



North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section

2704 Mail Service Center • Raleigh, North Carolina 27699-2704
<http://www.ncdhhs.gov/dhsr/>

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May 16, 2012

Mr. Brad H. Weisner, COO
Nash Hospitals, Inc.
2460 Curtis Ellis Drive
Rocky Mount, NC 27804

RE: Exempt from Review/ Nash Health Care System/ Acquire replacement Surgical Robotic System Equipment to operate at its existing site and dispose of existing Da Vinci Surgery System Equipment through a trade-in agreement / Nash County
FID # 933368

Dear Mr. Weisner:

The Certificate of Need (CON) Section received your letters dated March 26, April 5, and May 6, 2012 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that if the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

In addition, you should contact the Acute Care Licensure Section, Division of Health Service Regulation to determine if they have any requirements for development of the proposed project. Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D.# (FID) if the facility is licensed.

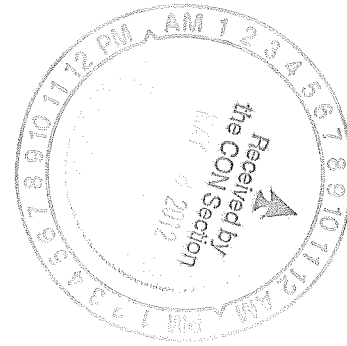
Sincerely,

Bernetta Thorne-Williams, Project Analyst

Craig R. Smith, Chief
Certificate of Need Section

cc: Medical Facilities Planning Section, DHSR
Acute Care Licensure and Certification Section, DHSR





May 6, 2012

Bernetta Thorne-Williams, Project Analyst
Division of Health Services Regulation
Certificate of Need Section
2704 Mail Service Center
Raleigh, NC 27699-2704

Dear Ms. Thorne-Williams:

I am writing to provide the additional information you requested in your letter dated April 13, 2012. Your questions will be italicized with answers following.

1. *Evidence to demonstrate conformance with each criterion in 10A NCAC 14C .0303.*

See Attachment 1

2. *A comparison of the existing and replacement equipment, using the format in the attached table.*

See attachment 2

3. *A description of the basic technology and functions of the existing and replacement equipment, including diagnostic and treatment purposes for which the equipment is used or capable of being used.*

See previous information provided on Da Vinci Si Surgical System and Simulator. Used as assistance for surgical procedures.

4. *If the replacement equipment is to be leased, a copy of the proposed capital lease that transfers substantially all the benefits and risks inherent in the ownership of the equipment to the lessee of the equipment, in accordance with criteria in Generally Accepted Accounting Principles (GAAP).*

As previously stated in correspondence dated March 26th and April 5th this is not a lease.



5. *If the replacement equipment is to be purchased a copy of the proposed purchased order or quotation, including the amount of the purchase price before discounts and trade-in allowance.*

Also provided in correspondence dated March 26th and April 5th.

6. *A letter from the person taking possession of the existing equipment that acknowledges that the existing equipment: will be permanently removed from North Carolina, will no longer be exempt from requirements of the North Carolina Certificate of Need law, and will not be used in North Carolina without first obtaining a new certificate of need.*

See attachment 3

7. *Documentation that the existing equipment is currently in use and has not been taken out of service.*

See attachment 4 which is Charge Master for Nash General that shows da Vinci surgical cases for the first four months of 2012.

I hope this letter with attachments plus all previous information submitted with March 26th and April 5th correspondences should provide all information needed to meet the CON's replacement equipment criteria.

Sincerely,



Brad H. Weisner, COO
Nash Hospitals, Inc.

Attachment 1

G.S. 131E-176(22a)

"Replacement equipment" means equipment that costs less than two million dollars (\$2,000,000) and is purchased for the sole purpose of replacing comparable medical equipment currently in use which will be sold or otherwise disposed of when replaced. In determining whether the replacement equipment costs less than two million dollars (\$2,000,000), the costs of equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the replacement equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.

10A NCAC 14C .0303

(a) The purpose of this Rule is to define the terms used in the definition of "replacement equipment" set forth in G.S. 131E-176(22a).

(b) "Activities essential to acquiring and making operational the replacement equipment" means those activities which are indispensable and requisite, absent which the replacement equipment could not be acquired or made operational.

(c) "Comparable medical equipment" means equipment which is functionally similar and which is used for the same diagnostic or treatment purposes.

(d) Replacement equipment is comparable to the equipment being replaced if:

- (1) it has the same technology as the equipment currently in use, although it may possess expanded capabilities due to technological improvements; and

New equipment is same technology as unit being replaced will only updated technology.

- (2) it is functionally similar and is used for the same diagnostic or treatment purposes as the equipment currently in use and is not used to provide a new health service; and

Like equipment is replacing like equipment with same use in surgery. No new health service will be provided.

- (3) the acquisition of the equipment does not result in more than a 10% increase in patient charges or per procedure operating expenses within the first twelve months after the replacement equipment is acquired.

Response: Procedure charges based on use of the da Vinci surgical robot will not change do to replacement equipment, except for possible price changes at beginning of next fiscal year (January 2013) that will be 10% or less. There is not specific charge for use of the da Vinci when doing the surgery.

(e) Replacement equipment is not comparable to the equipment being replaced if:

- (1) the replacement equipment is new or reconditioned, the existing equipment was purchased second-hand, and the replacement equipment is purchased less than three years after the acquisition of the existing equipment; or

Existing equipment purchased in 2007.

- (2) the replacement equipment is new, the existing equipment was reconditioned when purchased, and the replacement equipment is purchased less than three years after the acquisition of the existing equipment; or

Existing equipment purchased in 2007.

- (3) the replacement equipment is capable of performing procedures that could result in the provision of a new health service or type of procedure that has not been provided with the existing equipment; or

Equipment does not perform procedures that could result in the provision of a new health services or any type procedure not able to be performed with current equipment

- (4) the replacement equipment is purchased and the existing equipment is leased, unless the lease is a capital lease; or

Both existing and replacement equipment was purchased, no leases involved.

- (5) the replacement equipment is a dedicated PET scanner and the existing equipment is:
- (A) a gamma camera with coincidence capability; or
 - (B) nuclear medicine equipment that was designed, built, or modified to detect only the single photon emitted from nuclear events other than positron annihilation.

Not applicable

Attachment 2

Equipment Comparison

	Existing Equipment	Replacement Equipment
Type of Equipment	surgical robotic equipment	surgical robotic equipment
Manufacturer of Equipment	Intuitive Surgical	Intuitive Surgical
Telsa Rating of MRIs	NA	NA
Model Number	da Vinci S surgical system	da Vinci Si Surgical System with addition of simulator
Serial Number	SG334	
Provider's Method of Identifying Equipment	models: standard, da Vinci S and da Vinci Si	da Vinci
Mobile or Fixed?	mobile	mobile
Mobile Trailer Serial Number/VIN#	NA	NA
Mobile Tractor Serial Number/VIN#	NA	NA
Date of Acquisition of Each Component	November-07	April-12
Does Provider hold title to equipment or have a capital lease	Hold title	cash transaction, no lease
Specify if equipment was/is new or used when acquired	new	new
Total Capital Cost of Project including construction	NA	No construction or renovation needed. Equipment on wheels and mobile between Ors
Total Cost of Equipment	\$725,000	\$820,000
Total Market Value of Equipment	NA	\$820,000
Net Purchase Price of equipment	NA	\$820,000
Locations when operated	current operating rooms at Nash General	current operating rooms at Nash General
Number Days in Use/to be used in NC per year	available in OR every day	available in OR every day
Percent of change in Patient Charge (by procedures	NA	0%
Percent of change in per procedure operatin expense (by procedure)	NA	0%
Type of Procedures currently performed on exiasting equipment	prostatectomy, nephrectomy, hysterectomy, myomectomy	NA
Type of Procedures new equipment is capable of performing	NA	same as current plus other proceures as Surgeons are trained such as cholecystectomy, nissen fundoplication, gastric bypass and head and neck procedures

INTUITIVE
SURGICAL®

May 1, 2012


Mr. Brad Weisner
COO
Nash Hospitals, Inc.,
2460 Curtis Ellis Drive
Rocky Mount, NC 27804

Dear Mr. Weisner,

This is to confirm that Intuitive Surgical has received the daVinci "S" System, serial number SG 334, which Nash Hospital traded-in to Intuitive when they purchased the da Vinci® Si™ Surgical System in March 2012.

In the event the traded-in System is resold in the state of North Carolina, Intuitive will include the following provision in the sale agreement with the buyer: "Intuitive makes no representation with regard to Certificate of Need requirements for this purchase. It is Customer's responsibility to determine whether this purchase complies with Customer's State Certificate of Need law and what Certificate of Need filing, if any, needs to be made with regard to this purchase."

Sincerely,
Intuitive Surgical Inc.

Signature: 
Larry E. Crist (May 1, 2012)

Email: larry.crist@intusurg.com

Title: Director, Contracts Administration

Company: Intuitive Surgical, Inc.

Attachment 4

CDM Rev 3 Managers Report		CDM Information		Department Information		YTD Volumes			January Volumes			February Volumes			March Volumes			April Volumes		
Lawson Dept	CDM Clob	Eclipsys Description	Dept/Basic	YTD IP Volume	YTD OP Volume	YTD Tot Volume	Jan IP Volume	Jan OP Volume	Jan Tot Volume	Feb IP Volume	Feb OP Volume	Feb Tot Volume	Mar IP Volume	Mar OP Volume	Mar Tot Volume	Apr IP Volume	Apr OP Volume	Apr Tot Volume		
116211	47711553	Myonectomy w/Davinci	OPERATING ROOM	3	4	7	0	0	0	0	3	3	2	0	2	1	0	1		
116211	47711761	Hysterectomy w/Davinci	OPERATING ROOM	8	49	57	3	10	13	1	14	15	1	16	17	3	9	12		
116211	48016930	Robotic Pyeloplasty	OPERATING ROOM	0	1	1	0	0	0	0	0	0	0	1	1	0	0	0		
116211	48016931	Add'l Robotic Pyeloplasty	OPERATING ROOM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
116211	48016937	Nephrectomy w/Davinci	OPERATING ROOM	3	0	3	1	0	1	0	0	0	0	0	0	0	0	0		
116211	48017200	PROSTATECTOMY, RAD W/DAVI	OPERATING ROOM	5	1	6	0	0	0	3	0	3	1	0	1	1	1	2		
Grand Total				19	55	74	4	4	11	15	4	17	4	17	21	7	10	17		



April 5, 2012

Bernetta Thorne-Williams, Project Analyst
DHSR - Certificate of Need Section
2704 Mail Service Center
Raleigh, NC 27699-2704

RE: Request for additional information/Nash Health Care System/Acquire replacement
Robotic System Equipment/Nash County
FID # 93368

Dear Ms. Thorne-Williams:

At your request I would like to provide the following responses for the additional information requested in your letter dated April 2, 2012. **My response will be in bold print:**

1. For each line item on the Proposed Total Capital Cost form submitted with the March 26, 2012 letter, provide a detailed explanation of how the cost on that line was determined. Further, provide an itemized breakdown of the specific items included in the total cost on each line. For example, for line C(13) Fixed Equipment, identify the type, number and unit cost for each item of equipment included in the total cost on that line.

Response: The request submitted in the March 26th letter included the following:

The cost of the planned purchase is as follows:

da Vinci Si HD Surgical System \$735,000 (sales and license agreement with trade-in attached, plus 5 year service agreement)

da Vinci Skills Simulator \$85,000 (Quote attached with brochure)

Total \$820,000

The projected cost for the line item “da Vinci HD Surgical System if \$735,000 is supported by Exhibit A of the sale agreement provided with March 26th letter. I have attached the same sales agreement (Attachment 1) and highlighted in yellow the sections related to delivery cost, on-site support, training, taxes and all the Deliverables, Price and Delivery are in Exhibit A. Section 10 of Exhibit A addresses the trade-in of the current da Vinci S Surgical System. Being a governmental entity in NC (Hospital Authority) we do not include the cost of sales taxes since we are able to file and receive back from State.



The second attachment (Attachment 2) provides the quote or cost for the Simulator or \$85,000. The simulator is an attachment to the main console.

2. Identify (i.e., describe in some detail) all costs incurred or to be incurred by the owner of the building (i.e., the lessor) for renovation or upfit of the space in which the proposed & will be located.

Response: There will no other cost associated with this equipment replacement purchase other than what have been stated above. The equipment is mobile and self contained. The use of this equipment does not require any building, electrical, mechanical or plumbing modification. The equipment is delivered, uncrated, rolled to OR and connected with cables that come with unit. The only future cost associated with this purchase is disposables or consumables (drapes, staples etc) that will be consumed when equipment is used on a patient and a service agreement.

3. For each piece of fixed or movable equipment and furniture to be purchased, provide the cost and fair market value and document that the cost includes all taxes, installation fees and transportation costs.

Response: The fair market value of this Robotic Surgical System with a trade-in and with a simulator is \$820,000 as identified in the quote provided by Intuitive Surgery who sells the equipment. I have also attached the analysis from MD Buyline (Attachment 3). This is a national service the Hospital belongs to that tracks capital purchases in healthcare. Also see response to first question for additional information.

4. Identify all fixed or movable equipment and furniture that will be leased and provide the fair market value for each piece of equipment and furniture listed.

Response: There will be no movable equipment and/or furniture leased or purchased other than the Surgical System itself which is movable. This capital purchase will be made with cash reserves and is budgeted in the 2012 Capital Budget. (See Attachment 4)

5. Provide the cost for each item on the attached list, and identify the line item on the Proposed Total Capital Cost of Project form on which that cost is included. If the cost for an item listed below is "zero," provide a detailed explanation as to why the cost is not applicable to the proposed project. Identify the person that will incur each of the itemized the costs.

Response: The completed list of potential other costs is attached. (Attachment 5)

6. In accordance with N.C.G.S. 131E-177, provide all records in any recording medium which pertain to the construction/renovation and acquisition activities engaged in by any person related to the development of the proposed project, including but not limited to, construction contracts, architectural contracts, consultant contracts, purchase orders, cancelled checks, accounting and financial records, debt instruments, and loan and security agreements.

Response: This is not a construction project. Only contracts would be accepting the sales agreements from Intuitive Surgery that are attached. To further clarify the equipment replacement see Attachment 6. It shows photos of the current da Vinci unit that is being replaced and has been set up for a procedure in a OR room.

If you should need any additional information or have questions please feel free to contact me by phone at 252 962-8227. Thank you in advance for your prompt response.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad H. Weisner". The signature is fluid and cursive, with a long horizontal flourish at the end.

Brad H Weisner, COO
Nash Hospitals, Inc.

SALES AND LICENSE AGREEMENT

Agreement No.: 16MAR-SALES-NASH

This Sales and License Agreement ("Agreement") is dated **March 16, 2012** (the "Effective Date") and is between **Intuitive Surgical, Inc.**, a Delaware corporation ("Intuitive"), located at 1266 Kifer Road, Sunnyvale, California 94086, and **Nash Hospitals, Inc.**, located at 2460 Curtis Ellis Drive, Rocky Mount, NC 27804, ("Customer").

The parties agree as follows:

1. Introduction

Customer agrees to purchase the Hardware and license the Software and Documentation from Intuitive, and Intuitive agrees to respectively sell and license the same to Customer according to the terms and conditions of this Agreement.

2. Definitions

- 2.1 **"Acceptance"** means Customer's acceptance of the System as specified in **Exhibit A**.
- 2.2 **"Delivery Date"** means the estimated scheduled date for delivery of the System to Customer specified in **Exhibit A**.
- 2.3 **"Instruments and Accessories"** means those instruments or accessories made or approved by Intuitive for use with the System.
- 2.4 **"Proctoring"** means the assistance, coaching, or surgical training provided by a surgeon (the "Proctor") who is familiar with the System to another surgeon (the "Proctee") on how to perform a particular surgical procedure (or procedures) using the System.
- 2.5 **"System"** means the items comprising the da Vinci® Surgical System specified in **Exhibit A** consisting of certain hardware components ("Hardware"), software program elements ("Software") and related documentation ("Documentation"), that Customer may purchase and license under this Agreement. If Customer purchases multiple Systems under this Agreement, all references to "System" or "System(s)" apply to each System sold and licensed. Each System purchased is a separate transaction to be delivered, accepted, and paid for separately.
- 2.6 **"Taxes"** means any taxes, levies, or similar governmental charges, now in force or enacted in the future, and however designated, including related penalties and interest, imposed by any governmental authority on, or measured by, the activities described.
- 2.7 **"Customer's Access Requirements"** means any reasonably applicable requirements designated by Customer that Intuitive personnel must meet to gain access to Customer's facility. Such requirements may include, but are not limited to, compliance with Customer's site policies and vendor credentialing requirements, such as vaccination, immunization, background investigation, training, hospital orientation, and liability insurance coverage.

3. System Delivery, Use, Disposal

- 3.1 **Delivery and Installation.** Subject to credit approval of Customer by Intuitive, Intuitive will use commercially reasonable efforts to deliver the System on or before the Delivery Date. Each party will provide the other party with thirty (30) days notice, or if this Agreement is executed within thirty (30) days before the Delivery Date, a reasonable advance notice of any change in the Delivery Date. Customer will fully cooperate with Intuitive to permit Intuitive to install the System. Intuitive will use commercially reasonable efforts to install the System in an efficient and expeditious manner. Customer will also provide Intuitive with information, consultation, and advice reasonably necessary to permit installation.
- 3.2 **Delivery Terms.** Intuitive will deliver the System to Customer's designated location noted as the "Ship-to" in **Exhibit A** using a carrier selected by Intuitive. Fees for shipping the System are specified in **Exhibit A**. Risk of loss or damage to the System passes to the Customer upon delivery of the System to Customer. Title to the System passes to the Customer upon Acceptance.
- 3.3 **On-Site Support.** At no charge to Customer, Intuitive will provide periodic on-site support to Customer's designated personnel on the proper operation and upkeep of the System in order for Customer to operate the System as further described in Section 3.4. To clarify, this support includes, but is not necessarily limited to, training on draping the System for use in surgery, proper attachment of Instruments and Accessories, and cleaning of parts of the System and the Instruments and Accessories. The cleaning to be performed regularly by Customer is described in the Documentation.
- 3.4 **Use of System.** Customer will ensure the proper use of the System consistent with the Documentation, and Customer will ensure the proper management and supervision of the System. Customer will not, nor will Customer permit any third party to, modify, disassemble, reverse engineer, alter, or misuse the System or Instruments and Accessories. Prohibited actions include, but are not limited to: (1) adding or subtracting any Customer or third party equipment, hardware, firmware, or

software to or from the System, or (2) reconfiguring any of the Intuitive equipment, Hardware, firmware, or Software as originally provided to Customer as part of the System without Intuitive's express written permission. Customer will ensure that the System is moved and operated only by trained personnel in accordance with the Documentation and Intuitive's instructions. If Customer fails to comply with the requirements of this Section 3.4, Intuitive may terminate this Agreement immediately upon written notice, and any warranties applicable to the System will become void.

- 3.5 **Disposal.** Customer is responsible for properly disposing of all medical instruments, devices, and systems related to the operation and function of the System, including Instruments and Accessories, in accordance with the then current local environmental and safety laws and standards.

4. **Software License and Restrictions**

Software embedded within the System is provided under license and is not sold to Customer. Subject to the terms and conditions of this Agreement, Intuitive grants to Customer 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. Customer must not use, copy, modify, or transfer the Software or any copy thereof, in whole or in part, except as expressly provided in this Agreement. In addition, Customer 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, Customer must first request from Intuitive the information to be sought from the Software, and Intuitive may, in its discretion, provide information to Customer 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 Intuitive and Customer will protect the Software as Intuitive's Proprietary Information (as defined in Section 13). Intuitive reserves all rights to the Software not expressly granted to Customer.

5. **Training**

Intuitive offers training to surgical personnel on the use and operation of the System. At Customer's request, at mutually agreed times and at mutually agreed locations, Intuitive will provide training in the use of the System to Customer's surgical personnel in accordance with the terms specified in **Exhibit A**.

6. **Proctoring**

At Customer's request, and upon Customer's issuance of a purchase order, Intuitive will arrange for Proctoring at Customer's location in accordance with the terms specified in **Exhibit A**. Each Proctor is an independent contractor, is not an agent or employee of Intuitive, and is not authorized to act on behalf of, or legally bind, Intuitive. Intuitive is not responsible for Proctoring services provided by Proctors. The decision to utilize a Proctor is solely that of the Customer. Customer is responsible for ensuring that each Proctor meets Customer's credentialing requirements.

7. **Instruments and Accessories**

Instruments and Accessories will be made available to Customer from Intuitive pursuant to separate orders placed by Customer to Intuitive from time to time. Instruments and Accessories are subject to a limited license to use those Instruments and Accessories with, and prepare those Instruments and Accessories for use with, the System. Any other use is prohibited, whether before or after the Instrument or Accessory's license expiration, including repair, refurbishment, or reconditioning not approved by Intuitive. This license expires once an Instrument or Accessory is used up to its maximum number of uses specified in the Documentation accompanying the Instrument or Accessory.

8. **Pricing and Payment Terms**

8.1 **System.**

- (A) **Price.** Customer will pay to Intuitive the price specified in **Exhibit A** for the System acquired under this Agreement according to the payment terms in Section 8.1(B). The issuance of a purchase order by Customer is for the convenience of the Customer solely; therefore, whether or not Customer issues a purchase order does not affect Customer's commitment to acquire and pay for the System under this Agreement.
- (B) **Payment Terms.** Upon Acceptance, Intuitive will deliver an invoice to Customer for amounts due under this Agreement for the System. Customer will pay the invoiced amount not later than thirty (30) days after the date of invoice. Interest will accrue from the date on which payment is due, at an annual rate of twelve percent (12%) or the maximum rate permitted by applicable law, whichever is lower.
- (C) **Security Interest.** Intuitive will retain a security interest in the System until payment of the full System purchase price has been received by Intuitive. Customer will perform all acts Intuitive reasonably determines are necessary or appropriate to perfect and maintain the security interest. If Customer defaults in its payments for the System, Intuitive has the right, without liability to Customer, to reclaim the System.

8.2 Funding Entity.

A funding entity ("Funding Entity") may provide the funding for Customer to purchase the System defined herein, provided however, Customer remains responsible for payment in full according to the terms of this Agreement if Funding Entity fails to pay. A Funding Entity will have no rights or obligations whatsoever under this Agreement, except as specified in this Agreement. Customer acknowledges and agrees that once Acceptance has occurred and title of the System has passed to the Customer, if Customer subsequently enters into an arrangement with a Funding Entity, then Customer will enter into an agreement (such as a sale and lease-back agreement) directly with the Funding Entity that does not involve Intuitive. Intuitive will not reverse the sale of the System to Customer in order to sell it to another entity, including but not limited to a Funding Entity.

8.3 Taxes.

Customer will pay any Taxes in addition to the prices invoiced. Customer will pay, or reimburse Intuitive for the payment of all Taxes, including related penalties and interest, except Taxes for which Customer has provided a certificate of exemption acceptable to both Intuitive and the appropriate taxing authority prior to delivery of the System. Customer will also pay, or reimburse Intuitive for, all Taxes, related penalties, or interest resulting from Customer's use of a Funding Entity.

9. Warranty and Disclaimer

9.1 System Warranty.

- (A) Intuitive warrants to Customer that:
 - (1) the System as delivered will be free and clear of all liens and encumbrances (except as otherwise specified in this Agreement), and
 - (2) for the period specified in **Exhibit A**, will be free from defects in material and workmanship and will conform in all material respects to the Documentation when used in accordance with the Documentation and Intuitive's instructions.
- (B) Intuitive's obligations under this Section 9.1 are limited to the repair (as further described in Section 5.1(B)-(C)) or, at Intuitive's option, replacement of all or part of the System.
- (C) This warranty is void with respect to any claims:
 - (1) due to any installation, repair, adjustment, modification, disassembly, alteration, reconfiguration, addition to, subtraction from, or misuse of the System by Customer or any third party without the express written permission of Intuitive; or
 - (2) to the extent Customer has not operated, repaired, or maintained the System in accordance with the Documentation or any reasonable handling, maintenance, or operating instructions supplied by Intuitive; or
 - (3) to the extent Customer has used the System with surgical instruments or accessories that are not Instruments or Accessories; or
 - (4) to the extent Customer or Customer's employee, agent, or contractor has subjected the System to unusual physical or electric stress, misuse, abuse, negligence, or accident.
- (D) The foregoing expresses Customer's sole and exclusive remedy, and Intuitive's sole and exclusive liability, for any breach of warranty with respect to the System by Intuitive.

9.4 **No Other Warranties.** INTUITIVE MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SYSTEM OR SERVICES PROVIDED HEREUNDER AND THIS TRANSACTION, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES; THEREFORE, THE ABOVE LIMITATION WILL APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.

10. Indemnification

- 10.1 **By Intuitive.** To the extent allowable by law, Intuitive hereby assumes all liability for, and agrees to indemnify, defend and hold harmless Customer and its successors, permitted assigns, medical staff, agents and employees from and against, any and all liabilities, losses, damages, claims and expenses to the extent that they arise from third party claims, actions or demands including without limitation, claims arising in contract or tort (including negligence), strict liability or otherwise (collectively, "Claims") in any way relating to or arising from (a) Intuitive's breach of any of its representations or warranties or any other obligation hereunder, or (b) Intuitive's negligence or willful misconduct; provided that Intuitive's indemnification obligations

under this Section 10.1 shall not apply to the extent that such Claims arise from Customer's negligence or willful misconduct or breach of any of its obligations hereunder.

10.2 **By Customer.** To the extent allowable by law, Customer hereby assumes all liability for, and agrees to indemnify, defend and hold harmless Intuitive and its successors, permitted assigns, agents and employees from and against, any and all Claims by third parties to the extent that they arise from: (a) Customer's or its employees', medical staff's, agents', affiliates' or representatives' negligence or willful misconduct in the use, possession, or operation of the System, including without limitation, (i) use of the System by individuals who have not completed appropriate training or whose training was not conducted by Intuitive, (ii) use of the System with any surgical instrument or accessory that is not made or approved by Intuitive for use with the System, or (iii) the conduct of surgical procedures on cadavers used in training; or (b) Customer's breach of any of its representations or warranties or any other obligation hereunder, including without limitation Customer's failure to comply with the requirements of Section 7. Notwithstanding the foregoing, Customer's indemnification obligations under this Section 10.2 shall not apply to the extent that such Claims arise from Intuitive's negligence or willful misconduct or breach of any of its obligations hereunder.

10.3 Intellectual Property Obligations.

(A) **Intellectual Property Indemnification.** Intuitive will indemnify Customer against all liabilities, expenses, or damages in connection with any third party claim that the System infringes any third party patent, trade secret, or copyright. If Customer is enjoined from the use of the System due to any such third party claim, Intuitive will promptly, at its option and expense, either (1) substitute the System or any part thereof with non-infringing material that will perform substantially in accordance with the Documentation; or (2) obtain the right of Customer to continue to use the System; or (3) remove the System and refund to Customer the purchase price of the System less reasonable depreciation.

(B) **Indemnification Limitations.** Intuitive has no obligation under this Section 10.3 to the extent any claim of infringement is based upon or arises out of: (1) any modification to the System if the modification was not made directly by Intuitive or through its designated service provider; or (2) the use or combination of the System with any hardware, software, products, data or other materials not specified, provided or approved by Intuitive.

(C) **THE PROVISIONS OF THIS SECTION 10 STATE THE SOLE AND EXCLUSIVE OBLIGATIONS OF INTUITIVE FOR ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.**

10.2 **Customer's Indemnification Obligations.** Intuitive will not be liable for, and Customer will indemnify and hold Intuitive harmless from and against, any claims or damages caused by Customer's failure to comply with the requirements of Sections 3.4 (Use of the System) or 3.5 (Disposal).

10.3 **Claim Notification Requirement.** A party's indemnification obligations under this Section 10 will not apply unless the indemnified party promptly notifies the indemnifying party of the claim as soon as the indemnified party became aware of it. The indemnifying party will have the right to control the defense or settlement of any claim at its cost and with its choice of counsel. The indemnified party will provide all reasonable cooperation to assist the indemnifying party in the defense or settlement of the claim.

11. Limitation of Liability

Except for a breach of the obligations in Sections 3.4 (Use of System), 4 (Software License and Restrictions), 7 (Instruments and Accessories), 8 (Pricing and Payment Terms), the indemnification obligations of Section 10, 12 (Proprietary Information), to the extent permitted by applicable law, each party's aggregate liability to the other for claims relating to this Agreement, whether for breach in contract or tort (including negligence), is limited to an amount equal to the sum of amounts paid by Customer under this Agreement for the activity (such as procurement of the System, or training) giving rise to the claim. Except for a breach of the obligations in Sections 3.4, 4, 7, or 12, neither party will be liable for any indirect, punitive, special, incidental, or consequential damages in connection with or arising out of this Agreement (including loss of business, revenue, profits, use, data, or other economic advantage), even if that party has been advised of the possibility of damages. Some jurisdictions do not allow the limitation of liability for incidental or consequential damages; therefore in those jurisdictions, the foregoing limitation of liability applies only to the extent permitted by law.

12. Proprietary Information

"Proprietary Information" includes, but is not limited to, all non-public information (1) of the disclosing party ("Disclosing Party") that relates to past, present, or future research, development, or business activities or the results of those activities and (ii) that the Disclosing Party has received from others and is obligated to treat as confidential and proprietary. In addition, Intuitive's Proprietary Information includes the terms and conditions of this Agreement and all information derivable from the System, but excluding information that can be learned simply through observation of the System and its operation. Proprietary Information does not include information previously known by the receiving party ("Receiving Party") as demonstrated by the Receiving Party's contemporaneous written records, or information publicly disclosed without breach of an obligation of confidentiality, either before or after the Receiving Party's receipt of the information. The Receiving Party will hold all Proprietary Information of the Disclosing Party in strict confidence and must not use for any purpose, or disclose to any third party, any Proprietary Information, except (1) as expressly authorized in this Agreement or in writing by the Disclosing Party, and (2) as required by law or by court order. If the Receiving Party

is compelled by law to disclose the Proprietary Information of the Disclosing Party, then (1) the Receiving Party must give prior notice to the Disclosing Party so as to permit the Disclosing Party to try to protect its Proprietary Information including attempting to obtain a protective order requiring that the Proprietary Information so disclosed be used only for the purposes for which the order was issued or for other legal requirement and (2) the Receiving Party must cooperate with the Disclosing Party in such efforts. The Receiving Party will use the same degree of care to protect the Proprietary Information as Receiving Party uses to protect its own information of like kind, but not less than all reasonable steps to maintain the confidentiality of the Proprietary Information.

13. Term

13.1 **Initial Term.** The Initial Term is specified in **Exhibit A**.

13.2 **Termination and Survival.** Either party may terminate this Agreement if the other party breaches a material term or condition of this Agreement and fails to cure the breach following thirty (30) days' written notice from the non-breaching party. Sections 3.4, 3.5, 4, 8.1, 8.3, 10, 11, 12, 13.2, 14, and any other provision which by its nature will survive, will remain in effect notwithstanding the expiration or termination of this Agreement.

14. Miscellaneous

14.1 **Assignment.** This Agreement will be binding upon the permitted successors and assigns of the parties. Neither party may assign this Agreement without the prior written consent of the other party, except pursuant to a transfer of all or substantially all of a party's assets and business relating to the subject of this Agreement, whether by merger, re-organization, sale of assets, sale of stock, or otherwise. Customer may not assign or transfer the Software license granted to it under this Agreement to any third party without Intuitive's prior written consent. Any attempt by either party to assign this Agreement or any rights or duties hereunder contrary to the foregoing provision is void. Intuitive consents to Customer's assignment of this Agreement to a Funding Entity as part of Customer's financing arrangement with the Funding Entity. If Customer assigns this Agreement to a Funding Entity, Customer retains its right to all benefits under this Agreement, including without limitation all warranties, representations, and indemnification provided by Intuitive, and may independently enforce any obligation, warranty, or representation.

14.2 **Costs.** Except as otherwise specifically provided herein, each party will bear its own costs and expenses incurred in connection with the performance of its obligations hereunder.

14.3 **Debarment.** Intuitive warrants and represents that individuals of its organization involved in providing services under this Agreement have not been convicted of any criminal offense relating to health care and are not debarred, excluded, or otherwise ineligible for participation in any federal or state health care program. If at any time before completion of this Agreement, Intuitive or any individual in its organization involved in providing services under this Agreement is so convicted or is debarred, excluded or otherwise determined to be ineligible, Intuitive will notify Customer in writing, the individual will immediately cease providing services under this Agreement, and Intuitive will replace the individual with a replacement employee reasonably suitable to Customer, and, if it is Intuitive, this breach will be considered a material breach by Intuitive.

14.4 **Federal Audit.** Until the expiration of four (4) years after furnishing services under this Agreement, Intuitive will make available upon written request of the Secretary of the Department of Health and Human Services (the "Secretary") or upon request of the U.S. Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents, and records of Intuitive that are necessary to certify the nature and extent of costs for which Customer may properly seek reimbursement. If Intuitive carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, the subcontract will contain a clause to the effect that until the expiration of four (4) years after furnishing of services under the subcontract, the subcontracting party will make available, upon written request of the Secretary, or upon request of the U.S. Comptroller General or any of their duly authorized representatives, the subcontract, and the books, documents, and records of the organization that are necessary to verify the nature and extent of the costs. Intuitive will promptly notify Customer of any requests for information made under this provision.

14.5 **Force Majeure.** Neither party will be liable for any loss, damage, detention, delay, or failure to perform in whole or in part resulting from causes beyond that party's control including, but not limited to, acts of terrorism, fire, flood, earthquake, war, riots, labor disputes, shortage of components, or any governmental law, order, regulation, or ordinance.

14.6 **Insurance.** Intuitive has obtained, and will maintain throughout the term of the Agreement, Commercial General Liability Insurance including coverage for contractual liability, product liability, personal injury and bodily injury in an amount not less than \$1,000,000 per occurrence/\$3,000,000 aggregate (or as may be aggregated by the excess liability policy on the General Liability policy). Intuitive will furnish the Customer with a certificate of insurance evidencing the coverage as outlined above on Customer's request. Intuitive carries, and will continue to carry, Workers' Compensation Insurance as required by law.

14.7 **Interpretation.** Headings used in this Agreement are provided for convenience only and do not in any way affect the meaning or interpretation hereof. The terms "sale", "purchase", "acquire", "procure" and variations of such terms, as used in this Agreement with respect to the System, do not imply that the Software and Documentation aspect of the System are sold or purchased; the Software and Documentation are licensed under this Agreement and only the Hardware is sold. Neither

party is the drafter of this Agreement. Accordingly, the language of this Agreement will not be construed for or against either Party.

- 14.8 **Notices.** Any notices given under this Agreement must be in writing and will be deemed given and received five (5) days after the date of mailing, one (1) day after dispatch by overnight courier service or electronic mail, or upon receipt if by hand delivery, or upon completion of confirmed transmission if by facsimile. Any notices under this Agreement must be sent to Intuitive or the Customer at the address shown in the preamble above, in both cases to the Contracts Dept/General Counsel's office. Each party may change its address for receipt of notices by giving the other party notice of the new address.
- 14.9 **Relationship of the Parties.** The parties' relationship is one of contract, and they are not, and will not be construed as partners, joint venturers, or agent and principal. Neither party is authorized to act for, or on behalf of, the other party.
- 14.10 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, then that provision will not affect the validity of the remaining provisions of the Agreement, and the parties will substitute a valid provision for the invalid provision that most closely approximates the intent and economic effect of the invalid provision.
- 14.11 **Access to Customer's Facilities.** Intuitive agrees that any Intuitive personnel who routinely provide services at Customer's facilities will use commercially reasonable efforts to comply with Customer's Access Requirements, provided that Customer provides Customer's Access Requirements in writing prior to execution of this Agreement. Customer's need for service may be unplanned and urgent with patient safety at stake. Therefore, if Customer denies access to its facilities to any Intuitive personnel for performance of warranty (Section 9) obligations in connection with a surgical procedure because such personnel have not met Customer's Access Requirements, Intuitive's warranty obligations in this Agreement will be suspended during such denial of access, provided that Intuitive uses commercially reasonable efforts to find replacement Intuitive personnel who comply with Customer's Access Requirements. Customer will indemnify and hold harmless Intuitive from any losses, claims, liabilities or causes of action arising from such denial of access.
- 14.12 **Data Use.** Customer agrees that Intuitive and its affiliates within the Intuitive Surgical group of companies (collectively, "Intuitive") may collect data relating to the use of Intuitive products ("Data"). In some instances Data may be communicated via data gathering or transmission technology to Intuitive. In other instances, Intuitive may require Customer and Customer agrees to provide Data to Intuitive. Such Data may be used for a variety of purposes, including, but not limited to (1) providing support and preventative maintenance of Intuitive products, (2) improving Intuitive products or services, (3) ensuring compliance with applicable laws and regulations, and (4) providing a general resource for Intuitive's research and business development. Intuitive does not intend to collect protected health information (PHI) as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and associated laws and regulations, as may be amended from time to time. In the event any Data communicated to Intuitive identifies an entity or individual, Intuitive will not share such Data with any third parties without the entity's or individual's consent, unless required by law.
- 14.13 **Waivers.** No waiver of any right by either party under this Agreement will be of any effect unless the waiver is in writing and signed by the waiving party. Any purported waiver not consistent with the foregoing is void.
- 14.14 **Counterparts.** This Agreement may be executed by facsimile or in multiple copies, each of which is an original, and all of which taken together will constitute one single agreement.
- 14.15 **Entire Agreement; Amendment.** This Agreement is the entire agreement between Intuitive and Customer and supersedes any prior agreements, understandings, promises, and representations made either orally or in writing by either party to the other party concerning the subject matter herein, pricing, and the applicable terms. Any terms or conditions in Customer's (or as applicable, Funding Entity's) purchase order that are different from, inconsistent with, or in addition to, the terms and conditions of this Agreement will be void and of no effect, unless otherwise mutually agreed to in writing by the parties. This Agreement may be amended only in writing, signed by both parties. Any purported oral modification intended to amend the terms and conditions of this Agreement is void.

BOTH PARTIES HAVE READ, UNDERSTOOD, AND AGREED TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND EXECUTE THIS AGREEMENT AS OF THE EFFECTIVE DATE.

ACCEPTED BY: INTUITIVE SURGICAL, INC.

By: _____

Name: Larry E. Crist

Title: Director, Contracts Administration

Date: _____

ACCEPTED BY: NASH HOSPITALS, INC.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Deliverables, Price and Delivery

1. Intuitive will provide Customer with the following: da Vinci[®] Si[™] Surgical System (with single console) Equipment List

System Surgeon Console including:

- One (1) Surgeon Console
 - One (1) High Resolution Stereo Display
 - One (1) Left Master Controller
 - One (1) Right Master Controller
 - One (1) Foot Switch Panel
 - One (1) Surgeon Console to Vision Cart Cable
- Warranty period:** One (1) year from the Acceptance date.

System Patient Cart including:

- One (1) Patient Cart
 - One (1) Instrument Arm One
 - One (1) Instrument Arm Two
 - One (1) Instrument Arm Three
 - One (1) Camera Arm
 - One (1) Patient Cart to Vision Cart Cable
- Warranty period:** One (1) year from the Acceptance date.

System Vision Cart

Warranty period: One (1) year from the Acceptance date.

System Documentation including: User's Manual For System

Warranty period: Not Applicable.

System Software

Warranty period: One (1) year from the Acceptance date.

Instrument and Accessory: Reusable Accessory Starter Kit (Starter Kit contents subject to change without notice)

- One (1): 3 Arm Drape Kit, 5 pack
 - One (1): 4 Arm Drape Kit, 5 pack
 - Twenty (20): Instrument Arm Drapes
 - Twenty (20): Camera Head Drapes
 - Twenty (20): Camera Arm Drapes
 - Twenty (20): Monitor Drapes
 - One (1): Box of 10: 8mm Cannula Seals
 - One (1): Box of 3: 8mm Cannula
 - One (1): Cannula Gage Pin
 - One (1): Blunt Obturator
 - One (1) Box of 24: Bladeless Obturator
 - One (1): Blade Protector
 - One (1): Allen Wrench
 - One (1): Spare Lamp Module
- Warranty period:** Ninety (90) days from the Acceptance date

Instrument and Accessory: Camera Starter Kit: (Starter Kit contents subject to change without notice)

- One (1): 3D-HD Camera Head with Light Guide
 - One (1): Camera Cable
 - One (1): 0 degree Endoscope
 - One (1): 30 degree Endoscope
 - One (1): Alignment Target
- Warranty period:** One (1) year from the Acceptance date.

Instrument and Accessory: Training Instrument Starter Kit (Starter Kit contents subject to change without notice)

- One (1): Large Needle Driver
 - One (1): ProGrasp[™] Forceps
 - One (1): Maryland Bipolar Forceps
 - One (1): Curved Scissors
 - One (1): Tenaculum Forceps
 - One (1): Suture Cut Needle Driver
- Warranty period:** One (1) year from the Acceptance date.

(equipment list rev 10/2010)

2. **Pricing.** All amounts are shown in US Dollars

System Type	Quantity	Delivery Date*	Price	Delivery Charge
da Vinci® Si™ Surgical System (with single console)	1	March 29, 2012	\$725,000	\$10,000

It is Customer's responsibility to determine whether this purchase complies with Customer's State's Certificate of Need laws and what Certificate of Need filing, if any, needs to be made with regard to this purchase.

*The Delivery Date is an estimated "on or before" delivery date to Customer's designated location (see "Ship-to" below).

3. **Acceptance.** The System is deemed accepted by Customer upon delivery to Customer's designated location ("Acceptance").

4. **The "Ship-To" information for Customer is:**

5. **The "Bill-To" information for Customer is:**

Customer's PO Number: _____

6. **Taxes.** Customer represents that Customer is or is not exempt from sales and use tax by checking the appropriate box below. If no box is checked, Customer will be deemed to not be exempt from sales and use tax and appropriate sales and use tax will be charged to Customer. If exempt, Customer is requested to send or fax a copy of Customer's exemption certificate to: Attn: Tax Department, Intuitive Surgical, Inc, 1266 Kifer Road, Sunnyvale, CA 94086; fax number: 408-523-1390.

- Taxable
- Exempt: Charitable (501)(c)/nonprofit
- Exempt: Direct Pay Permit # _____
- Exempt: Other _____

7. **Term.** The initial term of this Agreement will commence as of the Effective Date and will continue until the fifth (5th) anniversary of Acceptance ("Initial Term") unless earlier terminated as provided in this Agreement. Thereafter, this Agreement may be renewed for successive one (1) year terms ("Renewal Term(s)") upon mutual written agreement of the parties.

8. **Training.** As of the Effective Date, the price for training is three thousand dollars (\$3,000) per surgeon or physician's assistant. The payment terms for training are net thirty (30) days from the date of Intuitive's invoice. This pricing will remain in effect during the first year of the Initial Term. Thereafter, training will be made available to Customer at Intuitive's then current list price for training.

9. **Proctoring.** As of the Effective Date, the rate for Proctor's services is three thousand dollars (\$3,000) per day. The payment terms for Proctoring are net thirty (30) days from the date of Intuitive's invoice. This pricing will remain in effect during the first year of the Initial Term. Thereafter, Proctoring will be made available to Customer at Intuitive's then current list price for Proctoring.

10. **Trade-in.** "Trade-on System means the da Vinci® S™ Surgical System with a serial number of SG334 and 2 camera head(s), 1 endoscope(s) (0 degree), and 1 endoscope(s) (30 degree).

Customer represents and warrants to Intuitive that as of the date of Acceptance, it has clear title to the Trade-in System.

Within 7 days after Acceptance, Customer will provide access to the Trade-in System at Customer's site to enable Intuitive to disconnect and remove the Trade-in System.

Customer acknowledges that any Service amounts paid to Intuitive for the Trade-in System are non-refundable.

11. **Rebate.** Intuitive shall issue Customer a rebate in the amount of \$9,000 (the "Rebate"). The Rebate is payable by Intuitive within sixty (60) days of either (i) the Effective Date or (ii) upon full payment of the System by Customer, whichever is later.

Customer agrees that the pricing in this Agreement, including this Rebate, reflects a discount which must be fully and accurately disclosed and reported in accordance with the requirements of the federal healthcare programs anti-kickback law (42 U.S.C. §1320a-7b(b)) and its implementing regulations (42 C.F.R. §1001.952). In addition, Customer will provide access to all information provided by Intuitive regarding this Rebate/discount upon request by the U.S. Department of Health and Human Services or a State health care program.

If the Rebate is to be made to an entity other than Customer, Customer will provide the entity's name and address information below:

Entity / Name of Payee: _____

Mailing Address: _____

Attention: _____



Quote Date: March 16, 2012
 Quote Expiration Date: March 30, 2012
 Quote Number: IS03162012E02

Customer Name/Address:

Nash Hospital
 2460 Curtis Ellis Dr
 Rocky Mount, NC 27804

Contact Intuitive Surgical for more information:

Contact Name: Bo Adams
 Title: Area Sales Manager
 Phone: 704-517-0705
 E-mail: Bo.Adams@intusurg.com
 Customer Service Fax Number: (408) 523-2377

Intuitive Surgical is pleased to provide you with the following Quote

Equipment Type	QTY	Price
372273 da Vinci Skills Simulator	1	\$85,000

Includes:

- da Vinci Skills Simulator Equipment List:
- One (1) Skills Simulator Unit
 - One (1) Blue Fiber Cable
 - One (1) Audio Cable
 - Warranty 1 Year from Acceptance Date

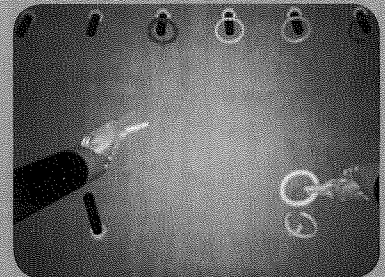
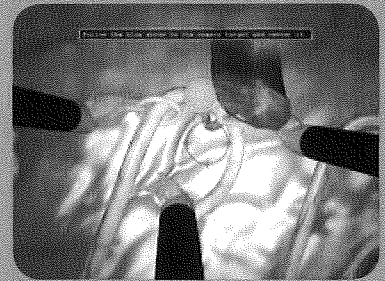
Equipment Total \$85,000
does not include freight or tax

"Intuitive makes no representation with regard to Certificate of Need requirements for this purchase. It is your (the customer's) responsibility to determine whether this purchase complies with your State Certificate of Need law and what Certificate of Need filing, if any, needs to be made with regard to this purchase."

Additionally: A signed Purchase Order and/or an addendum to the existing Sales, License, and Service Agreement ("SLSA") is required prior to shipment of the Equipment. All site modifications and preparation are the Customer's responsibility and are to be completed to the specification given by Intuitive Surgical prior to the installation date. Freight will be invoiced separately. Subject to credit approval by Intuitive Surgical, payment terms are net 30 days from Intuitive Surgical's invoice date. Additional System enhancements required to support new features may be purchased at Intuitive Surgical's then current list price. The System Upgrade price of the da Vinci® Surgical System includes the initial installation of the System at Customer's facility. All taxes are the responsibility of the Customer and will be added to the invoice, as appropriate. da Vinci Skill Simulator FOB Origin.

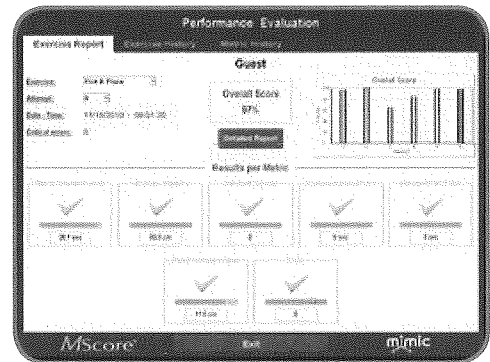
da Vinci^{Si} HD
SURGICAL SYSTEM

da Vinci Skills Simulator™



INTUITIVE
SURGICAL®

Introducing Simulation for the *da Vinci*[®] Surgical System



Skills Practice in an Immersive Virtual Environment

Portable. Practical. Powerful. The *da Vinci* Skills Simulator contains a variety of exercises and scenarios specifically designed to give users the opportunity to improve their proficiency with the *da Vinci* surgeon console controls. The sleek case seamlessly integrates with an existing *da Vinci*[®] *Si*[™] or *Si-e*[™] surgeon console*, turning it into a novel practice platform that can be used in or outside the operating room. No additional system components are required.

- The straightforward set-up allows users to practice unassisted or with supervision, according to their preference.
- Built-in metrics enable users to assess skills, receive real-time feedback and track progress.
- Administrative tools let users structure their own curriculum to fit with other learning activities in their institution.
- The open architecture of the system software allows for the future development and incorporation of additional practice modules.

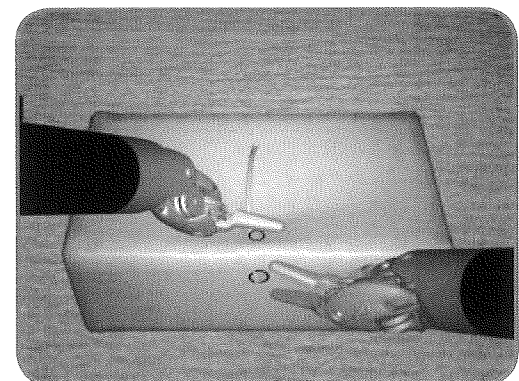
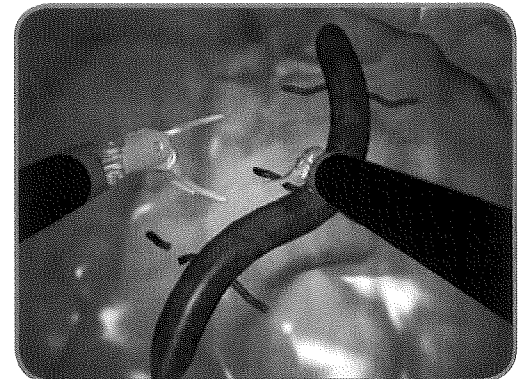
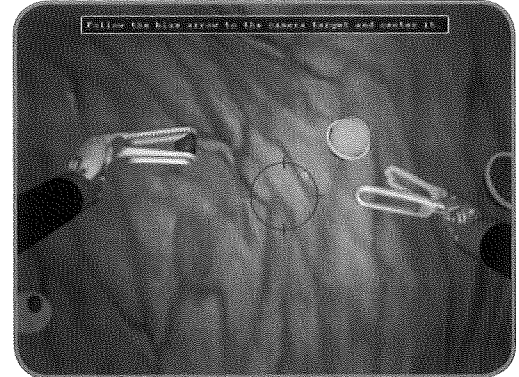
* Not compatible with the *da Vinci S* or standard *da Vinci* surgical systems.

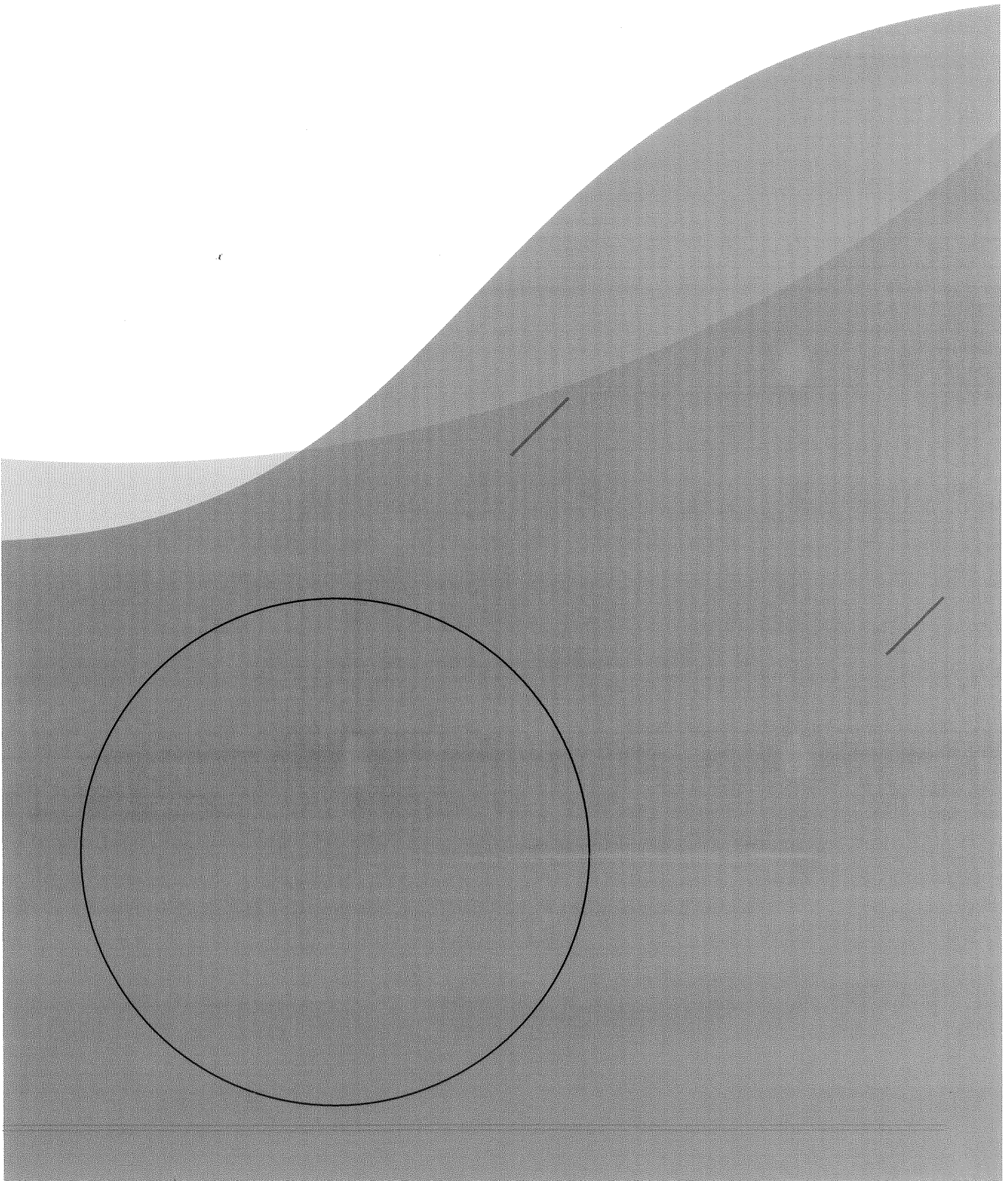
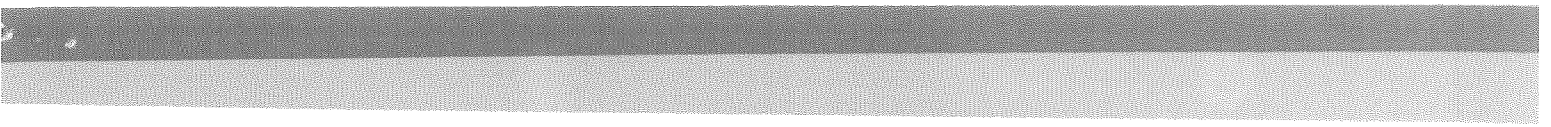
A Variety of Comprehensive Exercises

Developed in collaboration with *Mimic Technologies*®, the *Skills Simulator* exercises range from basic to advanced and are designed to be relevant to surgeons from any specialty.

Each exercise covers at least one of the following skill categories:

- **EndoWrist® Manipulation** - *EndoWrist* instruments are designed to provide surgeons with natural dexterity and a range of motion far greater than the human hand. These exercises are designed to help users gain familiarity with the movement of the instruments.
- **Camera and Clutching** – The three-dimensional, enhanced high-definition vision of the *da Vinci* System offers a key clinical advantage in surgery, and these exercises help users improve camera control and learn to use the clutch effectively.
- **Fourth Arm Integration** – For more advanced instrument control skills, some exercises include a fourth instrument arm that must be used. This is designed to promote instrument skill, and encourages users to think strategically about instrument placement during tasks.
- **System Settings** – The surgeon console features a full complement of controls for user settings. Quiz exercises on the simulator focus on basic setting topics such as icons, ergonomics and instrument scaling.
- **Needle Control and Driving** – These scenarios are designed to help users develop skill when manipulating needles, including a focus on how to effectively hand off and position needles while practicing with a range of geometries.
- **Energy and Dissection** – The footswitch panel enables users to perform a range of tasks such as swapping between different types of energy instruments. These exercises allow users to gain familiarity with the footswitch panel by applying monopolar and bipolar energy while working on dissection tasks.

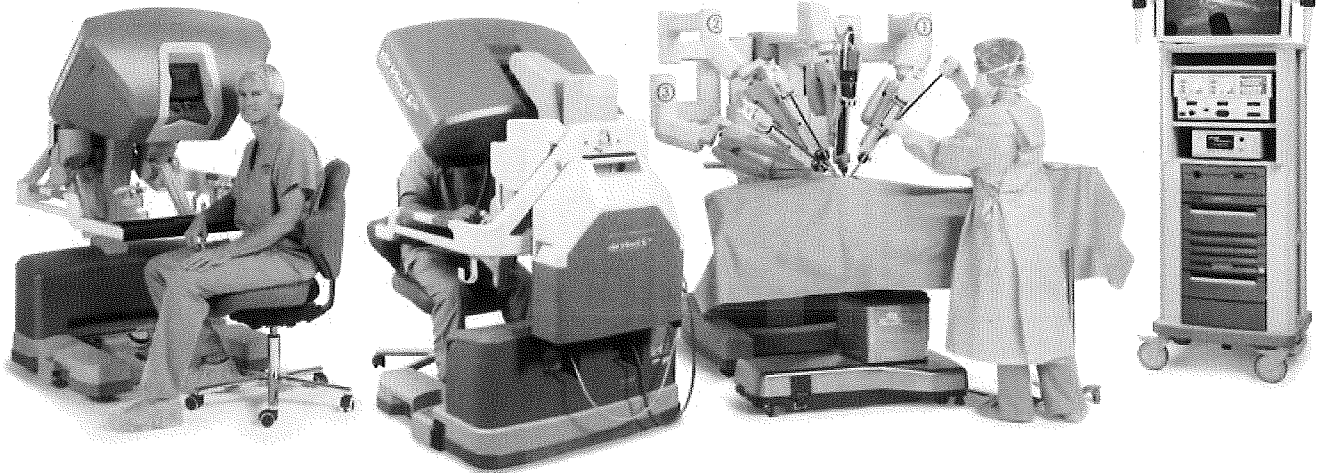
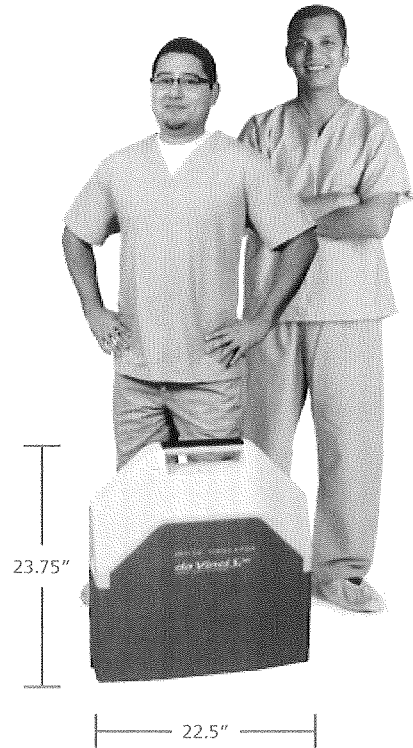




One Compact Solution With Many Benefits

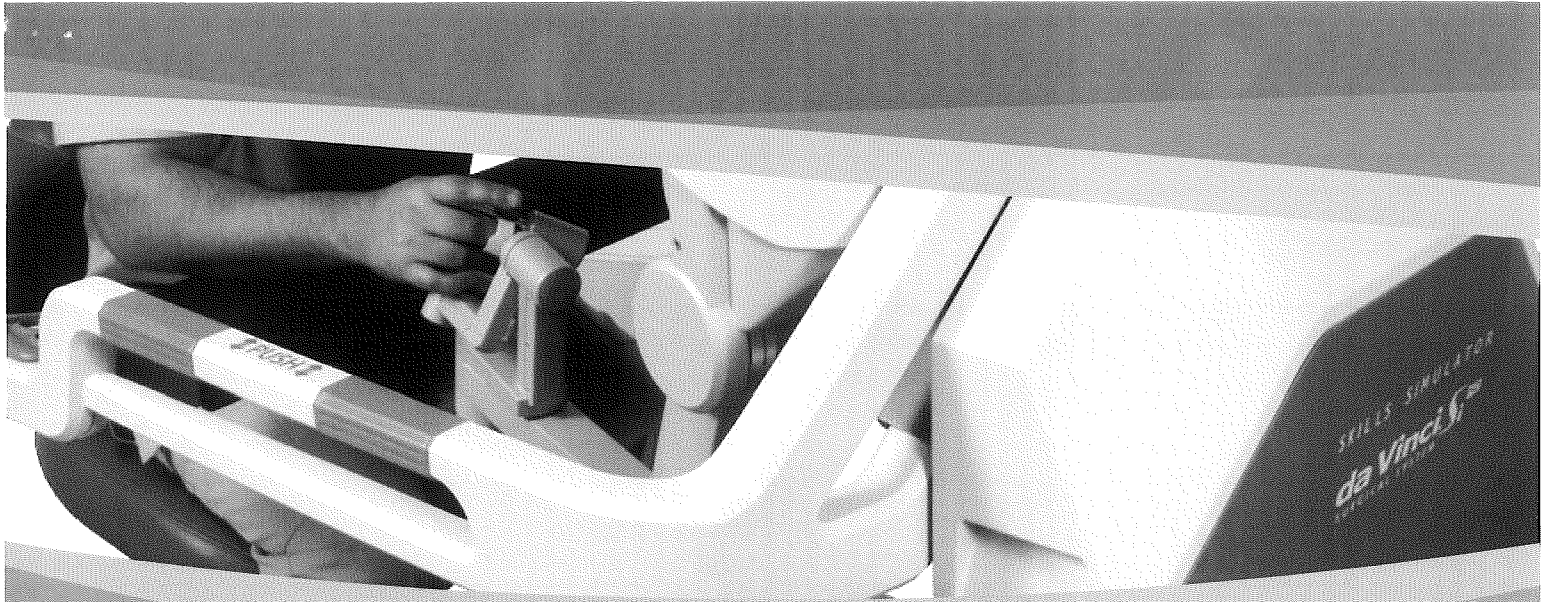
Simulation in all forms is an important part of the learning experience for surgical technology. By providing a controlled re-creation of critical steps in instrument control, simulation allows surgeons to practice their skills in a non-clinical environment. Other major benefits of simulation include the ability to:

- Increase familiarity with the *da Vinci System* - The *Skills Simulator* allows surgeons to practice on the *da Vinci System* as much as needed to become comfortable with new techniques.
- Provide more learning opportunities - For residents, simulation helps maximize practice time and ensures they get as much technical exposure as possible.
- Measure progress - This is a quantitative, measured platform designed to allow surgeons to see how they have done on a given exercise and to track progress over time.
- Warm-up before surgery - The simulator can be used immediately before a case to allow surgeons to re-familiarize themselves with the console.



For more information, please visit our website at:

http://www.intuitivesurgical.com/products/skills_simulator



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Sunnyvale, CA 94086-5304
Tel: +1.408.523.2100
Fax: +1.408.523.1390

European Headquarters

Intuitive Surgical Sàrl
1, Chemin des Mûriers
1170 Aubonne,
Suisse
Tel: +41.21.821.20.00
Fax: +41.21.821.20.01

Asia Pacific Headquarters

Intuitive Surgical Sàrl Shanghai
Room 2051, 20th Floor
No. 989 Chang Le Road
Shanghai 200031 P.R. China
Tel: +86.21.5116.6881
Fax: +86.21.5116.6899

www.IntuitiveSurgical.com
www.daVinciSurgery.com

To contact a representative or receive additional information, please
call Intuitive Surgical Customer Service at 1-877-408-3872.

While clinical studies support the use of the *da Vinci* Surgical System as an effective tool for minimally invasive surgery, individual results may vary. Before performing any clinical procedure utilizing the System, physicians are responsible for receiving sufficient training and proctoring to ensure that they have the requisite training, skill, and experience necessary to protect the health and safety of the patient. For technical information, including full cautions and warnings on using the *da Vinci* System, please refer to the System User Manual. Read all instructions carefully. Failure to properly follow instructions, notes, cautions, warnings, and danger messages associated with this equipment may lead to serious injury or complications for the patient. © 2010 Intuitive Surgical. All rights reserved. *Intuitive*, *Intuitive Surgical*, *da Vinci*, *da Vinci S HD*, *da Vinci Si*, *InSite*, *TilePro* and *EndoWrist* are trademarks or registered trademarks of Intuitive Surgical. All other product names are trademarks or registered trademarks of their respective holders. PN 874389 Rev. A 1/11

md buyline

Nash Health Care Systems / Nash General Hospital Rocky Mount, NC

Vendor:	INTUITIVE SURGICAL
Technology	Surgical Robotics
Model	da Vinci Si Surgical System
Requested By:	Paul Matthews
Quote Number:	IS312012JP3
Quote Date:	3/1/2012
Tracking #:	1188976
Analysis Date	3/2/2012

Surgical Robotics Price Analysis

MODEL: DA VINCI SI SURGICAL SYSTEM

PURCHASE

GENERAL	QUOTED	MDB RECOMMENDED
Discount %	58.00 %	58.00 %
List Price	\$1,750,000.00	\$1,750,000.00
Purchase Price	\$735,000.00	\$735,000.00

TERMS	QUOTED	MDB RECOMMENDED
Freight	FOB Destination; invoiced upon delivery	FOB Destination; invoiced upon delivery
Terms	Net 30 days from date of invoice	Net 30 days from date of invoice
Warranty	12 months	12 months

2012 Capital Equipment Budget

Budget Line	DEPT. #	DEPT. NAME	NEW EQUIP	REPLACE-MENT	DETAILED DESCRIPTION OF CAPITAL REQUEST	2012 Cap Ex
12	116160	Dialysis		X	Fresenius (2008K2) machines	\$17,200
13	116160	Dialysis	X		Moveable equipment	\$15,000
14	116211	NGH OR	X		DaVinci Si System	\$775,000
15	116211	NGH OR	X		Jackson Spinal Surgery Top	\$40,000
16	116211	NGH OR	X		Stryker TPS drills	\$34,000
17	116211	NGH OR			Beach Chair	\$12,000
18	116221	PACU	X		Bladder Scanner	\$14,000
19	116231	Heartburn		X	Manoscan (MSE-4264) and esophageal catheter (MSC-128) replacement (Amy has the actual quote from Given)	\$46,200

Response to Question 5 in Letter

a.	Bonds, insurance, surveys, testing, (builders risk, storage insurance, performance bonds);	\$0 Not Applicable
b.	Utility costs during construction, including utility extensions and relocations;	\$0 Not Applicable
c.	Parking and paving costs;	\$0 Not Applicable
d.	Architect and engineering fees including reimbursable expenses;	\$0 Not Applicable
e.	Construction management fees or costs;	\$0 Not Applicable
f.	Interior and exterior signage;	\$0 Not Applicable
g.	Permits and fees for impact studies: environment, asbestos, building, zoning, etc., sprinkler water tap fees; highway access fees;	\$0 Not Applicable
h.	Cable TV connections: wiring and/or hardware; external dishes and equipment;	\$0 Not Applicable
i.	Computer wiring: hardware and/or software (information systems wiring, power etc.);	\$0 Not Applicable
j.	Telephone wiring/system including equipment;	\$0 Not Applicable
k.	All consultants: construction, phasing, interior design, programmatic, etc.;	\$0 Not Applicable
l.	Exterior lighting, walks, rails, ramps, and protective barriers (fences/etc.);	\$0 Not Applicable
m.	Spare parts such as an initial change of air filters;	\$0 Not Applicable
n.	All types of moveable equipment: furniture, linens, carts, desks, chairs, medical equipment, art work etc.;	\$0 Not Applicable
o.	All types of fixed equipment, including moving and re-installation costs;	\$0 Not Applicable
p.	Startup costs such as cleaning, advertising, marketing, moving, grand opening, etc.;	\$0 Not Applicable
q.	Security equipment, wiring, hardware, software, etc.;	\$0 Not Applicable
r.	Moving costs and other costs associated with leaving an existing space or building (post occupancy repairs, clean-up, removal of telephone systems, lease requirements when moving out, etc.);	\$0 Not Applicable
s.	Interim Life Safety measures and/or OSHA requirements during construction (labor 4-materials);	\$0 Not Applicable
t.	Correction of existing life safety code, JCAHO Plant, Licensure and OSHA deficiencies;	\$0 Not Applicable
u.	Vehicles, maintenance, storage buildings;	\$0 Not Applicable
v.	Cost of financing;	\$0 paying with cash reserves, budgeted in 2012 capital budget
w.	Legal fees associated with the project: leases, agreements, disputes, deeds, consultation etc.;	\$0 Not Applicable
x.	Interest during construction on construction loans;	\$0 Not Applicable
y.	Building equipment and systems necessary to implement emergency management plan, such as, generators, snow removal equipment, extra fuel storage, etc.;	\$0 Not Applicable
z.	Outstanding life code deficiencies or major repairs needed to maintain existing building safety, longevity, and compliance with codes, regulations, and/or JCAHO requirements where applicable;	\$0 Not Applicable

aa.	Handicap accessibility requirements to assure compliance with ADA;	\$0 Not Applicable
bb.	Painting, wallpaper, all interior finishes;	\$0 Not Applicable
cc.	Carpet, floor tile, ceramic tile, operating room special flooring etc.;	\$0 Not Applicable
dd.	Demolition costs, including permits, hauling, special disposal costs;	\$0 Not Applicable
ee.	Partnership fees, incorporation fees, privilege licenses etc.;	\$0 Not Applicable
ff.	Costs for elevator and boiler certifications;	\$0 Not Applicable
gg.	Costs associated with compliance with final review comments by all reviewing regulatory agencies, including actual construction costs, design change costs if any, and modification of contracts (cost, profit, overhead);	\$0 Not Applicable
hh.	A reasonable contingency cost to complete the project;	\$ 0 Not necessary
ii.	Costs associated with completion of final system certifications, including but not limited to medical gas certification to comply with NFPA99 test criteria;	\$0 Not Applicable
11-	Costs for certification and testing of patient special electrical systems to comply with NFPA99 and the National Electrical Code (impedence, equipotential, and current leakage tests for fixed patient equipment);	\$0 Not Applicable
kk.	Costs for fire alarm certification and sprinkler system certification prior to occupancy;	\$0 Not Applicable
11.	Costs associated with field labeling of any equipment that is not listed and labeled by a NC recognized safety testing lab (E.G., UL, ETL., MET., etc.);	\$0 Not Applicable
mm	Costs to provide certification by the X-Ray shielding designer that the radiation shielding has been designed and installed per approved plans, specifications, and regulations (radiology installations only);	\$0 Not Applicable
		\$0 Not Applicable
nn.	Costs of all additive change orders known at this time;	\$0 Not Applicable

TOTAL \$ \$0.00

I certify that, to the best of my knowledge, the costs of the proposed project named above are complete and correct.

Date Certified: *Not applicable*
 (Signature of Licensed Architect or Engineer)

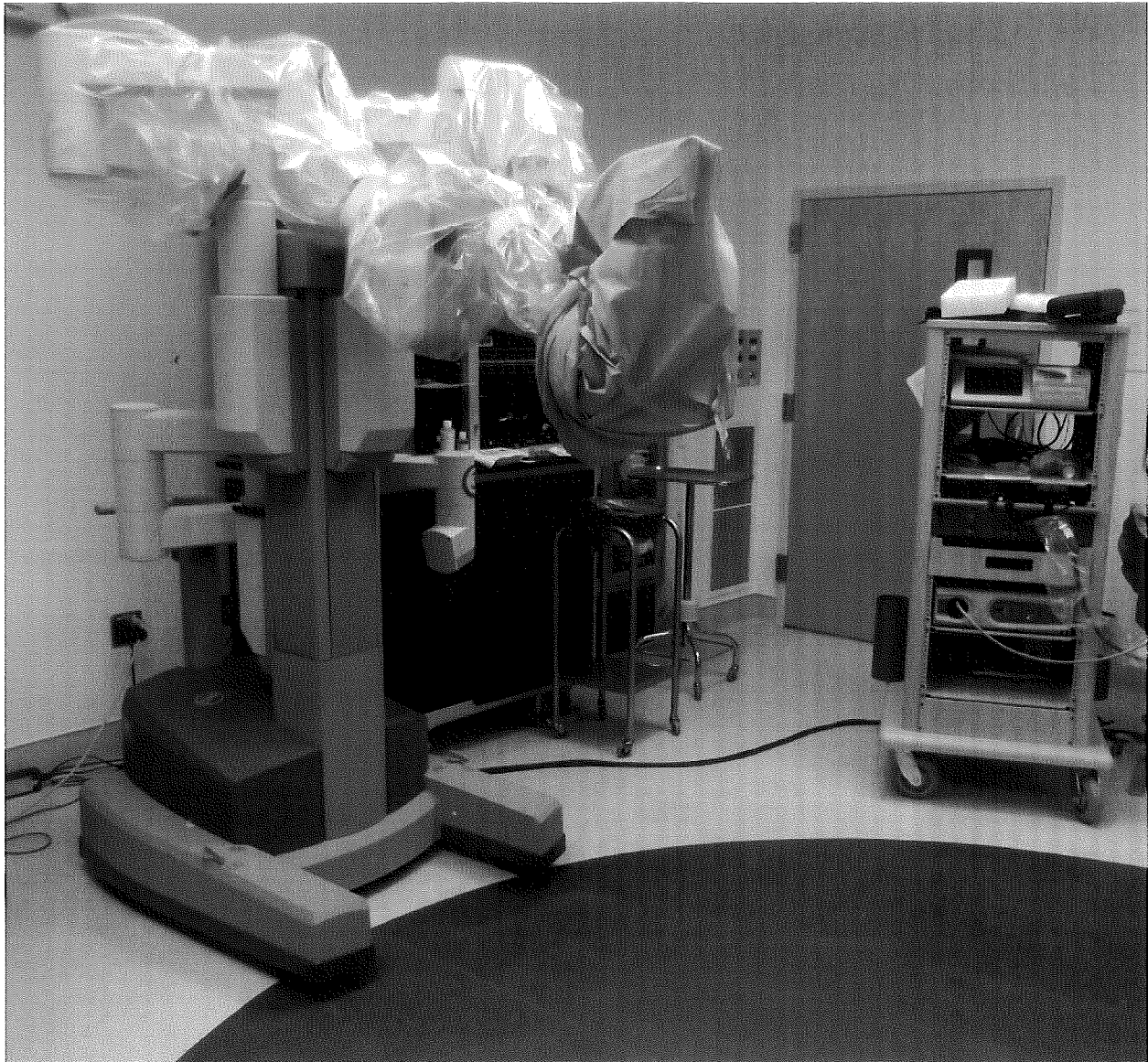
I assure that, to the best of my knowledge, the above costs for the proposed project are complete and correct and that it is my intent to carry out the proposed project as described.

Date Signed: *Brad H. Weir* *COO*
 (Signature and Title of Officer Authorized to Represent Provider/Company)

Picture of current unit being replaced. Picture shows Surgeon's console set up for use.



Photo of current unit. Robotic arms are already draped for surgery, note cable that connects to console





North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section

2704 Mail Service Center • Raleigh, North Carolina 27699-2704
<http://www.ncdhhs.gov/dhsr/>

Drexdal Pratt, Director

Beverly Eaves Perdue, Governor
Albert A. Delia, Acting Secretary

Craig R. Smith, Section Chief
Phone: (919) 855-3873
Fax: (919) 733-8139

April 2, 2012

Mr. Brad H. Weisner, COO
Nash Hospitals, Inc.
2460 Curtis Ellis Drive
Rocky Mount, NC 27804

RE: Request for additional information/ Nash Health Care System / Acquire replacement Robotic System Equipment / Nash County
FID #: 933368

Dear Mr. Weisner:

The Certificate of Need Section (CON Section) received your correspondence of March 26, 2012 including the completed Proposed Total Capital Cost of Project form. However, the CON Section does not have sufficient detail regarding the projected costs to be able to conclude whether all required costs have been included in the projected capital expenditure for the project. Therefore, the following additional information is needed to determine if all costs associated with the proposed project have been included.

1. For each line item on the Proposed Total Capital Cost form submitted with the March 26, 2012 letter, provide a detailed explanation of how the cost on that line was determined. Further, provide an itemized breakdown of the specific items included in the total cost on each line. For example, for line C(13) Fixed Equipment, identify the type, number and unit cost for each item of equipment included in the total cost on that line.
2. Identify (i.e., describe in some detail) all costs incurred or to be incurred by the owner of the building (i.e., the lessor) for renovation or upfit of the space in which the proposed & will be located.
3. For each piece of fixed or movable equipment and furniture to be purchased, provide the cost and fair market value and document that the cost includes all taxes, installation fees and transportation costs.
4. Identify all fixed or movable equipment and furniture that will be leased and provide the fair market value for each piece of equipment and furniture listed.



5. Provide the cost for each item on the attached list, and identify the line item on the Proposed Total Capital Cost of Project form on which that cost is included. If the cost for an item listed below is "zero," provide a detailed explanation as to why the cost is not applicable to the proposed project. Identify the person that will incur each of the itemized the costs.
6. In accordance with N.C.G.S. 131E-177, provide all records in any recording medium which pertain to the construction/renovation and acquisition activities engaged in by any person related to the development of the proposed project, including but not limited to, construction contracts, architectural contracts, consultant contracts, purchase orders, cancelled checks, accounting and financial records, debt instruments, and loan and security agreements.

Your prompt response will enable the CON Section to make a timely determination whether the above-referenced proposal is a new institutional health service that requires a certificate of need. If you have any questions regarding this request, please do not hesitate to call me at 919-733-6360. Include the Facility Identification Number (FID #) in all future correspondence.

Sincerely,

A handwritten signature in cursive script that reads "Bernetta Thorne-Williams".

Bernetta Thorne-Williams, Project Analyst
Certificate of Need Section

a.	Bonds, insurance, surveys, testing, (builders risk, storage insurance, performance bonds);	\$
b.	Utility costs during construction, including utility extensions and relocations;	\$
c.	Parking and paving costs;	\$
d.	Architect and engineering fees including reimbursable expenses;	\$
e.	Construction management fees or costs;	\$
f.	Interior and exterior signage;	\$
g.	Permits and fees for impact studies: environment, asbestos, building, zoning, etc., sprinkler water tap fees; highway access fees;	\$
h.	Cable TV connections: wiring and/or hardware; external dishes and equipment;	\$
i.	Computer wiring: hardware and/or software (information systems wiring, power etc.);	\$
j.	Telephone wiring/system including equipment;	\$
k.	All consultants: construction, phasing, interior design, programmatic, etc.;	\$
l.	Exterior lighting, walks, rails, ramps, and protective barriers (fences/etc.);	\$
m.	Spare parts such as an initial change of air filters;	\$
n.	All types of moveable equipment: furniture, linens, carts, desks, chairs, medical equipment, art work etc.;	\$
o.	All types of fixed equipment, including moving and re-installation costs;	\$
p.	Startup costs such as cleaning, advertising, marketing, moving, grand opening, etc.;	\$
q.	Security equipment, wiring, hardware, software, etc.;	\$
r.	Moving costs and other costs associated with leaving an existing space or building (post occupancy repairs, clean-up, removal of telephone systems, lease requirements when moving out, etc.);	\$
s.	Interim Life Safety measures and/or OSHA requirements during construction (labor +materials);	\$
t.	Correction of existing life safety code, JCAHO Plant, Licensure and OSHA deficiencies;	\$
u.	Vehicles, maintenance, storage buildings;	\$
v.	Cost of financing;	\$
w.	Legal fees associated with the project: leases, agreements, disputes, deeds, consultation etc.;	\$
x.	Interest during construction on construction loans;	\$
y.	Building equipment and systems necessary to implement emergency management plan, such as, generators, snow removal equipment, extra fuel storage, etc.;	\$

z.	Outstanding life code deficiencies or major repairs needed to maintain existing building safety, longevity, and compliance with codes, regulations, and/or JCAHO requirements where applicable;	\$
aa.	Handicap accessibility requirements to assure compliance with ADA;	\$
bb.	Painting, wallpaper, all interior finishes;	\$
cc.	Carpet, floor tile, ceramic tile, operating room special flooring etc.;	\$
dd.	Demolition costs, including permits, hauling, special disposal costs;	\$
ee.	Partnership fees, incorporation fees, privilege licenses etc.;	\$
ff.	Costs for elevator and boiler certifications;	\$
gg.	Costs associated with compliance with final review comments by all reviewing regulatory agencies, including actual construction costs, design change costs if any, and modification of contracts (cost, profit, overhead);	\$
hh.	A reasonable contingency cost to complete the project;	\$
ii.	Costs associated with completion of final system certifications, including but not limited to medical gas certification to comply with NFPA99 test criteria;	\$
jj.	Costs for certification and testing of patient special electrical systems to comply with NFPA99 and the National Electrical Code (impedence, equipotential, and current leakage tests for fixed patient equipment);	\$
kk.	Costs for fire alarm certification and sprinkler system certification prior to occupancy;	\$
ll.	Costs associated with field labeling of any equipment that is not listed and labeled by a NC recognized safety testing lab (E.G., UL, ETL., MET., etc.);	\$
mm.	Costs to provide certification by the X-Ray shielding designer that the radiation shielding has been designed and installed per approved plans, specifications, and regulations (radiology installations only);	\$
nn.	Costs of all additive change orders known at this time;	\$

TOTAL \$ _____

I certify that, to the best of my knowledge, the costs of the proposed project named above are complete and correct.

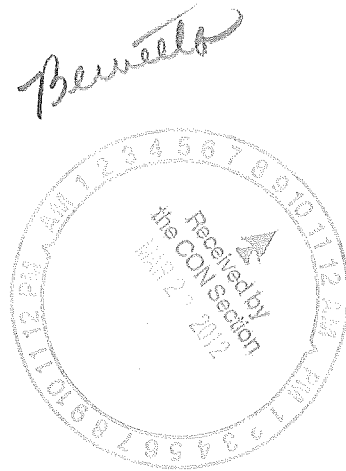
Date Certified: _____

(Signature of Licensed Architect or Engineer)

I assure that, to the best of my knowledge, the above costs for the proposed project are complete and correct and that it is my intent to carry out the proposed project as described.

Date Signed: _____

(Signature and Title of Officer Authorized to Represent Provider/Company)



March 26, 2012

Bernetta Thorne-Williams
Certificate of Need Section
NC Division of Health Services Regulation, DHSR
2704 Mail Service Center
Raleigh, NC 27699-2704

RE: Request for Exempt from Review/Replacement of Surgical Robotic System
FID# 933368

Dear Ms. Thorne-Williams:

Nash General Hospital is planning to replace its current da Vinci Surgery System and is requesting a determination that the replacement is exempt from review pursuant to 131E-184(7). The current system was purchased in 2007 and the Hospital wishes to replace the current unit with a new model that has many advantages and improvements over the older unit.

The da Vinci Si HD System is a sophisticated robotic platform designed to expand the surgeon's capabilities and offer a minimally invasive option for surgery. Small incisions are used to introduce miniaturized instruments and a high-definition 3D camera. Seated at the console the surgeon views a magnified HD 3D image of the surgical site. Benefits for the patient include potential for less pain, less blood loss, a shorter hospital stay, and faster return to normal daily activities as well as the potential for better clinical outcomes. Current procedures performed at Nash General using the da Vinci include prostatectomy, nephrectomy, hysterectomy and myomectomy. Additional procedures such as cholecystectomy, nissen fundoplication, gastric bypass and head neck surgery will be able to be performed with the new features of the new unit.

The new unit to be purchased is a da Vinci Si HD Surgical System from Intuitive Surgical. (Attached overview of equipment) The new unit provides many advantages or improvements over the current unit which includes:

- Advance 3D HD imaging for improved visualization



- Improved controls flexibility
- A fourth arm allowing the use of an endoscopic camera for newer procedures
- Updated user interface for streamlined setup and OT turnover

This planned purchase also includes a skills simulator option. The simulator provides exercises and scenarios that provide the surgeons the opportunity to improve and maintain their skills. Currently all surgeons must attend an approved training course and be proctored for several cases before receiving privileges. The simulator would provide skills practice and evaluation feedback.

The cost of the planned purchase is as follows:

da Vinci Si HD Surgical System	\$735,000	(sales and license agreement with trade-in attached, plus 5 year service agreement)
<u>da Vinci Skills Simulator</u>	<u>85,000</u>	(Quote attached with brochure)
Total	\$820,000	

The purchase of this equipment does not require any room modifications or have any installation cost. The unit is mobile and can be set up in any operating room. The total cost of \$820,000 is well below the 2 million dollar limit of replacement equipment cost as specified in 131E-176(22a). Nash Hospitals has budgeted this purchase for fiscal year 2012 and will be funding the purchase with cash reserves.

Please contact me at 252 962-8227 if you should need any additional information to determine your decision of replacement equipment that is exempt from review.

Sincerely,



Brad H. Weisner, COO

Nash Hospitals, Inc.

da Vinci[®] Si^{HD}

SURGICAL SYSTEM

The newly refined *da Vinci* Si Surgical System is the latest addition to the *da Vinci*[®] product line.



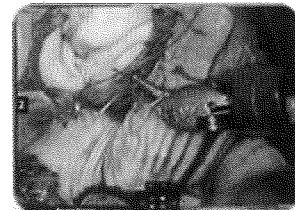
Launched in April 2009, the *da Vinci* Si introduces several enabling features, including:

- **Dual-console capability** to support training and collaboration during minimally invasive surgery.
- **Enhanced high-definition 3D vision** for superior clinical capability
- **An updated user interface** for streamlined setup and OR turnover
- **Extensibility** for digital OR integration

Core Technology

The *da Vinci* Si System retains and builds on the core technology at the heart of the existing *da Vinci* and *da Vinci* S[™] Systems:

- Advanced 3D HD visualization with up to 10x magnification and an immersive view of the operative field
- *EndoWrist*[®] instrumentation with dexterity and range of motion far greater than even the human hand
- *Intuitive*[®] Motion technology, which replicates the experience of open surgery by preserving natural eye-hand-instrument alignment and intuitive instrument control



System Features & Benefits

Together, these technological advancements provide unparalleled precision, dexterity and control that enable a minimally invasive approach to many complex surgical procedures. The *da Vinci* Si Surgical System provides the following core benefits:

- Surgeon Control and Comfort
- Patient Safety
- OR Efficiency
- Integrated Technology & Data

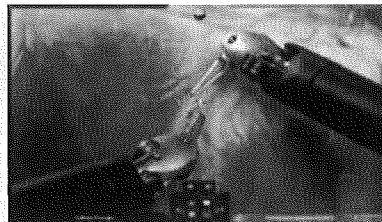




Extended Features & Benefits

3D HD visualization

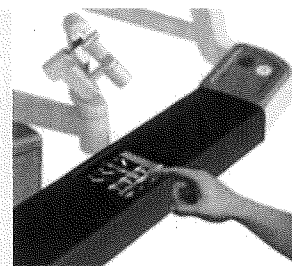
- World's only robotic surgical system with 3D HD vision
- Two separate HD optical channels that merge for highly accurate depth perception
- Lightweight camera head features buttons for focus control, automated scope setup and illuminator control directly from the camera head



Enhanced 3DHD visualization

User interface and ergonomics

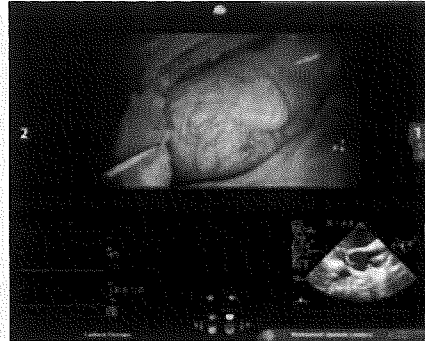
- Integrated surgeon touchpad offers comprehensive control of video, audio and system settings
- Surgeon console features multiple ergonomic adjustments, allowing surgeons to customize four different parameters for added comfort during longer procedures
- An extensive array of wristed *EndoWrist*[®] instruments, available in 5mm and 8mm diameters, provides a wide selection of surgical tools for multiple specialties
- Fingertip controls allow for precise, dexterous control of the *EndoWrist* instruments and fingertip controls.
- Footswitch controls allow the surgeon to perform a multitude of tasks, such as swapping between different types of energy instruments
- A variety of time-saving features, such as one-step cable connectors, enable quick and efficient setup
- A motorized patient cart facilitates quick and controlled docking of the system to the patient



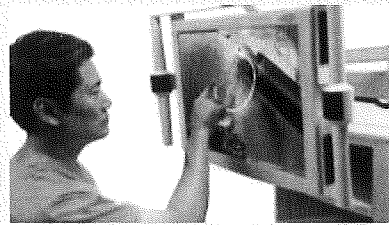
Integrated surgeon touchpad

OR Integration and Expandability

- TilePro™ multi-input display allows the surgeon and OR team to view 3D video of the operative field along with two additional video sources such as ultrasound and EKG
- Widescreen touchscreen for telestration capability
- Boom compatibility allows vision system components to be installed on a ceiling-mounted boom to conserve OR floor space
- Expandable system architecture allows for upgrades and compatibility with current and future OR technology.



TilePro™ multi-input display



Touchscreen for telestration capability



Quote Date: March 16, 2012
 Quote Expiration Date: March 30, 2012
 Quote Number: IS03162012EO2

Customer Name/Address:

Nash Hospital
 2460 Curtis Ellis Dr
 Rocky Mount, NC 27804

Contact Intuitive Surgical for more information:

Contact Name: Bo Adams
 Title: Area Sales Manager
 Phone: 704-517-0705
 E-mail: Bo.Adams@intusurg.com
 Customer Service Fax Number: (408) 523-2377

Intuitive Surgical is pleased to provide you with the following Quote

Equipment Type	QTY	Price
372273 da Vinci Skills Simulator	1	\$85,000

Includes:

- da Vinci Skills Simulator Equipment List:
- One (1) Skills Simulator Unit
 - One (1) Blue Fiber Cable
 - One (1) Audio Cable
 - Warranty 1 Year from Acceptance Date

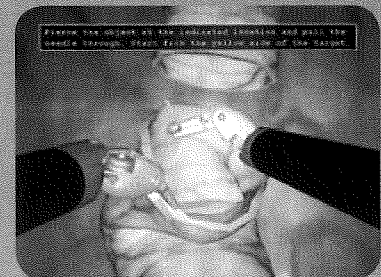
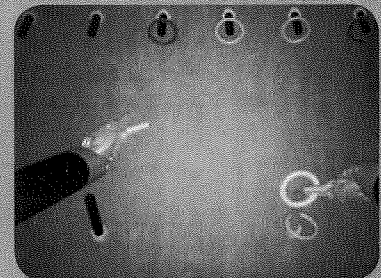
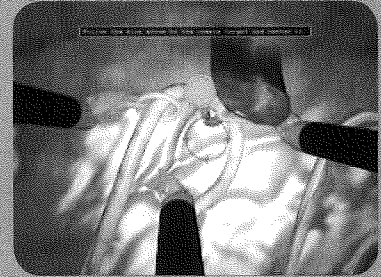
Equipment Total \$85,000
does not include freight or tax

"Intuitive makes no representation with regard to Certificate of Need requirements for this purchase. It is your (the customer's) responsibility to determine whether this purchase complies with your State Certificate of Need law and what Certificate of Need filing, if any, needs to be made with regard to this purchase."

Additionally: A signed Purchase Order and/or an addendum to the existing Sales, License, and Service Agreement ("SLSA") is required prior to shipment of the Equipment. All site modifications and preparation are the Customer's responsibility and are to be completed to the specification given by Intuitive Surgical prior to the installation date. Freight will be invoiced separately. Subject to credit approval by Intuitive Surgical, payment terms are net 30 days from Intuitive Surgical's invoice date. Additional System enhancements required to support new features may be purchased at Intuitive Surgical's then current list price. The System Upgrade price of the da Vinci® Surgical System includes the initial installation of the System at Customer's facility. All taxes are the responsibility of the Customer and will be added to the invoice, as appropriate. da Vinci Skill Simulator FOB Origin.

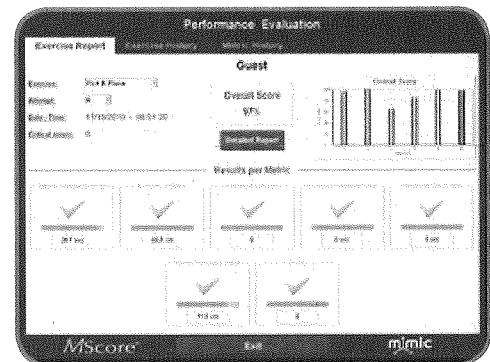
da Vinci[®] Si^{HD}
SURGICAL SYSTEM

da Vinci Skills Simulator™



INTUITIVE
SURGICAL[®]

Introducing Simulation for the *da Vinci*® Surgical System



Skills Practice in an Immersive Virtual Environment

Portable. Practical. Powerful. The *da Vinci* Skills Simulator contains a variety of exercises and scenarios specifically designed to give users the opportunity to improve their proficiency with the *da Vinci* surgeon console controls. The sleek case seamlessly integrates with an existing *da Vinci*® *Si*™ or *Si-e*™ surgeon console*, turning it into a novel practice platform that can be used in or outside the operating room. No additional system components are required.

- The straightforward set-up allows users to practice unassisted or with supervision, according to their preference.
- Built-in metrics enable users to assess skills, receive real-time feedback and track progress.
- Administrative tools let users structure their own curriculum to fit with other learning activities in their institution.
- The open architecture of the system software allows for the future development and incorporation of additional practice modules.

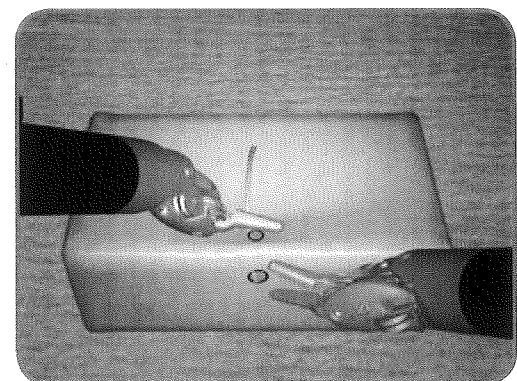
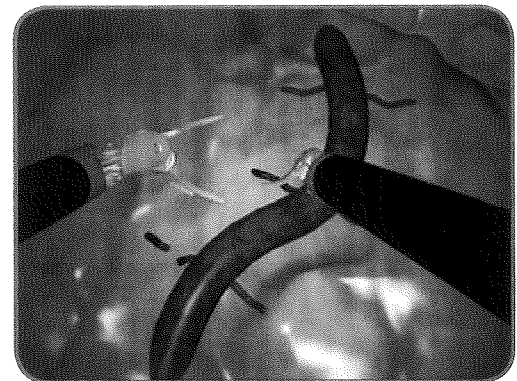
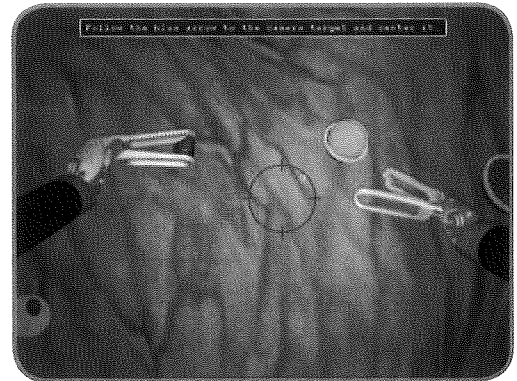
* Not compatible with the *da Vinci S* or standard *da Vinci* surgical systems.

A Variety of Comprehensive Exercises

Developed in collaboration with *Mimic Technologies*®, the *Skills Simulator* exercises range from basic to advanced and are designed to be relevant to surgeons from any specialty.

Each exercise covers at least one of the following skill categories:

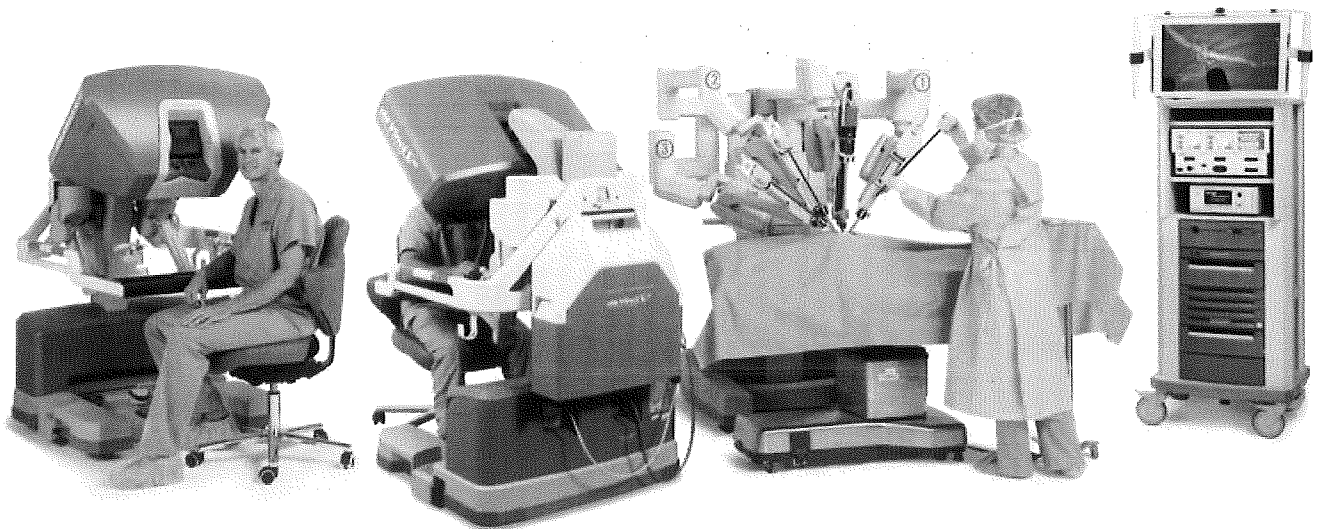
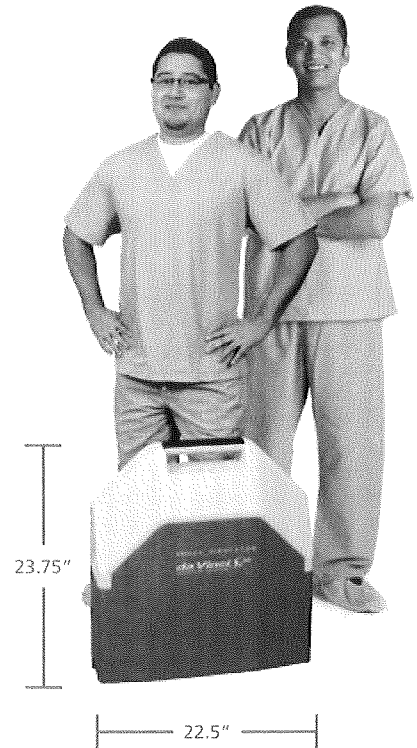
- **EndoWrist® Manipulation** - *EndoWrist* instruments are designed to provide surgeons with natural dexterity and a range of motion far greater than the human hand. These exercises are designed to help users gain familiarity with the movement of the instruments.
- **Camera and Clutching** – The three-dimensional, enhanced high-definition vision of the *da Vinci System* offers a key clinical advantage in surgery, and these exercises help users improve camera control and learn to use the clutch effectively.
- **Fourth Arm Integration** – For more advanced instrument control skills, some exercises include a fourth instrument arm that must be used. This is designed to promote instrument skill, and encourages users to think strategically about instrument placement during tasks.
- **System Settings** – The surgeon console features a full complement of controls for user settings. Quiz exercises on the simulator focus on basic setting topics such as icons, ergonomics and instrument scaling.
- **Needle Control and Driving** – These scenarios are designed to help users develop skill when manipulating needles, including a focus on how to effectively hand off and position needles while practicing with a range of geometries.
- **Energy and Dissection** – The footswitch panel enables users to perform a range of tasks such as swapping between different types of energy instruments. These exercises allow users to gain familiarity with the footswitch panel by applying monopolar and bipolar energy while working on dissection tasks.



One Compact Solution With Many Benefits

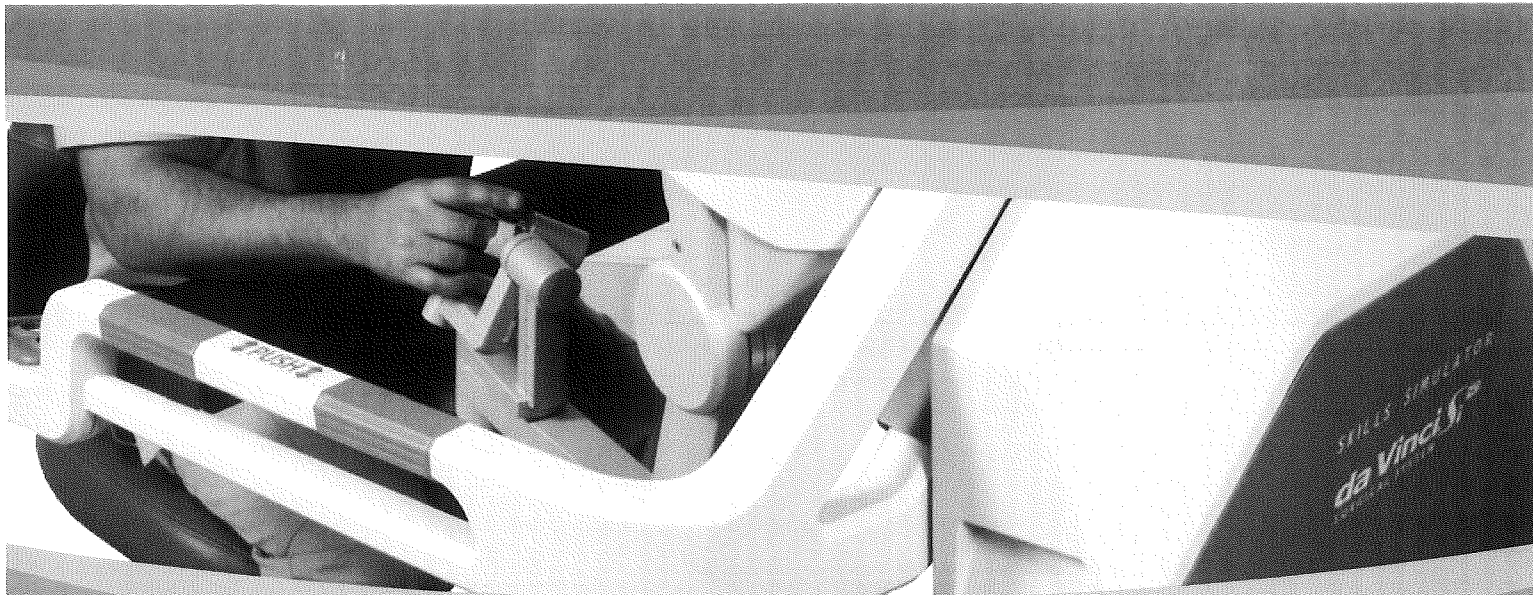
Simulation in all forms is an important part of the learning experience for surgical technology. By providing a controlled re-creation of critical steps in instrument control, simulation allows surgeons to practice their skills in a non-clinical environment. Other major benefits of simulation include the ability to:

- Increase familiarity with the *da Vinci System* - The *Skills Simulator* allows surgeons to practice on the *da Vinci System* as much as needed to become comfortable with new techniques.
- Provide more learning opportunities - For residents, simulation helps maximize practice time and ensures they get as much technical exposure as possible.
- Measure progress - This is a quantitative, measured platform designed to allow surgeons to see how they have done on a given exercise and to track progress over time.
- Warm-up before surgery - The simulator can be used immediately before a case to allow surgeons to re-familiarize themselves with the console.



For more information, please visit our website at:

http://www.intuitivesurgical.com/products/skills_simulator



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Fax: +1.408.523.1390

European Headquarters

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Tel: +41.21.821.20.00
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Asia Pacific Headquarters

Intuitive Surgical Sàrl Shanghai
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No. 989 Chang Le Road
Shanghai 200031 P.R. China
Tel: +86.21.5116.6881
Fax: +86.21.5116.6899

www.intuitivesurgical.com
www.davincisurgery.com

To contact a representative or receive additional information, please
call Intuitive Surgical Customer Service at 1-877-408-3872.

While clinical studies support the use of the *da Vinci* Surgical System as an effective tool for minimally invasive surgery, individual results may vary. Before performing any clinical procedure utilizing the System, physicians are responsible for receiving sufficient training and proctoring to ensure that they have the requisite training, skill, and experience necessary to protect the health and safety of the patient. For technical information, including full cautions and warnings on using the *da Vinci* System, please refer to the System User Manual. Read all instructions carefully. Failure to properly follow instructions, notes, cautions, warnings, and danger messages associated with this equipment may lead to serious injury or complications for the patient. © 2010 Intuitive Surgical. All rights reserved. *Intuitive*, *Intuitive Surgical*, *da Vinci*, *da Vinci S HD*, *da Vinci Si*, *InSite*, *TilePro* and *EndoWrist* are trademarks or registered trademarks of Intuitive Surgical. All other product names are trademarks or registered trademarks of their respective holders. PN 874389 Rev. A 1/11

SALES AND LICENSE AGREEMENT

Agreement No.: 16MAR-SALES-NASH

This Sales and License Agreement ("Agreement") is dated **March 16, 2012** (the "Effective Date") and is between **Intuitive Surgical, Inc.**, a Delaware corporation ("Intuitive"), located at 1266 Kifer Road, Sunnyvale, California 94086, and **Nash Hospitals, Inc.**, located at 2460 Curtis Ellis Drive, Rocky Mount, NC 27804, ("Customer").

The parties agree as follows:

1. Introduction

Customer agrees to purchase the Hardware and license the Software and Documentation from Intuitive, and Intuitive agrees to respectively sell and license the same to Customer according to the terms and conditions of this Agreement.

2. Definitions

- 2.1 "Acceptance" means Customer's acceptance of the System as specified in **Exhibit A**.
- 2.2 "Delivery Date" means the estimated scheduled date for delivery of the System to Customer specified in **Exhibit A**.
- 2.3 "Instruments and Accessories" means those instruments or accessories made or approved by Intuitive for use with the System.
- 2.4 "Proctoring" means the assistance, coaching, or surgical training provided by a surgeon (the "Proctor") who is familiar with the System to another surgeon (the "Proctee") on how to perform a particular surgical procedure (or procedures) using the System.
- 2.5 "System" means the items comprising the da Vinci® Surgical System specified in **Exhibit A** consisting of certain hardware components ("Hardware"), software program elements ("Software") and related documentation ("Documentation"), that Customer may purchase and license under this Agreement. If Customer purchases multiple Systems under this Agreement, all references to "System" or "System(s)" apply to each System sold and licensed. Each System purchased is a separate transaction to be delivered, accepted, and paid for separately.
- 2.6 "Taxes" means any taxes, levies, or similar governmental charges, now in force or enacted in the future, and however designated, including related penalties and interest, imposed by any governmental authority on, or measured by, the activities described.
- 2.7 "Customer's Access Requirements" means any reasonably applicable requirements designated by Customer that Intuitive personnel must meet to gain access to Customer's facility. Such requirements may include, but are not limited to, compliance with Customer's site policies and vendor credentialing requirements, such as vaccination, immunization, background investigation, training, hospital orientation, and liability insurance coverage.

3. System Delivery, Use, Disposal

- 3.1 **Delivery and Installation.** Subject to credit approval of Customer by Intuitive, Intuitive will use commercially reasonable efforts to deliver the System on or before the Delivery Date. Each party will provide the other party with thirty (30) days notice, or if this Agreement is executed within thirty (30) days before the Delivery Date, a reasonable advance notice of any change in the Delivery Date. Customer will fully cooperate with Intuitive to permit Intuitive to install the System. Intuitive will use commercially reasonable efforts to install the System in an efficient and expeditious manner. Customer will also provide Intuitive with information, consultation, and advice reasonably necessary to permit installation.
- 3.2 **Delivery Terms.** Intuitive will deliver the System to Customer's designated location noted as the "Ship-to" in **Exhibit A** using a carrier selected by Intuitive. Fees for shipping the System are specified in **Exhibit A**. Risk of loss or damage to the System passes to the Customer upon delivery of the System to Customer. Title to the System passes to the Customer upon Acceptance.

- 3.3 **On-Site Support.** At no charge to Customer, Intuitive will provide periodic on-site support to Customer's designated personnel on the proper operation and upkeep of the System in order for Customer to operate the System as further described in Section 3.4. To clarify, this support includes, but is not necessarily limited to, training on draping the System for use in surgery, proper attachment of Instruments and Accessories, and cleaning of parts of the System and the Instruments and Accessories. The cleaning to be performed regularly by Customer is described in the Documentation.
- 3.4 **Use of System.** Customer will ensure the proper use of the System consistent with the Documentation, and Customer will ensure the proper management and supervision of the System. Customer will not, nor will Customer permit any third party to, modify, disassemble, reverse engineer, alter, or misuse the System or Instruments and Accessories. Prohibited actions include, but are not limited to: (1) adding or subtracting any Customer or third party equipment, hardware, firmware, or software to or from the System, or (2) reconfiguring any of the Intuitive equipment, Hardware, firmware, or Software as originally provided to Customer as part of the System without Intuitive's express written permission. Customer will ensure that the System is moved and operated only by trained personnel in accordance with the Documentation and Intuitive's instructions. If Customer fails to comply with the requirements of this Section 3.4, Intuitive may terminate this Agreement immediately upon written notice, and any warranties applicable to the System will become void.
- 3.5 **Disposal.** Customer is responsible for properly disposing of all medical instruments, devices, and systems related to the operation and function of the System, including Instruments and Accessories, in accordance with the then current local environmental and safety laws and standards.

4. **Software License and Restrictions**

Software embedded within the System is provided under license and is not sold to Customer. Subject to the terms and conditions of this Agreement, Intuitive grants to Customer 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. Customer must not use, copy, modify, or transfer the Software or any copy thereof, in whole or in part, except as expressly provided in this Agreement. In addition, Customer 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, Customer must first request from Intuitive the information to be sought from the Software, and Intuitive may, in its discretion, provide information to Customer 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 Intuitive and Customer will protect the Software as Intuitive's Proprietary Information (as defined in Section 13). Intuitive reserves all rights to the Software not expressly granted to Customer.

5. **Training**

Intuitive offers training to surgical personnel on the use and operation of the System. At Customer's request, at mutually agreed times and at mutually agreed locations, Intuitive will provide training in the use of the System to Customer's surgical personnel in accordance with the terms specified in **Exhibit A**.

6. **Proctoring**

At Customer's request, and upon Customer's issuance of a purchase order, Intuitive will arrange for Proctoring at Customer's location in accordance with the terms specified in **Exhibit A**. Each Proctor is an independent contractor, is not an agent or employee of Intuitive, and is not authorized to act on behalf of, or legally bind, Intuitive. Intuitive is not responsible for Proctoring services provided by Proctors. The decision to utilize a Proctor is solely that of the Customer. Customer is responsible for ensuring that each Proctor meets Customer's credentialing requirements.

7. **Instruments and Accessories**

Instruments and Accessories will be made available to Customer from Intuitive pursuant to separate orders placed by Customer to Intuitive from time to time. Instruments and Accessories are subject to a limited license to use those Instruments and Accessories with, and prepare those Instruments and Accessories for use with, the System. Any other use is prohibited, whether before or after the Instrument or Accessory's license expiration, including repair, refurbishment, or reconditioning not approved by Intuitive. This license expires once an Instrument or Accessory is used up to its maximum number of uses specified in the Documentation accompanying the Instrument or Accessory.

8. Pricing and Payment Terms

8.1 System.

- (A) **Price.** Customer will pay to Intuitive the price specified in **Exhibit A** for the System acquired under this Agreement according to the payment terms in Section 8.1(B). The issuance of a purchase order by Customer is for the convenience of the Customer solely; therefore, whether or not Customer issues a purchase order does not affect Customer's commitment to acquire and pay for the System under this Agreement.
- (B) **Payment Terms.** Upon Acceptance, Intuitive will deliver an invoice to Customer for amounts due under this Agreement for the System. Customer will pay the invoiced amount not later than thirty (30) days after the date of invoice. Interest will accrue from the date on which payment is due, at an annual rate of twelve percent (12%) or the maximum rate permitted by applicable law, whichever is lower.
- (C) **Security Interest.** Intuitive will retain a security interest in the System until payment of the full System purchase price has been received by Intuitive. Customer will perform all acts Intuitive reasonably determines are necessary or appropriate to perfect and maintain the security interest. If Customer defaults in its payments for the System, Intuitive has the right, without liability to Customer, to reclaim the System.

8.2 Funding Entity.

A funding entity ("Funding Entity") may provide the funding for Customer to purchase the System defined herein, provided however, Customer remains responsible for payment in full according to the terms of this Agreement if Funding Entity fails to pay. A Funding Entity will have no rights or obligations whatsoever under this Agreement, except as specified in this Agreement. Customer acknowledges and agrees that once Acceptance has occurred and title of the System has passed to the Customer, if Customer subsequently enters into an arrangement with a Funding Entity, then Customer will enter into an agreement (such as a sale and lease-back agreement) directly with the Funding Entity that does not involve Intuitive. Intuitive will not reverse the sale of the System to Customer in order to sell it to another entity, including but not limited to a Funding Entity.

8.3 Taxes.

Customer will pay any Taxes in addition to the prices invoiced. Customer will pay, or reimburse Intuitive for the payment of all Taxes, including related penalties and interest, except Taxes for which Customer has provided a certificate of exemption acceptable to both Intuitive and the appropriate taxing authority prior to delivery of the System. Customer will also pay, or reimburse Intuitive for, all Taxes, related penalties, or interest resulting from Customer's use of a Funding Entity.

9. Warranty and Disclaimer

9.1 System Warranty.

- (A) Intuitive warrants to Customer that:
 - (1) the System as delivered will be free and clear of all liens and encumbrances (except as otherwise specified in this Agreement), and
 - (2) for the period specified in **Exhibit A**, will be free from defects in material and workmanship and will conform in all material respects to the Documentation when used in accordance with the Documentation and Intuitive's instructions.
- (B) Intuitive's obligations under this Section 9.1 are limited to the repair (as further described in Section 5.1(B)-(C)) or, at Intuitive's option, replacement of all or part of the System.
- (C) This warranty is void with respect to any claims:

- (1) due to any installation, repair, adjustment, modification, disassembly, alteration, reconfiguration, addition to, subtraction from, or misuse of the System by Customer or any third party without the express written permission of Intuitive; or
 - (2) to the extent Customer has not operated, repaired, or maintained the System in accordance with the Documentation or any reasonable handling, maintenance, or operating instructions supplied by Intuitive; or
 - (3) to the extent Customer has used the System with surgical instruments or accessories that are not Instruments or Accessories; or
 - (4) to the extent Customer or Customer's employee, agent, or contractor has subjected the System to unusual physical or electric stress, misuse, abuse, negligence, or accident.
- (D) The foregoing expresses Customer's sole and exclusive remedy, and Intuitive's sole and exclusive liability, for any breach of warranty with respect to the System by Intuitive.

9.4 **No Other Warranties.** INTUITIVE MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SYSTEM OR SERVICES PROVIDED HEREUNDER AND THIS TRANSACTION, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES; THEREFORE, THE ABOVE LIMITATION WILL APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.

10. Indemnification

10.1 **By Intuitive.** To the extent allowable by law, Intuitive hereby assumes all liability for, and agrees to indemnify, defend and hold harmless Customer and its successors, permitted assigns, medical staff, agents and employees from and against, any and all liabilities, losses, damages, claims and expenses to the extent that they arise from third party claims, actions or demands including without limitation, claims arising in contract or tort (including negligence), strict liability or otherwise (collectively, "Claims") in any way relating to or arising from (a) Intuitive's breach of any of its representations or warranties or any other obligation hereunder, or (b) Intuitive's negligence or willful misconduct; provided that Intuitive's indemnification obligations under this Section 10.1 shall not apply to the extent that such Claims arise from Customer's negligence or willful misconduct or breach of any of its obligations hereunder.

10.2 **By Customer.** To the extent allowable by law, Customer hereby assumes all liability for, and agrees to indemnify, defend and hold harmless Intuitive and its successors, permitted assigns, agents and employees from and against, any and all Claims by third parties to the extent that they arise from: (a) Customer's or its employees', medical staff's, agents', affiliates' or representatives' negligence or willful misconduct in the use, possession, or operation of the System, including without limitation, (i) use of the System by individuals who have not completed appropriate training or whose training was not conducted by Intuitive, (ii) use of the System with any surgical instrument or accessory that is not made or approved by Intuitive for use with the System, or (iii) the conduct of surgical procedures on cadavers used in training; or (b) Customer's breach of any of its representations or warranties or any other obligation hereunder, including without limitation Customer's failure to comply with the requirements of Section 7. Notwithstanding the foregoing, Customer's indemnification obligations under this Section 10.2 shall not apply to the extent that such Claims arise from Intuitive's negligence or willful misconduct or breach of any of its obligations hereunder.

10.3 Intellectual Property Obligations.

- (A) **Intellectual Property Indemnification.** Intuitive will indemnify Customer against all liabilities, expenses, or damages in connection with any third party claim that the System infringes any third party patent, trade secret, or copyright. If Customer is enjoined from the use of the System due to any such third party claim, Intuitive will promptly, at its option and expense, either (1) substitute the System or any part thereof with non-infringing material that will perform substantially in accordance with the Documentation; or (2) obtain the right of Customer to continue to use the System; or (3) remove the System and refund to Customer the purchase price of the System less reasonable depreciation.

(B) **Indemnification Limitations.** Intuitive has no obligation under this Section 10.3 to the extent any claim of infringement is based upon or arises out of: (1) any modification to the System if the modification was not made directly by Intuitive or through its designated service provider; or (2) the use or combination of the System with any hardware, software, products, data or other materials not specified, provided or approved by Intuitive.

(C) **THE PROVISIONS OF THIS SECTION 10 STATE THE SOLE AND EXCLUSIVE OBLIGATIONS OF INTUITIVE FOR ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.**

10.2 **Customer's Indemnification Obligations.** Intuitive will not be liable for, and Customer will indemnify and hold Intuitive harmless from and against, any claims or damages caused by Customer's failure to comply with the requirements of Sections 3.4 (Use of the System) or 3.5 (Disposal).

10.3 **Claim Notification Requirement.** A party's indemnification obligations under this Section 10 will not apply unless the indemnified party promptly notifies the indemnifying party of the claim as soon as the indemnified party became aware of it. The indemnifying party will have the right to control the defense or settlement of any claim at its cost and with its choice of counsel. The indemnified party will provide all reasonable cooperation to assist the indemnifying party in the defense or settlement of the claim.

11. **Limitation of Liability**

Except for a breach of the obligations in Sections 3.4 (Use of System), 4 (Software License and Restrictions), 7 (Instruments and Accessories), 8 (Pricing and Payment Terms), the indemnification obligations of Section 10, 12 (Proprietary Information), to the extent permitted by applicable law, each party's aggregate liability to the other for claims relating to this Agreement, whether for breach in contract or tort (including negligence), is limited to an amount equal to the sum of amounts paid by Customer under this Agreement for the activity (such as procurement of the System, or training) giving rise to the claim. Except for a breach of the obligations in Sections 3.4, 4, 7, or 12, neither party will be liable for any indirect, punitive, special, incidental, or consequential damages in connection with or arising out of this Agreement (including loss of business, revenue, profits, use, data, or other economic advantage), even if that party has been advised of the possibility of damages. Some jurisdictions do not allow the limitation of liability for incidental or consequential damages; therefore in those jurisdictions, the foregoing limitation of liability applies only to the extent permitted by law.

12. **Proprietary Information**

"Proprietary Information" includes, but is not limited to, all non-public information (1) of the disclosing party ("Disclosing Party") that relates to past, present, or future research, development, or business activities or the results of those activities and (ii) that the Disclosing Party has received from others and is obligated to treat as confidential and proprietary. In addition, Intuitive's Proprietary Information includes the terms and conditions of this Agreement and all information derivable from the System, but excluding information that can be learned simply through observation of the System and its operation. Proprietary Information does not include information previously known by the receiving party ("Receiving Party") as demonstrated by the Receiving Party's contemporaneous written records, or information publicly disclosed without breach of an obligation of confidentiality, either before or after the Receiving Party's receipt of the information. The Receiving Party will hold all Proprietary Information of the Disclosing Party in strict confidence and must not use for any purpose, or disclose to any third party, any Proprietary Information, except (1) as expressly authorized in this Agreement or in writing by the Disclosing Party, and (2) as required by law or by court order. If the Receiving Party is compelled by law to disclose the Proprietary Information of the Disclosing Party, then (1) the Receiving Party must give prior notice to the Disclosing Party so as to permit the Disclosing Party to try to protect its Proprietary Information including attempting to obtain a protective order requiring that the Proprietary Information so disclosed be used only for the purposes for which the order was issued or for other legal requirement and (2) the Receiving Party must cooperate with the Disclosing Party in such efforts. The Receiving Party will use the same degree of care to protect the Proprietary Information as Receiving Party uses to protect its own information of like kind, but not less than all reasonable steps to maintain the confidentiality of the Proprietary Information.

13. **Term**

13.1 **Initial Term.** The Initial Term is specified in **Exhibit A**.

13.2 **Termination and Survival.** Either party may terminate this Agreement if the other party breaches a material term or condition of this Agreement and fails to cure the breach following thirty (30) days' written notice from the non-breaching party. Sections 3.4, 3.5, 4, 8.1, 8.3, 10, 11, 12, 13.2, 14, and any other provision

which by its nature will survive, will remain in effect notwithstanding the expiration or termination of this Agreement.

14. Miscellaneous

- 14.1 **Assignment.** This Agreement will be binding upon the permitted successors and assigns of the parties. Neither party may assign this Agreement without the prior written consent of the other party, except pursuant to a transfer of all or substantially all of a party's assets and business relating to the subject of this Agreement, whether by merger, re-organization, sale of assets, sale of stock, or otherwise. Customer may not assign or transfer the Software license granted to it under this Agreement to any third party without Intuitive's prior written consent. Any attempt by either party to assign this Agreement or any rights or duties hereunder contrary to the foregoing provision is void. Intuitive consents to Customer's assignment of this Agreement to a Funding Entity as part of Customer's financing arrangement with the Funding Entity. If Customer assigns this Agreement to a Funding Entity, Customer retains its right to all benefits under this Agreement, including without limitation all warranties, representations, and indemnification provided by Intuitive, and may independently enforce any obligation, warranty, or representation.
- 14.2 **Costs.** Except as otherwise specifically provided herein, each party will bear its own costs and expenses incurred in connection with the performance of its obligations hereunder.
- 14.3 **Debarment.** Intuitive warrants and represents that individuals of its organization involved in providing services under this Agreement have not been convicted of any criminal offense relating to health care and are not debarred, excluded, or otherwise ineligible for participation in any federal or state health care program. If at any time before completion of this Agreement, Intuitive or any individual in its organization involved in providing services under this Agreement is so convicted or is debarred, excluded or otherwise determined to be ineligible, Intuitive will notify Customer in writing, the individual will immediately cease providing services under this Agreement, and Intuitive will replace the individual with a replacement employee reasonably suitable to Customer, and, if it is Intuitive, this breach will be considered a material breach by Intuitive.
- 14.4 **Federal Audit.** Until the expiration of four (4) years after furnishing services under this Agreement, Intuitive will make available upon written request of the Secretary of the Department of Health and Human Services (the "Secretary") or upon request of the U.S. Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents, and records of Intuitive that are necessary to certify the nature and extent of costs for which Customer may properly seek reimbursement. If Intuitive carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, the subcontract will contain a clause to the effect that until the expiration of four (4) years after furnishing of services under the subcontract, the subcontracting party will make available, upon written request of the Secretary, or upon request of the U.S. Comptroller General or any of their duly authorized representatives, the subcontract, and the books, documents, and records of the organization that are necessary to verify the nature and extent of the costs. Intuitive will promptly notify Customer of any requests for information made under this provision.
- 14.5 **Force Majeure.** Neither party will be liable for any loss, damage, detention, delay, or failure to perform in whole or in part resulting from causes beyond that party's control including, but not limited to, acts of terrorism, fire, flood, earthquake, war, riots, labor disputes, shortage of components, or any governmental law, order, regulation, or ordinance.
- 14.6 **Insurance.** Intuitive has obtained, and will maintain throughout the term of the Agreement, Commercial General Liability Insurance including coverage for contractual liability, product liability, personal injury and bodily injury in an amount not less than \$1,000,000 per occurrence/\$3,000,000 aggregate (or as may be aggregated by the excess liability policy on the General Liability policy). Intuitive will furnish the Customer with a certificate of insurance evidencing the coverage as outlined above on Customer's request. Intuitive carries, and will continue to carry, Workers' Compensation Insurance as required by law.
- 14.7 **Interpretation.** Headings used in this Agreement are provided for convenience only and do not in any way affect the meaning or interpretation hereof. The terms "sale", "purchase", "acquire", "procure" and variations of such terms, as used in this Agreement with respect to the System, do not imply that the Software and Documentation aspect of the System are sold or purchased; the Software and Documentation are licensed under this Agreement and only the Hardware is sold. Neither party is the drafter of this Agreement. Accordingly, the language of this Agreement will not be construed for or against either Party.

- 14.8 **Notices.** Any notices given under this Agreement must be in writing and will be deemed given and received five (5) days after the date of mailing, one (1) day after dispatch by overnight courier service or electronic mail, or upon receipt if by hand delivery, or upon completion of confirmed transmission if by facsimile. Any notices under this Agreement must be sent to Intuitive or the Customer at the address shown in the preamble above, in both cases to the Contracts Dept/General Counsel's office. Each party may change its address for receipt of notices by giving the other party notice of the new address.
- 14.9 **Relationship of the Parties.** The parties' relationship is one of contract, and they are not, and will not be construed as partners, joint venturers, or agent and principal. Neither party is authorized to act for, or on behalf of, the other party.
- 14.10 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, then that provision will not affect the validity of the remaining provisions of the Agreement, and the parties will substitute a valid provision for the invalid provision that most closely approximates the intent and economic effect of the invalid provision.
- 14.11 **Access to Customer's Facilities.** Intuitive agrees that any Intuitive personnel who routinely provide services at Customer's facilities will use commercially reasonable efforts to comply with Customer's Access Requirements, provided that Customer provides Customer's Access Requirements in writing prior to execution of this Agreement. Customer's need for service may be unplanned and urgent with patient safety at stake. Therefore, if Customer denies access to its facilities to any Intuitive personnel for performance of warranty (Section 9) obligations in connection with a surgical procedure because such personnel have not met Customer's Access Requirements, Intuitive's warranty obligations in this Agreement will be suspended during such denial of access, provided that Intuitive uses commercially reasonable efforts to find replacement Intuitive personnel who comply with Customer's Access Requirements. Customer will indemnify and hold harmless Intuitive from any losses, claims, liabilities or causes of action arising from such denial of access.
- 14.12 **Data Use.** Customer agrees that Intuitive and its affiliates within the Intuitive Surgical group of companies (collectively, "Intuitive") may collect data relating to the use of Intuitive products ("Data"). In some instances Data may be communicated via data gathering or transmission technology to Intuitive. In other instances, Intuitive may require Customer and Customer agrees to provide Data to Intuitive. Such Data may be used for a variety of purposes, including, but not limited to (1) providing support and preventative maintenance of Intuitive products, (2) improving Intuitive products or services, (3) ensuring compliance with applicable laws and regulations, and (4) providing a general resource for Intuitive's research and business development. Intuitive does not intend to collect protected health information (PHI) as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and associated laws and regulations, as may be amended from time to time. In the event any Data communicated to Intuitive identifies an entity or individual, Intuitive will not share such Data with any third parties without the entity's or individual's consent, unless required by law.
- 14.13 **Waivers.** No waiver of any right by either party under this Agreement will be of any effect unless the waiver is in writing and signed by the waiving party. Any purported waiver not consistent with the foregoing is void.
- 14.14 **Counterparts.** This Agreement may be executed by facsimile or in multiple copies, each of which is an original, and all of which taken together will constitute one single agreement.
- 14.15 **Entire Agreement; Amendment.** This Agreement is the entire agreement between Intuitive and Customer and supersedes any prior agreements, understandings, promises, and representations made either orally or in writing by either party to the other party concerning the subject matter herein, pricing, and the applicable terms. Any terms or conditions in Customer's (or as applicable, Funding Entity's) purchase order that are different from, inconsistent with, or in addition to, the terms and conditions of this Agreement will be void and of no effect, unless otherwise mutually agreed to in writing by the parties. This Agreement may be amended only in writing, signed by both parties. Any purported oral modification intended to amend the terms and conditions of this Agreement is void.

BOTH PARTIES HAVE READ, UNDERSTOOD, AND AGREED TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND EXECUTE THIS AGREEMENT AS OF THE EFFECTIVE DATE.

ACCEPTED BY: INTUITIVE SURGICAL, INC.

By: _____

Name: Larry E. Crist

Title: Director, Contracts Administration

Date: _____

ACCEPTED BY: NASH HOSPITALS, INC.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Deliverables, Price and Delivery

1. Intuitive will provide Customer with the following: da Vinci® Si™ Surgical System (with single console) Equipment List

System Surgeon Console including:

One (1) Surgeon Console
One (1) High Resolution Stereo Display
One (1) Left Master Controller
One (1) Right Master Controller
One (1) Foot Switch Panel
One (1) Surgeon Console to Vision Cart Cable
Warranty period: One (1) year from the Acceptance date.

System Patient Cart including:

One (1) Patient Cart
One (1) Instrument Arm One
One (1) Instrument Arm Two
One (1) Instrument Arm Three
One (1) Camera Arm
One (1) Patient Cart to Vision Cart Cable
Warranty period: One (1) year from the Acceptance date.

System Vision Cart

Warranty period: One (1) year from the Acceptance date.

System Documentation including: User's Manual For System

Warranty period: Not Applicable.

System Software

Warranty period: One (1) year from the Acceptance date.

Instrument and Accessory: Reusable Accessory Starter Kit (Starter Kit contents subject to change without notice)

One (1): 3 Arm Drape Kit, 5 pack
One (1): 4 Arm Drape Kit, 5 pack
Twenty (20): Instrument Arm Drapes
Twenty (20): Camera Head Drapes
Twenty (20): Camera Arm Drapes
Twenty (20): Monitor Drapes
One (1): Box of 10: 8mm Cannula Seals
One (1): Box of 3: 8mm Cannula
One (1): Cannula Gage Pin
One (1): Blunt Obturator
One (1) Box of 24: Bladeless Obturator
One (1): Blade Protector
One (1): Allen Wrench
One (1): Spare Lamp Module
Warranty period: Ninety (90) days from the Acceptance date

Instrument and Accessory: Camera Starter Kit: (Starter Kit contents subject to change without notice)

One (1): 3D-HD Camera Head with Light Guide
One (1): Camera Cable
One (1): 0 degree Endoscope
One (1): 30 degree Endoscope
One (1): Alignment Target
Warranty period: One (1) year from the Acceptance date.

Instrument and Accessory: Training Instrument Starter Kit (Starter Kit contents subject to change without notice)

One (1): Large Needle Driver
One (1): ProGrasp™ Forceps
One (1): Maryland Bipolar Forceps

- One (1): Curved Scissors
- One (1): Tenaculum Forceps
- One (1): Suture Cut Needle Driver

Warranty period: One (1) year from the Acceptance date.
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(equipment

2. Pricing. All amounts are shown in US Dollars

System Type	Quantity	Delivery Date*	Price	Delivery Charge
da Vinci [®] Si [™] Surgical System (with single console)	1	March 29, 2012	\$725,000	\$10,000

It is Customer's responsibility to determine whether this purchase complies with Customer's State's Certificate of Need laws and what Certificate of Need filing, if any, needs to be made with regard to this purchase.

*The Delivery Date is an estimated "on or before" delivery date to Customer's designated location (see "Ship-to" below).

3. Acceptance. The System is deemed accepted by Customer upon delivery to Customer's designated location ("Acceptance").

4. The "Ship-To" information for Customer is:

5. The "Bill-To" information for Customer is:

Customer's PO Number: _____

6. Taxes. Customer represents that Customer is or is not exempt from sales and use tax by checking the appropriate box below. If no box is checked, Customer will be deemed to not be exempt from sales and use tax and appropriate sales and use tax will be charged to Customer. If exempt, Customer is requested to send or fax a copy of Customer's exemption certificate to: Attn: Tax Department, Intuitive Surgical, Inc, 1266 Kifer Road, Sunnyvale, CA 94086; fax number: 408-523-1390.

- Taxable
- Exempt: Charitable (501)(c)/nonprofit
- Exempt: Direct Pay Permit # _____
- Exempt: Other _____

7. Term. The initial term of this Agreement will commence as of the Effective Date and will continue until the fifth (5th) anniversary of Acceptance ("Initial Term") unless earlier terminated as provided in this Agreement. Thereafter, this Agreement may be renewed for successive one (1) year terms ("Renewal Term(s)") upon mutual written agreement of the parties.

8. Training. As of the Effective Date, the price for training is three thousand dollars (\$3,000) per surgeon or physician's assistant. The payment terms for training are net thirty (30) days from the date of Intuitive's invoice. This pricing will remain in effect during the first year of the Initial Term. Thereafter, training will be made available to Customer at Intuitive's then current list price for training.

9. Proctoring. As of the Effective Date, the rate for Proctor's services is three thousand dollars (\$3,000) per day. The payment terms for Proctoring are net thirty (30) days from the date of Intuitive's invoice. This pricing will remain in effect during the first year of the Initial Term. Thereafter, Proctoring will be made available to Customer at Intuitive's then current list price for Proctoring.

10. **Trade-in.** "Trade-on System means the da Vinci® S™ Surgical System with a serial number of SG334 and 2 camera head(s), 1 endoscope(s) (0 degree), and 1 endoscope(s) (30 degree).

Customer represents and warrants to Intuitive that as of the date of Acceptance, it has clear title to the Trade-in System.

Within 7 days after Acceptance, Customer will provide access to the Trade-in System at Customer's site to enable Intuitive to disconnect and remove the Trade-in System.

Customer acknowledges that any Service amounts paid to Intuitive for the Trade-in System are non-refundable.

11. **Rebate.** Intuitive shall issue Customer a rebate in the amount of \$9,000 (the "Rebate"). The Rebate is payable by Intuitive within sixty (60) days of either (i) the Effective Date or (ii) upon full payment of the System by Customer, whichever is later.

Customer agrees that the pricing in this Agreement, including this Rebate, reflects a discount which must be fully and accurately disclosed and reported in accordance with the requirements of the federal healthcare programs anti-kickback law (42 U.S.C. §1320a-7b(b)) and its implementing regulations (42 C.F.R. §1001.952). In addition, Customer will provide access to all information provided by Intuitive regarding this Rebate/discount upon request by the U.S. Department of Health and Human Services or a State health care program.

If the Rebate is to be made to an entity other than Customer, Customer will provide the entity's name and address information below:

Entity / Name of Payee: _____

Mailing Address: _____

Attention: _____

SERVICE AGREEMENT

Agreement No.: 16MAR-SER-NASH

This Service Agreement ("Agreement") is dated **March 16, 2012** (the "Effective Date") and is between **Intuitive Surgical, Inc.**, a Delaware corporation ("Intuitive"), located at 1266 Kifer Road, Sunnyvale, California 94086 and **Nash Hospitals, Inc.**, located at 2460 Curtis Ellis Drive, Rocky Mount, NC 27804, ("Customer").

The parties agree as follows:

1. Introduction

This Agreement governs the Service obligations for the System as more particularly set forth in the Sales and License Agreement (Agreement No: **16MAR-SALES-NASH**) hereinafter the "Sales Agreement". Pursuant to the terms of the Sales Agreement, Customer agrees to purchase the Hardware and license the Software and Documentation from Intuitive, and Intuitive agrees to respectively sell and license the same to Customer.

2. Definitions

- 2.1 "Acceptance" means Customer's acceptance of the System as specified in **Exhibit A** in the Sales Agreement.
- 2.2 "Services" means the support and maintenance of the System described in Section 5 for the Service fees designated in **Exhibit A**.
- 2.3 "System" means the items comprising the da Vinci® Surgical System specified in **Exhibit A** of the Sales Agreement consisting of certain hardware components ("Hardware"), software program elements ("Software") and related documentation ("Documentation").
- 2.4 "Taxes" means any taxes, levies, or similar governmental charges, now in force or enacted in the future, and however designated, including related penalties and interest, imposed by any governmental authority on, or measured by, the activities described.
- 2.5 "Customer's Access Requirements" means any reasonably applicable requirements designated by Customer that Intuitive personnel must meet to gain access to Customer's facility. Such requirements may include, but are not limited to, compliance with Customer's site policies and vendor credentialing requirements, such as vaccination, immunization, background investigation, training, hospital orientation, and liability insurance coverage.

3. Services

- 3.1 **Services Included.** If Customer is current in payment to Intuitive of the Service fees specified in **Exhibit A**, Intuitive, directly or through one of its designated service providers, will provide Services to Customer as listed below. Intuitive will use parts sourced by Intuitive, which may, at Intuitive's discretion, include reconditioned parts, ("Equivalent to New" or "ETN"). ETN parts are components, assemblies, or partial products which have had prior usage, but have been inspected, reworked, and tested as required so that their function, performance, and appearance will be essentially equivalent to that of new parts. Regardless of whether parts are new or ETN, Intuitive's appropriate warranties under Section 5.1 apply.

Intuitive will:

- (A) Adjust parts on the System from time to time;
- (B) Replace defective or malfunctioning System parts (excludes Instruments and Accessories; and any items contained in the Instrument Starter Kit, Camera Starter Kit, and Training Instrument Starter Kit set forth in Exhibit A);
- (C) Repair System operational malfunctions;
- (D) Replace and install Software, Hardware, and mechanical equipment for safety and reliability;
- (E) Provide twenty four (24) hours per day, seven (7) days per week (24 x 7) telephone support by qualified service personnel;
- (F) Provide and install Software upgrades for feature enhancements. Software upgrades and Service with respect to additional equipment not included on **Exhibit A** may be subject to separate terms to be agreed upon by the parties;
- (G) Preferred pricing on endoscope repairs or replacement due to accidental endoscope damage;
- (H) Respond to Customer's request for Services described in Section 3.1(B)-(C) during normal business hours as promptly as is reasonable after Intuitive's receipt of Customer's request, but not later than twenty-four (24) hours after Intuitive's receipt; and
- (I) Perform System preventative maintenance inspections as necessary to maintain factory specifications.

3.2 Limitations on Services.

- (A) **General.** Intuitive does not have an obligation to provide Services (1) on any System where installation, repair, or adjustments have been made by an individual other than an Intuitive technician or an individual approved by Intuitive or (2) which are either necessary or desired as a direct or indirect result, in whole or in part, of

unauthorized repair, modification, disassembly, alteration, addition to, subtraction from, reconfiguration, or misuse of the System, or negligence or recklessness on the part of Customer.

- (B) **Cleaning.** Regular daily cleaning of the System as described in the Documentation is not included in the Services.
- (C) **Additional Equipment.** Intuitive's Services obligations do not include the provision to Customer of any hardware developed by Intuitive that is not contained in the initial System purchased by Customer, and which Intuitive offers as a separate product or for an additional fee.
- (D) **Time and Materials.** If the System needs repair or maintenance services due to any of the circumstances described in Section 3.2(A)-(B) above, Intuitive may, at its sole election, provide repair services at Customer's expense and at Intuitive's then current time and material rates. Intuitive is not obligated to provide Services on any System for which any applicable warranty has been voided, or for which the performance of Services is otherwise excused by the terms of this Agreement.
- (E) **Unauthorized Instruments and Accessories.** The System is designed for use only with the Instruments and Accessories. If Customer uses the System with any surgical instrument or accessory not made or approved by Intuitive, Intuitive may discontinue Services, and any warranties applicable to any Services provided prior to any discontinuance will be void.

3.3 Customer's Obligations.

- (A) **Notice, Access, and Cooperation.** Customer will notify Intuitive or Intuitive's designated service provider of any requests for Services. Customer will fully cooperate with and assist Intuitive in the provision of Services.
- (B) **Clinical Liaison.** Customer will designate one of its employees, agents, or representatives as a "Clinical Liaison." The Clinical Liaison will be the point of contact with Intuitive for installation, Services, use of the System, and other related issues. Nothing in this Section 3.3 authorizes Customer or the Clinical Liaison to perform Services or to perform any act otherwise prohibited by this Agreement.

4. Pricing and Payment Terms for Service

- 4.1 **Price Payment Term.** Customer will pay for the Services at the price specified in **Exhibit A**. Upon Acceptance and thirty (30) days prior to each anniversary of Acceptance throughout the Initial Term of the Agreement Intuitive will deliver to Customer an invoice for the annual Services fee. Customer will pay the invoice for Services not later than thirty (30) days after the date of invoice. Interest will accrue from the date on which payment is due, at an annual rate of twelve percent (12%) or the maximum rate permitted by applicable law, whichever is lower. After the Initial Term of the Agreement, and subject to mutual written agreement, annual Services may be renewed at Intuitive's then current list price. The issuance of a purchase order by Customer is for the convenience of the Customer solely; therefore, whether or not Customer issues a purchase order does not affect Customer's commitment to pay for Services under this Agreement during the Initial Term (as defined in Section 8).
- 4.2 **Taxes.** Customer will pay any Taxes in addition to the prices invoiced. Customer will pay, or reimburse Intuitive for the payment of all Taxes, including related penalties and interest, except Taxes for which Customer has provided a certificate of exemption acceptable to both Intuitive and the appropriate taxing authority prior to delivery of the System. Customer will also pay, or reimburse Intuitive for, all Taxes, related penalties, or interest resulting from Customer's use of a Funding Entity.

5. Warranty and Disclaimer

- 5.1 **Services Warranty.** Intuitive warrants that the Services will be performed consistent with generally accepted industry standards. If Intuitive breaches this warranty, Customer's sole and exclusive remedy will be to require Intuitive to re-perform the Services.
- 5.2 **No Other Warranties.** INTUITIVE MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SYSTEM OR SERVICES PROVIDED HEREUNDER AND THIS TRANSACTION, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES; THEREFORE, THE ABOVE LIMITATION WILL APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.

6. Limitation of Liability

Except for a breach of the obligations in 4 (Pricing and Payment Terms), 7 (Proprietary Information), to the extent permitted by applicable law, each party's aggregate liability to the other for claims relating to this Agreement, whether for breach in contract or tort (including negligence), is limited to an amount equal to the sum of amounts paid by Customer under this Agreement. Except for a breach of the obligations in Section 7, neither party will be liable for any indirect, punitive, special, incidental, or consequential damages in connection with or arising out of this Agreement (including loss of business, revenue, profits, use, data, or other economic

advantage), even if that party has been advised of the possibility of damages. Some jurisdictions do not allow the limitation of liability for incidental or consequential damages; therefore in those jurisdictions, the foregoing limitation of liability applies only to the extent permitted by law.

7. Proprietary Information

"Proprietary Information" includes, but is not limited to, all non-public information (1) of the disclosing party ("Disclosing Party") that relates to past, present, or future research, development, or business activities or the results of those activities and (ii) that the Disclosing Party has received from others and is obligated to treat as confidential and proprietary. In addition, Intuitive's Proprietary Information includes the terms and conditions of this Agreement and all information derivable from the System, but excluding information that can be learned simply through observation of the System and its operation. Proprietary Information does not include information previously known by the receiving party ("Receiving Party") as demonstrated by the Receiving Party's contemporaneous written records, or information publicly disclosed without breach of an obligation of confidentiality, either before or after the Receiving Party's receipt of the information. The Receiving Party will hold all Proprietary Information of the Disclosing Party in strict confidence and must not use for any purpose, or disclose to any third party, any Proprietary Information, except (1) as expressly authorized in this Agreement or in writing by the Disclosing Party, and (2) as required by law or by court order. If the Receiving Party is compelled by law to disclose the Proprietary Information of the Disclosing Party, then (1) the Receiving Party must give prior notice to the Disclosing Party so as to permit the Disclosing Party to try to protect its Proprietary Information including attempting to obtain a protective order requiring that the Proprietary Information so disclosed be used only for the purposes for which the order was issued or for other legal requirement and (2) the Receiving Party must cooperate with the Disclosing Party in such efforts. The Receiving Party will use the same degree of care to protect the Proprietary Information as Receiving Party uses to protect its own information of like kind, but not less than all reasonable steps to maintain the confidentiality of the Proprietary Information.

8. Term

8.1 **Initial Term.** The Initial Term is specified in **Exhibit A**.

8.2 **Termination and Survival.** Either party may terminate this Agreement if the other party breaches a material term or condition of this Agreement and fails to cure the breach following thirty (30) days' written notice from the non-breaching party. Sections 6, 7, 8.2, 9, and any other provision which by its nature will survive, will remain in effect notwithstanding the expiration or termination of this Agreement.

9. Miscellaneous

9.1 **Assignment.** This Agreement will be binding upon the permitted successors and assigns of the parties. Neither party may assign this Agreement without the prior written consent of the other party, except pursuant to a transfer of all or substantially all of a party's assets and business relating to the subject of this Agreement, whether by merger, re-organization, sale of assets, sale of stock, or otherwise. Customer may not assign or transfer the Software license granted to it under this Agreement to any third party without Intuitive's prior written consent. Any attempt by either party to assign this Agreement or any rights or duties hereunder contrary to the foregoing provision is void. Intuitive consents to Customer's assignment of this Agreement to a Funding Entity as part of Customer's financing arrangement with the Funding Entity. If Customer assigns this Agreement to a Funding Entity, Customer retains its right to all benefits under this Agreement, including without limitation all warranties, representations, and indemnification provided by Intuitive, and may independently enforce any obligation, warranty, or representation, including without limitation Intuitive's obligations under Section 3 (Services).

9.2 **Costs.** Except as otherwise specifically provided herein, each party will bear its own costs and expenses incurred in connection with the performance of its obligations hereunder.

9.3 **Debarment.** Intuitive warrants and represents that individuals of its organization involved in providing Services under this Agreement have not been convicted of any criminal offense relating to health care and are not debarred, excluded, or otherwise ineligible for participation in any federal or state health care program. If at any time before completion of this Agreement, Intuitive or any individual in its organization involved in providing Services under this Agreement is so convicted or is debarred, excluded or otherwise determined to be ineligible, Intuitive will notify Customer in writing, the individual will immediately cease providing Services under this Agreement, and Intuitive will replace the individual with a replacement employee reasonably suitable to Customer, and, if it is Intuitive, this breach will be considered a material breach by Intuitive.

9.4 **Federal Audit.** Until the expiration of four (4) years after furnishing Services under this Agreement, Intuitive will make available upon written request of the Secretary of the Department of Health and Human Services (the "Secretary") or upon request of the U.S. Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents, and records of Intuitive that are necessary to certify the nature and extent of costs for which Customer may properly seek reimbursement. If Intuitive carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, the subcontract will contain a clause to the effect that until the expiration of four (4) years after furnishing of services under the subcontract, the subcontracting party will make available, upon written request of the Secretary, or upon request of the U.S. Comptroller General or any of their duly authorized representatives, the subcontract, and the books, documents, and records of the organization that are necessary to verify the nature and extent of the costs. Intuitive will promptly notify Customer of any requests for information made under this provision.

- 9.5 **Force Majeure.** Neither party will be liable for any loss, damage, detention, delay, or failure to perform in whole or in part resulting from causes beyond that party's control including, but not limited to, acts of terrorism, fire, flood, earthquake, war, riots, labor disputes, shortage of components, or any governmental law, order, regulation, or ordinance.
- 9.6 **Insurance.** Intuitive has obtained, and will maintain throughout the term of the Agreement, Commercial General Liability Insurance including coverage for contractual liability, product liability, personal injury and bodily injury in an amount not less than \$1,000,000 per occurrence/\$3,000,000 aggregate (or as may be aggregated by the excess liability policy on the General Liability policy). Intuitive will furnish the Customer with a certificate of insurance evidencing the coverage as outlined above on Customer's request. Intuitive carries, and will continue to carry, Workers' Compensation Insurance as required by law.
- 9.7 **Interpretation.** Headings used in this Agreement are provided for convenience only and do not in any way affect the meaning or interpretation hereof. The terms "sale", "purchase", "acquire", "procure" and variations of such terms, as used in this Agreement with respect to the System, do not imply that the Software and Documentation aspect of the System are sold or purchased; the Software and Documentation are licensed under this Agreement and only the Hardware is sold. Neither party is the drafter of this Agreement. Accordingly, the language of this Agreement will not be construed for or against either Party.
- 9.8 **Notices.** Any notices given under this Agreement must be in writing and will be deemed given and received five (5) days after the date of mailing, one (1) day after dispatch by overnight courier service or electronic mail, or upon receipt if by hand delivery, or upon completion of confirmed transmission if by facsimile. Any notices under this Agreement must be sent to Intuitive or the Customer at the address shown in the preamble above, in both cases to the Contracts Dept/General Counsel's office. Each party may change its address for receipt of notices by giving the other party notice of the new address.
- 9.9 **Relationship of the Parties.** The parties' relationship is one of contract, and they are not, and will not be construed as partners, joint venturers, or agent and principal. Neither party is authorized to act for, or on behalf of, the other party.
- 9.10 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, then that provision will not affect the validity of the remaining provisions of the Agreement, and the parties will substitute a valid provision for the invalid provision that most closely approximates the intent and economic effect of the invalid provision.
- 9.11 **Access to Customer's Facilities.** Intuitive agrees that any Intuitive personnel who routinely provide Services at Customer's facilities will use commercially reasonable efforts to comply with Customer's Access Requirements, provided that Customer provides Customer's Access Requirements in writing prior to execution of this Agreement. Customer's need for Service may be unplanned and urgent with patient safety at stake. Therefore, if Customer denies access to its facilities to any Intuitive personnel for performance of Services (Section 5) or warranty (Section 5) obligations in connection with a surgical procedure because such personnel have not met Customer's Access Requirements, Intuitive's Services and warranty obligations in this Agreement will be suspended during such denial of access, provided that Intuitive uses commercially reasonable efforts to find replacement Intuitive personnel who comply with Customer's Access Requirements. Customer will indemnify and hold harmless Intuitive from any losses, claims, liabilities or causes of action arising from such denial of access.
- 9.12 **Data Use.** Customer agrees that Intuitive and its affiliates within the Intuitive Surgical group of companies (collectively, "Intuitive") may collect data relating to the use of Intuitive products ("Data"). In some instances Data may be communicated via data gathering or transmission technology to Intuitive. In other instances, Intuitive may require Customer and Customer agrees to provide Data to Intuitive. Such Data may be used for a variety of purposes, including, but not limited to (1) providing support and preventative maintenance of Intuitive products, (2) improving Intuitive products or services, (3) ensuring compliance with applicable laws and regulations, and (4) providing a general resource for Intuitive's research and business development. Intuitive does not intend to collect protected health information (PHI) as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and associated laws and regulations, as may be amended from time to time. In the event any Data communicated to Intuitive identifies an entity or individual, Intuitive will not share such Data with any third parties without the entity's or individual's consent, unless required by law.
- 9.13 **Waivers.** No waiver of any right by either party under this Agreement will be of any effect unless the waiver is in writing and signed by the waiving party. Any purported waiver not consistent with the foregoing is void.
- 9.14 **Counterparts.** This Agreement may be executed by facsimile or in multiple copies, each of which is an original, and all of which taken together will constitute one single agreement.
- 9.15 **Entire Agreement; Amendment.** This Agreement is the entire agreement between Intuitive and Customer and supersedes any prior agreements, understandings, promises, and representations made either orally or in writing by either party to the other party concerning the subject matter herein, pricing, and the applicable terms. Any terms or conditions in Customer's (or as applicable, Funding Entity's) purchase order that are different from, inconsistent with, or in addition to, the terms and conditions of this Agreement will be void and of no effect, unless otherwise mutually agreed to in writing by the parties. This Agreement may be amended only in writing, signed by both parties. Any purported oral modification intended to amend the terms and conditions of this Agreement is void.

BOTH PARTIES HAVE READ, UNDERSTOOD, AND AGREED TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND EXECUTE THIS AGREEMENT AS OF THE EFFECTIVE DATE.

ACCEPTED BY:

INTUITIVE SURGICAL, INC.

By: _____

Name: Larry E. Crist

Title: Director, Contracts Administration

Date: _____

ACCEPTED BY:

NASH HOSPITALS, INC.

By: _____

Name: _____

Title: _____

e-mail: _____

Phone: _____

Date: _____

EXHIBIT A Service Price

1. Pricing. All amounts are shown in US Dollars

System Type	Annual Service Fees
da Vinci[®] Si[™] Surgical System (with Single console)	First Year of Initial Term: \$235,000 Subsequent Years (2-5) of the Initial Term: \$235,000per year

It is Customer's responsibility to determine whether this purchase complies with Customer's State's Certificate of Need laws and what Certificate of Need filing, if any, needs to be made with regard to this purchase.

2. Taxes. Customer represents that Customer is or is not exempt from sales and use tax by checking the appropriate box below. If no box is checked, Customer will be deemed to not be exempt from sales and use tax and appropriate sales and use tax will be charged to Customer. If exempt, Customer is requested to send or fax a copy of Customer's exemption certificate to: Attn: Tax Department, Intuitive Surgical, Inc, 1266 Kifer Road, Sunnyvale, CA 94086; fax number: 408-523-1390.

- Taxable
- Exempt: Charitable (501)(c)/nonprofit
- Exempt: Direct Pay Permit # _____
- Exempt: Other _____

3. Term. The initial term of this Agreement will commence as of the Effective Date and will continue until the fifth (5th) anniversary of Acceptance ("Initial Term") unless earlier terminated as provided in this Agreement. Thereafter, this Agreement may be renewed for successive one (1) year terms ("Renewal Term(s)") upon mutual written agreement of the parties.