



RFP Submittal Deadline: **July 11, 2017 at 3:00 PM CST**
(Houston, TX Time)

Page 1 of 1

Addendum Issue Date: **June 14, 2016**

ADDENDUM 1
REQUEST FOR PROPOSAL
UTS/A63
CHARTER AIRCRAFT (SMALL
PASSENGER) RELATED SERVICES

DIRECT QUESTIONS TO: Lequida Pearson 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/A60** AND IS NOT A CONTRACT OR OFFER TO CONTRACT.

Item One:

The Pre-proposal Conference Meeting has been scheduled from 10:00 AM to 11:00 PM on June 20, 2017.

Location

7007 Bertner Ave., Houston, Texas 77030
Conf. Room: 1MC12.3312/3313

There is a parking garage attached to the building. Be sure to arrive early it can take a few minutes to find a space. There is a breezeway from the 5th floor of the garage to 3rd floor of the building. This is the floor that the conference room is located on. There is an information desk as you come into the building from the breezeway. They can direct you to the conference room.

All Proposers are strongly encouraged to have at least one representative (no more than two) attend the pre-proposal webinar / conference call scheduled for **June 20, 2017 at 10:00 AM CST (Houston, TX time)**. UT representatives will be available to answer questions pertaining to this RFP, explain HUB proposal requirements, and answer any questions that Proposers might have. The number one reason that proposals are disqualified is noncompliance with the HUB requirements associated with proposal submission.

Webinar

Webinar link: <https://global.gotowebinar.com/join/6057533197185095681/720457657>
Conf. Line: 877-226-9790
Passcode: 7277429

Item Two:

The Proposer's Survey has been amended to a Word document version. The revised Proposer's Survey is attached hereto.

All other terms, conditions and requirements set forth in RFP UTS/A63 remain unchanged and in effect.

END OF ADDENDUM 1



RFP Submittal Deadline: **July 11, 2017 at 3:00 PM**
CST (Houston, TX Time)

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Addendum Issue Date: **June 20, 2016**

ADDENDUM 2
REQUEST FOR PROPOSAL
UTS/A63
CHARTER AIRCRAFT (SMALL
PASSENGER) RELATED SERVICES

DIRECT QUESTIONS TO: Lequida Pearson via the SciQuest System

ACKNOWLEDGEMENT OF THIS ADDENDUM 25 IS REQUIRED IN ACCORDANCE WITH **SECTION 1.2 OF APPENDIX ONE**, TO THE RFP. THIS RFP ADDENDUM IS A FURTHERANCE OF RFP **UTS/A63** AND IS NOT A CONTRACT OR OFFER TO CONTRACT.

Item One:

Pre-proposal webinar / conference call slides.

Item Two:

Pre-proposal webinar / in-person attendees sign-in sheet and conference call attendee report.

All other terms, conditions and requirements set forth in RFP UTS/A63 remain unchanged and in effect.

END OF ADDENDUM 2



SUPPLY CHAIN ALLIANCE

THE UNIVERSITY of TEXAS SYSTEM

Creating Value Through Collaboration

RFP UTS/A63

Charter Aircraft (Small Passenger)

Related Services

Pre-Proposal Conference

Teleconference #: 877-226-9790

Participant Code: 7277429#

June 20, 2017 10:00 AM

Agenda

- 🔗 Introduction
- 🔗 UT System Supply Chain Alliance (UTSSCA) Overview
- 🔗 RFP Overview
- 🔗 UT System HUB Program Overview
- 🔗 Jaegger (SciQuest e-Sourcing) Platform
- 🔗 Key Reminders
- 🔗 Sourcing Event Contact(s)
- 🔗 Questions & Answers

ALLIANCE OVERVIEW

Alliance Facts

- Established by UT System in 2007
- Focused on Academic Health and Higher Education Institutions
 - ✓ 14 UT Members – 6 Health, 8 Academic
 - ✓ >30 Affiliates – including several multi-campus university systems
- Historically Underutilized Businesses
 - ✓ >25% of Alliance contract spend
- Combined Spend to Market
 - ✓ >\$1B Supplies & Services



You can view the Supply Chain Alliance video online on our YouTube Channel:
<https://www.youtube.com/watch?v=klep1pw5u1E&feature=youtu.be>



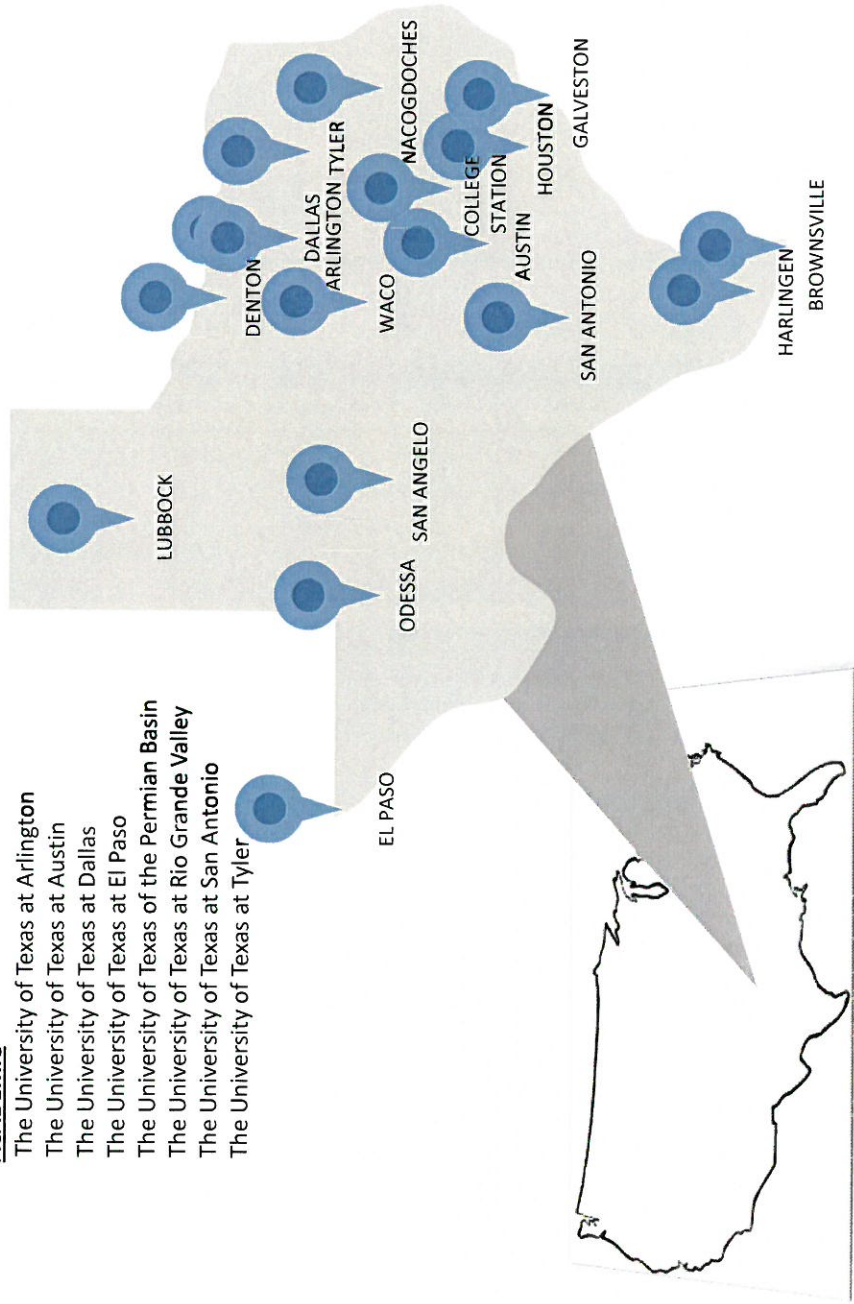
The UT System Supply Chain Alliance

ACADEMIC

- The University of Texas at Arlington
- The University of Texas at Austin
- The University of Texas at Dallas
- The University of Texas at El Paso
- The University of Texas of the Permian Basin
- The University of Texas at Rio Grande Valley
- The University of Texas at San Antonio
- The University of Texas at Tyler

HEALTH

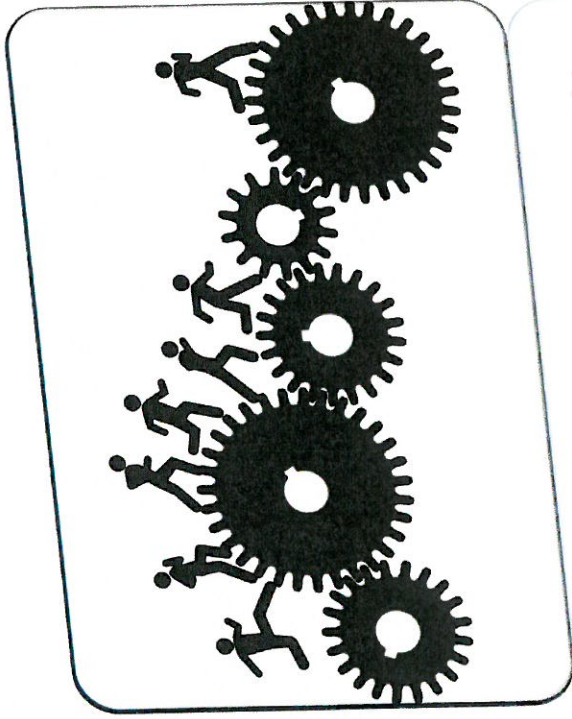
- The University of Texas Southwestern Medical Center at Dallas
- The University of Texas Medical Branch at Galveston
- The University of Texas Health Science Center at Houston
- The University of Texas Health Science Center at San Antonio
- The University of Texas MD Anderson Cancer Center
- The University of Texas Health Northeast



AFFILIATES

- Baylor College of Medicine
- Children's Medical Center
- University of North Texas System
- Rice University
- Stephen F. Austin
- Texas A&M University System
- Texas Tech University
- Tyler Junior College
- Baylor University
- University of Tennessee
- Texas State Technical College (System)
- Houston Community College

UTSSCA Key Successes



FY17 marks the
10th year of
operations for the
Alliance

The Alliance has
more than 40
strategic supplier
agreements and a
GPO collaboration

The Alliance
contracts create a
potential savings
opportunity of
over \$215M

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 (SSG) – Advocates for both Institutions and Preferred Suppliers

Lower cost structure for Preferred Supplier to do business



RFP OVERVIEW

Objective

The successful Proposer(s) to whom business may be awarded is referred to in the RFP document as the “**Preferred Supplier**.”

UT System, acting through the Alliance, is soliciting proposals in response to this RFP from qualified suppliers to provide charter aircraft-related services – principally involving air crafts with a passenger capacity of 18 passengers or fewer. 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.

- Increase efficiency, accuracy, and where possible automation, throughout the revenue cycle process
- Strong implementation support and training
- Supplier dedicated to ongoing product improvement
- Comprehensive and guaranteed pricing structure
- Leverage the aggregate purchasing volumes of Institutional Participants
- Achieve cost savings for Institutional Participants

Key Dates

Date	Time	Event
6/12/2017	12:00 pm*	Issue RFP Documents
6/20/2017	10:00 am*	Pre-Proposal Meeting
6/22/2017	5:00 pm*	<u>Deadline</u> to Submit Questions for clarification to RFP requirements - Section 2.2 of this RFP
6/29/2017	12:00 pm*	<u>Deadline</u> for preliminary review of HUB plan
7/11/2017	3:00 pm*	Proposal Submittal <u>Deadline</u>
July 2017		Selection of Finalists
August 2017		Finalists Interviews and Negotiations
August 2017		Anticipated Contract Awards(s)
* Houston, TX CDT/CST Time		

RFP Document Sections

Section 1

Introduction

- Description of UT
- Objective
- Background

Section 2

Notice to Proposer

- Timeline
- Contact Details

Section 3

Submission of Proposal

- Submittal Checklist

Section 4

General Terms & Conditions

Section 5

Specifications, Additional Questions, & Scope of Work

- Exceptions Uploaded in SciQuest (Section 5.1.3)

Section 6

Pricing Schedule & Affirmation

- Download & Return Signed Affirmation

RFP Appendices

- Appendix 1 Proposal Requirements
- Appendix 2 UT System Policy on HUBs
- Appendix 3 Form of Preferred Supplier Agreement for Charter Operator Services
- Appendix 4 Form of Preferred Supplier Agreement for Charter Broker Services
- Appendix 5 Access by Individuals with Disabilities
- Appendix 6 Certificate of Interested Parties

Proposer's Survey

- Download the document and provide answers to each of the questions
- Upload the completed document
- Any additional attachments not required, but pertinent, can be attached as a separate file
 - SciQuest will only allow one document to be uploaded. If there are multiple documents to upload, you must use a ZIP file

HUB OVERVIEW

Historically Underutilized Business (HUB) Overview

What is a "Historically Underutilized Business" ...

- is a for-profit entity that has not exceeded the size standards prescribed by 34 TAC §20.23, and has its principal place of business in Texas, and
- is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or Service Disabled Veteran, who reside in Texas and actively participate in the control, operations and management of the entity's affairs.

Completing the HUB Sub-Contracting Plan (HSP)

- 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%

HSP Option 1: Subcontracting, all HUB vendors

OPTION 1 – If all of your subcontracting opportunities will be performed using only HUB vendors, complete the following sections

SEC 1.

- Respondent and Requisition Information

SEC 2.

- A. Yes, I will be subcontracting portions of the contract
- B. List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to HUB vendors
- C. Yes

SEC 3.

- Not applicable

SEC 4.

- Affirmation (*Signature Required*)

Attach &
Upload

- Sections 1-4
- Good Faith Effort (Attachment A) – Complete this attachment for each subcontracting opportunity from Section 2B.
- Letter of Transmittal

HSP Option 2: Subcontracting, HUB & Non-HUB Meets or Exceeds the HUB Goal

OPTION 2 – If you are subcontracting with HUB & Non-HUB Vendors and the total % of HUB subcontractors meets or exceeds the HUB goal, complete the following sections

SEC 1.

- Respondent and Requisition Information

SEC 2.

- A. Yes, I will be subcontracting portions of the contract
- B. 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
- C. No
- D. Yes

SEC 3.

- Not Applicable

SEC 4.

- Affirmation (*Signature Required*)

Attach & Upload

- Sections 1-4
- Good Faith Effort (Attachment A) – Complete this attachment for each subcontracting opportunity from Section 2B.
- Letter of Transmittal

HSP Option 3: Subcontracting, HUB & Non-HUB

OPTION 3 – If you are subcontracting with HUB vendors and Non-HUB vendors (or only Non-HUB vendors), complete the following sections

SEC 1.

- Respondent and Requisition Information

SEC 2.

- A. Yes, I will be subcontracting portions of the contract
- B. 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
- C. No
- D. No

SEC 3.

- Not Applicable

SEC 4.

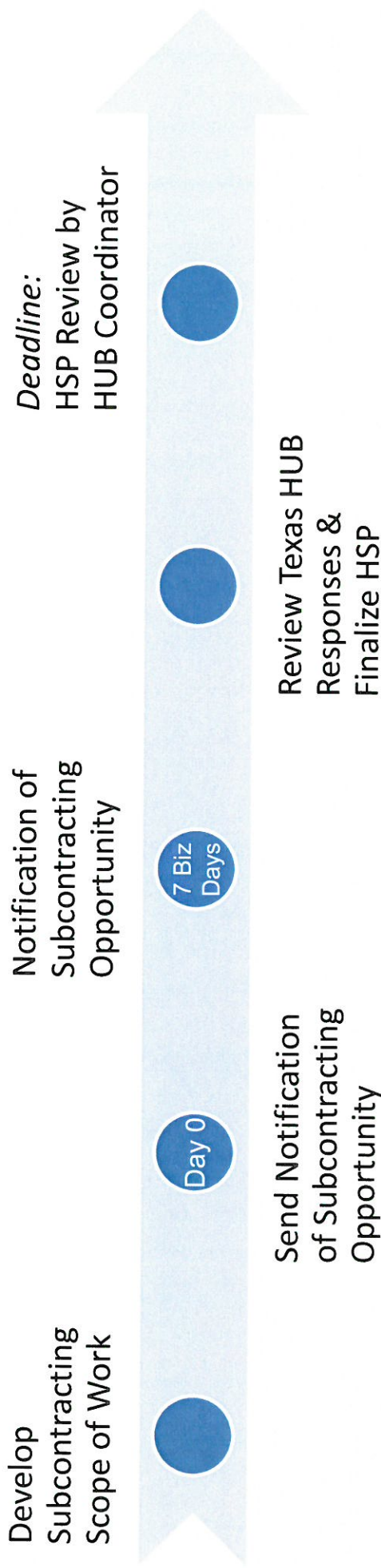
- Affirmation

Attach & Upload

- Sections 1-4
- Good Faith Effort (Attachment B) – Complete this attachment for each subcontracting opportunity from section 2B.
- Letter of Transmittal

HSP Option 3: Subcontracting, HUB & Non-HUB

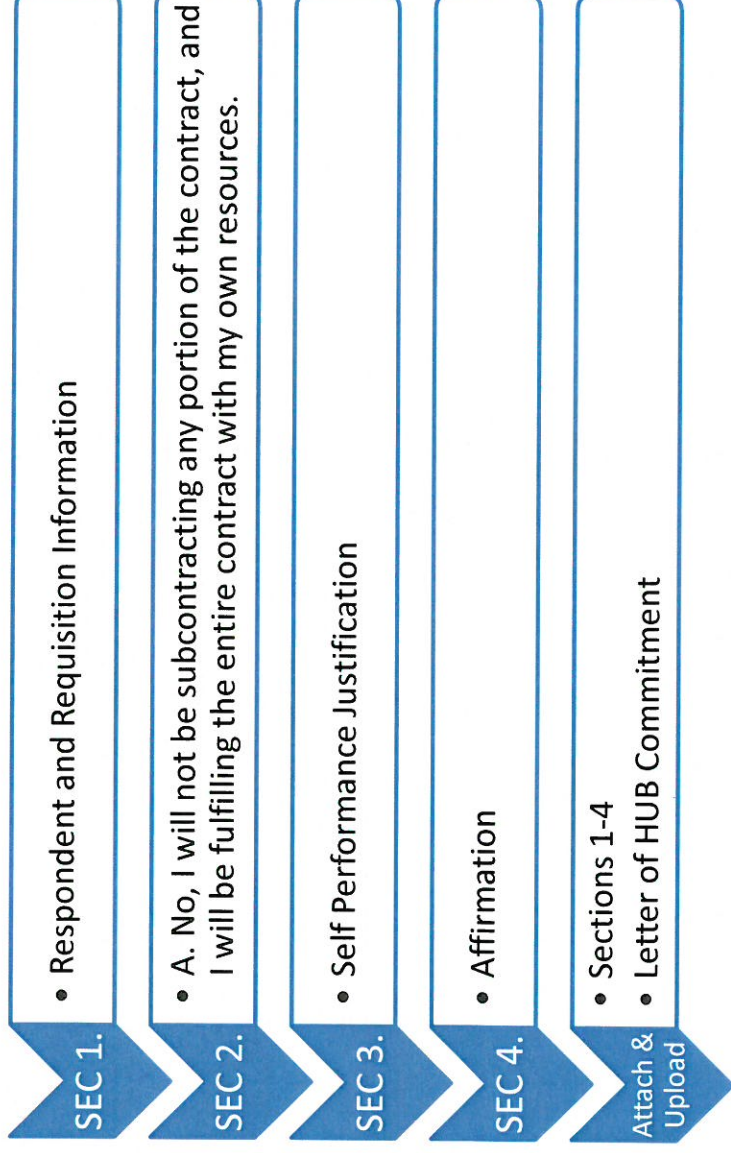
If you plan to subcontract any portion of this RFP, you must complete Good Faith Effort (GFE) Method B. This requires a **7 business day notification** of the subcontracting opportunity to Texas certified HUBs and trade organizations or development centers.



Texas Minority & Women Organization Links:
<http://comptroller.texas.gov/procurement/prog/hub/mwb-links-1/>

HSP Option 4: Self-Performing

OPTION 4 – 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



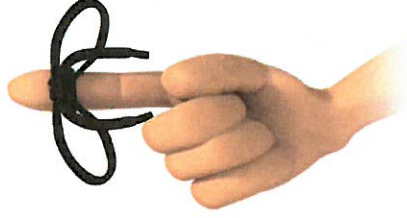
Required HUB Documents for Proposal Submission

- Letter of Transmittal or Letter of HUB Commitment
- HSP completed depending on your firms circumstances
(i.e. Option 1-4)

HSP FAQ's

- **Question:** I am certified as a State of Texas HUB. Do I still have to fill out the HSP?
 - **Answer:** Yes, every Proposer must complete the HSP or their Proposal will be disqualified.
- **Question:** If my company is based outside of the State of Texas, do I have to fill out an HSP?
 - **Answer:** Yes, your company's place of business is not considered for a HSP.
- **Question:** What are the cases that would exempt a company from filling out a HSP for this RFP?
 - **Answer:** None. Every Proposer must complete an HSP or their Proposal will be disqualified.
- **Question:** What is the biggest reason a Proposal may be disqualified during the RFP process?
 - **Answer:** **HSP was not received** or the Good Faith Effort was not met.

Before Proposal Submission



You may send the HSP to the HUB Coordinator for a preliminary review.

***BEFORE June 29, 2017 12:00pm CDT/CST**

UT System HUB Program Contact Details

Cynthia Booker
UT System Administration
Office of HUB Development
Office: 409-772-1353
cbooker@utsystem.edu

For a preliminary review of your HUB Plan, you must submit by **June 29, 2017 12:00 pm CDT/CST**

HSP must be submitted with your proposal response.
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 proposals.

MD Anderson Supplier Portal

[SciQuest Sourcing Director](#)

The screenshot shows the MD Anderson Supplier Management Portal login page. At the top left is the MD Anderson Cancer Center logo with the tagline 'Making Cancer History'. The main header reads 'SUPPLIER MANAGEMENT PORTAL'. Below the header, there is a 'Secure Account Login' section with a green checkmark icon and the text 'Please login to view the sourcing event.' This section contains two input fields: 'Email' and 'Password', followed by a blue 'Login' button and a link for 'Trouble logging in?'. To the right of the login fields is a blue callout box that says 'If you are a new supplier, click to register.' Below the login fields is a 'Create Account' button, which is highlighted with a red box. A blue callout box points to this button with the text 'To create a new account please click the button below.' At the bottom of the page, there is a footer with contact information: 'Please contact MD Anderson Supply Chain Management Help Desk at SupplyChainHelpdesk@mdanderson.org or +1 (713) 745-7937 for assistance.' The SciQuest logo is in the bottom right corner.

For registered supplier, click Supplier Portal Login

If you are a new supplier, click to register.

To create a new account please click the button below.

THE UNIVERSITY OF TEXAS
MD Anderson Cancer Center
Making Cancer History

SUPPLIER MANAGEMENT PORTAL

Secure Account Login
Please login to view the sourcing event.

Email
Password
Login Trouble logging in?

Create Account

Please contact MD Anderson Supply Chain Management Help Desk at SupplyChainHelpdesk@mdanderson.org or +1 (713) 745-7937 for assistance.

powered by **SciQuest**

Jaegger (SciQuest) Tips

- Upload Files
 - SciQuest will only allow one attachment to be uploaded per question - if there are multiple attachments to be uploaded on a single question, you must use a ZIP file
- Answering questions
 - Review and Submit
 - Green check mark

Successful Bid Submission

- Once the bid response has been submitted, a successful submission will look like this:

The screenshot displays a mobile application interface for 'MD Anderson Cancer Center Supply Chain Management'. The top navigation bar includes a home icon, a folder icon, a person icon, a dollar sign icon, and a gear icon. The main header reads 'MD Anderson Cancer Center Supply Chain Management - Supplier Portal'. A notification banner at the top right states 'Success Successfully Saved Changes'. The main content area features a green checkmark icon followed by the text 'Response Submitted'. Below this, a light green box contains the following information: 'Next Steps', 'You have submitted a bid of 0.00 USD. You have until 10/29/2015 6:00 PM EDT to withdraw or change your bid.', and a list of three links: 'Return to Home Page', 'Print this Event', and 'Event Summary'.

Key Reminders

- All questions need to be submitted in SciQuest by June 22, 2017 at 5:00 PM CDT/CST.
- Addendums will be published in SciQuest. Addendums will include:
 - Pre-proposal Conference PowerPoint
 - List of attendees (online & in person) from Pre-proposal Conference
 - Questions from suppliers & answers from UT System
 - Additional questions or information communicated about the RFP
- Complete Your HUB Subcontracting Plan (HSP)
- Complete & Sign The Execution Of Offer and all items in the Submittal Checklist
- Deadline for RFP submittal is July 11, 2017 at 3:00PM CDT/CST.

Sourcing Event Contact(s)

RFP Contacts

Lequida Pearson

Sourcing Specialist

Phone: 713-792-7929

E-mail: lfpearson@mdanderson.org

Kyle Barton

Manager, Contracts

Phone: 713-745-8339

E-mail: kdbarton@mdanderson.org

UTMDACC Jaegger (SciQuest) Support

Help Desk

Phone: 713-745-7997

E-mail: SupplyChainHelpdesk@mdanderson.org

RFP Q&A



Thank you for your participation!



RFP Submittal Deadline: **July 11, 2017** at **3:00 PM**
(CST)

Page 1 of 1

Addendum Issue Date: **June 23, 2016**

ADDENDUM 3
REQUEST FOR PROPOSAL
UTS/A63
SMALL AIRCRAFT CHARTER –
RELATED SERVICES

DIRECT QUESTIONS TO: Lequida Pearson 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/A63** AND IS NOT A CONTRACT OR OFFER TO CONTRACT.

Item One: Section 5.5 – Proposers Survey

The Proposer's Survey is hereby deleted in its entirety and replaced with the "Revised Proposer's Survey" attached hereto.

Item Two: RFP Questions Received

Answers to the questions received about the RFP are attached hereto.

All other terms, conditions and requirements set forth in RFP UTS/A63 remain unchanged and in effect.

END OF ADDENDUM 3

REVISED 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 and/or APPENDIX FOUR**, 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 4.0 of APPENDIX THREE and/or Section 5.0 of APPENDIX FOUR**.
- 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 121/135 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 to the necessary quality and safety standards as detailed in **Section 5.0 of APPENDIX THREE and/or Section 6.0 of APPENDIX FOUR**.
- 3.10 Please indicate your company's ability to provide a copy of the Air Carrier Certificate to the Institutional Participant not less than thirty (30) days prior to the scheduled departure date, as applicable. If the flight is scheduled less than thirty (30) days from the departure date, what is maximum time-frame to provide the Air Carrier Certificate to the Institutional Participant?

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 Reporting

- 5.1 Provide Upfront Data reports described in **Section 9.0 of APPENDIX THREE and/or Section 10 of APPENDIX FOUR.**
- 5.2 As requested by UT System, can your company support Ongoing Data reports described in **Section 9.0 of APPENDIX THREE and/or Section 10 of APPENDIX FOUR?**
- 5.3 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
- 5.4 Describe your company’s ability to provide reports for the Other Factors described in **Section 9.0 of APPENDIX THREE and/or Section 10 of APPENDIX FOUR.**
- 5.5 Describe the capacity of your company to report quarterly sales under the Preferred Supplier Agreement by each Institutional Participant.
- 5.6 Indicate which standard reports are available. Include the frequency they can be made available.

6.0 Pricing and Incentives

- 6.1 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.
- 6.2 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.
- 6.3 As applicable, please indicated any a not-to-exceed annual escalation percentages in your fee structure.
- 6.4 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".
- 6.5 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.
- 6.6 What is the Proposer's cancellation policy? What, if any, fees are charged?
- 6.7 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.
- 6.8 Please describe your company's approach to structuring an incremental sales volume growth rebate or incentive.

7.0 Services

- 7.1 How will your company accommodate Institutional Participants if there is a problem encountered with the flight arrangements?
- 7.2 Would your company be willing to assign a dedicated representative(s) to assist with charter requests as well as provide 24/7 assistance?
- 7.3 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.
- 7.4 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.
- 7.5 Describe an estimate of the earliest starting date for services following execution of an Agreement.
- 7.6 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.
- 7.7 In the event of weather or other VFR minimums that require landing at an alternate location,

please confirm that the aircraft will be repositioned to the original destination for the return flight at no additional cost, unless there is reasonable expectation that the conditions requiring the alternate location are not likely to improve. If not, please explain.

8.0 Added Value

- 8.1 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.
- 8.2 Please describe any special benefits or advantages in selecting your company. Please provide only information not previously asked or disclosed herein.
- 8.3 Does your company have the ability to allow passengers access to camera and photo equipment while in-flight?
- 8.4 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?
- 8.5 Can your company schedule hotel and other lodging accommodations?
- 8.6 Can your company schedule lounge and conference room services?
- 8.7 Please indicate any additional "value added" services or programs not otherwise asked or disclosed herein that should be considered during the evaluation process.

UTS/A63 SMALL AIRCRAFT CHARTER

RFP QUESTIONS

1. In the Proposer's Survey, it refers to requirements in Section 5.4.4.4, 5.4.4.5 & 5.4.4.7. We are unable to locate those sections.

Please see the revised Proposer's Survey included in this Addendum 3.

2. Will there be a primary departure point for these trips or can they originate from any of the UT locations?

There is not a primary departure point. Charters can originate from any location.

3. Are the Operators to submit specific aircraft models such as King Air 200, Lear 45, etc., or just categories of aircraft such as Turbo Prop, Light Jet etc..

Categories of aircraft type is acceptable.

4. Section 21 of Appendix 3 and Appendix 4 - some of the links provided in this section do not work. May new links please be provided or copies of the policies.

Below are the links to the policies listed in Section 21 (Ethics Matters; No Financial Interest) of Appendix 3 and Appendix 4.

Conflict of Interest Policy:

<https://www.utsystem.edu/board-of-regents/policy-library/policies/uts180-conflicts-interest-conflicts-commitment-and-outside>

UT System's Standards of Conduct Guide:

<https://www.utsystem.edu/documents/docs/policies-rules/ut-system-administration-standards-conduct-guide>

State ethics laws and rules:

<https://www.utsystem.edu/offices/general-counsel/ethics#use>

5. Section 20.1 of Appendix 4 – “anyone whose acts broker may be liable”; please confirm that this does not include airlines section 1.8 states that it is the operator who has operational control of the aircraft.

It would not include the operator, only direct employees of the Broker.

6. Section 19.4 of Appendix 3 and Appendix 4; please advise which insurance this refers to.

If refers to all the insurance coverages listed in Section 19 of Appendix 3 and Appendix 4.

7. Section 19.1 of Appendix 3 and Appendix 4; please advise if Business Auto Liability Insurance is required.

Yes

8. Section 9 of Appendix 3 and Appendix 4; if terminated by the UT party what cancellation fees would apply for charters already booked?

If the charters that have already been booked were canceled due to loss of funding, they would not be subject to the cancellation fees.

9. Section 1.6 of Appendix 3 and Section 1.7 of Appendix 4; what would happen if this was booked less than 30 days prior to the flight taking place?

Please reference Question 3.10 in the revised Proposer Survey included in this Addendum 3.

10. Where can we locate Rider 400/ Rider 300?

They are included towards the end of Appendix 3 and Appendix 4

11. Does the broker pay this on full amount, or just the commission and the airline pays directly?

The Broker is responsible for remitting both the Broker's and Operator's Administrative Fees to UT System.

12. Would UT System consider bidder's terms and conditions?

Please upload any exceptions to any terms and conditions in under Question 5 of the RFP.

13. Applicable certificate, insurance, pilot experience – How can these be provided if we don't know which operators may be utilized?

This criteria would not apply to proposer responding as a Broker.

14. What are the number of flights and average costs for these charters?

They vary from year-to-year; reference Section 1.3 of the RFP

15. Who are the incumbent(s) for the current or past contract?

The previous Preferred Supplier was FlighTime Business Jets, LLC



RFP Submittal Deadline: **July 18, 2017** at **3:00 PM**
(CST)

Page 1 of 1

Addendum Issue Date: **July 11, 2017**

ADDENDUM 4
REQUEST FOR PROPOSAL
UTS/A63
SMALL AIRCRAFT CHARTER –
RELATED SERVICES

DIRECT QUESTIONS TO: Lequida Pearson/Nancy Martinez via the SciQuest System

ACKNOWLEDGEMENT OF THIS ADDENDUM 4 IS REQUIRED IN ACCORDANCE WITH **SECTION 1.2 OF APPENDIX ONE**, TO THE RFP. THIS RFP ADDENDUM IS A FURTHERANCE OF RFP **UTS/A63** AND IS NOT A CONTRACT OR OFFER TO CONTRACT.

Item One: RFP Submittal Deadline

The RFP Submittal Deadline has been changed to July 18, 2017 at 3:00 PM (CST)

END OF ADDENDUM 4

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 SMALL AIRCRAFT CHARTER-RELATED SERVICES

RFP No. UTS/A63

**Submittal Deadline: July 18, 2017
@ 3:00 PM, CST**

Issued: June 12, 2017

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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 14 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 \$17.9 billion, UT System has a current student enrollment exceeding 221,000. UT System employs about 100,000 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 Dallas (UTD)
- The University of Texas at El Paso (UTEP)
- 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, (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 small charter aircraft-related services – **principally involving aircrafts with a passenger capacity of 18 passengers or fewer**. The services may include the procurement, delivery and management of small charter air 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 referenced 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 approx. \$150,000 for the charter of small aircraft and related services. To date, UT Austin, UTSA and UTMB have been the primary users of small aircraft charter contracts.

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**, Houston Time, on **July 11, 2017** (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**"):

Lequida Pearson
Sourcing Specialist
UT System Supply Chain Alliance
Email: lfpearson@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**, Houston Time, on **June 22, 2017**. 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 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	June 12, 2017
Pre-Proposal Conference (ref. Section 2.6 of this RFP)	June 20, 2017 (in Houston, TX), 10:00 AM Houston time
Deadline for Questions/Concerns (ref. Section 2.2 of this RFP)	June 22, 2017, 5:00 PM Houston time
Submittal Deadline (ref. Section 2.1 of this RFP)	July 11, 2017, 3:00 PM Houston time
Selection of Finalists	July 2017
Finalists Interviews	August 2017
Anticipated Contract Award(s)	August 2017

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 Cynthia Booker, HUB Coordinator (Phone: 409-772-1353 / Email: cbooker@utsystem.edu).

2.5.5 UT System may offer Proposer the opportunity to seek an informal review of its draft HSP by the UT System Office of HUB Development. If so, details regarding this opportunity will be provided in the Pre-Proposal Conference (ref. **Section 2.6** of this RFP) or by other means. This process of informal review is designed to help address questions Proposer may have about how to complete its HSP properly. Any concurrence in or comments on the draft HSP by the UT System Office of HUB Development will NOT constitute formal approval of the HSP, and will NOT eliminate the need for Proposer to submit its final HSP to UT System, concurrently with its proposal, in accordance with the detailed instructions in this **Section 2.5.2.6 Pre-Proposal Conference**

UT System will hold a pre-proposal conference at **10:00 AM**, Houston Time, on **June 20, 2017**. 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 June 14, 2017**, whether it will attend the Pre-Proposal Conference, by emailing the UT System Contact at lfpearson@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 Operator (ref. **APPENDIX THREE**) or a Charter Broker (ref. **APPENDIX FOUR**), or both. The terms “Charter Operator” and “Charter Broker” are defined in the relevant PSA.
- (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 relevant PSA(s).
- (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 small aircraft 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.

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, or both.**

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 referenced in **Section 5.4** of this RFP.
- 5.2.3 If Preferred Supplier is a **Charter Operator** (as defined below), Preferred Supplier must meet the additional minimum requirements referenced in **Section 5.4** 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 By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**), Proposer agrees to comply with Section 2252.908, Government Code (“**Disclosure of Interested Parties Statute**”), and 1 Texas Administrative Code Sections 46.1 through 46.5 (“**Disclosure of Interested Parties Regulations**”), as implemented by the Texas Ethics Commission (“**TEC**”), including, among other things, providing the TEC and UT System with the information required on the form promulgated by the TEC and set forth in **APPENDIX SIX**. Proposers may learn more about these disclosure requirements, including the use of the TEC electronic filing system, by reviewing the information on the TEC website at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html. The Certificate of Interested Parties must be submitted by Preferred Supplier upon delivery to UT System of a signed Agreement.

5.4 Scope of Work

The Scopes of Work contained in the PSA forms included in this RFP as **APPENDIX THREE** (Charter Operator) and **APPENDIX FOUR** (Charter Broker) outline 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.

Proposer should indicate in its response whether and how it will meet each of the requirements outlined in such Scopes of Work.

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 referenced 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/A63

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 Proposers 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.]

APPENDIX THREE

FORM OF PREFERRED SUPPLIER AGREEMENT

for

CHARTER OPERATOR SERVICES

between

THE UNIVERSITY OF TEXAS SYSTEM

and

University of Texas Agreement Number: UTSSCA_____

This Preferred Supplier Agreement (this “**Agreement**”), dated effective as of _____, 2017 (“**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 organized in _____, 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. Various non-UT System institutions that are affiliated with the Alliance may

participate in this Agreement, too, although participation by Alliance affiliates will be limited to business charters (with athletic charters being excluded, due to limits on capacity in the marketplace).

“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 more particularly described in **Rider 100** (Scope of Work) to 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 – Description of Services:

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 400** 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 Institutional Participant’s 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 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.

1.6 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.

1.7 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.

1.8 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.

1.9 If Institutional Participant cancels a charter flight, cancellation charges may apply, on the conditions specified in Section ___ of **Rider 200** (Price Schedule).

1.10 Charter Operator's rules and limitations on liability for checked baggage are attached as **Rider 800**. Institutional Participant will distribute a copy of these rules and limitations to all charter passengers as specified in **Section 1.7** 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 _____, 20__, 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 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 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 100** (Scope of Work) 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.

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: _____
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 15.1.1**, 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 System'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)(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., 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 600** 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 700** 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.

33.4 If Charter Operator undergoes a Change of Control, UT System may, in its sole discretion, terminate this Agreement upon written notice to Charter Operator, effective immediately or, at UT System's option, upon conclusion of a reasonable transition period. For purposes of this Section,

“Change of Control” means the sale of all or substantially all the assets of Charter Operator; any merger, consolidation or acquisition of Charter Operator with, by or into another corporation, entity or person; or any change in the ownership of more than fifty percent (50%) of the voting capital stock of Charter Operator in one or more related transactions. Upon any such termination of this Agreement, no UT Party will have any further liability or obligation to Charter Operator, or to any successor, employee, agent or representative of Charter Operator, except to pay for services actually rendered to the effective date of termination. If UT System provides any such notice of termination, Charter Operator and UT System will work together diligently to bring to a logical and orderly conclusion the business arrangements that are the subject of this Agreement.

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.

UT System institutions are exempt from Texas Sales & Use Tax on goods and services in accordance with Section 151.309, *Tax Code*, and Title 34 TAC Section 3.322. Pursuant to 34 TAC Section 3.322(c)(4), UT System institutions are not required to provide a tax exemption certificate to establish their tax exempt status.

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 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. Preferred Supplier, by executing this Agreement, is deemed to have entered into a HIPAA Business Associate Agreement (“**BAA**”) with each Institutional Participant, as applicable, on the terms set forth in **Rider 900** (UT System-Wide Standard BAA Terms and Conditions).

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	Scope of Work
Rider 200	Price Schedule
Rider 300	Form of Institutional Participation Agreement
Rider 400	Form of Engagement Letter for Particular Charter Flights
Rider 500	Supplier Relationship Management
Rider 600	HUB Subcontracting Plan
Rider 700	Affirmative Action Compliance Program
Rider 800	Charter Operator’s Rules and Limitations on Liability for Checked Baggage
Rider 900	UT System-Wide Standard BAA Terms and Conditions

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

Date: _____

Signed: _____

Printed Name: _____

Title: _____

Date: _____

RIDER 100

SCOPE OF WORK

The following outlines essential requirements for the supply of Services. Charter Operator acknowledges and understands that this Scope of Work provides a general description of the Services to be performed and is not intended to be all inclusive. Charter Operator represents that it is 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.

Charter Operator will provide the Services to Institutional Participants in accordance with this Scope of Work and the other terms and conditions of this Agreement.

1.0 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 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 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.**"

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.

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.

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 or 135, including those authorized operations under both Parts 121 and 135.

2.0 **Performance by Charter Operator**

2.1 Charter Operator will provide air charter services as described in **Section 1.1** of the main body of this Agreement.

2.2 Charter Operator will comply 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.

2.3 Charter Operator will store electronic data and information relating to the Services on servers backed up off-site and in an office located at _____.

2.4 Charter Operator will conduct an implementation kick-off meeting with Institutional Participants. Charter Operator also will conduct quarterly post-implementation status calls for the first six (6) months with Institutional Participant and the UT System Contract Administrator.

2.5 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 Charter Operator's opinion, require such action. Charter Operator will monitor flights on a 24-hour/7 days a week basis and will inform Institutional Participant if there are any requirements to change the requested aircraft. Final decision to make a change to the scheduled aircraft will require input of the Institutional Participant.

3.0 **Charter Operator Standards and Requirements**

Charter Operator will comply with the standards and requirements listed below:

3.1 Charter Operator will be audited for ongoing compliance with ARGUS Gold or Wyvern Standard Pass criteria.

3.2 A safety audit conducted by an accredited FAR Part 135 audit services provider will be conducted

once a year, and Charter Operator must obtain a pass score.

3.3 Charter Operator must be and remain 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.

4.0 **Regulatory Compliance**

Charter Operator will comply with the minimum regulatory requirements outlined below:

4.1 Charter Operator must have approval from the FAA in order to carry Institutional Participant personnel and must be in compliance with all requirements in **Section 5.0** (Air Carrier Quality and Safety) of this Agreement.

4.2 Part 121 Charter Operators must be in compliance with applicable regulations as outlined in Federal Aviation Regulations Part 121: Operating Requirements: Domestic, Flag, and Supplemental Operations.

5.0 **Air Carrier Quality and Safety**

Charter Operator will comply on an ongoing basis with the quality and safety standards outlined below:

5.1 **Must possess 24 months of continuous service.** 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. In applying this requirement, the following guidance will be used:

“**24 months**” refers to the 24 calendar months immediately preceding the date on which the standard is applied.

“**continuous service**” means Charter Operator must have performed revenue-generating services of the nature described in this Agreement, as an FAA Part 121 or 135 (14 CFR 121 or 135) air carrier on a recurring, substantially uninterrupted basis. The services must have occurred with such frequency and regularity as to clearly demonstrate Charter Operator’s ability to perform and support sustained, safe, reliable, and regular services of the type covered by this Agreement.

5.2 **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, Charter Operator 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 Charter Operator’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 Charter Operator's organization. Comprehensive disaster response plans must be in place.

5.3 Quality and Safety Requirements in Operations. Charter Operator will ensure the following:

(1) Flight safety. Established policies that promote flight safety will be maintained. 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 must be up-to-date, reflect the current scope of operations, and be 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 must 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 will be scheduled with highly experienced first officers, and new or low-time first officers will be

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 must involve 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 estimated or actual passenger and cargo weights must be used in computing aircraft weight and balance.

5.4 Quality and Safety Requirements—Maintenance. Charter Operator must demonstrate that passenger and employee safety is the paramount management concern; nonconformance to established maintenance practices is not tolerated; maintenance supervisors must routinely ensure all personnel understand that, in spite of scheduling pressure or other factors, the airplane must be airworthy prior to flight; management must ensure that contracted maintenance, including repair and overhaul facilities, is performed by maintenance organizations acceptable to the CAA. In particular:

(1) Maintenance personnel. Charter Operator must 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. Charter Operator 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 Charter Operator'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 Charter Operator'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. Charter Operator's 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.

5.5 Quality and Safety Requirements—Security. Charter Operator must demonstrate that its 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.

5.6 Quality and Safety Requirements—Specific Equipment Requirements. Charter Operator must be prepared to satisfy equipment and other requirements as specified in this Agreement.

6.0 Accessorial Services

Depending on the needs of the specific trip flown, an Institutional Participant may request Charter Operator to provide common air charter accessorial services. Charter Operator will have the ability to provide the following charter accessorial services that an Institutional Participant may wish to secure:

- (1) Catering services that 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) Group check-in and streamlined baggage/cargo handling procedures.
- (5) 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.
- (6) Communication services that allow crew members, traveling party, and other involved parties to keep abreast of any changing information regarding a trip.
- (7) Flight/trip concierge.
- (8) Dedicated contact for charter scheduling and account management.

7.0 Pricing Adjustments and Administrative Fee

7.1 All prices specified in **Rider 200** are inclusive of all cost and fees due and payable to Charter Operator by Institutional Participant. Prices specified in **Rider 200** are fixed through _____. Prices for calendar year 20__ and each subsequent calendar year during the term of this Agreement will be agreed upon in writing by Charter Operator and the UT System Contract Administrator at least 30 days in advance of the applicable calendar year and will be fixed throughout such year. Year-over-year increases in any price will not exceed ____ percent.

7.2 Charter Operator will pay, on a quarterly basis, an administrative fee (“**Administrative Fee**”) to UT System in an amount equal to one percent (1%) of Total Net Sales of all Services provided by Charter Operator to Institutional Participants under this Agreement during the immediately preceding calendar quarter. As used in this Agreement, “**Total Net Sales**” means the aggregate dollar amount of purchases from Charter Operator by Institutional Participants under this Agreement, less credits, returns, taxes, unpaid invoices, collections, and freight and delivery charges separately charged on an invoice in accordance with this Agreement. For example, if Total Net Sales to all Institutional Participants for a given calendar quarter is equal to \$1,000,000, then the Administrative Fee for that calendar quarter would be \$10,000.

The applicable Administrative Fee will be paid within thirty (30) days after the end of each calendar quarter to which it relates. While UT System prefers payment via ACH, if Charter Operator instead would like to submit any payments by wire transfer (Federal Reserve Fedwire), please contact Treasury.SBO@utsystem.edu in advance for additional instructions to ensure the payment is accepted and processed correctly.

All administrative fees, rebates and/or incentives due and payable to UT System under this Agreement will be paid in accordance with instructions to be provided to Preferred Supplier from time to time via email by the Alliance’s Strategic Services Group.

8.0 Invoicing

8.1 Charter Operator will invoice Institutional Participants, not UT System or the Alliance. Preferred Supplier will customize invoices for each Institutional Participant’s system specifications, process and protocol. Charter Operator will ensure secure data transmissions to and from each Institutional Participant.

8.2 Each Institutional Participant will be responsible for its own process for payment authorization and method for Charter Operator’s services (e.g., manual purchase orders, facsimile, EDI, etc.).

8.3 Each Institutional Participant is solely responsible for the payment due under any Engagement Letter and/or purchase orders it issues hereunder, and no Institutional Participant will have any liability whatsoever relating to an Engagement Letter or purchase order issued by another Institutional Participant. Any documentation issued by an Institutional Participant under this Agreement will be governed by additional commercial terms and conditions in such document.

8.4 Institutional Participant will remit payments of invoices issued under this Agreement on a Net 30 Days basis, subject to requirements of the Texas Prompt Payment Act. Institutional Participant will provide Charter Operator with reports for purchase orders and non-purchase orders requests for matching and allocation purposes.

8.5 Charter Operator 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, Charter Operator will take all of the steps the Institutional Participant's purchasing department deems necessary.

9.0 **Reporting and Performance Measure Requirements**

Charter Operator will submit periodic reports under this Agreement at the request of UT System, on the following matters:

9.1 Ongoing Data Reporting Requirements:

- Safety reports as requested*
 - Pilot experience and historical safety ratings as requested
 - Total number of flights and fees charged per Institutional Participant
 - 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 applicable limitations in FAR 135, Subpart F.

9.2 Ongoing Performance Measures

Charter Operator will furnish to Institutional Participant, prior to the start of each flight covered by an Engagement Letter, a written report of the following information:

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

Note: the following represents 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
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9.3 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

9.3 Sales History Report - Charter Operator will submit to the UT System Contract Administrator a “**Sales History Report**” on the last day of the month following the end of each calendar quarter. The report will be provided in Microsoft Excel format, in accordance with the Sales History Report Format, Field Definitions, and a template to be provided by UT System. The report will provide sales and returns/credits to each Institutional Participant, using the required fields as defined in the Sales History Report Format and Field Definitions. Sales or returns/credits fulfilled by Charter Operator and approved HUB Subcontractors under the Agreement must be included in the report. If no sales or returns are made during the calendar quarter, Charter Operator will submit confirmation of no sales or returns to the UT System Contract Administrator at the mailbox utsscainfo@mdanderson.org. The Sales History Report and reports of no sales or returns will be reviewed with the UT System Contract Administrator. Upon review, the UT System Contract Administrator may request Charter Operator to make formatting and content changes to the Sales History Report for past and/or future Sales History Reports. All sales or returns reported by Charter Operator are subject to the Alliance Administrative Fee. Timeliness of the Sales History Report on or before the Due Date will be evaluated as a Key Performance Indicator within the Supplier Relationship Management (SRM) Program described in **Rider 500**.

Charter Operator will submit the Sales History Report for all sales or returns/credits made by Charter Operator during the term of this Agreement to each Alliance member and affiliate, even if they have not yet signed an Institutional Participation Agreement. Sales or returns/credits made to Institutional Participants under other agreements, such as a local agreement between the Charter Operator and an Institutional Participant, are not required to be reported in the Sales History Report. All sales or returns/credits made under this Agreement to an Institutional Participant not listed in the Institution Name Table described below must be reported to the UT System Contract Administrator for review.

The following table indicates when Sales History Report will be due:

Sales History Report Quarterly Sales Period and Report Due Dates		
Calendar Quarter	Time Frame	Due Date
Q1	January-March	April 30
Q2	April-June	July 31
Q3	July-September	October 31
Q4	October-December	January 31

Institution Name Table

The names of current Alliance member and affiliated institutions are listed in the table below and are the only acceptable names that may be submitted to the Alliance in the Sales History Report. The UT System Contract Administrator will inform Charter Operator when an institution needs to be added to the Sales History Report. All other abbreviations and alternative names are unacceptable. The column titled “Examples of Other Institution Names” is only for reference purposes. Charter Operator should address to the UT System Contract Administrator any questions about institution names.

ID Number	Institution Name	Examples of Other Institution Names
714	UT Arlington	
721	UT Austin	UT Applied Research Labs (ARL) UT Austin Athletics
738	UT Dallas	
724	UT El Paso	
742	UT Permian Basin	
	UT Rio Grande Valley	UT Brownsville UT Pan American
743	UT San Antonio	
750	UT Tyler	
729	UT Southwestern Medical Center	
723	UT Medical Branch Galveston	
744	UT Health Science Center Houston	UT Physicians
745	UT Health Science Center San Antonio	
506	UT MD Anderson Cancer Center	University of Texas MD Anderson Cancer Center Science Park The Virginia Harris Cockrell Cancer Research Center MD Anderson Smithville
750	UT Health Science Center Tyler	UT Health Northeast
720	UT System	<i>Only used for sales or returns by the System Administration Office UTIMCO</i> UT System Personal Use UT System Info Resources

10.0 Supplier Relationship Management

Charter Operator will comply with supplier relationship management requirements set forth in Rider 500.

11.0 Primary Administrative Contacts

Charter Operator:

_____ [name]
_____ [title]
Phone: _____
_____ [email]

UT System/UT SUPPLY CHAIN ALLIANCE:

Lequida Pearson, Sourcing Specialist
UT System Supply Chain Alliance
Phone: (713) 792-7929
Email: lfpearson@mdanderson.org

RIDER 200

PRICE SCHEDULE

- 1.1 **Pricing.** Initial pricing, which is subject to adjustment per **Section 7.1** of **Rider 100** (Scope of Work), is as follows:

tbd

RIDER 300

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____, effective _____, 2017 (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.
- Where applicable, facilitate and promote (1) vendor show per year
- Identify the PSA and its value to end-users.
- Conduct business reviews to review Charter Operator’s reports, metrics, and commitments.
- Facilitate resolution of Institutional Participant and Charter Operator conflicts.

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.

RIDER 400

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 _____, 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 _____,
University of Texas Agreement Number UTSSCA _____, dated as of _____ (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 Alliance on a quarterly basis (refer to **Rider 100 - Scope of Work**).

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 1.3** 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:

tbd Phone: _____

tbd Phone: _____

tbd PAYABLE TO: _____ ABA # _____ Account # _____

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:

tbd
 ACCT. NAME: _____, ESCROW ACCOUNT
 ACCT. NUMBER _____
 ABA ROUTING NUMBER: _____

3. Cancellation Fees

If Institutional Participant cancels a charter flight, cancellation charges may apply, on the conditions specified in **Section ____** of **Rider 200** (Price Schedule).

RIDER 500

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.

2.0 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%	$\leq 2\%$ $>2\%-\leq 5\%$ $>5\%$	15 10 0	Comprehensive report detailing of year-to-date and period-over-period spend and spend versus previous quarter and year spend.
Administrative Fees & Incentive Payments	Not more than 5 days late	Y N	5 0	Paid accurately and on time within contract schedules
Historically Underutilized Business Report	Not more than 5 days late	Y N	5 0	Submitted within contract schedule each month to the Alliance (report includes monthly summary by Institutional Participant)
Customer Satisfaction	90% of metric	$\leq 3\%$ $>3\%-\leq 8\%$ $>8\%-\leq 15\%$ $>15\%$	25 15 10 0	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.

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.

RIDER 900
UT SYSTEM-WIDE BUSINESS ASSOCIATE
AGREEMENT STANDARD TERMS AND CONDITIONS

Preferred Supplier, by executing the Preferred Supplier Agreement to which this Rider is attached, is deemed to have entered into a HIPAA Business Associate Agreement ("**BAA**") with each Institutional Participant on the terms set forth below. Each Institutional Participant is a "**Covered Entity**," and Preferred Supplier is a "**Business Associate**," as more fully defined below (collectively, the "**Parties**").

RECITALS

WHEREAS, Covered Entity has entered or is entering into an Agreement with Business Associate (the "**Underlying Agreement**") by which it has engaged Business Associate to perform services;

WHEREAS, Covered Entity possesses Protected Health Information that is protected under HIPAA and the HIPAA Regulations, HITECH Act and state law, including the Medical Records Privacy Act (MRPA), and is permitted to manage such information only in accordance with HIPAA and the HIPAA Regulations, HITECH Act, and MRPA;

WHEREAS, Business Associate may receive such information from Covered Entity, or create, receive, maintain or transmit such information on behalf of Covered Entity, in order to perform certain of the services under the Underlying Agreement;

WHEREAS, the Parties desire to comply with health information privacy and security protections subsequent to the enactment of the HITECH Act, Subtitle D of the American Recovery and Reinvestment Act of 2009 which has established requirements for compliance with HIPAA. In particular, the requirements provide that: (1) Covered Entity give affected individuals notice of security breaches affecting their PHI, and Business Associate give notice to Covered Entity pursuant to the provisions below; (2) Business Associate comply with the HIPAA security regulations; and (3) additional and/or revised provisions be included in Business Associate Agreement;

WHEREAS, Under HIPAA and HITECH, Covered Entity is required to enter into protective agreements, generally known as "business associate agreements," with certain downstream entities that will be entrusted with HIPAA-protected health information;

WHEREAS, Health information is further protected by state law, including the MRPA; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Protected Health Information.

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions. The Parties agree that the following terms, when used in this BAA, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA and the HIPAA Regulations and the MRPA. All capitalized terms used in this BAA but not defined below shall have the meaning assigned to them under the HIPAA Regulations.
 - a. "Breach" shall have the meaning given such term under 45 C.F.R. § 164.402 as such regulation is revised from time to time.
 - b. "Breach of System Security" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Sensitive Personal Information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data.
 - c. "Business Associate" means, with respect to a Covered Entity, a person who:
 - 1) on behalf of such Covered Entity or of an Organized Health Care Arrangement (as defined under the HIPAA Regulations) in which the Covered Entity participates, but other than in the capacity of a member of the workplace of such Covered Entity or arrangement, creates, receives, maintains, or transmits PHI for a function or activity regulated by HIPAA, HIPAA Regulations, or MRPA including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 C.F.R. 3.20, billing, benefit management, practice management, and re-pricing; or
 - 2) provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, Data Aggregation, management, administrative, accreditation, or financial services to or for such Covered Entity, or to or for an Organized Health Care Arrangement in which the Covered Entity participates, where the provision of the service involves the disclosure of PHI from such Covered Entity or arrangement, or from another Business Associate of such Covered Entity or arrangement, to the person.
 - d. "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
 - e. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
 - f. "HIPAA Regulations" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164 subparts A and E ("The Privacy Rule") and the Security Standards as they may be amended from time to time, 45 C.F.R. Parts 160, 162 and 164, Subpart C ("The Security Rule").
 - g. "HITECH Act" means the provisions of Division A, Title XIII of the American Recovery and Reinvestment Act of 2009, known as The Health Information Technology for Economic and Clinical Health, Act 42 U.S.C. §3000 et. seq., and implementing regulations and guidance, including the regulations implemented in 78 Fed. Reg. 5566 (January 25, 2013).

h. “Individually Identifiable Health Information” means information that is a subset of health information, including demographic information collected from an individual, and:

1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

2) relates to past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

a) that identifies the individual; or

b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

i. “MRPA” means Texas Medical Records Privacy Act, as codified in Section 181 et seq. of the Texas Health and Safety Code and as implemented through regulations including the Standards Relating to the Electronic Exchange of Health Information, codified at Title 1, Section 390.1 et seq. of the Texas Administrative Code.

j. “Protected Health Information” or “PHI” means Individually Identifiable Health Information that is transmitted by electronic media; maintained in any medium described in the definition of the term electronic media in the HIPAA Regulations; or transmitted or maintained in any other form or medium. The term excludes Individually Identifiable Health Information in educational records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g; records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); and employment records held by a Covered Entity in its role as employer and regarding a person who has been deceased more than 50 years.

k. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a routine basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.

l. “Sensitive Personal Information” means: (1) an individual’s first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: (a) social security number; (b) driver’s license number or government-issued identification number; (c) account number or credit or debit card number in combination with any required security code, access, code, or password that would permit access to an individual’s financial account; or (2) PHI information that identifies an individual and relates to: (a) the physical or mental health or condition of the individual; (b) the provision of health care to the individual; or (c) payment for the provision of health care to the individual.

m. “Unsecured PHI” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified in the guidance issued under Section 13402(h)(2) of the HITECH Act on the HHS web site.

2. Permitted Uses and Disclosures.

- a. Compliance with Law. Covered Entity and Business Associate agree to comply with HIPAA, HIPAA Regulations, the HITECH Act, and the MRPA.
 - b. Performance of Services. Except as otherwise permitted by this BAA, Business Associate may create, receive, maintain or transmit PHI on behalf of Covered Entity only in connection with the performance of the services contracted for in the Underlying Agreement or as Required by Law (as that term is defined by 45 C.F.R. § 164.103).
 - c. Proper Management and Administration. Business Associate may use PHI it receives in its capacity as Covered Entity's Business Associate for the proper management and administration of Business Associate in connection with the performance of services in the Underlying Agreement, as permitted by this BAA or as Required by Law (as that term is defined by 45 C.F.R. § 164.103), and to carry out the legal responsibilities of Business Associate. Business Associate may also disclose Covered Entity's PHI for such proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate. Any such disclosure of PHI shall only be made in accordance with the terms of this BAA, including Section 5(c) if to an agent or subcontractor of Business Associate, and only if Business Associate obtains reasonable written assurances from the person to whom the PHI is disclosed that: (1) the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and (2) Business Associate will be notified by such person of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.
 - d. Data Aggregation. Business Associate may use and disclose PHI received by Business Associate in its capacity as Covered Entity's business associate in order to provide Data Aggregation services relating to Covered Entity's health care operations only with Covered Entity's permission.
 - e. Business Associate may use and disclose de-identified health information if written approval from the Covered Entity is obtained, and the PHI is de-identified in compliance with the HIPAA Rules.
3. Nondisclosure.
- a. As Provided in this BAA. Business Associate shall not use or further disclose Covered Entity's PHI other than as permitted or required by this BAA or as Required by Law (as that term is defined by 45 C.F.R. § 164.103).
 - b. Disclosures Required By Law. Business Associate shall not, without prior written consent of Covered Entity, disclose any PHI on the possibility that such disclosure is required by law without notifying, to the extent legally permitted, Covered Entity so that the Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such a disclosure, Business Associate, shall, to the extent permissible by law, refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section 2(c) that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI when a disclosure is required by law.
 - c. Additional Restrictions. If Covered Entity notifies Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of Covered Entity's PHI pursuant to HIPAA or the HIPAA Regulations, Business Associate shall be bound by such additional

restrictions and shall not disclose Covered Entity's PHI in violation of such additional restrictions to the extent possible consistent with Business Associate's obligations set forth in the Underlying Agreement.

d. **Restrictions Pursuant to Subject's Request.** If Business Associate has knowledge that an individual who is the subject of PHI in the custody and control of Business Associate has requested restrictions on the disclosure of PHI, Business Associate must comply with the requested restriction if (a) the Covered Entity agrees to abide by the restriction; or (b) the disclosure is to a health plan for purposes of carrying out payment or health care operations and the PHI pertains solely to a health care item or service for which Covered Entity has been paid out of pocket in full. If the use or disclosure of PHI in this BAA is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the Privacy Rule expressly applies.

e. **Remuneration.** Business Associate shall not directly or indirectly receive remuneration in exchange for disclosing PHI received from or on behalf of Covered Entity except as permitted by HITECH Act § 13405, the MRPA, and any implementing regulations that may be promulgated or revised from time to time.

f. **Disclosure.** Business Associate shall not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. part 164, or MRPA, if done by the Covered Entity itself except as authorized under Section 2 of this BAA.

4. **Minimum Necessary.** Business Associate shall limit its uses and disclosures of, and requests for, PHI, to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.

5. **Additional Business Associate Obligations.**

a. **Safeguards.** Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. 164 with respect to electronic PHI to prevent use or disclosure of the PHI other than as provided for by this BAA. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any paper or electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.

b. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of the obligations.

c. **Business Associate's Agents and Subcontractors.**

1) Business Associate shall ensure that any agents and subcontractors to whom it provides PHI agree to only create, receive, maintain or transmit PHI on behalf of the Business Associate under the same restrictions that apply to Business Associate. Such agreement between Business Associate and subcontractor or agent must be in writing and must comply with the terms of this BAA and the requirements outlined at 45 C.F.R. §164.504(e)(2); 45 C.F.R. §164.502(e)(1)(ii); 45 C.F.R. §164.314; and 45 C.F.R. §164.308(b)(2). Additionally, Business Associate shall ensure agent or subcontractor agree to and implement reasonable and appropriate safeguards to protect PHI.

- 2) If Business Associate knows of a pattern of activity or practice of its subcontractor or agent that constitutes a material breach or violation of the agent or subcontractor's obligation under the contract or other arrangement, the Business Associate must take steps to cure the breach and end the violation and if such steps are not successful, must terminate the contract or arrangement if feasible. If it is not feasible to terminate the contract, Business Associate must promptly notify the Covered Entity.
- d. Reporting. Business Associate shall, as soon as practicable but not more than five (5) business days after becoming aware of any successful security incident or use or disclosure of Covered Entity's PHI or Sensitive Personal Information in violation of this BAA, report any such use or disclosure to Covered Entity. With the exception of law enforcement delays that satisfy the requirements under 45 C.F.R. § 164.412 or as otherwise required by applicable state law, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than ten (10) calendar days upon discovery of a Breach of Unsecured PHI or Breach of Security System. Such notice must include, to the extent possible, the name of each individual whose Unsecured PHI or Sensitive Personal Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach. Business Associate shall also provide, to the extent possible, Covered Entity with any other available information that Covered Entity is required to include in its notification to individuals under 45 C.F.R. § 164.404(c) and Section 521.053, Texas Business & Commerce Code at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. For purposes of this BAA, a Breach of Unsecured PHI or Breach of Security System shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate (including any person, other than the individual committing the breach, who is an employee, officer, or other agent of Business Associate, as determined in accordance with the federal common law of agency) or should reasonably have been known to Business Associate following the exercise of reasonable diligence.
- e. Mitigation. Business Associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any Use or Disclosure (as defined by 45 C.F.R. §160.103).
- f. Sanctions. Business Associate shall apply appropriate sanctions in accordance with Business Associate's policies against any employee, subcontractor or agent who uses or discloses Covered Entity's PHI in violation of this BAA or applicable law.
- g. Covered Entity's Rights of Access and Inspection. From time to time upon reasonable notice, or upon a reasonable determination by Covered Entity that Business Associate has breached this BAA, Covered Entity may inspect the facilities, systems, books and records of Business Associate related to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity or the safeguarding of such PHI to monitor compliance with this BAA. Business Associate shall document and keep current such security measures and safeguards and make them available to Covered Entity for inspection upon reasonable request including summaries of any internal or external assessments Business Associate performed related to such security controls and safeguards. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this BAA, nor does Covered Entity's (1) failure to detect or (2) detection but failure to require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement or termination rights under this BAA. This Section shall survive termination of this BAA.

h. United States Department of Health and Human Services. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health and Human Services for purposes of determining Covered Entity's compliance with HIPAA and the HIPAA regulations, provided that Business Associate shall promptly notify Covered Entity upon receipt by Business Associate of any such request for access by the Secretary of the United States Department of Health and Human Services, and shall provide Covered Entity with a copy thereof as well as a copy of all materials disclosed pursuant thereto, unless otherwise prohibited by law.

i. Training. Business Associate shall provide such training in the privacy and security of PHI to its Workforce (as that term is defined by 45 C.F.R. § 160.103) as is required for Business Associate's compliance with HIPAA, HIPAA Regulations, HITECH, and the MRPA.

6. Obligation to Provide Access, Amendment and Accounting of PHI.

a. Access to PHI. Business Associate shall make available to Covered Entity, in the time and manner designated by the Covered Entity, such information as necessary to allow Covered Entity to meet its obligations under the HIPAA Regulations, PHI contained in a Designated Record Set held by Business Associate as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, and copies of, PHI in accordance with HIPAA and the HIPAA Regulations and MRPA. In the event that any individual requests access to PHI directly from Business Associate, Business Associate shall notify Covered Entity within five (5) business days that such request has been made.

b. Amendment of PHI. Business Associate shall make available to Covered Entity PHI contained in a Designated Record Set held by Business Associate as Covered Entity may require to fulfill Covered Entity's obligations to amend PHI in accordance with HIPAA and the HIPAA Regulations. In addition, Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity's PHI into copies of such information maintained by Business Associate. In the event that any individual requests amendment of PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days.

c. Accounting of Disclosures of PHI.

1) Record of Disclosures. Business Associate shall maintain a record of all disclosures of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, except for those disclosures identified in Section 6(c)(2) below, including the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure which includes an explanation of the reason for such disclosure. Business Associate shall make this record available to Covered Entity upon Covered Entity's request. If Business Associate maintains records in electronic form, Business Associate shall account for all disclosures made during the period of three (3) years preceding the request. In the event that any individual requests an accounting of disclosures of PHI directly from Business Associate, Business Associate shall notify Covered Entity within five (5) business days that such request has been made and provide Covered Entity with a record of disclosures within ten (10) days of an individual's request. If the request from an individual comes directly to Covered Entity and Covered Entity notifies Business Associate that it requires information from Business Associate in order to respond to the individual, Business Associate shall make available to Covered Entity such information as Covered Entity may require within ten (10) days from the time of request by Covered Entity.

- 2) Certain Disclosures Need Not Be Recorded. The following disclosures need not be recorded:
- a) disclosures to carry out Covered Entity's treatment, payment and health care operations as defined under the HIPAA Regulations;
 - b) disclosures to individuals of PHI about them as provided by the HIPAA Regulations;
 - c) disclosures for Covered Entity's facility's directory, to persons involved in the individual's care, or for other notification purposes as provided by the HIPAA Regulations;
 - d) disclosures for national security or intelligence purposes as provided by the HIPAA Regulations;
 - e) disclosures to correctional institutions or law enforcement officials as provided by the HIPAA Regulations;
 - f) disclosures that occurred prior to the later of (i) the Effective Date or (ii) the date that Covered Entity is required to comply with HIPAA and the HIPAA Regulations;
 - g) disclosures pursuant to an individual's authorization in accordance with HIPAA and the HIPAA Regulations; and
 - h) any other disclosures excepted from the right to an accounting by the HIPAA Regulations.

7. Material Breach, Enforcement and Termination.

a. Term. This BAA shall become effective on the Effective Date of the Underlying Agreement and shall continue unless or until this BAA terminates, the Underlying Agreement terminates, or the Business Associate has completed performance of the services in the Underlying Agreement, whichever is earlier.

b. Termination. Either Party may terminate this BAA:

- 1) immediately if the other Party is finally convicted in a criminal proceeding for a violation of HIPAA or the HIPAA Regulations;
- 2) immediately if a final finding or stipulation that the other Party has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the other Party has been joined; or completed performance of the services in the Underlying Agreement, whichever is earlier.
- 3) pursuant to Sections 7(c) or 8(b) of this BAA.

c. Remedies. Upon a Party's knowledge of a material breach by the other Party, the non-breaching Party shall either:

- 1) provide an opportunity for the breaching Party to cure the breach and end the violation or terminate this BAA and the Underlying Agreement if the breaching Party does not cure the breach or end the violation within ten (10) business days or a reasonable time period as agreed upon by the non-breaching party; or

- 2) immediately terminate this BAA and the Underlying Agreement if cure is not possible.
- d. Injunctions. Covered Entity and Business Associate agree that any violation of the provisions of this BAA may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law or in equity, Covered Entity shall be entitled to seek an injunction or other decree of specific performance with respect to any violation of this BAA or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.
- e. Indemnification. This indemnification provision is enforceable against the Parties only to the extent authorized under the constitution and laws of the State of Texas. The Parties will indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "indemnified party," against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any breach of this BAA or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under MRPA, HIPAA, the HIPAA Regulations, and the HITECH Act by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce.
- f. Breach of PHI and Breach of System Security. Business Associate will pay or reimburse Covered Entity for all costs and penalties incurred by Covered Entity in connection with any incident giving rise to a Breach of PHI and/or a Breach of System Security, including without limitation all costs related to any investigation, any notices to be given, reasonable legal fees, or other actions taken to comply with HIPAA, the HITECH Act, or any other applicable law or regulation, where (i) the PHI was in the custody or control of Business Associate when the Breach of PHI and/or Breach of System Security occurred, or (ii) the Breach of PHI and/or Breach of System Security was caused by the negligence or wrongful acts or omissions of Business Associate and its employees, directors, officers, subcontractors, agents or other members of its workforce.
8. General Provisions.
- a. State Law. Nothing in this BAA shall be construed to require Business Associate to use or disclose PHI without written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.
- b. Amendment. Covered Entity and Business Associate agree to enter into good faith negotiations to amend this BAA to come into compliance with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of PHI. Covered Entity may terminate this BAA upon thirty (30) days written notice in the event that Business Associate does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations.
- c. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
- d. Ambiguities. The Parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security, and

confidentiality of PHI, including, without limitation, MRPA, HIPAA, the HIPAA Regulations, and the HITECH Act.

e. Primacy. To the extent that any provision of this BAA conflicts with the provision of any other agreement or understanding between the Parties, this BAA shall control.

f. Destruction/Return of PHI. Business Associate agrees that, pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(l), upon termination of this BAA or the Underlying Agreement, for whatever reason,

1) It will return or destroy all PHI, if feasible, received from or created or received by it on behalf of Covered Entity that Business Associate maintains in any form, and retain no copies of such information which for purposes of this BAA shall mean all backup tapes. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. An authorized representative of Business Associate shall certify in writing to Covered Entity, within thirty (30) days from the date of termination or other expiration of the Underlying Agreement, that all PHI has been returned or disposed of as provided above and that Business Associate or its subcontractors or agents no longer retain any such PHI in any form.

2) If it is not feasible for Business Associate to return or destroy said PHI, Business Associate will notify the Covered Entity in writing. The notification shall include a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and the specific reasons for such determination. Business Associate shall comply with the Security Rule and extend any and all protections, limitations and restrictions contained in this BAA to Business Associate's use and/or disclosure of any PHI retained after the termination of this BAA, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

3) If it is infeasible for Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to comply with the Security Rule and extend any and all protections, limitations and restrictions contained in this BAA to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this BAA, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

g. Offshore Work. In performing the functions, activities or services for, or on behalf of Covered Entity, Business Associate shall not, and shall not permit any of its agents or subcontractors who receive Covered Entity's PHI to, transmit or make available any PHI to any entity or individual outside the United States without prior written consent of Covered Entity.

h. Integration. This BAA embodies and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments and understandings pertaining to the subject matter hereof.

i. Governing Law. This BAA is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Texas without regard to choice of law principles.

j. Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

If to Covered Entity:
The applicable U.T. Institution(s)'s Privacy Officer.

With copy to:
The University of Texas System Privacy Officer
Office of Systemwide Compliance

If to Business Associate: _____

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

k. Privilege. Notwithstanding any other provision in this BAA, this BAA shall not be deemed to be an agreement by Business Associate to disclose information that is privileged, protected, or confidential under applicable law to the extent that such privilege, protection or confidentiality (a) has not been waived or (b) is not superseded by applicable law.

APPENDIX FOUR

FORM OF PREFERRED SUPPLIER AGREEMENT

for

CHARTER BROKER SERVICES

between

THE UNIVERSITY OF TEXAS SYSTEM

and

University of Texas Agreement Number: UTSSCA_____

This Preferred Supplier Agreement (this “**Agreement**”), dated effective as of _____, 2017 (“**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 organized in _____, 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 principally involving aircraft with a passenger capacity of 18 persons or fewer, 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.

“**Charter Operator**” means the company or individual identified as such in a related Engagement Letter signed by such operator, Broker and Institutional Participant. Charter Operator will become a provider of

charter services to an Institutional Participant only upon Institutional Participant's execution of a related Engagement Letter.

"Engagement Letter" means a document to be signed by Broker, Charter Operator and Institutional Participant, in the format attached hereto as **Rider 400**, specifying the particular air charter operator services to be supplied by Charter Operator to Institutional Participant. The Charter Operator's supply of such Services will be governed by the Engagement Letter.

"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. Various non-UT System institutions that are affiliated with the Alliance may participate in this Agreement, too, although participation by Alliance affiliates will be limited to business charters (with athletic charters being excluded, due to limits on capacity in the marketplace).

"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 more particularly described in **Rider 100** (Scope of Work) to 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 and principally involving aircraft with a passenger capacity of 18 persons or fewer. (If Institutional Participant has a need for a charter flight involving aircraft with a passenger capacity of more than 18 persons, and this need cannot be met through use of another UT System-appointed charter operator or broker, Broker will use all reasonable efforts to help Institutional Participant meet such need under the terms of 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 Engagement Letter with 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 comply with detailed standards and requirements set forth in **Rider 100** (Scope of Work).
- 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's fee will be as detailed in **Rider 200** (Price Schedule). 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 Engagement Letter entered into between Institutional Participant, Broker and 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 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 Engagement Letter that Broker negotiates with Charter Operator must provide that, if such certificate is not furnished as required, Institutional Participant may cancel the contract with Charter Operator without penalty.
- 1.8** Institutional Participant and Broker acknowledge that:
- (a) Charter Operator will have operational control of the aircraft at all times.
 - (b) 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.
 - (c) Charter Operator may operate a flight with substitute equipment for safety or operational reasons. However, any substituted equipment must be of equal size, scope and capacity.
 - (d) the departure and arrival times listed in any agreement between Institutional Participant, Broker, and Charter Operator are indications of approximate times, and 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) 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) 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) 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 Engagement Letter between Institutional Participant, Broker and 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, 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, Broker will deposit in that account the amounts due to Charter Operator under the Engagement Letter among 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 Engagement Letter 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 Institutional Participant will pay the following additional amounts to Broker, as necessary to reimburse Charter Operator, within 30 days of receipt of invoice from Broker:

- Non-TSA costs incurred by 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 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 _____, 20__, 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 the Engagement Letter will apply to all Services purchased thereunder 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.

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: _____
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.

12.5 Broker will call to the attention of UT Party, in writing, all information in any written 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 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 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, 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 an Engagement Letter 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 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 15.1.1**, 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 System'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)(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., 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 Charter Operator, 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 600** 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 700** 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.

33.4 If Broker undergoes a Change of Control, UT System may, in its sole discretion, terminate this Agreement upon written notice to Broker, effective immediately or, at UT System’s option, upon conclusion of a reasonable transition period. For purposes of this Section, “**Change of Control**” means the sale of all or substantially all the assets of Broker; any merger, consolidation or acquisition of Broker with, by or into another corporation, entity or person; or any change in the ownership of more than fifty percent (50%) of the voting capital stock of Broker in one or more related transactions. Upon any such termination of this Agreement, no UT Party will have any further liability or obligation to Broker, or to any successor, employee, agent or representative of Broker, except to pay for services actually rendered to the effective date of termination. If UT System provides any such notice of termination, Broker and UT System will work together diligently to bring to a logical and orderly conclusion the business arrangements that are the subject of this Agreement.

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.

UT System institutions are exempt from Texas Sales & Use Tax on goods and services in accordance with Section 151.309, *Tax Code*, and Title 34 TAC Section 3.322. Pursuant to 34 TAC Section 3.322(c)(4), UT System institutions are not required to provide a tax exemption certificate to establish their tax exempt status.

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 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. Preferred Supplier, by executing this Agreement, is deemed to have entered into a HIPAA Business Associate Agreement (“**BAA**”) with each Institutional Participant, as applicable, on the terms set forth in **Rider 800** (UT System-Wide Standard BAA Terms and Conditions).

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, 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 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** Scope of Work
- Rider 200** Price Schedule
- Rider 300** Form of Institutional Participation Agreement
- Rider 400** Form of Engagement Letter Among Institutional Participant, Charter Operator and Broker
- Rider 500** Supplier Relationship Management
- Rider 600** HUB Subcontracting Plan
- Rider 700** Affirmative Action Compliance Program
- Rider 800** UT System-Wide Standard BAA Terms and Conditions

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

[BROKER]

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

Signed: _____

Printed Name: _____

Date: _____

Title: _____

Date: _____

RIDER 100

SCOPE OF WORK

The following outlines essential requirements for the supply of Services. Broker acknowledges and understands that this Scope of Work provides a general description of the Services to be performed and is not intended to be all inclusive. Broker represents that it is 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.

Broker will provide charter aircraft-related services to Institutional Participants in accordance with this Scope of Work and the other terms and conditions of this Agreement.

1.0 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 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 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.**”

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.

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.

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 or 135, including those authorized operations under both Parts 121 and 135.

2.0 **Performance by Broker**

- 2.1 Broker will provide charter broker services as described in **Section 1** of the main body of this Agreement.
- 2.2 Broker will comply 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.
- 2.3 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 and meet the standards and requirements specified elsewhere in this **Rider 100** and this Agreement.
- 2.4 Broker will monitor flights on a 24-hour/7 days a week basis and will inform the Institutional Participant if there are any requirements to change the requested aircraft. Final decision to make a change to the scheduled aircraft will require input of the Institutional Participant. 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.

3.0 **Broker Standards and Requirements**

Broker will comply with the broker standards and requirements listed below:

- When proposing Charter Operators operating under Part 135 certification, Broker should first propose Charter Operators audited by ARGUS Gold or Wyvern Standard Pass criteria.
- When proposing Charter Operators operating under Part 135 certification, Broker will maintain a written emergency response plan with sections appropriate to Broker’s role in responding to an emergency.
- Broker will have a manager that oversees compliance with Broker’s standards.

- Broker will provide flight following / tracking services for its flights.
- Broker will have at least two contacts designated for Institutional Participants' travel needs.
- Broker will ensure that each Charter Operator whose services it procures for an Institutional Participant meets the requirements listed in this **Rider 100** and elsewhere in this Agreement. Also, in procuring the services of charter operators for Institutional Participants, 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 Broker by an Institutional Participant (it being understood that, despite *soliciting* at least three bids, Broker may be unable in the circumstances to *obtain* at least three).
 - consider price, but more importantly the quality and safety of the operator. Broker must first consider and offer the services of charter operators meeting a minimum of ARGUS Gold or Wyvern Standard Pass criteria. Broker must ensure that these criteria are noted in responses to Broker solicitations.
 - verify that insurance is carried by Charter Operator for the type of charter being conducted, as specified in Sect. 19 of the main body of this Agreement.
 - provide coordination of all trip details as specified in **Section 7.0** (Accessorial Services) of this **Rider 100**, and provide a written, firm quote for each of the options being considered, within the time frame requested by Institutional Participant.
 - commensurate with DOT mandates, act only as the agent of Institutional Participant, unless the Institutional Participant agrees in a signed writing that Broker may act as Charter Operator's agent (cannot do both without prior written permission).
 - commensurate with all applicable laws, including the requirements in FAA document A008, "Operational Control," clearly provide to Institutional Participant the identity of Charter Operator having Operational Control of each flight booked.
 - serve as an intermediary to safeguard 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 Broker's role in the event of an emergency involving any Charter Operator flight coordinated via Broker. Appropriate Broker actions in an emergency situation include but are not 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.

4.0 **Process for Securing Written Proposals**

It is understood and agreed that, in procuring the services of Charter Operator for an Institutional Participant, Broker will deliver to the Institutional Participant all the relevant information about the competitively procured proposal(s) secured by Broker, and Institutional Participant will be responsible for selecting the winning proposal, on the basis of Institutional Participant's legally required procurement criteria. Further, while Broker will be responsible for negotiating the terms of the Engagement Letter between Institutional Participant and Charter Operator selected as the winning proposer, the agreement will be binding on Institutional Participant (notwithstanding any signature by Broker) only when Institutional Participant executes the Engagement Letter. In negotiating the terms of Charter Operator's Services, Broker will use the pre-agreed form attached hereto as **Rider 400**. Once the Engagement Letter is fully negotiated, Broker will review all the terms of the letter with Institutional Participant, and Institutional Participant will decide in its sole discretion whether to sign the Engagement Letter and legally bind itself. All three signatures (by Charter Operator, Broker and Institutional Participant) will be required before the Engagement Letter will be legally effective.

5.0 **Regulatory Compliance**

Broker must ensure that Charter Operator demonstrates compliance with regulatory requirements outlined below:

- 5.1 When proposing Charter Operators operating under Part 121 certification, Broker first will propose Charter Operators that are IOSA (IATA Operational Safety Audit Program) registered, provided such Charter Operators are available to propose. Charter Operator must provide proof of certificate and must be placed on IATA registry website.
- 5.2 Charter Operator must have approval from the FAA in order to carry Institutional Participant personnel and must be in compliance with all requirements in **Section 6.0** (Air Carrier Quality and Safety) of this **Rider 100**.
- 5.3 Part 135 Charter 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.
- 5.4 Part 121 Charter Operators must be in compliance with applicable regulations as outlined in Federal Aviation Regulations Part 121: Operating Requirements: Domestic, Flag, and Supplemental Operations.

6.0 **Air Carrier Quality and Safety**

Before proposing any Charter Operator to Institutional Participant, Broker will make the proposed Charter Operator aware of the quality and safety standards outlined below, and Broker will secure the Charter Operator's assurances that it conforms to such standards:

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

"24 months" refers to the 24 calendar months immediately preceding the date on which the standard is applied.

"continuous service" means Charter Operator must have performed revenue-generating services of the nature described in this Agreement, as an FAA Part 121 or 135 (14 CFR 121 or 135) air carrier on a recurring, substantially uninterrupted basis. The services must have occurred with such frequency and regularity as to clearly demonstrate Charter Operator's ability to perform and support sustained, safe, reliable, and regular services of the type covered by this Agreement.

"equivalent to the Charter Operator Services solicited by Broker pursuant to this Agreement" means services substantially equivalent to the type of Charter Operator Services sought by Institutional Participant. 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.

6.2 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, Charter Operator 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 Charter Operator'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 Charter Operator's organization. Comprehensive disaster response plans must be in place.

6.3 Quality and Safety Requirements in Operations. Broker will ensure that the Charter Operator has 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 estimated or actual passenger and cargo weights must be used in computing aircraft weight and balance.

6.4 Quality and Safety Requirements—Maintenance. Charter Operator 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. Charter Operator 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 Charter Operator'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 Charter Operator'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. Charter Operator's 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.

6.5 Quality and Safety Requirements—Security. Broker must determine that Charter Operator'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.

6.6 Quality and Safety Requirements—Specific Equipment Requirements. Charter Operator must be prepared to satisfy equipment and other requirements as specified in this Agreement.

7.0 Accessorial Services

Depending on the needs of the specific trip flown, an Institutional Participant may wish to have a Charter Operator provide common air charter accessorial services. Broker will request the following charter accessorial services that an Institutional Participant may wish to secure:

- (1) Catering services that 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.

8.0 **Pricing**

- 8.1 Broker's fee structure is as described in **Rider 200** (Price Schedule).

9.0 **Invoicing**

- 9.1 Broker will invoice the Institutional Participants, not UT System or the Alliance. Broker will customize invoices for each Institutional Participant's system specifications, process and protocol. Broker will ensure secure data transmissions to and from each Institutional Participant. Additional invoicing responsibilities are detailed in the form of Engagement Letter attached as **Rider 400**.
- 9.2 Each Institutional Participant will be responsible for its own process for payment authorization and method for Broker's services (e.g., manual purchase orders, facsimile, EDI, etc.).
- 9.3 Each Institutional Participant is solely responsible for the payment of any Engagement Letter / purchase orders it issues, and no Institutional Participant will have any liability whatsoever relating to an Engagement Letter / purchase order issued by another Institutional Participant. Any Engagement Letter / purchase order issued by an Institutional Participant under this Agreement will be governed by additional commercial terms and conditions in such document.
- 9.4 Institutional Participant will remit payments of invoices issued under this Agreement on a Net 30 Days basis, subject to requirements of the Texas Prompt Payment Act. Institutional Participant will provide Broker with reports for purchase orders and non-purchase orders requests for matching and allocation purposes. Payments will comply with DOT regulations.
- 9.5 Broker 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, Broker will take all of the steps the Institutional Participant's purchasing department deems necessary.
- 9.6 Broker's fee for its Broker services will listed as a separate line item in any quote or invoice for payment. 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 Engagement Letter entered into between 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 Engagement Letter.

10.0 **Reporting and Performance Measure Requirements**

Broker will submit an ongoing data report under this Agreement at the request of UT System. UT System agrees that some of the reporting requirements listed below may not be available if Charter Operator is an airline operating pursuant to CFR 14 Part 121 for a particular charter(s).

10.1 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 applicable limitations in FAR 135, Subpart F.

10.2 Ongoing Performance Measures

Broker will secure the following information from Charter Operators operating under CFR 14 Part 135 prior to each trip and will furnish the same immediately to Institutional Participant:

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

10.3 Other Factors:

Prior to each trip, Broker will secure from Charter Operator information on its compliance with the following standards and will furnish the same immediately to Institutional Participant:

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

- 10.4 Sales History Report - Broker will submit to the UT System Contract Administrator a “**Sales History Report**” on the last day of the month following the end of each calendar quarter. The report will be provided in Microsoft Excel format, in accordance with the Sales History Report Format, Field Definitions, and a template to be provided by UT System. The report will provide sales and returns/credits to each Institutional Participant, using the required fields as defined in the Sales History Report Format and Field Definitions. Sales or returns/credits fulfilled by Broker and approved HUB subcontractors under this Agreement must be included in the report. If no sales or returns are made during the calendar quarter, Broker will submit confirmation of no sales or returns to the UT System Contract Administrator at the mailbox utsscainfo@mdanderson.org. The Sales History Report and reports of no sales or returns will be reviewed with the UT System Contract Administrator. Upon review, the UT System Contract Administrator may request Broker to make formatting and content changes to the Sales History Report for

past and/or future Sales History Reports. All sales or returns reported by Broker are subject to the Alliance administrative fee. Timeliness of the Sales History Report on or before the Due Date will be evaluated as a Key Performance Indicator within the Supplier Relationship Management (SRM) Program described in **Rider 500**.

Broker will submit the Sales History Report for all sales or returns/credits made by Broker during the term of this Agreement to each Alliance member and affiliate, even if they have not yet signed an Institutional Participation Agreement. Sales or returns/credits made to Institutional Participants under other agreements, such as a local agreement between the Broker and the Institutional Participant, are not required to be reported in the Sales History Report. All sales or returns/credits made under this Agreement to an Institutional Participant not listed in the Institution Name Table described below must be reported to the UT System Contract Administrator for review.

The following table indicates when Sales History Report will be due:

Sales History Report Quarterly Sales Period and Report Due Dates		
Calendar Quarter	Time Frame	Due Date
Q1	January-March	April 30
Q2	April-June	July 31
Q3	July-September	October 31
Q4	October-December	January 31

Institution Name Table

The names of current Alliance member institutions are listed in the table below and are the only acceptable names that may be submitted to the Alliance in the Sales History Report. The UT System Contract Administrator will inform Broker when an institution needs to be added to the Sales History Report. All other abbreviations and alternative names are unacceptable. The column titled "Examples of Other Institution Names" is only for reference purposes. Broker should address to the UT System Contract Administrator any questions about institution names.

ID Number	Institution Name	Examples of Other Institution Names
714	UT Arlington	
721	UT Austin	UT Applied Research Labs (ARL) UT Austin Athletics
738	UT Dallas	
724	UT El Paso	

742	UT Permian Basin	
	UT Rio Grande Valley	UT Brownsville UT Pan American
743	UT San Antonio	
750	UT Tyler	
729	UT Southwestern Medical Center	
723	UT Medical Branch Galveston	
744	UT Health Science Center Houston	UT Physicians
745	UT Health Science Center San Antonio	
506	UT MD Anderson Cancer Center	University of Texas MD Anderson Cancer Center Science Park The Virginia Harris Cockrell Cancer Research Center MD Anderson Smithville
750	UT Health Science Center Tyler	UT Health Northeast
720	UT System	<i>Only used for sales or returns by the System Administration Office UTIMCO</i> UT System Personal Use UT Systems Info Resources

11.0 **Supplier Relationship Management**

Broker will comply with supplier relationship management requirements set forth in **Rider 500**.

12.0 **Primary Administrative Contacts**

Broker:

_____ [name]
 _____ [title]
 Phone: _____
 _____ [email]

UT System/UT SUPPLY CHAIN ALLIANCE:

Lequida Pearson, Sourcing Specialist
 UT System Supply Chain Alliance

Phone: (713) 792-7929
Email: lfpearson@mdanderson.org

RIDER 200

Price Schedule

Throughout the term of this Agreement, Broker's fee for identifying any Charter Operator for an Institutional Participant and negotiating air charter flight arrangements with such operator on behalf of Institutional Participant will be ___% of Institutional Participant's Cost of acquiring the particular Charter Operator's services.

For the purpose of calculating Broker's fee, Institutional Participant's "**Cost**" is defined as all out-of-pocket charges (excluding Broker's fees) incurred by Institutional Participant in purchasing from Charter Operator the charter flight services in question, including all applicable taxes, fees and surcharges.

In invoicing its fee to Institutional Participant, Broker will itemize such Cost charges as separate line items.

RIDER 300

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 _____, 2017 (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 air charter broker services principally involving aircraft with a passenger capacity of 18 persons or fewer.
- Assist in communication and distribution of Broker’s promotional materials.
- Where applicable, facilitate and promote (1) vendor show per quarter
- Identify the PSA and its value to end-users.
- Conduct business reviews to review reports, metrics, and commitments.
- Facilitate resolution of Institutional Participant and Broker conflicts.

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.

RIDER 400
FORM OF ENGAGEMENT LETTER
FOR PARTICULAR CHARTER FLIGHTS

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

Dear Sir or Madam,

_____ (“**Broker**”) is pleased to confirm the engagement of
_____ (“**Charter Operator**”) to provide to The University of Texas _____
 (“**Institutional Participant**”) the air charter flight services described in **Schedule 1** below, for the fees specified in
Schedule 1.

Charter Operator concurs with the provisions of this Engagement Letter, including Charter Operator’s Standard Terms and Conditions, which are incorporated by reference into this Engagement Letter per **Schedule 2**. The parties recognize that Broker is acting as Institutional Participant’s duly appointed agent solely for the purpose of arranging charter flights on behalf of Institutional Participant pursuant to a certain PSA (defined below).

Institutional Participant’s acceptance of Charter Operator’s proposed engagement, and Institutional Participant’s agreement with the Standard Terms referenced above, will be effective only upon signature by each of Broker, Charter Operator and the Institutional Participant.

Sincerely,

_____, as agent for The University of Texas _____

By: _____
Authorized Signature
Title:
Date:

[Name of Charter Operator]

By: _____
Authorized Signature
Title:
Date:

Acknowledged and Accepted:

[Name of Institutional Participant]

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 \$ _____
 (on the direct/indirect Charter Operator costs)
 Federal Segment Fees: \$ _____

 Total Payment for Contract Services: \$ _____

Note: An administrative fee due to the UT System Supply Chain Alliance in relation to this Engagement Letter will be deducted by Broker from the above charges to be remitted to Charter Operator by Broker (see **Section C** below).

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 should be 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. Departure times are not guaranteed and are subject to aircraft and crew availability.

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. The “Total Payment” amounts shown in **Schedule 1** are subject to the payment-related sections (see Sections XXXX) of the Standard Terms referenced in **Schedule 2** of this Engagement Letter.
6. Fuel Surcharge Fees. The fuel base for the flights contemplated in this agreement is \$XXXX per gallon.
7. Catering: _____
8. De-ice / anti-icing costs are / are not included. Institutional Participant agrees to pay any de-ice or anti-icing charges within 30 days of receipt of invoice.

Other Terms

A. Advance and Residual Payments. As contemplated in **Section 1.9** of a certain Preferred Supplier Agreement for Charter Broker Services between The University of Texas System (“**UT System**”) and Broker, effective as of February 15, 2016 (the “**PSA**”), in which Institutional Participant has elected to participate, Institutional Participant will deliver the Advance Payments and 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: Check delivered by Express Mail/Courier: Wire Transfer:

tbd Phone: _____

tbd Phone: _____

tbd PAYABLE TO: _____ ABA # _____ Account # _____

Note: Institutional Participant will notify Broker 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 1.9** 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:

ACCT. NAME: _____, ESCROW ACCOUNT

ACCT. NUMBER _____

ABA ROUTING NUMBER: _____

- B. Cancellation Charges. The following is the schedule of the applicable cancellation charges.

If Institutional Participant cancels a charter flight for reasons other than (a) a force majeure occurrence, (b) a

material breach by of the PSA by Broker, or (c) a material breach by Broker or Charter Operator of this Engagement Letter, then Institutional Participant will pay to Broker the following cancellation charges, which Broker in turn will remit to Charter Operator.

- tbd

The same rules recited above will apply to the calculation of cancellation charges owing to Broker in its own right, except in that case, the percentages will be applied only to Broker's fee, per **Rider 200** (Price Schedule) of the PSA, that Broker otherwise would have earned in connection with the cancelled flight. Suppose, for example, that Institutional Participant elects, without cause, to cancel a charter flight ___ hours prior to scheduled departure. In this event, the cancellation charges owing to Charter Operator would be ___% of the total charter price for the canceled flight, and the cancellation charges owing to Broker would be the percentage Broker fee applicable under **Rider 200** (___%), times the ___% owing to Charter Operator, *i.e.*, ___% times ___% times the total charter price for the canceled flight.

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 and 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.

C. Administrative Fee. On a quarterly basis:

- (1) Charter Operator will pay to UT System, an administrative fee ("**Administrative Fee**") in an amount equal to one percent (1%) of Total Net Sales of all Services provided by Charter Operator to Institutional Participant under this Engagement Letter during the immediately preceding calendar quarter (see provision below requiring Broker to collect such fee from Charter Operator on each transaction via a deduction), and
- (2) Broker will pay to UT System the same percentage Administrative Fee as applied to the charges payable to Broker under the PSA in relation to such Services.

These Administrative Fees will be used by UT System to provide support for implementation, administration, monitoring, and management of the PSA and Engagement Letters concluded pursuant to the PSA.

"**Total Net Sales**" means the aggregate dollar amount of purchases of air charter operator services from Charter Operator by Institutional Participant under this Engagement Letter, less credits, returns, taxes, unpaid invoices, collections, and freight and delivery charges separately charged on an invoice in accordance with this Engagement Letter. For example, if Total Net Sales to Institutional Participant for a given calendar quarter is equal to \$100,000, then the Administrative Fee payable by Charter Operator for that calendar quarter would be \$1,000.

Broker will be responsible for remitting to UT System both of these Administrative Fees. In regards to the Administrative Fee relating to Services provided by Charter Operator under this Engagement Letter, Broker will deduct such fee from charges paid to Broker by Institutional Participant for such Services before remitting the balance of the charges to Charter Operator.

The Administrative Fees will be paid within thirty (30) days after the end of each calendar quarter to which they relate. While UT System prefers payment via ACH, if Broker instead would like to submit any payments by wire transfer (Federal Reserve Fedwire), please contact Treasury.SBO@utsystem.edu in advance for additional instructions to ensure the payment is accepted and processed correctly.

All administrative fees, rebates and/or incentives due and payable to UT System under this Agreement will be paid in accordance with instructions to be provided to Broker from time to time via email by the Alliance's Strategic Services Group.

- D. Invoicing Responsibilities. Broker will submit a single invoice to Institutional Participant for all charges payable to Charter Operator under this Engagement Letter and all related fees due to Broker under the PSA. The invoice will itemize all of Charter Operator's charges and list the Broker's fee as a separate line item.
- E. Checked Baggage Rules. Charter Operator's rules and limitations on liability for checked baggage, if any, are included in Charter Operator's Standard Terms and Conditions referenced in **Schedule 2.**
- F. Insurance. Charter Operator will comply with the insurance requirements recited at <http://www.utsystem.edu/documents/docs/supporting-documents/air-charter-operator-insurance-requirements>.
- G. Substitution of Equipment. Charter Operator may operate a flight with substitute equipment for safety or operational reasons. However, any substituted equipment must be of equal size, scope and capacity. Charter Operator may substitute with more than one aircraft in order to transport all of the passengers as originally contracted. Notwithstanding the foregoing, Broker will ensure that Charter Operator exercises commercially reasonable efforts to utilize a single aircraft whenever possible. Any substitution of equipment will be subject to advance notification to Institutional Participant, justification for the substitution, and prior approval by Institutional Participant.
- H. Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under this Engagement Letter 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:

_____ [name]
 _____ [title]
 Phone: _____
 _____ [email]

If to Charter Operator:

 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.

Schedule 2

Charter Operator's Standard Terms and Conditions for charter flights may be accessed on Broker's website at http://_____. *[Broker to furnish the URL to be inserted here.]* In recognition of the identities of The University of Texas System and Institutional Participants as Texas state agencies, these Standard Terms will apply only to the extent not prohibited by the Constitution or internal laws of the State of Texas.

RIDER 500

SUPPLIER RELATIONSHIP MANAGEMENT

1.0 Supplier Relationship Management (“SRM”) Program Requirements

Quarterly Business Reviews (“QBRs”) of 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 Broker.

2.0 Quarterly Business Reviews

2.1 QBRs will consist of Key Performance Indicators: 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%	$\leq 2\%$ $>2\%-\leq 5\%$ $>5\%$	20 15 10 0	Timely response and resolution of inquiries and support calls placed by Institutional Participants: Initial response time will not exceed 4 hours
Pricing Accuracy	99%	$\leq 1\%$ $>1\%-\leq 5\%$ $>5\%$	15 10 0	Contract pricing in accordance with fee structure, as confirmed by Alliance audit
Invoice Accuracy	98%	$\leq 1\%$ $>1\%-\leq 5\%$ $>5\%$	15 10 0	Proportion of invoiced items reflecting accurate contract pricing, as confirmed by Alliance audit
Reporting	98%	$\leq 2\%$ $>2\%-\leq 5\%$	15 10	Comprehensive report detailing of year-to-date and period-over-period

		>5%	0	spend and spend versus previous quarter and year spend.
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	Broker will attain customer satisfaction score of 90% or greater. Survey content and distribution to be agreed with Broker to ensure appropriate measures recorded.
		>3%-≤8%	15	
		>8%-≤15%	10	
		>15%	0	

2.2 QBR Meeting Reports and Metrics

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

3.0 Broker Evaluation and Rating

No less than once each quarter the UT System Contract Administrator will prepare and present to Broker a scorecard of 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 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, 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 Broker during a QBR if 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, 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 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 Broker's implementation of the proposed solutions and process modifications, and the person(s) who will be responsible for 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 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 Broker to resubmit a further Corrective Action Plan, or
- Exercise other remedies available under this Agreement or applicable law.

RIDER 800
UT SYSTEM-WIDE BUSINESS ASSOCIATE
AGREEMENT STANDARD TERMS AND CONDITIONS

Preferred Supplier, by executing the Preferred Supplier Agreement to which this Rider is attached, is deemed to have entered into a HIPAA Business Associate Agreement ("**BAA**") with each Institutional Participant on the terms set forth below. Each Institutional Participant is a "**Covered Entity**," and Preferred Supplier is a "**Business Associate**," as more fully defined below (collectively, the "**Parties**").

RECITALS

WHEREAS, Covered Entity has entered or is entering into an Agreement with Business Associate (the "**Underlying Agreement**") by which it has engaged Business Associate to perform services;

WHEREAS, Covered Entity possesses Protected Health Information that is protected under HIPAA and the HIPAA Regulations, HITECH Act and state law, including the Medical Records Privacy Act (MRPA), and is permitted to manage such information only in accordance with HIPAA and the HIPAA Regulations, HITECH Act, and MRPA;

WHEREAS, Business Associate may receive such information from Covered Entity, or create, receive, maintain or transmit such information on behalf of Covered Entity, in order to perform certain of the services under the Underlying Agreement;

WHEREAS, the Parties desire to comply with health information privacy and security protections subsequent to the enactment of the HITECH Act, Subtitle D of the American Recovery and Reinvestment Act of 2009 which has established requirements for compliance with HIPAA. In particular, the requirements provide that: (1) Covered Entity give affected individuals notice of security breaches affecting their PHI, and Business Associate give notice to Covered Entity pursuant to the provisions below; (2) Business Associate comply with the HIPAA security regulations; and (3) additional and/or revised provisions be included in Business Associate Agreement;

WHEREAS, Under HIPAA and HITECH, Covered Entity is required to enter into protective agreements, generally known as "business associate agreements," with certain downstream entities that will be entrusted with HIPAA-protected health information;

WHEREAS, Health information is further protected by state law, including the MRPA; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Protected Health Information.

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions. The Parties agree that the following terms, when used in this BAA, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA and the HIPAA Regulations and the MRPA. All capitalized terms used in this BAA but not defined below shall have the meaning assigned to them under the HIPAA Regulations.
 - c. "Breach" shall have the meaning given such term under 45 C.F.R. § 164.402 as such regulation is revised from time to time.
 - d. "Breach of System Security" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Sensitive Personal Information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data.
 - c. "Business Associate" means, with respect to a Covered Entity, a person who:
 - 1) on behalf of such Covered Entity or of an Organized Health Care Arrangement (as defined under the HIPAA Regulations) in which the Covered Entity participates, but other than in the capacity of a member of the workplace of such Covered Entity or arrangement, creates, receives, maintains, or transmits PHI for a function or activity regulated by HIPAA, HIPAA Regulations, or MRPA including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 C.F.R. 3.20, billing, benefit management, practice management, and re-pricing; or
 - 2) provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, Data Aggregation, management, administrative, accreditation, or financial services to or for such Covered Entity, or to or for an Organized Health Care Arrangement in which the Covered Entity participates, where the provision of the service involves the disclosure of PHI from such Covered Entity or arrangement, or from another Business Associate of such Covered Entity or arrangement, to the person.
 - d. "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
 - e. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
 - f. "HIPAA Regulations" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164 subparts A and E ("The Privacy Rule") and the Security Standards as they may be amended from time to time, 45 C.F.R. Parts 160, 162 and 164, Subpart C ("The Security Rule").

g. “HITECH Act” means the provisions of Division A, Title XIII of the American Recovery and Reinvestment Act of 2009, known as The Health Information Technology for Economic and Clinical Health, Act 42 U.S.C. §3000 et. seq., and implementing regulations and guidance, including the regulations implemented in 78 Fed. Reg. 5566 (January 25, 2013).

h. “Individually Identifiable Health Information” means information that is a subset of health information, including demographic information collected from an individual, and:

- 1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- 2) relates to past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - a) that identifies the individual; or
 - b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

i. “MRPA” means Texas Medical Records Privacy Act, as codified in Section 181 et seq. of the Texas Health and Safety Code and as implemented through regulations including the Standards Relating to the Electronic Exchange of Health Information, codified at Title 1, Section 390.1 et seq. of the Texas Administrative Code.

j. “Protected Health Information” or “PHI” means Individually Identifiable Health Information that is transmitted by electronic media; maintained in any medium described in the definition of the term electronic media in the HIPAA Regulations; or transmitted or maintained in any other form or medium. The term excludes Individually Identifiable Health Information in educational records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g; records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); and employment records held by a Covered Entity in its role as employer and regarding a person who has been deceased more than 50 years.

k. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a routine basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.

l. “Sensitive Personal Information” means: (1) an individual’s first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: (a) social security number; (b) driver’s license number or government-issued identification number; (c) account number or credit or debit card number in combination with any required security code, access, code, or password that would permit access to an individual’s financial account; or (2) PHI information that identifies an individual and relates to: (a) the physical or mental health or condition of the individual; (b) the provision of health care to the individual; or (c) payment for the provision of health care to the individual.

m. "Unsecured PHI" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified in the guidance issued under Section 13402(h)(2) of the HITECH Act on the HHS web site.

2. Permitted Uses and Disclosures.

a. Compliance with Law. Covered Entity and Business Associate agree to comply with HIPAA, HIPAA Regulations, the HITECH Act, and the MRPA.

b. Performance of Services. Except as otherwise permitted by this BAA, Business Associate may create, receive, maintain or transmit PHI on behalf of Covered Entity only in connection with the performance of the services contracted for in the Underlying Agreement or as Required by Law (as that term is defined by 45 C.F.R. § 164.103).

c. Proper Management and Administration. Business Associate may use PHI it receives in its capacity as Covered Entity's Business Associate for the proper management and administration of Business Associate in connection with the performance of services in the Underlying Agreement, as permitted by this BAA or as Required by Law (as that term is defined by 45 C.F.R. § 164.103), and to carry out the legal responsibilities of Business Associate. Business Associate may also disclose Covered Entity's PHI for such proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate. Any such disclosure of PHI shall only be made in accordance with the terms of this BAA, including Section 5(c) if to an agent or subcontractor of Business Associate, and only if Business Associate obtains reasonable written assurances from the person to whom the PHI is disclosed that: (1) the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and (2) Business Associate will be notified by such person of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

f. Data Aggregation. Business Associate may use and disclose PHI received by Business Associate in its capacity as Covered Entity's business associate in order to provide Data Aggregation services relating to Covered Entity's health care operations only with Covered Entity's permission.

g. Business Associate may use and disclose de-identified health information if written approval from the Covered Entity is obtained, and the PHI is de-identified in compliance with the HIPAA Rules.

3. Nondisclosure.

a. As Provided in this BAA. Business Associate shall not use or further disclose Covered Entity's PHI other than as permitted or required by this BAA or as Required by Law (as that term is defined by 45 C.F.R. § 164.103).

b. Disclosures Required By Law. Business Associate shall not, without prior written consent of Covered Entity, disclose any PHI on the possibility that such disclosure is required by law without notifying, to the extent legally permitted, Covered Entity so that the Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such a disclosure, Business Associate, shall, to the extent permissible by law,

refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section 2(c) that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI when a disclosure is required by law.

c. **Additional Restrictions.** If Covered Entity notifies Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of Covered Entity's PHI pursuant to HIPAA or the HIPAA Regulations, Business Associate shall be bound by such additional restrictions and shall not disclose Covered Entity's PHI in violation of such additional restrictions to the extent possible consistent with Business Associate's obligations set forth in the Underlying Agreement.

d. **Restrictions Pursuant to Subject's Request.** If Business Associate has knowledge that an individual who is the subject of PHI in the custody and control of Business Associate has requested restrictions on the disclosure of PHI, Business Associate must comply with the requested restriction if (a) the Covered Entity agrees to abide by the restriction; or (b) the disclosure is to a health plan for purposes of carrying out payment or health care operations and the PHI pertains solely to a health care item or service for which Covered Entity has been paid out of pocket in full. If the use or disclosure of PHI in this BAA is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the Privacy Rule expressly applies.

e. **Remuneration.** Business Associate shall not directly or indirectly receive remuneration in exchange for disclosing PHI received from or on behalf of Covered Entity except as permitted by HITECH Act § 13405, the MRP, and any implementing regulations that may be promulgated or revised from time to time.

f. **Disclosure.** Business Associate shall not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. part 164, or MRP, if done by the Covered Entity itself except as authorized under Section 2 of this BAA.

4. **Minimum Necessary.** Business Associate shall limit its uses and disclosures of, and requests for, PHI, to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.

5. **Additional Business Associate Obligations.**

a. **Safeguards.** Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. 164 with respect to electronic PHI to prevent use or disclosure of the PHI other than as provided for by this BAA. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any paper or electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.

- b. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of the obligations.
- c. Business Associate's Agents and Subcontractors.
- 1) Business Associate shall ensure that any agents and subcontractors to whom it provides PHI agree to only create, receive, maintain or transmit PHI on behalf of the Business Associate under the same restrictions that apply to Business Associate. Such agreement between Business Associate and subcontractor or agent must be in writing and must comply with the terms of this BAA and the requirements outlined at 45 C.F.R. §164.504(e)(2); 45 C.F.R. §164.502(e)(1)(ii); 45 C.F.R. §164.314; and 45 C.F.R. §164.308(b)(2). Additionally, Business Associate shall ensure agent or subcontractor agree to and implement reasonable and appropriate safeguards to protect PHI.
 - 2) If Business Associate knows of a pattern of activity or practice of its subcontractor or agent that constitutes a material breach or violation of the agent or subcontractor's obligation under the contract or other arrangement, the Business Associate must take steps to cure the breach and end the violation and if such steps are not successful, must terminate the contract or arrangement if feasible. If it is not feasible to terminate the contract, Business Associate must promptly notify the Covered Entity.
- d. Reporting. Business Associate shall, as soon as practicable but not more than five (5) business days after becoming aware of any successful security incident or use or disclosure of Covered Entity's PHI or Sensitive Personal Information in violation of this BAA, report any such use or disclosure to Covered Entity. With the exception of law enforcement delays that satisfy the requirements under 45 C.F.R. § 164.412 or as otherwise required by applicable state law, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than ten (10) calendar days upon discovery of a Breach of Unsecured PHI or Breach of Security System. Such notice must include, to the extent possible, the name of each individual whose Unsecured PHI or Sensitive Personal Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach. Business Associate shall also provide, to the extent possible, Covered Entity with any other available information that Covered Entity is required to include in its notification to individuals under 45 C.F.R. § 164.404(c) and Section 521.053, Texas Business & Commerce Code at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. For purposes of this BAA, a Breach of Unsecured PHI or Breach of Security System shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate (including any person, other than the individual committing the breach, who is an employee, officer, or other agent of Business Associate, as determined in accordance with the federal common law of agency) or should reasonably have been known to Business Associate following the exercise of reasonable diligence.
- e. Mitigation. Business Associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any Use or Disclosure (as defined by 45 C.F.R. §160.103).

- f. Sanctions. Business Associate shall apply appropriate sanctions in accordance with Business Associate's policies against any employee, subcontractor or agent who uses or discloses Covered Entity's PHI in violation of this BAA or applicable law.
- g. Covered Entity's Rights of Access and Inspection. From time to time upon reasonable notice, or upon a reasonable determination by Covered Entity that Business Associate has breached this BAA, Covered Entity may inspect the facilities, systems, books and records of Business Associate related to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity or the safeguarding of such PHI to monitor compliance with this BAA. Business Associate shall document and keep current such security measures and safeguards and make them available to Covered Entity for inspection upon reasonable request including summaries of any internal or external assessments Business Associate performed related to such security controls and safeguards. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this BAA, nor does Covered Entity's (1) failure to detect or (2) detection but failure to require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement or termination rights under this BAA. This Section shall survive termination of this BAA.
- h. United States Department of Health and Human Services. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health and Human Services for purposes of determining Covered Entity's compliance with HIPAA and the HIPAA regulations, provided that Business Associate shall promptly notify Covered Entity upon receipt by Business Associate of any such request for access by the Secretary of the United States Department of Health and Human Services, and shall provide Covered Entity with a copy thereof as well as a copy of all materials disclosed pursuant thereto, unless otherwise prohibited by law.
- i. Training. Business Associate shall provide such training in the privacy and security of PHI to its Workforce (as that term is defined by 45 C.F.R. § 160.103) as is required for Business Associate's compliance with HIPAA, HIPAA Regulations, HITECH, and the MRPA.

6. Obligation to Provide Access, Amendment and Accounting of PHI.

- a. Access to PHI. Business Associate shall make available to Covered Entity, in the time and manner designated by the Covered Entity, such information as necessary to allow Covered Entity to meet its obligations under the HIPAA Regulations, PHI contained in a Designated Record Set held by Business Associate as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, and copies of, PHI in accordance with HIPAA and the HIPAA Regulations and MRPA. In the event that any individual requests access to PHI directly from Business Associate, Business Associate shall notify Covered Entity within five (5) business days that such request has been made.
- b. Amendment of PHI. Business Associate shall make available to Covered Entity PHI contained in a Designated Record Set held by Business Associate as Covered Entity may require to fulfill Covered Entity's obligations to amend PHI in accordance with HIPAA and the HIPAA Regulations. In addition, Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity's PHI into copies of such information maintained

by Business Associate. In the event that any individual requests amendment of PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days.

c. Accounting of Disclosures of PHI.

1) Record of Disclosures. Business Associate shall maintain a record of all disclosures of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, except for those disclosures identified in Section 6(c)(2) below, including the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure which includes an explanation of the reason for such disclosure. Business Associate shall make this record available to Covered Entity upon Covered Entity's request. If Business Associate maintains records in electronic form, Business Associate shall account for all disclosures made during the period of three (3) years preceding the request. In the event that any individual requests an accounting of disclosures of PHI directly from Business Associate, Business Associate shall notify Covered Entity within five (5) business days that such request has been made and provide Covered Entity with a record of disclosures within ten (10) days of an individual's request. If the request from an individual comes directly to Covered Entity and Covered Entity notifies Business Associate that it requires information from Business Associate in order to respond to the individual, Business Associate shall make available to Covered Entity such information as Covered Entity may require within ten (10) days from the time of request by Covered Entity.

2) Certain Disclosures Need Not Be Recorded. The following disclosures need not be recorded:

- a) disclosures to carry out Covered Entity's treatment, payment and health care operations as defined under the HIPAA Regulations;
- b) disclosures to individuals of PHI about them as provided by the HIPAA Regulations;
- c) disclosures for Covered Entity's facility's directory, to persons involved in the individual's care, or for other notification purposes as provided by the HIPAA Regulations;
- d) disclosures for national security or intelligence purposes as provided by the HIPAA Regulations;
- e) disclosures to correctional institutions or law enforcement officials as provided by the HIPAA Regulations;
- f) disclosures that occurred prior to the later of (i) the Effective Date or (ii) the date that Covered Entity is required to comply with HIPAA and the HIPAA Regulations;
- g) disclosures pursuant to an individual's authorization in accordance with HIPAA and the HIPAA Regulations; and

h) any other disclosures excepted from the right to an accounting by the HIPAA Regulations.

7. Material Breach, Enforcement and Termination.

a. Term. This BAA shall become effective on the Effective Date of the Underlying Agreement and shall continue unless or until this BAA terminates, the Underlying Agreement terminates, or the Business Associate has completed performance of the services in the Underlying Agreement, whichever is earlier.

b. Termination. Either Party may terminate this BAA:

1) immediately if the other Party is finally convicted in a criminal proceeding for a violation of HIPAA or the HIPAA Regulations;

2) immediately if a final finding or stipulation that the other Party has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the other Party has been joined; or completed performance of the services in the Underlying Agreement, whichever is earlier.

3) pursuant to Sections 7(c) or 8(b) of this BAA.

c. Remedies. Upon a Party's knowledge of a material breach by the other Party, the non-breaching Party shall either:

1) provide an opportunity for the breaching Party to cure the breach and end the violation or terminate this BAA and the Underlying Agreement if the breaching Party does not cure the breach or end the violation within ten (10) business days or a reasonable time period as agreed upon by the non-breaching party; or

2) immediately terminate this BAA and the Underlying Agreement if cure is not possible.

d. Injunctions. Covered Entity and Business Associate agree that any violation of the provisions of this BAA may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law or in equity, Covered Entity shall be entitled to seek an injunction or other decree of specific performance with respect to any violation of this BAA or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

e. Indemnification. This indemnification provision is enforceable against the Parties only to the extent authorized under the constitution and laws of the State of Texas. The Parties will indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "indemnified party," against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any breach of this BAA or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under MRPA, HIPAA, the HIPAA

Regulations, and the HITECH Act by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce.

f. Breach of PHI and Breach of System Security. Business Associate will pay or reimburse Covered Entity for all costs and penalties incurred by Covered Entity in connection with any incident giving rise to a Breach of PHI and/or a Breach of System Security, including without limitation all costs related to any investigation, any notices to be given, reasonable legal fees, or other actions taken to comply with HIPAA, the HITECH Act, or any other applicable law or regulation, where (i) the PHI was in the custody or control of Business Associate when the Breach of PHI and/or Breach of System Security occurred, or (ii) the Breach of PHI and/or Breach of System Security was caused by the negligence or wrongful acts or omissions of Business Associate and its employees, directors, officers, subcontractors, agents or other members of its workforce.

8. General Provisions.

a. State Law. Nothing in this BAA shall be construed to require Business Associate to use or disclose PHI without written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

b. Amendment. Covered Entity and Business Associate agree to enter into good faith negotiations to amend this BAA to come into compliance with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of PHI. Covered Entity may terminate this BAA upon thirty (30) days written notice in the event that Business Associate does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations.

c. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

d. Ambiguities. The Parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security, and confidentiality of PHI, including, without limitation, MRPA, HIPAA, the HIPAA Regulations, and the HITECH Act.

e. Primacy. To the extent that any provision of this BAA conflicts with the provision of any other agreement or understanding between the Parties, this BAA shall control.

f. Destruction/Return of PHI. Business Associate agrees that, pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I), upon termination of this BAA or the Underlying Agreement, for whatever reason,

- 1) It will return or destroy all PHI, if feasible, received from or created or received by it on behalf of Covered Entity that Business Associate maintains in any form, and retain no copies of such information which for purposes of this BAA shall mean all backup tapes. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. An authorized representative of Business Associate shall certify in writing to Covered Entity, within thirty (30) days from the date of

termination or other expiration of the Underlying Agreement, that all PHI has been returned or disposed of as provided above and that Business Associate or its subcontractors or agents no longer retain any such PHI in any form.

2) If it is not feasible for Business Associate to return or destroy said PHI, Business Associate will notify the Covered Entity in writing. The notification shall include a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and the specific reasons for such determination. Business Associate shall comply with the Security Rule and extend any and all protections, limitations and restrictions contained in this BAA to Business Associate's use and/or disclosure of any PHI retained after the termination of this BAA, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

3) If it is infeasible for Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to comply with the Security Rule and extend any and all protections, limitations and restrictions contained in this BAA to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this BAA, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

g. **Offshore Work.** In performing the functions, activities or services for, or on behalf of Covered Entity, Business Associate shall not, and shall not permit any of its agents or subcontractors who receive Covered Entity's PHI to, transmit or make available any PHI to any entity or individual outside the United States without prior written consent of Covered Entity.

h. **Integration.** This BAA embodies and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments and understandings pertaining to the subject matter hereof.

i. **Governing Law.** This BAA is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Texas without regard to choice of law principles.

j. **Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

If to Covered Entity:
The applicable U.T. Institution(s)'s Privacy Officer.

With copy to:
The University of Texas System Privacy Officer
Office of Systemwide Compliance

If to Business Associate: _____

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

k. Privilege. Notwithstanding any other provision in this BAA, this BAA shall not be deemed to be an agreement by Business Associate to disclose information that is privileged, protected, or confidential under applicable law to the extent that such privilege, protection or confidentiality (a) has not been waived or (b) is not superseded by 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

CERTIFICATE OF INTERESTED PARTIES (Texas Ethics Commission Form 1295)

This is a sample of the Texas Ethics Commission's FORM 1295 – DISCLOSURE OF INTERESTED PARTIES. Contractor must use the Texas Ethics Commission electronic filing web page (at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) to complete the most current Disclosure of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and UT System. **The Certificate of Interested Parties will be submitted to UT System by Preferred Supplier only when the Agreement resulting from this RFP is signed.**

CERTIFICATE OF INTERESTED PARTIES		FORM 1295	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		OFFICE USE ONLY	
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.			
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.			
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.			
4		Nature of Interest (check applicable)	
Name of Interested Party	City, State, Country (place of business)	Controlling	Intermediary
5 Check only if there is NO Interested Party. <input type="checkbox"/>			
6 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.			
_____ Signature of authorized agent of contracting business entity			
AFFIX NOTARY STAMP / SEAL ABOVE			
Sworn to and subscribed before me, by the said _____, this the _____ day			
of _____, 20 _____, to certify which, witness my hand and seal of office.			
_____ Signature of officer administering oath			
_____ Printed name of officer administering oath			
_____ Title of officer administering oath			
ADD ADDITIONAL PAGES AS NECESSARY			



THE UNIVERSITY *of* TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Office of HUB Programs
512-499-4530
www.utsystem.edu/hub

Exhibit H – Policy on Utilization Historically Underutilized Businesses

HUB Subcontracting Plan for:

- Commodities
- Special Trades
- Other Services
- Miscellaneous Professional Services

OFPC Managed Projects /UT System Administration Only

Revision 2 dated June 5, 2017



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* **Note 1:** If awarded a contract, the Prime Contractor Progress Assessment Report (PAR) is a required form with each payment application submitted. This form is a condition of payment.

For questions or clarifications regarding the HUB Subcontracting Plan, please contact the appropriate HUB Coordinator listed below:

UTA, UTD, UTT, & UT Health Northeast

Stephanie Park
Sr. HUB Coordinator
972-883-5377
spark@utsystem.edu

UT Health Houston, UT Health San Antonio, UTSA, UTRGV, Supply Chain & OFPC Misc. & Engineering

Cynthia Booker
HUB Coordinator
409-772-1353
cbooker@utsystem.edu

UTEP, UTPB, & UT System Admin.-Contracts & Procurement

Kyle Hayes
HUB Coordinator
512-322-3745
khayes@utsystem.edu

UT System Administration
Historically Underutilized Subcontracting Plans (HSP)
Commodities-31.04%, Other Services-26%, Special Trades-32.9%,
Miscellaneous Professional Services – 23.7%

All Texas State agencies and institutions of higher education (universities) are required to make a good faith effort to include minority and/or women owned businesses in their procurement opportunities. The State of Texas uses the term Historically Underutilized Businesses (HUB) to distinguish State certified minority and/or women owned businesses.

Statement of Probability - Subcontracting Opportunities are probable in connection with this solicitation

Choose **ONLY ONE** of the options below and follow the directions below the appropriate section.

Option 1 - Complete a Self-Performing HSP as follows:

Section 1

- Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

Section 2A

- Mark the 'NO', I will not be sub-consulting any portion of the contract, and I will be fulfilling the entire contract with my own resources. Continue to Section 3.

Section 3

- Mark the "NO" box and in the space provided indicate how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.

_____ has the resources to complete all scopes of this RFP with our own equipment, supplies, materials and personnel. If sub-contracting opportunities are identified at a future date, we will immediately contact the project manager and HUB Coordinator and commit to perform a Good Faith Effort through solicitation of HUB firms and submit an amended HUB Subcontracting Plan.

Section 4

- Sign the form. Include your e-mail address and contact phone number should UT System HUB have any questions.

Option 2 – Complete if all sub-consulting opportunities are performed by ONLY HUB vendors.

Section 1

- Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

Section 2A

- Mark the 'YES', I will be sub-contracting 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 HUB vendors.

Section 2C

- Mark "YES".

Section 4

- Sign the form. Include your e-mail address and contact phone number should UT System HUB have any questions.

Good-Faith Effort (Attachment A)

Section A-1

- Complete this attachment for each sub-consulting opportunity listed in Section 2B.

Section A2

- List the sub-consultants you selected to perform this subcontracting opportunity listed above in Section A-1. Please include their VID #, State of Texas HUB certificate, the appropriate \$ amount and the contract percentage.

Option 3 – Complete if sub-consulting opportunities by both HUB and non-HUB vendors meet or exceed the HUB goals stated above.

Section 1

- Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

Section 2A

- Mark the ‘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 HUB vendors and Non HUB vendors

Section 2C

- Mark “NO”.

Section 2D

- Mark “YES”.

Section 4

- Sign the form. Include your e-mail address and contact phone number should UT System HUB have any questions.

Good-Faith Effort (Attachment A)

- Complete this attachment for each sub-consulting opportunity listed in Section 2B.

Section A1

- List the name of the sub-consulting opportunity listed on the corresponding line in Section 2B.

Section A2

- List the sub-consultants you selected to perform this subcontracting opportunity listed above in Section A-1. Please include their VID #, State of Texas HUB certificate, the appropriate \$ amount and the contract percentage.

Option 4 - Complete a Sub-Contracting HSP as follows:

Section 1

- Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

Section 2A

- Mark the ‘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 HUB vendors and Non HUB vendors

Section 2C

- Mark “NO”.

Section 2D

- Mark "NO".

Section 4

- Sign the form. Include your e-mail address and contact phone number should UT System HUB have any questions.

Good-Faith Effort (Attachment B)

- Complete this attachment for each sub-consulting opportunity listed in Section 2B.

Section B1

- List the name of the sub-consulting opportunity listed on the corresponding line in Section 2B.

Section B3

- **Subsection (b)** - List 3 three HUBs you notified regarding the portion of work indicated in Section B1. **NOTE: Attach addressed and dated supporting documentation in the form of letters, fax transmittals, e-mails etc. demonstrating evidence of the Good Faith Effort performed. Please note that you must give the subcontractor 7 working days to respond to your request. Holidays and skeleton crew days do not count as working days.**

Subsection (d) – Indicate the names of two minority or women’s organization you contacted. **NOTE: Include copies of correspondence as well as the date the notice is sent and indicate if the notice was accepted or rejected.** The minority organizations at the link below, have expressed their willingness to accept notices of subcontracting opportunities from vendors to distribute to their minority and woman-owned business members. <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>

Section B4

List the sub-consultant you selected to perform the portion of the work indicated in Section 3. Include the expected percentage of work to be subcontracted, the dollar value and whether company selected is a HUB. If company selected is not a HUB, provide written justification of your selection process in Section B4, sub-section b.

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.

Determination of Good Faith Effort in developing an HSP for commodities contracts includes but is not limited to the following:

1. Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices.
2. The respondent shall notify HUBs of subcontracting opportunities that the respondent intends to subcontract in writing. Notice shall include the following:
 - a. Scope of work
 - b. Specifications
 - c. Identify a contact person with phone number and emailThe respondent shall provide potential HUB subcontractors no less than seven (7) working days from receipt of notice to respond.
3. The respondent shall use the Centralized Master Bidders List (CMBL), HUB Directory, Internet resources, and/or other directories as identified by the agency when searching for HUB subcontractors. Respondents may also rely on the services of minority/ women and community organizations, contractor groups, local, state and federal business assistance offices in identifying qualified HUB subcontractors. Search the CMBL at: <https://mycpa.cpa.state.tx.us/tpasscmbsearch/tpasscmbsearch.do>
4. The respondent shall provide notice of subcontracting opportunities to minority/women trade organizations or development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their membership. Minority and business contacts may be found at: <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>

Notice must be provided no less than seven (7) working days prior to the submission of the response.

Notice shall include the following:

- a. Scope of work
 - b. Specifications
 - c. Identify a contact person
5. The respondent shall provide notice to three or more HUBs per each subcontracting opportunity that provide the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees. The respondent must keep and provide official written documentation (i.e. fax transmittals, email, etc. to demonstrate compliance).
6. Provide written justification of the selection process if a non HUB subcontractor is selected.
7. Encourage selected non-certified minority or woman owned business subcontractors to apply for HUB certification. If the minority or woman owned vendor is not a State certified HUB you may refer the firm to the HUB office for additional information on becoming HUB certified or the State HUB website <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>

HUB Subcontracting Plan Required Documents

HUB forms may also be downloaded at: <http://www.utsystem.edu/offices/historically-underutilized-business/hub-forms>

Changes to the Plan

Once the HUB Plan has been submitted any changes to the HSP must be approved in writing by the UT System project manager and HUB Coordinator **prior** to any work commencing by the new subcontractor. Once the contract has been awarded the HSP is considered part of the contract. Violations to the HSP can be deemed a breach of contract by UT System.

Reporting – After Award

Prime contractor payment requests shall include: Prime Contractor Progress Assessment Report (PAR) identify all HUB and non-HUB subcontractor payments. PAR form and instructions for completion can be found at: <http://www.utsystem.edu/offices/historically-underutilized-business/hub-forms>

RESPONDENT'S BUSINESS LETTERHEAD

Date

Regional HUB Coordinator
The University of Texas System
Office of HUB Programs
201 W. 6th Street, Room B.140E
Austin, Texas 78701

RE: Historically Underutilized Business Plan for (Project Title): _____
Project Number: _____ - _____

Dear ,

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 20.284, and the goal as stated in the Agency Special Instructions section of the HUB Subcontracting Plan, page 8.

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.

During the course of this contract should we discover additional subcontractors claiming Historically Underutilized Business status or if for some reason a HUB is unable to fulfill its contractual obligation with us, we will notify you immediately in order to take the appropriate steps to amend this HUB subcontracting Plan.

Sincerely,

Project Executive

cc: Project Manager

BUSINESS LETTERHEAD

Date

Regional HUB Coordinator
Office of HUB Programs
The University of Texas System
201 W. 6th Street, Room B.140E
Austin, TX 78701

RE: Historically Underutilized Business Plan for (Project Title): _____
Project Number: _____ - _____

Dear ,

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs). In accordance with the requirements outlined in the HUB Subcontracting Plan (HSP), I am pleased to forward this HUB Subcontracting Plan as an integral part of our proposal in connection with your invitation for request for qualifications/proposals, referencing Project Number _____.

The Good Faith Effort for AE services will be documented by a two (2) part HUB Subcontracting Plan (HSP) process as described in the instructions located on page 2-3 of The University of Texas Exhibit H Policy on Utilization of Historically Underutilized Businesses (HUBs) for Hybrid Delivery Professional Services.

An HSP for Part One AE services shall consist of a Letter of HUB Commitment (page 7) and the HUB Subcontracting Plan (pages 8-16) with the appropriate sections completed per the instructions located on pages 2-5 of The University of Texas Exhibit H Policy on Utilization of Historically Underutilized Businesses (HUBs) for Professional Services.

As the scope of work/project is defined under this IDIQ/Miscellaneous Services contract, Part Two of the process will require a revised HUB Subcontracting Plan (HSP) if the work/project value over the duration of the work/project exceeds \$100,000. A Good Faith Effort will be required per instructions in Attachment B (pages 13-14).

Sincerely,

Project Manager/Executive

BUSINESS LETTERHEAD

Date

Regional HUB Coordinator
Office of HUB Programs
The University of Texas System
201 W. 6th Street, Room B.140E
Austin, TX 78701

RE: Historically Underutilized Business Plan for (Project Title): _____
RFP Number: _____

Dear ,

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs). In accordance with the requirements outlined in the HUB Subcontracting Plan (HSP), I am pleased to forward this HUB Subcontracting Plan as an integral part of our proposal in connection with your invitation for request for qualifications/proposals, referencing RFP Number _____.

The 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 (1) of the HSP Quick Checklist located on page 2 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). The Good Faith Effort will be documented per instructions in Attachment A/B (Options Two, Three and Four of the HSP Quick Check List pages 2, 3 and 4). 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 Administrator



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) §20.284 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 §20.285(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 the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** 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 effective January 1, 2016.

Miscellaneous Professional Services – 23.7%

Commodities-31.04%

Other Services-26%

Special Trades- 32.9%

- 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.
- Prime Contractor Progress Assessment Report (PAR) shall be submitted with each request for payment as a condition of payment. A copy of the UT System Contract Management System (UTCMS) Compliance Report shall be attached to the State of Texas HUB PAR and 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 INFORMATION

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)

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

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 contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "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, including employees, goods and services. (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).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	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		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>)

- 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 **do not** have a **continuous contract*** in place with for **more than five (5) years, 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: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

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).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <u>do not</u> 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 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		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***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.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

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 <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>).
- 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 A (Attachment A)

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 A (Attachment A)" 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 format <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>

SECTION A-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 A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/tpasscmbsearch.do>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB <input type="checkbox"/> - Yes <input type="checkbox"/> - No	Texas VID or federal EIN <small><i>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</i></small>	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		\$	%
	<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		\$	%
	<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		\$	%

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 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.

HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: _____ Requisition#: _____

IMPORTANT: If you responded "No" to SECTION 2, Items c and 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 <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>

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, 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 <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>

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 you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <https://mycpa.cpa.state.tx.us/tpasscblsearch/tpasscblsearch.do>. 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 Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	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 <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>

- 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 <small>(mm/dd/yyyy)</small>	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 Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/tpasscmbsearch.do>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	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.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____
Point-of-Contact: _____
E-mail Address: _____

State of Texas VID #: _____
Phone #: _____
Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____
Point-of-Contact: _____
Requisition #: _____

Phone #: _____
Bid Open Date: _____
(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,
we must receive your bid response no later than _____ on _____.
Central Time Date(mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(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.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

- Not Applicable

4. Bonding/Insurance Requirements:

- Not Applicable

5. Location to review plans/specifications:

- Not Applicable

HUB Subcontracting Plan (HSP)

Prime Contractor Progress Assessment Report

Contract/Requisition Number: _____ Date of Award: _____ Object Code: _____
(mm/dd/yyyy) (Agency Use Only)

Contracting Agency/University Name: _____

Contractor (Company) Name: _____ State of Texas VID #: _____

Point of Contact: _____ Phone #: _____

Reporting (Month) Period: _____ Total Amount Paid this Reporting Period to \$ _____

Report HUB and Non-HUB subcontractor information

Subcontractor's Name	Subcontractor's VID or HUB Certificate Number	*Texas Certified HUB? (Yes or No)	Total Contract \$ Amount from HSP with Subcontractor	Total \$ Amount Paid This Reporting Period to Subcontractor	Total Contract \$ Amount Paid to Date to Subcontractor	Object Code <small>(Agency Use Only)</small>
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
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Signature: _____ Title: _____ Date: _____



Printed Name: _____

***Note:** HUB certification status can be verified on-line at:<https://mycpa.cpa.state.tx.us/tpasscblsearch/tpasscblsearch.do>





General Instructions

Attachment A includes a pricing exercise for Galveston, Texas

- Galveston Pricing Exercise

The date, departure location, and arrival locations are examples of charter flight schedules and requirements for the University of Texas System.

Please complete all of the information in each tab as fully as possible. All rows for each origin and destination are required inputs. Pricing is requested for cost estimation purposes and the schedules are subject to change.

All fees that will be charged to the University of Texas System based on the flight schedule details must be included in this workbook. Use the *All Other Charges* row to describe fees that are not listed in other rows.

Entry Field Details

Fees That Do Not Apply

Enter N/A for fees that do not apply. You must enter an explanation in the last column for all N/A entries.

Substitute Aircraft Types (Required Document to Include)

You may provide a substitute Aircraft Type for the requested Aircraft Type

For all other Aircraft Types, use the Substitute Aircraft Type row to specify the substitute Aircraft Type. If you enter a Substitute Aircraft Type you must include a detailed document describing each aircraft. The document should include why you are substituting the Aircraft Type and how the substitute meets or exceeds the specifications of the Aircraft Type requested.

Catering Services (Required Document to Include)

As part of your proposal, please include a data sheet with all catering options and include the cost for each catering option. You may enter the cost for just one option in the Catering Services rows in this workbook.

Cancellation Policy (Required Document to Include)

Please include the terms and conditions for your cancellation policy. The terms and conditions should include the last cancellation date, fees that may apply, and non-refundable deposit details. Cancellation fees and non-refundable deposits should also be included in this workbook.

DESTINATION	Texas Gatesville, TX	PLEASE USE THIS COLUMN TO SHOW CALCULATIONS PER FLIGHT	N/A EXPLANATION
Departure Date:	Roundtrip flight the first and third Monday of every month September 1 - August 31		
Departure Airport:	HOU		
Aircraft Load Time (Minimum 90 Minutes):			
Depart Time:	TBD CT		
Arrival Time (Local):	TBD CT		
Arrival Airport:	GOP		
Departure Date:	See Above		
Departure Airport:	GOP		
Aircraft Load Time (Minimum 90 Minutes):			
Depart Time (Local):	TBD CT		
Arrival Time:	TBD CT		
Arrival Airport:	HOU		
Aircraft Type:	B-300		
Substitute Aircraft Type:			See Instructions tab
Aircraft Provider:			
Total Passenger Count:	8 plus small amount of medical equipment	Total Passenger Count	
Max Payload:			
Base Fuel Price Per Gallon:	\$		
Estimated Fuel Burn (Depart):		GAL/HR x HRS	
Estimated Fuel Burn (Return):		GAL/HR x HRS	
Total Estimated Fuel Cost:	\$	GAL/HR x HRS x \$	
Charter Only Cost:	\$		
Federal Excise Tax:	\$	Charter Cost x 7.5%	
Charter Only Subtotal:	\$		
Pfc (Depart):	\$	PAX Load x ?	
Pfc (Return):	\$	PAX Load x ?	
Total Pfc:	\$		
Segment Charges (Depart):	\$		
Segment Charges (Return):	\$		
Total Segment Charges:	\$		
Risk insurance (Depart):	\$		
Risk insurance (Return):	\$		
Total Risk Insurance:	\$		
Security Charges (Depart):	\$		
Security Charges (Return):	\$		
Total Security Charges:	\$		
Catering Services	\$		
Catering Services (Return):	\$		
Total Catering Costs:	\$		
Crew Standby:	\$		
Ground:	\$		
Hotel:	\$		
Per Diem:	\$		
Total Crew Costs:	\$		
Ground Handling:	\$		
Landing Fees:	\$		
Aircraft Parking:	\$		
Total Aircraft Handling Costs:	\$		
Charter Only Subtotal:	\$		
Other Transportation Costs:	\$		
All Other Charges:	\$	Describe Other Charges here.	
Management / Broker Fee If Applicable:	\$		
Total Charter Cost:	\$		
Deposit:	\$		
Deposit Due Date:	\$		
Balance:	\$		
Balance Due Date:	\$		
Non-refundable Deposit:	\$ or %		
Cancellation Fee:	\$		
Late Payment Fee:	\$		

CHARTER AIRCRAFT (SMALL PASSENGER) RELATED SERVICES
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 121/135 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 to the necessary quality and safety standards as detailed in **Section 5.4.4.5**.
- 3.10 Please indicate your company's ability to provide a copy of the Air Carrier Certificate to the Institutional Participant not less than thirty (30) days prior to the scheduled departure date, as applicable. If the flight is scheduled less than thirty (30) days from the departure date, what is maximum time-frame to provide the Air Carrier Certificate to the Institutional Participant?

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 Reporting

- 5.1 Provide Upfront Data reports described in section 5.4.4.7.
- 5.2 As requested by UT System, can your company support Ongoing Data reports described in section 5.4.4.7?
- 5.3 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
- 5.4 Describe your company’s ability to provide reports for the Other Factors described in section 5.4.4.7.
- 5.5 Describe the capacity of your company to report quarterly sales under the Preferred Supplier Agreement by each Institutional Participant.
- 5.6 Indicate which standard reports are available. Include the frequency they can be made available.

6.0 Pricing and Incentives

- 6.1 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.
- 6.2 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.
- 6.3 As applicable, please indicated any a not-to-exceed annual escalation percentages in your fee structure.
- 6.4 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".
- 6.5 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.
- 6.6 What is the Proposer's cancellation policy? What, if any, fees are charged?
- 6.7 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.
- 6.8 Please describe your company's approach to structuring an incremental sales volume growth rebate or incentive.

7.0 Services

- 7.1 How will your company accommodate Institutional Participants if there is a problem encountered with the flight arrangements?
- 7.2 Would your company be willing to assign a dedicated representative(s) to assist with charter requests as well as provide 24/7 assistance?
- 7.3 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.
- 7.4 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.
- 7.5 Describe an estimate of the earliest starting date for services following execution of an Agreement.
- 7.6 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.
- 7.7 In the event of weather or other VFR minimums that require landing at an alternate location,

please confirm that the aircraft will be repositioned to the original destination for the return flight at no additional cost, unless there is reasonable expectation that the conditions requiring the alternate location are not likely to improve. If not, please explain.

8.0 Added Value

- 8.1 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.
- 8.2 Please describe any special benefits or advantages in selecting your company. Please provide only information not previously asked or disclosed herein.
- 8.3 Does your company have the ability to allow passengers access to camera and photo equipment while in-flight?
- 8.4 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?
- 8.5 Can your company schedule hotel and other lodging accommodations?
- 8.6 Can your company schedule lounge and conference room services?
- 8.7 Please indicate any additional "value added" services or programs not otherwise asked or disclosed herein that should be considered during the evaluation process.