



BMS 6.7.4 PURCHASE ORDER PROVISIONS – COMMERCIAL ITEMS

The following provisions, including all the modification(s)/amendment(s) referenced herein, are incorporated as part of this purchase order. These provisions do not supersede or replace any prime contractor flow-downs with the commercial or government entity nor any executed subcontract or other agreements between the parties. The commencement of performance, services rendered against the issued purchase order or submitting an invoice against issued purchase order, Seller hereby agrees to the below terms and conditions, and any terms, conditions, and specifications on the purchase order. TekSynap hereby objects to and rejects any terms, conditions, or specifications contained in Seller's acceptance of this Order (or any other form or paper submitted by Seller) which differ from or add to the terms, conditions, and specifications of the purchase order. Seller agrees that the terms, conditions, and specifications of the purchase order shall prevail over any inconsistent provisions in any form or other paper submitted by Seller. As used herein, "Days" means calendar days, "Items" means those goods to be delivered (e.g., materials, equipment, products, hardware or software), and "Service" means the actions provided by Seller under this Order furnished in performance of and pursuant to this Order.

1. Seller represents and warrants to TekSynap that the Items and components provided are new (not used or reconditioned) and not of such age or so deteriorated as to impair their usefulness or safety. Seller also represents and warrants to TekSynap that all Items furnished under the Order will comply with the requirements of this Order; be free from defects in design, material, manufacture, and workmanship; will be free from liens and encumbrance; and, to the extent Seller knows such purpose, will be fit and sufficient for the purpose for which the Item was intended. If the Items furnished contain any manufacturer's warranties, Seller hereby assigns such warranties to TekSynap. Seller also represents and warrants to TekSynap that all labor provided hereunder shall be performed by qualified personnel, with diligence, and shall conform with the terms, specifications, and description of Item specified by TekSynap. Seller further represents and warrants to TekSynap that the Item(s) provided under this Order will not infringe upon the rights of any third party. These representations and warranties extend to the future performance of the Item(s) and shall continue for a period of twelve (12) months (or such longer period of time as Seller may warrant similar Item to its most favored customer) following final acceptance by TekSynap.
2. If goods are provided under the purchase order pursuant to a TekSynap Prime Contract or Subcontract subject to Trade Agreements Act, FAR 52.225-5 or other applicable laws, Seller shall comply with such provisions and provide any necessary documentation to show compliance.
3. If required to fulfill a Government request, TekSynap reserves the right to visit the Seller's facility for auditing supporting data for all cost elements of submitted invoices, or other matters relative to the issued purchase order agreement. Visits shall be scheduled at mutually agreed upon times. Any discrepancies identified shall have the appropriate credit/debit applied to the applicable purchase order agreement.
4. Termination for Cause. TekSynap may terminate all or any part of the purchase order by written notice to Seller if: (i) Seller fails to provide the Item or support services within the time specified by this Agreement or any written extension authorized by TekSynap; (ii) Seller fails to perform any other provision of this Agreement or fails to make progress, so as to endanger performance of this Agreement, and, in either of these two circumstances, does not cure the failure to TekSynap's satisfaction within ten (10) days after receipt of notice from TekSynap specifying the failure; or (iii) in the event Seller declares bankruptcy, suspension its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors. Seller shall continue work not terminated. If the Agreement is terminated for cause TekSynap may require the Seller to transfer title and deliver to TekSynap any completed Items or partially completed Items and materials, part, tool, fixtures, plans, drawings, information and Agreement rights that the Seller has specifically produced or acquired for this Agreement. Seller shall

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protect and preserve property in its possession in which TekSynap has an interest. TekSynap shall pay for completed Items and/or support services delivered and accepted in accordance with the prices set forth in the Agreement. TekSynap and Seller shall agree on the amount of payment for in process materials, title to which has been transferred and delivered to TekSynap. Failure to agree shall be a dispute and shall be settled in accordance with the terms herein. Seller must submit all claims within sixty (60) days after the effective date of termination. In no event shall TekSynap be obligated to pay Seller any amount in excess of the Agreement price. The rights and remedies provided TekSynap in this clause are in addition to any other right or remedies provided by law or in equity.

5. Termination for Convenience. TekSynap, by written notice, may terminate this order when in its best interest. In the event of termination, TekSynap shall be liable only for payment in accordance with the payment provisions of this purchase order agreement for labor hours rendered prior to the effective date of termination. Seller shall immediately cease all work terminated hereunder and cause any and all of its suppliers to cease work. TekSynap shall have no liability for such termination except for liability for Item and support services actually rendered or expenses actually incurred prior to the effective date of such termination for which payment has not been made. The Seller shall not be paid for any work performed or costs incurred that reasonably could have been avoided. Failure to agree shall be deemed a dispute and shall be settled in accordance with the terms herein. Seller must submit all claims within sixty (60) days after the effective date of termination. In no event shall TekSynap be obligated to pay Seller any amount in excess of the Agreement price. Seller shall continue work not terminated.
6. With acceptance of the provisions of this purchase order agreement, Seller certifies that the prices shown herein are not more than those which would be charged its most favored customer or the U.S. Government for the same services in like quantities under similar conditions.
7. It is understood and agreed that the Seller is an independent corporate entity or independent consultant. Performance on this purchase order does not constitute employment with TekSynap and therefore does not entitle Seller personnel to any TekSynap employee benefits or privileges. Seller shall be obligated to pay all applicable taxes, including social security, unemployment insurance and shall be adequately covered for worker's compensation insurance as applicable and required. Seller agrees to meet applicable laws as an independent business entity.
8. When a Contract Security Classification Specification (DD Form 254) is applicable to this Purchase Order, the Seller shall maintain and administer a security program in accordance with DOD 5220.00-M, "Industrial Security Manual for Safeguarding Classified Information", and DIAR 50-2, "Information Security Program", and those additional documents identified on the DD Form 254. Loss or suspension of required security clearance, as set forth in the DD Form 254, will result in the inability to perform in accordance with the terms and conditions of the PO. As a result, the purchase order and/or subcontract is subject to termination in accordance with FAR clause 52.249, Termination. TekSynap reserves the right to direct any employee of the Subcontractor to be removed from performance, direct or indirect, for reason of security violation(s) whether or not deemed of sufficient severity to warrant action to terminate the Seller's or individual's security clearance. TekSynap also reserves the right to direct any employee of the Seller to be removed for any investigation of alleged misconduct, which may, in the opinion of TekSynap, jeopardize the security of the project.
9. The Subcontractor certifies it maintains a binding insurance program covering the general, employment, errors and omissions, worker's compensation liability policies in accordance with applicable federal and state laws is in effect.
10. The level of effort for the performance of work under this tasking shall be established by this purchase order. The Subcontractor agrees to provide the total level of effort specified in each order in performance of work described in the associated statement of work for this order. No verbal direction or instruction shall change the ceiling value of this Purchase Order. All



modifications affecting cost must be in writing from an authorized TekSynap representative.

11. Effort performed in fulfilling the total level of effort obligations specified on each purchase order shall include only effort performed in direct support of this order and shall not include time and effort expended on such things as local travel to and from an employee’s usual work location, uncompensated effort while on travel status, truncated lunch periods, work (actual or inferred) at an employee’s residence or other non-work locations or other time and effort which does not have a specific and direct contribution to the tasks described in each order.
12. Subcontractor will not invoice for personnel vacancies (unfilled positions) under purchase orders issued for fixed price labor. TekSynap will not compensate subcontractor for vacancies on programs.
13. TekSynap's failure to enforce any provision of the Order or to protest any breach or default of the Order by Seller shall not be construed as evidence of (or evidence to interpret) the rights or obligations of the parties, or as a waiver of any Seller obligation or TekSynap right provided under the Order or by law. No right or remedy of TekSynap shall be deemed waived or released unless such waiver or release is in writing and signed by an authorized representative of TekSynap.
14. Transportation: Transportation shall be in accordance with the Delivery Terms specified on the front page of the Purchase Order. The instructions will be F.O.B. Destination, Freight Prepaid. "F.O.B. Destination, Freight Prepaid" means title and risk of loss pass to TekSynap at Destination Point; Seller bears and prepays freight charges; and Seller must file claims for loss, damage, or overcharges (if any) for Items in transit. TekSynap shall not be liable for insurance or premium transportation charges unless TekSynap consents to such charges in writing. All Items must be packaged in accord with the instructions specified by TekSynap and shipped by route and carrier designated by TekSynap. If TekSynap does not specify the manner of packing, route, or carrier, Seller will suitably pack and ship all Items in accord with customs and practices prevailing in the industry, following wherever applicable the precedents of previous shipments to this TekSynap and, unless otherwise specified, in the most economical mode available. Seller shall mark on all packages handling and loading instructions, shipping information, order number, item and account number, shipping date, and names and addresses of Seller and TekSynap. Seller shall be liable to TekSynap for all damages incurred directly or indirectly by TekSynap or TekSynap's Customer as a result of Seller's failure to comply with the conditions set forth in this Section.

Risk of Loss: F.O.B. Destination, Freight Prepaid - Seller shall bear the risk of any loss or damage to the Items until they are delivered in conformity to the “Ship To” address on the front page of this Purchase Order . Upon such delivery, Seller's responsibility for loss or damage shall cease, except for loss or damage resulting from Seller's negligence or fault. Notwithstanding the foregoing, Seller shall remain responsible for risk of loss of any nonconforming or rejected Work, unless such loss, destruction, or damage results from gross negligence or fault of TekSynap.

Title: Except as otherwise expressly stated in this Order, title to all Items furnished under this Order shall pass to TekSynap upon final acceptance, regardless of when or where TekSynap takes physical possession of the Items.

Delays: Seller understands that TekSynap depends upon prompt delivery by Seller at the time specified in the schedules furnished by TekSynap in order to comply with TekSynap's contractual obligations to third parties. Because time is of the essence, if delivery of the Work is not made in the quantities and at the time and manner specified, TekSynap shall have the right without liability, and in addition to its other rights and remedies under this Order and the law, to take any of the following actions: (1) direct expedited delivery of Items for which Seller shall bear all premium transportation charges and risk of loss; (2) direct acceleration of Work for which Seller shall bear all premium labor costs and other acceleration costs; (3) delay payment for a period of time equal to the lateness of such delivery or performance; and/or (4) terminate this Order by written notice effective when received by Seller as to the Work not yet

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delivered, and purchase substitute Work elsewhere and charge Seller with any loss incurred. Seller shall, in the event of a delay or threat of delay, due to any cause, in the production, delivery, of Work hereunder, immediately notify TekSynap in writing of the delay. Seller's notice shall include all relevant information with respect to such delay or threatened delay. Seller shall be liable for any damages resulting from failure to make delivery within the time called for by this Order or by any written instructions of TekSynap, except where such delay in delivery was due to causes beyond the reasonable control of Seller and Seller notifies TekSynap as required by this Section.

15. Indemnification.

Seller agrees to indemnify, defend and hold harmless TekSynap, its affiliates, subsidiaries, directors, officers, employees and agents from and against any and all actions, causes of action, liabilities, claims, expenses (including reasonable attorneys' fees and court costs), losses, damages, penalties, fines, forfeitures, suits, judgments, liens, awards and damages of any kind and nature whatsoever for (a) property damage, (b) personal injury, including death, and (c) all violations of applicable laws which arise out of, or are in any way related to Seller's or any of its suppliers' breach of obligations or responsibilities arising from this Order, or 2) failure to comply with all applicable Federal, state and local laws and regulations in the performance of this Order. Seller's obligation hereunder is not limited to insurance available to or provided by Seller or any of its suppliers. Seller expressly waives any immunity under industrial insurance, whether arising out of statute or common law, to the extent of the indemnity set forth in this Section. This duty to defend, indemnify, and hold harmless extends to any suit, liability, claim, judgment, or demand that may arise out of or in connection with the performance or nonperformance of this Order by Seller or its agents, breach of warranty by Seller or its agents, any defective Item performed or delivered by Seller or its agents, any patent infringement or misappropriation of trade secrets by Seller or its agents, any failure of Seller or its agents to pay royalties, any assertion under workers' compensation or similar acts by persons furnished by Seller or its agents, or any other breach of Seller's obligations hereunder, whether such suit, liability, claim, judgment, or demand is based upon contract, warranty, strict liability in tort, negligence, or other legal theory, and extends not only to "third party claims" but also to any direct loss suffered by TekSynap. TekSynap will inform Seller of any claim, demand, judgment, or suit asserted or instituted against it to which this provision may apply. "Agents" as used herein includes, but is not limited to, Seller's employees, subcontractors, and suppliers.

16. Seller warrants and agrees that it will comply with TekSynap's policy providing that TekSynap's employees and agents accept no gratuities or gifts from its vendors. Seller also warrants and agrees that it will comply with the Anti-Kickback provisions of 41 U.S.C. §§ 51 to 58. In addition to its other remedies provided by law or this Order, TekSynap shall have the right to deduct from the Order price the full amount of any gift or contingent fee made by Seller in breach of these warranties and may terminate this Order for default for breach of these warranties by Seller. Seller also agrees to indemnify and hold harmless TekSynap for any claims, loss, damage or expense (including, without limitation, attorneys' fees), resulting from a breach of these warranties by Seller.

17. IN ADDITION TO ANY OTHER LIMITATIONS ON TEKSYNAP'S LIABILITY SET FORTH HEREIN, IN NO EVENT SHALL TEKSYNAP, ITS EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE BY REASON OF TEKSYNAP'S BREACH OR TERMINATION OF THIS ORDER OR FOR ANY TEKSYNAP ACTS OR OMISSIONS IN CONNECTION WITH THIS ORDER FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED SCM-TMP-001 (08/12/2020) Page 6 of 9 TO, LOSS OF PROFITS OR REVENUE, LOSS OF DATA, ITEM INTERRUPTION, OR ANY CLAIMS OR DEMANDS AGAINST SELLER BY ANY OTHER ENTITY, WHETHER SUCH REMEDY IS SOUGHT IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. IN NO EVENT SHALL TEKSYNAP'S LIABILITY FOR DAMAGES IN ANY CIRCUMSTANCES SET FORTH IN THIS CLAUSE EXCEED THE PRICE PAYABLE FOR THE ITEM TO BE PERFORMED BY SELLER UNDER THE ORDER. THIS ORDER SHALL NEITHER CREATE FOR NOR GIVE



TO ANY THIRD PARTY ANY CLAIM OR RIGHT OF ACTION AGAINST SELLER OR TEKSYNAP WHICH WOULD NOT OTHERWISE ARISE WITHOUT THIS ORDER

- 18. United States Law: Seller, at its sole expense, shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations which may be applicable to the Item and Seller's performance under this Order, including, without limitation, all laws, regulations, and rules related to the safety and conditions of each job site.

Foreign Corrupt Practices Act and Anti-Bribery Laws: Seller agrees to comply with the Foreign Corrupt Practices Act and all applicable anti-bribery laws. Seller specifically represents and warrants that, in connection with the performance of its activities under this Order, neither it, nor anyone acting on its behalf, has or will, directly or indirectly, offer, pay, promise to pay, or authorize the giving of, any money or thing of value to any Government Official or to any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a Government Official, for the purpose of influencing any act or decision of such Government Official, including any act or decision to fail to perform his/her lawful duty, or for the purpose of inducing such Government Official to use his/her influence with any government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality to obtain or retain business for any person. "Government Official" means any officer, employee, agent, representative, or any other person acting in an official capacity for or on behalf of a government, government-owned or -controlled entity or instrumentality, public international organization, political party, party official or political candidate.

Seller, at its sole expense, shall comply with all applicable U.S. export control laws and regulations in the performance of this Order, including, but not limited to, the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 to 130, the Export Administration Regulations (EAR) 15 CFR Parts 730 through 799, and with all other laws, regulations, or executive orders of the United States related to the import, export, or delivery of Items contemplated by this Order such as customs laws and regulations, immigration laws and regulations, etc.

Seller, at its sole expense, agrees to determine and comply with all export license requirements, to obtain any export license or other official authorization, and to carry out any customs or immigration formalities or similar requirements for the export of any Items covered by this Order. Seller also hereby expressly agrees to bear sole responsibility for obtaining export licenses, if required, before utilizing foreign persons (as defined in 22 CFR § 120.16) in the performance of this Order, including instances where the work is to be performed on-site at any Government installation, where the foreign person will have access to export-controlled technical data, equipment or software. Seller also agrees to bear sole responsibility for all regulatory record keeping associated with the use of licenses and license exemptions/exceptions. Seller shall insert the substance of this clause in any lower-tier subcontracts it enters into in connection with this Order.

Taxes and Fees: Seller shall have sole responsibility for, and pay without reimbursement from TekSynap, all sales, value added, employment, transportation, business, income and any other taxes, duties, levies, tariffs, fees, and assessments of any sort applicable or related to any Item delivered under this Order unless this Order specifically states otherwise.

- 19. FAR and DFAR Clauses Applicable to Purchase Order:
 - [52.203-13](#), Contractor Code of Business Ethics and Conduct (JUN 2020) ([41 U.S.C. 3509](#)), if the subcontract exceeds the threshold specified in FAR [3.1004\(a\)](#) on the date of subcontract award, and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.
 - [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

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- [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).
- [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems (JUN 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause [52.204-21](#)
- [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018) (Section 1634 of Pub. L. 115-91).
- [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).
- [52.219-8](#), Utilization of Small Business Concerns (OCT 2018) ([15 U.S.C.637](#)(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR [19.702](#)(a) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.
- [52.222-21](#), *Prohibition of Segregated Facilities* (APR 2015).
- [52.222-26](#), Equal Opportunity (*Sept* 2015) (E.O.11246).
- [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ([38 U.S.C.4212\(a\)](#));
- [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ([29 U.S.C.793](#)).
- [52.222-37](#), Employment Reports on Veterans (JUN 2020) ([38 U.S.C.4212](#)).
- [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause [52.222-40](#).
- [52.222-50](#), Combating Trafficking in Persons (JAN 2019) ([22 U.S.C. chapter 78](#) and E.O. 13627).
- Alternate I (MAR 2015) of [52.222-50](#)([22 U.S.C. chapter 78](#) and E.O. 13627).
- [52.222-55](#), Minimum Wages under Executive Order 13658 (DEC 2015), if flow down is required in accordance with paragraph (k) of FAR clause [52.222-55](#).
- [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause [52.222-62](#).
- [52.224-3](#), Privacy Training (JAN 2017) ([5 U.S.C. 552a](#)) if flow down is required in accordance with [52.224-3](#)(f).
- Alternate I (JAN 2017) of [52.224-3](#), if flow down is required in accordance with [52.224-3](#)(f) and the agency specifies that only its agency-provided training is acceptable).
- [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).
- [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (DEC 2013), if flow down is required in accordance with paragraph (c) of FAR clause [52.232-40](#).
- [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. App.1241](#) and [10 U.S.C.2631](#)), if flow down is required in accordance with paragraph (d) of FAR clause [52.247-64](#)).

In the event it is determined that the Item(s) to be delivered under this Order is not a Commercial Item as defined at FAR 2.101, then Seller agrees that TekSynap’s Purchase Order Provisions if effect as of the date of the Purchase Order, and any corresponding agency flowdowns shall be applicable to this Purchase Order, in lieu of these commercial terms and conditions. Seller agrees to comply with all applicable laws, orders, rules, regulations, and ordinances

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