \$50 million for light jet aircraft and \$3 million per seat for large aircraft and including: War Risks endorsement; The Board of Regents of the University of Texas System and The University of Texas System and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents as additional insured; and primary and non-contributory language.

19.2.2 Aircraft hull insurance in an amount equal to the value of the aircraft and including: War Risks endorsement; and a waiver of subrogation in favor of The University of

Texas System and The Board of Regents of The University of Texas System and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents.

19.3 If Broker fails to fulfill its obligations contained in this **Section 19**, UT System may, upon notice to Broker, undertake the performance of the insurance requirements of this Section by contracting for such insurance directly; provided that UT System will include Broker as an additional insured on UT System's policies. If UT System undertakes the performance of the insurance requirements of this **Section 19** by contracting for such insurance directly, Broker promptly will reimburse UT System for the full cost thereof, upon written request. If Broker fails to pay any of the renewal premiums for the expiring policies, UT System will have the right to make the payments and set off the amount thereof against the next payment coming due to Broker under this Agreement. Upon Broker's request, UT System will furnish to Broker evidence of such insurance in certificate form.

19.4 Broker will deliver to UT System:

Evidence of insurance on a Texas Department of Insurance approved certificate (Acord 2510/05 is TDI preapproved) form verifying the existence and actual limits of all required insurance policies prior to the execution and delivery of the Agreement. Additional evidence of insurance will be provided upon renewal of each policy verifying the continued existence of all required insurance no later than ten (10) days after each annual insurance policy renewal.

All insurance policies (with the exception of workers' compensation and employer's liability) will be endorsed and name The University of Texas System and the Board of Regents of The University of Texas System as additional insureds for liability caused in whole or in part by Broker's acts or omissions with respect to its on-going operations up to the actual liability limits of the required insurance policies maintained by Broker. Commercial General Liability Additional Insured endorsement will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

19.5 Broker hereby waives all rights of subrogation against the Board of Regents of The University of Texas System and The University of Texas System. All insurance policies will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System and The University of Texas System. No policy will be cancelled until after thirty (30) days unconditional written notice to UT System. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to UT System thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required.

19.6 Broker will pay any deductible or self-insurance retention under its policies for any loss that occurs in the performance of this Agreement. Any self-insured retention must be declared to and approved by UT System prior to the performance of any work by Broker under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

19.7 Certificates of Insurance and additional insured endorsements as required by this Agreement will be mailed, faxed, or emailed to the following UT System contact:

Eric Agnew

The University of Texas System Administration
Office of Risk Management
210 West 6th Street, Room B140E
Austin, TX 78701
Facsimile Number: 512-499-4524
Email: eagnew@utsystem.edu

- 19.8** Broker's insurance will be primary to any insurance carried or self-insurance program established by UT System or an Institutional Participant. Broker's insurance will be kept in force until all work has been fully performed.

SECTION 20 – Indemnification:

20.1 TO THE FULLEST EXTENT PERMITTED BY LAW, BROKER WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UT PARTY, AND HOLD HARMLESS UT PARTY AND ITS AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "**INDEMNITEES**") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "**CLAIMS**") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM BROKER'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT, AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF BROKER, ANYONE DIRECTLY EMPLOYED BY BROKER OR ANYONE FOR WHOSE ACTS BROKER MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

20.2 IN ADDITION, BROKER WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UT PARTY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY BROKER, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF BROKER, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UT PARTIES WILL PROMPTLY NOTIFY BROKER AND BROKER WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UT PARTIES AGREE TO REASONABLY COOPERATE WITH BROKER. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

SECTION 21 – Ethics Matters; No Financial Interest:

Broker and its employees, agents, representatives and subcontractors have read and understand UT System's Conflicts of Interest Policy available at <http://www.utsystem.edu/policy/policies/int160.html>, UT System's Standards of Conduct Guide available at <http://www.utsystem.edu/systemcompliance/>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Broker nor its employees, agents, representatives or subcontractors will assist or cause UT Party's employees to violate UT System's Conflicts of Interest Policy, provisions described by UT System's Standards of Conduct Guide, or applicable state ethics laws or rules. Broker represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

SECTION 22 – Assignment of Overcharge Claims:

Broker hereby assigns to UT Party any and all claims for overcharges associated with this Agreement arising under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq., or arising under the antitrust laws of the State of Texas, Business and Commerce Code, Sec. 15.01, et seq.

SECTION 23 – Assignment and Subcontracting:

Except as specifically provided in any Historically Underutilized Business Subcontracting Plan (“HSP”) attached as **Rider 500** and incorporated for all purposes, neither Broker's interest in this Agreement, its duties and obligations under this Agreement nor fees due to Broker under this Agreement may be subcontracted, assigned, delegated or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (1) not be binding on UT Party; and (2) be a breach of this Agreement for which Broker will be subject to any remedial actions provided by Texas law, including Chapter 2161, Texas Government Code, and 34 Texas Administrative Code (“TAC”) Section 20.14. UT Party may report nonperformance under this Agreement to the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, “TPSS”) in accordance with 34 TAC Chapter 20, Subchapter F, Vendor Performance and Debarment Program. The benefits and burdens of this Agreement are, however, assignable by UT Party.

SECTION 24 – Historically Underutilized Business Subcontracting Plan:

24.1 If an HSP is attached to this Agreement, Broker agrees to use good faith efforts to subcontract the scope of work in accordance with the HSP. Broker agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to UT Party in the format required by the TPSS. Submission of compliance reports will be required as a condition for payment under this Agreement. If UT Party determines that Broker has failed to subcontract as set out in the HSP, UT Party will notify Broker of any deficiencies and give Broker an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Broker. If UT Party determines that Broker failed to implement the HSP in good faith, UT Party, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Chapter 20, Subchapter F, Vendor Performance and Debarment Program. UT Party may also revoke this Agreement for breach and make a claim against the Broker.

24.2 If at any time during the term of this Agreement, Broker desires to change the HSP, before the proposed changes become effective (1) Broker must comply with 34 TAC Section 20.14; (2) the changes must be reviewed and approved by UT Party; and (3) if UT Party approves changes to the HSP, this Agreement must be amended in accordance with Section 2.5.3 to replace the HSP with the revised subcontracting plan.

24.3 If UT Party expands the scope of this Agreement through a change order or any other amendment, UT Party will determine if the additional scope of work contains probable subcontracting opportunities not identified in the initial solicitation for the scope of work. If UT Party determines additional probable subcontracting opportunities exist, Broker will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (1) this Agreement may be amended to include the additional scope of work; or (2) Broker may perform the additional scope of work. If Broker subcontracts any of the additional subcontracting opportunities identified by UT Party without prior authorization and without complying with 34 TAC Section 20.14, Broker will be deemed to be in breach of this Agreement under Section 4.19 and will be subject to any remedial actions provided by Texas law including Chapter 2161, Texas Government Code, and 34 TAC Section 20.14. UT Party may report nonperformance under this Agreement to the TPSS in accordance with 34 TAC Chapter 20, Subchapter F, Vendor Performance and Debarment Program.

SECTION 25 – Payment and Invoicing:

Institutional Participant agrees to pay fees due under this Agreement in accordance with the Texas Prompt Payment Act (“**Act**”), Chapter 2251, *Texas Government Code*. Pursuant to the Act, payment will be deemed late on the 31st day after the later of: 1) the date the performance is completed, or 2) the date Institutional Participant receives an invoice for the related goods or services. Institutional Participant will be responsible for interest on overdue payments equal to the sum of: 1) one percent, plus 2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year (Institutional Participant’s fiscal year begins September 1) that does not fall on a Saturday or Sunday. Institutional Participant will have the right to verify the details set forth in Broker’s invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Broker at mutually convenient times; (b) examining any reports with respect to the related goods or services; and (c) other reasonable action.

Section 51.012, *Texas Education Code*, authorizes UT Party to make any payment through electronic funds transfer methods. Broker agrees to receive payments from UT Party through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, UT Party will confirm Broker’s banking information. Any changes to Broker’s banking information will be communicated by Broker to UT Party in writing at least thirty (30) days in advance of the effective date of the change.

SECTION 26 – Limitations:

The parties to this Agreement are aware that there are constitutional and statutory limitations on the authority of UT Party (a state agency) to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys’ fees; dispute resolution; indemnities; and confidentiality (collectively, the “**Limitations**”), and terms and conditions related to the Limitations will not be binding on UT Party except to the extent authorized by the laws and Constitution of the State of Texas.

SECTION 27 – Affirmative Action:

Broker agrees that either a written copy of Broker's Civil Rights "Affirmative Action Compliance Program" or, if Broker is not required to have such a written program, the reason Broker is not subject to such requirement, is attached to this Agreement as **Rider 600** and incorporated for all purposes.

SECTION 28 – OSHA Compliance:

Broker represents and warrants that all products and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-598) and its regulations in effect or proposed as of the date of this Agreement.

SECTION 29 - Certifications of Nonsegregated Facilities and Equal Employment Opportunities Compliance:

Broker certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Broker agrees that a breach of this certification is a violation of the Equal Opportunity clause in this Agreement. The term "**segregated facilities**" means any waiting rooms, work area, rest rooms and wash rooms, entertainment areas, transportation, or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Broker further agrees that, except where it has contracts prior to the award with subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Broker will retain such certifications for each one of its subcontractors in Broker's' files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Broker understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

SECTION 30 – Premises Rules:

If this Agreement requires Broker's presence on UT Party's premises or in UT Party's facilities, Broker agrees to cause its representatives, agents, employees and permitted subcontractors (if any) to become aware of, fully informed about, and in full compliance with all applicable UT Party rules and policies, including, without limitation, those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions; consideration for students, patients and their families as well as employees; parking; and security.

SECTION 31 – Debarment:

Broker confirms that neither Broker nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States ("U.S.") federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs issued by the U.S. General Services Administration. "**Principals**" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Broker will provide immediate written notification to UT Party if, at any time prior to award, Broker learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when UT Party executes this Agreement. If it is later determined that Broker knowingly rendered an erroneous certification, in addition to the other remedies available to UT Party, UT Party may terminate this Agreement for default by Broker.

SECTION 32 – Office of Inspector General Certification:

Broker acknowledges that UT Party is prohibited by federal regulations from allowing any employee, subcontractor, or agent of Broker to work on site at UT Party premises or facilities if that individual is not eligible to work on federal healthcare programs such as Medicare, Medicaid, or other similar federal programs. Therefore, Broker will not assign any employee, subcontractor or agent that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("**OIG**") to work on site at UT Party premises or facilities. Broker will perform an OIG sanctions check quarterly on each of its employees, subcontractors and agents during the time such employees, subcontractors and agents are assigned to work on site at UT Party premises or facilities. Broker acknowledges that UT Party will require immediate removal of any employee, subcontractor or agent of Broker assigned to work at UT Party premises or facilities if such employee, subcontractor or agent is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: <http://www.dhhs.gov/progorg/oig/cumsan/index.htm>.

SECTION 33 – Termination:

33.1 In the event of a material failure by either party to perform in accordance with the terms of this Agreement ("**default**"), the other, non-defaulting party may terminate this Agreement upon thirty (30) days' written notice of termination setting forth the nature of the material failure. The termination will not be effective if the material failure is fully cured prior to the end of the 30-day period. No such termination will relieve the defaulting party from liability for the underlying default or breach of this Agreement or any other act or omission.

33.2 UT System may terminate this Agreement, without cause, upon written notice to Broker; provided, however, this Agreement will not terminate until the later of (1) 90 days after receipt of notice of

termination, or (2) the date that performance is complete under all purchase orders issued by Institutional Participant to Broker prior to receipt of notice of termination. Institutional Participant may not issue any purchase orders after receipt of notice of termination. Termination of this Agreement will not relieve any party from liability for its default under or breach of this Agreement or any other act or omission of that party. In the event that this Agreement is terminated, then within thirty (30) days after termination, Broker will reimburse UT Party for all fees paid by UT Party to Broker that were (a) not earned by Broker prior to termination, or (b) for goods or services that UT Party did not receive from Broker prior to termination.

33.3 UT System or Institutional Participant may terminate an IPA, without cause, upon written notice to Broker; provided, however, the IPA will not terminate until the later of (1) thirty (30) days after receipt of notice of termination, or (2) the date that performance is complete under all purchase orders issued by Institutional Participant to Broker prior to receipt of notice of termination. Institutional Participant may not issue any purchase orders after receipt of notice of termination. Termination of an IPA will not relieve any party from liability for its default under or breach of the IPA or any other act or omission of that party. In the event that an IPA is terminated, then within thirty (30) days after termination, Broker will reimburse Institutional Participant for all fees paid by Institutional Participant to Broker that were (a) not earned by Broker prior to termination, or (b) for goods or services that Institutional Participant did not receive from Broker prior to termination.

SECTION 34 – Authority:

The individuals executing this Agreement on behalf of each party have been duly authorized to act for and bind the party they represent.

SECTION 35 – Survival of Provisions:

Expiration or termination of this Agreement will not relieve either party of any obligations under this Agreement that by their nature survive such expiration or termination.

SECTION 36 – Confidentiality; Press Releases; Public Information:

36.1 Confidentiality and Safeguarding of UT Party Records. Under this Agreement, Broker may (1) create, (2) receive from or on behalf of UT Party, or (3) have access to, UT Party's records or record systems (collectively, "**UT Party Records**"). However, it is expressly agreed that UT Party will not provide to Broker, and Broker will never seek to access, any UT Party Records that contain personally identifiable information regarding any individual that is not available to any requestor under the *Texas Public Information Act*, Chapter 552, Texas Government Code, including "directory information" of any student who has opted to prohibit the release of their "directory information" as that term is defined under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("**FERPA**") and its implementing regulations. Broker represents, warrants, and agrees that it will: (1) hold UT Party Records in strict confidence and will not use or disclose UT Party Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by UT Party in writing; (2) safeguard UT Party Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security, as well as Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Broker protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that UT Party Records are safeguarded and the confidentiality of UT Party Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with UT Party Rules regarding access to and use of UT Party's computer systems, including UTS 165 at

<http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html>. At the request of UT Party, Broker agrees to provide UT Party with a written summary of the procedures Broker uses to safeguard and maintain the confidentiality of UT Party Records.

36.2 Notice of Impermissible Use. If an impermissible use or disclosure of any UT Party Records occurs, Broker will provide written notice to UT Party within one (1) business day after Broker's discovery of that use or disclosure. Broker will promptly provide UT Party with all information requested by UT Party regarding the impermissible use or disclosure.

36.3 Return of UT Party Records. Broker agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all UT Party Records created or received from or on behalf of UT Party will be (1) returned to UT Party, with no copies retained by Broker; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any UT Party Records, Broker will provide UT Party with written notice of Broker's intent to destroy UT Party Records. Within five (5) days after destruction, Broker will confirm to UT Party in writing the destruction of UT Party Records.

36.3 Disclosure. If Broker discloses any UT Party Records to a subcontractor or agent, Broker will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Broker by this **Section 36**.

36.4 Press Releases. Broker will not make any press releases, public statements, or advertisement referring to this Agreement, or release any information relative to this Agreement for publication, advertisement or any other purpose, without the prior written approval of UT Party.

36.5 Public Information. UT Party strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* ("TPIA"), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and at no additional charge to UT Party, Broker will make any information created or exchanged with UT Party pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by UT Party that is accessible by the public.

36.6 Termination. In addition to any other termination rights set forth in this Agreement, and any other rights at law or equity, if UT Party reasonably determines that Broker has breached any of the restrictions or obligations set forth in this Section, UT Party may immediately terminate this Agreement without notice or opportunity to cure.

36.7 Duration. The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

SECTION 37 – Tax Exemption

UT Party may be an agency of the State of Texas or other non-profit entity and may be exempt from certain state taxes under various exemption statutes, including Texas Sales & Use Tax in accordance with Section 151.309, *Tax Code*, and Title 34 *Texas Administrative Code* ("TAC") Section 3.322. Notwithstanding its exemption from certain state taxes, UT Party will be responsible for any taxes (except corporate income taxes, franchise taxes, and taxes on Broker's personnel, including personal income tax and social security taxes) from which UT Party is not exempt. Broker will provide reasonable cooperation and assistance to UT Party in obtaining any tax exemptions to which UT Party is entitled.

SECTION 38 – Undocumented Workers:

The *Immigration and Nationality Act* (8 *United States Code* 1324a) (“**Immigration Act**”) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form (“**I-9 Form**”) as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Broker is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Broker employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, UT Party may terminate this Agreement in accordance with Section 4.31. Broker represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

SECTION 39 – Non-Exclusivity; No Required Quantities or Minimum Amounts:

Broker understands that this Agreement is non-exclusive and does not obligate UT Party to purchase from Broker any or all of its requirements for services that are the same as or similar to the Services provided hereunder. This Agreement does not establish any minimum quantity or minimum dollar amount of goods or services that UT Party must purchase from Broker during the term of this Agreement.

SECTION 40 – Access by Individuals with Disabilities:

Broker represents and warrants (“**EIR Accessibility Warranty**”) that the electronic and information resources and all associated information, documentation, and support that it provides under this Agreement (collectively, the “**EIRs**”) comply with the applicable requirements set forth in Title 1, Chapter 213, *Texas Administrative Code*, and Title 1, Chapter 206, Rule §206.70, *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M, *Government Code*). To the extent Broker becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Broker represents and warrants that it will, at no cost to UT Party, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event Broker fails or is unable to do so, UT Party may terminate this Agreement, and Broker will refund to UT Party all amounts UT Party has paid under this Agreement within thirty (30) days after the termination date.

SECTION 41 – Background Checks:

Broker will not knowingly assign any individual to provide services on a UT Party's campus if the individual has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. If requested by any UT Party to comply with its policy, Broker will perform appropriate criminal background checks on each individual who will provide such services on the UT Party's campus.

SECTION 42 – Business Associate Agreements:

Broker acknowledges that the Institutional Participants may be subject to the Health Insurance Portability and Accountability Act of 1996, Public 104-191 (“**HIPAA**”) as amended by the Health

Information Technology for Economic and Clinical Health, Title XII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) (“**HITECH Act**”). UT System and the respective Institutional Participants are separate entities for purposes of HIPAA. Therefore, Broker will enter into a separate HIPAA Business Associate Agreement (“**BAA**”) with each Institutional Participant, as applicable, prior to accessing any Protected Health Information, as that term is defined by HIPAA, as part of the Services to be provided under this Agreement.

SECTION 43 – Entire Agreement; Modifications:

This Agreement supersedes all prior agreements, written or oral, between Broker and UT System and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by UT System and Broker.

SECTION 44 – Captions:

The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

SECTION 45 – Waivers:

No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

SECTION 46 – Binding Effect:

This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

SECTION 47 – Limitations of Liability:

Except for UT Party’s obligation (if any) to pay Broker certain fees and expenses, UT Party will have no liability to Broker or to anyone claiming through or under Broker by reason of the execution or performance of this Agreement. Notwithstanding any duty or obligation of UT Party to Broker or to anyone claiming through or under Broker, no present or future affiliated enterprise, subcontractor, agent, officer, director, employee, representative, attorney or regent of UT Party, or anyone claiming under UT Party has or will have any personal liability to Broker or to anyone claiming through or under Broker by reason of the execution or performance of this Agreement.

SECTION 48 – Relationship of the Parties:

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Broker is an independent contractor and is not a state employee, partner, joint venturer, or agent of UT Party. Broker will not bind nor attempt to bind UT Party to any agreement or contract. As an independent contractor, Broker is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers’ compensation insurance.

SECTION 49 – Severability:

In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

SECTION 50 – External Terms:

This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral (“**External Terms**”), concerning Broker’s performance under this Agreement. Such External Terms are null and void and will have no effect under this Agreement, regardless of whether UT Party or any of its employees, contractors, or agents consents or agrees to External Terms. External Terms include any shrinkwrap, clickwrap, browserwrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that UT Party, or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided solely by Broker.

SECTION 51 – Conflicts:

In the event of a conflict between the terms and conditions of this Agreement and those of an IPA, the terms of this Agreement will control and govern.

SECTION 52 – Attachments:

The Riders listed below are attached to and fully incorporated into this Agreement as substantive parts of this Agreement:

- Rider 100** Form of Institutional Participation Agreement
- Rider 200** Pricing Schedule (will be attached to finalized agreement with the successful Proposer)
- Rider 300** Form of Agreement Between Institutional Participant and Airline for Specific Flights
- Rider 400** Supplier Relationship Management
- Rider 500** HUB Subcontracting Plan (will be attached to finalized agreement with the successful Proposer)
- Rider 600** Affirmative Action Compliance Program

Having agreed to the foregoing terms, and with the intention of being legally bound, the parties have executed this Agreement on the dates shown below.

THE UNIVERSITY OF TEXAS SYSTEM

[CHARTER BROKER]

Signed: _____
William H. McRaven, Chancellor

Signed: _____

Printed Name: _____

Signed: _____
Scott C. Kelley, Executive Vice
Chancellor for Business Affairs

Title: _____

Date: _____

Date: _____

APPENDIX THREE - 100

INSTITUTIONAL PARTICIPATION AGREEMENT

By entering into this Institutional Participation Agreement (“**Institutional Participation Agreement**”), the undersigned institution (“**Institutional Participant**”) agrees to the terms and conditions set forth in the Preferred Supplier Agreement between The University of Texas System and _____, Agreement Number UTSSCA_____, dated effective _____, 20__ (the “**Preferred Supplier Agreement**” or “**PSA**”). All of the terms and conditions of the PSA are incorporated into this Institutional Participation Agreement for all purposes. Unless otherwise specified in this Institutional Participation Agreement, all defined terms used in this Institutional Participation Agreement have the same meaning as assigned to those terms in the PSA.

By entering into this Institutional Participation Agreement, Institutional Participant is authorized to take full advantage of all of the benefits and provisions set forth in the PSA including, but not limited to, the benefits listed below, which are specified in detail in the PSA:

Benefits from Preferred Supplier Agreement:

To obtain air charter broker services at discounted prices.

Institutional Participant’s Responsibilities

To the extent authorized by applicable law and relevant rules and regulations of UT System and Institutional Participant, Institutional Participant will use commercially reasonable efforts to perform the following responsibilities:

- Identify Broker as the "preferred supplier" of certain air charter broker services.
- [others tbd]

Institutional Participant’s notice address and contact information is:

The University of Texas at _____
 Street Address: _____
 Fax: _____
 Email: _____
 Attention: _____

Institutional Participant designates the following contacts who will be responsible for facilitating this Institutional Participation Agreement:

INSTITUTIONAL PARTICIPANT: Primary Contact:

Name: _____
 Title: _____
 Telephone: _____
 Fax: _____
 Email: _____

INSTITUTIONAL PARTICIPANT: HUB Contact:

Name: _____
Title: _____
Telephone: _____
Fax: _____
Email: _____

Broker designates the following contact who will be responsible for facilitating this Institutional Participation Agreement:

BROKER Primary Contact:

Name: _____
Title: _____
Telephone: _____
Fax: _____
Email: _____

Institutional Participant agrees to the terms of this Institutional Participation Agreement:

The University of Texas _____

By: _____
Printed Name and Title: _____
Signature: _____
Street: _____
City: _____ State: _____ Zip: _____
Date: _____

Upon activation of this Institutional Participation Agreement, Institutional Participant's Primary Contact will receive notification of activation via email. Please return signed completed form to the UT System Supply Chain Alliance Strategic Services Group at utsscainfo@mdanderson.org.

APPENDIX THREE - 300

FORM OF AGREEMENT

for

CHARTER AIRLINE SERVICES

among

THE UNIVERSITY OF TEXAS _____,

[Name of Broker]

and

[Name of Airline]

This Agreement, dated effective as of _____, 20__ (“**Effective Date**”), is made by and between:

The University of Texas _____ (“**Institutional Participant**”), a state agency and institution of higher education authorized under the laws of the State of Texas;

_____ (“**Broker**”), a _____ corporation, Federal Tax Identification Number _____, with its principal offices located at _____, which has entered into a certain Preferred Supplier Agreement with The University of Texas System, for Charter Broker Services, effective _____, 20__, in which Institutional Participant is participating; and

_____ (“**Airline**”), a _____ corporation, Federal Tax Identification Number _____, with its principal offices located at _____.

This Agreement specifies the terms and conditions applicable to the supply by Airline of certain air charter operator services, all as further described below.

Now, therefore, the parties, intending to be legally bound, agree as follows:

Definitions

“**Alliance**” means The University of Texas System Supply Chain Alliance, a group purchasing organization established by UT System to conduct and coordinate strategic purchasing initiatives across UT System. UT System health and academic institutions are members of the Alliance. The

Alliance is also affiliated with other institutions of higher education that have executed an Alliance affiliate agreement.

“**Institutional Participant**” means the UT System institution identified above, which has executed an Institutional Participation Agreement in connection with a certain agreement, dated _____, between The University of Texas System and _____, for air charter broker services.

“**Services**” means the supply by Airline of certain air charter operator services, as described throughout this Agreement.

“**UT Party**” means, as applicable, UT System and/or the Institutional Participants.

“**UT System**” means The University of Texas System, a state agency and institution of higher education authorized under the laws of the State of Texas.

“**UT System Contract Administrator**” means the Director of the Alliance, who will be the initial contact for all contractual concerns related to this Agreement.

SECTION 1 – Scope of Work:

1.1 Airline will provide, on a non-exclusive basis, air charter services requested by Institutional Participant through Broker in accordance with the terms of this Agreement, with the details of particular charter flight services to be specified in an Engagement Letter to be signed by Broker, Airline and Institutional Participant (“**Engagement Letter**”). Each Engagement Letter will be substantially in the form shown in **Rider 300** to this Agreement. The fees for each charter flight will be listed using the format specified in the Engagement Letter. Each accessorial service or additional fee (surcharges, de-icing, etc.) must be itemized separately in the Engagement Letter and must be listed on a separate line on any invoice for payment.

1.2 Institutional Participant will have charter coordinator(s) who will serve as primary contact(s) with Airline. The coordinator(s) will initiate contact with Airline, communicate travel needs, and arrange for authorization to accept a specific offer from Airline to supply services to meet the needs. Airline will not be authorized to supply any services until the related Engagement Letter is signed by an authorized representative of Institutional Participant.

1.3 Institutional Participant will make the advance payments (the “**Advance Payments**”) and residual payments (the “**Residual Payments**”) to be described in the Engagement Letter to reserve the related charter flights, and those payments will be credited against the total payment due under the Engagement Letter’s fee schedule. The total payment includes flight charges, ground handling fees, accessorial services and all government-imposed taxes, security fees and similar government charges assessed for the charter flights. Institutional Participant will deliver the Advance Payments and the Residual Payments to Broker (or, if applicable, Broker’s designated depository bank) in accordance with the instructions in such schedule. This Agreement is conditioned upon the Advance Payments and the Residual Payments being delivered to Broker on the dates specified in such schedule. The parties acknowledge that Department of Transportation (“**DOT**”) regulations (14 Code of Federal Regulations, Section 212.3(e)) require Institutional Participant either to post a satisfactory bond or make arrangements for full payment for charter flights prior to flight departure. Airline will maintain a surety bond, letter of credit or escrow agreement as protections for Advance Payments, in accordance with DOT regulations. Broker will include in the Engagement Letter the name and address of the surety company or bank whose bond, letter of credit or escrow agreement secures the Advance Payments, pending the completion of the related charter flights. Claims against the surety bond or letter of credit

may only be made for non-performance of charter flights, and DOT regulations state that the surety company or bank will be released from all liability, unless Institutional Participant files a claim with the Broker (or, if the Broker is not available, with the surety or bank) within 60 days after the cancellation of a charter flight with respect to which Institutional Participant's Advance Payment is secured by the bond or letter of credit. During the term of this Agreement, Broker may change the company providing the bond, letter of credit or escrow agreement, or substitute one form of security arrangement for another (escrow arrangement, letter of credit or a surety bond), upon advance notice to Institutional Participant.

1.4 The parties acknowledge that, if a particular charter flight is to be operated with a large aircraft as defined in relevant DOT regulations, Broker must maintain an escrow account and/or a security agreement in conformity with DOT regulations. If Broker uses an escrow account to comply with the regulation, Institutional Participant will deposit in that account the amounts due to under this Agreement, to be withdrawn by the Broker only as permitted under the DOT regulations.

1.5 Institutional Participant (not UT System or any other UT System institution) will be solely responsible for specifying and paying for any particular air charter-related services, including all applicable broker fees, requested by Institutional Participant.

1.7 Before each flight, Broker will confirm to Institutional Participant that the Air Carrier Certificate required by federal regulations is still in good standing with the FAA and that both the aircraft and personnel meet FAA standards. Broker will furnish a copy of the Air Carrier Certificate to Institutional Participant not less than thirty (30) days prior to the scheduled departure date of the related flight. If such certificate is not furnished as required, Institutional Participant may cancel the Engagement Letter with Broker and Airline, without penalty.

1.8 Institutional Participant will ensure that passengers on the charter flights comply with government travel requirements, including passenger identification and any required travel documents for entry or exit from a foreign country, as applicable. Institutional Participant will prepare the charter flight passenger manifest and confirm that passengers are properly boarded in accordance with such manifest. Institutional Participant will notify charter flight passengers of the scheduled departure times and any delay or cancellation to the charter flights. Institutional Participant will ensure that charter flight passengers identify each piece of checked baggage with their name on the outside of the bag. Institutional Participant will provide written notice to each charter flight passenger of Airline's rules and limitations on liability for checked baggage. The parties acknowledge that the charter flights operated pursuant to this Agreement are not "public charters" as defined in 14 CFR Part 380, and Institutional Participant will not sell, barter or receive any payment from passengers for seats on the charter flights.

1.9 Institutional Participant may request a change in the aircraft, departure dates or arrival/departure times for flights listed in the Engagement Letter, with the understanding that all such requests are subject to the availability of Airline's aircraft and crew members, and that any mutually agreed adjustments may result in increased prices for the related flights.

1.10 If Institutional Participant cancels a charter flight for reasons other than (a) a force majeure occurrence, or (b) a material breach by Broker or Airline of this Agreement, then Institutional Participant will pay to Broker and Airline the cancellation charges specified in the Engagement Letter.

1.11 Airline's rules and limitations on liability for checked baggage are attached as **Rider 700**. Institutional Participant will distribute a copy of these rules and limitations to all charter passengers as specified in **Section 1.8** above. Institutional Participant acknowledges that Airline's rules contain liability limitations for all checked baggage and list items that are considered unacceptable for transportation in checked baggage, including photographic and cinematographic equipment, projectors,

computers, electronic devices and similar items. Such equipment should be carried by charter flight passengers in the passenger compartment of the aircraft, and Airline assumes no responsibility for delay, damage, loss, or destruction of photographic or cinematographic equipment, projectors, computers, electronic devices and similar items if they are included in checked baggage by charter flight passengers.

SECTION 2 – Term:

The term of this Agreement will begin on the Effective Date and expire _____ [*initial fixed term of five years*], unless earlier terminated in accordance with the provisions of this Agreement. Institutional Participant will have the option to extend the term of this Agreement for three additional one-year periods, upon written notice given to Airline at least 90 days in advance of the renewal term.

The Parties acknowledge that, prior to any scheduled expiration of this Agreement, Institutional Participant may conduct a competitive procurement for the purchase of products and services comparable to the Services, for the period following expiration. If Airline is not selected as the source for the succeeding period, Institutional Participants may need to transition over a period of time to purchasing the products and services primarily from the new source, rather than from Airline. In such event, in order to allow for an orderly transition, Institutional Participants may wish to continue purchasing from Airline for a limited period of time after the anticipated expiration of this Agreement. As a result, Airline agrees that, notwithstanding any other provision of this Agreement:

- Airline will make the Services available for purchase by Institutional Participant after _____, 20__ (or the anticipated expiration date under any extended term of this Agreement), for a transitional period of six months (the “**Transition Period**”), on the same terms and conditions set forth in this Agreement.
- The Administrative Fee provided for in **Rider 200** (Price Schedule) will apply to all Services purchased hereunder during the Transition Period, and all related obligations of Airline under this Agreement (such as to report sales volumes to UT System) will continue during such period.
- The Administrative Fee will apply to all future payments made by Institutional Participant for purchases of Services initiated during this Agreement, including the Transition Period, even if such payments are made following expiration of this Agreement.
- All incentive / rebate trigger amounts that may be established in this Agreement for any calendar year will be pro-rated automatically on a straight-line basis, to account for partial calendar years during which this Agreement exists, including the Transition Period.

Broker agrees to provide supporting brokerage services to Institutional Participant during the Transition Period, and to report and pay related Administrative Fees, upon the terms and conditions stated in Broker’s Preferred Supplier Agreement with UT System for Charter Broker Services.

SECTION 3 – Amendment:

No change, modification, alteration, or waiver of this Agreement will be effective unless it is set forth in a written agreement that is signed by Institutional Participant and Airline.

SECTION 4 – Performance by Airline:

Airline will perform its obligations under this Agreement to the satisfaction of Institutional Participant. Time is of the essence in connection with this Agreement. Institutional Participant will not have any obligation to accept late performance or waive timely performance by Airline. Airline will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local laws, regulations or ordinances, for its performance hereunder.

SECTION 5 – Family Code Child Support Certification:

Pursuant to Section 231.006, *Family Code*, Airline certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

SECTION 6 – Eligibility Certifications:

Pursuant to Sections 2155.004 and 2155.006, *Texas Government Code*, Airline certifies that it has not received compensation for participation in the preparation of the Request for Proposal related to this Agreement and is not ineligible to receive the award of or payments under this Agreement; and acknowledges that this Agreement may be terminated and payment withheld if these certifications are inaccurate.

Pursuant to Section 361.965, Texas Health and Safety Code, Airline also certifies that it is in full compliance with the State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Chapter 361, Subchapter Y, Texas Health and Safety Code, and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in Title 30, Chapter 328, Subchapter I, Texas Administrative Code. Airline acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

SECTION 7 – Tax Certification:

If Airline is a taxable entity as defined by Chapter 171, Texas Tax Code (“**Chapter 171**”), then Airline certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Airline is exempt from the payment of those taxes, or that Airline is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

SECTION 8 – Payment of Debt or Delinquency to the State:

Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Airline agrees that any payments owing to Airline under this Agreement may be applied directly toward any debt or delinquency that Airline owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

SECTION 9 – Loss of Funding:

Performance by Institutional Participant under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”) and/or allocation of funds by the Board of Regents of The University of Texas System (the “**Board**”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Institutional Participant will issue written notice to Airline and Institutional Participant may terminate this Agreement without further duty or obligation hereunder, other than payment for goods

and services already delivered or provided to Institutional Participant. Airline acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Institutional Participant.

SECTION 10 – Force Majeure:

None of the parties to this Agreement will be liable or responsible to another for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (“**force majeure occurrence**”). Provided, however, in the event of a force majeure occurrence, Airline agrees to use its best efforts to mitigate the impact of the occurrence so that Institutional Participant may continue to provide healthcare services during the occurrence.

SECTION 11 – Notices:

Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via registered or certified mail, overnight courier, confirmed facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one business day after delivery to the courier, (iii) if sent by facsimile (to the extent a facsimile number is set forth below), when transmitted, and (iv) if sent by email (to the extent an email address is set forth below), when received:

If to Institutional Participant:

Attn: _____

Fax: _____
Email: _____

with copy to:

The University of Texas System Supply Chain Alliance
Mid Campus Building
7007 Bertner Ave., Suite 11.2339
Houston, TX 77030
Attention: Director
Fax : 713-792-8084
Email:jfjoshua@mdanderson.org

If to Broker:

Attn: _____

Fax: _____
Email: _____

If to Airline:

Attn: _____
Fax: _____

Email: _____

or such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

SECTION 12 – Airline Obligations.

12.1 Airline represents that it has the knowledge, ability, skills, and resources to perform its obligations hereunder.

Throughout the term of this Agreement, Airline must be IOSA (IATA Operational Safety Audit Program) registered. This applies to 121 and 125 operators only. Airline must provide proof of certificate and must be placed on IATA registry website. Eligibility must be verified at <http://www.iata.org/whatwedo/safety/audit/iosa/Pages/registry.aspx?Query=all>.

NOTE: Exception to requirement above: In lieu of an applicant meeting charter operator requirements, carrier that has passed a safety audit conducted by an accredited FAR Part 121/125/135 audit services provider within the last twelve (12) months may be utilized.

Part 135 Operators must be in compliance with applicable regulations as outlined in Federal Aviation Regulations Part 135: Operating Requirements: Commuter & On-Demand Operations & Rules Governing Persons on Board Such Aircraft

The parties acknowledge and agree that charter flights and passengers traveling on charter flights are subject to the rules and regulations of governmental agencies having jurisdiction, including the DOT, the U.S. Federal Aviation Administration (FAA), the U.S. Transportation Security Administration (TSA) and, unless otherwise stated herein, the same in-flight passenger and baggage rules established by Airline for passengers traveling on Airline's scheduled flights. Airline has exclusive control over matters pertaining to the operation and safety of the charter flights, including, but not limited to matters pertaining to the aircraft, crews, and operational standards and controls applied by Airline such as the weight, size, type, contents, and value of baggage or property to be accommodated. Airline may, but is not obligated to, examine all baggage and cargo. No article will be permitted on board the aircraft, either as baggage, cargo or otherwise, which cannot be transported in accordance with Airline's conditions of carriage, tariffs, rules, regulations or applicable laws and governmental regulations, or which in Airline's sole opinion would endanger the safety of the flight, crew or passengers or would not be suitable for transportation on the aircraft. All persons and property aboard charter flights are subject to the authority of the flight crew. Institutional Participant will ensure that all charter flight participants comply with Airline's standards of conduct for passengers on charter flights. Airline may remove at any point any passengers or property who or which might involve a hazard or risk to passengers, crew, other persons or property or who or which is otherwise deemed unsuitable for transportation. All flights are subject to cancellation, interruption or deviation in Airline's sole discretion because of mechanical difficulties, damage to the aircraft, adverse weather conditions, force majeure occurrences, and similar circumstances which, in Airline's opinion, require such action. Airline may operate charter flights with substitute equipment for safety or operational reasons. The departure and arrival times listed in the Engagement Letter are indications of approximate times, and the parties acknowledge that flight delays may be caused by weather, air traffic control or airport conditions, mechanical problems or force majeure occurrences.

12.2 Airline will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance hereunder. Airline will cause all persons connected with the Airline directly in charge of performance hereunder to be duly registered and/or licensed under all applicable federal, state and

municipal, laws, regulations, codes, ordinances and orders, including the rules, regulations and procedures promulgated by the Board or Institutional Participants, and those of any other body or authority having jurisdiction (collectively, “**Applicable Law**”).

12.3 Airline represents, warrants and agrees that (a) it will use commercially reasonable efforts to perform hereunder, in a good and workmanlike manner and in accordance with commercially reasonable standards of Airline’s profession or business, and (b) all good and services provided hereunder will be of the quality that prevails among similar businesses engaged in providing similar products and services in major United States urban areas under the same or similar circumstances.

12.4 Airline warrants and agrees that all Services supplied under this Agreement will be accurate and free from any material defects. Airline’s performance hereunder will at no time be in any way diminished by reason of any approval by Institutional Participant nor will Airline be released from any liability by reason of any approval by Institutional Participant, it being agreed that Institutional Participant at all times is relying upon Airline’s skill and knowledge in performing hereunder. Airline will, at its own cost, correct all material defects in Services supplied under this Agreement, as soon as practical after Airline becomes aware of the defects. If Airline fails to correct such material defects within a reasonable time, then Institutional Participant may correct the defect at Airline’s expense. This remedy is in addition to, and not in substitution for, any other remedy for the defect that Institutional Participant may have at law or in equity.

12.5 Airline will call to the attention of Institutional Participant, in writing, all information in any materials supplied to Airline (by Institutional Participant or any other party) that Airline regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.

12.6 Airline represents that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Airline has been duly authorized to act for and bind Airline; or (ii) if it is a partnership, limited partnership, limited liability partnership, or limited liability company then it has all necessary power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder, and the individual executing this Agreement on behalf of Airline has been duly authorized to act for and bind Airline.

12.7 Airline represents and warrants that neither the execution and delivery of this Agreement by Airline nor Airline’s performance hereunder will (a) result in the violation of any provision [i] if a corporation, of Airline’s articles of incorporation or by-laws, [ii] if a limited liability company, of its articles of organization or regulations, or [iii] if a partnership, of any partnership agreement by which Airline is bound; (b) result in the violation of any provision of any agreement by which Airline is bound; or (c) to the best of Airline’s knowledge and belief, conflict with any order or decree of any court or other body or authority having jurisdiction.

SECTION 13 – State Auditor’s Office:

Airline understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor’s Office, or any successor agency (collectively, “**Auditor**”), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), Education Code. Airline agrees to cooperate with the Auditor in the conduct

of the audit or investigation, including without limitation providing all records requested. Airline will include this provision in all contracts with permitted subcontractors.

SECTION 14 –Governing Law:

Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties thereto and all of the terms and conditions thereof will be construed, interpreted and applied in accordance with and governed by and enforced under the internal laws of the State of Texas.

SECTION 15 – Breach of Contract Claims:

15.1 To the extent that Chapter 2260, Texas Government Code, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other Applicable Law, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by Institutional Participant and Airline to attempt to resolve any claim for breach of contract made by Airline:

15.1.1 Airline's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Airline will submit written notice, as required by subchapter B of Chapter 2260, to Institutional Participant in accordance with the notice provisions in this Agreement. Airline's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that Institutional Participant allegedly breached, the amount of damages Airline seeks, and the method used to calculate the damages. Compliance by Airline with subchapter B of Chapter 2260 is a required prerequisite to Airlines filing of a contested case proceeding under subchapter C of Chapter 2260. The Institutional Participant's chief business officer, or another officer of Institutional Participant as may be designated from time to time by Institutional Participant by written notice thereof to Airline in accordance with the notice provisions in this Agreement, will examine Airline's claim and any counterclaim and negotiate with Airline in an effort to resolve the claims.

15.1.2 If the parties are unable to resolve their disputes under Section 4.11.1.1, the contested case process provided in subchapter C of Chapter 2260 is Airline's sole and exclusive process for seeking a remedy for any and all of Airline's claims for breach of this Agreement by Institutional Participant.

15.1.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by Institutional Participant nor any other conduct, action or inaction of any representative of Institutional Participant relating to this Agreement constitutes or is intended to constitute a waiver of Institutional Participant's or the state's sovereign immunity to suit and (ii) Institutional Participant has not waived its right to seek redress in the courts.

15.2 The submission, processing and resolution of Airline's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.

15.3 Institutional Participant and Airline agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

SECTION 16 – Compliance with Law:

Airline will perform hereunder in compliance with all Applicable Law. Airline represents and warrants that neither Airline nor any firm, corporation or institution represented by Airline, nor anyone acting for such firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Airline's response to Institutional Participant's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process.

SECTION 17 – Institutional Participant's Right to Audit:

At any time during the term of this Agreement and for a period of four (4) years thereafter Institutional Participant or a duly authorized audit representative of the State of Texas, at its expense and at reasonable times, reserves the right to audit Airline's records and books directly related to charges paid for all products and services provided under this Agreement. The right will not extend to any fixed fee component of the charges or to any services performed more than one year prior to the date of request for review. In the event such an audit reveals any errors or overpayments by Institutional Participant, which error or overpayment is confirmed by Airline, Airline will refund to Institutional Participant the full amount of such overpayments within thirty (30) days of such audit findings, or Institutional Participant, at its option, reserves the right to deduct such amounts owing to Institutional Participant from any payments due Airline.

SECTION 18 – Access to Documents:

To the extent applicable to this Agreement, in accordance with Section 1861(v)(I)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Airline agrees to allow, during and for a period of not less than four (4) years after this Agreement term, access to this Agreement and its books, documents, and records; and contracts between Airline and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

SECTION 19 – Insurance:

19.1 Airline, consistent with its status as an independent contractor, will carry at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A:VII or better, and in amounts not less than the following minimum limits of coverage:

Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000.

Employers Liability – Each Accident	\$1,000,000
Employers Liability – Each Employee	\$1,000,000
Employers Liability – Policy Limit	\$1,000,000

Workers' Compensation policy must include states where contractor's employees will be performing operation for University.

Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 50,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000

The required Commercial General Liability policy will be issued on a form that insurers Airline's and subcontractor's liability and bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for bodily injury and property damage.

19.2 Airline will maintain at its sole expense, an Aircraft Hull and Liability Policy including coverage for:

19.2.1 Liability for Bodily Injury (including passengers) and property damage with minimum limits of liability insurance set at \$25 million for light turboprop aircraft, \$50 million for light jet aircraft and \$3 million per seat for large aircraft and including: War Risks endorsement; The Board of Regents of the University of Texas System and The University of Texas System and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents as additional insured; and primary and non-contributory language.

19.2.2 Aircraft hull insurance in an amount equal to the value of the aircraft and including: War Risks endorsement; and a waiver of subrogation in favor of The University of Texas System and The Board of Regents of The University of Texas System and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents.

19.3 If Airline fails to fulfill its obligations contained in this **Section 19**, Institutional Participant may, upon notice to Broker and Airline, undertake the performance of the insurance requirements of this Section by contracting for such insurance directly; provided that Institutional Participant will include Airline as an additional insured on Institutional Participant's policies. If Institutional Participant undertakes the performance of the insurance requirements of this **Section 19** by contracting for such insurance directly, Airline promptly will reimburse Institutional Participant for the full cost thereof, upon written request. If Airline fails to pay any of the renewal premiums for the expiring policies, Institutional Participant will have the right to make the payments and set off the amount thereof against the next payment coming due to Airline under this Agreement. Upon Airline's request, Institutional Participant will furnish to Airline evidence of such insurance in certificate form.

19.4 Airline, through Broker, will deliver to UT System:

Evidence of insurance on a Texas Department of Insurance approved certificate (Acord 2510/05 is TDI preapproved) form verifying the existence and actual limits of all required insurance policies prior to the execution and delivery of the Agreement. Additional evidence of insurance

will be provided upon renewal of each policy verifying the continued existence of all required insurance no later than ten (10) days after each annual insurance policy renewal.

All insurance policies (with the exception of workers' compensation and employer's liability) will be endorsed and name The University of Texas System and the Board of Regents of The University of Texas System as additional insureds for liability caused in whole or in part by Airline's acts or omissions with respect to its on-going operations up to the actual liability limits of the required insurance policies maintained by Airline. Commercial General Liability Additional Insured endorsement will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

- 19.5** Airline hereby waives all rights of subrogation against the Board of Regents of The University of Texas System and The University of Texas System. All insurance policies will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System and The University of Texas System. No policy will be cancelled until after thirty (30) days unconditional written notice to UT System. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to UT System thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required.
- 19.6** Airline will pay any deductible or self-insurance retention under its policies for any loss that occurs in the performance of this Agreement. Any self-insured retention must be declared to and approved by UT System prior to the performance of any work by Airline under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.
- 19.7** Certificates of Insurance and additional insured endorsements as required by this Agreement will be mailed, faxed, or emailed to the following UT System contact:

Eric Agnew
 The University of Texas System Administration
 Office of Risk Management
 210 West 6th Street, Room B140E
 Austin, TX 78701
 Facsimile Number: 512-499-4524
 Email: eagnew@utsystem.edu

- 19.8** Airline's insurance will be primary to any insurance carried or self-insurance program established by UT System or Institutional Participant. Airline's insurance will be kept in force until all work has been fully performed.

SECTION 20 – Indemnification:

20.1 TO THE FULLEST EXTENT PERMITTED BY LAW, AIRLINE WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UT PARTY, AND HOLD HARMLESS UT PARTY AND ITS AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "**INDEMNITEES**") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING,

DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY “**CLAIMS**”) BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM AIRLINE’S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT, AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF AIRLINE, ANYONE DIRECTLY EMPLOYED BY AIRLINE OR ANYONE FOR WHOSE ACTS AIRLINE MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

20.2 IN ADDITION, AIRLINE WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UT PARTY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY AIRLINE, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF AIRLINE, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UT PARTIES WILL PROMPTLY NOTIFY AIRLINE AND AIRLINE WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UT PARTIES AGREE TO REASONABLY COOPERATE WITH AIRLINE. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

SECTION 21 – Ethics Matters; No Financial Interest:

Airline and its employees, agents, representatives and subcontractors have read and understand UT System’s Conflicts of Interest Policy available at <http://www.utsystem.edu/policy/policies/int160.html>, UT System’s Standards of Conduct Guide available at <http://www.utsystem.edu/systemcompliance/>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Airline nor its employees, agents, representatives or subcontractors will assist or cause UT Party’s employees to violate UT System’s Conflicts of Interest Policy, provisions described by UT System’s Standards of Conduct Guide, or applicable state ethics laws or rules. Airline represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

SECTION 22 – Assignment of Overcharge Claims:

Airline hereby assigns to Institutional Participant any and all claims for overcharges associated with this Agreement arising under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq., or arising under the antitrust laws of the State of Texas, Business and Commerce Code, Sec. 15.01, et seq.

SECTION 23 – Assignment and Subcontracting:

Except as specifically provided in any Historically Underutilized Business Subcontracting Plan (“**HSP**”) attached as **Rider 500** and incorporated for all purposes, neither Airline's interest in this Agreement, its duties and obligations under this Agreement nor fees due to Airline under this Agreement may be subcontracted, assigned, delegated or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (1) not be binding on Institutional Participant; and (2) be a breach of this Agreement for which Airline will be subject to any remedial actions provided by Texas law, including Chapter 2161, Texas Government Code, and 34 Texas Administrative Code (“**TAC**”) Section 20.14. Institutional Participant may report nonperformance under this Agreement to the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency

(collectively, “TPSS”) in accordance with 34 TAC Chapter 20, Subchapter F, Vendor Performance and Debarment Program. The benefits and burdens of this Agreement are, however, assignable by Institutional Participant.

SECTION 24 – Historically Underutilized Business Subcontracting Plan:

24.1 If an HSP is attached to this Agreement, Airline agrees to use good faith efforts to subcontract the scope of work in accordance with the HSP. Airline agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to Institutional Participant in the format required by the TPSS. Submission of compliance reports will be required as a condition for payment under this Agreement. If Institutional Participant determines that Airline has failed to subcontract as set out in the HSP, Institutional Participant will notify Airline of any deficiencies and give Airline an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort. If Institutional Participant determines that Airline failed to implement the HSP in good faith, Institutional Participant, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Chapter 20, Subchapter F, Vendor Performance and Debarment Program. Institutional Participant may also revoke this Agreement for breach and make a claim against the Airline.

24.2 If at any time during the term of this Agreement, Airline desires to change the HSP, before the proposed changes become effective (1) Airline must comply with 34 TAC Section 20.14; (2) the changes must be reviewed and approved by Institutional Participant; and (3) if Institutional Participant approves changes to the HSP, this Agreement must be amended in accordance with Section 2.5.3 to replace the HSP with the revised subcontracting plan.

24.3 If Institutional Participant expands the scope of this Agreement through a change order or any other amendment, Institutional Participant will determine if the additional scope of work contains probable subcontracting opportunities not identified in the initial solicitation for the scope of work. If Institutional Participant determines additional probable subcontracting opportunities exist, Airline will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (1) this Agreement may be amended to include the additional scope of work; or (2) Airline may perform the additional scope of work. If Airline subcontracts any of the additional subcontracting opportunities identified by Institutional Participant without prior authorization and without complying with 34 TAC Section 20.14, Airline will be deemed to be in breach of this Agreement under Section 4.19 and will be subject to any remedial actions provided by Texas law including Chapter 2161, Texas Government Code, and 34 TAC Section 20.14. Institutional Participant may report nonperformance under this Agreement to the TPSS in accordance with 34 TAC Chapter 20, Subchapter F, Vendor Performance and Debarment Program.

SECTION 25 – Payment and Invoicing:

Institutional Participant agrees to pay fees due under this Agreement in accordance with the Texas Prompt Payment Act (“Act”), Chapter 2251, *Texas Government Code*. Pursuant to the Act, payment will be deemed late on the 31st day after the later of: 1) the date the performance is completed, or 2) the date Institutional Participant receives an invoice for the related goods or services. Institutional Participant will be responsible for interest on overdue payments equal to the sum of: 1) one percent, plus 2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year (Institutional Participant’s fiscal year begins September 1) that does not fall on a Saturday or Sunday. Institutional Participant will have the right to verify the details set forth in Airline’s invoices, either before or after payment, by (a) inspecting the books and records of Airline at mutually convenient times; (b) examining any reports with respect to the related goods or services; and (c) other reasonable

action. All invoices to Institutional Participant will be submitted by Airline to Broker, and Institutional Participant will make all payments to Airline through Broker.

Section 51.012, *Texas Education Code*, authorizes Institutional Participant to make any payment through electronic funds transfer methods. Airline, through Broker, agrees to receive payments from Institutional Participant through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, Institutional Participant will confirm Broker's banking information. Any changes to Broker's banking information will be communicated by Broker to Institutional Participant in writing at least thirty (30) days in advance of the effective date of the change.

SECTION 26 – Limitations:

The parties to this Agreement are aware that there are constitutional and statutory limitations on the authority of Institutional Participant (a state agency) to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "**Limitations**"), and terms and conditions related to the Limitations will not be binding on Institutional Participant except to the extent authorized by the laws and Constitution of the State of Texas.

SECTION 27 – Affirmative Action:

Airline agrees that either a written copy of Airline's Civil Rights "Affirmative Action Compliance Program" or, if Airline is not required to have such a written program, the reason Airline is not subject to such requirement, is attached to this Agreement as **Rider 600** and incorporated for all purposes.

SECTION 28 – OSHA Compliance:

Airline represents and warrants that all products and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-598) and its regulations in effect or proposed as of the date of this Agreement.

SECTION 29 - Certifications of Nonsegregated Facilities and Equal Employment Opportunities Compliance:

Airline certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Airline agrees that a breach of this certification is a violation of the Equal Opportunity clause in this Agreement. The term "**segregated facilities**" means any waiting rooms, work area, rest rooms and wash rooms, entertainment areas, transportation, or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Airline further agrees that, except where it has contracts prior to the award with subcontractors exceeding

\$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Airline will retain such certifications for each one of its subcontractors in Airline's files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Airline understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

SECTION 30 – Premises Rules:

If this Agreement requires Airline's presence on Institutional Participant's premises or in Institutional Participant's facilities, Airline agrees to cause its representatives, agents, employees and permitted subcontractors (if any) to become aware of, fully informed about, and in full compliance with all applicable Institutional Participant rules and policies, including, without limitation, those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions; consideration for students, patients and their families as well as employees; parking; and security.

SECTION 31 – Debarment:

Airline confirms that neither Airline nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States ("U.S.") federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs issued by the U.S. General Services Administration. "**Principals**" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Airline will provide immediate written notification to Institutional Participant if, at any time prior to award, Airline learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when Institutional Participant executes this Agreement. If it is later determined that Airline knowingly rendered an erroneous certification, in addition to the other remedies available to Institutional Participant, Institutional Participant may terminate this Agreement for default by Airline.

SECTION 32 – Office of Inspector General Certification:

Airline acknowledges that Institutional Participant is prohibited by federal regulations from allowing any employee, subcontractor, or agent of Airline to work on site at Institutional Participant's premises or facilities if that individual is not eligible to work on federal healthcare programs such as Medicare, Medicaid, or other similar federal programs. Therefore, Airline will not assign any employee, subcontractor or agent that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("**OIG**") to work on site at Institutional Participant's premises or facilities. Airline will perform an OIG sanctions check quarterly on each of its employees, subcontractors and agents during the time such employees, subcontractors and agents are assigned to work on site at

Institutional Participant's premises or facilities. Airline acknowledges that Institutional Participant will require immediate removal of any employee, subcontractor or agent of Airline assigned to work at Institutional Participant's premises or facilities if such employee, subcontractor or agent is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: <http://www.dhhs.gov/progorg/oig/cumsan/index.htm>.

SECTION 33 – Termination:

33.1 In the event of a material failure by either Institutional Participant or Airline to perform in accordance with the terms of this Agreement (“**default**”), the other, non-defaulting party (Institutional Participant or Airline, as applicable) may terminate this Agreement upon thirty (30) days’ written notice of termination setting forth the nature of the material failure. The termination will not be effective if the material failure is fully cured prior to the end of the 30-day period. No such termination will relieve the defaulting party from liability for the underlying default or breach of this Agreement or any other act or omission.

33.2 Institutional Participant may terminate this Agreement, without cause, upon written notice to Airline and Broker; provided, however, this Agreement will not terminate until the later of (1) 90 days after receipt of notice of termination, or (2) the date that performance is complete under all purchase orders issued by Institutional Participant to Airline prior to receipt of notice of termination. Institutional Participant may not issue any purchase orders after receipt of notice of termination. Termination of this Agreement will not relieve any party from liability for its default under or breach of this Agreement or any other act or omission of that party. In the event that this Agreement is terminated, then within thirty (30) days after termination, Airline will reimburse Institutional Participant for all fees paid by Institutional Participant to Airline that were (a) not earned by Airline prior to termination, or (b) for goods or services that Institutional Participant did not receive from Airline prior to termination.

SECTION 34 – Authority:

The individuals executing this Agreement on behalf of each party have been duly authorized to act for and bind the party they represent.

SECTION 35 – Survival of Provisions:

Expiration or termination of this Agreement will not relieve either party of any obligations under this Agreement that by their nature survive such expiration or termination.

SECTION 36 – Confidentiality; Press Releases; Public Information:

36.1 Confidentiality and Safeguarding of Institutional Participant Records. Under this Agreement, Airline may (1) create, (2) receive from or on behalf of Institutional Participant, or (3) have access to, Institutional Participant’s records or record systems (collectively, “**Institutional Participant Records**”). However, it is expressly agreed that Institutional Participant will not provide to Airline, and Airline will never seek to access, any Institutional Participant Records that contain personally identifiable information regarding any individual that is not available to any requestor under the *Texas Public Information Act*, Chapter 552, Texas Government Code, including “directory information” of any student who has opted to prohibit the release of their “directory information” as that term is defined under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“**FERPA**”) and its implementing regulations. Airline represents, warrants, and agrees that it will: (1) hold Institutional Participant Records in strict confidence and will not use or disclose Institutional Participant Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise

authorized by Institutional Participant in writing; (2) safeguard Institutional Participant Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security, as well as Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Airline protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that Institutional Participant Records are safeguarded and the confidentiality of Institutional Participant Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with Institutional Participant Rules regarding access to and use of Institutional Participant's computer systems, including UTS 165 at <http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html>. At the request of Institutional Participant, Airline agrees to provide Institutional Participant with a written summary of the procedures Airline uses to safeguard and maintain the confidentiality of Institutional Participant Records.

36.2 Notice of Impermissible Use. If an impermissible use or disclosure of any Institutional Participant Records occurs, Airline will provide written notice to Institutional Participant within one (1) business day after Airline's discovery of that use or disclosure. Airline will promptly provide Institutional Participant with all information requested by Institutional Participant regarding the impermissible use or disclosure.

36.3 Return of Institutional Participant Records. Airline agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all Institutional Participant Records created or received from or on behalf of Institutional Participant will be (1) returned to Institutional Participant, with no copies retained by Airline; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any Institutional Participant Records, Airline will provide Institutional Participant with written notice of Airline's intent to destroy Institutional Participant Records. Within five (5) days after destruction, Airline will confirm to Institutional Participant in writing the destruction of Institutional Participant Records.

36.3 Disclosure. If Airline discloses any Institutional Participant Records to a subcontractor or agent, Airline will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Airline by this **Section 36**.

36.4 Press Releases. Airline will not make any press releases, public statements, or advertisement referring to this Agreement, or release any information relative to this Agreement for publication, advertisement or any other purpose, without the prior written approval of Institutional Participant.

36.5 Public Information. Institutional Participant strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* ("TPIA"), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and at no additional charge to Institutional Participant, Airline will make any information created or exchanged with Institutional Participant pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by Institutional Participant that is accessible by the public.

36.6 Termination. In addition to any other termination rights set forth in this Agreement, and any other rights at law or equity, if Institutional Participant reasonably determines that Airline has breached any of the restrictions or obligations set forth in this Section, Institutional Participant may immediately terminate this Agreement without notice or opportunity to cure.

36.7 Duration. The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

SECTION 37 – Tax Exemption

Institutional Participant may be an agency of the State of Texas or other non-profit entity and may be exempt from certain state taxes under various exemption statutes, including Texas Sales & Use Tax in accordance with Section 151.309, *Tax Code*, and Title 34 *Texas Administrative Code* (“**TAC**”) Section 3.322. Notwithstanding its exemption from certain state taxes, Institutional Participant will be responsible for any taxes (except corporate income taxes, franchise taxes, and taxes on Airline’s personnel, including personal income tax and social security taxes) from which Institutional Participant is not exempt. Airline will provide reasonable cooperation and assistance to Institutional Participant in obtaining any tax exemptions to which Institutional Participant is entitled.

SECTION 38 – Undocumented Workers:

The *Immigration and Nationality Act* (8 *United States Code* 1324a) (“**Immigration Act**”) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form (“**I-9 Form**”) as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Airline is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual’s national origin or citizenship status. If Airline employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, Institutional Participant may terminate this Agreement in accordance with Section 4.31. Airline represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

SECTION 39 – Non-Exclusivity; No Required Quantities or Minimum Amounts:

Airline understands that this Agreement is non-exclusive and does not obligate Institutional Participant to purchase from Airline any or all of its requirements for services that are the same as or similar to the Services provided hereunder. This Agreement does not establish any minimum quantity or minimum dollar amount of goods or services that Institutional Participant must purchase from Airline during the term of this Agreement.

SECTION 40 – Access by Individuals with Disabilities:

Airline represents and warrants (“**EIR Accessibility Warranty**”) that the electronic and information resources and all associated information, documentation, and support that it provides under this Agreement (collectively, the “**EIRs**”) comply with the applicable requirements set forth in Title 1, Chapter 213, *Texas Administrative Code*, and Title 1, Chapter 206, Rule §206.70, *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M, *Government Code*). To the extent Airline becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Airline represents and warrants that it will, at no cost to Institutional Participant, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event Airline fails or is unable to do so, Institutional Participant may terminate this Agreement, and Airline will refund to

Institutional Participant all amounts Institutional Participant has paid under this Agreement within thirty (30) days after the termination date.

SECTION 41 – Background Checks:

Airline will not knowingly assign any individual to provide services on Institutional Participant's campus if the individual has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. If requested by Institutional Participant to comply with its policy, Airline will perform appropriate criminal background checks on each individual who will provide such services on the Institutional Participant's campus.

SECTION 42 – Business Associate Agreements:

Airline acknowledges that the Institutional Participant may be subject to the Health Insurance Portability and Accountability Act of 1996, Public 104-191 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health, Title XII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) ("HITECH Act"). UT System and the respective Institutional Participants are separate entities for purposes of HIPAA. Therefore, Airline will enter into a separate HIPAA Business Associate Agreement ("BAA") with Institutional Participant, as applicable, prior to accessing any Protected Health Information, as that term is defined by HIPAA, as part of the Services to be provided under this Agreement.

SECTION 43 – Entire Agreement; Modifications:

This Agreement supersedes all prior agreements, written or oral, between Broker, Airline and Institutional Participant and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement; *provided, however*, the Preferred Supplier Agreement between UT System and Charter Broker in which Institutional Participant is participating is *not* superseded. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Institutional Participant, Broker and Airline.

SECTION 44 – Captions:

The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

SECTION 45 – Waivers:

No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

SECTION 46 – Binding Effect:

This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

SECTION 47 – Limitations of Liability:

Except for Institutional Participant's obligation (if any) to pay, through Broker, Airline certain fees and expenses, Institutional Participant will have no liability to Airline or to anyone claiming through or under Airline by reason of the execution or performance of this Agreement. Notwithstanding any duty or

obligation of Institutional Participant to Airline or to anyone claiming through or under Airline, no present or future affiliated enterprise, subcontractor, agent, officer, director, employee, representative, attorney or regent of Institutional Participant, or anyone claiming under Institutional Participant has or will have any personal liability to Airline or to anyone claiming through or under Airline by reason of the execution or performance of this Agreement.

SECTION 48 – Relationship of the Parties:

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Airline is an independent contractor and is not a state employee, partner, joint venturer, or agent of Institutional Participant. Airline will not bind nor attempt to bind Institutional Participant to any agreement or contract. As an independent contractor, Airline is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.

SECTION 49 – Severability:

In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

SECTION 50 – External Terms:

This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral ("**External Terms**"), concerning Airline's performance under this Agreement. Such External Terms are null and void and will have no effect under this Agreement, regardless of whether Institutional Participant or any of its employees, contractors, or agents consents or agrees to External Terms. External Terms include any shrinkwrap, clickwrap, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that UT Party, or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided solely by Airline.

SECTION 51 – Conflicts:

In the event of a conflict between the terms and conditions of this Agreement and those of an IPA, the terms of this Agreement will control and govern.

SECTION 52 – Attachments:

The Riders listed below are attached to and fully incorporated into this Agreement as substantive parts of this Agreement:

Rider 100 – Form of Institutional Participation Agreement

Rider 200 – Price Schedule

Rider 300 – Form of Engagement Letter for Particular Charter Flights

Rider 400 – Supplier Relationship Management

Rider 500 – HUB Subcontracting Plan

Rider 600 – Affirmative Action Compliance Program

Rider 700 – Airline's Rules and Limitations on Liability for Checked Baggage

Having agreed to the foregoing terms, and with the intention of being legally bound, the parties have executed this Agreement on the dates shown below.

THE UNIVERSITY OF TEXAS _____

[AIRLINE]

Signed: _____

Signed: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

[BROKER]

Signed: _____

Printed Name: _____

Title: _____

Date: _____

RIDER 300

FORM OF ENGAGEMENT LETTER FOR PARTICULAR CHARTER FLIGHTS

[date]
Mr./Mrs. _____
The University of Texas _____

Dear Sir or Madam,

I am pleased to confirm, on behalf of *[name of Charter Operator]*, our engagement to provide to The University of Texas _____ the air charter flight services described in Schedule 1 below, for the fees specified in **Schedule 1. Schedule 1** and the materials immediately following it are incorporated into and made a part of this Engagement Letter.

This Engagement Letter is subject to the terms and conditions of a certain Agreement for Charter Airline Services among The University of Texas _____, *[Name of Charter Broker]* and *[Name of Charter Operator]*, dated as of _____, 20__ (the "Agreement.

Sincerely,

[Name of Charter Broker]

By: _____
Authorized Signature
Title:
Date:

Sincerely,

[Name of Charter Operator]

By: _____
Authorized Signature
Title:
Date:

Acknowledged and Accepted:

University of Texas _____

By: _____

Title:
Date:

Schedule 1

City Pair	Aircraft	Flight	Flight No. or	Departure	Arrival	Advance	Residual	Total	
Orig./Dest. Dest./Orig.	Equip.	Date*	Game Time* (Local)	Time* (Local)	Time* (Local)	Payment (Due Date*)	Payment (Due Date*)	Payment*	
_____	_____	__/__/__	__:--	__:--	__:--	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____	
_____	_____	__/__/__	__:--	__:--	__:--	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____	
							Total \$	_____	
_____	_____	__/__/__	__:--	__:--	__:--	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____	
_____	_____	__/__/__	__:--	__:--	__:--	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____	
							Total \$	_____	
_____	_____	__/__/__	__:--	__:--	__:--	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____	
_____	_____	__/__/__	__:--	__:--	__:--	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____	
							Total \$	_____	
_____	_____	__/__/__	__:--	__:--	__:--	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____	
_____	_____	__/__/__	__:--	__:--	__:--	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____	
							Total \$	_____	
Charter Flights and Related Services :							\$	_____	
Broker Services:							\$	_____	
Federal Excise Tax							\$	_____	
Federal Segment Fees:							\$	_____	
Total Payment for Contract Services:							\$	_____	

Note: The above payments do not include the administrative fee due to the UT System Alliance on a quarterly basis (refer to **Rider 200**)

Explanation of Asterisks in Schedule 1 Column Headings

The asterisks in the column headings in Schedule 1 reflect the following terms and conditions related to the charter flights:

1. Flight Date: If listed as “TBD,” the flight date must be mutually agreed by Institutional Participant and Airline.
2. Game Time/Flight No.: If the charter flight is for a sports team, local game time may be listed; otherwise flight numbers are listed for the charter flights.
3. Departure/Arrival Times: If listed as “TBD”, the flight departure/arrival times must be mutually agreed by Institutional Participant and Airline.
4. Due Date: Time is of the essence for Institutional Participant’s Advance Payments and Residual Payments, which must be received by Broker no later than 5 pm New York time on the stated due date.
5. Total Payment: The “Total Payment” amounts listed for the charter flights in Schedule 1 are based on charter flight passengers departing from a U.S. departure airport and using the common security checkpoint operated by the U.S.

Transportation Security Administration (TSA). This requires that all charter flight passengers and baggage be screened by TSA representatives at the common security checkpoint that is also used by passengers traveling on scheduled commercial flights at the airport. If Institutional Participant desires that charter flight passengers be screened for security purposes in another manner, or if one or more charter flights departs from an airport outside the United States, or within the U.S. but from a location where TSA security screening is not available or used for the charter flights, Institutional Participant will pay all costs incurred by Airline for such security screening. Such costs will vary depending on the geographic location of the departure airport and the number of passengers and the amount of passenger baggage to be screened. The security screening costs may range from \$500 to \$5,000 per charter flight departure, which is in addition to the "Total Payment" amounts listed in Schedule 1. All non-TSA costs incurred by Airline for security screening for the charter flights will be invoiced by Airline to Institutional Participant after flight departure, and Institutional Participant will pay all such invoices within 15 days of receipt. Upon request, Airline will provide Institutional Participant with estimated costs for such security screening.

As contemplated in **Section 1.8** of the PSA, Institutional Participant will deliver the Advance Payments and the Residual Payments to Broker (or, if applicable, Broker's designated depository bank) in accordance with the following instructions:

1. The Advance Payments and Residual Payments will be delivered by Institutional Participant to the following address (depending on the form of delivery selected):

Check delivered by U.S. Mail:

_____ Broker PO Box 123456 City, ST 00000-0000 Phone:
--

Check delivered by Express Mail/Courier:

_____ Bank _____ Broker # 000000 Street Address City, ST 00000 Phone:
--

Wire Transfer:

_____ Broker, _____ Bank Street Address City, ST 00000 ABA # 00000000 Account # 00000000

Note: Institutional Participant will notify Broker and Airline in writing if it makes a payment by wire transfer, to ensure proper credit to Institutional Participant's account.

2. **Surety Company Bond, Bank Letter of Credit or Depository Bank Escrow** (see **Section 1.3** of the PSA)

The following is the name and address of the surety company, letter of credit issuer or the depository bank:

Institutional Participant's Advance Payments and Residual Payments are secured through:

_____ Bank
 c/o _____,
 Street Address
 City, ST 00000

3. **Cancellation Fees** (see **Section 1.11** of the PSA)

The following is the schedule of the applicable cancellation fees.

Cancellation notice received by Broker and Airline from Institutional Participant at least the number of days shown below, in advance of the date of operation of the originating charter flight:

Applicable cancellation fee is equal to the percentage shown, multiplied by the Total Payment amount listed for the applicable Charter Flight in Schedule 1:

_____ days or more	0%
Between ___ days and ___ days	___%

Between ___ days and ___ days	___%
Between ___ days and ___ days	___%
___ days or less	100% (Total Payment due)

The parties have negotiated the above cancellation charges as a reasonable estimate of the anticipated damages resulting from Institutional Participant's cancellation of a charter flight. The parties agree that (a) such charges constitute "liquidated damages" for such cancellation; (b) Airline will accept such charges as compensation in full for damages suffered as a result of the cancellation; and (c) Institutional Participant will not contest such amounts as a "penalty" or otherwise.

APPENDIX THREE - 400

SUPPLIER RELATIONSHIP MANAGEMENT

1.0 Supplier Relationship Management (“SRM”) Program Requirements

Quarterly Business Reviews (“QBRs”) of Charter Broker’s performance under this Agreement will be conducted by the UT System Contract Administrator on behalf of UT System beginning six (6) months after the Effective Date of this Agreement and then every three (3) months thereafter. Institutional Participants may elect to establish a local level SRM program by a separate mutual agreement with Charter Broker.

2.0 Quarterly Business Reviews

2.1 QBRs will consist of Key Performance Indicators: Charter Broker’s performance will be determined as measured against the Service Level for each Performance Measure set forth in **Table 1** below.

Table 1: Key Performance Indicators

Performance Measure	Service Level	Variance from Service Level	Maximum Score	Definition and Measured By
Account Management	98%	≤ 2%	20	Timely response and resolution of inquiries and support calls placed by Institutional Participants: Initial response time will not exceed 4 hours
		>2%-≤5%	15	
		>5%	10	
			0	
Pricing Accuracy	99%	≤ 1%	15	Contract pricing in accordance with fee structure, as confirmed by Alliance audit
		>1%-≤5%	10	
		>5%	0	
Invoice Accuracy	98%	≤ 1%	15	Proportion of invoiced items reflecting accurate contract pricing, as confirmed by Alliance audit
		>1%-≤5%	10	
		>5%	0	
Reporting	98%	≤ 2%	15	Comprehensive report detailing of year-to-date and period-over-period spend and spend versus previous

		>2%-≤5%	10	quarter and year spend.
		>5%	0	
Administrative Fees & Incentive Payments	Not more than 5 days late	Y	5	Paid accurately and on time within contract schedules
		N	0	
Historically Underutilized Business Report	Not more than 5 days late	Y	5	Submitted within contract schedule each month to the Alliance (report includes monthly summary by Institutional Participant)
		N	0	
Customer Satisfaction	90% of metric	≤ 3%	25	Charter Broker will attain customer satisfaction score of 90% or greater. Survey content and distribution to be agreed with Charter Broker to ensure appropriate measures recorded.
		>3%-≤8%	15	
		>8%-≤15%	10	
		>15%	0	

2.2 QBR Meeting Reports and Metrics

Charter Broker will prepare and deliver to the UT System Contract Administrator for review at each QBR a report of the Key Performance Indicators and Business Relationship Indicators. The Key Performance Indicator report will be provided both in the aggregate, reflecting the total score for all Institutional Participants, and also will be reported separately for each Institutional Participant.

An advance copy of the Key Performance Indicator Report will be sent to the UT System Contract Administrator no less than ten (10) days prior to the scheduled QBR meeting date.

All report requirements may be modified by Institutional Participants within Charter Broker's reasonable capabilities to meet local requirements and service levels. Metrics may be revised upon mutual agreement between Charter Broker and the UT System Contract Administrator or the applicable Institutional Participant.

3.0 Charter Broker Evaluation and Rating

No less than once each quarter the UT System Contract Administrator will prepare and present to Charter Broker a scorecard of Charter Broker's performance based on their measured results under each of the KPIs for the preceding quarter. The scorecard will be presented and reviewed by Charter Broker and the UT System Contract Administrator during each QBR.

After the initial Agreement implementation period of six (6) months starting on the Effective Date, Charter Broker must obtain a minimum composite score of 85 from UT System for each quarter during the remaining term of this Agreement.

4.0 Corrective Action Plan

The UT System Contract Administrator will notify Charter Broker during a QBR if Charter Broker receives a composite score of less than 85 during the previous quarter or a score of Zero ("0") for any KPI.

Within fifteen (15) calendar days after receipt of such notice, Charter Broker will provide the UT System Contract Administrator with a written corrective action plan ("**CAP**") acceptable to the UT System Contract Administrator to address such unacceptable scores. At a minimum, the CAP will address Charter Broker's performance issues resulting in unacceptable score(s) and contain a root cause analysis of the problems causing such performance issue, proposed solutions to those problems, proposed process modifications to prevent recurrence of such problems, a time frame for Charter Broker's implementation of the proposed solutions and process modifications, and the person(s) who will be responsible for Charter Broker's implementation of the CAP. The CAP will be presented to the UT System Contract Administrator for concurrence prior to implementation. Concurrence with the CAP by the UT System Contract Administrator will not be unreasonably withheld or delayed. Concurrence with the CAP will not constitute a waiver by UT System of any rights regarding remedies.

5.0 Corrective Action and Remedies

If Charter Broker's implementation of the CAP does not result in a minimum composite score of 85 or better or if two (2) or more KPI's remain with a score of Zero ("0") during each subsequent calendar quarter, UT System may, at its sole discretion:

- Permit Charter Broker to resubmit a further Corrective Action Plan, or
- Exercise other remedies available under this Agreement or applicable law.

APPENDIX FOUR

FORM OF PREFERRED SUPPLIER AGREEMENT

for

CHARTER OPERATOR SERVICES

between

THE UNIVERSITY OF TEXAS SYSTEM

and

University of Texas Agreement Number: _____

This Preferred Supplier Agreement, dated effective as of _____, 20__ (“**Effective Date**”), is made by and between **The University of Texas System** (“**UT System**”), a state agency and institution of higher education authorized under the laws of the State of Texas, and _____ (“**Charter Operator**”), a _____ corporation, Federal Tax Identification Number _____, with its principal offices located at _____.

This Agreement specifies the terms and conditions applicable to the supply by Charter Operator of certain air charter operator services, all as further described below.

Now, therefore, the parties, intending to be legally bound, agree as follows:

Definitions

“**Alliance**” means The University of Texas System Supply Chain Alliance, a group purchasing organization established by UT System to conduct and coordinate strategic purchasing initiatives across UT System. UT System health and academic institutions are members of the Alliance. The Alliance is also affiliated with other institutions of higher education that have executed an Alliance affiliate agreement.

“**Institutional Participant**” means an Alliance member or affiliated institution of higher education, as designated by the Alliance, that has executed an Institutional Participation Agreement in connection with this Agreement.

“Institutional Participation Agreement” or **“IPA”** means the Institutional Participation Agreement attached to this Agreement as **Rider 300** and incorporated for all purposes, to be executed by each Institutional Participant.

“Services” means the supply by Charter Operator of certain air charter operator services, as described throughout this Agreement.

“UT Party” means, as applicable, UT System and/or the Institutional Participants.

“UT System Contract Administrator” means the Director of the Alliance, who will be the initial contact for all contractual concerns related to this Agreement.

SECTION 1 – Scope of Work:

1.1 Charter Operator will provide, on a non-exclusive basis, air charter services requested by Institutional Participant in accordance with the terms of this Agreement, with the details of particular charter flight services to be specified in an Engagement Letter to be signed by Charter Operator and Institutional Participant (**“Engagement Letter”**). Each Engagement Letter will be substantially in the form shown in **Rider 300** to this Agreement. The fees for each charter flight will be listed using the format specified in the Engagement Letter. Each accessorial service or additional fee (surcharges, de-icing, etc.) must be itemized separately in the Engagement Letter and must be listed on a separate line on any invoice for payment.

1.2 Each Institutional Participant will have charter coordinator(s) who will serve as primary contact(s) with Charter Operator. The coordinator(s) will initiate contact with Charter Operator, communicate travel needs, and arrange for authorization to accept a specific offer from Charter Operator to supply services to meet the needs. Charter Operator will not be authorized to supply any services until the related Engagement Letter is signed by an authorized representative of Institutional Participant.

1.3 Institutional Participant will make the advance payments (the **“Advance Payments”**) and residual payments (the **“Residual Payments”**) to be described in the Engagement Letter to reserve the related charter flights, and those payments will be credited against the total payment due under the Engagement Letter’s fee schedule. The total payment includes flight charges, ground handling fees, accessorial services and all government-imposed taxes, security fees and similar government charges assessed for the charter flights. Institutional Participant will deliver the Advance Payments and the Residual Payments to Charter Operator (or, if applicable, Charter Operator’s designated depository bank) in accordance with the instructions in such schedule. This Agreement is conditioned upon the Advance Payments and the Residual Payments being delivered to Charter Operator on the dates specified in such schedule. The parties acknowledge that Department of Transportation (**“DOT”**) regulations (14 Code of Federal Regulations, Section 212.3(e)) require Institutional Participant either to post a satisfactory bond or make arrangements for full payment for charter flights prior to flight departure. Charter Operator will maintain a surety bond, letter of credit or escrow agreement as protections for Advance Payments, in accordance with DOT regulations. Charter Operator will include in the Engagement Letter the name and address of the surety company or bank whose bond, letter of credit or escrow agreement secures the Advance Payments, pending the completion of the related charter flights. Claims against the surety bond or letter of credit may only be made for non-performance of charter flights, and DOT regulations state that the surety company or bank will be released from all liability, unless Institutional Participant files a claim with the Charter Operator (or, if the Charter Operator is not available, with the surety or bank) within 60 days after the cancellation of a charter flight with respect to which Institutional Participant’s Advance Payment is secured by the bond or letter of credit. During the term of this Agreement, Charter Operator may change the company providing the

bond, letter of credit or escrow agreement, or substitute one form of security arrangement for another (escrow arrangement, letter of credit or a surety bond), upon advance notice to Institutional Participant.

1.4 The parties acknowledge that, if a particular charter flight is to be operated with a large aircraft as defined in relevant DOT regulations, Charter Operator must maintain an escrow account and/or a security agreement in conformity with DOT regulations. If Charter Operator uses an escrow account to comply with the regulation, Institutional Participant will deposit in that account the amounts due to Charter Operator under this Agreement, to be withdrawn by the charter operator only as permitted under the DOT regulations.

1.5 The Institutional Participant that requests any particular air charter-related services will be solely responsible for specifying those services and paying for them, including all applicable broker fees.

1.7 Before each flight, Charter Operator will confirm to Institutional Participant that the Air Carrier Certificate required by federal regulations is still in good standing with the FAA and that both the aircraft and personnel meet FAA standards. Charter Operator will furnish a copy of the Air Carrier Certificate to Institutional Participant not less than thirty (30) days prior to the scheduled departure date of the related flight. If such certificate is not furnished as required, Institutional Participant may cancel the Engagement Letter with Charter Operator, without penalty.

1.8 Institutional Participant will ensure that passengers on the charter flights comply with government travel requirements, including passenger identification and any required travel documents for entry or exit from a foreign country, as applicable. Institutional Participant will prepare the charter flight passenger manifest and confirm that passengers are properly boarded in accordance with such manifest. Institutional Participant will notify charter flight passengers of the scheduled departure times and any delay or cancellation to the charter flights. Institutional Participant will ensure that charter flight passengers identify each piece of checked baggage with their name on the outside of the bag. Institutional Participant will provide written notice to each charter flight passenger of Charter Operator's rules and limitations on liability for checked baggage. The parties acknowledge that the charter flights operated pursuant to this Agreement are not "public charters" as defined in 14 CFR Part 380, and Institutional Participant will not sell, barter or receive any payment from passengers for seats on the charter flights.

1.9 The parties acknowledge that, if a particular charter flight is to be operated with a large aircraft as defined in relevant DOT regulations, the charter operator must maintain an escrow account and/or a security agreement in conformity with DOT regulations. If the charter operator uses an escrow account to comply with the regulation, Broker will deposit in that account the amounts due to the charter operator under the agreement between Institutional Participant and the charter operator, to be withdrawn by the charter operator only as permitted under the DOT regulations.

1.10 Institutional Participant may request a change in the aircraft, departure dates or arrival/departure times for flights listed in the Engagement Letter, with the understanding that all such requests are subject to the availability of Charter Operator's aircraft and crew members, and that any mutually agreed adjustments may result in increased prices for the related flights. Institutional Participant acknowledges that schedules and crews for each charter flight listed in the Engagement Letter may be assigned two months prior to each flight.

1.11 If Institutional Participant cancels a charter flight for reasons other than (a) a force majeure occurrence, or (b) a material breach by Charter Operator of this Agreement, then Institutional Participant will pay to Charter Operator the cancellation charges specified in the Engagement Letter.

1.12 Charter Operator's rules and limitations on liability for checked baggage are attached as **Rider 700**. Institutional Participant will distribute a copy of these rules and limitations to all charter passengers as specified in **Section 1.8** above. Institutional Participant acknowledges that Charter Operator's rules contain liability limitations for all checked baggage and list items that are considered unacceptable for transportation in checked baggage, including photographic and cinematographic equipment, projectors, computers, electronic devices and similar items. Such equipment should be carried by charter flight passengers in the passenger compartment of the aircraft, and Charter Operator assumes no responsibility for delay, damage, loss, or destruction of photographic or cinematographic equipment, projectors, computers, electronic devices and similar items if they are included in checked baggage by charter flight passengers.

SECTION 2 – Term:

The term of this Agreement will begin on the Effective Date and expire _____ [*initial fixed term of five years*], unless earlier terminated in accordance with the provisions of this Agreement. UT System will have the option to extend the term of this Agreement for three additional one-year periods, upon written notice given to Charter Operator at least 90 days in advance of the renewal term.

The Parties acknowledge that, prior to any scheduled expiration of this Agreement, UT System may conduct a competitive procurement for the purchase of products and services comparable to the Services, for the period following expiration. If Charter Operator is not selected as the source for the succeeding period, Institutional Participants may need to transition over a period of time to purchasing the products and services primarily from the new source, rather than from Charter Operator. In such event, in order to allow for an orderly transition, Institutional Participants may wish to continue purchasing from Charter Operator for a limited period of time after the anticipated expiration of this Agreement. As a result, Charter Operator agrees that, notwithstanding any other provision of this Agreement:

- Charter Operator will make the Services available for purchase by Institutional Participants after _____, 20_ (or the anticipated expiration date under any extended term of this Agreement), for a transitional period of six months (the "**Transition Period**"), on the same terms and conditions set forth in this Agreement.
- The Administrative Fee provided for in **Rider 200** (Price Schedule) will apply to all Services purchased hereunder during the Transition Period, and all related obligations of Charter Operator under this Agreement (such as to report sales volumes to UT System) will continue during such period.
- The Administrative Fee will apply to all future payments made by Institutional Participants for purchases of Services initiated during this Agreement, including the Transition Period, even if such payments are made following expiration of this Agreement.
- All incentive / rebate trigger amounts that may be established in this Agreement for any calendar year will be pro-rated automatically on a straight-line basis, to account for partial calendar years during which this Agreement exists, including the Transition Period.

SECTION 3 – Amendment:

No change, modification, alteration, or waiver of this Agreement will be effective unless it is set forth in a written agreement that is signed by UT System and Charter Operator.

SECTION 4 – Performance by Charter Operator:

Charter Operator will perform its obligations under this Agreement to the satisfaction of UT Party. Time is of the essence in connection with this Agreement. UT Party will not have any obligation to accept late performance or waive timely performance by Charter Operator. Charter Operator will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local laws, regulations or ordinances, for its performance hereunder.

SECTION 5 – Family Code Child Support Certification:

Pursuant to Section 231.006, *Family Code*, Charter Operator certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

SECTION 6 – Eligibility Certifications:

Pursuant to Sections 2155.004 and 2155.006, *Texas Government Code*, Charter Operator certifies that it has not received compensation for participation in the preparation of the Request for Proposal related to this Agreement and is not ineligible to receive the award of or payments under this Agreement; and acknowledges that this Agreement may be terminated and payment withheld if these certifications are inaccurate.

Pursuant to Section 361.965, Texas Health and Safety Code, Charter Operator also certifies that it is in full compliance with the State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Chapter 361, Subchapter Y, Texas Health and Safety Code, and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in Title 30, Chapter 328, Subchapter I, Texas Administrative Code. Charter Operator acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

SECTION 7 – Tax Certification:

If Charter Operator is a taxable entity as defined by Chapter 171, Texas Tax Code (“**Chapter 171**”), then Charter Operator certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Charter Operator is exempt from the payment of those taxes, or that Charter Operator is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

SECTION 8 – Payment of Debt or Delinquency to the State:

Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Charter Operator agrees that any payments owing to Charter Operator under this Agreement may be applied directly toward any debt or delinquency that Charter Operator owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

SECTION 9 – Loss of Funding:

Performance by UT Party under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”) and/or allocation of funds by the Board of Regents of The University of Texas System (the “**Board**”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then UT Party will issue written notice to Charter Operator and UT Party may terminate this Agreement without further duty or obligation hereunder, other than payment for goods and services already delivered or provided to Institutional Participant. Charter Operator acknowledges that appropriation, allotment, and allocation of funds are beyond the control of UT Party.

SECTION 10 – Force Majeure:

None of the parties to this Agreement will be liable or responsible to another for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (“**force majeure occurrence**”). Provided, however, in the event of a force majeure occurrence, Charter Operator agrees to use its best efforts to mitigate the impact of the occurrence so that UT Party may continue to provide healthcare services during the occurrence.

SECTION 11 – Notices:

Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via registered or certified mail, overnight courier, confirmed facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one business day after delivery to the courier, (iii) if sent by facsimile (to the extent a facsimile number is set forth below), when transmitted, and (iv) if sent by email (to the extent an email address is set forth below), when received:

If to UT System:

Office of Business Affairs
 The University of Texas System
 201 W. 7th Street
 Attn: Executive Vice Chancellor for Business Affairs
 Austin, Texas 78701-2982
 Fax: 512-499-4289
 Email: Lloyd@utsystem.edu

with copy to:

The University of Texas System Supply Chain Alliance
 Mid Campus Building
 7007 Bertner Ave., Suite 11.2339
 Houston, TX 77030
 Attention: Director
 Fax : 713-792-8084
 Email:jfjoshua@mdanderson.org

If to Charter Operator:

 Attn: _____

Fax: _____
 Email: _____

If to an Institutional Participant: The contact information for Institutional Participant as set forth in its IPA.

with copy to:

Office of Business Affairs
 The University of Texas System
 201 W. 7th Street
 Attn: Executive Vice Chancellor for Business Affairs
 Austin, Texas 78701-2982
 Fax: 512-499-4289
 Email: LegalNotices@utsystem.edu

and

The University of Texas System Supply Chain Alliance
 Mid Campus Building
 7007 Bertner Ave., Suite 11.2339
 Houston, TX 77030
 Attention: Director
 Fax: 713-792-8084
 Email: jfjoshua@mdanderson.org

or such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

SECTION 12 – Charter Operator's Obligations.

12.1 Charter Operator represents that it has the knowledge, ability, skills, and resources to perform its obligations hereunder. Throughout the term of this Agreement, Charter Operator must be IOSA (IATA Operational Safety Audit Program) registered. This applies to 121 and 125 operators only. Charter Operator must provide proof of certificate and must be placed on IATA registry website. Eligibility must be verified at <http://www.iata.org/whatwedo/safety/audit/iosa/Pages/registry.aspx?Query=all>.

NOTE: Exception to requirement above: In lieu of an applicant meeting charter operator requirements, carrier that has passed a safety audit conducted by an accredited FAR Part 121/125/135 audit services provider within the last twelve (12) months may be utilized.

Part 135 Operators must be in compliance with applicable regulations as outlined in Federal Aviation Regulations Part 135: Operating Requirements: Commuter & On-Demand Operations & Rules Governing Persons on Board Such Aircraft

The parties acknowledge and agree that charter flights and passengers traveling on charter flights are subject to the rules and regulations of governmental agencies having jurisdiction, including the DOT, the U.S. Federal Aviation Administration (FAA), the U.S. Transportation Security Administration (TSA) and, unless otherwise stated herein, the same in-flight passenger and baggage rules established by Charter Operator for passengers traveling on Charter Operator's scheduled flights. Charter Operator has exclusive control over matters pertaining to the operation and safety of the charter flights, including, but not limited to matters pertaining to the aircraft, crews, and operational standards and controls applied by Charter Operator such as the weight, size, type, contents, and value of baggage or property to be accommodated. Charter Operator may, but is not obligated to, examine all baggage and cargo. No article will be permitted on board the aircraft, either as baggage, cargo or otherwise, which cannot

be transported in accordance with Charter Operator's conditions of carriage, tariffs, rules, regulations or applicable laws and governmental regulations, or which in Charter Operator's sole opinion would endanger the safety of the flight, crew or passengers or would not be suitable for transportation on the aircraft. All persons and property aboard charter flights are subject to the authority of the flight crew. Institutional Participant will ensure that all charter flight participants comply with Charter Operator's standards of conduct for passengers on charter flights. Charter Operator may remove at any point any passengers or property who or which might involve a hazard or risk to passengers, crew, other persons or property or who or which is otherwise deemed unsuitable for transportation. All flights are subject to cancellation, interruption or deviation in Charter Operator's sole discretion because of mechanical difficulties, damage to the aircraft, adverse weather conditions, force majeure occurrences, and similar circumstances which, in Charter Operator's opinion, require such action. Charter Operator may operate charter flights with substitute equipment for safety or operational reasons. The departure and arrival times listed in the Engagement Letter are indications of approximate times, and the parties acknowledge that flight delays may be caused by weather, air traffic control or airport conditions, mechanical problems or force majeure occurrences.

12.2 Charter Operator will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance hereunder. Charter Operator will cause all persons connected with the Charter Operator directly in charge of performance hereunder to be duly registered and/or licensed under all applicable federal, state and municipal, laws, regulations, codes, ordinances and orders, including the rules, regulations and procedures promulgated by the Board or Institutional Participants, and those of any other body or authority having jurisdiction (collectively, "**Applicable Law**").

12.3 Charter Operator represents, warrants and agrees that (a) it will use commercially reasonable efforts to perform hereunder, in a good and workmanlike manner and in accordance with commercially reasonable standards of Charter Operator's profession or business, and (b) all good and services provided hereunder will be of the quality that prevails among similar businesses engaged in providing similar products and services in major United States urban areas under the same or similar circumstances.

12.4 Charter Operator warrants and agrees that all Services supplied under this Agreement will be accurate and free from any material defects. Charter Operator's performance hereunder will at no time be in any way diminished by reason of any approval by UT Party nor will Charter Operator be released from any liability by reason of any approval by UT Party, it being agreed that UT Party at all times is relying upon Charter Operator's skill and knowledge in performing hereunder. Charter Operator will, at its own cost, correct all material defects in Services supplied under this Agreement, as soon as practical after Charter Operator becomes aware of the defects. If Charter Operator fails to correct such material defects within a reasonable time, then UT Party may correct the defect at Charter Operator's expense. This remedy is in addition to, and not in substitution for, any other remedy for the defect that UT Party may have at law or in equity.

12.5 Charter Operator will call to the attention of UT Party, in writing, all information in any materials supplied to Charter Operator (by UT Party or any other party) that Charter Operator regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.

12.6 Charter Operator represents that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Charter Operator has been duly authorized to act for and bind Charter

Operator; or (ii) if it is a partnership, limited partnership, limited liability partnership, or limited liability company then it has all necessary power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder, and the individual executing this Agreement on behalf of Charter Operator has been duly authorized to act for and bind Charter Operator.

12.7 Charter Operator represents and warrants that neither the execution and delivery of this Agreement by Charter Operator nor Charter Operator's performance hereunder will (a) result in the violation of any provision [i] if a corporation, of Charter Operator's articles of incorporation or by-laws, [ii] if a limited liability company, of its articles of organization or regulations, or [iii] if a partnership, of any partnership agreement by which Charter Operator is bound; (b) result in the violation of any provision of any agreement by which Charter Operator is bound; or (c) to the best of Charter Operator's knowledge and belief, conflict with any order or decree of any court or other body or authority having jurisdiction.

SECTION 13 – State Auditor's Office:

Charter Operator understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "**Auditor**"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), Education Code. Charter Operator agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Charter Operator will include this provision in all contracts with permitted subcontractors.

SECTION 14 –Governing Law:

Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties thereto and all of the terms and conditions thereof will be construed, interpreted and applied in accordance with and governed by and enforced under the internal laws of the State of Texas.

SECTION 15 – Breach of Contract Claims:

15.1 To the extent that Chapter 2260, Texas Government Code, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other Applicable Law, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by UT Party and Charter Operator to attempt to resolve any claim for breach of contract made by Charter Operator:

15.1.1 Charter Operator's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Charter Operator will submit written notice, as required by subchapter B of Chapter 2260, to UT Party in accordance with the notice provisions in this Agreement. Charter Operator's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that UT Party allegedly breached, the amount of damages Charter Operator seeks, and the method used to calculate the damages. Compliance by Charter Operator with subchapter B of Chapter 2260 is a required prerequisite to Charter Operator's filing of a contested case proceeding under subchapter C of Chapter 2260. The UT Party's chief business officer, or another officer of UT Party as may be designated from time to time by UT Party by written notice thereof to Charter Operator in accordance with the notice provisions in this

Agreement, will examine Charter Operator's claim and any counterclaim and negotiate with Charter Operator in an effort to resolve the claims.

15.1.2 If the parties are unable to resolve their disputes under Section 4.11.1.1, the contested case process provided in subchapter C of Chapter 2260 is Charter Operator's sole and exclusive process for seeking a remedy for any and all of Charter Operator's claims for breach of this Agreement by UT Party.

15.1.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by UT Party nor any other conduct, action or inaction of any representative of UT Party relating to this Agreement constitutes or is intended to constitute a waiver of UT Party's or the state's sovereign immunity to suit and (ii) UT Party has not waived its right to seek redress in the courts.

15.2 The submission, processing and resolution of Charter Operator's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.

15.3 UT Party and Charter Operator agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

SECTION 16 – Compliance with Law:

Charter Operator will perform hereunder in compliance with all Applicable Law. Charter Operator represents and warrants that neither Charter Operator nor any firm, corporation or institution represented by Charter Operator, nor anyone acting for such firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Charter Operator's response to UT System's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process.

SECTION 17 – UT Party's Right to Audit:

At any time during the term of this Agreement and for a period of four (4) years thereafter UT System or a duly authorized audit representative of UT System, or the State of Texas, at its expense and at reasonable times, reserves the right to audit Charter Operator's records and books directly related to charges paid for all products and services provided under this Agreement. The right will not extend to any fixed fee component of the charges or to any services performed more than one year prior to the date of request for review. In the event such an audit by UT System reveals any errors or overpayments by UT System which error or overpayment is confirmed by Charter Operator, Charter Operator will refund UT System the full amount of such overpayments within thirty (30) days of such audit findings, or UT System, at its option, reserves the right to deduct such amounts owing to UT System from any payments due Charter Operator

SECTION 18 – Access to Documents:

To the extent applicable to this Agreement, in accordance with Section 1861(v)(l)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Charter Operator agrees to allow, during and for a period of not less than four (4) years after this

Agreement term, access to this Agreement and its books, documents, and records; and contracts between Charter Operator and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

SECTION 19 – Insurance:

- 19.1** Charter Operator, consistent with its status as an independent contractor, will carry at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, and in amounts not less than the following minimum limits of coverage:

Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000.

Employers Liability – Each Accident	\$1,000,000
Employers Liability – Each Employee	\$1,000,000
Employers Liability – Policy Limit	\$1,000,000

Workers' Compensation policy must include states where contractor's employees will be performing operation for University.

Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 50,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000

The required Commercial General Liability policy will be issued on a form that insurers Charter Operator's and subcontractor's liability and bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for bodily injury and property damage.

- 19.2** Charter Operator will maintain at its sole expense, an Aircraft Hull and Liability Policy including coverage for:

19.2.1 Liability for Bodily Injury (including passengers) and property damage with minimum limits of liability insurance set at \$25 million for light turboprop aircraft, \$50 million for light jet aircraft and \$3 million per seat for large aircraft and including: War Risks endorsement; The Board of Regents of the University of Texas System and The University of Texas System and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents as additional insured; and primary and non-contributory language.

19.2.2 Aircraft hull insurance in an amount equal to the value of the aircraft and including: War Risks endorsement; and a waiver of subrogation in favor of The University of Texas System and The Board of Regents of The University of Texas System and their

respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents.

19.3 If Charter Operator fails to fulfill its obligations contained in this **Section 19**, UT System may, upon notice to Charter Operator, undertake the performance of the insurance requirements of this Section by contracting for such insurance directly; provided that UT System will include Charter Operator as an additional insured on UT System's policies. If UT System undertakes the performance of the insurance requirements of this **Section 19** by contracting for such insurance directly, Charter Operator promptly will reimburse UT System for the full cost thereof, upon written request. If Charter Operator fails to pay any of the renewal premiums for the expiring policies, UT System will have the right to make the payments and set off the amount thereof against the next payment coming due to Charter Operator under this Agreement. Upon Charter Operator's request, UT System will furnish to Charter Operator evidence of such insurance in certificate form.

19.4 Charter Operator will deliver to UT System:

Evidence of insurance on a Texas Department of Insurance approved certificate (Acord 2510/05 is TDI preapproved) form verifying the existence and actual limits of all required insurance policies prior to the execution and delivery of the Agreement. Additional evidence of insurance will be provided upon renewal of each policy verifying the continued existence of all required insurance no later than ten (10) days after each annual insurance policy renewal.

All insurance policies (with the exception of workers' compensation and employer's liability) will be endorsed and name The University of Texas System and the Board of Regents of The University of Texas System as additional insureds for liability caused in whole or in part by Charter Operator's acts or omissions with respect to its on-going operations up to the actual liability limits of the required insurance policies maintained by Charter Operator. Commercial General Liability Additional Insured endorsement will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

19.5 Charter Operator hereby waives all rights of subrogation against the Board of Regents of The University of Texas System and The University of Texas System. All insurance policies will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System and The University of Texas System. No policy will be cancelled until after thirty (30) days unconditional written notice to UT System. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to UT System thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required.

19.6 Charter Operator will pay any deductible or self-insurance retention under its policies for any loss that occurs in the performance of this Agreement. Any self-insured retention must be declared to and approved by UT System prior to the performance of any work by Charter Operator under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

19.7 Certificates of Insurance and additional insured endorsements as required by this Agreement will be mailed, faxed, or emailed to the following UT System contact:

Eric Agnew

The University of Texas System Administration
Office of Risk Management
210 West 6th Street, Room B140E
Austin, TX 78701
Facsimile Number: 512-499-4524
Email: eagnew@utsystem.edu

- 19.8** Charter Operator's insurance will be primary to any insurance carried or self-insurance program established by UT System or an Institutional Participant. Charter Operator's insurance will be kept in force until all work has been fully performed.

SECTION 20 – Indemnification:

20.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CHARTER OPERATOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UT PARTY, AND HOLD HARMLESS UT PARTY AND ITS AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "**INDEMNITEES**") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "**CLAIMS**") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CHARTER OPERATOR'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT, AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CHARTER OPERATOR, ANYONE DIRECTLY EMPLOYED BY CHARTER OPERATOR OR ANYONE FOR WHOSE ACTS CHARTER OPERATOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

20.2 IN ADDITION, CHARTER OPERATOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UT PARTY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CHARTER OPERATOR, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF CHARTER OPERATOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UT PARTIES WILL PROMPTLY NOTIFY CHARTER OPERATOR AND CHARTER OPERATOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UT PARTIES AGREE TO REASONABLY COOPERATE WITH CHARTER OPERATOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

SECTION 21 – Ethics Matters; No Financial Interest:

Charter Operator and its employees, agents, representatives and subcontractors have read and understand UT System's Conflicts of Interest Policy available at <http://www.utsystem.edu/policy/policies/int160.html>, UT System's Standards of Conduct Guide available at <http://www.utsystem.edu/systemcompliance/>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Charter Operator nor its employees, agents, representatives or subcontractors will assist or cause UT Party's employees to violate UT System's Conflicts of Interest Policy, provisions described by UT System's Standards of Conduct Guide, or applicable state ethics laws or rules. Charter Operator represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

SECTION 22 – Assignment of Overcharge Claims:

Charter Operator hereby assigns to UT Party any and all claims for overcharges associated with this Agreement arising under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq., or arising under the antitrust laws of the State of Texas, Business and Commerce Code, Sec. 15.01, et seq.

SECTION 23 – Assignment and Subcontracting:

Except as specifically provided in any Historically Underutilized Business Subcontracting Plan (“HSP”) attached as **Rider 500** and incorporated for all purposes, neither Charter Operator's interest in this Agreement, its duties and obligations under this Agreement nor fees due to Charter Operator under this Agreement may be subcontracted, assigned, delegated or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (1) not be binding on UT Party; and (2) be a breach of this Agreement for which Charter Operator will be subject to any remedial actions provided by Texas law, including Chapter 2161, Texas Government Code, and 34 Texas Administrative Code (“TAC”) Section 20.14. UT Party may report nonperformance under this Agreement to the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, “TPSS”) in accordance with 34 TAC Chapter 20, Subchapter F, Vendor Performance and Debarment Program. The benefits and burdens of this Agreement are, however, assignable by UT Party.

SECTION 24 – Historically Underutilized Business Subcontracting Plan:

24.1 If an HSP is attached to this Agreement, Charter Operator agrees to use good faith efforts to subcontract the scope of work in accordance with the HSP. Charter Operator agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to UT Party in the format required by the TPSS. Submission of compliance reports will be required as a condition for payment under this Agreement. If UT Party determines that Charter Operator has failed to subcontract as set out in the HSP, UT Party will notify Charter Operator of any deficiencies and give Charter Operator an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Charter Operator. If UT Party determines that Charter Operator failed to implement the HSP in good faith, UT Party, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Chapter 20, Subchapter F, Vendor Performance and Debarment Program. UT Party may also revoke this Agreement for breach and make a claim against the Charter Operator.

24.2 If at any time during the term of this Agreement, Charter Operator desires to change the HSP, before the proposed changes become effective (1) Charter Operator must comply with 34 TAC Section 20.14; (2) the changes must be reviewed and approved by UT Party; and (3) if UT Party approves

changes to the HSP, this Agreement must be amended in accordance with Section 2.5.3 to replace the HSP with the revised subcontracting plan.

24.3 If UT Party expands the scope of this Agreement through a change order or any other amendment, UT Party will determine if the additional scope of work contains probable subcontracting opportunities not identified in the initial solicitation for the scope of work. If UT Party determines additional probable subcontracting opportunities exist, Charter Operator will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (1) this Agreement may be amended to include the additional scope of work; or (2) Charter Operator may perform the additional scope of work. If Charter Operator subcontracts any of the additional subcontracting opportunities identified by UT Party without prior authorization and without complying with 34 TAC Section 20.14, Charter Operator will be deemed to be in breach of this Agreement under Section 4.19 and will be subject to any remedial actions provided by Texas law including Chapter 2161, Texas Government Code, and 34 TAC Section 20.14. UT Party may report nonperformance under this Agreement to the TPSS in accordance with 34 TAC Chapter 20, Subchapter F, Vendor Performance and Debarment Program.

SECTION 25 – Payment and Invoicing:

Institutional Participant agrees to pay fees due under this Agreement in accordance with the Texas Prompt Payment Act (“**Act**”), Chapter 2251, *Texas Government Code*. Pursuant to the Act, payment will be deemed late on the 31st day after the later of: 1) the date the performance is completed, or 2) the date Institutional Participant receives an invoice for the related goods or services. Institutional Participant will be responsible for interest on overdue payments equal to the sum of: 1) one percent, plus 2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year (Institutional Participant’s fiscal year begins September 1) that does not fall on a Saturday or Sunday. Institutional Participant will have the right to verify the details set forth in Charter Operator’s invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Charter Operator at mutually convenient times; (b) examining any reports with respect to the related goods or services; and (c) other reasonable action.

Section 51.012, *Texas Education Code*, authorizes UT Party to make any payment through electronic funds transfer methods. Charter Operator agrees to receive payments from UT Party through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, UT Party will confirm Charter Operator’s banking information. Any changes to Charter Operator’s banking information will be communicated by Charter Operator to UT Party in writing at least thirty (30) days in advance of the effective date of the change.

SECTION 26 – Limitations:

The parties to this Agreement are aware that there are constitutional and statutory limitations on the authority of UT Party (a state agency) to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys’ fees; dispute resolution; indemnities; and confidentiality (collectively, the “**Limitations**”), and terms and conditions related to the Limitations will not be binding on UT Party except to the extent authorized by the laws and Constitution of the State of Texas.

SECTION 27 – Affirmative Action:

Charter Operator agrees that either a written copy of Charter Operator's Civil Rights "Affirmative Action Compliance Program" or, if Charter Operator is not required to have such a written program, the reason Charter Operator is not subject to such requirement, is attached to this Agreement as **Rider 600** and incorporated for all purposes.

SECTION 28 – OSHA Compliance:

Charter Operator represents and warrants that all products and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-598) and its regulations in effect or proposed as of the date of this Agreement.

SECTION 29 - Certifications of Nonsegregated Facilities and Equal Employment Opportunities Compliance:

Charter Operator certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Charter Operator agrees that a breach of this certification is a violation of the Equal Opportunity clause in this Agreement. The term "**segregated facilities**" means any waiting rooms, work area, rest rooms and wash rooms, entertainment areas, transportation, or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Charter Operator further agrees that, except where it has contracts prior to the award with subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Charter Operator will retain such certifications for each one of its subcontractors in Charter Operator's files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Charter Operator understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

SECTION 30 – Premises Rules:

If this Agreement requires Charter Operator's presence on UT Party's premises or in UT Party's facilities, Charter Operator agrees to cause its representatives, agents, employees and permitted subcontractors (if any) to become aware of, fully informed about, and in full compliance with all applicable UT Party rules and policies, including, without limitation, those relative to personal health,

security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions; consideration for students, patients and their families as well as employees; parking; and security.

SECTION 31 – Debarment:

Charter Operator confirms that neither Charter Operator nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States (“**U.S.**”) federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs issued by the U.S. General Services Administration. “**Principals**” means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Charter Operator will provide immediate written notification to UT Party if, at any time prior to award, Charter Operator learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when UT Party executes this Agreement. If it is later determined that Charter Operator knowingly rendered an erroneous certification, in addition to the other remedies available to UT Party, UT Party may terminate this Agreement for default by Charter Operator.

SECTION 32 – Office of Inspector General Certification:

Charter Operator acknowledges that UT Party is prohibited by federal regulations from allowing any employee, subcontractor, or agent of Charter Operator to work on site at UT Party premises or facilities if that individual is not eligible to work on federal healthcare programs such as Medicare, Medicaid, or other similar federal programs. Therefore, Charter Operator will not assign any employee, subcontractor or agent that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General (“**OIG**”) to work on site at UT Party premises or facilities. Charter Operator will perform an OIG sanctions check quarterly on each of its employees, subcontractors and agents during the time such employees, subcontractors and agents are assigned to work on site at UT Party premises or facilities. Charter Operator acknowledges that UT Party will require immediate removal of any employee, subcontractor or agent of Charter Operator assigned to work at UT Party premises or facilities if such employee, subcontractor or agent is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: <http://www.dhhs.gov/progorg/oig/cumsan/index.htm>.

SECTION 33 – Termination:

33.1 In the event of a material failure by either party to perform in accordance with the terms of this Agreement (“**default**”), the other, non-defaulting party may terminate this Agreement upon thirty (30) days’ written notice of termination setting forth the nature of the material failure. The termination will not be effective if the material failure is fully cured prior to the end of the 30-day period. No such termination will relieve the defaulting party from liability for the underlying default or breach of this Agreement or any other act or omission.

33.2 UT System may terminate this Agreement, without cause, upon written notice to Charter Operator; provided, however, this Agreement will not terminate until the later of (1) 90 days after receipt of notice of termination, or (2) the date that performance is complete under all purchase orders issued by Institutional Participant to Charter Operator prior to receipt of notice of termination. Institutional Participant may not issue any purchase orders after receipt of notice of termination. Termination of this Agreement will not relieve any party from liability for its default under or breach of this Agreement or any other act or omission of that party. In the event that this Agreement is terminated, then within thirty

(30) days after termination, Charter Operator will reimburse UT Party for all fees paid by UT Party to Charter Operator that were (a) not earned by Charter Operator prior to termination, or (b) for goods or services that UT Party did not receive from Charter Operator prior to termination.

33.3 UT System or Institutional Participant may terminate an IPA, without cause, upon written notice to Charter Operator; provided, however, the IPA will not terminate until the later of (1) thirty (30) days after receipt of notice of termination, or (2) the date that performance is complete under all purchase orders issued by Institutional Participant to Charter Operator prior to receipt of notice of termination. Institutional Participant may not issue any purchase orders after receipt of notice of termination. Termination of an IPA will not relieve any party from liability for its default under or breach of the IPA or any other act or omission of that party. In the event that an IPA is terminated, then within thirty (30) days after termination, Charter Operator will reimburse Institutional Participant for all fees paid by Institutional Participant to Charter Operator that were (a) not earned by Charter Operator prior to termination, or (b) for goods or services that Institutional Participant did not receive from Charter Operator prior to termination.

SECTION 34 – Authority:

The individuals executing this Agreement on behalf of each party have been duly authorized to act for and bind the party they represent.

SECTION 35 – Survival of Provisions:

Expiration or termination of this Agreement will not relieve either party of any obligations under this Agreement that by their nature survive such expiration or termination.

SECTION 36 – Confidentiality; Press Releases; Public Information:

36.1 Confidentiality and Safeguarding of UT Party Records. Under this Agreement, Charter Operator may (1) create, (2) receive from or on behalf of UT Party, or (3) have access to, UT Party's records or record systems (collectively, "**UT Party Records**"). However, it is expressly agreed that UT Party will not provide to Charter Operator, and Charter Operator will never seek to access, any UT Party Records that contain personally identifiable information regarding any individual that is not available to any requestor under the *Texas Public Information Act*, Chapter 552, Texas Government Code, including "directory information" of any student who has opted to prohibit the release of their "directory information" as that term is defined under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("**FERPA**") and its implementing regulations. Charter Operator represents, warrants, and agrees that it will: (1) hold UT Party Records in strict confidence and will not use or disclose UT Party Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by UT Party in writing; (2) safeguard UT Party Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security, as well as Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Charter Operator protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that UT Party Records are safeguarded and the confidentiality of UT Party Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with UT Party Rules regarding access to and use of UT Party's computer systems, including UTS 165 at <http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html>. At the request of UT Party, Charter Operator agrees to provide UT Party with a written summary of the procedures Charter Operator uses to safeguard and maintain the confidentiality of UT Party Records.

36.2 Notice of Impermissible Use. If an impermissible use or disclosure of any UT Party Records occurs, Charter Operator will provide written notice to UT Party within one (1) business day after Charter Operator's discovery of that use or disclosure. Charter Operator will promptly provide UT Party with all information requested by UT Party regarding the impermissible use or disclosure.

36.3 Return of UT Party Records. Charter Operator agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all UT Party Records created or received from or on behalf of UT Party will be (1) returned to UT Party, with no copies retained by Charter Operator; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any UT Party Records, Charter Operator will provide UT Party with written notice of Charter Operator's intent to destroy UT Party Records. Within five (5) days after destruction, Charter Operator will confirm to UT Party in writing the destruction of UT Party Records.

36.3 Disclosure. If Charter Operator discloses any UT Party Records to a subcontractor or agent, Charter Operator will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Charter Operator by this **Section 36**.

36.4 Press Releases. Charter Operator will not make any press releases, public statements, or advertisement referring to this Agreement, or release any information relative to this Agreement for publication, advertisement or any other purpose, without the prior written approval of UT Party.

36.5 Public Information. UT Party strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* ("TPIA"), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and at no additional charge to UT Party, Charter Operator will make any information created or exchanged with UT Party pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by UT Party that is accessible by the public.

36.6 Termination. In addition to any other termination rights set forth in this Agreement, and any other rights at law or equity, if UT Party reasonably determines that Charter Operator has breached any of the restrictions or obligations set forth in this Section, UT Party may immediately terminate this Agreement without notice or opportunity to cure.

36.7 Duration. The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

SECTION 37 – Tax Exemption

UT Party may be an agency of the State of Texas or other non-profit entity and may be exempt from certain state taxes under various exemption statutes, including Texas Sales & Use Tax in accordance with Section 151.309, *Tax Code*, and Title 34 *Texas Administrative Code* ("TAC") Section 3.322. Notwithstanding its exemption from certain state taxes, UT Party will be responsible for any taxes (except corporate income taxes, franchise taxes, and taxes on Charter Operator's personnel, including personal income tax and social security taxes) from which UT Party is not exempt. Charter Operator will provide reasonable cooperation and assistance to UT Party in obtaining any tax exemptions to which UT Party is entitled.

SECTION 38 – Undocumented Workers:

The *Immigration and Nationality Act* (8 *United States Code* 1324a) (“**Immigration Act**”) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form (“**I-9 Form**”) as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Charter Operator is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Charter Operator employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, UT Party may terminate this Agreement in accordance with Section 4.31. Charter Operator represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

SECTION 39 – Non-Exclusivity; No Required Quantities or Minimum Amounts:

Charter Operator understands that this Agreement is non-exclusive and does not obligate UT Party to purchase from Charter Operator any or all of its requirements for services that are the same as or similar to the Services provided hereunder. This Agreement does not establish any minimum quantity or minimum dollar amount of goods or services that UT Party must purchase from Charter Operator during the term of this Agreement.

SECTION 40 – Access by Individuals with Disabilities:

Charter Operator represents and warrants (“**EIR Accessibility Warranty**”) that the electronic and information resources and all associated information, documentation, and support that it provides under this Agreement (collectively, the “**EIRs**”) comply with the applicable requirements set forth in Title 1, Chapter 213, *Texas Administrative Code*, and Title 1, Chapter 206, Rule §206.70, *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M, *Government Code*). To the extent Charter Operator becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Charter Operator represents and warrants that it will, at no cost to UT Party, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event Charter Operator fails or is unable to do so, UT Party may terminate this Agreement, and Charter Operator will refund to UT Party all amounts UT Party has paid under this Agreement within thirty (30) days after the termination date.

SECTION 41 – Background Checks:

Charter Operator will not knowingly assign any individual to provide services on a UT Party's campus if the individual has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. If requested by any UT Party to comply with its policy, Charter Operator will perform appropriate criminal background checks on each individual who will provide such services on the UT Party's campus.

SECTION 42 – Business Associate Agreements:

Charter Operator acknowledges that the Institutional Participants may be subject to the Health Insurance Portability and Accountability Act of 1996, Public 104-191 (“**HIPAA**”) as amended by the Health Information Technology for Economic and Clinical Health, Title XII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) (“**HITECH Act**”). UT System and the respective Institutional Participants are separate entities for purposes of HIPAA. Therefore, Charter Operator will enter into a separate HIPAA Business Associate Agreement (“**BAA**”) with each Institutional Participant, as applicable, prior to accessing any Protected Health Information, as that term is defined by HIPAA, as part of the Services to be provided under this Agreement.

SECTION 43 – Entire Agreement; Modifications:

This Agreement supersedes all prior agreements, written or oral, between Charter Operator and UT System and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by UT System and Charter Operator.

SECTION 44 – Captions:

The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

SECTION 45 – Waivers:

No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

SECTION 46 – Binding Effect:

This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

SECTION 47 – Limitations of Liability:

Except for UT Party’s obligation (if any) to pay Charter Operator certain fees and expenses, UT Party will have no liability to Charter Operator or to anyone claiming through or under Charter Operator by reason of the execution or performance of this Agreement. Notwithstanding any duty or obligation of UT Party to Charter Operator or to anyone claiming through or under Charter Operator, no present or future affiliated enterprise, subcontractor, agent, officer, director, employee, representative, attorney or regent of UT Party, or anyone claiming under UT Party has or will have any personal liability to Charter Operator or to anyone claiming through or under Charter Operator by reason of the execution or performance of this Agreement.

SECTION 48 – Relationship of the Parties:

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Charter Operator is an independent contractor and is not a state employee, partner, joint venturer, or agent of UT Party. Charter Operator will not bind nor attempt to bind UT Party to any agreement or contract. As an independent contractor, Charter Operator is solely responsible for all taxes,

withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.

SECTION 49 – Severability:

In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

SECTION 50 – External Terms:

This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral ("**External Terms**"), concerning Charter Operator's performance under this Agreement. Such External Terms are null and void and will have no effect under this Agreement, regardless of whether UT Party or any of its employees, contractors, or agents consents or agrees to External Terms. External Terms include any shrinkwrap, clickwrap, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that UT Party, or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided solely by Charter Operator.

SECTION 51 – Conflicts:

In the event of a conflict between the terms and conditions of this Agreement and those of an IPA, the terms of this Agreement will control and govern.

SECTION 52 – Attachments:

The Riders listed below are attached to and fully incorporated into this Agreement as substantive parts of this Agreement:

- Rider 100** – Form of Institutional Participation Agreement
- Rider 200** – Pricing Schedule
- Rider 300** – Form of Engagement Letter for Particular Charter Flights
- Rider 400** – Supplier Relationship Management
- Rider 500** – HUB Subcontracting Plan
- Rider 600** – Affirmative Action Compliance Program
- Rider 700** – Charter Operator's Rules and Limitations on Liability for Checked Baggage

Having agreed to the foregoing terms, and with the intention of being legally bound, the parties have executed this Agreement on the dates shown below.

THE UNIVERSITY OF TEXAS SYSTEM

[CHARTER OPERATOR]

Signed: _____
William H. McRaven, Chancellor

Signed: _____

Printed Name: _____

Signed: _____
Scott C. Kelley, Executive Vice

Title: _____

Chancellor for Business Affairs

Date: _____

Date: _____

APPENDIX FOUR - 100

INSTITUTIONAL PARTICIPATION AGREEMENT

By entering into this Institutional Participation Agreement (“**Institutional Participation Agreement**”), the undersigned institution (“**Institutional Participant**”) agrees to the terms and conditions set forth in the Preferred Supplier Agreement between The University of Texas System and _____, Agreement Number UTSSCA_____, dated effective _____, 20__ (the “**Preferred Supplier Agreement**” or “**PSA**”). All of the terms and conditions of the PSA are incorporated into this Institutional Participation Agreement for all purposes. Unless otherwise specified in this Institutional Participation Agreement, all defined terms used in this Institutional Participation Agreement have the same meaning as assigned to those terms in the PSA.

By entering into this Institutional Participation Agreement, Institutional Participant is authorized to take full advantage of all of the benefits and provisions set forth in the PSA including, but not limited to, the benefits listed below, which are specified in detail in the PSA:

Benefits from Preferred Supplier Agreement:

To obtain a broad range of air charter operator services at discounted prices.

Institutional Participant’s Responsibilities

To the extent authorized by applicable law and relevant rules and regulations of UT System and Institutional Participant, Institutional Participant will use commercially reasonable efforts to perform the following responsibilities:

- Identify Charter Operator as the "preferred supplier" of certain air charter operator services.
- [tbd]

Institutional Participant’s notice address and contact information is:

The University of Texas at _____
 Street Address: _____
 Fax: _____
 Email: _____
 Attention: _____

Institutional Participant designates the following contacts who will be responsible for facilitating this Institutional Participation Agreement:

INSTITUTIONAL PARTICIPANT: Primary Contact:

Name: _____
 Title: _____
 Telephone: _____
 Fax: _____
 Email: _____

INSTITUTIONAL PARTICIPANT: HUB Contact:

Name: _____
Title: _____
Telephone: _____
Fax: _____
Email: _____

Charter Operator designates the following contact who will be responsible for facilitating this Institutional Participation Agreement:

CHARTER OPERATOR Primary Contact:

Name: _____
Title: _____
Telephone: _____
Fax: _____
Email: _____

Institutional Participant agrees to the terms of this Institutional Participation Agreement:

The University of Texas _____

By: _____
Printed Name and Title: _____
Signature: _____
Street: _____
City: _____ State: _____ Zip: _____
Date: _____

Upon activation of this Institutional Participation Agreement, Institutional Participant's Primary Contact will receive notification of activation via email. Please return signed completed form to the UT System Supply Chain Alliance Strategic Services Group at utsscainfo@mdanderson.org.

APPENDIX FOUR - 300

FORM OF ENGAGEMENT LETTER FOR PARTICULAR CHARTER FLIGHTS

[date]
Mr./Mrs. _____
The University of Texas _____

Dear Sir or Madam,

I am pleased to confirm, on behalf of *[name of Charter Operator]*, our engagement to provide to The University of Texas _____ the air charter flight services described in Schedule 1 below, for the fees specified in Schedule 1. Schedule 1 and the materials immediately following it are incorporated into and made a part of this Engagement Letter.

This Engagement Letter is subject to the terms and conditions of a certain Preferred Supplier Agreement, between The University of Texas System and *[Name of Charter Operator]*, University of Texas Agreement Number UTSSCA _____, dated as of _____, 2015 (the "PSA"), in which The University of Texas _____ is an Institutional Participant.

Sincerely,

[Name of Charter Operator]

By: _____
Authorized Signature
Title:
Date:

Acknowledged and Accepted:
University of Texas _____

By: _____
Title:
Date:

Schedule 1

City Pair	Aircraft	Flight	Flight No. or	Departure	Arrival	Advance	Residual	Total
Orig./Dest. Dest./Orig.	Equip.	Date*	Game Time* (Local)	Time* (Local)	Time* (Local)	Payment (Due Date*)	Payment (Due Date*)	Payment*
_____	_____	__/__/__	__:__	__:__	__:__	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____
_____	_____	__/__/__	__:__	__:__	__:__	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____
Total \$								_____
_____	_____	__/__/__	__:__	__:__	__:__	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____
_____	_____	__/__/__	__:__	__:__	__:__	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____
Total \$								_____
_____	_____	__/__/__	__:__	__:__	__:__	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____
_____	_____	__/__/__	__:__	__:__	__:__	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____
Total \$								_____
_____	_____	__/__/__	__:__	__:__	__:__	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____
_____	_____	__/__/__	__:__	__:__	__:__	\$ _____ (__/__/__)	\$ _____ (__/__/__)	\$ _____
Total \$								_____
Charter Flights and Related Services:							\$ _____	
Federal Excise Tax							\$ _____	
Federal Segment Fees:							\$ _____	
Total Payment for all Charter Flights:							\$ _____	

Note: The above payments do not include the administrative fee due to the UT System Alliance on a quarterly basis (refer to **Rider 200**).

Explanation of Asterisks in Schedule 1 Column Headings

The asterisks in the column headings in Schedule 1 reflect the following terms and conditions related to the charter flights:

1. Flight Date: If listed as "TBD," the flight date must be mutually agreed by Institutional Participant and Charter Operator.
2. Game Time/Flight No.: If the charter flight is for a sports team, local game time may be listed; otherwise flight numbers are listed for the charter flights.
3. Departure/Arrival Times: If listed as "TBD", the flight departure/arrival times must be mutually agreed by Institutional Participant and Charter Operator.
4. Due Date: Time is of the essence for Institutional Participant's Advance Payments and Residual Payments, which must be received by no later than 5 pm New York time on the stated due date.
5. Total Payment: The "Total Payment" amounts listed for the charter flights in Schedule 1 are based on charter flight passengers departing from a U.S. departure airport and using the common security checkpoint operated by the U.S. Transportation Security Administration (TSA). This requires that all charter flight passengers and baggage be screened

by TSA representatives at the common security checkpoint that is also used by passengers traveling on scheduled commercial flights at the airport. If Institutional Participant desires that charter flight passengers be screened for security purposes in another manner, or if one or more charter flights departs from an airport outside the United States, or within the U.S. but from a location where TSA security screening is not available or used for the charter flights, Institutional Participant will pay all costs incurred by Charter Operator for such security screening. Such costs will vary depending on the geographic location of the departure airport and the number of passengers and the amount of passenger baggage to be screened. The security screening costs may range from \$500 to \$5,000 per charter flight departure, which is in addition to the "Total Payment" amounts listed in Schedule 1. All non-TSA costs incurred by Charter Operator for security screening for the charter flights will be invoiced by Charter Operator to Institutional Participant after flight departure, and Institutional Participant will pay all such invoices within 15 days of receipt. Upon request, Charter Operator will provide Institutional Participant with estimated costs for such security screening.

As contemplated in **Section 1.8** of the PSA, Institutional Participant will deliver the Advance Payments and the Residual Payments to Charter Operator (or, if applicable, Charter Operator's designated depository bank) in accordance with the following instructions:

1. The Advance Payments and Residual Payments will be delivered by Institutional Participant to the following address (depending on the form of delivery selected):

Check delivered by U.S. Mail:

Check delivered by Express Mail/Courier:

Wire Transfer:

_____ Air Lines PO Box 123456 City, ST 00000-0000 Phone:

_____ Bank _____ Air Lines # 000000 Street Address City, ST 00000 Phone:

_____ Air Lines, _____ Bank Street Address City, ST 00000 ABA # 00000000 Account # 00000000
--

Note: Institutional Participant will notify Charter Operator in writing if it makes a payment by wire transfer, to ensure proper credit to Institutional Participant's account.

2. **Surety Company Bond, Bank Letter of Credit or Depository Bank Escrow** (see **Section 1.3** of the PSA)

The following is the name and address of the surety company, letter of credit issuer or the depository bank:

Institutional Participant's Advance Payments and Residual Payments are secured through:

_____ Bank
 c/o _____,
 Street Address
 City, ST 00000

3. **Cancellation Fees** (see **Section 1.11** of the PSA)

The following is the schedule of the applicable cancellation fees.

Cancellation notice received by Charter Operator from Institutional Participant at least the number of days shown below, in advance of the date of operation of the originating charter flight:

Applicable cancellation fee is equal to the percentage shown, multiplied by the Total Payment amount listed for the applicable Charter Flight in Schedule 1:

_____ days or more	0%
Between ___ days and ___ days	___%

Between ___ days and ___ days	___%
Between ___ days and ___ days	___%
___ days or less	100% (Total Payment due)

The parties have negotiated the above cancellation charges as a reasonable estimate of the anticipated damages resulting from Institutional Participant's cancellation of a charter flight. The parties agree that (a) such charges constitute "liquidated damages" for such cancellation; (b) Charter Operator will accept such charges as compensation in full for damages suffered as a result of the cancellation; and (c) Institutional Participant will not contest such amounts as a "penalty" or otherwise.

APPENDIX FOUR - 400

SUPPLIER RELATIONSHIP MANAGEMENT

1.0 Supplier Relationship Management (“SRM”) Program Requirements

Quarterly Business Reviews (“QBRs”) of Charter Operator’s performance under this Agreement will be conducted by the UT System Contract Administrator on behalf of UT System beginning six (6) months after the Effective Date of this Agreement and then every three (3) months thereafter. Institutional Participants may elect to establish a local level SRM program by a separate mutual agreement with Charter Operator.

3.0 Quarterly Business Reviews

2.1 QBRs will consist of Key Performance Indicators: Charter Operator’s performance will be determined as measured against the Service Level for each Performance Measure set forth in **Table 1** below.

Table 1: Key Performance Indicators

Performance Measure	Service Level	Variance from Service Level	Maximum Score	Definition and Measured By
Account Management	98%	≤ 2%	20	Timely response and resolution of inquiries and support calls placed by Institutional Participants: Initial response time will not exceed 4 hours
		>2%-≤5%	15	
		>5%	10	
			0	
Pricing Accuracy	99%	≤ 1%	15	Contract pricing in accordance with fee structure, as confirmed by Alliance audit
		>1%-≤5%	10	
		>5%	0	
Invoice Accuracy	98%	≤ 1%	15	Proportion of invoiced items reflecting accurate contract pricing, as confirmed by Alliance audit
		>1%-≤5%	10	
		>5%	0	
Reporting	98%	≤ 2%	15	Comprehensive report detailing of year-to-date and period-over-period spend and spend versus previous

		>2%-≤5%	10	quarter and year spend.
		>5%	0	
Administrative Fees & Incentive Payments	Not more than 5 days late	Y	5	Paid accurately and on time within contract schedules
		N	0	
Historically Underutilized Business Report	Not more than 5 days late	Y	5	Submitted within contract schedule each month to the Alliance (report includes monthly summary by Institutional Participant)
		N	0	
Customer Satisfaction	90% of metric	≤3%	25	Charter Operator will attain customer satisfaction score of 90% or greater. Survey content and distribution to be agreed with Charter Operator to ensure appropriate measures recorded.
		>3%-≤8%	15	
		>8%-≤15%	10	
		>15%	0	

2.2 QBR Meeting Reports and Metrics

Charter Operator will prepare and deliver to the UT System Contract Administrator for review at each QBR a report of the Key Performance Indicators and Business Relationship Indicators. The Key Performance Indicator report will be provided both in the aggregate, reflecting the total score for all Institutional Participants, and also will be reported separately for each Institutional Participant.

An advance copy of the Key Performance Indicator Report will be sent to the UT System Contract Administrator no less than ten (10) days prior to the scheduled QBR meeting date.

All report requirements may be modified by Institutional Participants within Charter Operator's reasonable capabilities to meet local requirements and service levels. Metrics may be revised upon mutual agreement between Charter Operator and the UT System Contract Administrator or the applicable Institutional Participant.

3.0 Charter Operator Evaluation and Rating

No less than once each quarter the UT System Contract Administrator will prepare and present to Charter Operator a scorecard of Charter Operator's performance based on their measured results under each of the KPIs for the preceding quarter. The scorecard will be presented and reviewed by Charter Operator and the UT System Contract Administrator during each QBR.

After the initial Agreement implementation period of six (6) months starting on the Effective Date, Charter Operator must obtain a minimum composite score of 85 from UT System for each quarter during the remaining term of this Agreement.

4.0 Corrective Action Plan

The UT System Contract Administrator will notify Charter Operator during a QBR if Charter Operator receives a composite score of less than 85 during the previous quarter or a score of Zero ("0") for any KPI.

Within fifteen (15) calendar days after receipt of such notice, Charter Operator will provide the UT System Contract Administrator with a written corrective action plan ("**CAP**") acceptable to the UT System Contract Administrator to address such unacceptable scores. At a minimum, the CAP will address Charter Operator's performance issues resulting in unacceptable score(s) and contain a root cause analysis of the problems causing such performance issue, proposed solutions to those problems, proposed process modifications to prevent recurrence of such problems, a time frame for Charter Operator's implementation of the proposed solutions and process modifications, and the person(s) who will be responsible for Charter Operator's implementation of the CAP. The CAP will be presented to the UT System Contract Administrator for concurrence prior to implementation. Concurrence with the CAP by the UT System Contract Administrator will not be unreasonably withheld or delayed. Concurrence with the CAP will not constitute a waiver by UT System of any rights regarding remedies.

5.0 Corrective Action and Remedies

If Charter Operator's implementation of the CAP does not result in a minimum composite score of 85 or better or if two (2) or more KPI's remain with a score of Zero ("0") during each subsequent calendar quarter, UT System may, at its sole discretion:

- Permit Charter Operator to resubmit a further Corrective Action Plan, or
- Exercise other remedies available under this Agreement or applicable law.

APPENDIX FIVE

ACCESS BY INDIVIDUALS WITH DISABILITIES

Access by Individuals with Disabilities. Preferred Supplier represents and warrants (“**EIR Accessibility Warranty**”) that the electronic and information resources and all associated information, documentation, and support that it provides under this Agreement (collectively, the “**EIRs**”) comply with the applicable requirements set forth in Title 1, Chapter 213, *Texas Administrative Code*, and Title 1, Chapter 206, Rule §206.70, *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M, *Government Code*). To the extent Preferred Supplier becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Preferred Supplier represents and warrants that it will, at no cost to UT Party, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event Preferred Supplier fails or is unable to do so, UT Party may terminate this Agreement, and Preferred Supplier will refund to UT Party all amounts UT Party has paid under this Agreement within thirty (30) days after the termination date.

APPENDIX SIX

ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

The specifications, representations, warranties and agreements set forth in Proposer's responses to this **APPENDIX FIVE** will be incorporated into the Agreement.

Basic Specifications

If the EIR will be hosted by Institutional Participant, please describe the overall environment requirements for the EIR (size the requirements to support the number of concurrent users, the number of licenses and the input/output generated by the application as requested in the application requirements).

- A. Hardware: If Proposer will provide hardware, does the hardware have multiple hard drives utilizing a redundant RAID configuration for fault tolerance? Are redundant servers included as well?
- B. Operating System and Version:
- C. Web Server: Is a web server required? If so, what web application is required (Apache or IIS)? What version? Are add-ins required?
- D. Application Server:
- E. Database:
- F. Other Requirements: Are any other hardware or software components required?
- G. Assumptions: List any assumptions made as part of the identification of these environment requirements.
- H. Storage: What are the space/storage requirements of this implementation?
- I. Users: What is the maximum number of users this configuration will support?
- J. Clustering: How does the EIR handle clustering over multiple servers?
- K. Virtual Server Environment: Can the EIR be run in a virtual server environment?

If the EIR will be hosted by Proposer, describe in detail what the hosted solution includes, and address, specifically, the following issues:

- A. Describe the audit standards of the physical security of the facility; and
- B. Indicate whether Proposer is willing to allow an audit by Institutional Participant or its representative.

If the user and administrative interfaces for the EIR are web-based, do the interfaces support Firefox on Mac as well as Windows and Safari on the Macintosh?

If the EIR requires special client software, what are the environment requirements for that client software?

Manpower Requirements: Who will operate and maintain the EIR? Will additional Institutional Participant full time employees (FTEs) be required? Will special training on the EIR be required by Proposer's technical staff? What is the estimated cost of required training.

Upgrades and Patches: Describe Proposer's strategy regarding EIR upgrades and patches for both the server and, if applicable, the client software. Included Proposer's typical release schedule, recommended processes, estimated outage and plans for next version/major upgrade.

Security

1. Has the EIR been tested for application security vulnerabilities? For example, has the EIR been evaluated against the Open Web Application Security Project ("**OWASP**") Top 10 list that includes flaws like cross site scripting and SQL injection? If so, please provide the scan results and specify the tool used. Institutional Participant will not take final delivery of the EIR if Institutional Participant determines there are serious vulnerabilities within the EIR.
2. Which party, Proposer or Institutional Participant, will be responsible for maintaining critical EIR application security updates?
3. If the EIR is hosted, indicate whether Proposer's will permit Institutional Participant to conduct a penetration test on Institutional Participant's instance of the EIR.
4. If confidential data, including HIPAA or FERPA data, is stored in the EIR, will the data be encrypted at rest and in transmittal?

Integration

1. Is the EIR authentication Security Assertion Markup Language ("**SAML**") compliant? Has Proposer ever implemented the EIR with Shibboleth authentication? If not, does the EIR integrate with Active Directory? Does the EIR support TLS connections to this directory service?
2. Does the EIR rely on Active Directory for group management and authorization or does the EIR maintain a local authorization/group database?
3. What logging capabilities does the EIR have? If this is a hosted EIR solution, will Institutional Participant have access to implement logging with Institutional Participant's standard logging and monitoring tools, RSA's Envision?
4. Does the EIR have an application programming interface ("**API**") that enables us to incorporate it with other applications run by the Institutional Participant? If so, is the API .Net based? Web Services-based? Other?

Will Institutional Participant have access to the EIR source code? If so, will the EIR license permit Institutional Participant to make modifications to the source code? Will Institutional Participant's modifications be protected in future upgrades?

Will Proposer place the EIR source code in escrow with an escrow agent so that if Proposer is no longer in business or Proposer has discontinued support, the EIR source code will be available to Institutional Participant.

Accessibility Information

Proposer must provide the following, as required by Title 1, Rule §213.38(b) of the *Texas Administrative Code*:

5. Accessibility information for the electronic and information resources (“EIR”)¹ products or services proposed by Proposer, where applicable, through one of the following methods:
 - (A) the URL to completed Voluntary Product Accessibility Templates (“VPATs”)² or equivalent reporting templates;
 - (B) an accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or
 - (C) the URL to a web page which explains how to request completed VPATs, or equivalent reporting templates, for any product under contract; and
2. Credible evidence of Proposer’s capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, Proposer’s internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.

¹ Electronic and information resources are defined in Section 2054.451, *Texas Government Code* ([link](#)) and Title 1, Rule §213.1 (6) of the *Texas Administrative Code* ([link](#)).

² Voluntary Product Accessibility Templates are defined in Title 1, Rule §213.1 (19) of the *Texas Administrative Code* ([link](#)). For further information, see this [link](#) to a VPAT document provided by the Information Technology Industry Council.

APPENDIX SEVEN

SECURITY CHARACTERISTICS AND FUNCTIONALITY OF CONTRACTOR'S INFORMATION RESOURCES

The specifications, representations, warranties and agreements set forth in Proposer's responses to this **APPENDIX SIX** will be incorporated into the Agreement.

"Information Resources" means any and all computer printouts, online display devices, mass storage media, and all computer-related activities involving any device capable of receiving email, browsing Web sites, or otherwise capable of receiving, storing, managing, or transmitting Data including, but not limited to, mainframes, servers, Network Infrastructure, personal computers, notebook computers, hand-held computers, personal digital assistant (PDA), pagers, distributed processing systems, network attached and computer controlled medical and laboratory equipment (i.e. embedded technology), telecommunication resources, network environments, telephones, fax machines, printers and service bureaus. Additionally, it is the procedures, equipment, facilities, software, and Data that are designed, built, operated, and maintained to create, collect, record, process, store, retrieve, display, and transmit information.

"Institutional Participant Records" means records or record systems that Proposer (1) creates, (2) receives from or on behalf of Institutional Participant, or (3) has access, and which may contain confidential information (including credit card information, social security numbers, and private health information ("**PHI**") subject to Health Insurance Portability and Accountability Act ("**HIPAA**") of 1996 (Public Law 104-191), or education records subject to the Family Educational Rights and Privacy Act ("**FERPA**").

General Protection of Institutional Participant Records

1. Describe the security features incorporated into Information Resources to be provided or used by Proposer pursuant to this RFP.
2. List all products, including imbedded products that are a part of Information Resources and the corresponding owner of each product.
3. Describe any assumptions made by Proposer in its proposal regarding information security outside those already listed in the proposal.

Complete the following additional questions if the Information Resources will be hosted by Proposer:

4. Describe the monitoring procedures and tools used for monitoring the integrity and availability of all products interacting with Information Resources, including procedures and tools used to, detect security incidents and to ensure timely remediation.
5. Describe the physical access controls used to limit access to Proposer's data center and network components.
6. What procedures and best practices does Proposer follow to harden all systems that would interact with Information Resources, including any systems that would hold or process Institutional Participant Records, or from which Institutional Participant Records may be accessed?

7. What technical security measures does the Proposer take to detect and prevent unintentional, accidental and intentional corruption or loss of Institutional Participant Records?
8. Will the Proposer agree to a vulnerability scan by Institutional Participant of the web portal application that would interact with Information Resources, including any systems that would hold or process Institutional Participant Records, or from which Institutional Participant Records may be accessed? If Proposer objects, explain basis for the objection to a vulnerability scan.
9. Describe processes Proposer will use to provide Institutional Participant assurance that the web portal and all systems that would hold or process Institutional Participant Records can provide adequate security of Institutional Participant Records.
10. Does Proposer have a data backup and recovery plan supported by policies and procedures, in place for Information Resources? If yes, briefly describe the plan, including scope and frequency of backups, and how often the plan is updated. If no, describe what alternative methodology Proposer uses to ensure the restoration and availability of Institutional Participant Records.
11. Does Proposer encrypt backups of Institutional Participant Records? If yes, describe the methods used by Proposer to encrypt backup data. If no, what alternative safeguards does Proposer use to protect backups against unauthorized access?
12. Describe the security features incorporated into Information Resources to safeguard Institutional Participant Records containing confidential information.

Complete the following additional question if Information Resources will create, receive, or access Institutional Participant Records containing PHI subject to HIPAA:

13. Does Proposer monitor the safeguards required by the HIPAA Security Rule (45 C.F.R. § 164 subpts. A, E (2002)) and Proposer's own information security practices, to ensure continued compliance? If yes, provide a copy of or link to the Proposer's HIPAA Privacy & Security policies and describe the Proposer's monitoring activities and the frequency of those activities with regard to PHI.

Access Control

1. How will users gain access (i.e., log in) to Information Resources?
2. Do Information Resources provide the capability to use local credentials (i.e., federated authentication) for user authentication and login? If yes, describe how Information Resources provide that capability.
3. Do Information Resources allow for multiple security levels of access based on affiliation (e.g., staff, faculty, and student) and roles (e.g., system administrators, analysts, and information consumers), and organizational unit (e.g., college, school, or department)? If yes, describe how Information Resources provide for multiple security levels of access.
4. Do Information Resources provide the capability to limit user activity based on user affiliation, role, and/or organizational unit (i.e., who can create records, delete records, create and save reports, run reports only, etc.)? If yes, describe how Information Resources provide that capability. If no, describe what alternative functionality is provided to ensure that users have need-to-know based access to Information Resources.

5. Do Information Resources manage administrator access permissions at the virtual system level? If yes, describe how this is done.

6. Describe Proposer's password policy including password strength, password generation procedures, password storage specifications, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

Complete the following additional questions if Information Resources will be hosted by Proposer:

7. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that would have access to the environment hosting Institutional Participant Records to ensure need-to-know-based access?

8. What procedures and best practices does Proposer have in place to ensure that user credentials are updated and terminated as required by changes in role and employment status?

9. Describe Proposer's password policy including password strength, password generation procedures, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

Use of Data

Complete the following additional questions if Information Resources will be hosted by Proposer:

1. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that have access to the environment hosting all systems that would hold or process Institutional Participant Records, or from which Institutional Participant Records may be accessed, to ensure that Institutional Participant Records will not be accessed or used in an unauthorized manner?

2. What safeguards does Proposer have in place to segregate Institutional Participant Records from system data and other customer data and/or as applicable, to separate specific Institutional Participant data, such as HIPAA and FERPA protected data, from Institutional Participant Records that are not subject to such protection, to prevent accidental and unauthorized access to Institutional Participant Records ?

3. What safeguards does Proposer have in place to prevent the unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access, or disclosure of Institutional Participant Records?

4. What procedures and safeguards does Proposer have in place for sanitizing and disposing of Institutional Participant Records according to prescribed retention schedules or following the conclusion of a project or termination of a contract to render Institutional Participant Records unrecoverable and prevent accidental and unauthorized access to Institutional Participant Records? Describe the degree to which sanitizing and disposal processes addresses Institutional Participant data that may be contained within backup systems. If Institutional Participant data contained in backup systems is not fully sanitized, describe processes in place that would prevent subsequent restoration of backed-up Institutional Participant data.

Data Transmission

1. Do Information Resources encrypt all Institutional Participant Records in transit and at rest? If yes, describe how Information Resources provide that security. If no, what alternative methods are used to safeguard Institutional Participant Records in transit and at rest?

Complete the following additional questions if Information Resources will be hosted by Proposer:

2. How does data flow between Institutional Participant and Information Resources? If connecting via a private circuit, describe what security features are incorporated into the private circuit. If connecting via a public network (e.g., the Internet), describe the way Proposer will safeguard Institutional Participant Records.

3. Do Information Resources secure data transmission between Institutional Participant and Proposer? If yes, describe how Proposer provides that security. If no, what alternative safeguards are used to protect Institutional Participant Records in transit?

Notification of Security Incidents

Complete the following additional questions if Information Resources will be hosted by Proposer:

1. Describe Proposer's procedures to isolate or disable all systems that interact with Information Resources in the event a security breach is identified, including any systems that would hold or process Institutional Participant Records, or from which Institutional Participant Records may be accessed.

2. What procedures, methodology, and timetables does Proposer have in place to detect information security breaches and notify Institutional Participant and other customers? Include Proposer's definition of security breach.

3. Describe the procedures and methodology Proposer has in place to detect information security breaches, including unauthorized access by Proposer's and subcontractor's own employees and agents and provide required notifications in a manner that meets the requirements of the state breach notification law.

Compliance with Applicable Legal & Regulatory Requirements

Complete the following additional questions if Information Resources will be hosted by Proposer:

1. Describe the procedures and methodology Proposer has in place to retain, preserve, backup, delete, and search data in a manner that meets the requirements of state and federal electronic discovery rules, including how and in what format Institutional Participant Records are kept and what tools are available to Institutional Participant to access Institutional Participant Records.

2. Describe the safeguards Proposer has in place to ensure that systems (including any systems that would hold or process Institutional Participant Records, or from which Institutional Participant Records may be accessed) that interact with Information Resources reside within the United States of America. If no such controls, describe Proposer's processes for ensuring that data is protected in compliance with all applicable US federal and state requirements, including export control.

3. List and describe any regulatory or legal actions taken against Proposer for security or privacy violations or security breaches or incidents, including the final outcome.

APPENDIX EIGHT

OVERVIEW OF AIR CHARTER-RELATED SERVICES TYPICALLY REQUIRED BY UT SYSTEM AND ITS INSTITUTIONS

The following is a representation of typical air charter travel, on an annual basis, for UT System and its institutions:

Common aircraft include:

EMB-175
737-700
737-800
737-900ER
Embraer 145
SAAB 2000
Hawker 400XP
MD80
MD83
Cessna Citation
Learjet
Bombardier CRJ700
Dassault Falcon 50
Beechcraft 300/350

Executive / VIP / Staff Travel

UT System and its institutions may request charter services for executive, staff and VIP travel.

The number of passengers will vary – one to nine passengers is the norm.

Travel will generally be within Texas or to other cities within the United States.

Bi-weekly charters to transport medical personnel between Houston and Gatesville, Texas may be contracted on an annual basis. Aircraft is typically King Air 200 or similar.

Short-notice, single-flight turbo prop and light jet services out of Austin and other cities may be required.

Helicopter services for West Texas aerial surveys may be required.

Aircraft for Lidar surveys in Texas may be required.

Flight services in Antarctica may be required.

Team Travel

Travel may be one-way, roundtrip or multi-city.
Single day and overnight flights are common.

Departure City	Destination	# of Passengers
Austin, TX	Provo, UT	144
Austin, TX	Ames, IA	150
Austin, TX	Morgantown, WV	33

Morganton, WV	Minneapolis, MN	33
Lawrence, Kansas	Austin, TX	33
Dallas, TX	Austin, TX	125
Austin, TX	Lawrence, KN	22
Orlando, FL	Austin, TX	10
Austin, TX	Morgantown, WV	23
Austin, TX	Manhattan, KN	24
Austin, TX	Albuquerque, NM	38
Austin, TX	St. Thomas, USVI	35
Austin, TX	Philadelphia, PA	35
Austin, TX	Knoxville, TN	30
Austin, TX	Chapel Hill, NC	40
Austin, TX	Stillwater, OK	32
Austin, TX	Lubbock, TX	30
Austin, TX	Hutchinson, KN	7
Austin, TX	Morgantown, VA	110
Tyler, TX	Claremont, CA	20
Tyler, TX	Memphis, TN	20
Tyler, TX	Sandestin, FL	15
Tyler, TX	Bangor, ME	24
Tyler, TX	Columbus, OH	15
Tyler, TX	Liberty, MO	7
Tyler, TX	Portland, OR	7
Tyler, TX	Salt Lake City, UT	7
El Paso, TX	Buffalo, NY	130
El Paso, TX	Hattiesburg, MS	130
El Paso, TX	Tulsa, OK	130
El Paso, TX	Lafayette, LA	130
El Paso, TX	Houston, TX	130
El Paso, TX	Greenville, NC	130
El Paso, TX	Buffalo, NY	30
El Paso, TX	Hattiesburg, MS	30
El Paso, TX	Tulsa, OK	30
El Paso, TX	Lafayette, LA	30
El Paso, TX	Houston, TX	30
El Paso, TX	Greenville, NC	30
El Paso, TX	Orlando, FL	30
El Paso, TX	Las Vegas, NV	30
El Paso, TX	Las Cruces, NM	30
San Antonio, TX	Stillwater, OK	140
San Antonio, TX	Boca Raton, FL	140
San Antonio, TX	Ruston, LA	140
San Antonio, TX	Bowling Green, KY	140

AIR CHARTER PROPOSER'S SURVEY**1.0 Company Profile**

- 1.1 Provide your company's main address, telephone and fax number.
- 1.2 Provide your company's FEIN.
- 1.3 Provide your company's DUNS number.
- 1.4 Provide your company's main contact for this RFP including telephone number and email address.
- 1.5 What is your company's legal structure (e.g., corporation, partnership, etc.)?
- 1.6 For all individuals, groups, corporations, etc. that holds 25% or greater equity in the company list their name and their percentage (%) held.
- 1.7 Provide any details of all past or pending litigation or claims filed against your company that would affect your company's performance under an Agreement with UT System.
- 1.8 Has your company, or any of its parents or subsidiaries, ever had a Bankruptcy Petition filed in its name, voluntarily or involuntarily? If yes, specify the date, circumstances, and resolution.
- 1.9 Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If yes, specify date(s), details, circumstances, and prospects for resolution.
- 1.10 Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
- 1.11 If requested, please indicate your company's agreement to provide the company's audited financial statement for the last two (2) years.
- 1.12 Please list all new all new accounts (customer name and location) established within last 6 months projected to exceed \$5mm in annual sales.
- 1.13 Is your company a State of Texas HUB firm and/or a Small Business (as defined by the US Small Business Administration)? If so, please list all HUB/Small Business categories your company is qualified under.
- 1.14 Is your company current on its federal excise tax payments?

2.0 References

- 2.1 Provide a listing of at least three (3) customers (non-UT System Institutions) for which you have provided air charter services of equal type and scope within the past five (5) years. Your customer reference list shall include the company name; contact person including telephone #; scope of services, annual sales volume (\$), and the period of time for which work was performed.
- 2.2 If you did not provide your DUNS number as requested in response to question 1.3 above, please provide two financial references (1 trade reference and 1 financial institution/bank reference). List should include company name, mailing address, telephone number, FAX number, contact person and length of financial relationship.

3.0 General Requirements

- 3.1 Please indicate your company's agreement to utilize umbrella / standardized contracts, within the timeframe requested by individual Institutional Participants, substantially similar to **APPENDIX THREE – 300**, in arranging for the services of a Charter Operator.
- 3.2 Please indicate your company's ability to comply with the charter broker or charter operator standards and requirements detailed in **Section 5**, of this RFP. Please indicate if your company is unable to meet any of these requirements – outline specific exceptions.
- 3.3 Please indicate your company's ability to comply with applicable requirements of [UT System Regents Rule 20601](#), specifically the requirement that all flights must include a minimum of two qualified/certified pilots in the cockpit?
- 3.4 As applicable, please indicate your company's compliance with requirements as detailed in **Section 5.4.4.4**.
- 3.5 Specific to Charter Operator: Are you registered with IOSA (IATA Operational Safety Audit Program)? If no, have you passed a safety audit conducted by an accredited FAR Part 121/125/135 audit services provider within the last twelve (12) months?
- 3.6 Please indicate your company's compliance with all requirements in section 5.4.4.5 (Air Carrier Quality and Safety).
- 3.7 Please indicate your company's compliance with applicable regulations as outlined in Federal Aviation Regulations Part 135: Commuter & On-Demand Operations & Rules Governing Persons on Board Such Aircraft..
- 3.8 Please indicate your company's compliance with applicable regulations as outlined in Federal Aviation Regulations Part 121: Operating Requirements: Domestic, Flag, and Supplemental Operations.
- 3.9 Please indicate your company's compliance with applicable regulations as outlined in Federal Aviation Regulations Part 125: Certification and Operations: Airplanes having a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more; and rules governing persons on board such aircraft ("**Private Carriage**").
- 3.10 Please indicate your company's compliance to the necessary quality and safety standards as detailed in **Section 5.4.4.5**.

4.0 Account Management

- 4.1 Provide the name, title and brief resume of the individual who will assume overall responsibility for the work to be performed for UT System.
- 4.2 Provide a project-staffing plan including resumes for all proposed "key" staff members who will be assigned to this account and defining their role in supporting the UT System account.
- 4.3 Describe your training and development program for both full time and part-time personnel as it relates to customer service, policies and procedures, quality control, and general business operations.
- 4.4 Identify the staff/personnel resources outside of your company that you typically engage to assist in performing the work contemplated under this RFP and the role they play in performing the services.
- 4.5 Do you have a standard code of ethics for sales staff? If yes, please provide a copy.

- 4.6 How is your staff rewarded for outstanding customer service and support?
- 4.7 Does Proposer operate a “toll free” customer service support line?
- 4.8 What is the average response time to requests for charter price quotes and account management issues?
- 4.9 Describe your quality assurance program, its quality requirement, and how account management personnel are evaluated and measured.
- 4.10 Describe your company’s problem resolution process for customer complaints and concerns

5.0 Technology and Tools

- 5.1 Please provide a list of all supporting web based reservation tools currently utilized and/or those available upon request. If such tools are available, please describe your company’s technical support process, capabilities, and hours of operation to handle technical questions regarding your tool.

6.0 Reporting

- 6.1 Provide Upfront Data reports described in section 5.4.4.7.
- 6.2 As requested by UT System, can your company support Ongoing Data reports described in section 5.4.4.7?
- 6.3 Can your company provide Institutional Participants the following reports prior to performing each trip?
- Pilot in Command’s (PIC’s) Total Time (hours)
 - PIC’s Time as PIC
 - PIC’s Time in Type as PIC
 - Second In Command (SIC’s) Total Time
 - SIC’s Time as PIC
- 6.4 Describe your company’s ability to provide reports for the Other Factors described in section 5.4.4.7.
- 6.5 Describe the capacity of your company to report quarterly sales under the Preferred Supplier Agreement by each Institutional Participant.
- 6.6 Are reports available real-time via an internet website or portal? If yes, please indicate the type of report that is available and if they are downloadable in a usable format (e.g., Excel, Word, HTML, etc.).
- 6.7 Does your company currently provide custom reporting capabilities? If so, describe.
- 6.8 Indicate which standard reports are available. Include the frequency they can be made available.

7.0 Pricing and Incentives

- 7.1 Submit as part of its proposal the Pricing Exercise included in **Attachment A** detailing the prices that will be charged based on the flight schedule details. The prices must include all charges associated with providing the full scope of work.
- 7.2 What is your company's proposed fee structure?
- Hourly rate one-way
 - Hourly Rate round-trip
 - Alternate Operator proposed pricing structure (detail required)
 - Landing/Ramp/Hangar Fees
 - Hourly rate for repositioning aircraft ("ferry" aircraft legs)
 - Per-mile rate for repositioning aircraft ("ferry" aircraft legs)
 - Minimum flight time each 24 hour period
 - Limousine/taxi fees (if applicable)
 - Catering (if applicable)
 - Cancellation fee
 - Federal Excise Tax
 - State Taxes
- Other (specific to Broker) - Outline in detail proposer's fee for service excluding operator costs. For example, a percentage of the total cost or flat fee per charter.
- 7.3 As applicable, please indicated any a not-to-exceed annual escalation percentages in your fee structure.
- 7.4 Provide your company's Fuel Surcharge fee structure. Proposer should note if fuel surcharge fee is included in general fuel costs or is it itemized separately. Since fuel costs are very volatile, the UT System will entertain provisions for adjusting charter pricing in response to fuel cost changes. Any adjustment should be based on fuel "in wing" If Proposer wants such a clause in the contract, the Proposer must include the formula to be used for making such fuel adjustment along with its response to this RFP. Please include as part of the adjustment how the fuel price is determined - (Index, Average, Site specific, etc). If the Proposer submits no adjustment formula with its response to the RFP, it will be assumed that the fee structure is firm and no adjustments for fuel price will be made for duration of any contract. Also any formula offered and clause that might be added to address fuel cost adjustments will consider both increases and decreases in fuel prices. If a formula is offered which does not make it easy to determine the extent of any adjustment to fuel costs of which only makes provisions for price increase, this may be considered grounds to consider a Proposer's bid as "non-responsive"
- 7.5 Please indicate that your company agrees to pay UT System Supply Chain Alliance a one percent (1%) Administration Fee for total sales volume of Institutional Participant's purchases.
- 7.6 What is the Proposer's cancellation policy? What, if any, fees are charged?
- 7.7 What catering options can the Proposer provide for departing and returning trips to Institutional Participants? Please provide in detail the Proposer's proposed pricing to the University for each catering option.
- 7.8 Please describe your company's approach to structuring an incremental sales volume growth rebate or incentive.
- 7.9 What, if any, additional costs/fees would apply for international charters? Currently are there any international regions you could not service.

8.0 Services

- 8.1 Does your company have existing contracts to provide services directly to a competing interest?

- 8.2 Describe any conflict of interest in aircraft sourcing and pricing.
- 8.3 How will your company accommodate Institutional Participants if there is a problem encountered with the flight arrangements?
- 8.4 Would your company be willing to assign a dedicated representative(s) to assist with charter requests as well as provide 24/7 assistance?
- 8.5 Describe your ability to provide/arrange airport security/screening. Please specify your passenger/baggage screening procedures including if you will arrange to use local TSA agents or your own screeners and if screeners will travel on the aircraft.
- 8.6 Can the Proposer conduct formal, quarterly and annual business reviews with Institutional Participants. Detail in your response how your company's sees these reviews structured, who attends and conducts the presentation, and any additional information.
- 8.7 Does Proposer have a contingency plan, disaster recovery plan or redundant systems in place in the event of a disaster? If so, then Proposer will provide information.

9.0 Implementation Plan

- 9.1 Explain your company's plan for marketing the Preferred Supplier Agreement to participating Institutional Participants.
- 9.2 Explain how your company will educate its management team and sales team about the Preferred Supplier Agreement.
- 9.3 Describe an estimate of the earliest starting date for services following execution of an Agreement.
- 9.4 Describe the standard/requested amount of time needed to secure charter services for overall efficiency and best value and describe key steps in the process. Proposer will also detail procedures for short notice charter requests.
 - 9.4.1 Describe in detail procedures for short notice request (including same day) for small business jet services departing from Austin, Texas.

10.0 Added Value

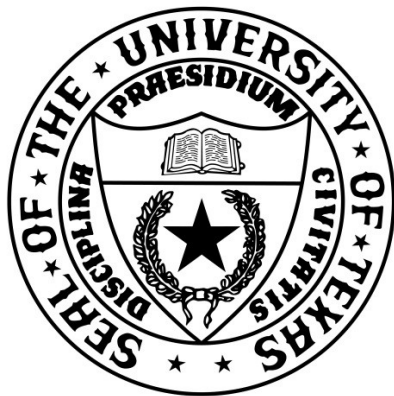
- 10.1 Please identify any challenges and/or difficulties you anticipate in providing services to UT System and how you plan to manage them; what assistance will you require from UT System.
- 10.2 Please describe any special benefits or advantages in selecting your company. Please provide only information not previously asked or disclosed herein.
- 10.3 Please provide any suggested improvements and alternatives that will make doing business with your company more cost effective for your company and Institutional Participants.
- 10.4 Briefly describe your company's advantage in the marketplace. Please provide only information not previously asked or disclosed herein.
- 10.5 Describe how your company would proactively approach generating additional cost savings for the Institutional Participants spend going forward. Please provide only information not previously asked or disclosed herein.

- 10.6 Please state how your company will maintain its competitive advantage long-term, with respect to "best value" price and non-price offering.
- 10.7 Does your company have the ability to allow passengers access to camera and photo equipment while in-flight?
- 10.8 Can your company provide ground transportation (origin and destination) to/from point of departure/arrival? If so, what method of transportation will your company provide?
- 10.9 Can your company schedule hotel and other lodging accommodations?
- 10.10 Can your company schedule lounge and conference room services?
- 10.11 Can your company provide group check-in and streamline baggage/cargo handling procedures for both domestic and international charters?
- 10.12 Can your company provide TSA plane-side security processes for team/group travel?
- 10.13 Can your company provide a Mechanic to accompany flight if requested or guarantee immediate service for mechanical issues (limited to high-profile flight request)?
- 10.14 Can your company provide flight dispatch staffing services with individuals who have preferably received FAA training in the area of Federal Aviation Regulations, aviation weather, navigation, air space & air traffic control, aerodynamics, weight & balance, dangerous goods, and manual flight plan.
- 10.15 Please indicate any additional "value added" services or programs not otherwise asked or disclosed herein that should be considered during the evaluation process.

THE UNIVERSITY OF TEXAS SYSTEM ADMINISTRATION
JANUARY 2015

APPENDIX II

POLICY ON UTILIZATION HISTORICALLY UNDERUTILIZED BUSINESSES VENDOR/COMMODITIES



**The University of Texas System
Office of HUB Development
Policy on Utilization of Historically Underutilized Businesses (HUBs)**

Contents

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- Summary of Requirements/Historically Underutilized Business (HUB) Subcontracting Plan (HSP) Pages 4-6
- Summary of Attachments Required from Respondents Page 7
- Letter of Transmittal Page 8
- Letter of HUB Commitment (indefinite duration/indefinite quantity contracts) Page 9
- HSP Quick Checklist Page 10
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 - Self-Performance Justification Page 14
 - HSP Good Faith Effort Method A (Attachment A) Page 15
 - HSP Good Faith Effort Method B (Attachment B) Page 16-17
- HUB Subcontracting Opportunity Notification Form Page 18

Minority and Trade Organizations contact information is available online at:
<http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>
- HUB Subcontracting Plan Prime Contractor Progress Assessment Report (PAR) Page 19

(Required of successful respondent for payment requests only)

**The University of Texas System
Office of HUB Development**

POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS)

Introduction

In accordance with the Texas Government Code, Sections 2161.181-182 and Title 34, Section 20.13 of the Texas Administrative Code (TAC), the Board of Regents of The University of Texas System, acting through the Office of HUB Development shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction services, including professional and consulting services; and commodities contracts. The HUB Rules promulgated by the Texas Comptroller of Public Accounts (the "Texas Comptroller"), set forth in 34 TAC Sections 20.10-20.28, encourage the use of HUBs by implementing these policies through race, ethnic and gender-neutral means.

The purpose of the HUB Program is to promote full and equal business opportunities for all business in State contracting in accordance with the following goals as specified in the State of Texas Disparity Study:

- 11.2% for heavy construction other than building contracts;
- 21.1% for all building construction, including general contractors and operative builders contracts;
- 32.9% for all special trade construction contracts;
- 23.7% for professional services contracts;
- 26% for all other services contracts, and
- 21.1% for commodities contracts.

The University of Texas System shall make a good faith effort to meet or exceed the above stated goals to assist HUBs in receiving a portion of the total contract value of all contracts that UT System expects to award in a fiscal year. The University of Texas System may achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, chapter 2161, Subchapter F.

NOTE: The goals above are the State of Texas HUB goals. For purposes of this procurement, The University of Texas System goals listed in the Special Instructions on page 11 will apply.

SUMMARY OF REQUIREMENTS
Historically Underutilized Business (HUBs) Subcontracting Plan (HSP)

It is the policy of The University of Texas System and each of its component institutions, to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (HUBs) in all contracts. Accordingly, UT System has adopted “**EXHIBIT H, Policy on Utilization of Historically Underutilized Businesses**”. The policy applies to all contracts with an expected value of \$100,000 or more. The Board of Regents of The University of Texas System is the contracting authority.

1. In all contracts for professional services, contracting services, and/or commodities with an expected value of \$100,000 or more, The University of Texas System, “UT System” or the “University” will indicate in the purchase solicitation (e.g. RFQ, RFP, or CSP) whether or not subcontracting opportunities are probable in connection with the contract. A HUB Subcontracting Plan is a required element of the architect, contractor or vendor Response to the purchase solicitation. The HUB Subcontracting Plan shall be developed and administered in accordance with the Policy. **Failure to submit a required HUB Subcontracting Plan (HSP) will result in rejection of the Response.**
2. If subcontracting opportunities are probable UT System will declare such probability in its invitations for bids, requests for proposals, or other purchase solicitation documents, and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
 - a. When subcontracting opportunities are probable, and the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller** identifying subcontractors **[34 TAC §20.14 (d) (1)(A)(B)(C)(D) (2) (3)(A)(B)(C)(D)(E)(F) (4)(A)(B)]**.
 - b. When subcontracting opportunities are probable, but the Respondent can perform such opportunities with its employees and resources, the Respondent’s HUB Subcontracting Plan shall include **Section 3 –Self Performance [34 TAC §20.14 (d) (5) (A) (B) (C) (D)]**.
3. If subcontracting opportunities are not probable UT System will declare such probability in its invitations or bids, requests for proposals, or other purchase solicitation documents and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
 - a. When subcontracting opportunities are not probable, and the Respondent proposes to perform all the work with its employees and resources, the Respondent shall submit a HUB Subcontracting Plan that includes **Section 3 – Self Performance Justification**.
 - b. When subcontracting opportunities are not probable, but the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller** identifying subcontractors.
4. Respondents shall follow, but are not limited to, procedures listed in the Policy when developing a HUB Subcontracting Plan.
5. **Competitive Sealed Proposals (CSP):** Respondents shall submit a HUB Subcontracting Plan (packaged separately) twenty-four (24) hours following the Response submission date and time or as prescribed by the project manager.
6. In making a determination whether a good faith effort has been made in the development of the required HUB Subcontracting Plan, UT System shall follow the procedures listed in the Policy. If accepted by the

University, the HUB Subcontracting Plan shall become a provision of the Respondent's contract with UT System. **Revisions necessary to clarify and enhance information submitted in the original HUB subcontracting plan may be made in an effort to determine good faith effort.** Any revisions after the submission of the HSP shall be approved by the HUB Coordinator.

7. **Design Build (DB) and Construction Manager @ Risk (CM@R) responses:** Respondents to a "design build" or "construction manager-at-risk" purchase solicitation shall include the Letter of HUB Commitment in their Response attesting that the Respondent has read and understands the Policy on Historically Underutilized Businesses (HUBs), and a HUB Subcontracting Plan for all preconstruction and construction services including a HUB Subcontracting Plan as prescribed by the Texas Comptroller specific to construction services identifying first, second and third tier subcontractors. Respondents proposing to perform Part 1 preconstruction services with their own resources and employees shall submit, as part of their HSP, the Self Performance Justification.
8. **DB and CM@R HUB Contract Requirements:** Contractors engaged under design-build and construction manager-at-risk contracts shall submit a HUB Subcontracting Plan for all preconstruction and construction Phase Services, and, must further comply with the requirements of this Policy by developing and submitting a HUB Subcontracting Plan for each bid package issued in buying out the guaranteed maximum or lump sum price of the project. The HSP shall identify first, second and third tier subcontractors.
9. The University of Texas System shall reject any Response that does not include a fully completed HSP as required. **An incomplete HUB Subcontracting Plan is considered a material failure to comply with the solicitation for proposals.**
10. **Changes to the HUB Subcontracting Plan:** Once a Respondent's HSP is accepted by UT System and becomes a provision of the contract between Respondent and UT System, the Respondent can only change that HSP if (a) the Respondent complies with 34 TAC Section 20.14; (b) the Respondent provides its proposed changes to UT System for review; (c) UT System (including UT System's HUB Coordinator) approves Respondent's proposed changes to its HSP; and (d) UT System and the Respondent amend their contract (in writing signed by authorized officials of both parties) in order to replace the contract's existing HSP with a revised HSP containing the changes approved by UT System.
11. **Expansion of Work:** If, after entering into a contract with a Respondent as a result of a purchase solicitation subject to the Policy, UT System wishes to expand the scope of work that the Respondent will perform under that contract through a change order or any other contract amendment (the "additional work"), UT System will determine if the additional work contains probable subcontracting opportunities not identified in the initial purchase solicitation for that contract. If UT System determines that probable subcontracting opportunities exist for the additional work, then the Respondent must submit to UT System an amended HUB Subcontracting Plan covering those opportunities that complies with the provisions of 34 TAC Section 20.14. Such an amended HSP must be approved by UT System and the Respondent (including UT System's HUB Coordinator) before (a) the contract may be amended by UT System and the Respondent to include the additional work and the amended HSP and (b) the Respondent performs the additional work. If a Respondent subcontracts any of the additional subcontracting opportunities identified by UT System for any additional work (i) without complying with 34 TAC Section 20.14 or (ii) before UT System and that Respondent amend their contract to include a revised HSP that authorizes such subcontracting, then the Respondent will be deemed to be in breach of its contract with UT System. As a result of such breach, UT System will be entitled to terminate its contract with the Respondent, and the Respondent will be subject to any remedial actions provided by Texas law, including those set forth in Chapter 2161, Texas Government Code, and 34 TAC Section 20.14. The University may report a Respondent's nonperformance under a

contract between that Respondent and UT System to the Texas Comptroller in accordance with 34 TAC Sections 20.10 through 20.18.

12. A Response may state that the Respondent intends to perform all the subcontracting opportunities with its own employees and resources in accordance with the Policy. However, if such a Respondent enters into a contract with UT System as a result of such a Response but later desires to subcontract any part of the work set forth in that contract, before the Respondent subcontracts such work it must first change its HUB Subcontracting Plan in accordance with the provisions of Section 10 above.
13. The University of Texas System shall require a professional services firm, contractor or vendor to whom a contract has been awarded to report the identity and the amount paid to its subcontractors on a monthly basis using a **HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report (PAR)** as a condition for payment.
14. If the University of Texas System determines that the successful Respondent failed to implement an approved HUB Subcontracting Plan in good faith, UT System, in addition to any other remedies, may report nonperformance to the Texas Comptroller in accordance with 34 TAC Section 20.14, (g) (1) related remedies of nonperformance to professional services firms, contractor and vendor implementation of the HSP.
15. In the event of any conflict between this “Summary of Requirements” and the remainder of the HUB Policy, the remainder of the HUB Policy will control.
16. These requirements, including the attachments referred to above, may be downloaded over the Internet from <http://utsystem.edu/offices/historically-underutilized-business/hub-forms>. For additional information contact the Office of HUB Development, The University of Texas System, 512/499/4530.

**Other Services/Vendor/Commodities HSP
Summary of Attachments Required from Respondents**

	Letter of Transmittal Page 8	Letter of HUB Commitment Page 9	HUB Subcontracting Plan (HSP) Pages 11-18	Progress Assessment Report (PAR) Page 19
1. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE PROBABLE.				
1. A. Respondent Proposes Subcontractors: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable</u> .	X		X	
1.B. Respondent Proposes Self-Performance: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable</u> , but the Respondent can perform such opportunities with its employees and resources.	X		X	
2. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE NOT PROBABLE.				
2.A. Respondent Proposes Self-Performance: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable</u> , but the Respondent can perform such opportunities with its employees and resources.	X		X	
2. B. Respondent Proposes Subcontractors: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable</u> , but the Respondent proposes to subcontract any part of the work.	X		X	
3. INDEFINITE DURATION/INDEFINITE QUANTITY CONTRACTS: Submit with initial qualifications. Attachments required from the Respondent prior to contract execution for each contract associated with a solicitation for miscellaneous services.		X	X	
4. CHANGES IN THE HUB SUBCONTRACTING PLAN AFTER AWARD: Attachments required from the Respondent to whom a contract has been awarded if it desires to make changes to the approved HUB Subcontracting Plan.			X	
5. REPORTING: Progress Assessment Report (PAR) required with all payment requests. The submittal of this attachment is a condition of payment.				X

(RESPONDENT'S BUSINESS LETTERHEAD)

Date

Mr. Hopeton Hay
Director, HUB and Federal Small Business Program
The University of Texas System
201 W. 6th St., Room B.140E
Austin, Texas 78701

RE: Historically Underutilized Business Plan for (Project Title): _____
Project Number: _____ - _____

Dear Mr. Hay,

In accordance with the requirements outlined in the specification section "HUB Participation Program," I am pleased to forward this HUB Subcontracting Plan as an integral part of our response in connection with your invitation for Request for Proposals referencing the above project.

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs). I also understand the State of Texas Annual Procurement Goal according to 34 Texas Administrative Code Section 20.13, and the goal as stated in the Agency Special Instructions section of the HUB Subcontracting Plan, page 11.

Select one of the following:

- _____ 32.9% for all special trade construction contracts
- _____ 26% for all other services contracts
- _____ 31.04% for commodities contracts

Subcontractors	No. of Subcontractors	Total Subcontract \$ Value	Total Estimated HUB %	% Minority Owned	% Woman Owned	% Service Disabled Veteran
HUB						
NON-HUB						
TOTAL						

I understand the above HUB percentages must represent Texas Comptroller HUB certification standards. For each of the listed HUB firms, I have attached a Texas Comptroller HUB Certification document.

Should we discover additional subcontractors claiming Historically Underutilized Business status during the course of this contract we will notify you of the same. In addition, if for some reason a HUB is unable to fulfill its contract with us, we will notify you immediately in order to take the appropriate steps to amend this contractual obligation.

Sincerely,

(Project Executive)

cc: Contract Administrator

(RESPONDENT’S BUSINESS LETTERHEAD)

Date

Mr. Hopeton Hay
Director, HUB and Federal Small Business Program
The University of Texas System
201 W. 6th St., Room B.140E
Austin, TX 78701

RE: Historically Underutilized Business Plan for (Project Title): _____
Project Number: _____ - _____

Dear Mr. Hay:

In accordance with the requirements outlined in the specification section “HUB Participation Program”, I am pleased to forward this HUB Subcontracting Plan as an integral part of our proposal in connection with your invitation for request for proposals, referencing Project Number _____.

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs).

Good Faith Effort will be documented by a two part HUB Subcontracting Plan (HSP) process. Part one (1) of the HSP submission will reflect self-performance with the appropriate sections completed per the instructions in Option One of the HSP Quick Checklist located on page 10 of The University of Texas Exhibit H Policy on Utilization of Historically Underutilized Businesses (HUBs).

As the scope of work/project is defined under this ID/IQ contract, part two (2) of the process will require a revised HUB Subcontracting Plan (HSP) and the Good Faith Effort will be documented per instructions in Attachment B (page 16-17) and Option Three of the HSP Quick Check List. The revised HUB Subcontracting Plan will be submitted to the HUB Coordinator prior to execution of each contract process. Documentation of subcontracted work will be provided with each pay request.

Sincerely,

(Project Executive)

cc: Contract Administrator



HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

Option One -If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:

- Section 1 - Respondent and Requisition Information
- Section 2a. - Yes, I will be subcontracting portions of the contract
- Section 2b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
- Section 2c. - Yes
- Section 4 - Affirmation
- GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2b.
- Letter of Transmittal

Option Two - If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:

- Section 1 - Respondent and Requisition Information
- Section 2a. - Yes, I will be subcontracting portions of the contract
- Section 2b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- Section 2c. - No
- Section 2d. - Yes
- Section 4 - Affirmation
- GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2b.
- Letter of Transmittal

Option Three - If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:

- Section 1 - Respondent and Requisition Information
- Section 2a. - Yes, I will be subcontracting portions of the contract
- Section 2b. - List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- Section 2c. - No
- Section 2d. - No
- Section 4 - Affirmation
- GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2b.
- Letter of Transmittal

Option Four - If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete:

- Section 1 - Respondent and Requisition Information
- Section 2a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
- Section 3 - Self Performing Justification
- Section 4 - Affirmation
- Letter of HUB Commitment

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

In accordance with 34 TAC §20.13(d)(1)(D)(iii), the goals below are the applicable goals for the University of Texas System Administration only.

- Other Services HUB Goal – 26%**
- Commodities HUB Goal – 31.04%**
- Special Trades HUB Goal – 32.9%**

- Responses for Special Trades construction shall submit a HUB Subcontracting Plan (HSP) that meets the Good Faith Effort prescribed in Method B (Attachment B). See instruction for Option three on the HSP Quick Check List. No other Good Faith Effort method will be accepted.
- Responses for Miscellaneous Services Agreements for indefinite duration/indefinite quantity- Two (2) part process:
 1. Submit a Letter of HUB Commitment (page 9) and a Good Faith Effort described in Option Four.
 2. Submit a revised HSP prior to execution of each contract process as described in Option Three of Quick Check List.
- Respondents shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive. Failure to submit a completed HSP shall result in the bid, proposal or other expression of interest to be considered Non-responsive.
- Respondents who intend to Self-Perform all of their work shall submit an HSP for Self Performance HUB Subcontracting Plan (HSP) as described in Option Four.
- Prime contractor Progress Assessment Report (PAR) shall be submitted with each request for payment as a condition of payment.
- Please note that phone logs are no longer acceptable documentation of Good Faith Effort. Only fax, email and certified letter are acceptable.

SECTION-1: RESPONDENT AND REQUISITION INFORM

a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____

b. Is your company a State of Texas certified HUB? - Yes - No

c. Requisition #: _____ Bid Open Date: _____

(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: SUBCONTRACTING INTENTIONS RESPONDENT

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b, of this SECTION and continue to Item c of this SECTION.)
- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified** HUBs with which you have a **continuous contract*** in place with for five (5) years or less **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "**Agency Special Instructions/Additional Requirements**".

- **Yes** (If **Yes**, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION-2: SUBCONTRACTING INTENTIONS RESPONDENT (CONTINUATION SHEET)

a. This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years.</u>	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%

**Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: _____ Requisition #: _____

SECTION-3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- **Yes** (If **Yes**, in the space provided below **list the specific page(s)/section(s)** of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- **No** (If **No**, in the space provided below **explain how** your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

SECTION-4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature

Printed Name

Title

Date
(mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://window.state.tx.us/procurement/prog/hub/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, to continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://mycpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

CompanyName	VID Number	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.

- d. List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

CompanyName	Texas certified HUB	VID Number (Required if Texas certified HUB)	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



RFP Submittal Deadline: **May 29, 2015** at **3:00 PM**
(CST)

Page 1 of 1

Addendum Issue Date: **May 7, 2015**

ADDENDUM 1
REQUEST FOR PROPOSAL
UTS/A48
Charter Aircraft - Related Services

DIRECT QUESTIONS TO: Nancy Martinez via the SciQuest System

ACKNOWLEDGEMENT OF THIS ADDENDUM 1 IS REQUIRED IN ACCORDANCE WITH **SECTION 1.2 OF APPENDIX ONE**, TO THE RFP. THIS RFP ADDENDUM IS A FURTHERANCE OF RFP **UTS/A48** AND IS NOT A CONTRACT OR OFFER TO CONTRACT.

Item One:

The Pre-proposal Conference Presentation (May 7, 2015) is attached hereto.

Item Two:

The Pre-proposal Conference Attendee List (May 7, 2015) is attached hereto.

All other terms, conditions and requirements set forth in RFP UTS/A48 remain unchanged and in effect.

END OF ADDENDUM 1



SUPPLY CHAIN ALLIANCE
THE UNIVERSITY of TEXAS SYSTEM
Creating Value Through Collaboration

Pre-Proposal Conference UTSA48 Charter Aircraft Related Services

Teleconference #: 877-226-9790 Participant Code: 7277429#

May 7, 2015

Agenda

 Introduction

 UT System Supply Chain Alliance Overview

 Sourcing Event Overview

 UT System HUB Program Overview

 SciQuest e-Sourcing Platform

 Questions & Answers

 Sourcing Event Contact

 Key Reminders

ALLIANCE OVERVIEW

The Power of Collaboration



Alliance Facts

- Established by UT System in 2007
- Focused on Academic Health and Higher Education Institutions in Texas

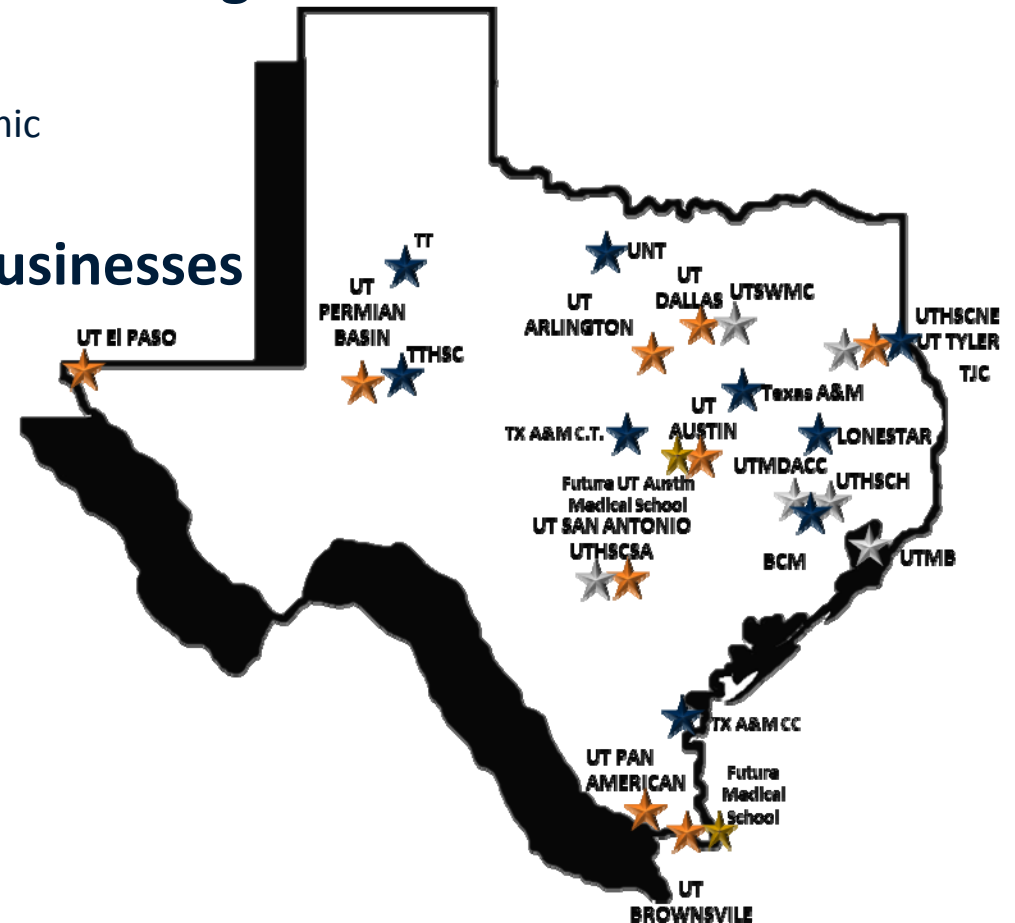
- ✓ 15 UT Members – 6 Health, 9 Academic
- ✓ 13 Affiliates – 3 Health, 10 Academic

- Historically Underutilized Businesses

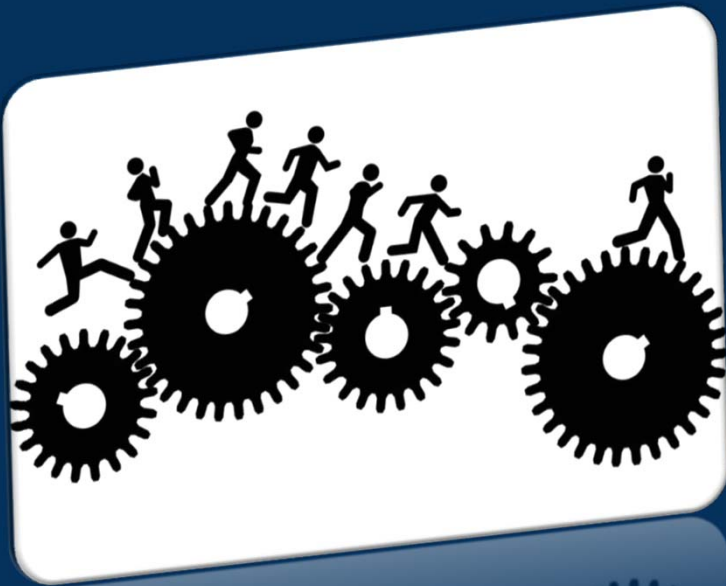
- ✓ \$34M Annualized HUB Spend

- Combined Spend to Market

- ✓ >\$1B Supplies & Services



Key Successes



FY15 marks the 8th year of operations for the Alliance

The Alliance has more than 45 strategic supplier agreements and 1 GPO collaboration

Alliance contracts generate over \$250M in annual spend

Alliance contracts create a potential savings opportunity of over \$124M

Uniqueness of Alliance Contracts

- Commitment to deliver spend to Preferred Suppliers
- Institutional accountability for non-compliant spend
- Marketing and promotion of Preferred Suppliers
- Strategic Services Group – Advocates for both institutions and Preferred Suppliers
- Lower cost structure for Preferred Supplier to do business



SOURCING EVENT OVERVIEW

Scope of Opportunity

- UT System, acting through the Alliance, is soliciting proposals in response to this RFP from qualified suppliers to provide charter aircraft-related services.
- The spend by UT System and its institutions is over \$5 million annually.
- The new Contract will have a base term of up to 5 years subject to the competitiveness of the proposal we receive.

Desired Sourcing Event Outcomes

- Comprehensive and guaranteed service and pricing structure
- Meet our HUB and Small Business Goals
- Achieve cost recovery and process improvements for participants
- Improve overall customer satisfaction
- Team with Preferred Supplier to develop positive long term mutual benefiting solutions

Sourcing Event Key Dates

Date	Time	Event
April 27, 2015	11:00 AM	Issue RFP Documents
May 7, 2015	10:00 AM	Pre-Proposal Meeting
May 14, 2015	5:00 PM	<u>Deadline</u> to Submit Questions for clarification to RFP requirements - Section 2.2 of this RFP
May 29, 2015	3:00 PM	Proposal Submittal <u>Deadline</u>
June 2015	TBD	Selection of Finalists
July 2015	TBD	Finalists Interviews and Negotiations
July 2015	TBD	Anticipated Contract Awards(s)

Sections and Appendices

Section I
Introduction

Section II
Notice of Proposer

Section III
Submission of Proposal

Sections and Appendices (Cont'd)

Section IV General Terms & Conditions

- Exceptions Uploaded in SciQuest (Section 5.1.3)

Section V – V.5 Scope of Work

- Proposer's Survey

Section VI Pricing Schedule & Affirmation

- Download & Return Signed Affirmation

Sourcing Event Overview

Appendix 1 Proposal Requirements

Appendix 1,
Section 2 Download and Return Signed Execution of Offer

Appendix 2 HUB Subcontracting Plan

Appendix 3 100 Sample Participation Agreement

 300 Form of Agreement

 400 Sample Supplier Relationship Management

Sourcing Event Overview (Cont'd)

Appendix 4 100 Sample Participation Agreement
 300 Form of Agreement
 400 Sample Supplier Relationship Management

Appendix 5 Access by Individual with Disabilities

Appendix 6 Electronic and Information Resources Environment
 Specifications

Appendix 7 Security Characteristics and Functionality of Contractor's

Appendix 8 Overview of Air Charter Related Services

Attachment Proposer's Price Schedule

HISTORICALLY UNDERUTILIZED BUSINESSES

Completing the HUB Sub-Contracting Plan

- UT System Policy #137 requires a “good-faith effort” to include minority and woman-owned businesses in all of our procurement opportunities.
- All firms or individuals, both HUB and non-HUB, in-state or out-of-state, who propose on UT System opportunities, valued over \$100,000 are required to submit a HUB Subcontracting Plan with their RFP.
- Responses that do not include an HSP will be rejected as a material failure to comply with advertised specifications in accordance with the request for proposal.
- HUB Goal for this RFP is 26%

Completing the HUB Sub-Contracting Plan (cont'd)

Option One

If you are not subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete the following sections:

- a) Section 1 – Respondent and Requisition Information
- b) Section 2A – No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
- c) Section 3 – Self Performance Justification – Check “No” and provide an explanation in the box provided.
- d) Section 4 – Affirmation

Completing the HUB Sub-Contracting Plan (cont'd)

Option Two

If all of your subcontracting opportunities will be performed using only HUB vendors, complete the following sections:

- a) Section 1 - Respondent and Requisition Information
- b) Section 2A – Yes, I will be subcontracting portions of the contract
- c) Section 2B – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to HUB vendors
- d) Section 2C – Yes
- e) Section 4 – Affirmation
- f) Good Faith Effort (Attachment A) – Complete this attachment for each subcontracting opportunity
- g) Attach HUB certification documents

Completing the HUB Sub-Contracting Plan (cont'd)

Option Three

If you are subcontracting with HUB vendors and Non-HUB vendors, and the total percentage of subcontracting with HUB vendors meets or exceeds the HUB Goal the contracting agency has identified in “Agency Special Instructions/Additional Requirements”, complete the following:

- a) Section 1 - Respondent and Requisition Information
- b) Section 2A – Yes, I will be subcontracting portions of the contract
- c) Section 2B – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to HUB vendors and Non HUB vendors
- d) Section 2(C) – No
- e) Section 2(D) – Yes
- f) Section 4 – Affirmation
- g) Good Faith Effort (Attachment A) – Complete this attachment for each subcontracting opportunity
- h) Attach HUB certification documents

Completing the HUB Sub-Contracting Plan (cont'd)

Option Four

If you are subcontracting with HUB vendors and Non-HUB vendors (or only Non HUB vendors) and will not meet the HUB Goal , complete the following:

- a) Section 1 - Respondent and Requisition Information
- b) Section 2A – Yes, I will be subcontracting portions of the contract
- c) Section 2B – List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to HUB vendors and Non HUB vendors
- d) Section 2C – No
- e) Section 2D – No
- f) Section 4 – Affirmation
- g) Good Faith Effort (Attachment B) – Complete this attachment for each subcontracting opportunity
- h) Attach HUB certification documents

Required Documents

- Letter of HUB Commitment
- HSP completed depending on your firms circumstances (i.e. Option 1-4)
- Changes to the plan must be approved by the HUB Coordinator and if approved a revised HSP will be submitted
- Any requests for payment will include the Progress Assessment Report (PAR) form or no payment will be made until the form is complete

Before Submission Requirement



Send the HSP to the HUB Coordinator for a preliminary review.

*At Least 4 Days Prior to RFP Due Date

BEFORE MAY 25TH

Historically Underutilized Businesses

Cynthia Booker

UT System Administration
Office of HUB Development

Office: 409-772-1353

cbooker@utsystem.edu

- All HUB Plans should be reviewed prior to submittal
- Responses that do not include an HSP will be rejected as a material failure to comply with advertised specifications in accordance with the request for qualifications
- HUB Subcontractor Training Presentation can be found at:
<http://www.cpa.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

SCIQUEST eSOURCING PLATFORM

MD Anderson Supplier Portal

[SciQuest Sourcing Director](#)

THE UNIVERSITY OF TEXAS
MD Anderson
Cancer Center
Making Cancer History®

SUPPLIER MANAGEMENT PORTAL

Secure Account Login

Welcome to the University of Texas at MD Anderson Supplier Management Portal. Please login to begin.

✔ Please login to view the sourcing event.

Email

Password

[Login](#) [Trouble logging in?](#)

To create a new account please click the button below.

[Create Account](#)

Please contact MD Anderson Supply Chain Management Help Desk at SupplyChainHelpdesk@mdanderson.org or +1 (713) 745-7997 for assistance.

powered by
sciQuest

For registered supplier, click Supplier Portal Login

If you are a new supplier, click to register.

RFP Q&A



SUPPLY CHAIN ALLIANCE
THE UNIVERSITY of TEXAS SYSTEM
Creating Value Through Collaboration

Key Reminders

- All questions need to be sent in SciQuest by May 14, 2015 by 5:00PM (CST)
- Addendums will be published in SciQuest. Addendum will include:
 - Pre-proposal meeting PowerPoint
 - List of attendees (online & in person) from Pre-proposal meeting
 - Questions & Answers
 - Additional questions or information communicated about the RFP
- Complete Your Hub Subcontracting Plan
- Complete & Sign The Execution Of Offer
- Deadline for RFP submittal is May 29, 2015 by 3:00 PM (CST)

SOURCING EVENT CONTACTS

UTSSCA Contact Information



Our Online Community:

www.utsystem.edu/hea/supplychainalliance



Like Us on Facebook



Follow Us on Twitter

Kyle Barton

Contract Manager

713.745-8339

kdbarton@mdanderson.org

Nancy Martinez

Sourcing Specialist

713.563.5656

njmartinez@mdanderson.org



HUB Contact and SciQuest Support



Cynthia Booker

UT System Administration
Office of HUB Development

Office: (409) 772-1353

cbooker@utsystem.edu

UTMDACC SciQuest Contact

Office: (713) 745-7997

SupplyChainHelpdesk@mdanderson.org



Thank you for your participation!

Pre-Proposal Meeting**UTSA48****Charter Aircraft-Related Conference**

Last Name	First Name	Organization
Copus	Gavin	Air Charter Service
Foster	Mackenzie	Air Charter Service
Young	Lisa	American Airlines
Croasmun	Troy	Ameristar Charters
Muth	Stacy	Ameristar Charters
Salazar	Mauricio	Chapman Freeborn Airchartering
Clay	James	FlighTime Business Jets, LLC
Holmgrain	Tripp	FlighTime Business Jets, LLC
Haggerty	Katelyn	PJS Group, LLC
Strasburg	Marco	SHY Aviation
Hull	Weston	Starbase Jet
Ross	Kevin	United Airlines
Barton	Kyle	UT Supply Chain Alliance
Martinez	Nancy	UT Supply Chain Alliance



RFP Submittal Deadline: **June 2, 2015** at **3:00 PM**
(CST)

Page 1 of 1

Addendum Issue Date: **May 15, 2015**

ADDENDUM 2
REQUEST FOR PROPOSAL
UTS/A48
Charter Aircraft - Related Services

DIRECT QUESTIONS TO: Nancy Martinez via the SciQuest System

ACKNOWLEDGEMENT OF THIS ADDENDUM 2 IS REQUIRED IN ACCORDANCE WITH **SECTION 1.2 OF APPENDIX ONE**, TO THE RFP. THIS RFP ADDENDUM IS A FURTHERANCE OF RFP **UTS/A48** AND IS NOT A CONTRACT OR OFFER TO CONTRACT.

Item One:

Section 5.42 - The third definition for "14 CFR Part 125" is deleted and replaced with the following to exclude this type of operator from providing athletic charter services per NCAA regulations.

14 CFR Part 125: Title 14 of the Code of Federal Regulations Part 125 issued by the FAA prescribes rules governing the certification and operations of airplanes having a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more; and rules governing persons on board such aircraft. Part 125 is referred to as "**Private Carriage.**" *In accordance with NCAA regulations, this type of operator cannot provide athletic charter services.*

Item Two

Section 5.4.4.5, C, Paragraph (9) is deleted and replaced with the following to provide for the use of estimated passenger and cargo weights.

- (9) **Charter procedures.** Complete route planning and airport analyses must be accomplished, and estimated or actual passenger and cargo weights must be used in computing aircraft weight and balance.

Item Three:

Section 2.1 is deleted and replaced with the following to extend the submittal deadline to June 2, 2015 at 3:00 PM Central Standard Time.

2.1 Submittal Deadline

UT System will accept proposals submitted in response to this RFP until **3:00 PM**, Central Standard Time, on **June 2, 2015** (the "**Submittal Deadline**").

Item Four

No questions were submitted regarding this RFP by the deadline of 5:00 PM, May 14, 2015.

All other terms, conditions and requirements set forth in RFP UTS/A48 remain unchanged and in effect.

END OF ADDENDUM 2



RFP Submittal Deadline: **June 2, 2015** at **3:00 PM**
(CST)

Page 1 of 1

Addendum Issue Date: **May 27, 2015**

ADDENDUM 3
REQUEST FOR PROPOSAL
UTS/A48
Charter Aircraft - Related Services

DIRECT QUESTIONS TO: Nancy Martinez via the SciQuest System

ACKNOWLEDGEMENT OF THIS ADDENDUM 3 IS REQUIRED IN ACCORDANCE WITH **SECTION 1.2 OF APPENDIX ONE**, TO THE RFP. THIS RFP ADDENDUM IS A FURTHERANCE OF RFP **UTS/A48** AND IS NOT A CONTRACT OR OFFER TO CONTRACT.

Item One:

Appendix Two – HUB Subcontracting Plan

Due to airport contracting arrangements, the UT System HUB office has determined that the HUB Subcontracting Plan for the above sourcing event may be completed as “Self Performing”. If you have any questions, please contact Cynthia Booker at (409) 772-1353 or via e-mail at cbooker@utsystem.edu.

All other terms, conditions and requirements set forth in RFP UTS/A48 remain unchanged and in effect.

END OF ADDENDUM 3