

DIVISION II**GENERAL CONDITIONS TO THE CONSTRUCTION CONTRACT****TABLE OF CONTENTS**

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DIVISION II

GENERAL CONDITIONS TO THE CONSTRUCTION CONTRACT

ARTICLE 1 GENERAL CONDITIONS

1.1 DEFINITIONS, CORRELATION AND INTENT

1.1.1 Definitions. Unless otherwise provided herein, capitalized terms used in this Contract, and not otherwise defined herein, have the respective meanings set forth in the Contract Documents that make up the entire agreement and incorporated herein by this reference.

1.1.2 Entire Agreement. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

1.1.3 Contractual Relationship. The Contract shall not be construed to create a contractual relationship of any kind (1) between the Owner and a Subcontractor, or (3) between any persons or entities other than the Owner and Contractor.

1.1.4 Intent. The intent of the Contract is to include all items necessary for the proper execution and completion of the work by the Contractor.

1.1.5 Supplementary Instructions. The Owner will issue written interpretations necessary for the proper execution of the work in the form of Supplementary Instructions with reasonable promptness. Supplementary Instructions may either be instructions, drawings or additional information but shall not change the Contract Sum or Contract Time without subsequently executed Change Orders (collectively "Supplementary Instructions").

1.1.6 Requests for Clarification. The Contractor shall submit requests for clarification of the Contract to the Owner.

1.1.7 Discrepancies in Contract. If there is any discrepancy, inconsistency or ambiguity in the quality or quantity of the work or materials required under the Contract, the Contractor shall (1) immediately bring such discrepancy, inconsistency or ambiguity to the attention of the Project Representative, and (2) provide the better quality of or greater quantity of the work or materials, without an increase in the Contract Sum, unless otherwise directed in writing by the Owner. If the Owner accepts the lower quality or quantity of work or materials, the Contractor shall remit to the Owner the difference in cost between the better quality or greater quantity and such lower quality or lesser quantity.

1.1.8 Organization of Specifications and Drawings Not to Control Division of Work. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.1.9 Contractor Solely Responsible for Division of Work. The Contractor is solely responsible for the division of the work among Subcontractors. The Owner will not act as arbiter as to which trade or Subcontractor is to furnish or install the various items indicated or required to complete the work. The

Contractor shall make necessary arrangements to reconcile any and all labor conflicts without delay, damage or cost to the Owner.

1.1.10 Technical and Industry Meanings. Unless otherwise stated in the Contract, words that have well-known technical or construction industry meanings are used in the Contract in accordance with such recognized meanings.

1.1.11 Current Standards. Where a reference in the Contract to an American Society for Testing and Materials Standard (ASTM), American National Standards Institute Standard (ANSI), federal specification or other recognized standard does not include the date of the standard, the edition current as of the date of issuance of the permit for the work shall apply. No consideration will be given to claimed ignorance as to what a cited standard contains, since the Contractor and each Subcontractor is considered to be experienced and familiar with the generally accepted, published standards of quality and workmanship for its own trade. Requirements of such referenced standards form a part of the Specifications to the extent indicated by the references thereto.

1.2 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

All Drawings, Specifications and copies thereof furnished by the Owner are and shall remain the property of the Owner. The Drawings and Specifications and the design reflected therein shall be kept strictly confidential and shall not be disclosed or released except as necessary for the performance of the work. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications or other documents prepared by the Owner. The Owner will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned to the Owner upon completion of the work. The Drawings, Specifications and other documents prepared by the Owner, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the work without the specific written consent of the Owner. The Contractor and its Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Owner necessary for execution of the work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Owner. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's copyright or other reserved rights.

END OF ARTICLE 1

ARTICLE 2 OWNER

2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.1.1 Financial Arrangements. The Owner shall, at the request of the Contractor, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

2.1.2 Survey and Work Milestone Dates. The Owner shall furnish a survey of the Site and work Milestone Dates, if any, required for performance of the work.

2.1.3 Not Used.

2.1.4 Communication with Contractor. The Owner shall forward communications to the Contractor either through the Project Representative or directly.

2.2 OWNER'S RIGHT TO STOP THE WORK.

If the Contractor fails to perform or correct work that is not in accordance with the requirements of the Contract or does not allow other Contractors to timely perform their work, the Owner may order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2.3 OWNER'S RIGHT TO CARRY OUT THE WORK.

The Owner shall have the right to contact the Contractor's Surety if the Owner determines that the Contractor is not performing in accordance with the Contract. If the Contractor defaults or neglects to carry out the work in accordance with the Contract or fails to commence and continue correction of such default or neglect with diligence or promptness, the Owner may, after forty eight (48) hours written notice to the Contractor and its Surety, require the Surety to promptly assume the obligations of the Contract. Should the Surety fail to assume the obligations within five (5) calendar days after receipt of the written notices then Owner, without prejudice to any other remedy it may have, may correct such nonconforming work. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor or the Surety all costs of correcting such nonconforming work, including but not limited to, compensation for the Owner's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor or its Surety are not sufficient to cover such amount, the Contractor or its Surety shall pay the difference to the Owner within thirty (30) days after the Owner's invoice, therefore.

END OF ARTICLE 2**ARTICLE 3 CONTRACTOR****3.1 REVIEW OF CONTRACT AND FIELD CONDITIONS BY CONTRACTOR.**

3.1.1 Notice of Errors. The Contractor warrants that he has carefully reviewed the Contract, including the work Milestone Dates, if any, and all documents pertaining to the work, including but not limited to the plans, Specifications and the work Milestone Dates, and that he is satisfied as to the feasibility and correctness of the Contract, including the work Milestone Dates, to perform the work within the Contract Time. The Contractor shall immediately report to the Project Representative any errors, inconsistencies or omissions discovered in the Contract, including the work Milestone Dates. If the Contractor performs any construction activity containing an error, inconsistency, or omission that the Contractor recognized or should have recognized through the exercise of reasonable diligence, without reporting such error, inconsistency or omission to the Project Representative, the Contractor shall assume responsibility for such performance and shall bear the costs for correction.

3.1.2 Examination of Site. The Contractor warrants that he has visited and examined the character of the Site and any existing structures and/or has satisfied himself as to the nature of the work and all matters which could in any way affect the work. The Contractor shall take field measurements and verify field conditions and shall compare such field measurements and conditions and other information known to the Contractor with the Contract before commencing the work. Errors, inconsistencies or omissions discovered shall be reported to the Project Representative immediately. The Owner does not guarantee the accuracy of grades, elevations, dimensions, or locations on work installed by other Contractors. The Contractor shall verify the accuracy of all grades, elevations, dimensions and locations relating to the work. In cases of interconnection of the Contractor's work with other work, it shall verify at the Site all dimensions relating to such other work. The Contractor shall promptly rectify any error due to the Contractor's failure to verify the accuracy of such grades, elevations, location or dimensions without any additional cost to the Owner.

3.1.3 Contractor License and Compliance with Law. The Contractor warrants (1) that it is licensed under the laws of the State of Arizona to perform the work, and (2) that it is familiar and will comply with all applicable laws, statutes, ordinances, building codes, rules and regulations and lawful orders of public authorities in performing the work, including but not limited to environmental laws and A.R.S. Title 34 as amended.

3.1.4 Contract Compliance with Law. If the Contractor observes that portions of the Contract are at variance with applicable laws, statutes, ordinances, building codes, or rules and regulations, the Contractor shall promptly notify the Owner in writing, and necessary changes shall be accomplished by appropriate modification. If the Contractor performs work it knows or should know to be contrary to laws, statutes, ordinances, building codes, or rules and regulations without such notice to the Owner, the Contractor shall assume full responsibility for such work and shall bear all damages, losses, costs and expenses attributable thereto.

3.1.5 Contractor Compliance with Contract. The Contractor shall perform the work in accordance with the Contract and in a first class and workmanlike manner. In the event that the Contractor fails to do so, the Owner may withhold payments to protect the Owner from loss, regardless of whether payment has previously been made for the work in question.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES.

3.2.1 Contractor to Supervise Work. The Contractor shall supervise and direct the work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, safety, and procedures associated with its work and for coordinating all portions of the work under this Contract. The Contractor shall designate in writing and assign to the Project a qualified and experienced project superintendent, who shall be fully authorized to act and receive communications on the Contractor's behalf. The superintendent shall be present on site at all times necessary or appropriate to adequately supervise and coordinate the work.

Contractor shall have an authorized and qualified representative on site at all times when a subcontractor, or lower tier subcontractor, is conducting any work.

3.2.2 Acts and Omissions. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the work under a contract with the Contractor.

3.2.3 Duty to Perform. The Contractor shall not be relieved of obligations to perform the work in accordance with the Contract either by activities or duties of the Project Representative in its administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.2.4 Duty to Inspect. The Contractor shall inspect portions of the Project related to the Contractor's work in order to determine that such portions are in proper condition to receive subsequent work.

3.2.5 Limitation on Liability. Contractor acknowledges that neither the Owner nor any of its respective agents, employees, successors or assigns shall control the day-to-day operations of the Contractor and shall not determine construction means, methods, techniques or procedures or safety precautions and programs in connection with the work. Contractor agrees that neither the Owner nor any of their respective agents, employees, successors or assigns shall be responsible for the failure of the Contractor to perform the work in accordance with the Contract or with the laws, ordinances, rules, permit conditions, regulations or lawful orders of any governmental agency having regulatory authority over the manner, methods or means of performance of the work.

3.3 LABOR AND MATERIALS.

3.3.1 Contractor to Provide. The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, storage and other facilities and services necessary for proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated in the work.

3.3.2 Skilled Labor. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.3.3 Standard of Quality. Wherever materials, products, articles, equipment systems or similar items are identified by reference to proprietary terms or by a similar reference, it is intended to establish the minimum standard or measure of quality that has been determined as requisite or intended for the work.

3.3.4 E-verify Requirements. To the extent applicable under Arizona Revised Statutes § 41-4401, the Contractor and its Subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-Verify requirements under A.R.S. § 23-214(A). Contractors or its Subcontractors failure to comply with such warranty shall be deemed a material breach of this Contract and may result in the termination of this Contract by the Authority.

3.3.5 Applicable Standards. Unless otherwise specifically provided in the Contract Documents, all Work shall be performed in accordance with the following. In the event of a conflict, the Contract Documents shall govern.

1. The Contract Documents
2. The manufacturer's written installation instructions for the specified HVAC equipment,
3. Applicable federal, state, and local laws, codes, ordinances, and permit requirements,
4. The latest edition of the Maricopa Association of Governments (MAG) Uniform Standard Specifications for Public Works Construction and MAG Uniform Standard Details for Public Works Construction, where applicable; and
5. Generally accepted industry standards and best practices applicable to commercial HVAC installation.
6. The MAG Uniform Standard Specifications and Standard Details are incorporated solely to supplement the technical requirements of the Work and shall not modify or supersede the contractual rights, obligations, or administrative provisions contained in the Contract Documents.

3.3.6 Removal and Disposal of Existing HVAC Equipment. The Contractor shall remove and lawfully dispose of all existing HVAC equipment designated for replacement, including all associated refrigerants, oils, filters, piping, wiring, controls, and other materials as necessary to complete the Work.

Refrigerants shall be recovered, handled, transported, and disposed of in accordance with all applicable federal, state, and local laws and regulations, including all applicable requirements of the United States Environmental Protection Agency (EPA). Venting of refrigerants to the atmosphere is strictly prohibited.

The Contractor shall be responsible for all disposal costs and shall provide documentation of refrigerant recovery and disposal if requested by the Owner.

3.3.7 Temporary Roof Openings. The Contractor shall be responsible for maintaining the building in a weather-tight condition throughout the performance of the Work.

Roof openings created during the removal or installation of HVAC equipment shall be kept to the minimum size and duration necessary to perform the Work. The Contractor shall provide all temporary coverings, barriers, tarps, flashings, or other protective measures necessary to prevent the intrusion of rain, wind, dust, debris, or other environmental elements into the building.

Roof openings shall not be left unattended or unsecured during the Work and shall not remain open beyond the approved work period unless specifically authorized in writing by the Owner.

The Contractor shall continuously monitor weather conditions and shall suspend roof work or implement additional protective measures as necessary to prevent damage to the building or its contents.

The Contractor shall be solely responsible for any damage to the building, equipment, finishes, furnishings, or other property resulting from inadequate weather protection or failure to properly secure roof openings. Any such damage shall be promptly repaired or replaced by the Contractor, at no additional cost to the Owner, to the satisfaction of the Owner.

3.3.8 Protection of Existing Facilities. The Contractor shall protect all existing buildings, structures, roofs, equipment, utilities, finishes, furnishings, and other improvements from damage during performance of the Work.

The Contractor shall provide all temporary barriers, dust control measures, weather protection, coverings, and other protective measures necessary to prevent damage to the existing facility and to minimize disruption to building occupants and airport operations.

Any damage caused by the Contractor or its subcontractors shall be promptly repaired or replaced at the Contractor's sole expense to the satisfaction of the Owner.

3.4 SUBSTITUTION OF PRODUCTS.

3.4.1 Requests for Substitutions. The Contractor shall furnish the manufacturer and model of HVAC equipment identified in the Contractor's Proposal and approved by the Owner, provided such equipment meets or exceeds the minimum requirements established in Exhibit 1 of the RFP.

After execution of the Contract, the Contractor shall not change the approved manufacturer or model without the Owner's prior written approval. Any proposed replacement equipment shall meet or exceed all applicable requirements of Exhibit 1 and shall be provided at no additional cost to the Owner unless the Owner expressly approves otherwise in writing.

3.5 WORK HOURS.

All Work shall be performed during nighttime work windows established by the Owner, Monday through Friday only, unless otherwise authorized in writing by the Owner. Daily work hours will be established by the Owner based on airline schedules, passenger activity, TSA activity, airport operations, security requirements, and other operational considerations. The available work window may vary from night to night and may be limited.

The Contractor shall plan, schedule, and staff the Work to accommodate the varying nighttime work windows and shall perform the Work only during approved work periods. Compliance with the Owner's work-hour restrictions, including the Monday through Friday nighttime work requirement, shall be included in the Contract Sum. No additional compensation or extension of Contract Time shall be allowed solely as a result of the work-hour restrictions identified in the Contract Documents or reasonably foreseeable variations in the available nighttime work windows.

Refer to the General Conditions for the limitations of work during the Holidays.

Notwithstanding any other provision of the Contract Documents, the Owner may establish work hour restrictions necessary to accommodate airport operations, security requirements, tenant activities, or public safety. The Contractor shall perform the Work during the approved work periods established by the Owner. Compliance with such work hour restrictions shall be included in the Contract Price.

3.6 WARRANTY.

3.6.1 Free from Defects. The Contractor warrants to the Owner that (1) materials and equipment furnished under the Contract will be of first quality and new, (2) the work will be free from defects, and (3) the work will conform to the requirements of the Contract. Work not conforming to these

requirements, including substitutions not properly approved and authorized, shall be considered defective. This warranty is in addition to and not limited by the provisions of Section 12.2.

3.6.2 Assignment of Warranties. The Contractor shall assign to the Owner, before Final Payment is due, all manufacturer's warranties relating to equipment, materials, and labor used in the work.

3.6.3 Workmanship Warranty. In addition to all manufacturer warranties, the Contractor warrants its workmanship for a period of one (1) year from the date of Substantial Completion. The Contractor shall promptly correct, at no additional cost to the Owner, any defective workmanship discovered during the warranty period.

3.7 TAXES.

3.7.1 The Contractor shall pay any and all sales, consumer, use, transaction privilege, and similar taxes on all monies owed for the Work or portions thereof provided by the Contractor.

3.7.2 The Mesa Gateway Airport Authority has been certified by the State of Arizona as an eligible entity providing aviation services in a designated Military Reuse Zone (MRZ). As a result, construction-type improvements within the MRZ are eligible for exemption from State Transaction Privilege Taxes (sales taxes).

3.7.3 Owner, with the assistance of the Contractor, shall apply for any and all applicable benefits. If Owner is deemed eligible, Contractor shall then apply for a Letter of Qualification for MRZ Transaction Privilege Tax Exemption from the Arizona Department of Revenue (ADOR) in a timely manner. The owner will issue a Notice to Proceed only after such a letter has been sent by the Contractor to ADOR.

The MRZ tax exemption only applies to the State of Arizona Transaction Privilege Tax. No such exemption exists for the City of Mesa Transaction Privilege Taxes. See Section 3.7.1 above regarding payment of required taxes.

3.7.4 Within thirty (30) days of the release of Retention by Owner to Contractor, Contractor must submit a Completion Report to the Arizona Commerce Authority, or as required by the program, to secure the tax exemption.

3.7.5 If Contractor fails to file any reports as required, after Owner has been deemed eligible under the MRZ program, Contractor will be obligated to pay any and all taxes, not the Owner.

3.8 PERMITS AND FEES.

The Contractor shall secure and pay, as applicable, for the building permit and plan check fee, and the Contractor shall secure and pay for all other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the work.

3.9 NOT USED

3.10 SUPERINTENDENT.

3.10.1 On Site. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Site during performance of the work. The superintendent shall represent the

Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall confirm important communications in writing. If the prime contractor is working on more than one project at Mesa Gateway Airport, a separate superintendent will be provided for this project.

3.10.2 Satisfactory to Owner. The Contractor's superintendent and staff must be satisfactory to the Owner. The Contractor, within ten (10) days of the Contract award, shall submit to the Owner the names and resumes of the superintendent and staff it proposes to use for the work. The superintendent and key members of the Contractor's staff shall not change without the prior consent of the Owner. However, the Contractor agrees to change any superintendent or key member of the Contractor's staff at the request of the Owner if, in the sole opinion of the Owner, such person's performance is unsatisfactory.

3.11 CONTRACTOR'S SCHEDULES.

3.11.1 Within ten (10) calendar days after the Notice to Proceed, the Contractor shall submit a detailed project schedule acceptable to the Owner showing procurement and delivery of equipment, badging and security activities, planned work sequence for each HVAC unit, anticipated work windows, testing and commissioning, Substantial Completion, and Final Completion.

3.11.2 The Contractor shall maintain and update the schedule as necessary to accurately reflect the status of the Work and shall provide updated schedule information upon the Owner's request.

3.11.3 The Contractor shall promptly notify the Owner in writing of any actual or anticipated delay that may affect the Contract Time and shall identify the cause of the delay and measures proposed to mitigate its impact.

3.12 DOCUMENTS AND SAMPLES AT THE SITE.

3.12.1 Contractor to Maintain. The Contractor shall maintain at the Site for the Owner one record copy of the Drawings, Specifications, Change Orders, Shop Drawings, Product Data, Samples, current As-Built Drawings, and addenda or modifications in good order and marked currently to record changes and selections made during the work. These shall be available to the Owner before Final Payment is due.

3.12.2 Record Drawings. The Contractor shall keep one (1) copy of all specifications, plans, addenda, modifications, working drawings, and shop drawings at the site and in good order, and the Contractor shall annotate these to show all changes made during construction as the changes occur. When the Project is complete but before the final application for payment is submitted, the annotated set of plans showing the as-built work and any annotated working and shop drawings shall be delivered to the Owner.

3.12.3 Preparation of Manuals. Before final payment is due, the Contractor shall furnish to the Owner two (2) sets of manuals containing the manufacturer's instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract and any additional data requested under the Specifications for each division of the work. The manuals shall have a table of contents, an index, and be bound in a 3-ring notebook.

3.13 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES.

3.13.1 Not Part of Contract. Shop Drawings, Product Data, Samples, and similar submittals are not part of the Contract. The purpose of their submittal is to demonstrate, for those portions of the work for which

submittals are required, the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract.

3.13.2 Prompt Submittal. The Contractor shall submit, in accordance with its Submittal Schedule, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract with such promptness as to cause no delay in the Contractor's own work or in that of any other contractor. The Contractor shall cooperate with the Owner in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other contractors. Submittals made by the Contractor that are not required by the Contract may be returned without action.

3.13.3 Review Required. The Contractor shall perform no portion of the work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the Owner has reviewed the submittal. Such work shall be performed in accordance with reviewed submittals.

3.13.4 Representations Made by Submittals. By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the work and of the Contract.

3.13.5 Effect of Review. The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract by the Owner's review of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submittal and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Owner's review thereof.

3.13.6 Revisions to Submittals. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Owner on previous submittals.

3.13.7 Informational Submittals. Informational submittals upon which the Owner is not expected to take responsive action shall be so identified in the submittals.

3.13.8 Professional Certification. When professional certification of performance criteria of materials, systems, or equipment is required by the Contract, the Owner shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13.9 Cost for Re-submittals. The Owner shall have the right to require the Contractor to pay the additional costs of the Owner resulting from the review by the Owner of any Shop Drawings, Product Data, Samples, and similar submittals which have been submitted three (3) or more times.

3.14 USE OF SITE.

3.14.1 Limits on Use. The Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits, and the Owner and shall not unreasonably encumber the Site with materials or equipment. Only materials and equipment that are to be used directly in the work shall be brought to the Site. After equipment is no longer required for the work, it shall be promptly removed from the Site.

3.14.2 Owner Approval. The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Owner before using any portion of the Site.

3.14.3 Display of Signs. The Contractor shall not display on or about the Site any sign, trademark, or other advertisement without the consent of the Owner.

3.14.4 Equipment Location. The Contractor's field offices, shanties, materials, storage rooms, etc., if any, will be placed in locations designated by the Owner. When it becomes necessary, due to the progress of the Project, for the Contractor to relocate the Contractor's field operations, such relocation will be accomplished in an expeditious manner with no increase in the Contract Time or Contract Sum.

3.15 CUTTING AND PATCHING.

3.15.1 Contractor Responsible. The Contractor shall be responsible for cutting, fitting or patching required to complete the work or to make its parts fit together properly with other work.

3.15.2 Consent Required. The Contractor shall not damage or endanger work performed by the Owner or other contractors by cutting, patching, excavating, or otherwise altering such construction. The Contractor shall not cut or otherwise alter work performed by the Owner or other contractors except with the written consent of the Owner and such other contractors. The Contractor shall not unreasonably withhold from the other contractors or the Owner the Contractor's consent to cutting or otherwise altering the work.

3.16 CLEANING UP.

3.16.1 Daily Clean Up. The Contractor shall, on a daily basis, clean up after its operation by removing rubbish, including old and surplus materials. The Contractor shall use its best efforts to prevent dust. All waste materials, rubbish, and debris resulting from Contractor's work shall be removed regularly from the Site and disposed of in accordance with federal, state, and local laws.

3.16.2 Final Clean Up. At the completion of the work, the Contractor shall remove all its waste materials and rubbish from and about the Site as well as all its tools, construction equipment, machinery, and surplus materials. The Contractor shall professionally wash and clean all surfaces and leave the work neat and clean, ready for occupancy by the Owner, unless higher cleaning standards are required elsewhere in the Contract. The Contractor shall be responsible for the overall cleanliness and neatness of the work.

3.16.3 Failure to Clean Up. If the Contractor fails to perform regular daily cleanup or to clean up at the completion of the work as specified, the Owner may do so or cause such work to be performed, with the cost paid for by the Contractor. The Owner shall have the right to retain such costs from payments due Contractor.

3.16.4 Clean Up Disputes. If a dispute arises between the Contractor and other contractors as to their responsibility for cleaning up as required by this Section 3.16, or elsewhere in the Contract, the Owner may clean up and equitably charge the cost thereof to the several contractors. The Owner shall have the right to retain such costs from payments due Contractor.

3.17 ACCESS TO WORK.

The Contractor shall provide the Owner access to the work in preparation and progress, wherever located. The Contractor shall provide facilities for such access so that the Owner may perform its functions under the Contract.

3.18 ROYALTIES AND PATENTS.

3.18.1 Contractor Responsibility. The Contractor shall pay all royalties and license fees applicable to the Contractor's work. The Contractor shall indemnify, defend, and hold harmless the indemnified parties from any and all suits, demands, or claims for infringement of any patent rights unless a particular design, process, or product is specified in the Contract. If such a specification is made and the Contractor has reason to believe it is an infringement of a patent, the Contractor shall be responsible for any loss arising therefrom unless the Contractor promptly notifies the Owner before performing any portion of the work involving the patented item.

3.18.2 Effect of Review by Owner. The review by the Owner of any method of construction, invention, appliance, process, article, device, or material of any kind shall not constitute an approval thereof for use by the Contractor in violation of any patent or other rights of any third party.

3.19 INDEMNIFICATION.

3.19.1 Indemnification for Claims Arising From Work. To the fullest extent permitted by law, the Contractor shall fully protect, indemnify, defend and hold harmless the indemnified parties from and against any and all liabilities, claims or demands, arising out of or resulting from, either directly or indirectly, the performance of the work or the conditions of the Site, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the work itself) including the loss of use resulting therefrom, and (2) is caused by any act, neglect, default or omission of the Contractor or Subcontractor or anyone for whose acts either of them may be liable. But in no event shall Contractor be required to indemnify Owner for Owner's negligence. The Contractor's indemnity obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this Section 3.19.1. The Contractor, at its own expense and risk, shall defend all legal proceedings that may be brought against the indemnified parties on any such liability, claim, or demand, and satisfy any resulting judgment that may be rendered against any of them.

3.19.2 Effect of Workers' Compensation Law on Indemnification. In any and all claims against the indemnified parties by any employee of the Contractor or Subcontractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 3.19 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontract under Workers' or Workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.20 COORDINATION WITH AIRPORT OPERATIONS

3.20.1 The Contractor acknowledges that the Work will be performed within an active airport environment and shall coordinate all activities with the Owner to minimize disruption to airport operations, tenants, passengers, and the public.

3.20.2 The Contractor shall coordinate all utility outages, equipment shutdowns, deliveries, crane operations (if applicable), lane closures, access restrictions, and other activities that may affect airport operations sufficiently in advance to obtain the Owner's approval.

3.20.3 Work affecting airport operations or the use of airport facilities shall only be performed during times approved by the Owner. The Contractor shall comply with all operational restrictions established by the Owner and shall promptly suspend or modify operations if directed by the Owner to address operational or safety concerns.

3.21 NOISE AND OPERATIONAL RESTRICTIONS

The Contractor shall conduct the Work in a manner that minimizes disruption to airport operations, tenants, passengers, and the public. Noisy activities, utility interruptions, or work affecting occupied areas shall be performed only during times approved by the Owner. The Contractor shall coordinate such activities with the Owner in advance and comply with all operational restrictions established for the Project.

END OF ARTICLE 3

ARTICLE 4 ADMINISTRATION AND RESOLUTION OF DISPUTES

4.1 ADMINISTRATION OF THE CONTRACT.

4.1.1 Owner's Representatives. The Project Representative may provide administration of the Contract and may be the Owner's representative (1) during construction, (2) until Final Payment is made, and (3) with the Owner's concurrence, from time to time during the correction period described in Section 12.2.

4.1.2 Coordination of Contractors. The Owner will provide for coordination of the activities of other contractors and of the Owner's own forces with the work of the Contractor, who shall cooperate with them. The Contractor shall participate with other contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the Contractor Construction Schedule deemed necessary by the Owner.

4.1.3 Coordination with Work Milestone Dates. The Contractor shall schedule and coordinate its activities in accordance with the work Milestone Dates, if any. The Owner will schedule and coordinate all Contractors with respect to their use of the Site.

4.1.4 Owner's Observation of the Work. The Owner may visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed work and to determine in general if the work is being performed in a manner indicating that the work, when completed, will comply with the Contract. The Owner may assign an inspector to observe the work and report to the Owner on its progress. Whenever it appears that material furnished or work performed by the Contractor fails to fulfill Contract Document requirements, the inspectors may, but shall not be required to, report their observations to the Owner. The inspector may direct the attention of the Contractor to such work defects or deficiencies, but nothing the inspector observes, says, or does shall relieve the Contractor from the obligation to perform the work strictly in accordance with the Contract Documents. The inspector shall have the authority to reject defective work. The Owner shall have the authority to suspend the work until

an issue can be referred to and decided by the Owner. Inspectors are not authorized to revoke, alter, enlarge, relax, or release any requirements of the Contract Documents. Inspectors shall in no case act as foremen or perform other duties for the Contractor or interfere with the prosecution of the work.

4.1.5 Control of Work. The Owner and Project Representative will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, since these are solely the Contractor's responsibility and neither will be responsible for the Contractor's failure to carry out the work in accordance with the Contract. Neither the Owner nor the Owner Representative will have control over or charge of or be responsible for acts or omissions of the Contractor or Subcontractors. Inspections by the Owner or Project Representative or designee shall not constitute control of individual workmen or the work. Direct control of workmen shall be solely the responsibility of the Contractor.

4.1.6 Communication with Owner. Except when direct communications have been specifically not authorized in the Contract, the Contractor shall communicate with the Owner through the Project Representative. Communications by and with Subcontractors shall be through the Contractor. Communications by and with other contractors shall be through the Owner.

4.1.7 Authority to Reject Work. The Owner and the Inspectors shall have authority to reject work that does not comply with the Contract and to require additional testing and inspection.

4.1.8 Owner's Review of Submittals. Not Applicable

4.1.9 Limitation on Owner's Review of Submittals. The Owner will review or take other appropriate action on the Contractor's submittals, such as shop drawings, working drawings, supplemental drawings, product data, and samples, but only for the limited purpose of checking for general conformance with information given and the design concept expressed in the Contract. The Owner's action will be taken within two (2) weeks of the date of submittal to the Owner. Review is for general compliance with the intent of the Contract Documents only. The Contractor is responsible for dimensions, quantities, performance, details, coordination with other trades, safety, and other requirements of the Contract Documents. Review does not authorize changes to the contract requirements unless specifically stated in a separate letter of change order. The Owner's review of the Contractor's submittals shall not relieve the Contractor of the obligations under the Contract. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences, or procedures. The Owner's review of a specific item shall not indicate approval of an assembly of which the item is a component.

4.1.10 Inspections by the Owner. The Owner will conduct inspections to determine the dates of Substantial Completion and Final Completion and will receive written warranties and related documents required by the Contract and assembled by the Contractor.

4.1.11 Aesthetic Decisions. The Owner's decisions on matters relating to aesthetic effect will be final.

4.1.12 Owner Representation at Site. The Owner will be represented at the Site by appropriate construction supervisory staff for the observation of the Contractor's work. The Owner will establish procedures for coordination among the Owner, Project Representative, and other contractors as appropriate for all aspects of the project.

4.1.13 Contractors Required to Attend Meetings. The Project Representative or Owner will call for meetings of the Contractor and Subcontractors, as the Owner deems necessary. Such meetings shall be

held at the Site on regular working days during regular working hours, unless otherwise directed. Attendance shall be mandatory for all parties notified to attend, and the Contractor and Subcontractors so notified are required to have a responsible member of their organizations with full decision-making authority in attendance.

4.1.14 Acts or Omissions by Owner. In no event shall any act or omission on the part of the Owner relieve the Contractor from its obligation to perform the work in full compliance with the Contract.

4.2 CLAIMS AND DISPUTES.

4.2.1 Time Limits on Claims. Claims by the Contractor must be made within the number of days specified in Sections 4.2.3, 4.2.4, 4.2.5, or 4.2.6 before the occurrence of the event giving rise to such claim. Claims shall be made by written notice. An additional claim made after the initial Claim has been implemented, by Change Order, shall not be considered.

4.2.2 Continuing Contract Performance. Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the Contract, and the Owner shall continue to make payments in accordance with the Contract other than amounts in dispute.

4.2.3 Claims for Concealed or Unknown Conditions. If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract, (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent at the Site, and (3) could not have been discovered by a thorough inspection and investigation of the Site by the Contractor, the Contractor shall give written notice within 24-hours of observing such conditions to the Owner. The Owner will promptly investigate these conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the work, may recommend to the Owner an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner, determines that the conditions at the Site are not materially different from those indicated in the Contract and that no change in the terms of the Contract is justified, the Owner shall so notify the Contractor in writing, stating the reasons. Claims by the Contractor in opposition to such determination shall be made within three (3) calendar days after the Owner has given notice of the decision. Failure to give notice in strict compliance with this time frame shall constitute a waiver of such claim.

4.2.4 Claims for Additional Cost.

4.2.4.1 Required Notice Prior to Execution of Work. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in Section 4.2.4.2 shall be given 24 hours before proceeding to execute the work. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a changed condition unknown to all parties at the time of Proposal, (2) an order by the Owner to stop the work where the Contractor was not at fault, (3) a written order for a major change in the work issued by the Owner, (4) failure of payment by the Owner, or (5) other reasonable grounds, the claim shall be filed in accordance with Section 4.2.4.2.

4.2.4.2 Claims for Adjustment and Disputes. If the Contractor wishes to make a claim for an increase in the Contract Sum, the Contractor shall give the Owner written notice thereof within 24 hours before proceeding with the work for the event giving rise to such claim, in the exercise of due diligence, for the condition giving rise to such Claim.

4.2.4.3 Waiver of Claim for Additional Cost. Failure to give notice of a claim for an increase in the Contract Sum, in strict compliance with the requirements of this Section 4.2.4, shall constitute a waiver of such Claim.

4.2.4.4 Not Used

4.2.4.5 Not Used

4.2.5 Claims for Additional Time.

4.2.5.1 Estimate of Cost and Delay. If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in Section 4.2.5.4 shall be given. The Contractor's claim shall include an estimate of cost and of the probable effect of delay on the progress of the work. In the case of a continuing delay, only one claim is necessary.

4.2.5.2 Not Used

4.2.5.3 Critical Path. No extension of time shall be granted to the Contractor for a delay caused by the Owner, any of the other contractors, or other causes beyond the Contractor's control, unless the delay affects the critical path of the Project and then only to the extent that the delay affects the critical path. No extension of time shall be granted to the Contractor to the extent that, notwithstanding the existence of any such circumstance beyond the Contractor's control, delay would have resulted in any event due to a concurrent unexcused delay by the Contractor.

4.2.5.4 Notice of Claim for Additional Time. If the Contractor contends that it is entitled to an extension of time for completion of any portion or portions of the work, the Contractor shall, within 24-hours of the occurrence of the cause of the delay, notify the Owner in writing of its Claim, setting forth (a) the cause of the delay, (b) a description of the portion or portions of work affected by the delay, (c) the specific number of days of delay for which an extension of time is requested, and (d) all details pertaining thereto. Within three (3) calendar days after the expiration of any such delay, if such delay continues after the filing of the Claim pursuant to the foregoing sentence, the Contractor shall deliver to the Owner a subsequent written application for the specific number of days of extension of time requested.

4.2.5.5 Request for Changes in Time Resulting from Change in Work. For changes in the work that significantly affect the time and progress of the work, any time extension shall be requested no later than when the change in the work is requested.

4.2.5.6 Waiver of Claim for Additional Time. Failure to give notice of a Claim for extension of time in strict compliance with the requirements of this Section 4.2.5 shall constitute a waiver of such Claim.

4.2.6 Injury or Damage to Person or Property. If the Contractor suffers injury or damage to person or property because of an act or omission of the Owner, written notice of such injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding 24 hours after first observance. The notice shall provide sufficient detail to enable the Owner to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Section 4.2.4 or 4.2.5.

4.3 DISPUTE RESOLUTION.

4.3.1 Negotiations. If a dispute arises out of or relates to this Contract or its breach, the parties to this Contract shall endeavor to settle the dispute through direct discussions as a condition precedent to mediation or binding dispute resolution.

4.3.2 Mediation. Should the parties to this Contract be unable to resolve their dispute through direct negotiations, the parties to this Contract, upon the written request of either, shall engage in mediation, to be administered privately by a mediator and according to rules mutually agreed upon by the parties to this Contract, or, the absence of such mutual agreement, by a mediator appointed by JAMS and administered by JAMS in accordance with its then-current mediation rules. The fees and costs of mediation shall be split equally by the parties to this Contract, but subject to reallocation following binding dispute resolution.

4.3.3 Binding Dispute Resolution. Should the parties to this Contract be unable to resolve their dispute through direct negotiations or mediation, either party may, within the time limitations for bringing claims under Arizona law and this Contract, commence formal dispute resolution proceedings. Both parties to this Contract consent to binding arbitration administered by JAMS according to its then current arbitration rules, provided, however, that (i) in the event both parties agree, the arbitration may be administered privately by an arbitrator and according to rules mutually agreed upon by the parties to this Contract, and (ii) in the event any party seeks relief against the other party or against a non-party which cannot fully be granted in arbitration, by reason of non-joinder or otherwise, the parties to this Contract are excused from this arbitration requirement and the parties to this Contract shall proceed in the state or federal courts of competent jurisdiction and located in Maricopa County, Arizona. In any arbitration or litigation, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs as determined by the arbitrator or court, as applicable.

END OF ARTICLE 4

ARTICLE 5 SUBCONTRACTORS

5.1 CONTRACTUAL RELATIONSHIP.

Nothing contained in the Contract shall create any contractual relationship between the Owner and any Subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.

5.2.1 Division of Work. The Contractor shall identify in its Proposal the portions of the Work to be performed by Subcontractors and the portions to be performed by the Contractor's own forces. Any changes to the proposed allocation of Work among the Contractor and its Subcontractors shall be subject to the requirements of this Article.

5.2.2 Proposed Subcontractors. The Contractor shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment) proposed for each principal portion of the Work in its Proposal. The proposed Subcontractors shall be established, reputable firms of recognized standing with a record of successful and satisfactory past performance with the type of work and/or items proposed to be provided or furnished by them. The Contractor shall, with this information, provide an experience statement or other requested information providing evidence of the Subcontractors'

qualifications for the work and experience with similar projects. The Owner shall have the right to reject any proposed Subcontractor for whom they have a reasonable objection. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has a reasonable objection to any such proposed person or entity.

5.2.3 Opportunity to Review List of Proposed Subcontractors. No subcontracts shall be executed until the Owner has had a reasonable opportunity to review the list of Subcontractors. The Contractor shall not contract with a proposed person or entity to which the Owner has made a reasonable and timely objection.

5.2.4 Reasonable Objection to Proposed Subcontractors. If the Owner has a reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. No increase in the Contract Sum or Contract Time shall be allowed for such change.

5.2.5 Substitution or Addition of Subcontractors. The Contractor will not change any Subcontractor that has been previously approved by Owner without the prior written consent of the Owner. Nor shall the Contractor add any additional Subcontractors without the prior written consent of the Owner. Owner shall have the right to reject any proposed replacement or additional Subcontractor for whom they have a reasonable objection. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has a reasonable objection to any such proposed person or entity.

5.2.6 Contractor Responsibility Not Diminished. The right of the Owner to reject proposed Subcontractors shall not diminish the Contractor's responsibility for the performance of the Contractor's Subcontractors. The Contractor shall continue to be fully responsible to the Owner for the proper, complete, and timely execution of the work, even though a portion of such work has been subcontracted to a Subcontractor acceptable to the Owner.

5.3 SUBCONTRACTUAL RELATIONS.

5.3.1 Subcontractors Subject to Contract. By an appropriate written Agreement, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract, and to assume toward the Contractor all the obligations and responsibilities which the Contractor assumes toward the Owner, except with respect to the ADR provisions of this Contract. The Contractor shall require its Subcontractors to enter into similar agreements with their Subcontractors, except with respect to the ADR provisions of this Contract. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of this Contract to which the Subcontractor will be bound, except with respect to the ADR provisions of this Contract. Each Subcontractor shall similarly make copies of this Contract available to their Subcontractors.

5.3.2 Terms to be Included in Subcontracts. All work performed for the Contractor by a Subcontractor shall be pursuant to a written subcontractor agreement between the Contractor and the Subcontractor. The Contractor will ensure that each such subcontract contains provisions requiring:

- .1 That the work be performed and guaranteed in accordance with the requirements of this Contract;
- .2 Submission to the Contractor of Applications for Payment under each subcontract, and a reasonable time to enable the Contractor to apply for payment in accordance with Article 9;

- .3 That the Subcontractor pay sub-subcontractors in accordance with A.R.S. § 32-1181, 32-1183, and 34-221;
- .4 That the Subcontractor purchase and maintain insurance and comply with all insurance provisions as required by Article 11;
- .5 That the Subcontractor consent to an assignment of the subcontract from the Contractor to the Owner in the event of termination of the Contractor by the Owner;
- .6 That all Federal Contract Provisions as listed in the Contract documents are included in all lower-tier subcontracts;
- .7 That the Subcontractor include the above provisions (1-6) in all lower-tier subcontracts.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACT.

The Contractor hereby assigns a portion of the work to the Owner, and any subcontracts held by the Contractor, provided that:

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.1 and only for those subcontracts which the Owner accepts by notifying the Subcontractor in writing; and
- .2 assignment is subject to the prior rights of the Surety, if any, obligated under the bond required by the Contract.

END OF ARTICLE 5

ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION WITH OWN FORCES AND TO AWARD OTHER CONTRACTS.

The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces. The Owner further reserves the right to award other contracts in connection with other portions of the Project or other construction or operations on the Site.

6.2 MUTUAL RESPONSIBILITY.

6.2.1 Coordination with Owner's Forces. The Contractor shall afford the Owner's own forces and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract.

6.2.2 Defects in Other Work. If part of the Contractor's work depends upon construction or operations by the Owner's own forces or other contractors, the Contractor shall, prior to proceeding with that portion of the work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's own forces or other contractors' completed or partially

completed construction is fit and proper to receive the Contractor's work, except as to defects not then reasonably discoverable.

6.2.3 Damage to Other Work. The Contractor shall promptly remedy damage caused by the Contractor to the completed or partially completed Project or to the property of the Owner or other contractors.

END OF ARTICLE 6

ARTICLE 7 CHANGES IN THE WORK

7.1 CHANGE ORDERS.

7.1.1 Defined. A Change Order is a written order to the Contractor signed by the Owner authorizing a change in the (1) Work, (2) Contract Sum, or (3) Contract Time. Only a Change Order may change the Contract Sum or Contract Time. The Contractor or its Subcontractors shall not perform any work for which the Contractor intends to seek additional money or an extension of time unless the Contractor obtains a written Change Order or written approval by the Owner prior to performing the work. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including, without limitation, any adjustment in the Contract Sum or Contract Time. A Change Order signed by the Contractor without any indication of change in the Contract Sum or Contract Time indicates the Contractor's agreement that there will be no change in the Contract Sum or Contract Time (collectively "Change Order").

7.1.2 Contract Sum Adjustments. Adjustments to the Contract Sum for approved changes shall be determined by one of the following methods, as directed by the Owner:

- .1 A mutually agreed lump sum supported by sufficient itemized cost information;
- .2 Actual allowable costs supported by appropriate documentation, plus the applicable overhead and profit percentages established by the Contract Documents; or
- .3 Another method mutually agreed upon in writing by the Owner and Contractor.

7.1.3 Itemized Costs. For any proposed adjustment to the Contract Sum, the Contractor shall submit a complete itemization of all costs associated with the proposed change, including, as applicable, labor, materials, equipment, Subcontractor costs, permits, taxes, insurance, bonds, overhead, and profit.

7.1.4 No Unauthorized Work. The Contractor shall not perform changed or additional Work for which it intends to seek additional compensation or time unless authorized in writing by the Owner in accordance with the Contract Documents, except as otherwise expressly permitted for emergency work.

7.1.5 Limitations on Costs. Costs attributable to Subcontractors shall be supported by appropriate documentation and shall be subject to the same requirements applicable to the Contractor's costs.

7.1.6 Impact Costs. No claim for impact costs resulting from the performance of a Change Order will be permitted against the Owner, or any other party in privity of contract with the Owner with respect to the Project after the time the Change Order is signed by the Contractor.

7.1.7 Prompt Response to Proposed Changes. The Contractor shall promptly respond to requests for proposals for changes initiated by the Owner, and in any event shall provide a written itemized proposal in response to any such request within five (5) calendar days after such request is made to the Contractor.

7.1.8 Final Settlement. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any impact such change may have on the unchanged work, and any and all adjustments to the Contract Sum or the Contract Time. In the event a Change Order increases the Contract Sum, the Contractor shall include the work covered by such Change Orders in Applications for Payment as if such work were originally part of the Contract. Agreement on any Change Order releases the Owner, and any other party in privity of Contract with the Owner with respect to the Project from all claims or liabilities arising in any way in connection with, or in any way associated with, such change.

7.2 CHANGE DIRECTIVE.

7.2.1 Defined. A Change Directive is a written order issued by the Owner directing the Contractor to proceed with a change in the Work when the Owner and Contractor have not agreed upon the extent of the Work, adjustment to the Contract Sum, or adjustment to the Contract Time related to the requested change ("Change Directive"). The Change Directive shall include a proposed basis for adjustment in the Contract Sum or Contract Time, if any adjustment is to be made.

7.2.2 Contract Sum. If the Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 actual allowable costs supported by appropriate documentation, plus the applicable overhead and profit markups provided in Article 7.4; or
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

7.2.3 Contractor's Duty to Proceed with the Change in the Work. Upon receipt of a Change Directive, the Contractor shall promptly proceed with the change in the work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.2.4 Contractor's Duty to Proceed. The Contractor shall proceed with the Work directed by a Change Directive notwithstanding the Contractor's disagreement with the proposed adjustment to the Contract Sum or Contract Time. The Contractor's signature acknowledging receipt of a Change Directive shall not constitute agreement with the Owner's proposed adjustment to the Contract Sum or Contract Time.

7.2.5 Change Order Required for Payment. The Owner and Contractor shall make reasonable efforts to agree upon the adjustment to the Contract Sum and Contract Time resulting from a Change Directive. If the parties cannot agree, the adjustment shall be determined based upon the actual allowable costs of the change, supported by appropriate documentation, together with the applicable overhead and profit markups provided in Section 7. When both additions and credits covering related Work or substitutions are

involved in a change, overhead and profit shall be calculated on the net increase, if any, attributable to the change.

7.3 MINOR CHANGES IN THE WORK.

The Owner shall have authority to order minor changes in the work not involving adjustment in the Contract Sum or Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by written order issued by the Owner and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly.

7.4 PAYMENT FOR EXTRA WORK.

Extra Work shall be paid at the Contract prices, if applicable, or at prices agreed upon in a Change Order or other written authorization issued by the Owner. When the Owner directs that Extra Work be performed on a force-account basis, the Contractor shall be compensated for the actual, allowable, and properly documented costs of the Extra Work, together with the markups specified below.

- .1 General Contractor Self-Performed Work. For Extra Work performed by the Contractor's own forces, the Contractor shall be allowed a markup of ten percent (10%) on the actual allowable costs of labor, materials, and equipment for overhead and profit.
- .2 General Contractor Markups of Subcontractor Work. The Contractor will be allowed to markup actual or approved subcontractor costs for equipment, material, and labor (excluding subcontractor overhead and profit) by five (5%) percent.
- .3 Subcontractor Markups for Self-Performed Work. The subcontractor will be allowed to markup actual or approved costs for equipment, material, and labor performed by that subcontractor's own forces, and shall be marked up by ten (10%) percent.
- .4 Subcontractor Work Markups for Sub-subcontractors. The subcontractor will be allowed to markup actual or approved costs for equipment, materials, and labor performed by the sub-subcontractor by five (5%) percent.
- .5 Bonds and Insurance. The Contractor shall not receive a markup for bonds or insurance unless the Contractor demonstrates that the Extra Work results in an actual additional cost for required bonds or insurance. Any such additional cost must be approved by the Owner and supported by documentation from the applicable surety or insurance provider. No additional markup shall be applied to such bond or insurance costs.
- .6 Taxes and Permit Fees. The Contractor shall be reimbursed for applicable taxes and permit or governmental fees directly attributable to the Extra Work, provided such costs are properly documented. No markup shall be applied to such taxes or fees except as expressly provided in this Section 7.4.
- .7 Equipment. Equipment costs shall be based on the actual reasonable rental cost of equipment necessary to perform the Extra Work, supported by rental invoices or other documentation acceptable to the Owner. Contractor-owned equipment shall be

- compensated only at a reasonable rate agreed upon by the Owner before the equipment is used. Small tools and hand tools shall be included in the applicable labor markup and shall not be separately reimbursed.
- .8 Material. Material costs shall be based on the actual cost to the Contractor or Subcontractor, less applicable trade discounts, rebates, refunds, credits, or other reductions in cost. The Contractor shall provide invoices, receipts, or other documentation reasonably requested by the Owner to substantiate material costs. See General Conditions Section 7.1.6 for additional information.
- .9 Labor. For all labor and for the foreman, when he is in direct charge of the operation, the Contractor will be paid the actual wages paid.
- .10 Miscellaneous. No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.
- .11 Comparison of Records. The Contractor and the Owner shall compare records of the cost of force account work at the end of each day. Agreement shall be indicated by the signature of the Contractor and the Owner or their duly authorized representatives. The Contractor shall submit all required backup and supplemental information, calculations, invoices, etc., that are required to justify and support all Contractor, subcontractor, and/or supplier costs.
- .12 Statement. No payment will be made for work performed on a force account basis until the Contractor has furnished the Owner with an itemized statement of the cost of such force account work, detailed as follows:
- Name, classification, date, daily hours, total hours, rate, and extension for each laborer and operator.
 - Designation, dates, daily hours, total hours, rental rate(s), and extension for each unit of machinery and equipment.
 - Quantities of materials, prices, and extensions.
 - Statements shall be accompanied and supported by a receipted invoice for all materials used and transportation charges.
- .13 No Unauthorized Extra Work. The Contractor shall not perform Extra Work with the expectation of receiving additional compensation unless the Extra Work has been authorized in writing by the Owner, except where the Contract Documents expressly authorize the Contractor to proceed without prior written authorization.
- .14 No Duplicate Recovery. Costs included in the Contractor's or Subcontractor's markup for overhead and profit shall not be separately reimbursed. The Contractor shall not receive additional compensation for costs already included in the Contract Sum or otherwise compensated under the Contract Documents.

END OF ARTICLE 7

ARTICLE 8 TIME**8.1 PROGRESS AND COMPLETION.**

8.1.1 Consent to Contract Time. The Contractor acknowledges that the Contract Time is a reasonable period for performing the work, and that it is capable of properly completing the work within the Contract Time.

8.1.2 Effective Date of Insurance. Except by agreement or instruction of the Owner in writing, the Contractor shall not knowingly prematurely commence operations on the Site or elsewhere before the effective date of insurance provided by Contractor under Section 11 and bonds to be furnished by the Contractor under Section 11.

8.1.3 Compliance with Contract Time. The Contractor shall carry the work forward expeditiously with adequate forces to maintain progress in accordance with the Contractor Construction Schedule and the work Milestone Dates, if any, and to complete the work within the Contract Time.

8.1.4 Not Used

8.1.5 Maintenance of Utilities. The Contractor shall (1) protect utilities encountered whether identified in the Contract Documents or encountered at the Site; (2) exercise care in excavation around utilities; (3) restore any damaged items to the same condition (or better) as existed prior to starting the work; and (4) maintain utilities or other services indicated to be abandoned in service until new services are provided, tested, and ready for use.

8.2 DELAYS AND EXTENSIONS OF TIME.

8.2.1 Notice of Delays. The Contractor shall provide prompt written notice to the Owner of the occurrence of any delay, and in no event shall such notice be given later than (24) hours after commencement of the delay. The Contractor agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused or could not have been anticipated by the Contractor, and (2) could not have been limited or avoided by the Contractor's timely notice to its suppliers, Subcontractors or the Owner of the delay.

8.2.2 Claims for Additional Time. Claims relating to time shall be made in accordance with Section 4.2.5.

8.2.3 Recovery of Damages Not Precluded. Except as otherwise expressly provided in the Contract Documents, including Liquidated Damages provisions, this Section 8.2 does not preclude recovery of damages for delay by either party.

8.3 TIME OF ESSENCE.

Time is of the essence with respect to the performance of each of the covenants, conditions and obligations contained in this Contract.

8.4 LIQUIDATED DAMAGES.

Liquidated damages for failure to timely achieve Substantial Completion or Final Completion shall be assessed in accordance with Article 4 of the Construction Contract.

END OF ARTICLE 8**ARTICLE 9 PAYMENTS AND COMPLETION****9.1 SCHEDULE OF VALUES.**

Before submitting the first Application for Payment, the Contractor shall submit a Schedule of Values in a form acceptable to the Owner. The Schedule of Values shall reasonably identify the major components of the Work and shall be used as the basis for reviewing Applications for Payment.

9.2 APPLICATIONS FOR PAYMENT.

9.2.1 Defined. On the 25th of each month or the next Business Day if the 25th is a legal holiday or weekend, the Contractor shall submit to the Owner an itemized application requesting payment for work completed in accordance with the Schedule of Values, substantiating the Contractor's right to payment as the Owner may require, such as copies of requisitions from Subcontractors and reflecting retainage ("Application for Payment").

9.2.2 Change Order Required for Payment. Applications for Payment may not include requests for payment on account of changes in the work which have been properly authorized by Change Directives but not yet included in executed Change Orders.

9.2.3 Disputes with Subcontractors. Applications for Payment may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor because of a dispute or other reason.

9.2.4 Not Used.

9.2.5 Payment for Stored Materials. The Owner may, in its discretion, approve payment for materials and equipment stored at the Site or at another secure location approved in writing by the Owner, provided the Contractor demonstrates that title and the Owner's interest in the materials and equipment are adequately protected and provides such documentation, insurance, photographs, invoices, and other evidence as the Owner may reasonably require.

9.2.6 Lien Waivers. The Contractor warrants that title to all work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor also warrants that upon submittal of an Application for Payment, all work for which payments have been received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, or other persons or entities making a claim by reason of having provided labor, materials, or equipment relating to the work. All Applications for Payment shall include lien waivers executed by the Contractor and all Subcontractors providing labor, equipment, or materials for the work in the form set forth in A.R.S. § 33-1008. If a Subcontractor, sub-subcontractor, vendor, supplier, manufacturer, or other entity or person supplying labor, equipment, or materials related to the work refuses to furnish a lien waiver for the Contractor's Application for Payment, the Contractor shall furnish a bond satisfactory to the Owner against such possible lien prior to payment. Payment shall not be due until Contractor furnishes such bond. The Contractor shall also indemnify, defend, and hold harmless the indemnified parties against

any lien by any Subcontractor, sub-subcontractor, vendor, supplier, manufacturer, or other entity or person supplying labor, equipment, or materials related to the work.

9.2.7 Not Used.

9.3 RECOMMENDATION FOR PAYMENT.

9.3.1 Timing for Payment. The Owner shall pay the Contractor within fourteen (14) days once the Contractor's Application for Payment has been approved and certified by the Owner. In addition to the amount withheld under Section 9.2.4, the Owner may withhold an additional amount from the progress payment sufficient to pay the expenses that the Owner reasonably expects to incur in correcting the deficiency set forth in the written finding. Undisputed portions of progress payments shall be paid monthly after an Application for Payment is submitted to the Owner. Payment will be approved by the Owner only upon the Owner's determination that the work has progressed to the point indicated in the Contractor's Application for Payment and that, to the Owner's knowledge, information, and belief, the quality of the work is in accordance with the Contract.

9.3.2 Not Used.

9.3.3 Recommendation Subject to Later Evaluation. The decision of the Owner to make a payment is subject to later evaluation of the work for conformance with the Contract upon Substantial Completion, to the results of subsequent tests and inspections, to minor deviations from the Contract correctable prior to completion, and to specific qualifications expressed by the Owner. The issuance of a recommendation for payment will not be a representation that the Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.4 DECISIONS TO WITHHOLD RECOMMENDATION.

9.4.1 Criteria for Withholding Recommendation. The Owner may decide not to make payment and may withhold in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's opinion the representations to the Owner required in Section 9.3.1 cannot be made. If the Owner is unable to make payment in the amount of the Application for Payment, the Owner will notify the Contractor as provided in Section 9.3.1. The Owner may also decide not to make payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a recommendation previously issued, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because of:

- .1 defective work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;
- .4 reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;

- .6 reasonable evidence that the work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 persistent failure to carry out the work in accordance with the Contract;
- .8 failure to submit lien waivers as required by Section 9.2.6;
- .9 unsatisfactory prosecution of the work or failure to comply with the work Milestone Dates or Contractor Construction Schedule;
- .10 failure to supply Shop Drawings or other required submittals;
- .11 erroneous estimates by the Contractor of the value of the work performed; or
- .12 the existence of a breach by the Contractor of any provision in the Contract.

9.4.2 Recommendation Made Upon Compliance. When the above reasons for withholding the recommendation are removed, the recommendation will be made for the amounts previously withheld.

9.5 PAYMENTS TO SUBCONTRACTORS.

9.5.1 Prompt Payment. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 7 days from the receipt of each payment the prime contractor receives from the Owner. The prime contractor agrees further to return retainage payments to each subcontractor for work satisfactorily completed within 7 days from the receipt of payment that the prime contractor receives from the Owner. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the Owner.

For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of this Contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

9.5.2 No Obligation to Oversee Payments. The Owner shall have an obligation to pay or to see to the payment of money to a Subcontractor.

9.5.3 Payment Not Acceptance of Work. A payment recommendation, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of work not in accordance with the Contract.

9.6 NOT USED.

9.7 NOT USED.

9.8 SUBSTANTIAL COMPLETION.

9.8.1 Defined. Substantial Completion is the stage in the progress of the Work when the Work, or an agreed portion thereof, has been completed in accordance with the Contract Documents to the extent that the Owner can safely and continuously operate and use the HVAC systems and affected terminal areas for their intended purposes, notwithstanding minor Punch List items that do not materially interfere with such use.

For this Project, Substantial Completion shall require, at a minimum:

- .1 All seven (7) HVAC units have been installed and are operational;
- .2 Required testing, startup, and commissioning have been completed;

.3 The HVAC units and associated controls have been properly integrated with the existing building systems;

.4 Required deficiencies that materially affect operation, safety, or performance have been corrected; and

.5 The Contractor has completed all other Work required for the intended operation and use of the Project, except minor Punch List items approved by the Owner.

9.8.2 Request for Substantial Completion. When the Contractor believes the Work is Substantially Complete, the Contractor shall submit a written notice to the Owner Representative requesting inspection for Substantial Completion and shall provide a comprehensive list of items remaining to be completed or corrected (Punch List).

The Owner or Owner Representative will inspect the Work to determine whether Substantial Completion has been achieved.

If the Owner or Owner Representative determines that the Work is not substantially complete or not ready for inspection, the Contractor's notice shall be considered void, and the Contractor shall correct the deficiencies prior to submitting a new request for inspection.

Authority to determine Substantial Completion is vested with the Owner, whose determination shall be final.

9.8.3 Certificate of Substantial Completion. If the Owner or Owner Representative determines the Work is Substantially Complete, the Owner or Owner Representative will prepare and issue a Certificate of Substantial Completion, which shall:

1. Establish the date of Substantial Completion, and
2. Identify the Punch List items remaining to be completed or corrected.

Failure of the Contractor to include an item on the Punch List shall not relieve the Contractor of responsibility to complete all Work in accordance with the Contract Documents.

The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for written acceptance of the responsibilities assigned therein.

The accepted date of Substantial Completion shall establish the beginning of the Project closeout period and shall stop Contract Time.

The authority to determine whether Substantial Completion has been achieved shall rest with the Owner.

9.8.4 Completion of Punch List Work. The Contractor shall complete all Punch List items within thirty (30) calendar days after the date of Substantial Completion unless the Owner Representative grants additional time in writing.

In no case shall additional time be granted except for documented extenuating circumstances such as labor strikes or other events beyond the Contractor's control.

If the Contractor fails to complete Punch List items within the required period, the Owner may, after written notice to the Contractor, complete the remaining Work through its own forces or others and deduct the reasonable costs incurred from amounts otherwise due to the Contractor. Such action shall not relieve the Contractor of its warranty obligations or any other obligations under the Contract.

9.9 FINAL COMPLETION AND FINAL PAYMENT.

9.9.1 Project Closeout Submittals. Within thirty (30) calendar days after Substantial Completion, the Contractor shall submit all documentation required for Final Completion, including, as applicable:

- .1 Final Application for Payment;
- .2 Contractor's certification of Final Completion;
- .3 Required unconditional waivers and releases from the Contractor and Subcontractors;
- .4 Manufacturer warranties and required warranty documentation;
- .5 Contractor's workmanship warranty;
- .6 Startup, testing, and commissioning documentation;
- .7 Operation and maintenance manuals in electronic format;
- .8 Final product data and technical documentation for installed HVAC equipment;
- .9 As-built documentation reflecting the installed equipment and any changes to existing systems;
- .10 Documentation confirming proper integration with the existing building management/control system;
- .11 Required security badge and access credential returns; and
- .12 Any other closeout documentation expressly required by the Contract Documents.

The Contractor shall also verify in writing the completion of the following prior to Final Payment:

- Final project cleanup completed
- All project badges returned to the badging office

Final Completion shall not occur until all required closeout documentation has been submitted and accepted by the Owner. Failure to provide required closeout documentation may delay Final Completion and Final Payment.

9.9.2 Request for Final Inspection and Final Completion. Upon completion of all Punch List items and submission of all required closeout documentation, the Contractor shall submit a written notice to the Owner Representative requesting final inspection and acceptance of the Work and shall submit the Contractor's Final Application for Payment.

Upon receipt of such notice, the Owner or Owner Representative will promptly perform a final inspection of the Work in consultation with the Owner.

9.9.3 Determination of Final Completion. If the Owner or Owner Representative determines, based on inspection and consultation with the Owner, that:

- the Work has been completed in accordance with the Contract Documents,
- all Punch List items have been completed, and
- all required closeout documentation has been received,

the Owner or Owner Representative will issue a written recommendation stating that, to the best of the Owner's or Owner Representative's knowledge, information, and belief, the Work has been completed in accordance with the Contract Documents and that the remaining Contract Sum is due, less authorized deductions.

Upon acceptance of this recommendation, the Owner will acknowledge, in writing, Final Completion of the Work.

9.9.4 Final Payment and Release of Retainage. Following acceptance of Final Completion by the Owner, Final Payment shall be made within thirty (30) days after:

Final Completion has been accepted, in writing, by the Owner; and
The Contractor has satisfied all requirements of this Section.

Neither Final Payment nor release of retainage shall become due until all required documentation has been submitted and approved.

If any Subcontractor refuses to furnish a required waiver and release of liens, the Contractor shall provide a bond satisfactory to the Owner, indemnifying the Owner against such liens. Final Payment shall not become due until such bond is provided.

The Contractor shall indemnify, defend, and hold

9.9.5 Delay of Final Completion. If Final Completion is materially delayed through no fault of the Contractor, or due to Change Orders affecting completion of the Work, and the Owner or Owner Representative confirms such delay, the Owner may, upon application by the Contractor and recommendation by the Owner or Owner Representative, make payment for the portion of the Work that has been fully completed and accepted.

9.9.6 Waiver of Claims. Acceptance of Final Payment by the Contractor or any Subcontractor shall constitute a waiver of all claims by that payee except those previously made in writing and specifically identified as unresolved at the time of submission of the Final Application for Payment.

9.9.7 Failure to submit Closeout Documents. If the Contractor fails to submit the required closeout documentation within thirty (30) calendar days after Substantial Completion, the Owner may withhold processing of Final Completion and Final Payment until such documentation is received and approved.

The Owner may continue to withhold retainage and any other payments otherwise due until all required documentation has been submitted in accordance with the Contract Documents.

Any delay in Final Payment resulting from the Contractor's failure to provide required documentation shall not constitute a delay by the Owner nor entitle the Contractor to additional compensation, interest, or damages.

9.9.8 Owner's Right to Complete Punch List Work. If the Contractor fails to complete Punch List work within the time required under Section 9.8.4, the Owner may, after providing written notice to the Contractor, complete the remaining work by its own forces or by others without terminating the Contract.

All costs incurred by the Owner to complete such work, including administrative, engineering, and inspection costs, shall be deducted from amounts otherwise due to the Contractor, including retainage.

Exercise of this right by the Owner shall not relieve the Contractor of its warranty obligations under the Contract Documents.

9.9.9 Commencement of Warranty Period. Unless otherwise stated in the Contract Documents, the warranty period for the Work shall commence on the date of Substantial Completion established in the Certificate of Substantial Completion.

For Punch List work or corrective work completed after Substantial Completion, the warranty period for such work shall begin on the date that the work is completed and accepted by the Owner.

The Contractor shall remain responsible for the correction of defective Work discovered during the applicable warranty period in accordance with the Contract Documents.

9.10 INSPECTION BY OWNER.

The Owner will make up to two inspections of the work for the purpose of determining Substantial Completion and up to two inspections of the work for the purpose of determining Final Completion. If, after making either of such inspections, the Owner determines that the work is not substantially complete or finally complete (as the case may be), the Contractor shall be responsible for the costs of the Owner incurred in the performance of additional inspections for the purpose of determining Substantial Completion or Final Completion (as the case may be).

END OF ARTICLE 9

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS.

10.1.1 Contractor's Responsibility. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.

10.1.2 Remedy for Failure to Maintain Safety. If the Contractor fails to maintain the safety precautions required by law, the Owner may take action as necessary and charge the Contractor therefore. However, the failure of the Owner to take any such action shall not relieve the Contractor of its obligations set forth in Section 10.1.1. If the Contractor fails to maintain the safety precautions required by law, the Contractor shall, if directed by the Owner, remove all forces from the Project without cost or loss to the Owner until the Contractor complies with such safety precautions.

10.1.3 Environmental Hazards. In the event the Contractor encounters on the Site material reasonably believed to contain asbestos, polychlorinated biphenyls (PCBs), petroleum based substances, or hazardous substances (as defined or regulated under any federal, state, or local law), the Contractor shall (1) immediately suspend the work in the area affected and report the condition to the Owner by the fastest available means and follow up in writing; and (2) take reasonable precautions to prevent or contain the

movement, spread or disturbance of such materials. The work in the affected area shall not thereafter be resumed except by the written consent of the Owner. In no event shall the Owner have any responsibility for any substance or material that is brought to the Site by the Contractor, any Subcontractor, any material-man or supplier, or any entity for which any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the work that are hazardous, toxic, or comprised of any items that are hazardous or toxic. Contractor shall indemnify, defend, and hold harmless, the indemnified parties from and against any and all liabilities, claims, or demands (including attorney's fees and costs) arising out of or resulting from the presence, uncovering, release of suspected or confirmed asbestos, polychlorinated biphenyls (PCBs), petroleum based substances, or hazardous substances to the extent caused by the negligence of, or failure to comply with the terms and conditions of the Contract by, the Contractor, any Subcontractor, any material-men or supplier, or any entity for whom any of them is responsible.

10.1.4 Duty to Suspend the Work. If reasonable precautions are inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the Site by the Contractor, the Contractor shall, upon recognizing the condition, immediately suspend the work in the affected area and report the condition to the Owner in writing.

10.2 SAFETY OF PERSONS AND PROPERTY.

10.2.1 Contractor's Duty to Protect. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- .1 employees on the work and other persons who may be affected thereby;
- .2 the work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody or control of the Contractor or the Contractor's Subcontractors;
- .3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- .4 construction or operations by the Owner or other Contractors.

10.2.2 Compliance with Safety Notices and Laws. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

10.2.3 Safety Precautions. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Site and improvements thereon. The Contractor shall promptly repair any damage to such property or improvements. Without limiting the indemnity provisions elsewhere in the Contract, the Contractor shall indemnify, defend, and hold harmless the indemnified parties from and against any and all liabilities, claims, or demands (including attorney's fees and costs) arising out of or resulting from damage to such property or improvements.

10.2.4 Use of Explosives or Hazardous Materials. When the use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the work, the Contractor shall exercise utmost care and carry on such activities under the supervision of properly qualified personnel. When the use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary, the Contractor shall secure the Owner's approval prior to their storage or use.

10.2.5 Contractor Liability. The Contractor shall promptly remedy damage and loss to any property caused in whole or in part by the Contractor or Subcontractor or anyone or by anyone for whose acts they may be liable.

10.2.6 Safety Representative. The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner. This person shall conduct regular safety meetings for employees of the Contractor and Subcontractors engaged in construction activities at the Site.

10.2.7 Loading Precautions. The Contractor shall not load or permit to be loaded any part of the Project, including the structure or the Site, in such a way as to cause damage to or endanger the Project or any persons or entities at the Site during or after completion of the work.

10.2.8 Accident Reports. The Contractor shall immediately report in writing to the Owner all accidents arising out of or in connection with the work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death or serious personal injuries or serious damages are caused, immediately report the accident by telephone or messenger to the Owner.

10.2.9 Safety Cooperation. The Contractor and its Subcontractors shall cooperate fully with all interested persons on accident prevention.

10.2.10 Risk of Loss. The Contractor shall be fully responsible for, and shall bear the full risk of loss of, all the Contractor's tools, equipment, materials, and other property, notwithstanding any security measures for the Site provided by the Owner.

10.3 EMERGENCIES.

In an emergency affecting the safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.2 and Article 7.

END OF ARTICLE 10

ARTICLE 11 INSURANCE

11.1 CONTRACTOR-PROVIDED INSURANCE.

11.1.1 Scope. The Contractor shall obtain and maintain the insurance required by Attachment G, Insurance Requirements and Certificate of Insurability, of the RFP. The Contractor shall require its Subcontractors to

maintain insurance appropriate to the Work performed by each Subcontractor and consistent with the requirements of Attachment G and this Article.

11.1.2 Additional Insured. The Commercial General Liability and automobile Liability insurance policies shall be endorsed to include Mesa Gateway Airport Authority and its officers, employees, successors, and assigns as additional insureds, shall provide that the insurance shall be primary, and shall stipulate that any insurance carried by the additional insured and their officers or employees shall not be contributory insurance.

11.1.3 Waiver. Contractor and Subcontractors waive all rights of recovery against Mesa Gateway Airport Authority and their directors, officers, employees, successors and assigns, and shall require its insurers to waive all rights of subrogation against Mesa Gateway Airport Authority and all of their respective directors, officers, employees, successors and assigns.

11.1.4 Contractor to Provide Certificates of Insurance. Before commencing any work under this Contract, Contractor shall furnish Owner with Certificates of Insurance issued by Contractor's and Subcontractors' insurer(s), as necessary, in a form acceptable to Owner, as evidence that the insurance policies, including all applicable endorsements, providing the coverage, conditions, and limits required by this Article 11, are in full force and effect. The owner has the right to request and receive promptly from the Contractor certified copies of any or all of such insurance policies and/or endorsements. Owner will not be obligated, however, to review such certificates, policies, and endorsements, or to advise Contractor of any deficiencies in such documents, and such receipts shall not relieve Contractor from, or be deemed a waiver of, Owner's right to insist on strict fulfillment of Contractor's obligations hereunder.

11.1.5 Cancellation Notice. Contractors' and Subcontractors' Certificates of Insurance shall identify the Contract number and shall provide for not less than thirty (30) days' advance notice of any cancellation, termination, or alteration affecting the minimum required amounts of insurance. All such certificates, endorsements, and notices shall be sent to the following:

Owner:	Mesa Gateway Airport Authority
Address:	5835 South Sossaman Road Mesa, Arizona 85212
Attn:	Engineering and Facilities Director

11.1.6 Costs of Contractor-Provided Insurance. Costs of all insurance coverage required by Article 11 are the sole responsibility of the Contractor.

11.1.7 Cancellation of Insurance. In the event any insurance coverage for the work is cancelled or terminated, Contractor agrees to replace the insurance without any lapse of protection to Owner.

11.1.8 Contractual Obligations. The stipulation of insurance coverage in this Article 11 shall not be construed to limit, qualify, or waive any liabilities or obligations of Contractor, assumed or otherwise, under this Contract.

11.1.9 Notice of Loss. All physical loss or damage to the work or to the Owner's property must be reported immediately to the Owner.

11.1.10 Higher Limits. If the Contractor maintains higher limits than the minimums stated in this Article 11, Owner requires, and shall be entitled to, coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Owner.

11.1.11 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, Owner. At the option of the Owner, either: the Contractor shall reduce or eliminate such deductibles; or the Contractor shall provide a financial guarantee satisfactory to the Owner guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11.1.12 Claims Made Policy. No Claims Made policies, other than Professional Liability, Cyber Liability, or Pollution Legal Liability (if applicable to this Contract), will be accepted. For policies that provide claims-made coverage:

- .1 The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
- .2 Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
- .3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy with a retroactive date prior to the contract effective date, or start of work date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- .4 A copy of the claims reporting requirements must be submitted to the Owner for review.
- .5 If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Legal Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractor's Pollution Legal Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

11.1.13 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than "A-" unless otherwise acceptable to the Owner.

11.1.14 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Owner is an additional insured on insurance from subcontractors.

11.1.15 Special Risks or Circumstances. The owner reserves the right to modify these requirements, including limits, based on the nature of the risk, scope of services, prior experience, insurer, coverage, or other special circumstances

11.2 PERFORMANCE AND PAYMENT BONDS.

11.2.1 A.R.S. § 34-222. Contractor shall obtain, at its own expense, performance and payment bonds as required by A.R.S. § 34-222. Contractor warrants that its payment and performance bonds fully comply with A.R.S. § 34-222.

11.2.2 Copies to Potential Beneficiaries. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

END OF ARTICLE 11

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK.

12.1.1 Duty to Uncover Work. If a portion of the work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract, it must, if required in writing by the Owner, be uncovered for its observation and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 Cost of Uncovering Work. If the Contractor covers a portion of the work that the Owner has not specifically requested to observe prior to its being covered, the Owner may request to see such work, and the Contractor shall uncover it. If such work is in accordance with the Contract, an appropriate Change Order shall charge the costs of uncovering and replacement to the Owner. If such work is not in accordance with the Contract, the Contractor shall pay such costs.

12.2 CORRECTION OF WORK.

12.2.1 Duty to Correct Rejected Work. The Contractor shall promptly correct all work rejected by the Owner as defective or failing to conform to the requirements of the Contract, whether observed before or after Substantial Completion of the work and whether or not fabricated, installed, or completed. The Contractor shall bear the costs of correcting such rejected work, including the replacement or repair of other work affected by Contractor's performance, including additional testing and inspection, and compensation for the Owner's services made necessary thereby. Work rejected before Final Completion shall be corrected prior to Final Payment

12.2.2 One-Year Duty to Correct Work. Without limiting the Owner's statutory, common law, or rights arising out of this Agreement, if within one year after the date of Substantial Completion of the work, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty or guarantee required by the Contract, any of the work is found to be defective or not in accordance with the requirements of the Contract, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so. The Contractor shall bear all costs of correcting such defective work, including replacement or repair of other work affected by the defect and any other damages resulting from such defect. The obligations under this Section 12.2.2 shall survive Final Payment to the Contractor.

12.2.3 Removal of Nonconforming Work. The Contractor shall remove from the Site, at no additional cost, portions of the work that are not in accordance with the requirements of the Contract and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 Owner's Right to Correct Nonconforming Work. If the Contractor fails to correct nonconforming work within a reasonable time, the Owner may correct it in accordance with the Contract Documents. If the Contractor does not proceed with the correction of such nonconforming work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and store the salvageable materials or

equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days thereafter, the Owner may sell such materials and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting the costs that should have been borne by the Contractor, including compensation for the Owner's additional services and expenses made necessary thereby. If such proceeds of sale do not cover costs that the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.5 Cost of Correcting Other Affected Work. The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner, Contractor, or other contractors caused by the Contractor's correction or removal of work which is defective or not in accordance with the requirements of the Contract.

12.2.6 Warranty Periods. Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to obligations that the Contractor has under the Contract or at law, including Section 3.6. Establishment of the time period of one year as described in Section 12.2.2, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract, relates only to the specific obligation of the Contractor to correct the work, and has no relationship to the time within which the obligation to comply with the Contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations.

12.3 ACCEPTANCE OF NONCONFORMING WORK.

If the Owner prefers to accept work that is not in accordance with the requirements of the Contract, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable for the difference in value, together with an allowance for damage or loss of quality. Such adjustment shall be effected whether or not Final Payment has been made.

END OF ARTICLE 12

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW.

The laws of the State of Arizona shall govern the Contract.

13.2 SUCCESSORS AND ASSIGNS.

The Owner and Contractor, respectively, bind themselves, their successors, assigns, and legal representatives to the other party hereto and to successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract.

13.3 THIRD PARTY BENEFICIARY.

This Contract is not intended to benefit any third party.

13.4 NOTICES.

13.4.1 Methods of Notice. All notices under this Contract shall be in writing and sent to the appropriate person and will be deemed properly given if sent by (i) personal delivery (hand carried), (ii) facsimile transmission, (iii) express mail, postage prepaid, return receipt requested, or (iv) certified United States mail, postage prepaid, return receipt requested, addressed as follows:

Owner: Mesa Gateway Airport Authority
5835 South Sossaman Road
Mesa, Arizona 85212-6014
Attn: Engineering and Facilities Director

With a copy to:

Contractor: **TBD**

Each party may, by notice to the others, specify a different address for subsequent notice purposes. Notice is effective on the date of actual receipt or three (3) days after the date of mailing, whichever is earlier.

13.4.2 Authorized Persons. Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.5 RIGHTS AND REMEDIES.

13.5.1 Legal Rights. Duties and obligations imposed by the Contract and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. This clause shall not be interpreted to permit the Contractor to recover any costs or damages that are otherwise limited, prohibited, or waived by the Contract.

13.5.2 No Waiver. No action or failure to act by the Owner or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.6 TESTS AND INSPECTIONS.

13.6.1 Contractor's Duty to Administer. Tests, inspections, and approvals of portions of the work required by the Contract or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction shall be made at the appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory selected and paid for by the Owner or with the appropriate public authority. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so the Owner may observe such procedures. Any of the work requiring testing, inspection, or approval that is covered or otherwise made inaccessible without the consent of those requiring or making the inspection or test shall be uncovered or made accessible by

and at the expense of the Contractor. Contractor shall be responsible for any testing, retesting, or other charges resulting from Contractor's failure to perform.

13.6.2 Additional Testing and Inspection. If the Owner or public authorities having jurisdiction determine that portions of the work require additional testing, inspection or approval not included under Section 13.6.1, the Owner will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner of when and where tests and inspections are to be made so the Owner may observe such procedures. The Owner shall bear such costs except as provided in Section 13.6.3.

13.6.3 Costs for Testing and Inspection. If such procedures for testing, inspection, or approval under Sections 13.6.1 and 13.6.2 reveal failure of the portions of the work to comply with requirements established by the Contract, the Contractor shall bear all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's services and expenses.

13.6.4 Certificates. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract, be secured by the Contractor and promptly delivered to the Owner.

13.6.5 Prompt Testing and Inspection. Tests or inspections conducted pursuant to the Contract shall be made promptly to avoid unreasonable delay in the work.

13.7 MANUFACTURERS' NAMEPLATES.

Manufacturers' nameplates shall not be permanently attached to ornamental and miscellaneous metal work, door frames, millwork, and similar factory-fabricated products on which, in the Owner's opinion, the nameplates would be objectionable if visible after installation of the work. This provision does not apply to underwriters' labels when required, or to the manufacturers' name and rating plates on mechanical and electrical equipment.

13.8 MANUFACTURERS' INSTRUCTIONS.

All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written specifications or instructions. In case of any difference or conflicts between the requirements of the manufacturers' instructions or specifications and the technical sections of the Specifications, the Contractor shall promptly report any such difference or conflict to the Owner.

13.9 NOT USED

13.10 ACCESS.

Contractor will accommodate reasonable access to the Site by third parties at the request of the Owner.

13.11 HEADINGS.

The subject headings of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any provision of this Agreement.

13.12 INTERPRETATION.

In the interest of brevity, the Contract frequently omits modifying words such as “all” and “any” and articles such as “the” and “an” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. To the extent permitted by the context in which used, (a) words in the singular member shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa; and (b) (unless specified otherwise) references to paragraphs, sections or articles are to paragraphs, sections or articles of the General Conditions to the Construction Contract.

13.13 RECORDS RETENTION AND INSPECTION.

The Contractor shall maintain complete and accurate records relating to the Work and the performance of the Contract, including records supporting amounts invoiced to the Owner. The Owner and its authorized representatives shall have the right, upon reasonable notice and during normal business hours, to examine and audit such records to the extent reasonably necessary to verify the Contractor’s compliance with the Contract and the accuracy of amounts billed to the Owner. The Contractor shall retain such records for a period of three (3) years after Final Completion or such longer period as required by applicable law.

13.14 NOT USED**13.15 NOT USED****13.16 FOREIGN NATIONALS.**

The Contractor certifies that: (1) it is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the office of the United States Trade Representative; (2) it has not knowingly entered into any contract or subcontract for this project with a contractor that is a citizen or national of a foreign country on the list or a contractor that is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on the list; and (3) it has not procured any product or subcontracted for the supply of any product for use on the project that is produced in a foreign country on the list. Unless the restrictions of this clause have been waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the Contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on this list for use on the Project, the Owner may cancel the contract at no cost to the Owner. Further, the Contractor agrees that it will incorporate this provision for certification without modification in each contract and in all lower-tier subcontracts related to the Project. Making false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, U.S.C. Section 1001.

13.16.1 Contractor Certification. Pursuant to Arizona Revised Statutes Section 35-397, the Contractor certifies that it does not have a scrutinized business operation in either Sudan or Iran.

13.17 ENVIRONMENTAL COMPLIANCE.

13.17.1 The Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

13.17.2 At its sole cost and expense, the Contractor shall at all times promptly observe and comply with all applicable federal, state, and local laws, regulations, and standards, and in particular with those provisions concerning the environment and pollution control and abatement, waste minimization, and pollution prevention that are, or may become, applicable to the work.

13.17.3 The Contractor shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under this Contract, independent of any existing Owner permits.

13.17.4 To the fullest extent permitted by law, the Contractor shall save, indemnify, defend and hold harmless the Owner, and the federal government from any damages, costs, expenses, liabilities, fines, or penalties resulting from or relating to releases, discharges, emissions, spills, storage, disposal, or any other acts or omissions by the Contractor, its officers, agents, employees, or contractors, or the invitee of any of them under federal, state or local environmental laws. This provision shall survive the termination or completion of this Contract, and the Contractor's obligations under this Section 13.22.4 shall apply whenever the Owner or the federal government incurs costs or liability for the Contractor's actions of the types described in this Section 13.22.

13.17.5 The Owner's rights under this Contract specifically include the right to inspect upon reasonable notice the Site for compliance with environmental, safety, and occupational health laws and regulations. The Contractor shall have no claim against the Owner or any officer, agent, employee, or contractor of the Owner on account of any entries.

13.17.6 The Contractor shall comply with all federal, state, and local laws, regulations, and other requirements relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes. The Contractor shall be liable for the cost of proper disposal of any hazardous waste it generates or for that waste generated by Subcontractors or assigns in the event of failure by a Subcontractor or assign to properly dispose of such wastes. Where required, the Owner may act on behalf of Contractor to dispose of Contractor-derived waste, sign manifests on behalf of Contractor, and assign such disposal to Contractor's EPA ID number. Contractor shall repay the Owner the costs and fees for doing so.

13.17.7 The Contractor shall strictly comply with the hazardous waste permit requirements under RCRA, or its state equivalent, and any other applicable laws, rules, or regulations.

13.17.8 The Contractor shall not conduct any subsurface excavation, digging, drilling, or other disturbance of the surface without Owner's prior written approval.

13.18 ENERGY CONSERVATION AND POLICY ACT COMPLIANCE.

This agreement is executed in recognition that the Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201et seq).

END OF ARTICLE 13

ARTICLE 14 **TERMINATION OR SUSPENSION OF THE CONTRACT****14.1** **TERMINATION BY THE OWNER FOR CAUSE.**

14.1.1 Criteria for Termination for Cause. The Contractor shall be considered in default of his or her contract and such default will be considered as cause for the Owner to terminate the contract for any of the following reasons if the Contractor:

- .1 Fails to begin the work under the contract within the time specified in the Notice to Proceed, or
- .2 Fails to perform the work or fails to provide sufficient workers, equipment, and/or materials to assure completion of work in accordance with the terms of the contract, or
- .3 Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
- .4 Discontinues the execution of the work, or
- .5 Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- .6 Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- .7 Allows any final judgment to stand against the Contractor unsatisfied for a period of 10 days, or
- .8 Makes an assignment for the benefit of creditors, or
- .9 Disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction, or
- .10 Breaches any provision of the contract, or
- .11 For any other cause whatsoever, fails to carry on the work in an acceptable manner.

Should the Owner consider the Contractor in default of the contract for any reason above, the Owner shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Owner's intentions to terminate the contract.

14.1.2 Effect of Termination for Cause. When any of the above conditions exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's Surety, if any, ten (10) days' written notice, terminate the Contract and may, subject to any prior rights of the Surety:

- .1 take possession of the Site and all materials, equipment, tools, and construction equipment machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the work by whatever reasonable method the Owner may deem expedient.

14.1.3 Contractor Right to Receive Payment. When the Owner terminates the Contract for one of the reasons stated in Section 14.1.1, the Contractor shall not be entitled to receive further payment until the work is finished.

14.1.4 Costs for Finishing Work. If the unpaid balance of the Contract Sum exceeds costs of finishing the work, including compensation for the Owner's services and expenses made necessary thereby and other costs and charges incurred by the Owner, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Owner, and this obligation for payment shall survive termination of the Contract.

14.2 NOT USED

14.3 OWNER'S TERMINATION FOR CONVENIENCE.

14.3.1 Effect of Termination for Convenience. The Owner reserves the right to terminate the Contract for convenience and without cause, even if Contractor has not failed to perform any part of the Contract. Termination of the work hereunder shall be effected by written notice to the Contractor. Upon receipt of such notice, Contractor shall, unless the notice otherwise directs:

- .1 Immediately discontinue the work and the placing of all orders and subcontracts in connection with this Contract;
- .2 Immediately cancel all of the existing orders and subcontracts made hereunder;
- .3 Immediately transfer to the Owner all materials, supplies, work in progress, appliances, facilities, machinery, and tools acquired by the Contractor in connection with the performance of the Contract, and take such action as may be necessary or as the Owner may direct for protection and preservation of the work relating to this Contract;
- .4 Deliver all plans, Drawings, Specifications, and other necessary information to the Owner; and
- .5 Complete performance of the work not terminated by the notice.

14.3.2 Contractor's Exclusive Remedy. If the Owner terminates the Contract for convenience, the following shall be the Contractor's exclusive remedy:

- .1 Reimbursement of all actual expenditures and costs approved by the Owner as having been made or incurred in performing the work;
- .2 Reimbursement of expenditures made and costs incurred with the Owner's prior written approval in settling or discharging outstanding commitments entered into by the Contractor in performing the Contract;
- .3 Reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and

- .4 Reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

The Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

14.3.3 Warranties, Guarantees, and Indemnified Parties to Remain in Effect. All obligations of the Contractor under the Contract with respect to completion of the work, including but not limited to all warranties, guarantees, and indemnities, shall apply to all work completed or substantially completed by the Contractor prior to a convenience termination by the Owner. Notwithstanding the above, any convenience termination by the Owner or payments to the Contractor shall be without prejudice to any claims or legal remedies that the Owner may have against the Contractor for any cause, including liquidated damages assessed for Contractor's delays to any work Milestone Dates.

14.3.4 Conversion of Termination for Cause to Termination for Convenience. Upon a determination that a termination of this Contract other than a termination for convenience under this Article was wrongful or improper for any reason, such termination shall automatically be deemed converted to a convenience termination under this Article 14, and the Contractor's remedy for such wrongful termination shall be limited to the recoveries specified under this Article 14.

14.3.5 Remedy Limited to Damages. In the event that Contractor is terminated, whether for cause or convenience, the Contractor's sole remedy shall be for damages. In no event shall the Contractor be entitled to reinstatement or other equitable relief from a court or through alternative dispute resolution.

14.3.6 Notice that Contract is Subject to Termination Provisions of A.R.S. § 38-511. The parties acknowledge, and as required by law, notice is hereby given that this Contract is subject to A.R.S. § 38-511.

14.4 SUSPENSION BY THE OWNER.

The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the work in whole or in part for such period of time as the Owner may determine.

14.4.1 Adjustment in Contract Sum. An adjustment may be made for increases in the cost of performance of the Contract caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

- .1 that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

14.4.2 Method for Adjustment in Contract Sum. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

END OF ARTICLE 14

ARTICLE 15 OPERATIONS, SAFETY, AND SECURITY**15.1 AIRPORT SECURITY REQUIREMENTS**

15.1.1 The airport is operated in strict compliance with the Transportation Security Administration (TSA) and Federal Aviation Regulations (FAR), which prohibit unauthorized persons or vehicles in the Air Operations Area (AOA). Equipment and workmen will be restricted to the work area defined on the plans. Any violation by Contractor's personnel or subcontractors will subject the Contractor to penalties imposed by the TSA or the Authority.

15.1.2 The Contractor will assume all fines against the Authority assessed to them by the TSA for the Contractor's security violations. Typical fines are ten thousand dollars (\$10,000.00) or more per incident.

15.1.3 The Contractor shall be responsible for the protection of the construction site and all work, materials, equipment, and existing facilities thereon against vandals and other unauthorized persons.

15.1.4 The Contractor's responsibilities for work areas are as follows:

- .1 The Contractor shall be held responsible for controlling his employees, subcontractors, and their employees with regard to traffic movement.
- .2 The Contractor shall rebuild, repair, restore, and make good at his own expense all injuries or damages to any portion of the work occasioned by his use of these facilities before completion and acceptance of his work.
- .3 The Contractor shall submit to MGAA's project manager, in writing, a detailed work plan for each phase of the work. **This plan shall be submitted 14 calendar days prior to the start of each phase.** No work within the construction phase may commence until the phase work plan is approved.

15.2 AIRPORT ACCESS BADGES

15.2.1 All Contractor and Subcontractor personnel requiring access to secured or restricted areas shall comply with the Airport's security and badging requirements set forth in Exhibit 2. The Contractor shall be responsible for coordinating and maintaining compliance with all applicable badging, escort, training, identification, access, and badge-return requirements for its personnel and Subcontractors.

END ARTICLE 15

END GENERAL CONDITIONS TO THE CONSTRUCTION CONTRACT