



Draken International LLC "Draken US"

GENERAL PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR NON-COMMERCIAL SERVICES UNDER A U.S. GOVERNMENT PRIME CONTRACT (ALL AGENCIES)

1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- a. This Agreement integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.
- b. SELLER's acknowledgement, acceptance of payment or commencement of performance, shall constitute Seller's unqualified acceptance of this Contract.
- c. Unless expressly accepted in writing by DRAKEN, additional or differing terms or conditions proposed by Seller or included in SELLER's acknowledgment are objected to by DRAKEN and have no effect.
- d. The headings used in this Agreement are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Agreement.

2. APPLICABLE LAWS

- a. This Contract and any matter arising out of or related to this Contract shall be governed by the laws of the State of Texas from which this Contract is issued by DRAKEN, without regard to its conflicts of laws provisions, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal Government.
- b. SELLER, in the performance of this Contract, shall comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses/permits and pay all fees and other required charges, and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority. SELLER, at its expense, shall provide reasonable cooperation to DRAKEN in conducting any investigation regarding the nature and scope of any failure by SELLER or its personnel to comply with applicable local, state, and federal laws, orders, rules, regulations, and ordinances that may affect the performance of SELLER's obligations under this Contract.
- c. If (i) DRAKEN's contract price or fee is reduced; (ii) DRAKEN's costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on

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DRAKEN; or (iv) DRAKEN incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, DRAKEN may proceed as provided for in (3) below.

- ii. Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if SELLER or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon DRAKEN's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on DRAKEN's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; or, if (v) the U.S. Government alleges any of the foregoing; and, as a result, (A) DRAKEN's contract price or fee is reduced; (B) DRAKEN's costs are determined to be unallowable; (C) any fines, penalties, or interest are assessed on DRAKEN; or (D) DRAKEN incurs any other costs or damages; DRAKEN may proceed as provided for in (3) below.
 - iii. Upon the occurrence of any of the circumstances, other than withholdings, identified in paragraphs (1) and (2) above, DRAKEN may make a reduction of corresponding amounts (in whole or in part) in the price of this Contract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded. In the case of withholding(s), DRAKEN may withhold the same amount from SELLER under this Contract.
- d. SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to DRAKEN hereunder is, as applicable, on the Toxic Substances Control Act (TSCA) Chemical Substances inventory compiled by the United States the Environmental Protection Agency pursuant to TSCA (15 U.S.C. Sec. 2607(b)) as amended and implemented in 40 CFR Part 710; and is designated as "active" pursuant to the TSCA Inventory Notification Rule (codified by amendments to 40 CFR Part 710 effective August 11, 2017). SELLER shall make available to DRAKEN all Safety Data Sheets for any material provided to DRAKEN, or brought or delivered to DRAKEN or its customer's premises in the performance of this Contract, as required by applicable law such as the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.
- e. Work delivered by SELLER under this Contract may be incorporated into deliverable goods for use in the European Economic Area (EEA) and subject to the European Union Regulation (EC) No 1907/2006 concerning the Registration,

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Evaluation, Authorization and Restriction of Chemicals (REACH); the Classification, Labeling and Packaging Regulation (EC) No. 1272/2008 (CLP); and the Biocidal Products Regulation (EU) 528/2012 (BPR).

- i. SELLER represents and warrants that the Work and any substances contained therein are not prohibited or restricted by, and are supplied in compliance with REACH, CLP, and BPR, and that no current requirement in REACH, CLP, or BPR prevents the sale or transport of SELLER's Work or substances in SELLER's Work in the EEA, and that all such Work and substances have been pre-registered, registered, reported, approved, and/or authorized as and to the extent required by REACH, CLP, and BPR.
 - ii. SELLER shall timely respond to any request from DRAKEN with all relevant information on the Work so that the intents of REACH, CLP, and BPR are met for communicating with downstream users (e.g., as defined in article 3(13) of REACH [any person established in the EEA using substances in the course of that person's industrial or professional activities; the definition does not include the manufacturer, importer, distributor, or consumer]), and in any case, SELLER shall provide all information necessary for DRAKEN and/or any downstream user to timely and accurately fulfill their obligations under REACH, CLP, and BPR.
 - iii. SELLER shall bear all costs, charges and expenses related to pre-registration, registration, evaluation, authorization, reporting, and approval under REACH, CLP, and BPR.
- f. SELLER shall be responsible for compliance with all requirements and obligations relating to its employees under all local, state, and federal statutes, ordinances, rules and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor or benefits related laws.
- g. SELLER shall notify DRAKEN promptly in writing if a charge of noncompliance with any law addressing occupational health and safety or protection of the environment has been filed against SELLER in connection with the performance of this Contract.
- h. Equal Opportunity for Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) Protected Veterans. (1) The clause at 41 CFR 60-300.5(a) is incorporated herein by reference. The clause applies if this Contract is for \$100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA. As used in the clause, "contractor" means "SELLER." This clause applies in addition to FAR 52.222-35 if included in this

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Contract. (2) **DRAKEN and SELLER shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

- i. **Equal Opportunity for Workers with Disabilities. (1) The clause at 41 CFR 60-741.5 is incorporated herein by reference. The clause applies in in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, as amended. As used in the clause, “contractor” means “SELLER.” This clause applies in addition to FAR 52.222-36 if included in this Contract. (2) DRAKEN and SELLER shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

3. ASSIGNMENT

- a. Any assignment of SELLER's Contract rights or delegation of SELLER's duties shall be void, unless prior written consent is given by DRAKEN. Nevertheless, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if DRAKEN is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of DRAKEN against SELLER. DRAKEN shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.

4. CHANGE IN CONTROL OF SELLER

- a. Prior to a potential change of control of SELLER and at least ninety (90) days prior to the proposed effectiveness of such change of control, SELLER will promptly notify DRAKEN in writing thereof, and provide the identity of the potential new controlling party and information on such party and the transaction as DRAKEN may request, consistent with applicable law and confidentiality restrictions.

5. CHANGES

- a. The DRAKEN Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.
- b. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, DRAKEN shall make an

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equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.

- c. SELLER must assert its right to an equitable adjustment under this clause within thirty (30) days from the date of receipt of the written change order from DRAKEN. If SELLER's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, DRAKEN shall have the right to prescribe the manner of disposition of the property.
 - d. Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.
6. COMMUNICATION WITH DRAKEN CUSTOMER
- a. SELLER shall not communicate with DRAKEN's customer or higher tier customer in connection with this Contract, except as expressly permitted by DRAKEN. This clause does not prohibit SELLER from communicating with the U.S. Government with respect to (1) matters SELLER is required by law or regulation to communicate to the Government, (2) fraud, waste, or abuse communicated to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information, (3) any matter for which this Contract, including a FAR or FAR Supplement clause included in this Contract, provides for direct communication by SELLER to the Government, or (4) any material matter pertaining to payment or utilization.
7. CONTRACT DIRECTION
- a. Only the DRAKEN Procurement Representative has authority on behalf of DRAKEN to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties.
 - b. DRAKEN engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.
 - c. Except as otherwise provided herein, all notices to be furnished by SELLER shall be in writing and sent to the DRAKEN Procurement Representative.
8. COUNTERFEIT WORK
- a. The following definitions apply to this clause: "Counterfeit Work" means Work that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original

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manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used Work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. "Suspect Counterfeit Work" means Work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Work part is authentic.

- b. SELLER shall not deliver Counterfeit Work or Suspect Counterfeit Work to DRAKEN under this Contract.
- c. SELLER shall only purchase products to be delivered or incorporated as Work to DRAKEN directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. SELLER may use another source only if (i) the foregoing sources are unavailable, (ii) SELLER's inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the Work, and (iii) SELLER obtains the advance written approval of DRAKEN.
- d. SELLER shall maintain counterfeit risk mitigation processes in accordance with industry recognized standards and with any other specific requirements identified in this Contract.
- e. SELLER shall immediately notify DRAKEN with the pertinent facts if SELLER becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by DRAKEN, SELLER shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. SELLER, at its expense, shall provide reasonable cooperation to DRAKEN in conducting any investigation regarding the delivery of Counterfeit Work or Suspect Counterfeit Work under this Contract.
- f. This clause applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flowdown, or other provision included in this Contract addressing the authenticity of Work.
- g. In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, SELLER shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, SELLER shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation DRAKEN's costs of removing Counterfeit Work, of installing replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies DRAKEN may have at law, equity or under other provisions of this Contract.
- h. SELLER shall include paragraphs (a) through (f) and this paragraph (h) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to DRAKEN.

9. DEFAULT

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- a. DRAKEN, by written notice, may terminate this Contract for default, in whole or in part, if SELLER (i) fails to comply with any of the terms of this Contract; (ii) fails to make progress so as to endanger performance of this Contract; (iii) fails to provide adequate assurance of future performance; (iv) files or has filed against it a petition in bankruptcy; or (v) becomes insolvent or suffers a material adverse change in financial condition. SELLER shall have ten (10) days (or such longer period as DRAKEN may authorize in writing) to cure any such failure after receipt of notice from DRAKEN. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.
- b. Following a termination for default of this Contract, SELLER shall be compensated only for Work actually delivered and accepted. DRAKEN may require SELLER to deliver to DRAKEN any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. DRAKEN and SELLER shall agree on the amount of payment for these other deliverables.
- c. Upon the occurrence and during the continuation of a default, DRAKEN may exercise any and all rights and remedies available to it under applicable law and equity, including without limitation, cancellation of this Contract. If after termination for default under this Contract, it is determined that SELLER was not in default, such termination shall be deemed a termination for convenience.
- d. SELLER shall continue all Work not terminated or cancelled.

10. DEFINITIONS

The following terms have the meanings set forth below:

- a. "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, including these General Provisions, all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- b. "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- c. "DRAKEN" means DRAKEN CORPORATION, acting through its companies or business units as identified on the face of this Contract. If a subsidiary or affiliate of DRAKEN CORPORATION is identified on the face of this Contract, then "DRAKEN" means that subsidiary or affiliate.
- d. "DRAKEN Procurement Representative" means a person authorized by DRAKEN's cognizant procurement organization to administer and/or execute this Contract.

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- e. "SELLER" means the party identified on the face of this Contract with whom DRAKEN is contracting.
- f. "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

11. DISPUTES

- a. All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of under or in connection with this Contract.
- b. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by DRAKEN.
- c. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other] Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

12. ELECTRONIC CONTRACTING

- a. The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature.

13. EXPORT CONTROL

- a. SELLER shall comply with all applicable U.S. export control laws and economic sanctions laws and regulations, specifically including but not limited to the International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120 et seq.; the Export Control Reform Act of 2018; the Export Administration Regulations, 15 C.F.R. 730-774; and the Foreign Assets Control Regulations, 31 C.F.R. 500-598 (collectively, "Trade Control Laws").
- b. SELLER shall notify DRAKEN if any deliverable under this Contract is restricted by applicable Trade Control Laws. Before providing DRAKEN any item or data controlled under any of the Trade Control Laws, SELLER shall provide in writing to the DRAKEN Procurement Representative the export classification of any such item or controlled data (i.e. the export classification under the EAR, ITAR, EU List of Dual Use Items and Technology, Wassenaar Arrangement's List of Dual-Use Goods and Technologies or other applicable export control list) and shall notify the DRAKEN Procurement Representative in writing of any changes to the export classification information of the item or controlled data. SELLER represents that an official authorized to bind the SELLER has determined that the SELLER or the designer, manufacturer, supplier or other source of the Work has properly determined their export classification.

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- c. SELLER shall not export, re-export, transfer, disclose or otherwise provide or make accessible DRAKEN's technical data and/or hardware controlled by Trade Control Laws ("Export Controlled Information") to any persons, or entities not authorized to receive or have access to the data, services and/or hardware, including third country/dual national employees, lower-tier subcontractors and sub-licensees, or modify or divert such Export Controlled Information to any military application unless SELLER receives advance, written authorization from DRAKEN and verification of any required export authorization is in place. SELLER shall not provide a defense service as defined by the Trade Control Laws using any or all of DRAKEN's technical data and/or hardware. Upon DRAKEN's request, SELLER shall demonstrate to DRAKEN's reasonable satisfaction, SELLER's and SELLER's lower-tier subcontractors' compliance with this clause and all Trade Control Laws. To the extent SELLER's Work provided under this Contract include packing, labeling, processing, and/or handling exports for DRAKEN, SELLER shall maintain an auditable process that assures accurate packing, labeling, processing, and handling of such exports. SELLER shall also promptly notify DRAKEN if it becomes aware of any failure by SELLER or SELLER's lower-tier subcontractors to comply with this clause and shall cooperate with DRAKEN in any investigation of such failure to comply.
- d. SELLER hereby represents that neither SELLER nor any parent, subsidiary, affiliate or sublicensee or sub-tier supplier of SELLER is included on any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security ("BIS"), or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls, listed, the ITAR §126.1 Restricted Parties List, or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom (collectively, "Restricted Party Lists"). SELLER will provide prompt notice to DRAKEN, in adherence with applicable laws, the confidentiality restriction of the change of control agreement from the acquiring party of a change of control of SELLER, or any parent, subsidiary or affiliate of SELLER, or any sublicensee or sub-tier supplier of SELLER, which becomes listed or their ownership is listed on any Restricted Party List, within or by an ITAR § 126.1 listed country, or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. or non-U.S. government entity or agency. To ensure compliance with the requirements of the applicable agency's regulations, if the intended sale or transfer of ownership is to a non-U.S. person or entity, SELLER shall provide DRAKEN with notice at least 90 days prior to the effectiveness of such change of control.
- e. If SELLER is engaged in the business of exporting manufacturing (whether exporting or not) or brokering defense articles or furnishing defense services,

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SELLER represents that it is and will continue to be registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

- f. Where SELLER is a party to or signatory under a DRAKEN Technical Assistance Agreement (TAA) or Manufacturing License Agreement (MLA), license exception or license exemption, collectively, "Export Authorization," SELLER shall provide prompt notification to the DRAKEN Procurement Representative in the event of (1) changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR or other applicable governmental restrictions, and the initiation or existence of a U.S. Government investigation, that could affect SELLER's performance under this Contract, or (2) any change by SELLER that might require DRAKEN to submit an amendment to an existing Export Authorization or request a new or replacement Export Authorization. SELLER shall provide to DRAKEN all information and documentation as may reasonably be required for DRAKEN to prepare and submit any required export license applications. Delays on SELLER's part to submit the relevant information for export licenses shall not constitute an excusable delay under this Contract.
- g. Upon completion of performance of this Contract, SELLER and its lower-tier subcontractors shall as directed by DRAKEN, return or destroy all export controlled technical data, technology, hardware or other items. SELLER shall provide a certificate of destruction for all destroyed items.
- h. SELLER shall include paragraphs (a) through (g) and this paragraph (h) of this clause or equivalent provisions in lower-tier subcontracts for the delivery of items that will be included in or delivered as Work to DRAKEN. SELLER shall immediately notify DRAKEN upon learning that any lower-tier subcontractor with which it engages has become listed on the Restricted Parties List.
- i. SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

14. EXTRAS

- a. Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

15. FURNISHED PROPERTY

- a. DRAKEN may, by written authorization, provide to SELLER property owned by either DRAKEN or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.

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- b. Title to Furnished Property shall remain in DRAKEN or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- c. Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify DRAKEN of, any loss or damage to Furnished Property. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with applicable law, the requirements of this Contract and good commercial practice.
- d. At DRAKEN's request, and/or upon completion of this Contract, SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by DRAKEN.
- e. The Government Property Clause contained in this Contract shall apply in lieu of paragraphs (a) through (d) above with respect to Government-furnished property, or other property to which the Government has title, or may take title under this Contract.
- f. SELLER shall conduct an annual inventory of DRAKEN Furnished Property by January 31st. The inventory report shall include each unique item, quantity, location of Furnished Property, arrival date, and estimated disposition date (return to DRAKEN).

16. GRATUITIES/KICKBACKS

- a. SELLER shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a DRAKEN supplier.
- b. By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

17. INDEMNITY

- a. **SELLER shall defend, indemnify, and hold harmless DRAKEN, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.**

18. INDEPENDENT CONTRACTOR RELATIONSHIP AND SELLER PERSONNEL

- a. SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract

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shall be SELLER's employees exclusively without any relation whatsoever to DRAKEN.

19. INFORMATION ASSURANCE

- a. SELLER shall not reproduce or disclose any information, knowledge, or data of DRAKEN that SELLER may receive from DRAKEN or have access to, including proprietary or confidential information of DRAKEN or of others when in possession of DRAKEN (hereinafter DRAKEN INFORMATION), without the prior written consent of DRAKEN. DRAKEN INFORMATION includes, but is not limited to, business plans, marketing information, cost estimates, forecasts, bid and proposal data, financial data, formulae, compositions, products, processes, procedures, inventions, systems, or designs. SELLER agrees not to use any DRAKEN INFORMATION for any purpose except to perform this Contract. SELLER shall maintain data protection processes and systems sufficient to adequately protect DRAKEN information and comply with any law or regulation applicable to such information.
- b. If SELLER becomes aware of any compromise of information used in the performance of this Contract or provided by DRAKEN to SELLER, its officers, employees, agents, suppliers, or subcontractors (an "Incident"), SELLER shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including notification within seventy-two (72) hours to DRAKEN after learning of the Incident. As used in this clause, "compromise" means that information has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform the Work. SELLER shall provide reasonable cooperation to DRAKEN in conducting any investigation regarding the nature and scope of any Incident. Any costs incurred in investigating or remedying Incidents shall be borne by SELLER.
- c. Prior to commencement of Work, SELLER shall have a written agreement with each of its employees performing services hereunder sufficient to enable SELLER to comply with this Clause.
- d. DRAKEN INFORMATION provided to SELLER remains the property of DRAKEN. Within thirty (30) days of the expiration or termination of this Contract or upon the request of DRAKEN, SELLER shall return or certify the destruction of all DRAKEN INFORMATION and any reproductions, and SELLER shall promptly surrender all information or proprietary data developed by SELLER in performance of this Contract, unless its retention is authorized in writing by DRAKEN.
- e. Any DRAKEN provided information identified as proprietary or subject to restrictions on public disclosure by law or regulation shall be encrypted (i) if transmitted via the Internet, or (ii) during electronic storage if potentially accessible by the Internet or otherwise by non-authorized users.

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- f. The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in a proprietary information agreement between the parties.
- g. DFARS 252.204-7012 applies to covered defense information if said clause is included in this Contract.

20. INFORMATION OF SELLER

- a. SELLER shall not provide any proprietary information to DRAKEN without prior execution of a proprietary information agreement by the parties

21. INSPECTION AND ACCEPTANCE

- a. DRAKEN and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- b. No such inspection shall relieve SELLER of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract. DRAKEN's final inspection and acceptance shall be at destination.
- c. If SELLER delivers non-conforming Work, DRAKEN may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work; or (iii) require SELLER, at SELLER's cost, to make all repairs, modifications, or replacements at the direction of DRAKEN necessary to enable such Work to comply in all respects with Contract requirements.
- d. SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

22. INSURANCE

- a. SELLER and its subcontractors shall maintain for the performance of this Contract the following insurances:
 - i. Workers' compensation insurance meeting the statutory requirements where Work will be performed;
 - ii. Employer's liability (EL) in the amount of \$1 million per each accident or per each employee for disease;
 - iii. Commercial general liability (CGL) including Products Liability and Completed Operations liability in the amount of \$1 million per occurrence and \$2 million in the aggregate annually, or in such higher amounts as DRAKEN may require;
 - iv. Automobile liability (AL) insurance covering third party bodily injury and property damage with a minimum of \$1 million per occurrence limit, or in such higher amounts as DRAKEN may require; and
 - v. Such other insurance as DRAKEN may require.

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- b. SELLER shall provide DRAKEN thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER of its obligations to maintain the required insurance. SELLER shall have its' insurers name DRAKEN as an additional insured on the CGL and AL policies for the duration of this Contract. If requested, SELLER shall provide a "Certificate of Insurance" evidencing SELLER's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of DRAKEN and is not contributory with any insurance which DRAKEN may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations herein for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Contract.

23. INTELLECTUAL PROPERTY

- a. SELLER warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Except to the extent that the U.S. Government assumes liability therefor, SELLER shall defend, indemnify, and hold harmless DRAKEN, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.
- b. SELLER's obligations under paragraph (a) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to DRAKEN's Prime Contract for infringement of a U.S. patent and DRAKEN and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorney's fees by a third party.
- c. In addition to the Government's rights in data and inventions SELLER agrees that DRAKEN, in the performance of its prime or higher tier contract obligations, shall have an unlimited, irrevocable, paid-up, royalty-free right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, transfer computer software to the Government and the Government's end customer, and prepare derivative works, and authorize others to do any, some or all of the foregoing, any and all, inventions, discoveries, improvements, maskworks and patents as well as any and all data, copyrights, reports, and works of authorship, conceived, developed, generated or delivered in performance of this Contract.

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- d. Items delivered under this Contract such as operation and maintenance manuals shall be delivered with the right to copy for internal use and/or copy and deliver with the right to use to DRAKEN's customers.
- e. The tangible medium storing copies of all reports, memoranda or other materials in written form including machine readable form, prepared by SELLER and furnished to DRAKEN pursuant to this Contract shall become the sole property of DRAKEN. Nothing in this paragraph (e) assigns ownership of SELLER's intellectual property included on such medium to DRAKEN.
- f. No other provision in this Contract, including but not limited to the Indemnity clause, shall be construed to limit the liabilities or remedies of the parties under this clause

24. NEW MATERIALS

- a. The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5, not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

25. PACKAGING AND SHIPMENT

- a. Unless otherwise specified, all Work and DRAKEN Furnished Property, if applicable, is to be packed in accordance with good commercial practice.
- b. A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the DRAKEN Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- c. Unless otherwise specified, delivery shall be FOB Place of Shipment. For international shipments the parties shall utilize Incoterms CPT 2020 Port or Destination.

26. PARTS OBSOLESCENCE

- a. DRAKEN may desire to place additional orders for Work purchased hereunder. SELLER shall provide DRAKEN with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any Work purchased under this Contract.

27. PAYMENTS, TAXES, AND DUTIES

- a. Unless otherwise provided, terms of payment shall be net forty-five (45) days from latest of the following: (1) DRAKEN's receipt of SELLER's proper invoice; (2) scheduled delivery date of the Work; or (3) actual delivery of the Work at the final destination.
- b. Each payment made shall be subject to reduction to the extent of amounts which are found by DRAKEN or SELLER not to have been properly payable, and shall also be subject to reduction for overpayments. SELLER shall promptly notify

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DRAKEN of any such overpayments and remit the amount of the overpayment except as otherwise directed by DRAKEN.

- c. DRAKEN shall have a right of setoff against payments due or at issue under this Contract or any other Contract between the parties
- d. Payment shall be deemed to have been made as of the date of mailing DRAKEN's payment or electronic funds transfer.
- e. Unless otherwise specified, prices include 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.

28. PLACE OF PERFORMANCE

- a. If SELLER intends to change the place of performance of Work under this Contract from the place(s) identified in SELLER's proposal, SELLER shall provide prior written notice to DRAKEN. Notification of changes to the place of performance from within the United States to a location outside the United States shall be provided by SELLER to DRAKEN at least six months in advance.

29. PRECEDENCE

- a. Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) face of the Purchase Order and/or Task Order, release document, or schedule (including any continuation sheets), as applicable, including any special terms and conditions; (2) this document and any supplementary document invoked in this Contract; and (3) the requirement document.

30. PRIORITY RATING

- a. If this Contract contains a DPAS rating, this Contract is a "rated order" certified for national defense, emergency preparedness, and energy program use, and SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

31. QUALITY CONTROL SYSTEM

- a. SELLER shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.
- b. Records of all quality control inspection work by SELLER shall be kept complete and available to DRAKEN and its customers.

32. RELEASE OF INFORMATION

- a. Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER or its subcontractors without the prior written approval of DRAKEN. SELLER shall not use "DRAKEN," "DRAKEN Corporation," or any

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other trademark or logo owned by DRAKEN, in whatever shape or form, without the prior written consent of DRAKEN.

33. RETENTION OF RECORDS

- a. Unless a longer period is specified in this Contract or by law or regulation, SELLER shall retain all records related to this Contract for four (4) years from the date of final payment received by SELLER. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, SELLER shall timely provide access to such records to the US Government and/or DRAKEN upon request.

34. SELLER BUSINESS SYSTEMS

- a. "SELLER Business Systems" as used in this clause means SELLER's material management and accounting system, cost estimating system, accounting system, earned value management system, property management system, and purchasing system. If SELLER's Business Systems are reviewed and approved by a Government agency, SELLER shall provide prompt notice to DRAKEN whenever there is a material change in the status of the Government's approval or determination of adequacy of any of SELLER's Business Systems.

35. SEVERABILITY

- a. Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

36. STOP WORK

- a. SELLER shall stop Work for up to ninety (90) days in accordance with any written notice received from DRAKEN, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- b. Within such period, DRAKEN shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

37. SURVIVABILITY

- a. All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of this Contract, including but not limited to warranties, indemnifications, intellectual property

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(including rights to and protection of intellectual property and proprietary information), and product support obligations shall survive the expiration or termination of this Contract.

38. TERMINATION FOR CONVENIENCE

- a. DRAKEN reserves the right to terminate this Contract, or any part hereof, for its convenience. DRAKEN shall terminate by delivering to SELLER a Notice of Termination specifying the extent of termination and the effective date. In the event of such termination, SELLER shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Contract, SELLER shall be paid a percentage of the Contract price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges SELLER can demonstrate to the satisfaction of DRAKEN using its standard record keeping system have resulted from the termination. SELLER shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.
- b. In no event shall DRAKEN be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.
- c. SELLER shall continue all Work not terminated.

39. TIMELY PERFORMANCE

- a. SELLER's timely performance is a critical element of this Contract.
- b. SELLER shall provide DRAKEN status of performance of this Contract when requested. In addition, if SELLER becomes aware of an impending labor dispute involving SELLER or any lower tier subcontractor, or any other difficulty in performing the Work, SELLER shall timely notify DRAKEN, in writing, giving pertinent details. These notifications shall not change any delivery schedule.

40. TRAVEL COSTS

- a. All travel incurred by SELLER in the performance of this Contract is included within the Contract price and shall not be separately reimbursed by DRAKEN unless such travel is expressly authorized in writing in advance by DRAKEN's Procurement Representative.
- b. When travel is authorized under this Contract, SELLER shall be reimbursed only for necessary, reasonable, and actual travel expenses for transportation, lodging, meals and incidental expenses only to the extent that they do not exceed the maximum per diem rate in effect at the time of travel, as set forth in the United States Federal Travel Regulations for the area of travel authorized under this Contract. Air travel shall be reimbursed for coach class only. Lodging expenses are reimbursable only where incurred from establishments serving the general public.

- c. SELLER shall provide a detailed summary of all such costs by category of expense with each invoice. SELLER shall provide a legible receipt for each claimed individual expense exceeding \$75.00.

41. USE OF FREE, LIBRE AND OPEN SOURCE SOFTWARE (FLOSS)

- a. This clause only applies to Work that includes the delivery of software (including software residing on hardware).
- b. SELLER shall disclose to DRAKEN in writing any FLOSS that will be used or delivered in connection with this Contract and shall obtain DRAKEN's prior written consent before using or delivering such FLOSS in connection with this Contract. DRAKEN may withhold such consent in its sole discretion.
- c. As used herein, "FLOSS License" means the General Public License (GPL), Lesser/Library GPL, (LGPL), the Affero GPL (AGPL), the Apache license, the Berkeley Software Distribution (BSD) license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License (MPL), or variations thereof, including without limitation licenses referred to as "Free Software License", "Open Source License", "Public License", or "GPL Compatible License."
- d. As used herein, "FLOSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a FLOSS License, or (3) software provided under a license that (a) subjects the delivered software to any FLOSS License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates DRAKEN to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.
- e. **SELLER shall defend, indemnify, and hold harmless DRAKEN, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney's fees, relating to use in connection with this Contract or the delivery of FLOSS. No other provision in this Contract, including but not limited to the Indemnity clause, shall be construed to limit the liabilities or remedies of the parties for the use of FLOSS in connection with this Contract or for the delivery of FLOSS under this Contract.**

42. USE OF DELIVERABLE TECHNICAL DATA AND COMPUTER SOFTWARE

- a. This clause applies only to technical data or computer software delivered by SELLER to DRAKEN under this Contract.
- b. As used in this clause "Nonconforming Marking" means any confidential, proprietary, or other restrictive-use markings that are not expressly permitted by applicable FAR, DFARS, NASA FAR Supplement or other applicable U.S.

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Government agency acquisition clauses incorporated into this Contract. SELLER shall not deliver technical data or computer software that contains Nonconforming Markings. On behalf of the Government, DRAKEN may notify SELLER of such a Nonconforming Marking. If SELLER fails to remove or correct such marking within sixty (60) days after such notification, DRAKEN may, notwithstanding any other provision of this Contract, ignore or, at SELLER's expense, remove or obliterate any such Nonconforming Marking as may be on technical data or computer software delivered by SELLER.

43. WAIVERS, APPROVALS, AND REMEDIES

- a. Failure by either party to enforce any of the provisions of this Contract or applicable law shall not constitute a waiver of the requirements of such provisions or law, or as a waiver of the right of a party thereafter to enforce such provision or law.
- b. DRAKEN's approval of documents shall not relieve SELLER of its obligation to comply with the requirements of this Contract.
- c. The rights and remedies of either party in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

44. WARRANTY

- a. SELLER warrants that it is and shall remain free of any obligation or restriction which would interfere or be inconsistent with or present a conflict of interest concerning the Work to be furnished by SELLER under this Contract.
- b. SELLER warrants that it will perform the services under this Contract with the degree of high professional skill and sound practices and judgment which is normally exercised by recognized professional firms with respect to services of a similar nature.
- c. SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any non-conforming Work is identified within the warranty period, SELLER, at DRAKEN's option, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work, return of non-conforming Work, and re-performance of Work shall be at SELLER's expense. If repair, or replacement, or reperformance of Work is not timely, DRAKEN may elect to return, reperform, repair, replace, or reprocur the Work at SELLER's expense. All warranties shall run to DRAKEN and its customers.

45. WORK ON DRAKEN AND THIRD PARTY PREMISES

- a. "Premises" as used in this clause means premises of DRAKEN, its customers, or other third parties where Work is being performed.

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- b. SELLER shall ensure that SELLER personnel working on Premises comply with any on-premises policies and: (i) do not bring weapons of any kind onto Premises; (ii) do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on Premises; (iii) do not possess hazardous materials of any kind on Premises without DRAKEN's authorization; (iv) remain in authorized areas only; (v) do not conduct any non-DRAKEN related business activities (such as interviews, hirings, dismissals or personal solicitations) on Premises, (vi) do not send or receive non-DRAKEN related mail through DRAKEN's or third party's mail systems; (vii) do not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on Premises without DRAKEN's written permission or as permitted by law; and (viii) follow instruction from DRAKEN in the event of an actual or imminent safety or environmental hazard on Premises.
- c. All persons, property, and vehicles entering or leaving Premises are subject to search.
- d. SELLER shall promptly notify DRAKEN and provide a report of any accidents or security incidents involving loss of or misuse or damage to DRAKEN, customer, or third party intellectual or physical assets, and all physical altercations, assaults, or harassment.
- e. (i) Prior to entry on Premises, SELLER shall coordinate with DRAKEN to gain access. SELLER shall provide information reasonably required by DRAKEN to ensure proper identification of personnel, including, but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status.
 - ii. SELLER personnel requiring access to Premises shall, prior to entry, be screened by SELLER at no charge to DRAKEN through the DRAKEN Contractor Screen Program, or otherwise screened by SELLER in a manner satisfactory to DRAKEN.
- f. SELLER shall ensure that SELLER personnel: (i) do not remove DRAKEN, customer, or third party assets from Premises without DRAKEN authorization; (ii) use DRAKEN, customer, or third party assets only for purposes of this Contract; (iii) only connect with, interact with or use computer resources, networks, programs, tools or routines authorized by DRAKEN; and (iv) do not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. DRAKEN may periodically audit SELLER's data residing on DRAKEN, customer, or third party assets on Premises.
- g. DRAKEN may, at its sole discretion, have SELLER remove any specified employee of SELLER from Premises and require that such employee not be reassigned to any Premises under this Contract.
- h. Violation of this clause may result in termination of this Contract in addition to any other remedy available to DRAKEN at law or in equity. SELLER shall reimburse DRAKEN, customer, or third party for any unauthorized use of DRAKEN, customer, or third party assets.

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- i. SELLER shall advise the DRAKEN Procurement Representative of any unauthorized direction or course of conduct.
- j. SELLER shall immediately report to DRAKEN all emergencies (e.g., medical, fire, spills or release of any hazardous material) and non-emergency incidents (e.g., job-related injuries or illnesses) affecting the Work. SELLER shall provide DRAKEN with a copy of any reports of such incidents SELLER makes to governmental authorities.