

**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS  
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30**

1. REQUISITION NO. PAGE 1 OF 47

2. CONTRACT NO. 36C10G19D0092  
 3. AWARD/EFFECTIVE DATE 10-01-2019  
 4. ORDER NO.  
 5. SOLICITATION NUMBER 36C10G19R0025  
 6. SOLICITATION ISSUE DATE 08-15-2019

7. FOR SOLICITATION INFORMATION CALL: a. NAME Mark Blevins  
 b. TELEPHONE NO. (No Collect Calls) 202-400-5716  
 8. OFFER DUE DATE/LOCAL TIME 08-19-2019

9. ISSUED BY U.S. Department of Veterans Affairs  
 OPAL | Strategic Acquisition Center  
 10300 Spotsylvania Ave | STE 400  
 Fredericksburg VA 22408-2697  
 CODE 36C10G  
 10. THIS ACQUISITION IS  UNRESTRICTED OR  SET ASIDE: \_\_\_\_\_ % FOR:  
 SMALL BUSINESS  WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM NAICS: 339112  
 HUBZONE SMALL BUSINESS  EDWOSB  
 SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS  8(A) Y SIZE STANDARD: 1000 Employees

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED  SEE SCHEDULE  
 12. DISCOUNT TERMS NET 30 DAYS  
 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)   
 13b. RATING N/A  
 14. METHOD OF SOLICITATION  RFQ  IFB  RFP

15. DELIVER TO CODE Deliveries IAW each order  
 16. ADMINISTERED BY CODE 36C10G  
 U.S. Department of Veterans Affairs  
 OPAL | Strategic Acquisition Center  
 10300 Spotsylvania Ave | STE 400  
 Fredericksburg VA 22408-2697

17a. CONTRACTOR/OFFEROR CODE 1URE3 FACILITY CODE  
 INTUITIVE SURGICAL, INC.  
 1266 KIFER RD  
 SUNNYVALE CA 94086  
 TELEPHONE NO. DUNS: 93864702 DUNS+4:  
 18a. PAYMENT WILL BE MADE BY CODE VAFSC  
 U.S. Department of Veterans Affairs  
 Financial Services Center  
 PO BOX 149971  
 (see Section B.3 invoicing/payment)  
 Austin TX 78714-8917  
 PHONE: 1 (877) 489-6135 FAX:

17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER  
 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED  SEE ADDENDUM

19. ITEM NO.	20. See CONTINUATION Page SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	Requirements Contract for da Vinci Surgical Robotic Device and supplies / consumables. 12-month base with four (4) 12-month option year periods.  SEE CONTINUATION PAGE FOR ALL DETAILS  (Use Reverse and/or Attach Additional Sheets as Necessary)				

25. ACCOUNTING AND APPROPRIATION DATA See CONTINUATION Page  
 26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$0.00

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED.  
 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED  
 29. AWARD OF CONTRACT: REF. \_\_\_\_\_ OFFER DATED \_\_\_\_\_ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR  
 31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)  
 30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT) Marc G. Frida (Sep 27, 2019)  
 30c. DATE SIGNED  
 31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) ZACHARY WILCOX  
 31c. DATE SIGNED 9/27/2019

## Table of Contents

<b>SECTION A</b> .....	<b>1</b>
A.1 SF 1449 SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS.....	1
<b>SECTION B - CONTINUATION OF SF 1449 BLOCKS</b> .....	<b>4</b>
B.1 CONTRACT ADMINISTRATION DATA.....	4
<b>SECTION C - CONTRACT CLAUSES</b> .....	<b>10</b>
C.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) .....	10
C.2 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984).....	12
C.3 52.203-99 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS (DEVIATION) (FEB 2015).....	12
C.4 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (OCT 2018) .....	13
C.5 52.216-18 ORDERING (OCT 1995).....	22
C.6 MANDATORY WRITTEN DISCLOSURES.....	22
C.8 FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999).....	23
C.9 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000) .....	24
C.10 52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (OCT 2018) .....	24
<b>SECTION D - CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS</b> .....	<b>30</b>
1.0 SCOPE.....	30
1.1 Background .....	30
2.0 APPLICABLE DOCUMENTS .....	30
3.0 REQUIREMENT.....	31
3.1 System Components and Accessories.....	31
3.2 System Documentation and Site Survey .....	32
3.3 FDA Requirement .....	33
4.0 PERFORMANCE DETAILS .....	33
4.1 Performance Period .....	33
4.2 Hours of Operation.....	34
4.3 Federal Holidays.....	34
4.4 Place of Performance .....	34
4.5 Travel.....	34
5.0 TRAINING.....	34
5.2 Off-site Surgeon Training (Porcine Multi-Port or Single Site) .....	34

<b>6.0</b>	<b>DELIVERY AND ACCEPTANCE</b> .....	<b>36</b>
<b>6.2</b>	<b>Testing and Certification</b> .....	<b>36</b>
<b>6.3</b>	<b>Government Acceptance Testing</b> .....	<b>37</b>
<b>7.0</b>	<b>SOFTWARE LICENSES AND RESTRICTIONS</b> .....	<b>37</b>
<b>7.1</b>	<b>Software License for the Skills Simulator</b> .....	<b>37</b>
<b>8.0</b>	<b>SYSTEM WARRANTY</b> .....	<b>38</b>
<b>8.1</b>	<b>System Service and Maintenance</b> .....	<b>38</b>
<b>8.2</b>	<b>Software Updates</b> .....	<b>39</b>
<b>8.3</b>	<b>Response</b> .....	<b>39</b>
<b>9.0</b>	<b>PRODUCT MODIFICATION, REMOVAL OR RECALL</b> .....	<b>40</b>
<b>10.0</b>	<b>COMPLIANCE WITH GENERAL SAFETY REGULATIONS</b> .....	<b>40</b>
<b>11.0</b>	<b>COMPLIANCE WITH SECURITY REQUIREMENTS</b> .....	<b>40</b>
<b>12.0</b>	<b>CONFORMANCE STANDARDS</b> .....	<b>41</b>
<b>13.0</b>	<b>RESERVED</b> .....	<b>41</b>
	<b>Security Incident Investigation</b> .....	<b>42</b>
	<b>Training</b> .....	<b>42</b>
<b>15.0</b>	<b>QUARTERLY REPORTING</b> .....	<b>42</b>
<b>16.0</b>	<b>SYSTEM TRADE-IN / UPGRADE</b> .....	<b>43</b>
<b>17.0</b>	<b>SUBCONTRACTING PLAN</b> .....	<b>44</b>
<b>18.0</b>	<b>OTHER DIRECT COSTS (ODC)</b> .....	<b>44</b>
<b>19.0</b>	<b>DEFINITIONS/ACRONYMS</b> .....	<b>44</b>
<b>B.5</b>	<b>ADDITIONAL TERMS AND CONDITIONS.</b> .....	<b>46</b>

## SECTION B - CONTINUATION OF SF 1449 BLOCKS

### B.1 CONTRACT ADMINISTRATION DATA

Contract Administration: The Contractor shall contact the Contracting Officer on all matters pertaining to administration. Only the Contracting Officer is authorized to make commitments or issue changes that will affect the price, quantity or delivery terms of the contract. In the event a new Contracting Officer and/or Contract Specialist is assigned to the subject contract, no contract modification is required. All contractual administration matters will be handled by the following individuals:

- a. CONTRACTOR:
- Jason Lamb  
Director of Government Accounts  
[Jason.lamb@intusurg.com](mailto:Jason.lamb@intusurg.com)  
(770) 570-6623
- Drew Ferguson  
Contracts Negotiator  
[Drew.ferguson@intusurg.com](mailto:Drew.ferguson@intusurg.com)  
(678) 291-1318
- b. GOVERNMENT:
- Contracting Officer 36C10G  
Zachary Wilcox  
[Zachary.wilcox@va.gov](mailto:Zachary.wilcox@va.gov)  
U.S. Department of Veterans Affairs  
OPAL | Strategic Acquisition Center  
10300 Spotsylvania Ave | STE 400  
Fredericksburg VA 22408-2697
- Contracting Specialist 36C10G  
Mark Blevins  
[Mark.blevins2@va.gov](mailto:Mark.blevins2@va.gov)  
U.S. Department of Veterans Affairs  
OPAL | Strategic Acquisition Center  
10300 Spotsylvania Ave | STE 400  
Fredericksburg VA 22408-2697
- c. PROGRAM MANAGER
- Daniel R. King (Dan)  
Project Manager  
VHA CO Procurement & Logistics Office (10NA2)  
10300 Spotsylvania Avenue  
Fredericksburg, Virginia 22408  
202-281-4250 (Mobile)  
202-632-9005 (VOIP)  
[daniel.king4@va.gov](mailto:daniel.king4@va.gov)

- d. CORs/Ordering Officers Determined by individual orders at each requiring activity

2. CONTRACTOR REMITTANCE ADDRESS: All payments by the Government to the contractor will be made in accordance with:

- 52.232-33, Payment by Electronic Funds Transfer—System For Award Management, or  
 52.232-36, Payment by Third Party

3. INVOICES: Invoices shall be submitted in arrears:

- a. Quarterly   
b. Semi-Annually   
c. Other  Upon Inspection/Acceptance as set forth in paragraph 6.2 of the Statement of Work and delivered to location specified in Delivery/Task Orders. In the event Credit Card purchases are possible, then the contractor and government shall create a process to implement this option.

4. GOVERNMENT INVOICE ADDRESS: All Invoices from the contractor shall be submitted electronically in accordance with VAAR Clause 852.232-72 Electronic Submission of Payment Requests.

TUNGSTEN (aka OB10) ELECTRONIC INVOICE SUBMISSION

FSC e-INVOICE PROGRAM THRU AUSTIN PORTAL

FSC MANDATORY ELECTRONIC INVOICE SUBMISSION FOR AUSTIN PAYMENTS

Contracting POC: Zachary Wilcox | Mark Blevins  
COR / Ordering Officers ("OO") (Contracting Officers Representative): TBD  
Contract: 36C10G-19-D -0092

Vendor Electronic Invoice Submission Methods:

Fax, email and scanned documents are not acceptable forms of submission for payment requests. Electronic form means an automated system transmitting information electronically according to the accepted data transmissions below.

- VA's Electronic Invoice Presentment and Payment System – The Financial Services Center (FSC) in Austin, TX uses a third-party contractor, Tungsten, to transition vendors from paper to electronic invoice submission. Please go to this website:

<http://www.tungsten-network.com/US/en/veterans-affairs/> to begin submitting electronic invoices, free of charge.

- A system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) chartered by the American National Standards Institute (ANSI). The X12 EDI Web site is <http://www.x12.org>.

Vendor e-invoice Set-up information:

Please contact Tungsten at the phone number or email address listed below to begin submitting your electronic invoices to the VA Financial Services Center in Austin, TX for payment processing. If you have questions about the payment status of a properly submitted invoice, the e-invoicing program, or Tungsten, please contact the FSC at the phone number or email address listed below.

- Tungsten e-Invoice setup information: 1-877-489-6135
- Tungsten e-Invoice email: [VA.Registration@tungsten-network.com](mailto:VA.Registration@tungsten-network.com)
- VA TUNGSTEN Number: AAA544240062
- FSC e-Invoice contact information: 1-877-353-9791
- FSC e-Invoice email: [vafscshd@va.gov](mailto:vafscshd@va.gov)
- <http://www.fsc.va.gov/einvoice.asp>

**B.1.E. SAC 16-01 SAC Service Level Agreement Fee and Submission of Quarterly Sales Reports: Open Market. (JAN 2016)**

a. Service Level Agreement Fee.

The Service Level Agreement (SLA) fee is established by the Supply Fund Board and is provided as a means of reimbursement for customary acquisition-related services necessary to obtain contractor services and/or supplies as required. The SLA is reimbursed to the SAC based on rates established by the supply fund board and are recouped based on a percentage of total quarterly sales. The Supply Fund Board may change the percentage at any time, but typically not more than once per year. Upon a change in the SLA, the Contracting Officer (CO) shall issue a unilateral modification to apply the change to CLIN prices based upon the SLA rate change. The SAC will provide reasonable notice prior to the effective date of the change. In order to facilitate SLA reimbursement, offerors must include (imbed) the SLA fee into their prices; therefore, the fee will be reflected in the total amount charged and transparent to ordering activities.

The current SLA which applies to this contract action is 3.0%. This SLA Fee shall be imbedded in the awarded contract/agreement price(s), and offers submitted in

response to this solicitation shall include this SLA Fee in the price of every line item offered.

b. Quarterly Sales Reports.

The Contractor shall report all contract sales under this contract and submit collected SLAs as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales made under this contract by calendar quarter (January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31). Reported sales must include all sales made to all authorized contract or agreement users, whether shipped directly to the users or through Prime Vendor contractors. The report shall reflect sales by contract line item and shall segment sales by the Department of Veterans Affairs (VA) and Other Government Agencies (OGA). The reported contract sales shall include the SLA Fee and each quarterly report shall show the total SLA Fee amount collected on the reported sales. The Contractor shall maintain a consistent accounting method of sales reporting, based on the Contractor's established commercial accounting practice. The Contractor shall consistently use only one of the following acceptable points at which sales may be reported-

- i. Receipt of order;
- ii. Shipment or delivery, as applicable;
- iii. Issuance of an invoice; or
- iv. Payment.

(2) Sales under this contract/agreement shall be reported to the SAC within 60 calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports, including "zero" sales, through physical completion of the last outstanding order of the contract/agreement.

(3) The sales report signed by an authorized representative of the contractor shall be emailed to the appropriate individual(s) listed in the terms and conditions of the contract or agreement.

c. SLA Remittance

The Contractor shall remit the SLA fee to the SAC in U.S. dollars within 60 calendar days after the end of the reporting quarter and final payment shall be remitted within

60 days after physical completion of the last outstanding task order or delivery order of the contract. The SLA Fee amount collected and due shall be paid electronically. To ensure that the payment is credited properly, the contractor shall electronically transmit the SLA fee at [www.pay.gov](http://www.pay.gov) (VA Strategic Acquisition Center (SAC)); specific instructions shall be provided when the contract action resulting from this solicitation is awarded (i.e. post-award/BPA issuance conference and/or post-award letter when used in lieu of a conference).

The Government reserves the right to inspect, without further notice, such records of the Contractor as pertinent to sales under any contract or agreements resulting from this solicitation. Failure to remit the full amount of the SLA within 60 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of Federal Acquisition Regulation (FAR) Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.232-17, Interest). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the SLA, the Government shall have, in addition to the rights and remedies described in this clause, all other rights and remedies permitted by Federal law and statutes.

(End of Clause)

## **B.2. SCHEDULE OF SUPPLIES/SERVICES**

This is a nationwide Department of Veterans Affairs Requirements Contract for procurement and upgrades of the da Vinci® Robotic Surgical System, to include accessories, consumables, installation, training, proctoring services, annual warranty and maintenance services, in accordance with Statement of Work (SOW). Period of Performance is an ordering period of 60 months: Base Year with Four (4) One (1) Year Options as noted in the below CLIN structure.

Individual requirements will be issued as Firm Fixed Price Delivery/Task orders against this contract. See FAR 52.216-18 and FAR 52.216-21 for additional information. The quantity delivered will be dependent on the numbers ordered by the VA Medical Centers.

Attachment A- Pricing Schedule Spreadsheet shall be updated, as applicable, to capture all current items for sale, their respective price, as well as the imbedded 3% SLA fee, and shipping. Currently, the shipping fee for Instruments and Accessories is capped at \$20.00 per item through FEDEX. Any pricing which is rounded down in the VA's favor shall be identified. The standard Government CLIN

structure lists items sequentially, and each option period is generally designated with the first digit as corresponding to that option period.

**SECTION C - CONTRACT CLAUSES**

IAW FAR 52.301, Solicitation Provisions and Contract Clauses (Matrix), the subject requirements contract may not be able to predetermine all the contract provisions/clauses for future individual task/delivery orders. However, all applicable and required provisions/clauses as set forth in FAR 52.301 automatically flow down to all task/delivery orders as of the date the task/delivery order solicitation is issued. In the event a contract clause or solicitation provision is updated, then that updated most recent version shall automatically be inserted into any solicitation and any resulting contract or task order.

**C.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <http://farsite.hill.af.mil/>

<u>FAR</u>	<u>TITLE</u>	<u>DATE</u>
52.202-1	DEFINITIONS	NOV 2013
52.203-3	GRATUITIES	APR 1984
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	SEP 2006
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	OCT 2010
52.203-14	DISPLAY OF HOTLINE POSTER(S)	OCT 2015
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	APR 2014
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER	MAY 2011
52.204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS	OCT 2018

52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE	OCT 2018
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	OCT 2015
52.209-9	UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS	OCT 2018
52.228-5	INSURANCE – WORK ON GOVERNMENT INSTALLATION	JAN 1997
52.232-18	AVAILABILITY OF FUNDS	APR 1984
52.232-37	MULTIPLE PAYMENT ARRANGEMENTS	MAY 1999
52.232-39	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS	JUN 2013
52.242-13	BANKRUPTCY	JUL 1995

**VAAR 852.252-70 SOLICITATION PROVISIONS OR CLAUSES INCORPORATED BY REFERENCE JAN 2008**

Clauses and/or provisions that are incorporated by reference (by Citation Number, Title, and Date), have the same force and effect as if they were given in full text. The following full text references can be found at <https://www.va.gov/oal/library/vaar/vaar852>. The following provisions and clauses are incorporated into this solicitation by reference:

<b><u>VAAR Number</u></b>	<b><u>Title</u></b>	<b><u>Date</u></b>
VAAR 852.203-70	COMMERCIAL ADVERTISING	MAY 2018
VAAR 852.216-70	ESTIMATED QUANTITIES	APR 1984
VAAR 852.232-72	ELECTRONIC SUBMISSION OF PAYMENT REQUESTS	NOV 2018
VAAR 852.237-70	CONTRACTOR RESPONSIBILITIES	APR 1984
VAAR 852.270-1	REPRESENTATIVES OF CONTRACTING OFFICERS	JAN 2008
VAAR 852-211-70	EQUIPMENT OPERATION AND MAINTENANCE MANUALS	NOV 2018
VAAR 852.273-74	AWARD WITHOUT EXCHANGES	JAN 2003

(End of provision)

**C.2 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)**

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any VAAR (48 CFR Chapter FEDERAL ACQUISITION REGULATION (48 CFR Chapter 1)) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of Clause)

**C.3 52.203-99 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS (DEVIATION) (FEB 2015)**

(a) The Contractor shall not require employees or contractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The contractor shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.

(c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d)(1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (Pub. L. 113-235), use of funds appropriated (or otherwise made available) under that or any other Act may be prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(2) The Government may seek any available remedies in the event the contractor fails to comply with the provisions of this clause.

(End of Clause)

#### **C.4 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (OCT 2018)**

a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 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).

(1) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015)

(2) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77, 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

*[Contracting Officer check as appropriate.]*

\_\_\_ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

X (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).

\_\_\_ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub L. 111-5) (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009).

\_\_\_ (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2018) (Pub. L. 109-282) (31 U.S.C. 6101 note).

\_\_\_ (5) [Reserved]

\_\_\_ (6) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

\_\_\_ (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

\_\_\_ (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015) (31 U.S.C. 6101 note).

\_\_\_ (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) (41 U.S.C. 2313).

\_\_\_ (10) [Reserved]

\_\_\_ (11) (i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) (15 U.S.C. 657a).

\_\_\_ (ii) Alternate I (Nov 2011) of 52.219-3.

\_\_\_ (12) (i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer)(15 U.S.C. 657a).

\_\_\_ (ii) Alternate I (Jan 2011) of 52.219-4.

\_\_\_ (13) [Reserved]

\_\_\_ (14) (i) 52.219-6, Notice of Total Small Business Aside (Nov 2011) (15 U.S.C. 644).

\_\_\_ (ii) Alternate I (Nov 2011).

\_\_\_ (iii) Alternate II (Nov 2011).

\_\_\_ (15) (i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

\_\_\_ (ii) Alternate I (Oct 1995) of 52.219-7.

\_\_\_ (iii) Alternate II (Mar 2004) of 52.219-7.

\_\_\_ (16) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)).

\_\_\_ (17) (i) 52.219-9, Small Business Subcontracting Plan (Aug 2018) (15 U.S.C. 637 (d)(4)).

\_\_\_ (ii) Alternate I (Nov 2016) of 52.219-9.

\_\_\_ (iii) Alternate II (Nov 2016) of 52.219-9.

\_\_\_ (iv) Alternate III (Nov 2016) of 52.219-9.

\_\_\_ (v) Alternate IV (Aug 2018) of 52.219-9.

\_\_\_ (18) 52.219-13, Notice of Set-Aside of Orders (Nov 2011) (15 U.S.C. 644(r)).

\_\_\_ (19) 52.219-14, Limitations on Subcontracting (Jan 2017) (15 U.S.C. 637(a)(14)).

\_\_\_ (20) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).

\_\_\_ (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) (15 U.S.C. 657f).

\_\_\_ (22) 52.219-28, Post Award Small Business Program Representation (Jul 2013) (15 U.S.C. 632(a)(2)).

\_\_\_ (23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) (15 U.S.C. 637(m)).

\_\_\_ (24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) (15 U.S.C. 637(m)).

X (25) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

X (26) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Jan 2018) (E.O. 13126).

(27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(28) (i) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(ii) Alternate I (Feb 1999) of 52.222-26.

(29) (i) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).

(ii) Alternate I (July 2014) of 52.222-35.

(30) (i) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(ii) Alternate I (July 2014) of 52.222-36.

(31) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(32) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

(33) (i) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).

(ii) Alternate I (Mar 2015) of 52.222-50, (22 U.S.C. chapter 78 and E.O. 13627).

(34) 52.222-54, Employment Eligibility Verification (Oct 2015). (E. O. 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

(35) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

(ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

(36) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O.13693).

(37) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).

(38) (i) 52.223-13, Acquisition of EPEAT® -Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514)

(ii) Alternate I (Oct 2015) of 52.223-13.

(39) (i) 52.223-14, Acquisition of EPEAT® -Registered Television (Jun 2014) (E.O.s 13423 and 13514).

     (ii) Alternate I (Jun 2014) of 52.223-14.

     (40) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

     (41) (i) 52.223-16, Acquisition of EPEAT® -Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).

     (ii) Alternate I (Jun 2014) of 52.223-16.

  **X** (42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging while Driving (Aug 2011) (E.O. 13513).

     (43) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).

     (44) 52.223-21, Foams (Jun 2016) (E.O. 13696).

     (45) (i) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).

     (ii) Alternate I (Jan 2017) of 52.224-3.

  **X** (46) 52.225-1, Buy American--Supplies (May 2014) (41 U.S.C. chapter 83).

     (47) (i) 52.225-3, Buy American--Free Trade Agreements--Israeli Trade Act (May 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

     (ii) Alternate I (May 2014) of 52.225-3.

     (iii) Alternate II (May 2014) of 52.225-3.

     (iv) Alternate III (May 2014) of 52.225-3.

     (48) 52.225-5, Trade Agreements (Aug 2018) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

  **X** (49) 52.225-13, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

     (50) 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).

\_\_\_ (51) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

\_\_\_ (52) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

\_\_\_ (53) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 4505), 10 U.S.C. 2307(f)).

\_\_\_ (54) 52.232-30, Installment Payments for Commercial Items (Jan 2017) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

X (55) 52.232-33, Payment by Electronic Funds Transfer--System for Award Management (Oct 2018) (31 U.S.C. 3332).

\_\_\_ (56) 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management (Jul 2013) (31 U.S.C. 3332).

\_\_\_ (57) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C. 3332).

\_\_\_ (58) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

\_\_\_ (59) 52.242-5, Payments to Small Business Subcontractors (Jan 2017) (15 U.S.C. 637(d)(12)).

\_\_\_ (60) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).

\_\_\_ (ii) Alternate I (Apr 2003) of 52.247-64.

\_\_\_ (iii) Alternate II (Feb 2006) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

\_\_\_ (1) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495)

\_\_\_ (2) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67.).

\_\_\_ (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_\_ (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (Multiple Year and Option Contracts) (Aug 2018) (29 U.S.C.206 and 41 U.S.C. chapter 67).

\_\_\_ (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_\_ (6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (May 2014) (41 U.S.C. chapter 67).

\_\_\_ (7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67).

\_\_\_ (8) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015) (E.O. 13658).

\_\_\_ (9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

\_\_\_ (10) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) (42 U.S.C. 1792).

(d) *Comptroller General Examination of Record* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records -- Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the

Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 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).

(iv) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(v) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (1) of FAR clause 52.222-17.

(vi) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(vii) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(viii) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).

(ix) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(x) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(xi) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(xii) 52.222-41, Service Contract Labor Standards (Aug 2018), (41 U.S.C. chapter 67).

(xiii) (A) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).

(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 E.O. 13627).

(xiv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (May 2014) (41 U.S.C. chapter 67.)

(xv) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67)

(xvi) 52.222-54, Employment Eligibility Verification (Oct 2015) (E. O. 12989).

(xvii) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).

(xviii) 52.222-62, Paid sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

(xix) (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).

(B) Alternate I (Jan 2017) of 52.224-3.

(xx) 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).

(xxi) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxii) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of Clause)

#### **C.5 52.216-18 ORDERING (OCT 1995)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule or through Ordering Officers (“OO”) and through those practices and processes as established for OOs. Such orders may be issued from October 1, 2019 through September 30, 2024 and the latter date may be extended by six-month IAW FAR 52.217-8 Option to Extend Services.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered “issued” when the Government deposits the order in the mail. Orders may be issued orally; by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of Clause)

#### **C.6 MANDATORY WRITTEN DISCLOSURES**

Mandatory written disclosures required by FAR clause 52.203-13 to the Department of Veterans Affairs, Office of Inspector General (OIG) must be made electronically through the VA OIG Hotline at <http://www.va.gov/oig/contacts/hotline.asp> and clicking on "FAR clause 52.203-13 Reporting." If you experience difficulty accessing the website, call the Hotline at 1-800-488-8244 for further instructions.

#### **C.7 52.216-21 Requirements (Oct 1995)**

a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government’s requirements do not result in orders in the quantities described as “estimated” or “maximum” in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after March 31, 2025.

(End of Clause)

#### **C.8 FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 10 days of expiration.

"Evaluation of Option to Extend Services under 52.217-8. For the purposes of the award of this Contract, the Government intends to evaluate the option to extend services, provided under FAR 52.217-8, as follows: The evaluation will consider the possibility that the option can be exercised at any time, and can be exercised in increments of one to six months, but for no more than a total of six months during the life of the contract. The evaluation will assume that the prices for any option exercised under FAR 52.217-8 will be at the same rates as those in effect under the contract. The evaluation will therefore assume that the addition of the price or prices of any possible extension or extensions under FAR 52.217-8 to the total price for the basic requirement and the total price for the priced options has the same effect on the total price of all proposals relative to each other, and will not affect the ranking of proposals based on price, unless, after reviewing the proposals, the Government determines that there is a basis for finding otherwise. This evaluation will not obligate the Government to exercise any option under FAR 52.217-8."

(End of Clause)

**C.9 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor within 10 DAYS; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 10 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 60 MONTHS plus an additional six (6) months under the extension of services clause IAW 52.217-8.

(End of Clause)

**C.10 52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (OCT 2018)**

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal

or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—System for Award Management, or 52.232-34, Payment by

Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.—

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor 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, the Contractor 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 the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments

(9) The specification.

(t) [Reserved]

(u) *Unauthorized Obligations.*

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of Clause)

## SECTION D - CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS

### Statement of Work (SOW) for da Vinci® Robotic Surgical System

#### 1.0 SCOPE

This statement of work ("SOW") details the Government's requirement relative to the purchase, delivery, installation, maintenance, and testing of the single/dual console da Vinci® Robotic Surgical System (referred to as the "da Vinci® System" or "da Vinci®" or "System") by Intuitive Surgical, Inc. ("Contractor"). This procurement also includes the purchase of required surgical accessories, training, consumables, and supplementary 12-month maintenance service agreements for existing da Vinci Robotic Surgical Systems. Each da Vinci® System shall come with a 12-month manufacturer's warranty. The da Vinci® System is currently the only robotic surgical system that meets the Department of Veterans Affairs ("VA") requirements for a robotic surgical system that can perform multiple surgical procedures using the same robotic system and is approved for use in all of those procedures by the United States Food and Drug Administration ("FDA").

#### 1.1 Background

The VA is responsible for providing high quality and timely medical and surgical procedures to our Veterans and their families. Providing the best possible medical equipment and associated service support is the goal of the Veterans Health Administration ("VHA"). The robotic surgical equipment being procured by the VA is standardized across VHA for efficiencies in overall life-cycle costs as well as the training consistency across all Veterans Affairs Medical Centers (VAMCs).

Veterans Health Administration (VHA) surgeons seek to and provide our Veterans advanced surgical techniques that are comparable to state-of-the-art commercially surgical solutions in the private sector. The da Vinci® System will simplify Minimally Invasive Surgery (MIS) procedures. MIS procedures include laparoscopic surgery and use of state-of-the-art technology to reduce the damage to human tissue when performing surgery. The advantages of robotic surgery include reduction in length of hospital stay, reduction in infection rates, minimal blood loss when compared to other techniques, significantly less postoperative pain leading to a faster recovery. Additionally, such robotic surgical techniques contribute to positive psychological outcomes as it pertains to postsurgical scarring. The VA has already procured 74 da Vinci® Robotic Surgical Systems for various Veterans Administration Medical Centers ("VAMC") and plans to expand to additional VAMC locations.

#### 2.0 APPLICABLE DOCUMENTS

In the performance of the tasks associated with this Statement of Work (SOW), the Contractor shall comply with the following directives and handbooks:

- a. VA Directive 6500 Information Security Program
- b. VA Directive 0710 Personnel Suitability and Security Program.
- c. VA Directive 6550 Pre-Procurement Assessment for Medical Devices
- d. VA Handbook 6500.6 Appendix A "Checklist for Information Security in the Initiation Phase of Acquisitions"
- e. 36 C.F.R. Part 1194 "Electronic and Information Technology Accessibility Standards," July 1, 2003

### 3.0 REQUIREMENT

The Contractor, their personnel, and any subcontractors shall be subject to the Federal laws, regulations, standards, and VA Directives and Handbooks regarding information and information system security as delineated in this contract.

The Contractor shall deliver, install and test the da Vinci® System and all related equipment, accessories, consumables, training and 12- month warranty to the VAMC locations in the quantities, locations and configurations as specified in the individual Delivery/Task Order locations. Locations include Continental United States (CONUS) or Outside Continental United States (OCONUS). In addition, the Contractor shall provide the associated accessories, training and 12-month maintenance services as specified in individual Delivery/Task Order(s) for da Vinci® Systems that are already installed at VAMCs. Contractor shall provide services, instruments and accessories under the terms of this contract for Systems previously procured under the prior contract with Contract Number VA-119-14-D-0001 to ensure the continuity of care.

Capabilities and operating parameters include the Contractor delivering the da Vinci® System fully capable of performing robotically assisted surgical procedures using MIS techniques to include allowing a physician to perform a surgical procedure on a patient without physically handling operating instruments. The da Vinci® Robotic Surgical Systems shall be capable of operating with either a single or dual surgeon console. The single surgeon console shall provide the surgeon with intuitive controls, full range of motion, fine tissue manipulation capability, and 3-D visualization characteristic of open surgery while simultaneously allowing the surgeon to work through small ports of MIS surgery for the procedures listed below. A dual (second) surgeon console shall have all the features of the single console, and shall allow two surgeons to perform simultaneous complex surgical procedures as well as to observe and train medical professionals how to perform MIS using the da Vinci® System. The System shall operate at 115 VAC, 60 Hz, 20 amps. The System shall be able to perform multiple surgical procedures using a single System that decreases the footprint/space required. The System shall be able to perform, at a minimum, laparoscopic procedures such as prostatectomy, nephrectomy, colectomy, sacrocolpopexy, myomectomy, lobectomy and urological robotic procedures. All da Vinci® Systems shall be delivered with a 12-month warranty as set forth in Section 8.0 of this Statement of Work.

#### 3.1 System Components and Accessories

The Contractor shall provide the da Vinci® System, all required accessories, all consumables, and all related training, warranty and maintenance services identified

below. Contractor shall deliver the da Vinci® System, System related documentation and any accessories, training or maintenance services to the delivery points specified in the specific associated Delivery/Task Orders.

Single Console Surgical Robot. The System shall include a Surgeon Console, Patient Cart, and Vision Cart. The Surgeon Console must have the following: High Definition Stereo Display, 720p or 1080i, provide control of surgical arms to be passed back and forth in real time with secondary surgeon's console, multi-planar wrist control functionality to provide better manipulation of the surgical robot arms, built-in intercom system to allow for communication between consoles, integrated bipolar system, cut and coagulation.

Dual Console Surgical Robot. The System shall include two Surgeon Consoles (as described above), a Patient Cart, and Vision Cart

Fluorescence imaging. This capability includes fluorescence imaging capabilities to visualize subcutaneous blood vessels.

Skills Simulator Kit. This kit consists of accessories that can be attached to the surgeon console to provide surgeon training in a controlled environment using the controls of the consoles.

Vessel Sealer Generator Kit. The Vessel Sealer Generator Kit includes a generator that allows hospital owned vessel sealers to work with the robotic surgery System.

Accessories. The accessories include at a minimum forceps, spatulas, hooks, retractors, and graspers used to perform, at a minimum, laparoscopic procedures, such as prostatectomy, nephrectomy, colectomy, sacrocolpopexy, myomectomy, lobectomy and urological robotic procedures.

Proctoring Service. Proctoring is providing the assistance, coaching, or surgical preceptor provided by a surgeon (the "Proctor") who is familiar with the da Vinci Surgical System ("System") to another surgeon (the "Proctor") on how to perform a particular surgical procedure (or procedures) using the System.

### 3.2 System Documentation and Site Survey

Upon receipt of a Delivery/Task Order, the Contractor shall provide to the Contracting Officer's Representative (COR) at the individual VAMC location designated in the Delivery/Task Order a pre-installation checklist with technical and clinical specifications that include installation requirements (e.g., power, space and floor plan and facility requirements), System specifications and requirements, and data pertinent to the installation, operation, and use of the System.

Within 30 days of receipt of a Delivery/Task Order the Contractor shall provide a field site survey for each site to the COR designated in the Delivery/Task Order. This documentation shall include the installation test plan and procedures that the Contractor shall follow to conduct an initial pre-acceptance test.

The Contractor shall document and deliver all necessary information, including any and all manuals to operate and maintain the System by the end users including on-site handling as well as service call events and indications. The documentation shall include all procedures for the handling and sterilization of the System to be performed by the end users as well as procedures for the use of the System.

The Contractor shall provide manuals for operation of the System (two per System) as applicable to the System and its components. Digital documentation is acceptable. The Contractor shall provide all documentation to the COR with the delivery of each System.

### **3.3 FDA Requirement**

The da Vinci® System shall be compliant with the FDA requirement to market and deliver medical products for use in the United States. Any System must be approved for use in the United States by the FDA's Center for Devices and Radiological Health (CDRH), the federal agency responsible for regulating firms who manufacture, repackage, re-label, and/or import medical devices sold in the United States. According to 21 Code of Federal Regulations (CFR) Part 807 Subpart E, a manufacturer cannot commercially distribute medical devices in the United States until the FDA authorizes them to do so. The Contractor shall provide proof that all Systems, instruments, and accessories delivered under this contract have FDA clearance.

## **4.0 PERFORMANCE DETAILS**

It is anticipated that the financial arrangement with the Contractor shall be Firm Fixed Price ("FFP"). The anticipated pricing shall be catalog pricing, or lower, as offered to DoD and other federal agencies. The Systems and their consumables, and other allied supply items are commercial off the shelf items ("COTS"). The anticipated procurement will be sole sourced to the incumbent which is Intuitive Surgical, Inc., which is the sole and only manufacturer of the da Vinci® surgical robotic System. Each VAMC will utilize this contract vehicle for the purchase of the da Vinci® System with warranties and any instruments, accessories, training, and maintenance services. Ordering Officers ("OO") shall be appointed for the purpose of procuring supply items and other deliverables but not the actual robotic device. All OO shall be registered in eCERT, and shall follow the policies as established in eCERT and follow-on guidance for OOs. The requiring activity's contracting support office shall procure the actual robotic devices. This is a turn-key procurement for da Vinci® supplies and services which replaces the current contract that expires on September 30, 2019. Contingent upon OnSite connectivity, the Contractor shall supply up-to-date statistics and other detailed information relative to each VAMC's robotic device inventory, consumable and attachment usage, and surgical procedures performed so the VA can utilize this information to maximize and optimize its Return on Investment ("ROI"). The CLIN structure breaks down all supply items which can be purchased from Intuitive Surgical Inc. ("ISI") and alternative CLIN numbering to mirror ISI inventory will be explored to avoid prior ordering problems. The contractor shall also make commercially reasonable efforts to assist the VA to create applicable training and guidance, as needed, in the future, to facilitate OOs use of the anticipatory requirements contract.

### **4.1 Performance Period**

The ordering period for the subject da Vinci® System award shall be one 12-month base year period with four (4) 12-month option year periods. Upon acceptance of each individual da Vinci® System order pursuant to Section 6.2 of this SOW, the Contractor shall provide the warranty as described in Section 8.0, on-site clinical support as described in Section 5.1, and off- site training services as described in Section 5.2 during the twelve-month warranty period. All deliveries shall be made within 120 days of award of the Delivery/Task Order provided the specific Delivery/Order does not require a different delivery schedule.

#### **4.2 Hours of Operation**

Normal hours of operation at VA are Monday through Friday, 7:00 AM to 4:30 PM excluding Federal Holidays. All services shall be performed during normal hours of operation.

#### **4.3 Federal Holidays**

Any scheduled work at the Government site shall not take place on Federal holidays or weekends unless directed by the Contracting Officer (CO). VA follows all Federal holidays that are set by law (USC Title 5 Section 6103).

#### **4.4 Place of Performance**

The Contractor shall deliver the specified da Vinci System(s), accessories and services to VAMCs identified in each Delivery/Task Order. Such locations may include both CONUS and OCONUS VAMC locations.

#### **4.5 Travel**

The Government will not pay for any travel under this requirement.

### **5.0 TRAINING**

#### **5.1 On-site (VA Medical Center site) Clinical and Support Staff Training**

Contractor shall provide on-site training for surgical support personnel and onsite training for clinical support personnel as set forth in this paragraph for each da Vinci® System delivered to a VAMC. Within five (5) days of acceptance by VA of the da Vinci® System, the Contractor shall coordinate a time with the COR and the Chief Biomedical Engineer at each VAMC to conduct on-site training for surgeons, surgical support personnel and clinical support personnel. The On-site surgical support personnel training shall include at a minimum proper use, operation and upkeep of the robotic surgical System (including accessories), System preparation and management, and hands-on practicum. The On-site clinical support training shall include, but not be limited to, training on draping the robot for use in surgery, proper attachment of the instruments, and cleaning of parts of the System, accessories, and instruments. The Contractor shall provide as-needed training sessions for all System users at each location at no cost to the Government at the request of the COR.

#### **5.2 Off-site Surgeon Training (Porcine Multi-Port or Single Site)**

If the VA purchases Surgeons training, the Contractor shall conduct off-site training to provide System and procedure training to surgeons to teach pre-, intra- and post-operative techniques and applications when using the da Vinci® System and the associated accessories. The training may be one or two days and shall include didactic sessions and structured, hands-on laboratory sessions. The curriculum shall emphasize surgical team roles and responsibilities, as well as emergent techniques for optimizing robotic-assisted MIS. Due to the nature of the training to include surgeries on animals, this training will take place at a suitable off- site location capable of hosting this effort to be identified by the Contractor.

### **5.3 Technology Training - Cadaver: Multi-Port**

If the VA purchases Surgeon's training, the Contractor shall conduct off-site training to provide System and procedure training to surgeons to teach pre-, intra-, and post-operative techniques and applications when using the da Vinci System and associated accessories. The training is one day, and shall include didactic sessions and structures, and hands-on laboratory sessions. The curriculum shall emphasize surgical team roles and responsibilities, as well as emergent techniques for optimizing robotic assisted MIS. Due to the nature of the training to include procedures on cadavers, this training will take place at a suitable off-site location capable of hosting this effort to be identified by the Contractor.

### **5.4 Technology & Surgeon-Led Training**

If, when purchasing Basic Training/Porcine or Basic Training/Cadaver, the VA also purchases Basic-PLUS – Surgeon Led, the Contractor shall conduct off-site training to provide System and procedure training to surgeons to teach pre-, intra-, and post-operative techniques and applications when using the da Vinci System and associated accessories. The training is one day, and shall include didactic sessions and structures, and hands-on laboratory sessions conducted by a surgeon. The curriculum shall emphasize surgical team roles and responsibilities, as well as emergent techniques for optimizing robotic assisted MIS. Due to the nature of the training to include procedures on cadavers, this training will take place at a suitable off-site location capable of hosting this effort to be identified by the Contractor.

### **5.5 Surgeon Led Training**

In addition to the Technology Training - Porcine: Multi-Port or Single Site, Technology Training - Cadaver: Multi-Port, and Technology & Surgeon-Led Training offered by Contractor, the Contractor offers various Surgeon-Led Training that may require completion of pre-requisites, and must, in all cases, be reserved with the Contractor in consultation with the Contractor's representative to ensure the surgeon is selecting the course appropriate for the surgeon's needs. The fees for Surgeon-Led Training vary with type, duration, and factors that are specific to the course curriculum. To accommodate the VA's requests for such training, CLIN's have been identified for this purpose. Each task order issued by the VA must specify desired course name, the surgeon attending, the date, and such other detail as provided by the Contractor to VA for each Surgeon-Led Training.

## **6.0 DELIVERY AND ACCEPTANCE**

### **6.1 Delivery**

Upon Contractor's receipt of a Purchase Order from a VAMC, Contractor and the COR from the ordering VA Medical Center will coordinate the delivery and installation date. To avoid delays or wasted effort, the subject VAMC and Contractor shall mutually determine a date certain for delivery and shall memorialize those logistical and planning events to avoid wasted trips or System delays.

### **SPECIAL DELIVERY INSTRUCTIONS:**

Prior to shipping, the Contractor shall notify the local Point of Contact (POC) by phone, followed by e-mail of all incoming deliveries, including line-by-line details of all Contract Line Item Numbers (CLINs) being shipped. Contractor must coordinate deliveries with Site POCs sited on the Delivery/Task Order before shipment of any equipment and accessories to ensure sites have adequate storage space. All shipments, either single or multiple container deliveries, will bear the VA Purchase Order (PO) number on external shipping labels and associated manifests or packing lists. In the case of multiple container deliveries, a statement readable near the VA PO number will indicate total number of containers for the complete shipment (ex. Package of 2") clearly readable on manifests and external shipping labels.

Shipping terms for Systems (or Surgeon Consoles) is FOB Destination. Any Order received by Contractor from the Government that does not have the FOB specified, or is incorrectly designated as FOB Origin is deemed superseded, as stated herein. Freight fees are included in the pricing of Systems (or Surgeon Consoles) title transfers to the Government when the Government has provided Acceptance to Contractor.

Shipping terms for Instruments and Accessories is FOB Origin. Any Order received by Contractor from the Government that does not have the FOB specified, or is incorrectly designated as FOB Destination is deemed superseded, as stated herein. Freight fees are included in the pricing of the Instruments and Accessories; title transfers to the Government when the product is transferred to the carrier.

### **6.2 Testing and Certification**

Upon completing delivery and installation, the Contractor shall pre-test the entire System to verify that the System meets the manufacturer's technical specifications and performance capabilities as set forth in the operator manuals, passes all internal diagnostics tests, and VA requirements as set forth in this SOW. After successful pre-testing, the Contractor shall notify the COR, the Biomedical representative at the delivery site, in writing that the System meets all requirements, passed the pre-test and that the System is ready for Government testing and final acceptance by VA. Submission of this notification of System readiness shall be accomplished by the Contractor prior to beginning the Government acceptance test.

### 6.3 Government Acceptance Testing

In the presence of the COR, the site Biomedical representative, and designated VA site medical professionals, the Contractor shall test each System using established procedures to ensure that the System meets all System specifications and conforms to System documentation and passes all internal diagnostics testing to fully prove System performance and meets VA requirements as set forth in this SOW. The Contractor shall provide final acceptance test results and a summary signature page indicating completion by the Contractor. The Contractor shall provide Contractor's Standard Form (Acceptance Letter) to the COR for approval. The written approval by the COR will indicate Government acceptance of the System and the beginning of the 12-month warranty period for that System. In the event the System does not pass the Government acceptance testing, the Contractor shall return the da Vinci® System delivered and deliver a new da Vinci® System at no additional cost to the Government. Testing will then be performed on the new da Vinci® System delivered. Payments to the Contractor will be made based on final written acceptance of each System by the COR.

### 7.0 SOFTWARE LICENSES AND RESTRICTIONS

The Contractor grants to VA non-exclusive, non-transferrable licenses to use the da Vinci System and all associated accessories and software, including any documentation, for Systems intended purposes.

#### 7.1 Software License for the Skills Simulator.

End User Software License Agreement. LICENCE. The software ("Software") embedded within the da Vinci Skills Simulator ("Simulator") and the accompanying documentation ("Documentation") are provided under license and are not sold to Customer. Intuitive grants to Customer a non-exclusive, non-transferable, fully-paid, restricted license to (a) install and use the Software solely as incorporated in the Simulator in machine-executable object code form and solely in connection with the operation of the Simulator as described in the Documentation, and (b) use the Documentation for such Software solely for the purpose of using the Software in compliance with this license. At no additional cost, Customer will be entitled to Software updates when such updates are made generally available without cost to other licensees of the Software. Any software upgrades or enhancements which are not made generally available at no cost to other licensees will be offered to Customer at Intuitive's then current list prices. RESTRICTIONS. Customer shall not (i) use, copy, translate, modify, create derivative works of, or transfer, (ii) merge with any other product, (iii) sublicense, lease, rent, loan, or otherwise transfer, (iv) reverse engineer, decompile, disassemble, attempt to derive the source code for, or otherwise manipulate, or (v) disclose, permit to be disclosed or publicly display or perform, the Software, in whole or in part, or any copy thereof. Notwithstanding the foregoing, manipulation of the Software is permitted if, and then only to the extent that, the foregoing prohibition on manipulation is required to be modified by applicable law; provided, however, that Customer must first request from Intuitive the information to be sought from the Software, and Intuitive may, in its discretion, provide such information to Customer under good faith restrictions, and/or impose reasonable conditions, including but not limited to a reasonable fee, on such use of the Software, to ensure that Intuitive's and any third party's proprietary rights in the Software are

protected.. Customer may not alter, obscure or remove any copyright, trademark, proprietary rights, disclaimer, or warning notice included on or embedded in any part of the Software (including those of third parties). OWNERSHIP. The Software is licensed, not sold, to Customer. There is no implied license, right or interest granted in any copyright, patent, trade secret, Trademark, invention or other intellectual property right. TERM. This license will begin on the date the Software is delivered to Customer, and will continue until the end of the useful life of the Simulator. Customer agrees upon termination to promptly discontinue all use of and destroy the Software and all copies thereof (whether in tangible form or as installed on Customer's equipment). EXPORT LAW. The Software and related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries.

Customer agrees to strictly comply with all such laws and regulations and acknowledge that Customer have the responsibility to obtain such licenses to export, re-export or import as may be required. U.S. GOVERNMENT BUYERS. The Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227-19all U.S. Government end users acquire the Software with only those rights set forth therein.

## 8.0 SYSTEM WARRANTY

The Contractor shall provide a 12- month warranty that includes product support for the delivered da Vinci® System to ensure the System is operating at optimum performance levels and in conformance with product documentation, specifications and demonstrated claims, and is free from all defects. The warranty shall include support, all parts, labor, and travel as well as all software updates and upgrades at no additional cost to the VA for the duration of the warranty period. The Contractor shall provide a warranty on all repairs and service and certify that the System is fully operational after such repair or service. The COR is the Contractor's reporting and contact official for all service calls. The Contractor shall contact the designated COR at the facility to schedule service for the da Vinci® Robotic Surgical System. At completion of any service or repair, the Contractor shall provide all documentation for System configuration and updates as well as all service reports to the COR and Biomedical Engineer.

### 8.1 System Service and Maintenance

Further, if after the warranty expires, the VA purchases maintenance services, the Contractor shall furnish all necessary services, including parts and labor (remote and/or on site as needed), to maintain the da Vinci® Robotic Surgical System for optimum performance. Contractor shall perform, but is not limited to, the following:

- a. Periodic software maintenance updates to the original software investment;
- b. Installation and configuration for the software maintenance updates;
- c. Software diagnostics and trouble-shooting;

- d. Updates to any documentation such as operation and maintenance manuals;
- e. Preventive maintenance service and inspections in accordance with the manufacturer's specifications;
- f. Test/adjust/calibrate parts on the da Vinci Robotic Surgical System as required;
- g. Replace defective or malfunctioning parts;
- h. Repair operational malfunctions;
- i. Replace and install software, hardware, and mechanical equipment for safety and reliability;
- j. Perform System preventative maintenance inspections as necessary to maintain factory specifications.

## 8.2 Software Updates

During the warranty period, the Contractor shall provide and install software updates to include periodic updates, enhancements and corrections to the software, and reasonable technical support, all of which are customarily provided by the Contractor to its customers so as to cause the software to perform according to its specification, documentation, or demonstrated claims. The Contractor shall coordinate the installation of any software upgrades with the COR and Biomedical engineer. The COR and Biomedical engineer will notify and include the Information Security Officer (ISO) as required.

## 8.3 Response

The Contractor shall maintain the Systems in accordance with the warranty and service requirements as set forth in 8.0, 8.1 and 8.2 of this SOW. Response time for repair services during both the Warranty and Maintenance periods is as set forth herein. The Contractor shall provide telephone operational and technical support (Customer Service Department) twenty-four (24) hours per day, seven (7) days per week (24/7). The Customer Service Department assistance shall be via an 800 number or other toll-free service and shall be operated by service personnel who are qualified to operate, maintain, troubleshoot and repair the robotic surgical System. The Contractor shall respond within two (2) hours of notification to the Customer Service Department to be provided to each site COR/POC, and no later than 24 hours from notification. If the problem cannot be corrected by phone, or via remote access, the Contractor shall commence work with on-site, physical response within 24 hours of receipt of the first notification or as approved by the COR. All required repairs shall commence without undue delay with the System corrected to include replacing malfunctioning parts and retesting the System within 48 hours. The vendor agrees and understands that before any connection to these devices using vendor supplied equipment (laptop or USB drive devices) those devices must be scanned for malicious code or other malware by the Biomedical engineer or ISO.

## **9.0 PRODUCT MODIFICATION, REMOVAL OR RECALL**

If any product awarded under this solicitation requires modification, is removed or recalled by the Contractor or manufacturer, or if any required modification, removal or recall is suggested or mandated by a regulatory or official agency, the following steps shall immediately be taken by the Contractor or manufacturer:

The Contractor shall notify the CO, in writing, by the most expeditious manner possible. Provide two copies of the notification which shall include, but not be limited to the following:

Complete item description and/or identification, order numbers from customers and the contract number assigned as a result of an award on this solicitation; Reasons for modifications, removal or recall; and Necessary instructions for return for credit, replacement or corrective action.

The Contractor shall provide the above information to the CORs at all VAMCs and facilities that purchased the product. The Contractor shall provide the CO a copy of the notification as stated in the first paragraph of Section 9.0 and a list of all agencies and/or VA facilities notified.

Contractor shall be responsible for all costs associated with the above.

## **10.0 COMPLIANCE WITH GENERAL SAFETY REGULATIONS**

All Contractors performing services for the Government shall comply with all Occupational Safety and Health Administration (OSHA), State, County and Municipal Safety and Occupational Health Standards and any other applicable rules and regulations. Also, all Contractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.

## **11.0 COMPLIANCE WITH SECURITY REQUIREMENTS**

### **11.1 ACCESS TO VA INFORMATION AND VA INFORMATION SYSTEMS**

As necessary, the Contractor shall request logical (technical) or physical access to VA information and VA information systems for their employees, subcontractors, and affiliates only to the extent necessary to perform the services specified in the contract, agreement, or task order.

The contractor and associates working with VA information may be subject to the same investigative requirements as those of VA appointees or employees who have access to the same types of information. The level and process of background security investigations for contractors must be in accordance with VA Directive and Handbook 0710, Personnel Security and Suitability Program. The Office for Operations, Security, and Preparedness is responsible for these policies and procedures.

In the event that VA denies facility access to any Contractor personnel because such personnel has not met the VA's Security Requirements, the Contractor shall provide a fully trained (robotic surgical System operation, maintenance, troubleshooting and repair) substitute. The Contractor employee access to VA facilities will be denied until such time as the individual meets VA Security Requirements. The Contractor shall ensure that any individual performing work has successfully completed a formalized training program in providing the type of service(s) expected.

The Contractor agrees that none of its officers or employees shall use or reveal any research, statistical, medical, or security information obtained in the performance of the work required pursuant to this SOW without the written consent of the Contracting Officer.

The Contractor shall be professional at all times and shall take all necessary precautions to maintain a safe environment for the occupants. The Contractor shall minimize noise to the fullest extent possible while working in all buildings.

If VA determines that the Contractor has violated any of the information confidentiality, privacy, and security provisions of the contract, it shall be sufficient grounds for VA to withhold payment to the Contractor or third party or terminate the contract for default or terminate for cause under Federal Acquisition Regulation (FAR) part 12.

## **12.0 CONFORMANCE STANDARDS**

All work shall be performed, and equipment shall function in conformance with all VA safety standards, manufacturer's/industry standards, the latest published edition of NFPA-99, FDA, U.L. and other applicable state, local, national and industry standards. Equipment shall meet EMC (Electromagnetic Compatibility) for IEC 60601-1-2 CE, CSA, and ETL Approved to U.L. 2601-1, second edition.

On a periodic basis, VA, including the Office of Inspector General, reserves the right to evaluate any or all of the security controls and privacy practices implemented by the Contractor under the clauses contained within the contract. Within 10 working-days' notice, at the request of the Government, the Contractor must fully cooperate and assist in a Government-sponsored security controls assessment at each location wherein VA information is processed or stored, or information systems are developed, operated, maintained, or used on behalf of VA, including those initiated by the Office of Inspector General. The Government may conduct a security control assessment on shorter notice (to include unannounced assessments) as determined by VA in the event of a security incident or at any other time.

## **13.0 RESERVED**

## **14.0 CONTRACT SECURITY**

Information made available to the Contractor or subcontractor by VA for the performance or administration of this contract or information developed by the Contractor/subcontractor in performance or administration of the contract shall be used only for those purposes and shall not be used in any other way without the prior written

agreement of the VA. The Contractor/subcontractor's firewall and Web services security controls, if applicable, shall meet or exceed VA's minimum requirements. VA Configuration Guidelines are available upon request.

### Security Incident Investigation

The term "security incident" means an event that has, or could have, resulted in unauthorized access to, loss or damage to VA assets, or sensitive information, or an action that breaches VA security procedures. The Contractor/subcontractor shall immediately notify the COR and simultaneously, the designated ISO and Privacy Officer for the contract of any known or suspected security/privacy incidents, or any unauthorized disclosure of sensitive information, including that contained in System(s) to which the Contractor/subcontractor has access.

### Training

a. All Contractor employees and subcontractor employees requiring access to VA information and VA information systems shall complete the following before being granted access to VA information and its systems:

- (1) Sign and acknowledge (either manually or electronically) understanding of and responsibilities for compliance with the *Contractor Rules of Behavior*, Attachment A, relating to access to VA information and information systems;
- (2) Successfully complete the *VA Cyber Security Awareness and Rules of Behavior* training and annually complete required security training;
- (3) Successfully complete the appropriate VA privacy training and annually complete required privacy training; and
- (4) Successfully complete any additional cyber security or privacy training, as required for VA personnel with equivalent information system access *[to be defined by the VA program official and provided to the contracting officer for inclusion in the solicitation document]*.

b. The Contractor shall provide to the contracting officer and/or the COR a copy of the training certificates and certification of signing the Contractor Rules of Behavior for each applicable employee within 1 week of the initiation of the contract and annually thereafter, as required.

c. Failure to complete the mandatory annual training and sign the Rules of Behavior annually, within the timeframe required, is grounds for suspension or termination of all physical or electronic access privileges and removal from work on the contract until such time as the training and documents are complete.

### 15.0 QUARTERLY REPORTING

The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by fiscal quarter (October 1–December 31, January 1–March 31, April 1–June 30, and July 1–September 30). The dollar value of a sale is the price paid by the Task Order user for supplies/services on a Task Order. The Contractor shall maintain a consistent accounting method of sales reporting, based on the Contractor's established commercial accounting practice.

All Task Orders issued shall be reported to the Strategic Acquisition Center (SAC) within thirty (30) calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports through physical completion of the last outstanding order of the contract

The Contractor shall provide the quarterly dollar value of sales. The quarterly report shall be emailed to the Contracting Officer and/or Contract Specialist identified on the award document.

## **16.0 SYSTEM TRADE-IN / UPGRADE**

In the event the Government requests to trade-in a previously purchased System as part of a purchase transaction for a new System, and the Contractor agrees to take such trade, the Contractor and Government will determine fair and reasonableness of the Trade-in Value prior to the issuance of the Task Order. The Contractor shall remove and dispose of any existing robotic surgical Systems identified in the Delivery/Task Order under the Contract Line Item Number (CLIN) "Consideration for Trade-in."

**Any Trade-in System consists of the da Vinci System purchased by the Government with a serial number specified in the applicable Order and:**

- 1 camera head (s)
- 1 endoscope(s) (0 degree)
- 1 endoscope(s) (30 degree)
- 1 Vessel Sealer Generator (if applicable and installed with the System)
- 1 Skill Simulator serial number (if applicable)
- 1 Firefly Fluorescence Imaging (if applicable and installed with the System)

The Government will trade in the Trade-in System to Intuitive and receive the agreed Trade in Credit which will be applied toward the System price of System purchased under the applicable Order. Title to the Trade-In System passes to Contractor on Acceptance of the System purchased under the applicable Order. Within thirty (30) days after Acceptance, the Government will provide access to the Trade-in System at the Government's site to enable Contractor to disconnect and remove the Trade-in System. The Government is, and remains, responsible for costs related to the loss or damage to the Trade-In System until it is removed by Contractor from the Government's site.

**16.1 Upgrade of the da Vinci Xi System.** Facilities that purchased the da Vinci Xi System Pre-FDA clearance of Firefly™ Fluorescence Imaging and have not yet performed the upgrade may do so, at NO CHARGE, in accordance with the following guidance:

- Sites that purchased the da Vinci Xi Systems (Pre-FDA clearance of Firefly™ Fluorescence Imaging) under CLINs 0335 or 0336 from June 11, 2014 to the date of Contract Modification P0004 (December 2, 2014), may activate the upgraded Firefly™ Fluorescence Imaging at NO CHARGE.

- To activate Firefly on existing Systems (purchased prior to FDA clearance), the OCO/OO must send a no-charge Task Order to the Intuitive order support team at: [order.support@insurg.com](mailto:order.support@insurg.com).
- Previous CLIN 2012 (or a new CLIN as specified and agreed upon) must be used for the upgrade.
- The no-charge Task Order must provide the serial number of the da Vinci Xi System to be upgraded and the name, phone, and email for the facility Point of Contact for this request. The Intuitive order support team will process the request and provide written documentation with an activation code (2-day FedEx). Again, the ordering activity may use their Federal Shipping Account.
- If the OnSite functionality of the da Vinci Xi System (to be upgraded) has been activated, the customer must call the Intuitive Surgical customer service line with the activation code. Thereafter, it is a 5-10 minute process to complete the upgrade. If the customer does not have OnSite, then an appointment must be made for an Intuitive Surgical field service engineer to perform an on premise upgrade at the customer's facility. Questions may be directed to [order.support@intusurg.com](mailto:order.support@intusurg.com) or the Intuitive Customer Service Department at (800) 876-1310.

**17.0 SUBCONTRACTING PLAN**

There appear to be no sub-contracting opportunities except shipping through private carrier, e.g., FedEx. Shipping costs are built into the CLIN pricing. The contractor shall affirmatively disclose if any sub-contracting opportunities exist currently, and if none, the contractor shall disclose to the Contracting Officer if any should occur during the life of the contract.

**18.0 OTHER DIRECT COSTS (ODC)**

Other Direct Costs (ODC) cannot be determined at this time. Contractor understands that there may be cases where the Government requires expedited handling of Instruments and Accessories; therefore, expedited delivery of Instrument and Accessories may be requested by contacting Contractor's Customer Support Department at 1 (800) 876-1310. ODC for Expedited Shipping, when requested by the Government, will be determined (as applicable) at the time the request is made to the Contractor. Charges for Expedited Shipping will be indicated using CLIN 0005.

**19.0 DEFINITIONS/ACRONYMS**

3-D	Three-dimensional
Acceptance Signature	VA employee who is authorized to sign-off on the ESR which indicates that the PM has been concluded or is still pending completion, or that the Emergency Repair has been accomplished or is still in a pending status.
AHIMA	American Health Information Management Association

Amps	Amperes
BAA	Business Associate Agreement
CDRH	Center for Devices and Radiological Health
CE	Conformance European (Communauté Européenne or Conformité Européenne)
CFR	Code of Federal Regulations
CO	Contracting Officer
COR	Contracting Officer's Representative
CSA	Canadian Standards Association
da Vinci System	da Vinci Robotic Surgical System
EMC	Electromagnetic Compatibility
ESR	(Vendor) Engineering Service Report Documentation of the services rendered for each incidence of work performance under the terms and conditions of this contract.
ETL	Originally a mark of ETL Testing Laboratories, now a mark of Intertek Testing Services
FAR	Federal Acquisition Regulation
FDA	US Food and Drug Administration
FSE	Field Service Engineer A person who is authorized by the Contractor to perform maintenance (corrective and/or preventive) services on the VA premises
HD	High Definition
HHS	Department of Health and Human Services
HIPPA	Health Insurance Portability and Accountability Act
HSPD	Homeland Security Presidential Directive
Hz	Hertz
"I"	Interlaced
IEC	International Electrotechnical Commission
ISO	Information Security Officer
MIS	Minimally Invasive Surgery
NFPA	National Fire Protection Association
OAQ	Office of Acquisition Operations
OSHA	Occupational Safety and Health Administration
"p"	Progressive scan
PHI	Public Health Information
PL	Public Law
PO	Privacy Officer
SAC	Strategic Acquisition Center
SOW	Statement of Work
UL	Underwriters Laboratory
USC	United States Code
VA	Department of Veterans Affairs
VAC	Volt – AC (alternating current)

#### **B.4 GOVERNING LAW**

Federal law and regulations, including the Federal Acquisition Regulations ("FAR"), shall govern this Order. Commercial license agreements may be made a part of this Contract but only if both parties expressly make them an addendum. Claims of patent or copyright infringement brought against the Government as a party shall be defended by the U.S. Department of Justice (DOJ). 28 U.S.C. § 516. At the discretion of DOJ, the Contractor may be allowed reasonable participation in the defense of the litigation. Any additional changes to the Order must be made by order modification (Standard Form 30). Nothing in this Order or any commercial license agreement shall be construed as a waiver of sovereign immunity.

#### **B.5 ADDITIONAL TERMS AND CONDITIONS.**

1. **Use of System.** The Government will ensure that the System is used only for its intended purpose, specifically minimally invasive surgery or procedure. Government will use the System only with surgical instruments and accessories made or approved by Contractor, and will not, nor will Government permit any third party to, modify, disassemble, reverse engineer, alter or misuse the System, instruments or accessories. Such prohibited actions will include, but are not be limited to (i) adding to, or subtracting from the System, any Government or third-party equipment, hardware, firmware or software, or (ii) reconfiguring any of the Contractor equipment, hardware, firmware or software as originally provided to Government as part of the System, without the express written permission from Contractor. Notwithstanding the foregoing, the Government is permitted to utilize a third party OR video storage system to allow transmission of the video output from the surgical robot to all the slave monitors in the room in order for others to be aware of what is happening during the procedure. Government will ensure that the System is moved and/or operated only by trained personnel in accordance with the Documentation and Contractor's instructions.

2. **Instruments and Accessories.** Instruments and Accessories for the System, which are not sold with the System, are made available to the Government from Contractor pursuant to separate orders placed by the Government with the Contractor. Government acknowledges and agrees that all Contractor Instruments and Accessories which the Government obtains from the Contractor have a finite number of uses as set forth in the instructions for use and documentation accompanying the Instruments and Accessories or provided by Intuitive for the Instruments and Accessories. Contractor represents that the instruments are fitted with a microchip which is programmed to permit the set number of uses as set forth in the instructions instrument is disabled. Notwithstanding clause 52.212-4 paragraph (o) "Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract." The Endoscopes and Camera Heads, and Simulators will have a 1-year warranty for manufacturer defects and Accessories will have a 90-day warranty for manufacture defects. The Government agrees to discard, and to no longer use, the Instrument once the maximum number of uses has been met. Any other use of the Instruments or Accessories, whether before or after the maximum number of uses has been reached, including repair, refurbishment or reconditioning not approved by Intuitive, is prohibited.

The Warranty for Endoscopes, Camera Heads, and Simulators is 12 months, Accessories is 90 days, and Instruments, as noted in the Contractor's then current catalog, is based on the number of lives remaining as set forth shown below:

- Endoscope, Camera, and Simulator – 1 year warranty
- Accessories – 90 day warranty
- Instruments – Contractor will issue credit against original purchase after full inspection is complete.
  - Credit for defective returns
    - Contractor will issue credit on products based on failure analysis performed and individual warranty terms
    - For instruments, credit will be issued for the remaining lives, plus one additional life to compensate for usage at the time the issue was identified.
    - Evidence of neglect, misuse and mishandling will not qualify for credit.
  - Credit for excess inventory returns
    - Excess inventory returns will be valued at the invoice price less a 15% restocking fee
    - Original packaging must be unmarked, undamaged and seals intact to qualify for credit.
  - Credit will be issued based on the following conditions
    - Products were shipped less than 12 months prior to return request
    - If the original package is intact
    - If the product is within the expiration date Intuitive Surgical will retain all return product.

All returns are authorized through Contractor's Customer Service department. Please call toll free at 800.876.1310 to obtain a Return Material Authorization number (RMA#). All items must be accompanied with a valid RMA# and are requested to be received within 14 days of issuance or the RMA could be subject to cancellation. Contractor will prepay for the return of the defective Instruments.

- Defective returns:
  - Upon identification of a defective instrument, please call Contractor's Customer Service department within 5 days.
  - Prior to returning product to Contractor, items must be cleaned and decontaminated in accordance with current local environmental safety laws and standards.
- Excess Returns:
  - Items are required to be in the original packaging with no markings, seals intact, and to have been purchased within the last 12 months.
  - Package excess returned inventory in a separate shipping container to prevent damage to original product packaging.

### 3. Software License and Restrictions

Software embedded within the System is provided under license and is not sold to VA. Subject to the terms and conditions of this Order, Intuitive grants to VA a non-exclusive, non-transferable, fully paid, restricted use license to use the Software solely as incorporated in the System in machine-executable object code form and solely in connection with the operation of the System as described in the Documentation. VA must not use, copy, modify, or transfer the Software or any copy thereof, in whole or in part, except as expressly provided in this Order. In addition, VA must not reverse engineer, decompile, disassemble, attempt to derive the source code for, or otherwise manipulate the Software, except that manipulation of the Software is permitted if, and then only to the extent that, the foregoing prohibition on manipulation is required to be modified by applicable law. In that case, VA must first request from Contractor the information to be sought from the Software, and Contractor may, in its discretion, provide information to VA under good faith restrictions and impose reasonable conditions on use of the Software. The structure and organization of the Software are valuable trade secrets of Contractor and VA will protect the Software as Intuitive's proprietary information. Contractor reserves all rights to the Software not expressly granted to VA. Some components of the Software may be provided to VA under a separate license, such as an open source license. In the event of a conflict between this Order and any such separate license, the separate license will prevail with respect to the component that is the subject of such separate license.

#### D.1 ATTACHMENT B – PRICING SCHEDULE SPREADSHEET

**Signature:**   
Marc Giuffrida (Sep 27, 2019)

**Email:** marc.giuffrida@intusurg.com

**Title:** Director, Contract Administration

**Company:** Intuitive Surgical, Inc