

PSS/T-8 NORTHROP GRUMMAN SYSTEMS CORPORATION

PURCHASE ORDER TERMS AND CONDITIONS SERVICES CONTRACT – COMMERCIAL IN-PLANT LABOR –TIME BASIS

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1. DEFINITIONS.

- A. BUYER means Northrop Grumman Systems Corporation including its subsidiaries, sectors, and business areas as identified on the face of the Order.
- B. BUYER'S AUTHORIZED PURCHASING REPRESENTATIVE means the person authorized by Buyer's cognizant procurement organization to administer and/or execute the Order.
- C. ORDER means the instrument of contracting including the Purchase Order and all referenced documents, exhibits, drawings, and attachments.
- D. SELLER means the party with whom Buyer is contracting.
- E. DATA means all designs, dimensions, specifications, drawings, patterns, know how, or other information concerning, methods, manufacturing processes, equipment, gauges and tools used in the design and manufacture of Products. Data may be recorded in a written or printed document, computer or electronic file, electromagnetic

- tape or disc, software, or any other tangible form of expression.
- F. DAY means a calendar day consisting of a twenty-four (24) hour period unless otherwise specifically stated.
- G. DIRECT LABOR HOURLY RATE means the hourly rate that the Seller will pay employees who perform Service, as defined below, for Buyer.
- H. MARK-UP PERCENTAGE RATE means the percentage rate charged by Seller for performing Services for Buyer.
- I. MARK-UP RATE means the rate which Buyer shall pay Seller over and above the Direct Labor Hourly Rate. The Mark-Up Rate is computed by multiplying the Direct Labor Hourly Rate by the Mark-Up Percentage Rate.
- J. OVERTIME is defined as hours worked in excess of forty (40) hours in a pay week. Such hours must have prior approval of the cognizant Northrop Grumman Systems Corporation

manager. Non-exempt personnel will receive a Direct Labor Rate of time-and-a-half for overtime. Exempt personnel will receive the straight time Direct Labor rate for overtime. Under certain circumstances, contract labor personnel may receive Double Time for certain hours worked.

- K. OVERTIME BILLING RATE (Non-exempt personnel) means one-half the Direct Labor Hourly Rate plus the Straight Time Billing Rate. Overtime Billing Rate (Exempt personnel) is the same as the Straight Time Billing Rate. Double Time Billing Rate is twice the Direct Labor Hourly Rate plus the Straight Time Billing Rate
- L. PARTIES means Buyer and Seller collectively.
- M. PAYROLLED means a Seller employee referred to Seller by Buyer, including former employees of Buyer, former Contract Labor employees (from other sellers, or from Seller when more than six months have passed since date of last assignment to Buyer), individuals who sought direct employment with Buyer, or individuals recruited by Buyer.
- N. PRIME CONTRACT means the contracting instrument issued to Buyer or Buyer's higher tier customer by its customer for the acquisition of Products or Services.
- O. PROPRIETARY INFORMATION includes any confidential or proprietary data, designs, drawings, processes, computer software, engineering instructions, models, specifications and other information, business information related to the production costs, sales, and marketing of Buyer's or Buyer's Customers' products, and any other such confidential or proprietary information received from the other Party, whether written, in some otherwise tangible medium, visual, or oral. All Proprietary Information in written or tangible form shall be marked with a suitable restrictive legend that identifies the source of information.
- P. RECRUITED means a Seller employee identified and employed by Seller without referral by Buyer.
- Q. SERVICE means Seller's time and effort as set forth in the Order rather than the direct sale and purchase of goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies.
- R. STRAIGHT TIME BILLING RATE means the Direct Labor Hourly Rate plus the Mark-Up Rate for all authorized Service performed.
- S. SUB-SELLER means any person or supplier, at any tier, who performs Services for Seller, except for employees of Seller.
- T. WORK means all Services to be performed or other things required to be furnished or performed by Seller in order to properly perform and fulfill the obligations and requirements of the Purchase Order.
- U. Unless the context otherwise requires, words importing the singular number include the plural and in the plural include the singular.

2. ACCEPTANCE.

This Order is Buyer's offer to Seller. Acceptance of this offer is strictly limited to the terms and conditions in this offer. Modifications hereto, to be binding, must be in writing and signed by Buyer's authorized purchasing representative. Seller's acknowledgement, acceptance of payment, or commencement of performance, shall conclusively evidence acceptance of this offer as written. Buyer hereby objects to any additional or different terms contained in Seller's acceptance.

3. ORDER OF PRECEDENCE.

In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:

- A. Change Order Document
- B. Purchase Order Document
- C. Purchase Order Terms and Conditions
- D. Statement of Work
- E. Other Referenced Documents

4. - 5. RESERVED.

6. PAYMENT.

As specified by Buyer's Contract Labor Administrator, at the time of personnel selection, one of the following processes will be used:

- A. Once each month (or at more frequent intervals, if approved by Buyer), Seller may submit to Buyer, in such form and reasonable detail as Buyer may require, an invoice for Services furnished under this Order to the date of such invoice. The invoice shall include the following certification made by one (1) officer or other responsible official of Seller, who shall be a person supervising accounting with respect to the Order:

"The undersigned certifies that payment requested herein is correct and just, that the statement of time expended is true, and that payment therefore has not been received and the undersigned has complied with all applicable Federal, state, and local laws, ordinances and regulations, including Equal Employment Opportunity."

- or -

- B. Once each month (or at more frequent interval's at Buyer's discretion), Buyer will make payments of amounts due to Seller that are not already paid. Payments shall be based on Buyer's internal record keeping system as described below and referred to as "Reverse Billing." Under this "Reverse Billing" system, each of Seller's employees, assigned at Buyer's facility, will be required to complete a job card or automated time keeping system entry each week and have it approved by the manager to which assigned. Seller's employee will send a duplicate copy of the job card or automated time keeping system entry to Seller. The original job card or automated time keeping system entry will be processed through Buyer's data processing system. The resulting computer generated listing will be provided to Seller weekly and will

include a record of straight time and overtime hours worked together with the applicable rates. Seller shall, within seven (7) working days of receipt, report any discrepancies to Buyer's representative and negotiate in good faith to resolve such discrepancies.

Any amounts owing to Buyer by Seller may be set off against amounts otherwise due to Seller under this Order.

7. - 9. RESERVED.

10. WARRANTY.

Seller warrants that all Services to be performed under this Order will be performed by skilled, qualified and competent personnel and that such Services shall be provided in accordance with the standard practices of Buyer.

11. CHANGES.

Buyer may, at any time, by issuance of a Change Order, or by other written order, make changes in the nature, scope and extent of the Work set forth in any Order and Seller, without delay, shall promptly comply therewith; provided, however, that Seller shall not be obligated to comply with any change ordered by Buyer which will require: (1) expenditures in excess of the total amount set forth on the face of the Order, or (2) personnel in excess of the requirements contemplated by this Order.

12. BUYER AUTHORIZATION.

- A. The Buyer's Authorized Purchasing Representative has sole authority to make contractual commitments on behalf of the Buyer, to provide contractual direction, and to change contractual requirements as defined in the Order.
- B. Buyer's engineering, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Seller's personnel concerning the Product hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for an equitable adjustment.

13. DISPUTES.

- A. Any dispute that may arise under or in connection with this Order with respect to the rights, duties, or obligations of the Parties shall be submitted in writing for resolution to ascending levels of management of the respective Parties up to the Senior Executive of the Materiel or Procurement organization placing the Order, and Seller's equivalent executive level.
- B. If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within ninety (90) calendar days from the date the written claim is received by the other Party, or such additional time as the Parties agree upon, in writing, either Party may only bring suit in federal or state court in the state from which this Order is issued.
- C. Pending any prosecution, appeal, or final decision referred to in this clause, or the settlement of any dispute arising under this Order, Seller shall

proceed diligently, as directed by Buyer, with performance of the Order.

- D. To the maximum extent permitted by law, the parties waive any right to a jury trial.

14. TERMINATION FOR CONVENIENCE.

- A. Buyer may, from time to time, at its sole option, terminate, in whole or in part, the Services to be furnished under any Order, whenever, for any reason, Buyer shall deem any such termination is in its best interest. Any such termination shall be effected by delivery to Seller of a written notice of termination, specifying the extent to which the Services are terminated and the dates upon which such termination shall become effective.
- B. Buyer's obligation resulting from such termination shall be limited to making payments to Seller, in accordance with the rates established in the Order for each labor-hour expended for Services performed under the terminated Order to the date upon which the termination becomes effective.

15. TERMINATION FOR DEFAULT.

- A. Subject to paragraphs C and D below, Buyer may terminate this Order in whole or in part, by written notice of default to Seller if Seller:
 - 1. Fails to deliver the supplies or to perform the services within the time specified in this Order or any extension;
 - 2. Fails to make progress so as to endanger performance of this Order or to perform any of the other provisions of this Order and does not cure that failure within a period of 10 days after receipt of the notice from Buyer specifying Seller's failure to perform; or
 - 3. Becomes insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or pursues any other remedy under any other law relating to the relief for debtors, or in the event a trustee or receiver is appointed for Seller's property or business; or assignment.
- B. If Buyer terminates this Order in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, supplies or services similar to those terminated, and Seller will be liable to Buyer for any excess costs for those supplies or services. However, Seller shall continue the work not terminated. In addition, Buyer may rework or repair any Product in accordance with the Non-Conforming Goods clause herein, at Seller's cost.
- C. If the failure to perform is caused by an excusable delay, as described in the Excusable Delay clause herein, Seller shall not be liable for any excess costs of re-procurement.
- D. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both Seller and subcontractor, and without the fault or negligence of either, Seller shall not be liable for any excess costs for failure to perform, unless the

subcontracted supplies or services were obtainable from other sources in sufficient time for Seller to meet the required deliver schedule.

- E. If this Order is terminated for default, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Buyer, Seller shall also protect and preserve Property in its possession in which Buyer has an interest.
- F. Buyer shall pay the Order price for completed supplies delivered or services performed and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property.
- G. Buyer shall, at its option, have the right to set off against, or appropriate and apply to the payment or performance of any obligation, sum or amount owing at any time to Buyer under this Order, all deposits, amounts, or balances held by Buyer for the account of Seller, any amounts owed by Buyer to Seller, and any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.
- H. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by Law or under this Order.

16. - 18. RESERVED.

19. NOTIFICATION OF STATUS CHANGES.

By accepting this Order, Seller certifies that most recent representations and certifications provided by Seller continue to remain valid and unchanged. If Seller's status under any of the applicable representations and certifications has changed, Seller must complete and submit to Buyer revised representations and certifications prior to taking any action indicating acceptance as stated on the face of the Order.

20. TAXES.

The price of this Order includes all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. Use or sales taxes for which Buyer has furnished a valid exemption certificate or other evidence of exemption shall not be included.

21. ASSIGNMENT.

Seller shall not assign any of its rights under this Order without Buyer's prior, written consent, except as specifically stated in this clause. Seller may assign to a bank, trust company, or other financing institution including any Federal lending agency, claims for money due or to become due to Seller from Buyer under this Order, provided:

- 1. The assignment is limited to one party, covers all amounts payable under the Order

and not already paid, is not subject to further assignment, and is made specifically subject to reduction and set off or recoupment for any present or future claim or claims or indebtedness which Buyer may have against Seller;

- 2. Seller furnishes to Buyer written notice of assignment and a true copy of the instrument of assignment.

B. Buyer may make direct settlements or adjustments in price, or both, with Seller under the terms of this Order notwithstanding any assignment of claims for money due or to become due under this Order and without notice to the assignee.

C. Seller shall not furnish or disclose to any assignee under this Order or any other person not entitled to receive the same, any classified document or any of Buyer's Proprietary information (including this Order) until and unless authorized to do so by Buyer's authorized representative.

22. SUBCONTRACTING.

A. Seller shall not subcontract without the prior written authorization of Buyer for the performance of any service to be provided hereunder, and Seller shall require a like agreement from any immediate and lower-tier suppliers. This is not a restriction on authorized distributors, dealers, jobbers or industrial suppliers.

B. No subcontract placed under this Order shall provide for payment on a cost-plus-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 15.404-4(c) of the Federal Acquisition Regulation (FAR).

C. Any subcontract awarded to a foreign person, as defined in the International Traffic in Arms Regulations or the Export Administration Regulations, must comply with the Export and Import Compliance clause herein.

23. PROPRIETARY INFORMATION.

A. If a separate Proprietary Information Agreement exists between the Parties, which relates to the subject matter of this Order, then Proprietary Information furnished by one Party to the other Party shall be protected pursuant to such Proprietary Information Agreement.

B. If no separate Proprietary Information Agreement exists between the Parties, Seller agrees to keep confidential and not to disclose to any other person any Proprietary Information received from Buyer in connection with this Order. Seller further agrees to use Proprietary Information only for purposes necessary for performing this Order, without first obtaining Buyer's written authorization.

C. Seller may disclose Proprietary Information to its subcontractors as required for the performance of this Order, provided that each such subcontractor first assumes by written agreement the same obligations imposed on Seller under this Order relating to such Proprietary Information.

- D. All documents and other tangible media (excluding Products) containing or conveying Proprietary Information and transferred in connection with this Order, together with any copies thereof, are and remain the property of Buyer.
- E. Neither the existence of this Order nor the disclosure hereunder of Proprietary Information or any other information shall be construed as granting expressly by implication, by estoppel or otherwise, a license under any invention or patent now or hereafter owned or controlled by Buyer or Buyer's customer, except as specifically set forth herein.
- F. Seller's obligations with respect to Proprietary Information disclosed hereunder prior to the performance in full, termination or cancellation of this Order shall not, except as expressly set forth herein, be affected by such performance in full, termination, or cancellation.
- G. Unless otherwise provided herein, or authorized by Buyer in writing, Seller shall use Proprietary Information and/or data only in the performance of this Order subject to the Government's rights under the Government Property clause.

24. SELLER'S DATA.

Excluding Data marked with an appropriate legend and protected in accordance with a separate Proprietary Information Agreement, any Data, which Seller discloses to Buyer while performing this Order, that Seller has not marked with a limited rights legend in accordance with the applicable rights in technical data and computer software clauses/provisions called out herein shall not be considered proprietary to Seller or in any way restrict Buyer's use of such Data.

25. INFRINGEMENT INDEMNIFICATION.

- A. In lieu of any other warranty by Seller to Buyer against intellectual property infringement, statutory or otherwise, express or implied, Seller will defend, indemnify, and hold harmless Buyer, Buyer's officers, agents, employees, and customers against all suits or actions, claims and liabilities, including costs, based on a claim that use or sale of any Products delivered under this Order infringes any patent, trade secret, copyright, or other intellectual property right of third parties.
- B. Buyer shall notify Seller in writing of such claim and Buyer shall provide Seller with reasonable information and assistance, at Seller's expense, for the defense thereof.
- C. If the use or sale of the Product is enjoined as a result of a suit, Seller, at no expense to Buyer, shall obtain for Buyer and its customer the right to use and sell the Product or shall substitute an equivalent Product acceptable to Buyer and extend this indemnification thereto.
- D. Seller's obligation shall not apply to Products manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under an Order, which does not require research, development, or design work by Seller. Seller's obligation shall also not apply to any infringement arising from the use or sale of Products in combination with Products not deliv-

ered by Seller if such infringement would not have occurred but for such combined use unless such combination was reasonably foreseeable.

- E. Notwithstanding the foregoing, when this Order is performed under the authorization and consent of the U.S. Government to infringe United States Patents, Seller's liability for Seller's patent infringement under this Order shall be coextensive with Buyer's liability.

26. INSURANCE.

- A. During the entire Order period Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Worker's Compensation insurance coverage as required by the laws of the state in which the work is performed and such insurance shall provide waiver of subrogation against Buyer. Seller shall also maintain, at their sole cost and expense, Employer Liability insurance in the amount of \$1,000,000.
- B. Whenever performance requires work on a Government installation, Buyer's premises, or premises under the care, custody or control of Buyer or Buyer's customer, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the following insurance coverage in the minimum limits indicated:
 - 1. General Liability – Combined Single Limit \$2,000,000 bodily injury and property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.
 - 2. Automobile Liability – Combined Single Limit \$2,000,000 bodily injury and property damage covering all owned, hired and non-owned vehicles.
- C. All insurance required as a part of this Order shall be placed with insurance companies that are authorized to do business under the laws of the state or states in which the work is being performed and shall be in a form reasonably acceptable to Buyer.
- D. General Liability and Automobile Liability insurance coverage shall provide that Buyer is named as an additional insured and if requested by Buyer, Seller shall provide evidence that the required insurance is in place in the form of insurance certificates.
- E. Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Order. Renewal insurance certificates, if applicable, shall be provided to Buyer at least 15 days prior to the expiration date of the insurance under each required coverage.
- F. Buyer and Seller agree to defend, indemnify, and save harmless the other from all damages and liabilities arising out of or in connection with presence on the other's premises pursuant to this Order; provided, however, that such damage and liability shall not have been caused by the negli-

gence of the agents, subcontractors or employees of the indemnified parties.

27. LABOR DISPUTES.

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this Order, Seller shall immediately give notice to Buyer including all relevant information including, but not limited to, nature of dispute, labor organizations involved, estimated impact on Seller's performance of Buyer's order and estimated duration. Seller shall also provide updated reports throughout the dispute duration. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract where a labor dispute might delay timely performance of this Order.

28. COMPLIANCE WITH LAWS.

- A. Seller warrants that it shall comply with all applicable Federal, State and local laws, rulings, and regulations in effect on the date of this Order.
- B. Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- C. During the performance of this Order, Seller agrees to comply with all provisions of the following:
 - 1. Executive Order 11246 of Sept. 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor;
 - 2. Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era in accordance with 38 U.S.C. 4212(a); and
 - 3. Affirmative Action for Handicapped Workers in accordance with 29 U.S.C. 793.
- D. FAIR LABOR STANDARDS. Seller shall warrant that the Services furnished hereunder have been or will be performed in compliance with the Fair Labor Standards Act of 1938, 29 U.S. Code 201-219, as amended, and, insofar as applicable hereto, the Walsh-Healey Public Contracts Act, 41 U.S. Code 35-45, and any amendments thereto, as well as with the provisions of any other Federal labor law or regulation now in effect or hereafter enacted. Seller agrees that this warranty may be considered as the certificate contemplated by the October 26, 1949, amendment to the Fair Labor Standards Act of 1938.
- E. Seller shall obtain at Seller's expense, all permits, licenses and authorizations required to perform this Order.
- F. Seller agrees to include the requirements of this clause, including this subparagraph F, in every subcontract or purchase order placed hereunder, unless otherwise exempt.

29. CHOICE OF LAW.

Both Parties agree that, irrespective of the place of performance of this Order, unless otherwise specifically provided herein, this Order will be construed and interpreted according to the law of the state from which this Order is issued, as identified in the Order, excepting that state's laws on conflicts of laws.

30. - 31. RESERVED.

32. EXPORT AND IMPORT COMPLIANCE.

- A. Export Compliance. Seller is advised that its performance of this Order may involve the use of or access to articles, technical data or software this is subject to export controls under 22 United States Code 2751-2796(Arms Export Control Act) and 22 Code of Federal Regulations 120-130(International Traffic in Arms Regulations) or 50 United States Code 2401-2420(Export Administration Act) and 15 Code of Federal Regulations 768-799 (Export Administration Regulations) and their successor and supplemental laws and regulations(collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is either 1) a U.S. Person as that term is defined in the Export Laws and Regulations, or 2) that it has disclosed to Buyer's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and US immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued there under.
- B. Registration. If Seller is a U.S entity and is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services. Seller represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR and it maintains an effective export and import compliance program in accordance with the ITAR.
- C. Foreign Personnel/Person. Seller shall not give any Foreign Person access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Contractor/Buyer. Any request for such consent must state the intended recipient's citizenship(s) and status under 8 U.S.C 1324(the "Immigration and Naturalization Act"), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this paragraph C. shall relieve Seller of its obligations to comply with the provisions of paragraph A. of this Clause or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph A. hereinabove, nor constitute consent for Seller to violate any provision of the Export Laws and Regulations.
- D. Indemnification. Seller shall indemnify and save harmless Buyer from and against and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys' fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with the provisions of this clause and breach of the warranty set forth in paragraph A. Any failure of Seller to comply with the requirements or any breach of the warranty contained in this Clause shall be a material breach of this Order.
- E. Subcontracts. The substance of this Clause shall be incorporated into any lower-tier subcontract or

purchase order entered into by the Seller for the performance of any part of the work under this Order.

33. RELIANCE.

Seller represents and warrants that Seller is an expert fully competent in all phases of the work involved in producing and supporting all Products and performing all services purchased under this Order.

34. RELEASE OF INFORMATION AND ADVERTISING.

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Order or the subject matter hereof, will be made by Seller without the prior written approval of Buyer. Additionally, Seller shall not use the name "Northrop Grumman Systems Corporation" or in any other way identify Buyer in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.

35. - 36. RESERVED.

37. HEADINGS.

The descriptive headings contained in this Order are for convenience of reference only and in no way define, limit or describe the scope or intent of this Order.

38. PARTIAL INVALIDITY.

If any provision in this Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

39. NONWAIVER.

A Party's failure at any time to enforce any provision of any Order shall not constitute a waiver of the provision or prejudice a Party's right to enforce that provision at any subsequent time.

40. COMPLETE AGREEMENT.

This Order is the Parties' final expression of their agreement and is the complete and exclusive statement of all terms and conditions of agreement. This Order supersedes and cancels all prior understandings, proposals, communications, whether oral or written, and agreements between the Parties, whether such understandings, proposal, communications, and agreements were written or oral, concerning the matters addressed in this Order. No course of prior dealings between the Parties, and no usage of trade, shall be relevant to supplement or explain any term used in this Order.

41. RESPONSIBILITY FOR CLAIMS/INDEMNITY.

A. Seller shall, at its own expense, defend, indemnify and hold harmless Buyer from any claims or suits brought and liabilities and losses sustained by any third party for injury to persons or damage to property, arising in whole or in part out of the acts or omissions of Seller, its subcontractors, agents, or employees in the performance of this Order. If Seller fails to defend, hold harmless, and indemnify Buyer as provided in this clause, then Seller shall pay for any damages, attorney's fees, and any other fees, costs, and expenses that may be incurred by Buyer in the defense of any action related to this Order and/or in the prosecution of any action to enforce the provisions of this clause.

B. Seller shall secure and protect itself, and shall secure, indemnify and defend Buyer, its officers, agents, and employees from any liability, claim of liability, expense, cause of action, loss or damage whatsoever, arising out of or in connection with withholding tax payments for the Seller's personnel, or any personal injury or any claimed personal injury, including death, to any person or party whatsoever in the performance of this Order.

42. RIGHTS IN COPYRIGHTS.

The Parties expressly agree that all original works of authorship fixed in any tangible form, including software improvements, enhancements, derivative works and mask works, whether specially ordered or commissioned, made by Seller personnel alone or jointly with others in connection with this Order ("Works") shall become and remain the property of Buyer. These Works shall be considered "a work made for hire" and Seller shall assign and hereby assigns all its right, title, and interest in the Works to Buyer. Seller agrees to require its personnel or others hereinafter associated with or used by Seller in the performance of this Order to execute all necessary documents to transfer and assign all right, title and interest in said Works to Buyer.

43. PATENTS AND INVENTIONS.

A. Seller agrees to assign and hereby does assign to Buyer the entire and exclusive right, title, and interest to all designs, models, photographs, drawings, ideas, inventions (whether or not patentable), and improvements whatsoever, conceived, discovered, or developed by Seller, or Seller's employees, specifically related to or in connection with performance of this Order, shall be and remain the sole and exclusive property of Buyer. Seller agrees to promptly disclose to Buyer all such ideas, inventions, and improvements, and, on demand and at Buyer's expense, assist and require and bind Seller's employees to assist, in preparation, execution, and delivery of any disclosures, patent applications or other papers required by Buyer to obtain and enforce patents in the United States and foreign countries, and to execute and deliver to Buyer any assignment or other document which Buyer deems necessary to perfect Buyer's right, title and interest in and to said ideas, inventions, and improvements.

B. Seller shall require each of its personnel who will perform Work pursuant to this Order to execute Buyer's form number C-100C, entitled "Contractor Intellectual Property Agreement", to be provided by Buyer. The signed "Contractor Intellectual Property Agreement" must be provided to Buyer for each of Seller's personnel prior to their beginning Work.

44. RESERVED.

45. STOP WORK.

A. Buyer may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by this Order for a period of up to ninety (90) days after the stop work order is

delivered to Seller, and for any further period to which the Parties may agree. Any such order shall be specifically identified as a Stop Work Order (SWO) issued pursuant to this clause. Upon receipt of an SWO, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the SWO during the period of work stoppage. Within the period of the work stoppage specified by the SWO, and any amendments to it, Buyer shall either (1) cancel the SWO, or (2) terminate the work covered by such SWO as provided in "Termination For Convenience", of this Order.

- B. If an SWO issued under this clause is canceled, or the period of the Order or any extension thereof expires, Seller shall resume work. An equitable adjustment shall be made in the delivery schedule or Order price, or both, and the Order shall be modified in writing accordingly, if (1) the stop work results in an increase in the time required for, or in Seller's cost properly allocable to, the performance of any part of this Purchase Order, and (2) Seller submits its proposal for such adjustment within forty-five (45) days after the end of the period of work stoppage. Failure of the Parties to agree to any adjustment to be made under this clause shall not excuse Seller from proceeding with the performance of the Order.
- C. If an SWO is not canceled and the work covered by such SWO is terminated for the convenience of Buyer, the reasonable costs resulting from the SWO shall be allowed in arriving at the termination settlement.

46. RESERVED.

47. RELATIONSHIP OF THE PARTIES.

- A. Personnel assigned by Seller shall be employees of Seller. Nothing herein shall be construed as creating an employer – employee or other relationship between Buyer and such personnel. Seller's employees shall be assigned to this Order pursuant to Seller's direction and employed by Seller under the terms and conditions detailed by Seller. Buyer shall also provide direction to Seller's employees while they are on assignment to Buyer pursuant to this Order. Seller understands and agrees that neither Seller nor any of its employees shall act, in any sense, as agents or representatives of Buyer; furthermore, Seller agrees to refrain, directly or indirectly, from initiating or engaging on behalf of Buyer or for Buyer's benefit, in activities which are not authorized by Buyer.
- B. Seller's employees shall be paid exclusively by Seller for all Services performed and Seller shall be responsible and shall actually comply with all requirements and obligations relating to such employees under local, state or federal law (or foreign law as applicable), including but not limited to minimum wage, social security, unemployment insurance, local, state, and federal income tax, and Worker's Compensation. Buyer

has no responsibility for withholding any portion of salary or wages due employees of Seller to comply with any taxes aforementioned.

- C. Seller shall ensure the following certification statement is submitted to Buyer annually, by 31 January:

"_____ (Seller) certifies that the personnel supplied under this Order for the calendar year ending December 31, _____, are employees of Seller or employees of authorized Sub-Sellers and that Seller and its authorized Sub-Sellers will properly file all reports and will meet all employment obligations respecting them, including, but not limited to withholding and paying applicable income and employment taxes, unemployment compensation and workers compensation, as well as compliance with all applicable labor and employment laws, both foreign and domestic. Seller shall indemnify and hold Buyer harmless against any and all liability imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from any failure of Seller or its authorized Sub-Sellers to file reports and/or to meet Seller's or Sub-Sellers' obligations as set forth herein."

48. RESERVED.

49. CITIZENSHIP ELIGIBILITY REQUIREMENTS.

- A. Employees of Seller who perform Services under this Order shall be citizens of the United States of America (U.S.), its possessions or territories, or lawful permanent residents as defined by 8 United States Code (U.S.C.) 1101(a)(20), or protected individuals as defined by 8 U.S.C. 1324b(a)(3). Seller shall provide Seller shall promptly notify Buyer of any changes to the Certification. Failure to provide the Certification, or notice of changes, may result in termination of the purchase order for default.
- B. Upon the request of Buyer, Seller shall submit verification of citizenship, lawful permanent resident status, protected individual status, or employment eligibility status to Buyer for each employee who will perform Services under this Order. Examples of documents that may be considered satisfactory are state birth certificates, U.S. passports, U.S. naturalization papers, and "green" cards (I-551) issued by the U.S. Department of Immigration and Naturalization. Consistent with IRCA, the order of presentment of such documents shall be the sole prerogative of Seller's employees. If these documents are not available, a compilation of other evidence may suffice.
- C. Employees of Seller not listed on the Certification of Employees or providing individual proof of U.S. citizenship, or other status as described in subparagraph B. above, may be denied access to Buyer's premises.

50. BADGES AND PLANT SECURITY.

- A. Seller will require its personnel who perform Services for Buyer to comply with all rules for issuance, control and wearing of identification

badges. Compliance with Buyer's rules will permit such personnel to enter and leave the premises where Work is performed. Seller further agrees to require its personnel to wear Buyer-issued badges in a conspicuous place upon their person when they are in, on, or about the premises where Work is performed.

- B. Seller agrees to abide by and comply with Buyer's rules and regulations pertaining to plant security and plant protection promulgated at the location where Work is performed.
- C. Seller agrees to comply with all applicable fire safety requirements and to adhere to all rules, regulations, and laws pertaining to fire protection at the location where Work is performed.
- D. When performing Work in the U.S., Seller and Seller's personnel shall comply with all applicable rules, regulations and orders of the Occupational Safety and Health Act of 1970 (P.L. 91-596, 29 U.S.C. 651-678), as amended, and all applicable safety laws, rules, regulations and orders of the United States and the State wherein this Order is being performed. When performing Work at a location outside the U.S., Seller and Seller's personnel will comply with all applicable rules, regulations and orders of the foreign location pertaining to the occupational safety and health. Seller hereby indemnifies and holds Buyer harmless from and against any noncompliance by Seller or its personnel with any of the above laws, rules, regulations and orders as may be applicable.
- E. Buyer may, for any reason, require Seller to remove from Buyer's or any other facility where Work is performed for Buyer any employee, agent or representative of Seller, or any of its Sub-Sellers, Buyer deems incompetent, careless or otherwise objectionable. Seller will remove such employee, agent or representative from the premises immediately.

51. CONFLICT OF INTEREST.

Seller warrants that no conflict of interest exists between the Services and Products to be provided under this Order and Seller's other activities. Seller shall immediately advise Buyer of any such conflict of interest or potential conflict of interest which arises during performance of this Order.

52. SERVICE RATES.

- A. Seller will bill Buyer for Services furnished under this Order at the mark-up rates set forth in the Order. Shift Differential by site, if any, will be indicated in the Order.
- B. The Overtime Billing Rate will be paid for all authorized Work performed in excess of hours chargeable at the Straight Time Billing Rate.
- C. Seller agrees to provide its employees performing Services with the following paid holidays, when earned in accordance with Seller's policies: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. The cost of providing such holidays shall be included in the Seller's mark-up rate.

- D. Seller shall provide, as part of its mark-up rate, its employees performing Services for Buyer a minimum of five days paid vacation each year when earned in accordance with Seller's policies.
- E. When Buyer requires Seller personnel to perform travel, Buyer will notify Seller to request travel arrangements be made. Buyer will reimburse per diem, airfare or mileage (when authorized in writing in advance) as authorized pursuant to standard General Service Administration (GSA) rates. Travel costs will be reimbursed at actual cost, without addition of overhead, profit or similar charges, upon receipt of an itemized invoice with receipts per the Payment clause herein. At Buyer's option, Buyer may ticket airfares and arrange hotel and rental car reservations.
- F. Seller's prices include applicable Federal, State and local taxes.
- G. All rates are in U.S. Dollars.

53. SERVICES.

- A. From time to time, Buyer may require Seller to provide a specific number and type of personnel for a specific number of hours between specific dates at specified sites, at the Mark-Up Percentage Rates set forth in the Order.
- B. Except as included as an element of Seller's mark-up rate, Buyer shall not be liable for payment for any hours not worked, including such times when Buyer's facility is closed due to holidays (including the holidays specified in the clause entitled "Service Rates" hereof), shutdowns, inclement weather, etc.

54. SELECTION OF PERSONNEL.

- A. All personnel assigned by Seller to perform Services hereunder shall be capable of performing such Services and will be qualified in accordance with the classifications assigned, or equivalent. If Buyer objects to the qualifications of Seller's personnel, Seller agrees to withdraw and replace immediately any personnel that Buyer deems unacceptable, even though such personnel have been approved previously by Buyer. If Seller's personnel, who are acceptable to Buyer, resign or discontinue employment for any reason, Seller shall immediately replace such personnel without additional cost to Buyer. Seller shall ensure that each person assigned to perform Services under this Order is qualified in accordance with the classifications assigned, if any, and possesses the items of personal equipment, if any, specified for the Services to be performed.
- B. Except for Seller's personnel whose Services Buyer determines may not exceed thirty (30) days in duration, Seller shall certify that each person assigned to perform Services under this Order are drug free as set forth in the clause entitled "Pre-Employment Drug Testing" herein below.
- C. Except for Seller's personnel whose Services Buyer determines may be less than sixty (60) days in duration, Seller shall certify that each person assigned to perform Services under this Order meet the criteria for assignment as speci-

fied in the clause entitled "Background Investigation" herein below.

- D. Seller shall certify that each person assigned to perform Services under this Order meets the requirements as set forth in the clause entitled "Eligibility Requirements" herein below.
- E. Buyer, in its sole discretion, may, at no charge to Buyer, reject any Seller personnel based upon the results of such test(s) and/or investigation, or who fails to cooperate with Buyer in conducting such test(s) or investigation as Buyer deems appropriate.
- F. Seller has sole responsibility for ensuring that it shall only furnish to Buyer, personnel whose use by Buyer will not cause Buyer to be in violation of 10 U.S.C. 2408 applicable to the prohibition on employment of persons convicted of defense-contract related felonies and related criminal penalty by defense Sellers. Buyer agrees to supply any information requested by Seller reasonably necessary to permit the Parties to determine if Buyer may be in violation of such prohibition. Seller further recognizes that violation of such prohibition could result, among other things, in a breach of its contracts and possible Suspension or Debarment of Buyer from further Government and Government related contracts. Seller specifically agrees to indemnify Buyer should Buyer be adversely impacted by any such violation.
- G. Seller shall send all submittal letters and resumes to the attention of Buyer's Contract Labor Administrator, as set forth in the clause entitled "Buyer's Contract Labor Administrator" below. Under no circumstances shall resumes be sent to any other department or section without the approval of Buyer.
- H. Buyer's Contract Labor Administrator will notify Seller of the personnel selected and establish individual labor rates at the time of hire, and any subsequent increases in the labor rates, if approved, as set forth in the clause entitled "Increase in Direct Labor Hourly Rate" set forth herein below. Seller is required to pay its personnel not less than the labor rate as established in agreement with Buyer.
- I. Seller shall promptly confirm availability of personnel and obtain approval of start date(s) from Buyer's Contract Labor Administrator.
- J. Nothing herein shall affect Buyer's rights, set forth elsewhere in this Agreement, to deem any of Seller's personnel unacceptable and to reject such personnel accordingly.

55. PRE-EMPLOYMENT DRUG TESTING.

Except for Seller's personnel whose Services Buyer determines may not exceed thirty (30) days in duration, Seller agrees each person assigned to perform Services hereunder shall be required to complete a drug test as set forth in Addendum A, entitled "Drug Free Workplace," which is by this reference made a part of this Order. The drug test must have been completed within one year from the date the individual begins performing Services for Buyer. If Seller's

personnel are extended beyond thirty (30) days, Seller shall perform a drug test upon receipt of request from Buyer.

56. BACKGROUND INVESTIGATIONS.

See Addendum B.

57. REASONABLE SUSPICION DRUG AND ALCOHOL TESTING.

When the appearance or the behavior of Seller personnel causes Buyer to reasonably suspect the influence of drugs or alcohol (i.e., slurred speech, body or breath odor, dilated or constricted pupils, unsteady gait, possession of drugs or alcohol, or other impairments), Buyer may direct Seller to perform drug/alcohol testing per Addendum A. Such testing shall be accomplished as soon as possible after Buyer makes a request, but not later than eight (8) hours after request by Buyer. Results shall be reported to Buyer within twenty-four (24) hours of receipt by Seller.

58. DRUG TESTING, BACKGROUND INVESTIGATIONS AND OTHER MEDICAL SCREENING COSTS.

- A. Buyer shall reimburse Seller for the actual amount paid by Seller for each drug test, background investigation, or other required medical screening; provided that:
 - 1. The individual performs services for Buyer pursuant to this Order; and
 - 2. Seller submits an invoice, along with supporting information from the provider of such services; and
- B. No overhead, profit or other costs shall be added to the invoice amount. All invoices must reflect reasonable and actual charges for the service(s) performed.

59. RELEASE OF SELLER'S EMPLOYEES.

Seller agrees that any Seller restrictions regarding Buyer's employment of personnel furnished to Buyer during the term of this Order will be waived upon Buyer's request and Seller will release, effective as of the date of Buyer's request, such personnel from any covenants in their individual employment agreements which prohibit for any specified period of time their subsequent employment in any manner by Buyer. No employment fee shall be assessed for release of employees.

60. MILITARY SECURITY REQUIREMENTS.

- A. The provisions of this clause shall apply to the extent that this Order involves access to information classified "Top Secret", "Secret", or "Confidential". If Seller's employees require access to classified material under the terms of any Order, a DD254 must be issued prior to personnel reporting to Buyer's facility.
- B. Seller agrees to provide and maintain a system of security controls within its own organization, in accordance with (i) the requirements of the current edition of the National Industrial Security Program Operating Manual ("NISPOM"), as in effect on the date of this Order, which manual is hereby incorporated by reference and made a part of this Order, and (ii) any amendments to said manual required by the demands of national security, as determined by the Government and made

after the date of this Order, notice of which has been furnished to Seller.

- C. The Government has agreed that it shall indicate, when necessary, by classification ("Top Secret", "Secret", or "Confidential"), the degree of importance to the national defense of information pertaining to supplies, Services, and other matters to be furnished to Buyer by the Government, and Buyer shall give written notice of such classification to Seller and of any subsequent changes thereto. Seller is authorized to rely on any letter or other written instrument signed by the Contracting Officer or Buyer changing the security classification of matter.
- D. Designated representatives of the Government responsible for inspection pertaining to industrial plant security shall have the right to inspect, at all reasonable times, the procedures, methods and facilities utilized by Seller in complying with the requirements of the terms and conditions of this clause. Should the Government, through its authorized representatives, determine that Seller's security methods, procedures, or facilities do not conform to such requirements, it shall submit a written report to Seller advising of the proper actions to be taken in order to effect compliance with such requirements.

61. WORKING CONDITIONS AND PERSONAL PROPERTY.

- A. Buyer shall furnish suitable working space and all necessary facilities and materials. Personal tools (if required) shall be furnished by Seller, or its personnel, unless otherwise agreed in writing by Buyer. All Work performed hereunder shall be subject to inspection by Buyer at all reasonable times.
- B. Upon completion or termination of this Order, or at such other times as Buyer may direct, Seller shall return to Buyer all supplies or any other property furnished by Buyer or produced or reproduced by Seller in connection with Work to be performed hereunder and remove from the premises where Work is performed any equipment or supplies belonging to Seller.

62. REASSIGNMENT.

- A. At the conclusion of any Order or this Order, whether by termination or expiration, all Seller personnel assigned by Seller to Buyer under the concluded Order may be solicited for either direct employment with Buyer or reassignment to Buyer pursuant to Orders awarded to another Supplier. Seller hereby waives and agrees not to assert any objection it may have to such direct employment or reassignment, based on Seller's employment agreement with its contract labor employees.

- B. If any Contract Labor personnel are reassigned pursuant to paragraph A above, Seller is responsible for payment of: (1) all year-end holidays earned and (2) prorated vacation accrued through the last date the reassigned employee was employed by Seller.

63. EXAMINATION OF RECORDS.

- A. Seller agrees that Buyer or the Comptroller General of the United States, or any duly authorized representatives, shall, until the expiration of three (3) years after final payment under this Order, have access to and the right to examine any directly pertinent books, documents, papers and records of Seller involving transactions related to this Order.
- B. Buyer shall have the right to perform payroll audits from time to time. Seller shall have available, at a minimum, the following documents:
 - 1. Each Contract Labor's W-2 form.
 - 2. Each Contract Labor's W-2 form for prior years, if applicable.
 - 3. Payroll checks and withholding information.
 - 4. Canceled checks.
 - 5. Employer Quarterly Report of Wages Paid to applicable personnel.
- C. Seller agrees to include, in all subcontracts issued hereunder, a provision to the effect that the Sub-Seller agrees Buyer or the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such Sub-Seller involving transactions related to the subcontract.

64. COMPOSITION OF SELLER.

If Seller is comprised of more than one legal entity, each such entity shall be jointly and severally liable to Buyer under this Order.

65. SUPERSEDURE.

The terms and provisions herein contained constitute the entire agreement between the Parties and shall supersede all the printed terms and conditions appearing on the Orders issued hereunder, and all previous communications, representations or agreements, either oral or written, between the Parties hereto, with respect to the subject matter hereof, including, without limitation, any telegraphic authorizations issued by Buyer and accepted by Seller.

66. NOTICES.

Any notices required or authorized to be given hereunder shall be in writing and sent by certified mail to the Buyer.

ADDENDUM A

DRUG FREE WORKPLACE

Seller shall implement a program in compliance with the federal Drug Free Workplace Act of 1988 and ensure all personnel who will perform Service hereunder for more than thirty (30) days have satisfactorily completed a test for the presence of illegal drugs pursuant to the program (hereinafter "Drug Test") within the past year. All Drug Tests must be performed by a U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory. Seller shall indemnify, defend and hold harmless Buyer from any liability with respect to Drug Tests or handling of Drug Test results.

All newly assigned personnel scheduled to perform Service for more than 30 days must have satisfactorily completed the Drug Test with negative results within the past year prior to reporting to Buyer. Seller shall provide the certification set forth below, on Seller's stationery, for each newly assigned individual at the time the individual first reports to Buyer; provided however, Buyer's Contract Labor Administrator may permit, at his/her sole discretion, newly assigned personnel to perform Services for up to five (5) workdays pending receipt of Drug Test results.

Seller's personnel whose initial assignment was scheduled for 30 days or less and whose assignment is subsequently extended to exceed 30 days, based on mutual agreement of

Buyer and Seller, shall be subject to a Drug Test by Seller. Unless previously performed within one year from the date of request by Buyer, such Drug Test shall be conducted within five (5) workdays of the date of agreement to extend such personnel. The certification set forth below shall be submitted from Seller to Buyer for each individual. Personnel shall continue performing Services pending receipt of Drug Test results.

Seller personnel who test positive for the presence of illegal drugs are subject to dismissal. After an individual tests positive for illegal drugs on a Drug Test, Seller shall wait at least six months before referring the individual for a position with Buyer and the individual must successfully complete a Drug Test before being considered for assignment by Buyer.

Buyer may waive receipt of certification for up to five (5) days pending receipt of test results.

"I hereby confirm the contractually required testing for the presence of illegal drugs performed on (name of the individual) by a U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory has been satisfactorily completed with negative results within the past year."

ADDENDUM B

BACKGROUND INVESTIGATION

1. Seller must complete background investigations (BI's) on all newly assigned personnel who will perform Service hereunder. As a minimum, BI's will:
 - A. Verify with all employers over the last seven years:
 - (1) Employment;
 - (2) Position;
 - (3) Salary;
 - (4) Reason for termination;
 - (5) Eligibility for rehire;
 - (6) Reputation for honesty, integrity, reliability, stability; and
 - (7) Competence.
 - B. Verify with the designated institution:
 - (1) The highest or latest claimed college degree; and
 - (2) Professional licenses or certifications.
 - C. Review public records to determine criminal convictions history in each city the candidate has resided or worked during the past seven years, including appropriate state Department of Motor Vehicles to determine violation convictions history.

NOTE: Only convictions information can be solicited, collected, retained, or considered.
 - D. Include interview of at least two work related references.
 - E. Verify Military Service to include character of discharge [this may be done by reviewing the individual's copy of his/her DD Form 214, Report of Separation (or equivalent)].
 - F. Include a credit history for candidates to fill positions designated as "sensitive" by Buyer.

NOTE: Sensitive positions are those that require special trustworthiness and honesty, as designated by senior management, the Contract Labor Representative, or the hiring manager. Jobs so designated may involve access to or control of cash and/or access to sensitive information, such as audit, legal or security, etc.
2. Seller will provide the certification set forth below, on Seller's stationery, for each newly assigned individual at the time the individual first reports to Buyer.

"I hereby confirm the contractually required background investigation performed on (name of the individual) by the investigative firm, (name of investigative firm):

 - A. ☐ Has been completed and a thorough review of the investigative report disclosed only favorable information. A copy of the investigative report is provided as an enclosure to this certification.
 - B. ☐ Has been completed and a copy of the investigation report is provided as an enclosure to this certification. A thorough review of the investigation report disclosed unfavorable information in the area(s) indicated:
 - ☐ Education and/or professional license(s) or certification(s)
 - ☐ Employment
 - ☐ Criminal and/or driving record
 - ☐ References
 - ☐ Credit
 - ☐ Other. Identify: _____
 - C. ☐ Has not been completed, but will be completed within five (5) work days. Furthermore, an updated certification and the investigative report will be provided to Buyer upon completion of the background investigation."