

**AIRLINE DATA INC
TERMS AND CONDITIONS AGREEMENT
Contract No. _____**

- I. **SERVICES.** Airline Data Inc shall provide to the Office of the Governor ("OOG"), on a subscription basis, its proprietary information, databases, reports, maps, charts, graphs, tools, software, documentation, and other materials, consisting of online access (collectively referred to as the "Database" and/or "Software") for a term commencing February 1, 2019 and terminating on January 31, 2020, unless terminated earlier pursuant to the terms of the Contract between Airline Data Inc and the OOG (collectively, the "Parties").

The Parties' "Contract" is comprised of this Terms and Conditions Agreement, the attached Order Form, and the OOG Standard Terms and Conditions document ("OOG Terms") attached hereto. The terms of the Contract shall apply to the Parties and cover all system(s) and services provided to the OOG by Airline Data Inc hereunder. This Terms and Conditions Agreement is subject to the attached Order Form and the OOG Terms. In the event of conflicts or inconsistencies between the foregoing documents, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: (1) the OOG Terms; (2) the Order Form; and (3) this Terms and Conditions Agreement.

- II. **TAXES.** Except where the OOG is exempt from taxes, the prices set forth herein may not include applicable sales, use, excise, or similar taxes, and the OOG will pay any applicable sales, use, excise, or similar taxes. The invoice will indicate such taxes, if any.
- III. **UPDATES/CHANGES IN DATABASE.** Airline Data Inc reserves the right to make changes in the information included in the Database or in the format of the Database or in the Software for any reason. If Airline Data Inc determines not to continue publishing the Database as a result of reductions in available data or for any other reason, Airline Data Inc may terminate the Contract.
- IV. **USE RESTRICTIONS.** Except as required by law or otherwise set forth herein, including, but not limited to, where required under Chapters 321 and/or 552 of the Texas Government Code, the Database and Software may be used only in the operation of the OOG's or any affiliate's business which may include providing reports, data extracts and/or analysis derived from the database to third parties as long as:
- (i) The data extracted does not constitute the entirety or the majority of the data in the database for any time period requested, except as otherwise required by law, including, but not limited to, where required to be provided in response to any request(s) under Chapter 552 of the Texas Government Code or where required to be provided under Chapter 321 of the Texas Government Code.
 - (ii) Any third party reviewing the reports, data extracts and/or analysis has a direct business relationship with the OOG excluding any known competitors to the Database, or the information is otherwise required by law to be provided to the third party, including, but not limited to, where required to be provided in response to any request(s) under Chapter 552 of the Texas Government Code or where required to be provided under Chapter 321 of the Texas Government Code
 - (iii) The report, data extract and/or analysis is not utilized to directly feed or source any other external software, database or other delivery media where the OOG may then sell access to that external software, database or media. This provision does not, however, affect the OOG's right to charge a requestor for fulfilling any request(s) under Chapter 552 of the Texas Government Code in accordance with the provisions in that chapter and related law.
 - (iv) The data extract and/or analysis is not utilized to directly feed or source any other OOG-internal software or database where the OOG and their own internal employees or related associates may then access that internal software or database to perform additional analysis. If this occurs, the

internal employees must also have a user ID to the Database and Software, except as necessary to comply with any request(s) for public information under Chapter 552 of the Texas Government Code, where required under Chapter 321 of the Texas Government Code, for the OOG to conduct internal audit functions, or as otherwise required by law.

The Database and Software may not be made available for any other use by any loan, rental, service bureau, external timesharing or similar arrangement or otherwise.

Except as expressly authorized in the Contract, the OOG:

(i) Will use best efforts to ensure that neither the Database nor Software are displayed outside of the OOG's offices, located at (1) 1100 San Jacinto Boulevard, Austin, Texas, 78701; (2) 221 East 11th Street, Austin, Texas, 78701; and (3) 1100 Congress Avenue, Austin, Texas 78701, nor distributed in any way to any third party, except as otherwise required by law, including, but not limited to, where required to be provided in response to any request(s) under Chapter 552 of the Texas Government Code or where required under Chapter 321 of the Texas Government Code. This includes any related documents such as Help Files, Release Notes, etc.

(ii) Will take all reasonable steps to protect the Database from unauthorized access or use.

(iii) Will use best efforts to prevent third parties from obtaining Passwords.

(iv) Will immediately inform Airline Data Inc of any actual or potential unauthorized access to a Password or to the Database.

Failure to comply with these Use Restrictions may result in termination of the Contract.


- V. **IDENTIFICATION OF USE.** The OOG agrees that in any presentation of data and/or analysis (including reports, maps, charts, graphs), whether it is in Microsoft PowerPoint, Excel, Word or any other publishable material including media publications (which include news articles, blog posts, interviews, public forum discussions, etc.), where the Database was utilized to provide any part of the analysis, that Airline Data Inc will be provided as a source of the data in a footnote or other applicable reference. Approved footnotes include "Source: *The Hub* by Airline Data Inc" or "Source: Airline Data Inc". ~~Airline Data Inc reserves the right to request copies of any available publishable material that is not covered under a confidentiality agreement or otherwise subject to withholding from public disclosure under Chapter 552 of the Texas Government Code, to ensure the references are being credited.~~
- VI. **PROPRIETARY RIGHTS IN THE DATABASE.** The OOG acknowledges that any component of the Database and Software identified as "Confidential" by Airline Data Inc in accordance with the Texas Public Information Act provision in the OOG Terms may be proprietary to Airline Data Inc and may be subject to legal protection as a trade secret and under copyright laws, but may also be subject to Chapters 321 and 552 of the Texas Government Code. The Database shall remain the exclusive property of Airline Data Inc, and the OOG shall have no right therein other than as set forth in the Contract. The Database and the format of the information contained therein may not be duplicated, transferred, sold or in any manner commercially exploited by the OOG, except as required by law, including, but not limited to, pursuant to Chapter 552 of the Texas Government Code or where required to be provided under Chapter 321 of the Texas Government Code. The OOG agrees to take the same security measures to prevent the unauthorized duplication, distribution or use of the Database or any part thereof as the OOG takes with its own proprietary property.
- VII. **PROPRIETARY RIGHTS IN THE SOFTWARE.** The OOG acknowledges that any search and retrieval Software provided by Airline Data Inc identified as "Confidential" by Airline Data Inc in accordance with the Texas Public Information Act provision in the OOG Terms may comprise valuable and confidential information which may be proprietary to Airline Data Inc and which may be subject to legal protection as a trade secret and under the copyright laws, but may also be subject to Chapters 321 and 552 of the Texas Government Code, and other law. The OOG further acknowledges that the Software shall remain the exclusive property of Airline Data Inc and that the OOG shall have no rights therein other than as set forth in the Contract.


VIII. TERMINATION. Upon termination of the Contract, access to the database will be terminated. If the OOG utilizes the "Superset" product, or any product where Airline Data Inc provides a direct data feed to the OOG, or for any data that may have been loaded into another database or storage technology, all data feeds will be deleted from the OOG's source systems (including databases, file servers, internet cloud services and backup services), except as otherwise required by the OOG Terms. Any data analysis created in files such as Word, PowerPoint, Excel, etc during the life of the Contract do not have to be deleted unless those files are in violation of any portion of the Contract, subject to the OOG Terms.

IX. SIGNATURES. The signatures below are representatives of Airline Data Inc, and the OOG, both of which have the authority to represent and bind each to the terms of the Contract.

Airline Data Inc

Office of the Governor

By: 
Name: Richard Olmos
Title: Managing Director
Date: 1-24-19

By: 
Name: JORDAN HALE
Title: DEPUTY CHIEF OF STAFF
Date: 1/25/19



**OOG STANDARD TERMS AND CONDITIONS:
ITEMS BELOW APPLY TO AND BECOME PART OF BID/PURCHASE ORDER/CONTRACT.
ANY EXCEPTIONS MUST BE IN WRITING.**

BIDDING REQUIREMENTS:

Bidders must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this document. "Vendor" means any entity that files a bid ("Bidder") before an award of a Contract as well as any entity that is awarded a Contract. The Office of the Governor is "OOG".

Bidder must price per unit shown. Unit prices shall govern in the event of extension errors. If a price quotation is submitted as part of the bid, the quotation must be referenced on the bid document and signed by the Bidder. Quote FOB destination, freight prepaid and allowed; otherwise must show exact delivery cost and terms. Bid prices are requested to be firm for OOG acceptance for 30 days from bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts offered will be taken if earned. Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include taxes in bid.

Person signing bid must have the authority to bind Bidder in a contract. Bidder should enter Texas Identification Number System (TINS) number, full name and address of Bidder on bid. Vendor name should appear on each continuation page of each bid.

Any terms and conditions attached to a bid will not be considered unless specifically referred to on the bid form. If Bidder takes any exceptions to any provisions of the bid, the exceptions must be specifically and clearly identified in Bidder's response to the bid, and a proposed alternative must be provided. "Blanket exceptions" are not acceptable, and any exceptions taken by Bidder may result in the contract not being awarded to the Bidder.

SUBMISSION OF BIDS. The email address for submission of bids is: spencer.cummings@gov.texas.gov. Inquiries pertaining to bids must include the bid/offer solicitation number. Bids must be time stamped at OOG on or before the hour and date specified for the bid opening. Late and/or unsigned bids will not be considered. Bids cannot be altered or amended after opening time. Changes may be made to a bid before opening time. No bid can be withdrawn after opening time without approval by OOG.

SPECIFICATIONS. Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids on brands of like nature and quality may be considered unless advertised as a proprietary purchase under Section 2155.067, Government Code. Bidding should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and/or a complete description of product offered must be included in the bid.

Unless otherwise specified, items shall be new and unused and of current production. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA. Manufacturer's standard warranty shall apply unless otherwise stated in the bid.

Samples, when requested, must be furnished free of expense to OOG. If not destroyed in examination, they may be returned to the Bidder, on request, at Bidder's expense. Each sample should be marked with Bidder's name and address. Do not include samples, unless specified in bid.

OOG is not bound by any conduct or statement contrary to the written specifications of this bid.

DELIVERY. Show number of days required to place material in OOG's designated location under normal conditions. Delivery days means calendar days, unless otherwise specified. Failure to state delivery time obligates

Vendor to deliver in 14 calendar days. Unrealistic delivery promises may cause bid to be disregarded. If delay is foreseen, Vendor shall give written notice to OOG. Default in promised delivery or failure to meet specifications authorizes OOG to purchase supplies elsewhere and charge the full increase, if any, in cost and handling to defaulting Vendor. Delivery shall be made during 8:00 a.m. to 4:00 p.m., Monday through Friday, except regularly observed state or federal holidays, unless prior approval has been obtained from OOG. No substitutions or cancellations permitted without written approval of OOG. Receipt of goods or service does not constitute acceptance.

INSPECTION AND TESTS. All goods will be subject to inspection and test by OOG. OOG shall have access to Vendor/supplier's place of business for the purpose of inspecting merchandise. Tests may be performed on samples submitted with the bid and/or on samples taken from regular shipment. All costs for return, restocking, or replacement shall be borne by the Vendor in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at OOG's option, be returned to the Vendor or held for disposition, both at Vendor's expense. Latent defects may result in revocation of acceptance, termination of this Contract and any other remedies against Vendor available to OOG.

AWARD NOTICE: OOG may make an award on the basis of best value in accordance with Sections 2155.074-.075, and/or 2157.003 Government Code. OOG may reject any and all bid items; waive minor technicalities; or award the bid that best serves the interests of the OOG. In the event of tie bids with an Invitation for Bids, unless the application of preferences under 34 TAC § 20.38(b)(3) resolves the tie, lots may be drawn to break the tie.

AWARD OF CONTRACT. A response to this invitation for bid is an offer to contract based upon the terms, conditions, and specifications contained herein. Bids do not become a contract until they are accepted through the execution of a purchase order.

PAYMENT. Vendor shall submit invoices to ap@gov.texas.gov or mail to Office of the Governor, P.O. Box 12878, Austin, Texas 78711. Invoice must include OOG purchase order number. OOG will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services or receipt of a correct invoice, whichever is later. Payments will be made in accordance with Chapter 2251, Government Code.

VENDOR ACCESS. Vendor shall comply with all access routes, entrance gates or doors, parking and storage areas, and other necessary Vendor access, along with any imposed time limitations, as designated by OOG.

CONFLICTS OF INTEREST; DISCLOSURE OF CONFLICTS; DISCLOSURE OF INTERESTED PARTIES. Vendor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to the OOG under any contract resulting from this bid, and that Vendor's provision of the requested goods or services will not reasonably create an appearance of impropriety. Vendor has a continual and ongoing obligation to immediately notify OOG in writing, upon discovery of any actual or potential conflict. In addition, Section 2252.908, Texas Government Code and the administrative rules of the Texas Ethics Commission (TEC) at Title I, Chapter 46 of the Texas Administrative Code, require certain contractors to file a Disclosure of Interested Parties Form 1295 (Form 1295) with the TEC and the OOG. The OOG may require the Vendor to complete and file the Form 1295 at the time of contract execution and/or prior to the execution of any amendment of the contract."

Vendor makes the following certifications and warranties and agrees that payments under this Contract can be withheld and this Contract terminated, without further notice, if the Certifications and Warranties are inaccurate or

false:

Delinquent Child Support Obligations. Vendor certifies that it is not ineligible to receive any payment under this Contract pursuant to Section 231.006, Family Code. If applicable, Vendor has provided the name and social security number of each person (sole proprietors, firm owners, partners, or shareholders) with at least 25% ownership in the Vendor (business entity).

Buy Texas. If Vendor is authorized to make purchases under this Contract, it certifies that it will buy Texas products, services and materials when available at a comparable price and in a comparable period of time.

Iran, Sudan or Foreign Terrorist Organization. Grantee certifies that it: (i) is not a "Listed Company," as identified by the Texas Comptroller of Public Accounts or the Texas Pension Review Board; (ii) is not engaged in "scrutinized business operations" as defined by Tex. Gov't Code, § 806.002 or 807.002; and (iii) does not have contracts with or provide supplies or services to a "foreign terrorist organization" as defined by Tex. Gov't Code, §2252.151(2).

Israel. Vendor verifies that it (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract.

Gift to Public Servant. Vendor warrants that it has not given, offered to give, nor intends 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 this bid or award of this Contract.

Debt to State. Vendor acknowledges and agrees that, to the extent Vendor owes any debt (child support, delinquent taxes, or other obligation) to the State of Texas, any payments Vendor is owed under this Contract may be applied to pay those amounts owed by Vendor.

Prohibited Bids and Contracts. Vendor certifies, under Section 2155.004, Government Code, that it is not ineligible to receive this Contract.

Former Executive Head, State Officer and Employees of the Agency. Vendor certifies this Contract is compliant, and will remain in compliance during the Contract term, with Section 669.003 (Contracting with Executive Head of State Agency), Section 2252.901 (Contracts with Former or Retired Agency Employees) and Section 572.069 (if Applicable, Prohibiting Employment within two years of Former State Officer or Employee who participated in procurement of goods or services), Texas Government Code.

Certification of Good Standing; Delinquent Taxes. Vendor certifies that it is in good standing under the laws of the State in which it was formed or organized, and if requested, will provide OOG with documentation. Vendor certifies that it owes no delinquent taxes to any taxing unit of this State at the start date of this Contract. Vendor agrees to remain in good standing with the Texas Secretary of State, the Texas Comptroller of Public Accounts and related state or federal governmental bodies related to Vendor's right to conduct its business in Texas during the term of any contract resulting from this bid.

U.S. Department of Homeland Security's E-Verify System. Vendor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- a. All persons employed to perform duties within Texas, during the term of the Contract; and
- b. All persons including subcontractors, assigned by Vendor to perform work pursuant to the Contract, within the United States of America.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the OOG and at no fault to the OOG, with no prior notification.

Immigration Reform. The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees provide proof of identity and employment eligibility before they can work in the U.S. Vendor shall not place any employee of Vendor at a worksite, nor shall Vendor permit any employees, nor any employee of its subcontractors to perform any work on behalf of, or for the benefit of, OOG without first ensuring said employee's authorization to lawfully work in the U.S.

Compliance with Licensing, Permitting and Regulatory Bodies. Vendor certifies that it has or will obtain all licenses, certifications, permits and authorizations necessary to perform its obligations under this Contract, without costs to OOG. Vendor shall comply with any applicable federal, state, county, local and municipal laws, ordinances, resolutions, codes, decisions, orders, rules, and regulations, in connection with its obligations under this Contract.

Hurricane Relief. OOG is prohibited from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004, Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053, Government Code, Vendor certifies that it is not ineligible from entering into this Contract.

Deceptive Trade Practices; Unfair Business Practices: Vendor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17, Texas Bus. & Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that the Vendor has not been found to be liable for such practices in such proceedings. Vendor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings. Vendor shall notify OOG in writing within five (5) calendar days if Vendor or any of its officers are subject to allegations of Deceptive Trade Practices or are the subject of alleged violations of any unfair business practices in an administrative hearing or court suit, and that Vendor or officers have been found to be liable for such practices in such proceedings.

Antitrust and Assignment of Claims. Neither the Vendor nor the firm, corporation, partnership, or institution represented by the Vendor, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State under Chapter 15, Bus. & Commerce Code, or the Federal Antitrust Laws nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. Vendor hereby assigns to the State of Texas all of Vendor's rights, title, and interest in and to all claims and causes of action Vendor may have under the antitrust laws of Texas of the United States for overcharges associated with this Contract.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion. Vendor understands that the OOG will adhere to the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, and Vendor certifies that it and its principals are eligible to participate in this Contract and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity; that it is in compliance with Texas statutes and rules relating to procurement; and that it is not listed on the federal government's terrorism watch list.

Electronic and Information Resources Accessibility Standards. Products must comply with the State accessibility requirements for electronic and information resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If applicable, Vendor shall provide the Texas Department of Information Resources with the universal resource locator to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements or indicate that the product/service accessibility information is available from the GSA "Buy Accessible Wizard" (<http://www.buyaccessible.gov>).

WARRANTIES.

Performance Warranty. All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and of local codes and ordinances and any other authority having lawful jurisdiction. Vendor shall guarantee all work included in this Contract against any defects in workmanship and shall satisfactorily correct, at no cost to OOG, any such defect that may become apparent within a reasonable time period after

completion of work. The warranty period shall commence upon the date of acceptance by OOG.

Pricing Warranty. Notwithstanding any other provision of any contract resulting from this bid, Vendor warrants that, for a period of one-year, the prices, services, terms, and conditions for the goods or services provided by Vendor will at all times remain comparable to or more favorable than the prices, services, terms, and conditions offered by Vendor to any of its customers during the applicable period.

Material Warranty. All material furnished under this Contract is guaranteed by Vendor to be in compliance with this Contract, fit and sufficient for the purpose intended, new and free from defects. Materials furnished under this Contract shall be the latest improved product in current production, as offered to commercial trade, and shall be of quality material. Used, shopworn, demonstrator, prototype, reconditioned, or discontinued products or material are not acceptable. The warranty period for Vendor-provided materials shall be for a reasonable time period after completion of the installation or within the manufacturer's warranty, whichever is longer. The warranty period shall commence upon date of acceptance by OOG.

Warranty on Safety and Health Requirements. Vendor shall procure, at Vendor's expense, all necessary and required licenses and permits necessary for the performance of this Contract. Vendor represents and warrants that the services provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, OSHA, and all Texas health and safety standards.

Payment of Subcontractors. Vendor shall be solely responsible for any payments or other claims to subcontractors for goods or services provided under this contract. As provided by Section 2251.022, Government Code, Vendor shall pay a subcontractor its appropriate share of a payment received by OOG not later than the tenth (10th) day after the date Vendor received payment.

STATE FUNDING. Vendor agrees that nothing in this Contract will be interpreted to create an obligation or liability of OOG in excess of the funds delineated in this Contract. Vendor agrees that funding for this Contract is subject to the actual receipt by OOG of funds appropriated to OOG. Vendor agrees that the funds, if any, received from OOG are limited by the term of each state biennium and by specific appropriation authority to and the spending authority of OOG for the purpose of this Contract. Vendor agrees that notwithstanding any other provision of this Contract, if OOG is not appropriated the funds or if OOG does not receive the appropriated funds, or if the funds appropriated to OOG are required to be reallocated to fund other state programs or purposes, then OOG may terminate the Contract without cost or penalty.

TERMINATION FOR CONVENIENCE OF OOG. The OOG may, in its sole discretion, terminate the Contract for convenience on thirty (30) calendar days' written notice, stating the effective date of termination, without recourse, liability, or penalty against the OOG.

TERMINATION FOR CAUSE. In the event Vendor fails to perform or comply with an obligation of the terms, conditions and provisions of this Contract or if Vendor is in default of this Contract and after the OOG has given Vendor an opportunity to cure and the Vendor has failed to cure, OOG may, upon written notice to Vendor, terminate this Contract for Cause by providing written notice to Vendor and stating the effective date of such termination.

NO LIABILITY UPON TERMINATION. If this Contract is terminated for any reason, OOG and the State of Texas shall not be liable to Vendor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award, if applicable, under Chapter 2260, Government Code. Upon termination for any reason, if the effective date of termination occurs after the first of a particular month, Vendor shall pro-rate the amount due and owing for that particular month to reflect the days of goods or services actually rendered prior to or on the effective date of termination by Vendor in the month in which the contract was effectively terminated.

INFORMAL MEETINGS AND DISPUTE RESOLUTION. The parties' representatives will meet as needed to implement the terms of this Contract

and will make a good faith attempt to informally resolve any disputes. If Chapter 2260, Government Code is applicable, it shall be used as the sole and exclusive process to resolve any claim for breach of this Contract made by Vendor. Neither the execution of this Contract nor any other conduct or statements by OOG relating to this Contract shall be considered a waiver of sovereign immunity. Vendor shall not be excused from performance during any pending dispute, unless approved in writing by OOG.

SURVIVAL OF PROMISES. Expiration or termination of this Contract for any reason, does not release Vendor from any liability or obligation pertaining to return of funds, confidentiality, limitation of liability, indemnification, audit rights, records retention, dispute resolution, sovereign immunity, governing law and venue.

APPLICABLE LAW AND VENUE. This Contract is made and entered into in the State of Texas. This Contract and all disputes arising out of or relating thereto shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements. Venue for any Vendor-initiated action, suit or litigation arising out of or in any way relating to this Contract shall be exclusively in the Travis County District Court or the United States District Court, Western District of Texas - Austin Division. Venue for any OOG-initiated action, suit or litigation arising out of or in any way relating to this Contract may be in a Texas state district court or a United States District Court in Texas selected by OOG in its sole discretion. Vendor hereby irrevocably and unconditionally consents to the jurisdiction of the courts referenced above for the purpose of prosecuting and/or defending any such litigation. Vendor hereby waives and agrees not to assert as a defense, or otherwise, in any suit, action or proceeding, any claim that the Vendor is not subject to the jurisdiction of the above-named courts; the suit, action or proceeding is brought in an inconvenient forum; and/or the venue is otherwise improper.

NO WAIVER OF IMMUNITY. OOG is immune from suit and from liability. No part of this Contract, nor the conduct or statement of any person, will be construed as a waiver of sovereign immunity or official immunity, or of any of the privileges, rights, defenses, remedies, or immunities available to the OOG, or the State of Texas, or their officers, employees, or agents as provided by law.

TEXAS PUBLIC INFORMATION ACT. Vendor agrees the State, OOG, and this Contract are subject to the Texas Public Information Act, Chapter 552, Government Code (the "PIA"). Vendor agrees all information created or exchanged in connection with this Contract is subject to the PIA. Vendor agrees that information not otherwise excepted from disclosure under the PIA, will be available in a format that is accessible by the public at no additional charge to OOG or State. Vendor will cooperate with OOG in the production of documents or information responsive to a request for information. Information provided by Vendor in connection with this Contract that Vendor considers proprietary, financial, or trade secret information (collectively "Confidential Information") shall be designated as such when it is provided to OOG. Vendor will notify OOG within twenty-four hours of receipt of any third party requests for information that was provided to the Vendor by the OOG or the State.

CONFIDENTIALITY AND SECURITY. Vendor must maintain and protect any information it receives, compiles, or creates as a result of the Contract in accordance with any applicable federal, state, or local laws and regulations. Unless required by law to disclose, Vendor agrees to maintain the confidentiality of information received from OOG or the State during the performance of this Contract, including, but not limited to, sensitive personal information, personally identifying information, personal financial information, financial account numbers, account access information, computer passwords, social security numbers or information that is confidential by law or otherwise subject to a lawful exception from disclosure. In the event of an unauthorized acquisition, use, or disclosure of OOG information by the Vendor, its employees, representatives, subcontractors or other agents in the performance of Vendor's duties, the Vendor shall: (i) immediately notify the OOG in writing; (ii) assume and comply with any applicable remedial requirements required by the OOG or applicable law; (iii) bear all costs of such compliance and remediation; and (iv) provide the OOG with information regarding the breach and the progress of any remedial efforts if requested. Upon request of the OOG, Vendor, Vendor's employees, agents, and subcontractors may be required to execute additional information

security or non-disclosure agreements as deemed necessary by the OOG.

RECORDS RETENTION; ACCOUNTING RECORDS; ACCESS; AUDITS. Vendor shall maintain adequate records to support its charges, procedures and performances for all work related to this Contract and retain those Records for a period of seven (7) years after the later of the date of the final payment or the resolution of any audit, dispute, litigation, or the settlement of claims arising out of the Contract. Vendor shall, at vendor's expense, promptly provide access to, inspection of, and reproduction of all paper and electronic records, reports, data, files, software, books, documents, accounting procedures, practices or any other items relevant to the performance of this Contract to OOG, auditors of the State of Texas, or such other persons or entities designated by OOG. Vendor will direct any of its subcontractors to likewise permit access to, inspection of, and reproduction of any Records of Vendor's subcontractor(s) which pertain to this Contract. Pursuant to Section 2262.154, Government Code, the State Auditor's Office may conduct an audit or investigation of Vendor or any other entity or person receiving funds from OOG directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by Vendor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract is acceptance of the authority of the State Auditor's Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Vendor or other entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. Vendor further agrees to cooperate fully with the State Auditor's Office. Vendor shall ensure that this requirement concerning the authority to audit funds received indirectly by subcontractors from Vendor and the requirement to cooperate is with an audit is included in any subcontract Vendor awards.

NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY. Vendor may not make any news releases, public announcements, or public disclosures, nor will it have any conversations with representatives of the news media, pertaining to this Contract, without the prior written approval of OOG, and then only in accordance with explicit written instructions from OOG. Vendor must not use the name of the State of Texas or OOG in any advertisement, promotion, or otherwise for any purpose regarding this Contract without OOG's prior written approval.

TRAVEL. Unless otherwise expressly agreed in writing by the OOG, any travel or per diem required by Vendor to perform its obligations under this Contract is at Vendor's expense.

FORCE MAJEURE. Except as otherwise provided herein, neither the Vendor nor OOG shall be liable to the other for any delay in, or failure of performance of, any covenant contained herein caused by force majeure. "Force majeure" is defined as "an act of God or any other cause of like kind not reasonably within a party's control and which, by the exercise of due diligence of such party, could not have been prevented or is unable to be overcome." The party claiming force majeure must inform the other party in writing within three days of the such force majeure, and exercise due diligence to overcome such force majeure. If non-performance continues for more than 30 calendar days, OOG may terminate this Contract with no further notice to Vendor.

VENDOR IS INDEPENDENT CONTRACTOR. Vendor shall render the goods, services, and requirements under this Contract as an independent contractor. Employees and contractors of Vendor are not employees of OOG or the State of Texas by virtue of this Contract or otherwise within the meaning of any federal, state, or local law, ordinance, or regulation. Vendor agrees it is entirely responsible for the payment of Vendor's and Vendor's employees' taxes, unemployment and workers' compensation insurance, and Vendor agrees to comply with all state and federal laws applicable to any such persons.

INSURANCE AND OTHER SECURITY. Vendor represents and warrants that during the term of this Contract it Vendor will maintain: (1) Standard Workers Compensation Insurance in accordance with statutory limits covering all

personnel who will provide services under this Contract; and (2) Commercial General Liability Insurance, personal injury and advertising injury with, at a minimum, the following limits: \$500,000 minimum each occurrence; \$1,000,000 per general aggregate. Vendor shall provide proof of insurance to the OOG within seven (7) days of its written request. To the extent that Vendor does not have or maintain insurance or does not have or maintain insurance as required, Vendor acknowledges and agrees that Vendor will be solely responsible for any losses or damages related to or caused by the Vendor's performance of its duties and obligations under this Contract. The OOG will have no obligation to reimburse or otherwise pay Vendor for any costs incurred related to any such losses or damages.

LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY. The Vendor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Vendor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to this Contract, if any. The Vendor shall notify the OOG in writing of any such damage within one (1) calendar day.

ASSIGNMENT. No right or obligation under this Contract may be assigned without the prior written approval of OOG; assignments made in violation of this provision shall be null and void.

INDEMNIFICATION AND HOLD HARMLESS. VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE OOG, THE STATE OF TEXAS AND ITS EMPLOYEES, AGENTS, OFFICERS, REPRESENTATIVES, CONTRACTORS, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DAMAGES, DEMANDS OR SUITS, WHATSOEVER, FOR ANY INJURIES, DAMAGES SUSTAINED BY ANY PERSON OR PROPERTY, COSTS, OR CLAIMS, INCLUDING ANY THIRD PARTY CLAIMS OR CLAIMS INVOLVING INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS, IN CONNECTION WITH THE VENDOR'S SERVICES OR PRODUCTS UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF LITIGATION DEFENSE INCLUDING ATTORNEYS' FEES AND EXPENSES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH OOG AND THE OFFICE OF THE ATTORNEY GENERAL; VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OOG AND THE OFFICE OF THE ATTORNEY GENERAL. VENDOR SHALL FURNISH TIMELY WRITTEN NOTICE TO THE OOG OF ANY CLAIM.

~~**FALSE STATEMENTS, BREACH OF REPRESENTATIONS.**~~ By signing this bid, Vendor makes all the representations, warranties, guarantees, certifications and affirmations included in this bid. If Vendor signs this bid with a false statement or it is subsequently determined that Vendor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this bid, Vendor shall be in default under this Contract. The OOG may terminate this Contract for cause and pursue other remedies available to OOG under this Contract and applicable law.

ENTIRE AGREEMENT. This OOG Standard Terms and Conditions document ("OOG Terms") is part of the Contract between the OOG and Vendor. The Contract includes (1) the OOG Terms; (2) the attached Order Form; and (3) the attached Terms and Conditions Agreement. In the event of conflicts or inconsistencies between the OOG Terms, the Order Form, and the Terms and Conditions Agreement, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: (1) the OOG Terms; (2) the Order Form; and (3) the Terms and Conditions Agreement. The Contract may be amended only upon written agreement signed by both the OOG and Vendor. The OOG and Vendor stipulate and agree that any act, oral statements, or representation by either party, their agents or employees that purports to increase the liability of the OOG is voidable by the OOG, unless the Contract is amended in writing to increase the liability of the OOG. The OOG reserves the right to amend the Contract through execution of a unilateral amendment under the following circumstances: (i) to correct an obvious clerical error in this Contract; (ii) to incorporate new or revised federal or state laws, regulations, rules, or policies that are required to be included as part of the Contract; (iii) to change the designated OOG contact person or mailing address for this Contract; or (iv) to change the designated Vendor contact person or mailing address for this Contract.

Order Form for Online Databases from Airline Data Inc

Bill To:

Name: <u>Accounts Payable</u>	Phone: <u>512-936-9503</u>
Company: <u>Texas office of the Governor</u>	Fax:
Address: <u>1100 San Jacinto Blvd</u>	Email: <u>Ap@gov.texas.gov</u>
City: <u>Austin</u>	ST: <u>TX</u> Zip: <u>78701</u>

Products:	Total
*Subscription Start Date 2/1/19	
Mapping/ Graphing/ Dashboard	Included w/ Subscription
Customer Training & Support	Included w/ Subscription
Schedules Module	
Total:	
\$333.33/month for the first eight (8) months; \$333.34/month for the four (4) months thereafter. Each monthly amount is to be invoiced after services are rendered for each month.	

Customer's Authorization:

Name: JORDAN HALE
 Title: DEPUTY CHIEF OF STAFF
 Date: 1/25/19
 Signature: [Signature]

Acceptance by Airline Data Inc

Name: Richard Olmos
 Title: Managing Director
 Date: 1-24-19
 Signature: [Signature]

This Order Form is part of the Contract between the Office of the Governor ("OOG") and Airline Data Inc. The Contract includes (1) this Order Form; (2) the attached OOG Standard Terms and Conditions document ("OOG Terms"); and (3) the attached Terms and Conditions Agreement. In the event of conflicts or inconsistencies between this Order Form, the OOG Terms, and the Terms and Conditions Agreement, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: (1) the OOG Terms; (2) this Order Form; and (3) the Terms and Conditions Agreement.



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