GENERAL CONDITIONS OF THE CONTRACT
These Standard Terms and Conditions are incorporated into and made part of the Agreement and shall govern and apply to all products and services furnished by Contractor to NUAIR under this Agreement.

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. Addenda—Written or graphic instruments issued prior to the opening of Bids/Proposals, which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. Agreement—The written instrument which is evidence of the agreement between NUAIR and Contractor covering the Work.

3. Application for Payment—The form acceptable to NUAIR’s Representative which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. Change Order—A document recommended by NUAIR’s Representative which is signed by Contractor and NUAIR and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

5. Claim—A demand or assertion by NUAIR or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

6. Contract—The entire and integrated written agreement between the NUAIR and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

7. Contract Documents—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings are not Contract Documents.

8. Contract Price—The moneys payable by NUAIR to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

9. Contract Times—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; and (ii) complete the Work so that it is ready for final payment.

10. Contractor—The individual or entity with whom NUAIR has entered into the Agreement.

11. Drawings—That part of the Contract Documents prepared or approved by NUAIR’s Representative which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
12. Effective Date of the Agreement—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

13. NUAIR’s Representatives—The individuals or entities named as such by the NUAIR who will act as the NUAIR’s representative in administering the project.

14. Field Order—A written order issued by NUAIR’s Representative which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

15. Hazardous Environmental Condition—The presence at the Sites of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

16. Hazardous Waste—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

17. Laws and Regulations; Laws or Regulations—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

18. Liens—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

19. Milestone—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to completion of all the Work.

20. Notice of Award—The written notice by NUAIR to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, NUAIR will sign and deliver the Agreement.

21. Notice to Proceed—A written notice given by NUAIR to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

22. NUAIR—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

23. NUAIR Controlled Site—Property, equipment or infrastructure owned, rented or leased by NUAIR.

24. Progress Schedule—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.

25. Project—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

26. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

27. Schedule of Submittals—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
28. Schedule of Values—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.

29. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

30. Site—Lands or areas indicated which the Work is to be performed and such other lands furnished by NUAIR which are designated for the use of Contractor.

31. Specifications—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

32. Subcontractor—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

33. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of NUAIR’s Representative, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

34. Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

35. Work—The entire tangible deliverables or construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all services, materials and equipment into such construction, all as required by the Contract Documents.

36. Work Change Directive—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by NUAIR and recommended by NUAIR’s Representative ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms below shall have the following meaning as described below.

B. Intent of Certain Terms or Adjectives:

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by NUAIR’s Representative. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of
NUAIR’s Representative as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to NUAIR’s Representative any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.04 or any other provision of the Contract Documents.

C. Day:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
   a. does not conform to the Contract Documents; or
   b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
   c. has been damaged by Contractor prior to NUAIR’s Representative’s recommendation of final payment.

E. Furnish, Install, Perform, Provide:

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Evidence of Insurance
A. Evidence of Insurance: Before any Work is started, Contractor shall deliver certificates of insurance (and other evidence of insurance which may be reasonably requested) which Contractor is required to purchase and maintain in accordance with Article 5.

2.02 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement.

2.03 Starting the Work

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done prior to the date on which the Contract Times commence to run.

2.04 Before Starting Work

A. Preliminary Schedules: Within 30 days after the Effective Date of the Agreement, Contractor shall submit to NUAIR’s Representative for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents. Schedule shall consider time required for submission and approval of Shop Drawing and Sample submittals (as outlined in Exhibit A of this Agreement) and for manufacturing lead times and product delivery dates, and shall contain at least the level of detail and other characteristics documenting the intended progress of the Work;

2. a preliminary Schedule of Submittals consistent with those identified in Exhibit A to this Agreement. Unless otherwise specified in Exhibit A to this Agreement, schedule shall allow a minimum of ten working days for NUAIR’s Representative’s review after receipt of each submittal and resubmittal (excluding time for transmittal). In preparing schedule, Contractor shall discuss individual submittal requirements with NUAIR’s Representative and shall increase the minimum time allowance for review of complex or voluminous submittals.; and

2.05 Project Kick-off Conference; Designation of Authorized Representatives

A. Before any Work is started, a conference attended by NUAIR, Contractor, NUAIR’s Representative, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference, NUAIR and Contractor each shall designate, in writing, a specific individual(s) to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.06 Initial Acceptance of Schedules

A. At least 10 days before submission of the first Application for Payment, a conference attended by Contractor, NUAIR’s Representative, and others as appropriate will be held to review for acceptability to NUAIR’s Representative as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to NUAIR’s Representative.
1. The Progress Schedule will be acceptable to NUAIR’s Representative if it provides an orderly progression of the Work to completion within the Contract Times and it contains a work detail breakdown documenting the intended progress of the Work. Such acceptance will not impose on NUAIR’s Representative responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor’s full responsibility therefore.

2. Contractor’s Schedule of Submittals will be acceptable to NUAIR’s Representative if it provides a workable arrangement for reviewing and processing the required submittals.

2.07 Deliverables.

A. All software and software development, databases, database content, designs, updates, enhancements, patches, bug-fixes, technical and functional specifications, documentation and related goods or deliverables which are developed for NUAIR under the Agreement or generated from or by any of the Services provided under the Agreement, are referred to as the “Software”. All systems design, support, maintenance, research, consulting and other services performed for or provided to the NUAIR by Contractor or its agents or representatives under the Agreement are referred to as the “Services”. Any computer and peripheral equipment, and other tangible property provided to the Customer under any the Agreement, are referred to as the “Hardware.” Deliverables includes the Software, the Services and the Hardware.

1. Contractor will provide the Services and other Deliverables using one or a combination of programming techniques, code, methods, components; routines and subroutines, web services, modules and sub-modules, libraries, quality processes and testing procedures which are proprietary to Contractor as of the date of the Agreement (“Contractor Technology”) and third party software which Contractor is authorized to provide and relicense to NUAIR (“Third Party Software”, collectively, “Background IP”). Background IP is and shall remain the exclusive owner of the Contractor.

2. NUAIR shall retain exclusive ownership and intellectual property rights existing on the date of Agreement of its proprietary code, data, methods, components, modules, libraries, development tools, custom frameworks, development status, functionality, appearance, content and flow of screens, the method and pattern of user interaction and work flow, and related documentation (“NUAIR IP”) and any derivative works to or of Contractor IP created under the Agreement.

3. Contractor hereby grants to NUAIR a perpetual, irrevocable, royalty-free, non-exclusive and transferable license to use, develop, modify, enhance, or license all or any part of the Background IP which is embedded in or otherwise necessary to access and utilize the Deliverables.

B. Upon completion of, and receipt of payment for each Deliverable or project milestone under the Agreement, NUAIR will be the sole and exclusive owner of all right, title, and interest in and to the Deliverable, including all Intellectual Property Rights therein (other than any Background IP contained therein or any Intellectual Property Rights in or to the Background IP). Contractor shall create the Software as work made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent the Software, or any Intellectual Property Right therein, does not qualify as, or otherwise fails to be, work made for hire, Contractor will assign to NUAIR the ownership rights in the Software with the right to obtain and to hold in its own name, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof, and all rights to transfer. Upon the request and at the expense of NUAIR, Contractor agrees to give such reasonable assistance and execute any instruments reasonably requested by NUAIR to vest more fully the rights herein. Contractor further warrants that it will secure the assignment of all ownership or intellectual property rights from any independent contractors it engages to the extent necessary to completely effectuate these terms.

C. Contractor acknowledges that the NUAIR IP, Deliverables and Work Product contain valuable trade secrets and confidential information owned by NUAIR. Therefore, upon completion of each milestone and upon
completion of the project contemplated by this Agreement, Contractor will deliver to NUAIR media containing complete copies of the then-most-current source code and object code and any documentation relating thereto.

D. Upon completion of the project contemplated by the Agreement, Contractor will return to NUAIR all copies of NUAIR IP and all Work Product created under the Agreement. Subject to any other terms of the Agreement, Contractor may use the general knowledge and experience gained from performance of the Services and development of the Software (“Residual Knowledge”); except that Residual Knowledge shall not be used by Contractor or its employees or personnel to: (1) reconstruct or reverse engineer the NUAIR IP or the Software, or (2) for a period of two (2) years following the completion of the project contemplated under the Agreement, to license, sell, use, or develop a competing systems road map or systems architecture for a certified FAA DAA or UTM, without the express written consent of NUAIR.

E. Contractor represents and warrants that the Deliverables shall conform to the specifications, milestones, and other technical documents approved by NUAIR’s Representatives and shall perform for their intended purposes for the Task

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. Clarifications and interpretations of the Contract Documents shall be issued by NUAIR’s Representative as provided in Article 9.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of NUAIR, Contractor, or NUAIR’s Representative, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to NUAIR, NUAIR’s Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies:

1. Contractor’s Review of Contract Documents During Performance of Work: If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract
Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to NUAIR’s Representative in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

2. Contractor shall not be liable to NUAIR or NUAIR’s Representative for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies:

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

   a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents)

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

   1. A Field Order;
   2. NUAIR’s Representative’s approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
   3. NUAIR’s Representative’s written interpretation or clarification.

3.05 Reuse of Documents

A. Contractor and any Subcontractor or Supplier shall not:

   1. have or acquire any title to or Ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of NUAIR’s Representative or its consultants, including electronic media editions; or
   2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of NUAIR and NUAIR’s Representative and specific written verification or adaptation by NUAIR’s Representative.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 Electronic Data

A. The data furnished by NUAIR or NUAIR’s Representative to Contractor, or by Contractor to NUAIR or NUAIR’s Representative, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic
media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user’s sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data’s creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data’s creator.

D. Some or all of the data exchanged between the Parties are or may contain proprietary information, and constitutes a valuable and proprietary asset. The parties shall treat, handle, and preserve such confidential information in a commercially reasonable manner and, subject to other applicable provisions in this Agreement. Such confidential information shall be used only in furtherance of this Agreement and shall remain confidential until it becomes publicly known or made generally available through no impermissible action of the receiving party. Either party shall not disclose any such information to third-parties until two (2) years after the expiration of the Agreement; provided, however, that neither party shall (i) duplicate, reproduce, copy or use confidential information of the other party; (ii) sell, lease, assign, or sublicense confidential information of the other party, (iii) decompile, disassemble, or reverse engineer any confidential information or proprietary information or material of the other party.

ARTICLE 4 – BONDS AND INSURANCE

4.01 Performance, Payment, and Other Bonds (NOT USED)

4.02 Licensed Sureties and Insurers (NOT USED)

4.03 Certificates of Insurance

A. Contractor shall deliver to NUAIR, with copies to each additional insured (see below) and loss payee identified, certificates of insurance (and other evidence of insurance requested by NUAIR or any other additional insured) which Contractor is required to purchase and maintain. Additional named insured to include: Northeast UAS Airspace Integration Research Alliance, Inc.

B. NUAIR shall deliver to Contractor, with copies to each additional insured and loss payee identified, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which NUAIR is required to purchase and maintain.

C. Failure of NUAIR to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of NUAIR to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor’s obligation to maintain such insurance.

D. NUAIR does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor’s liability under the indemnities granted to NUAIR in the Contract Documents.
A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor’s performance of the Work and Contractor’s other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers’ compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor’s employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor’s employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
   a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;

6. claims for damages because of bodily injury or death of any person or property damage arising out of the Ownership, maintenance or use of any motor vehicle;

7. Product liability; and

8. Data Privacy and Protection

B. The policies of insurance required by this Paragraph 4.04 shall:

1. with respect to insurance required by Paragraphs 4.04.A.3 through 4.04.A.6 inclusive, be written on an occurrence basis, include as additional named insureds (subject to any customary exclusion regarding professional liability) NUAI\R and NUAI\R’s Representative, and any other individuals or entities identified, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided herein or required by Laws or Regulations, whichever is greater;

3. include contractual liability insurance covering Contractor’s indemnity obligations under Paragraphs 5.11 and 5.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to NUAI\R and Contractor and to each other additional insured identified to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 4.03 will so provide);

5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work.
C. The limits of liability for the insurance required by paragraph 4.04 of the General Conditions shall provide the following coverages for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation, etc., under paragraphs 4.04.A.1 and A.2 of the General Conditions:
   - (A) State Statutory
   - (B) Applicable Federal (e.g., Longshoreman's): Statutory
   - (C) Employer's Liability: $ 1,000,000

2. CONTRACTOR's General Liability Insurance under paragraphs 4.04.A.3 through A.6 of the General Conditions which shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of CONTRACTOR:
   - (A) General Aggregate (except Products - Completed Operations): $ 2,000,000
   - (B) Products - Completed Operations Aggregate: $ 2,000,000
   - (C) Personal and Advertising Injury (Per Person/Organization): $ 1,000,000
   - (D) Each Occurrence (Bodily Injury and Property Damage): $ 1,000,000
   - (E) Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where applicable.
   - (F) Excess Liability:
     - General Aggregate: $ 10,000,000
     - Each Occurrence: $ 10,000,000
   - (G) Professional Liability: $ 8,000,000

3. Automobile Liability:
   - (A) Combined Single Limit (Bodily Injury and Property Damage): $ 1,000,000

4. The Contractual Liability coverage required by Paragraph 5.04.B.3 of the General Conditions shall provide coverage for not less than the following amounts:
   - (A) Bodily Injury:
     - Each Person: $10,000,000
     - Each Accident: $10,000,000
   - (B) Property Damage:
     - Each Accident: $10,000,000
     - Annual Aggregate: $10,000,000

4.05 NUAIR's Liability Insurance

A. In addition to the insurance required to be provided by Contractor under Paragraph 4.04, NUAIR, at NUAIR's option, may purchase and maintain at NUAIR's expense NUAIR’s own liability insurance as will protect NUAIR against claims which may arise from operations under the Contract Documents.
4.06  Property Insurance (not used)

4.07  Waiver of Rights

A. NUAIR and Contractor intend that all policies purchased will protect NUAIR, Contractor, Subcontractors, and NUAIR’s Representative, and all other individuals or entities identified as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. NUAIR and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and NUAIR’s Representative, and all other individuals or entities identified as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by NUAIR as trustee or otherwise payable under any policy so issued.

4.08  Receipt and Application of Insurance Proceeds (Not Used)

4.09  Acceptance of Bonds and Insurance; Option to Replace

A. If either NUAIR or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. NUAIR and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party’s interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

ARTICLE 5 – CONTRACTOR’S RESPONSIBILITIES

5.01  Supervision and Superintendence

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of NUAIR or NUAIR’s Representative in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent Project Manager who shall not be replaced without written notice to NUAIR and NUAIR’s Representative, except under extraordinary circumstances.

5.02  Labor; Working Hours (NUAIR controlled sites only)

A. Except as otherwise required for the safety or protection of persons or the Work or property at the Sites or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Sites shall be performed during
regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without NUAIR’s written consent (which will not be unreasonably withheld) given after prior written notice to NUAIR’s Representative.

5.03 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by NUAIR’s Representative, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

5.04 Progress Schedule

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07, as it may be adjusted from time to time as provided below.

1. Contractor shall submit to NUAIR’s Representative for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto. NUAIR’s Representative’s acceptance will not impose on NUAIR’s Representative responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor. NUAIR’s Representative’s review to determine acceptability will be limited to future activities only. By accepting the revised schedule, NUAIR’s Representative does not indicate acceptance of any historic information shown thereon.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

5.05 Substitutes and “Or-Equals” (Not Used)

5.06 Concerning Subcontractors, Suppliers, and Others (NUAIR controlled site only)

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to NUAIR as indicated in Paragraph 5.06.B), whether initially or as a replacement, against whom NUAIR may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. Contractor shall be fully responsible to NUAIR and NUAIR’s Representative for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor’s own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between NUAIR or NUAIR’s Representative and any such Subcontractor, Supplier or other individual or entity; nor
2. shall create any obligation on the part of NUAIR or NUAIR’s Representative to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

C. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

D. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with NUAIR’s Representative through Contractor.

E. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of NUAIR and NUAIR’s Representative. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against NUAIR, Contractor, NUAIR’s Representative, and all other individuals or entities identified to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

5.07 Fees and Royalties

A. Contractor shall pay all license fees and royalties regarding intellectual property and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless NUAIR and NUAIR’s Representative, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of NUAIR’s Representatives, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights, trade secret, copyrights, or other intellectual property right incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

5.08 Permits

A. Unless otherwise provided, Contractor shall obtain and pay for all construction permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

5.09 Laws and Regulations

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither NUAIR nor NUAIR’s Representative shall be responsible for monitoring Contractor’s compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of NUAIR’s Representatives, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor’s responsibility to make certain that
the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor’s obligations under Paragraph 3.03.

C. Changes in Laws or Regulations after the Effective Date of the Agreement having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If NUAIR and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

5.10 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

5.11 Use of Site and Other Areas (NUAIR controlled sites only)

A. Limitation on Use of Sites and Other Areas:

1. Contractor shall confine equipment, the storage of materials and equipment, and the operations of workers to the Sites and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Sites and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the NUAIR or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such NUAIR or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless NUAIR and NUAIR’s Representative, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of NUAIR’s Representatives, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such NUAIR or occupant against NUAIR, NUAIR’s Representative, or any other party indemnified hereunder to the extent caused by or based upon Contractor’s performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall keep the Sites and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: Prior to Substantial Completion of the Work Contractor shall clean the Sites and the Work and make it ready for utilization. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property.

5.12 Record Documents (Not Used)

5.13 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Sites or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify NUAIRs of adjacent property and of Underground Facilities and other utility NUAIRs when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. For NUAIR controlled sites, Contractor shall comply with the applicable requirements of NUAIR’s safety programs, if any.

D. Contractor shall inform NUAIR and NUAIR’s Representative of the specific requirements of Contractor’s safety program with which NUAIR’s and NUAIR’s Representative’s employees and representatives must comply while at the Sites.

E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of NUAIR or NUAIR’s Representative or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

F. Contractor’s duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and the Term of the Agreement has ended.

5.14 Safety Representative (NUAIR controlled sites only)

A. Contractor shall designate a qualified and experienced safety representative at the Sites whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

5.15 Hazard Communication Programs (NUAIR controlled sites only)

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Sites in accordance with Laws or Regulations.

5.16 Emergencies (NUAIR controlled sites only)

A. In emergencies affecting the safety or protection of persons or the Work or property at the Sites or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give NUAIR’s Representative prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof.
B. Contractor shall designate one person to respond to emergencies and act on the Contractor's behalf during off-work hours at the project sites. The person's name, address, telephone and 24 hour number shall be provided to the NUAIR during the project kick-off conference and the designated person shall be on call during off-work hours.

5.17 Shop Drawings (not used).

5.18 Export Compliance

A. The Products, including any software, documentation, and any related technical data included with, or contained in, such Products, and any products utilizing any such Products, software, documentation, or technical data (collectively, “Regulated Products”) may be subject to US export control laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. All parties shall not, and shall not permit any third parties to, directly or indirectly, export, reexport, or release any Regulated Product to any jurisdiction or country to which, or any party to whom, the export, reexport, or release of any Regulated Product is prohibited by applicable federal law, regulation, or rule or unless proper export authorization has been obtained.

B. The Receiving Party shall indemnify, defend, and hold harmless the Disclosing Party and its subsidiaries and affiliates, and their respective directors, officers, employees, representatives, and agents, from all claims, demands, liabilities, damages, costs, fines, penalties, attorneys’ fees, and all other costs and expenses, relating to or arising out of, directly or indirectly, the failure of the Receiving Party to comply with this section or any applicable U.S. export control laws or regulations.

C. Parties acknowledge that foreign persons employed by or associated with, or under contract to the Party may not be in receipt of export controlled information without proper U.S. Government authorization. Each Party further agrees to notify the other Party in the event that they intend to share information disclosed hereunder with any employee who is a foreign person prior to commencement of that person’s work under the subject agreement.

Furthermore, each Party certifies that if they are engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, each Party represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Directorate of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.

D. The exporting party shall complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, reexporting, or releasing any Regulated Products.

E. The Contractor shall provide prior written notice to the NUAIR of the classification and jurisdiction of such Regulated Products. At a minimum, the Contractor shall identify all Regulated Products, and clearly mark all written documents or Shop Drawings, with their export Jurisdiction and Classification. The contractor is unable to mark certain data (i.e., radar output data), however, will provide written notice as to the jurisdiction and classification of the data prior to commencement of those types of data transfers, of which written notice shall cover all transfers for duration of contract, unless otherwise notified. NUAIR is responsible to notify the need to comply with such laws and regulations to any person, firm, or entity which it has reason to believe is obtaining any such Regulated Product from NUAIR.

F. The Contractor shall deliver data as agreed upon to NUAIR sites/specified locations. NUAIR shall be responsible for ensuring the parties on the receiving end (i.e. at the operating center) are US Persons (as defined by 22 CFR 120.15) or that appropriate export authorization has been obtained for non-US Persons.
5.19 **Continuing the Work**

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with NUAIR. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 14.04 or as NUAIR and Contractor may otherwise agree in writing.

5.20 **Contractor’s General Warranty and Guarantee**

A. Contractor warrants and guarantees to NUAIR that all Work will be in accordance with the Contract Documents and will not be defective. NUAIR’s Representative and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor’s warranty and guarantee.

B. Contractor’s warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor’s obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor’s obligation to perform the Work in accordance with the Contract Documents:

1. observations by NUAIR’s Representative;

2. recommendation by NUAIR’s Representative or payment by NUAIR of any progress or final payment;

3. use or occupancy of the Work or any part thereof by NUAIR;

4. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by NUAIR’s Representative;

5. any inspection, test, or approval by others; or

6. any correction of defective Work by NUAIR.

5.21 **Indemnification**

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless NUAIR and NUAIR’s Representative, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of NUAIR’s Representatives, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
B. In any and all claims against NUAIR or NUAIR’s Representative or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 5.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

C. NUAIR shall indemnify and hold the Contractor harmless for any third-party claims arising from NUAIR or any third-party’s use of or reliance on Contractor deliverables. NUAIR shall obtain indemnification from, and shall be held harmless by third parties prior to allowing such third parties to access or use Contractor deliverables.

D. The indemnification obligations of Contractor under Paragraph 5.20.A shall not extend to the liability of NUAIR’s Representative and NUAIR’s Representative’s officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

5.22 Delegation of Professional Design Services

A. Where required by law, permit or regulation, Contractor will be required to provide professional design services for a portion of the Work required under this Agreement.

B. Contractor shall cause such professional services and/or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional’s written approval when submitted to NUAIR’s Representative.

C. NUAIR and NUAIR’s Representative shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

D. Pursuant to this Paragraph 5.21, NUAIR’s Representative’s review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents.

ARTICLE 6 – OTHER WORK AT NUAIR-CONTROLLED SITES

6.01 Related Work at NUAIR Controlled Sites

A. NUAIR may perform other work related to the Project at the Sites controlled by the NUAIR with NUAIR’s employees, or through other direct contracts therefore, or have other work performed by utility NUAIRs. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and
2. if NUAIR and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 9.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility NUAIR, and NUAIR, if NUAIR is performing other work with NUAIR’s employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others’ work with the written consent of NUAIR’s Representative and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility NUAIRs and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between NUAIR and such utility NUAIRs and other contractors.

C. If the proper execution or results of any part of Contractor’s Work depends upon work performed by others under this Article 6, Contractor shall inspect such other work and promptly report to NUAIR’s Representative in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor’s Work. Contractor’s failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor’s Work except for latent defects and deficiencies in such other work.

6.02  Coordination

A. The NUAIR may contract with others for the performance of other work on the Project at the NUAIR controlled Sites. The following shall pertain regarding contract coordination:

1. the NUAIR’s Representative will have authority and responsibility for coordination of the activities among the various contractors.

2. the specific matters to be covered by such authority and responsibility and the extent of such authority and responsibilities is identified in Article 9.

6.03  Legal Relationships

A. Paragraphs 6.01.A and 6.02 are not applicable for utilities not under the control of NUAIR.

B. Each other direct contract of NUAIR under Paragraph 6.01.A shall provide that the other contractor is liable to NUAIR and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor’s wrongful actions or inactions.

C. Contractor shall be liable to NUAIR and any other contractor under direct contract to NUAIR for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor’s wrongful action or inactions.

6.04  Claims Between Contractors
A. Should Contractor cause damage to the work or property of any other contractor at the Sites, or should any claim arising out of Contractor’s performance of the Work at the Site be made by any other contractor against Contractor, NUAIR, NUAIR’s Representative, or the construction coordinator, then Contractor (without involving NUAIR, NUAIR’s Representative, or construction coordinator) shall either (1) remedy the damage, (2) agree to compensate the other contractor for remedy of the damage, or (3) remedy the damage and attempt to settle with such other contractor by agreement, or otherwise resolve the dispute by arbitration or at law.

B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless NUAIR, NUAIR’s Representative, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of NUAIR’s Representatives, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against NUAIR, NUAIR’s Representative, consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor’s performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against NUAIR, NUAIR’s Representative, or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from NUAIR, NUAIR’s Representative, or the construction coordinator on account of any such damage or Claim.

C. If Contractor is delayed at any time in performing or furnishing the Work by any act or neglect of another contractor, and NUAIR and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 11. An extension of the Contract Times shall be Contractor’s exclusive remedy with respect to NUAIR, NUAIR’s Representative, and construction coordinator for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from NUAIR, NUAIR’s Representative, or construction coordinator for activities that are their respective responsibilities.

ARTICLE 7 – NUAIR’S RESPONSIBILITIES

7.01 Communications to Contractor

A. Except as otherwise provided in these General Conditions, NUAIR shall issue all communications to Contractor through NUAIR’s Representative.

7.02 Replacement of NUAIR’s Representative

A. In case of termination of the employment of NUAIR’s Representative, NUAIR shall appoint a new NUAIR’s Representative, whose status under the Contract Documents shall be that of the former NUAIR’s Representative.

7.03 Furnish Data

A. NUAIR shall promptly furnish the data required of NUAIR under the Contract Documents.

7.04 Pay When Due

A. NUAIR shall make payments to Contractor when they are due as provided in Paragraphs 13.08.C.

7.05 Lands and Easements; Reports and Tests (Not Used)

7.06 Insurance
A. NUAIR’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 4.

7.07 **Change Orders**

A. NUAIR is obligated to execute Change Orders as indicated in Paragraph 9.03.

7.08 **Inspections, Tests, and Approvals**

A. NUAIR’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 12.03.

7.09 **Limitations on NUAIR’s Responsibilities**

A. The NUAIR shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. NUAIR will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

7.10 **Undisclosed Hazardous Environmental Condition**

A. NUAIR’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.02.

7.11 **Evidence of Financial Arrangements**

A. Upon request of Contractor, NUAIR shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy NUAIR’s obligations under the Contract Documents.

7.12 **Compliance with Safety Program**

A. While at the Site, NUAIR’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which NUAIR has been informed pursuant to Paragraph 5.13.D.

7.13 **Flight Test Assistance**

A. NUAIR will provide test aircraft and associated flight support (pilots, visual observers, etc.) as documented in the Test and Acceptance Plan.

**ARTICLE 8 – NUAIR’S REPRESENTATIVE’S STATUS DURING CONSTRUCTION**

8.01 **NUAIR’s Representative**

A. NUAIR’s Representative (as designated in this Contract) will be NUAIR’s representative during the construction and/or design period.

8.02 **Visits to Site**

A. NUAIR’s Representative will make visits to the Sites at intervals appropriate to the various stages of construction and/or design as NUAIR’s Representative deems necessary in order to observe as an experienced and qualified professional the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, NUAIR’s Representative,
for the benefit of NUAIR, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. NUAIR’s Representative will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. NUAIR’s Representative’s efforts will be directed toward providing for NUAIR a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, NUAIR’s Representative will keep NUAIR informed of the progress of the Work and will endeavor to guard NUAIR against defective Work.

B. NUAIR’s Representative’s visits and observations are subject to all the limitations on NUAIR’s Representative’s authority and responsibility set forth in Paragraph 9.04. Particularly, but without limitation, during or as a result of NUAIR’s Representative’s visits or observations of Contractor’s Work, NUAIR’s Representative will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

8.03 **Rejecting Defective Work**

A. NUAIR’s Representative will have authority to reject Work which NUAIR’s Representative believes to be defective, or that NUAIR’s Representative believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. NUAIR’s Representative will also have authority to require special inspection or testing of the Work as provided in Paragraph 12.04, whether or not the Work is fabricated, installed, or completed.

8.04 **Limitations on NUAIR’s Representative’s Authority and Responsibilities**

A. Neither NUAIR’s Representative’s authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by NUAIR’s Representative in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by NUAIR’s Representative shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by NUAIR’s Representative to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. NUAIR’s Representative will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. NUAIR’s Representative will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

C. NUAIR’s Representative will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

8.05 **Compliance with Safety Program**

A. While at the Site, NUAIR’s Representative’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which NUAIR’s Representative has been informed pursuant to Paragraph 6.13.D.

**ARTICLE 9 – CHANGES IN THE WORK; CLAIMS**

9.01 **Authorized Changes in the Work**

A. Without invalidating the Contract, NUAIR may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order. Upon receipt of any such document, Contractor
shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If NUAIR and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change, a Claim may be made therefor as provided in Paragraph 9.05.

9.02 Unauthorized Changes in the Work

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16.

9.03 Execution of Change Orders

A. NUAIR and Contractor shall execute appropriate Change Orders recommended by NUAIR’s Representative covering:

1. changes in the Work which are: (i) ordered by NUAIR pursuant to Paragraph 9.01.A, (ii) required because of acceptance of defective Work under Paragraph 12.06.A or (ii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by NUAIR’s Representative pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

9.04 Notification to Insurers/Surety

A. If the provisions of any bond or insurance require notice to be given to a surety or insurance carrier of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor’s responsibility.

B. Similarly, if Contractor has purchased the Property Insurance for the project, such insurance shall also be adjusted and proof of adjustment submitted to NUAIR.

9.05 Claims

A. NUAIR Decision Required: All Claims shall be referred to NUAIR (with a copy to NUAIR’s representative) for decision. A decision by NUAIR shall be required as a condition precedent to any exercise by Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. Notice: Written notice stating the general nature of each Claim shall be delivered by the claimant to NUAIR and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice
of the amount or extent of the Claim, with supporting data shall be delivered to the NUAIR and the other party
to the Contract within 60 days after the start of such event (unless NUAIR allows additional time for claimant
to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract
Price shall be prepared in accordance with the provisions of Paragraph 11.01.B. A Claim for an adjustment in
Contract Times shall be prepared in accordance with the provisions of Paragraph 11.02.B. Each Claim shall be
accompanied by claimant’s written statement that the adjustment claimed is the entire adjustment to which the
claimant believes it is entitled as a result of said event. The opposing party shall submit any response to NUAIR
and the claimant within 30 days after receipt of the claimant’s last submittal.

C. **NUAIR Action**: NUAIR will review each Claim and, within 30 days after receipt of the last submittal of the
claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part;
2. approve the Claim; or

D. In the event that NUAIR does not take action on a Claim within said 30 days, the Claim shall be deemed
denied.

E. NUAIR’s written action under Paragraph 9.05.C or denial pursuant to Paragraphs 9.05.C.1 or 9.05.D will be
final and binding upon Contractor, unless Contractor invokes the dispute resolution procedure set forth in
Article 15 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance
with this Paragraph 9.05.

**ARTICLE 10 – (NOT USED)**

**ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

### 11.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract
Price shall be based on written notice submitted by the party making the Claim to the NUAIR’s
Representative and the other party to the Contract in accordance with the provisions of Paragraph 9.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price
will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by
application
   of such unit prices to the quantities of the items involved; or
2. where the Work involved is not covered by unit prices contained in the Contract Documents,
   by a mutually agreed lump sum (which may include an allowance for overhead and profit).

### 11.02 Change of Contract Times

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract
Times shall be based on written notice submitted by the party making the Claim to the NUAIR’s
Representative in accordance with the provisions of Article 9.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the
Contract Times will be determined in accordance with the provisions of this Article 11.
11.03 Delays

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 11.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by NUAIR, acts or neglect of utility NUAIRs or other contractors performing other work as contemplated by Article 6, fires, floods, epidemics, or acts of God.

B. If NUAIR, NUAIR’s Representative, or other contractors or utility NUAIRs performing other work for NUAIR as contemplated by Article 6, or anyone for whom NUAIR is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor’s ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility NUAIRs not under the control of NUAIR, or other causes not the fault of and beyond control of NUAIR and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor’s ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor’s sole and exclusive remedy for the delays described in this Paragraph 11.03.C.

D. NUAIR, NUAIR’s Representative, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of NUAIR’s Representatives, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.01 Notice of Defects

A. Prompt notice of all defective Work of which NUAIR or NUAIR’s Representative has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 12.

12.02 Access to Work

A. NUAIR, NUAIR’s Representative, their consultants and other representatives and personnel of NUAIR, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Sites and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor’s safety procedures and programs so that they may comply therewith as applicable. NUAIR agrees that access to the Site and the Work shall require written consent of Contractor, which shall not be unreasonably withheld, as well as compliance with any lease or contractual obligations of the Contractor to the Site-owner.

12.03 Tests and Inspections
A. Contractor shall give NUAIR’s Representative timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish NUAIR’s Representative the required certificates of inspection or approval.

C. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for NUAIR’s and NUAIR’s Representative’s acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor’s purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to NUAIR and NUAIR’s Representative.

D. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of NUAIR’s Representative, Contractor shall, if requested by NUAIR’s Representative, uncover such Work for observation.

E. Inspectors and testing laboratories shall be acceptable to NUAIR’s Representative, and Contractor shall submit evidence of their qualifications to NUAIR’s Representative prior to any inspections or tests, if requested by NUAIR’s Representative.

12.04 NUAIR May Stop the Work

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, NUAIR may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of NUAIR to stop the Work shall not give rise to any duty on the part of NUAIR to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

12.05 Correction or Removal of Defective Work

A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by NUAIR’s Representative, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of NUAIR’s Representatives, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

12.06 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, NUAIR (and, prior to NUAIR’s Representative’s recommendation of final payment, NUAIR’s Representative) prefers to accept it, NUAIR may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of NUAIR’s Representatives, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to NUAIR’s evaluation of and determination to accept such defective Work (such costs to be approved by NUAIR’s Representative as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to NUAIR’s Representative’s recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and
NUAIR shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, NUAIR may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to NUAIR. Payments to Contractor and Completion

12.07 Progress Payments

A. Applications for Payments:

1. Contractor shall submit to NUAIR’s Representative for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation detailing the basis for the Contractor’s costs associated with performance of the work or as otherwise specified in the Agreement.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor’s legitimate obligations associated with prior Applications for Payment.

B. Review of Applications:

1. NUAIR’s Representative will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to NUAIR or return the Application to Contractor indicating in writing NUAIR’s Representative’s reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. By recommending any such payment NUAIR’s Representative will not thereby be deemed to have represented that:
   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to NUAIR’s Representative in the Contract Documents; or
   b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by NUAIR or entitle NUAIR to withhold payment to Contractor.

3. Neither NUAIR’s Representative’s review of Contractor’s Work for the purposes of recommending payments nor NUAIR’s Representative’s recommendation of any payment, including final payment, will impose responsibility on NUAIR’s Representative:
   a. to supervise, direct, or control the Work, or
   b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
   c. for Contractor’s failure to comply with Laws and Regulations applicable to Contractor’s performance of the Work, or
   d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price.
4. NUAIR’s Representative may refuse to recommend any payment, regardless of amount otherwise due, if Contractor has failed to submit certifications, affidavits, schedules, or other written information when and as required in the Contract Documents, or Contractor has failed to submit shop drawings or submittals for the work being performed.

C. Payment Becomes Due:

1. Ninety (90) days after presentation of the Application for Payment to NUAIR with NUAIR’s Representative’s recommendation, the amount recommended will become due, and when due will be paid by NUAIR to Contractor. NUAIR will pay interest at the rate of 1% per month for each day payment is delayed beyond Ninety (90) days after presentation of the Application for Payment to NUAIR.

D. Reduction in Payment:

1. NUAIR may refuse to make payment of the full amount recommended by NUAIR’s Representative because:

   a. claims have been made against NUAIR on account of Contractor’s performance or furnishing of the Work;

   b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to NUAIR to secure the satisfaction and discharge of such Liens;

   c. there are other items entitling NUAIR to a set-off against the amount recommended; or

   d. Liability for liquidated or other damages contained or referenced herein has been incurred by the Contractor.

2. If NUAIR refuses to make payment of the full amount recommended by NUAIR’s Representative, NUAIR will give Contractor immediate written notice (with a copy to NUAIR’s Representative) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. NUAIR shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by NUAIR and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that NUAIR’s refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined herein and subject to interest as provided in the Agreement.

ARTICLE 13 – SUSPENSION OF WORK AND TERMINATION

13.01 NUAIR May Suspend Work

A. At any time and without cause, NUAIR may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and NUAIR’s Representative which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 9.05.

13.02 NUAIR May Terminate for Cause
A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor’s persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor’s disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor’s repeated disregard of the authority of NUAIR’s Representative; or


B. Contractor’s services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

C. Where Contractor’s services have been so terminated by NUAIR, the termination will not affect any rights or remedies of NUAIR against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by NUAIR will not release Contractor from liability.

13.03 *NUAIR May Terminate For Convenience*

A. Upon 30 days written notice to Contractor and NUAIR’s Representative, NUAIR may, without cause and without prejudice to any other right or remedy of NUAIR, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of NUAIR’s Representatives, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall use reasonable efforts to mitigate NUAIR’s liability under this paragraph by, among other actions, accepting the return of, returning to its suppliers, selling to others, or otherwise using the canceled deliverables provided such expenses do not exceed the prices set forth in this Contract.

C. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

13.04 *Contractor May Stop Work or Terminate*
A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by NUAIR or under an order of court or other public authority, or (ii) NUAIR’s Representative fails to act on any Application for Payment within 60 days after it is submitted, or (iii) NUAIR fails for 90 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to NUAIR and NUAIR’s Representative, and provided NUAIR or NUAIR’s Representative do not remedy such suspension or failure within that time, terminate the Contract and recover from NUAIR payment on the same terms as provided in Paragraph 15.01.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if NUAIR’s Representative has failed to act on an Application for Payment within 60 days after it is submitted, or NUAIR has failed for 90 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to NUAIR and NUAIR’s Representative, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 13.01 are not intended to preclude Contractor from making a Claim under Paragraph 9.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor’s stopping the Work as permitted by this Paragraph.

ARTICLE 14 – DISPUTE RESOLUTION

14.01 Methods and Procedures

A. Either NUAIR or Contractor may request mediation of any Claim submitted to NUAIR’s Representative for a decision under Paragraph 9.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 9.05.E. Either party may elect not to participate in mediation of any claim.

B. NUAIR and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, NUAIR or Contractor may:

1. elect in writing to invoke any dispute resolution process provided for; or
2. agree with the other party to submit the Claim to another dispute resolution process; or
3. give written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 15 – MISCELLANEOUS

15.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

15.02 Computation of Times
A. When any period of time is referred to in the Contract Documents by days, if the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be extended to the next business day.

15.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

15.04 Survival of Obligations

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

15.05 Controlling Law

A. This Contract is to be governed by the laws of the State of New York. The Parties submit to the jurisdiction of, and will not object to a change of venue to, the courts of New York State and the Northern District of New York.