

NUAIR GENERAL TERMS AND CONDITIONS

These terms and conditions (the "**Terms and Conditions**") are expressly incorporated into the _____ (the "**Statement of Work**") entered into between Northeast UAS Airspace Integration Research Alliance, Inc. d/b/a NUAIR, a New York not for profit corporation, having a principal place of business at 7931 State Route 13, Suite #1, Canastota, NY 13032 ("**NUAIR**") and you (the "**Client**"). These Terms and Conditions may be updated by NUAIR from time to time. Each such update will be posted at https://_____ or such other URL as specified by NUAIR.

1. Applicability. These Terms and Conditions are the only terms that govern the provision of services by NUAIR to Client. The accompanying Statement of Work and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the Statement of Work, the Statement of Work shall govern. These Terms and Conditions prevail over any of Client's general terms and conditions regardless whether or when Client has submitted its request for proposal, order, or such terms. The provision of services to Client does not constitute acceptance of any of Client's terms and conditions and does not serve to modify or amend these Terms and Conditions.

2. Services. NUAIR shall provide the services to Client as described in the Statement of Work (the "**Services**") in accordance with these Terms and Conditions.

3. Performance Dates. NUAIR shall use commercially reasonable efforts to meet any performance dates specified in the Statement of Work, and any such dates shall be estimates only.

4. Client's Obligations. Client shall:

- a. cooperate with NUAIR in all matters relating to the Services as may reasonably be requested by NUAIR, for the purposes of performing the Services;
- b. respond promptly to any NUAIR request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for NUAIR to perform Services in accordance with the requirements of this Agreement;
- c. provide such Client materials or information as NUAIR may reasonably request to carry out the Services in a timely manner and ensure that such Client materials or information are complete and accurate in all material respects;
- d. obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start;
- e. if operating its own drone equipment during the course of the Services, the equipment and the operators of such equipment shall be under the Operational Control (defined as similar to that required by a Federal Aviation Administration ("**FAA**") Part 135 air carrier) of Client throughout the term of the Statement of Work, regardless of the location of the equipment and/or flight test. Client shall operate its equipment in a careful and proper manner and will comply with all laws, rules, ordinances, statutes, and orders regarding the use and maintenance of its equipment, including but not limited to the terms of the FAA Certificate(s) of Waiver or Authorization ("**COA**"), if applicable; and

f. client shall work cooperatively with NUAIR to ensure compliance with the COA.

5. Client's Acts or Omissions. If NUAIR's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants, or employees, NUAIR shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Client, in each case, to the extent arising directly or indirectly from such prevention or delay.

6. Change Orders.

- a. If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing. NUAIR shall, within a reasonable time after such request, provide a written estimate to Client of:
 - i. the likely time required to implement the change;
 - ii. any necessary variations to the fees and other charges for the Services arising from the change;
 - iii. the likely effect of the change on the Services; and
 - iv. any other impact the change might have on the performance of this Agreement.
- b. Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 27.
- c. Notwithstanding Section 6(a) and Section 6(b), NUAIR may, from time to time modify the Services without the consent of Client provided that such modifications do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Statement of Work.
- d. NUAIR may charge for the time it spends assessing and documenting a change request from Client on a time and materials basis in accordance with the Statement of Work.

7. Fees and Expenses; Payment Terms; Interest on Late Payments.

- a. In consideration of the provision of the Services by NUAIR and the rights granted to Client under this Agreement, Client shall pay the fees set forth in the Statement of Work.
- b. Client agrees to reimburse NUAIR for all reasonable travel and out-of-pocket expenses incurred by NUAIR in connection with the performance of the Services.
- c. Client shall pay all undisputed invoiced amounts due to NUAIR within thirty (30) days from the date of NUAIR's invoice. Client shall make all payments hereunder in US dollars.
- d. In the event payments are not received by NUAIR within thirty (30) days after becoming due, NUAIR may: (i) charge interest on any such unpaid amounts at a rate of one percent (1%) per month or, if lower, the maximum amount permitted under applicable law, from the date such payment was due until the date paid; and (ii) suspend performance for all Services until payment has been made in full.

8. Taxes. Client shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Client hereunder.

9. Intellectual Property. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, technical data, flight data, know-how and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product, and other materials that are delivered to Client under this Agreement or prepared by NUAIR in the course of performing the Services, including any items identified as such in the Statement of Work (collectively, the "**Deliverables**"), shall be owned by NUAIR except for any Confidential Information of Client or Client materials. NUAIR hereby grants Client a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free, and perpetual basis to the extent necessary to enable Client to make reasonable use of the Deliverables and the Services.

10. Confidential Information. All non-public, confidential or proprietary information of either party, including, but not limited to, trade secrets, proprietary technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "**Confidential Information**"), disclosed by a party to the other, if any, whether disclosed orally or in any media, is confidential, and shall not be disclosed or copied by the other party without the prior written consent of the disclosing party. Confidential Information does not include information that is: (i) in the public domain; (ii) known to the receiving party at the time of disclosure; or (iii) rightfully and lawfully obtained by the receiving party on a non-confidential basis from a third party. The parties agree to use the other party's Confidential Information only to make use of the Services. Upon termination of this Agreement, the parties shall timely return or destroy, as the other party shall designate, all of the other party's Confidential Information. In the event of a breach of this Section 10, in addition to other relief available to the non-breaching party, it is agreed that temporary and permanent injunctive relief shall be available to the non-breaching party without the necessity of proving actual damages or posting a bond to prevent any actual or threatened violation of this Section 10 or to enforce the confidentiality obligations set forth in this Section 10. The non-breaching party shall be entitled to recover its costs of enforcement, including reasonable attorneys' fees and disbursements. The parties shall have no liability for the disclosure of any Confidential Information to the extent such disclosure is required by (a) any applicable law, rule, or regulation, (b) any validly issued subpoena or other process of law by a court of competent jurisdiction or governmental agency, or (c) any regulatory or self-regulatory authority in the course of routine supervisory examinations, inquiries or other regulatory oversight.

11. Representation and Warranty.

- a. NUAIR represents and warrants to Client that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
- b. NUAIR shall not be liable for a breach of the warranty set forth in Section 11(a) unless Client gives written notice of the defective Services, reasonably described, to NUAIR within fourteen (14) days of the time when Client discovers or ought to have discovered that the Services were defective.

- c. Subject to Section 11(b), NUAIR shall, in its sole discretion, either: (i) repair or re-perform such Services (or the defective part); or (ii) credit or refund the price of such Services at the pro rata contract rate. **THE REMEDIES SET FORTH IN THIS SECTION 11(c) SHALL BE THE CLIENT'S SOLE AND EXCLUSIVE REMEDY AND NUAIR'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11(a).**

12. Disclaimer of Warranties. EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(a) ABOVE, NUAIR MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

13. Limitation of Liability.

- a. **IN NO EVENT SHALL NUAIR BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT NUAIR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
- b. **EXCEPT RELATING TO NUAIR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL NUAIR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO NUAIR PURSUANT TO THE APPLICABLE STATEMENT OF WORK IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.**

14. General Indemnification. Client shall defend, indemnify and hold harmless NUAIR and its employees, shareholders, officers, directors, agents, successors and assigns from and against any and all claims, demands, actions, liabilities, damages, fines, penalties, assessments, levies, costs, surcharges and reasonable attorneys' fees (including in enforcing this indemnity) arising from, in connection with, related to, and/or resulting from: (i) any loss of or damage to any property or any person caused by any act or omission or misconduct of Client; (ii) Client's violation of law or regulation and/or breach of any term, provision, obligation, warranty and/or representation in this Agreement; (iii) Client's fraud, gross negligence or willful misconduct.

15. Flight Indemnification. In the event that the Services entail Client operating its own drone equipment (whether owned or leased by Client) under NUAIR's FAA COA/Waiver and/or operating a flight pursuant to a Lease Agreement with a third party, Client shall defend, indemnify and hold harmless NUAIR and its employees, shareholders, officers, directors, agents, successors and assigns from and against any and all claims, demands, actions, liabilities, damages, fines, penalties, assessments, levies, costs, surcharges and reasonable attorneys' fees (including in enforcing this indemnity) arising from, in connection with, related to, and/or resulting from (i) Client's operation of

the drone equipment, including, but not limited to property damage or bodily injury as a result of a crash, or (ii) Client's breach of the Lease.

16. Termination. In addition to any remedies that may be provided under this Agreement, NUAIR may terminate this Agreement with immediate effect upon written notice to Client, if Client:

- a. fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Client's receipt of written notice of nonpayment;
- b. has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or
- c. becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

17. Insurance.

- a. During the term of this Agreement, Client shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to the following insurance coverages with financially sound and reputable insurers qualified and admitted to do business in New York State and that have at least an A- (excellent) rating by A. M. Best:
 - i. Statutory State of New York Workers' Compensation and Employers Liability Insurance.
 - ii. Automobile Liability with:
 1. Business Auto Liability with limits of at least \$1,000,000 each accident.
 2. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
 3. NUAIR, and all other parties required of NUAIR, shall be included as additional insureds on a primary and non-contributing basis
 - iii. Commercial General Liability ("CGL") Policy with: (i) \$1,000,000 per Occurrence; and (ii) \$2,000,000 Annual Aggregate Limit.
 1. CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury.
 2. NUAIR, and all other parties required of NUAIR, shall be included as additional insureds on the CGL. Coverage for the additional insureds shall apply as Primary and Non-contributing Insurance.
 - iv. Owned Aircraft Liability with: (i) \$1,000,000 minimum limit per occurrence; and (ii) covering bodily injury and property damage (only if Client is operating its own or NUAIR's equipment).
 - v. Commercial Umbrella/Excess Liability Policy with coverage limit of at least \$5,000,000.

1. Umbrella coverage must include as additional insureds all entities that are additional insureds on the CGL.
 2. Umbrella coverage for such additional insureds shall apply as primary and non-contributing.
- b. Client shall provide a certificate of insurance to NUAIR prior to the start of any Services. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Client's Commercial General Liability Policy. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to NUAIR. The certificate of insurance shall name NUAIR as an additional insured.
 - c. Except where prohibited by law, Client shall require its insurer to waive all rights of subrogation against NUAIR's insurers, NUAIR and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per requirements as set forth in this Section 17.
 - d. If Client fails to procure insurance for NUAIR as required pursuant to this Section 17, recoverable damages shall not be limited to the cost of premiums for such additional insurance, but shall include all sums expended, and damages incurred by NUAIR, and their respective insurers, which would have otherwise been paid by the Client's required insurance.
 - e. Client may be required to procure additional insurance if a third party is involved in the operations and requests such insurance. NUAIR will notify client of said request and passthrough request to client. As per Section 17b, Client will be required to provide a certificate of insurance with Additional Insureds naming NUAIR and third party on certificate.

18. Waiver. No waiver by NUAIR of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by NUAIR. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

19. Force Majeure. The NUAIR shall not be liable or responsible to Client, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of NUAIR including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

20. Assignment. Client shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of NUAIR. Any purported assignment or delegation

in violation of this Section is null and void. No assignment or delegation relieves Client of any of its obligations under this Agreement.

21. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

22. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

23. Governing Law; Jurisdiction. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in the City of Syracuse, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

24. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth in the Statement of Work or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

25. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. Survival. Provisions of these Terms, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidentiality, Governing Law, Insurance, Indemnification, Limitation of Liability, and Survival.

27. Amendment and Modification. This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.