



**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH SYSTEM MEDICAL CENTER GOVERNING BOARD  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 15.1  
(ID # 21425)

**MEETING DATE:**  
Tuesday, May 02, 2023

**FROM :** RUHS-MEDICAL CENTER:

**SUBJECT:** RIVERSIDE UNIVERSITY HEALTH SYSTEM – MEDICAL CENTER: Approve the Lease Agreement and Use license and Service Agreement with Intuitive for two da Vinci Surgical Robot and associated maintenance and supplies without seeking competitive bids for four years; All Districts [Total Cost \$4,422,841 ongoing; up to \$442,284 in additional compensation] 100% -Hospital Enterprise Fund - 40050

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Lease Agreement and Use license and Service Agreement with Intuitive for two da Vinci Surgical Robots and associated maintenance and supplies without seeking competitive bids for a total aggregate amount of \$4,442,284 for four years through March 28, 2027 and authorize the Chair of the Board to sign the Agreement on behalf of the County.
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based upon the availability of funding and as approved as to form by County Counsel to sign amendments that exercise the options of the agreement including modifications of the statement of work that stay within the intent of the agreement and sign amendments to the compensation provisions that do not exceed the sum total of ten percent (10%) of the total annual cost of the agreement.

**ACTION:**

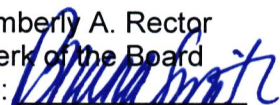
  
 Jennifer Cruikshank, Chief Executive Officer – Health System 4/20/2023

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**MINUTES OF THE GOVERNING BOARD**

On motion of Supervisor Washington, seconded by Supervisor Gutierrez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Gutierrez  
 Nays: None  
 Absent: None  
 Date: May 2, 2023  
 xc: RUHS

Kimberly A. Rector  
 Clerk of the Board  
 By:   
 Deputy

**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH  
SYSTEM MEDICAL CENTER GOVERNING BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 1,060,960	\$ 1,120,627	\$4,422,841	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> 100% Hospital Enterprise Fund 40050			<b>Budget Adjustment:</b>	No
			<b>For Fiscal Year:</b>	22/23 – 26/27

**C.E.O. RECOMMENDATION:** Approve.

**BACKGROUND:**

**Summary**

RUHS- Medical Center (RUHS-MC) Operating Room (O.R.) is committed to providing high quality healthcare to the residents of Riverside County. To achieve such success RUHS-MC O.R. must keep their equipment and practices on par with the latest technology. The continued patient population growth at RUHS-MC is indicative of need for additional equipment, so that physicians and patients at RUHS maintain access to the best treatment possible. Acquisition of a da Vinci Robot, a second trial da Vinci Robot, services, and supporting supplies, will ensure that surgeons and more importantly patients, will have access to a da Vinci Robot for their surgical procedures.

A da Vinci Robot is currently in use at RUHS-MC O.R. This system has been essential in enhancing the way surgeons perform procedures on patients. When the da Vinci Robot is a clear treatment option, the approach is superior to both open and traditional laparoscopic surgery. The da Vinci Robot allows the surgeon to operate using a computer console with controls that manipulate the robot arms and displays high definition, magnified, 3D images of inside a patient's body. Compared to traditional surgery, robotic surgery provides surgeons with a greater range of motion and precision. The assistance from the Robot's arms and cameras allows surgeons to reach areas not normally possible through a traditional laparoscopic or open method. The advanced technology that is integrated in to the da Vinci Robot results in less bleeding and post operative pain, leading to a quicker recovery time.

**Impact on Residents and Businesses**

These services are a component of RUHS's system of care aimed at improving the health and safety of its patients and the community.

**Additional Fiscal Information**

There are sufficient funds in the Department's budget for FY 22/23 budget and no additional County funds are required.

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The cost breakdown for the items being requested is listed in the chart below,

<b>Cost Break Down</b>	<b>Da Vinci Robot</b>	<b>Trial Robot</b>	<b>Supplies</b>
<b>COST</b>	\$3,082,057	\$90,000	\$1,250,784

**Contract History and Price Reasonableness**

Intuitive surgical is the only manufacturer of this product. The terms being offered to the County are comparable to those offered to the other regional medical centers.

**ATTACHMENTS:**

- **Lease Agreement (42002802)**
- **Use, license Service Agreement (42002802)**
- **Lease Agreement (42003568)**
- **Use, License and Service Agreement (42003568)**
- **Intuitive Sole Source Justification No. 23-171**

  
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Meghan Hahn, Deputy Director of Procurement 4/21/2023

  
\_\_\_\_\_  
Steven Atkeson 4/24/2023

  
\_\_\_\_\_  
Gregg Gu, Chief Deputy County Counsel 4/24/2023

# LEASE AGREEMENT

Agreement No.: 42003568

This Lease Agreement ("Lease Agreement") is made and entered into as of **March 25, 2023** between **Intuitive Surgical, Inc.**, a Delaware corporation, located at 1020 Kifer Road, Sunnyvale, California 94086 ("**Lessor**" or "**Intuitive**"); and

**Lessee: County of Riverside, a political subdivision of the state of California, on behalf of Riverside University Health System Medical Center**  
**Registered Address:** 26520 Cactus Avenue, Moreno Valley, CA 92555

Lessor and Lessee are contemporaneously entering into a Use, License & Service Agreement, dated **March 25, 2023**.

The Lessor and the Lessee are referred to as the "Parties" collectively, or "Party" individually.

Qty.	Included in Periodical Lease Payment	Not included in Periodical Lease Payment	Equipment Description	Price
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	System Table "System": da Vinci® Xi™ Dual Console System	\$2,200,000.00
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Service during the first twelve months of the Lease Period	Included in Periodical Lease Payments
n/a	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Service beginning on the thirteenth month of the Lease Period, or if Lessee purchases the equipment "Service": see Special Conditions	\$179,000.00 per year*
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	System delivery fee	\$6,500.00
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	da Vinci® Xi™ Integrated Table Motion Upgrade**	\$51,500.00
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	E-100 Generator	\$12,700.00
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Intuitive Hub	\$35,000.00

\*Intuitive will credit Lessee a pro-rata amount of the annual Service fee Lessee has paid to Intuitive for the leased System based on the number of months remaining in the current Service year from the date the leased System is de-installed. The credit will be applied to Lessee's account with Intuitive within thirty (30) days from the date the leased System is de-installed. The Service price indicated above will be valid for a period of five (5) years from the effective date of this Lease Agreement.

Lease Conditions			
<b>Lease Period</b>	6 Months. The Lease Period may be extended in accordance with the Lease Agreement.		
<b>Commencement Date</b>	This Lease Agreement will commence on the date of Acceptance specified in the Acceptance Document.		
<b>Interest Rate</b>	n/a		
<b>Periodical Lease Payments</b>	Months 1 – 6 \$15,000.00 per month	No. of Periodical Lease Payments: 6	<input checked="" type="checkbox"/> Monthly payments (subject to extension of Lease Period)
	Lessee agrees and acknowledges payments due herein shall not be excused by any contingencies including, but not limited to, Lessee's internal practices, policies, or any state approvals.		
	<input type="checkbox"/> The first Periodical Lease Payment is due on Commencement Date. Thereafter, each subsequent Periodical Lease Payment is due on the corresponding day of each month, as applicable, of the Lease Period (payments in advance). <input checked="" type="checkbox"/> The first Periodical Lease Payment is due one month after the Commencement Date. Thereafter, each subsequent payment is due on the corresponding day of each month of the Lease Period (payments in arrears).		
<b>Deposit</b>	\$0.00	The Deposit if any is due on the Commencement Date	
<b>Balloon Payment</b>	N/A	The Balloon Payment if any is due on the last day of the Lease Period.	
<b>End of Lease Options</b>	<input type="checkbox"/> End of Lease option A applies (see 11.1 of Standard Terms and Conditions) <input checked="" type="checkbox"/> End of Lease option B applies (see 11.2 of Standard Terms and Conditions) <input checked="" type="checkbox"/> See Special Conditions below		
<b>Funding Amount</b>	Original Equipment Cost (OEC): \$2,305,700.00	Down-Payment from Lessee to Lessor: \$0.00	Funding Amount: \$2,305,700.00
<b>Maximum Compensation Amount:</b> Maximum payments by Lessee to Lessor shall not exceed three million eighty two thousand and fifty seven dollars (\$3,082,057.00) in the aggregate including all expenses. The Lessee is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products.			

Special Conditions*	
Lessee will have the option to Rent the above Equipment configuration from Lessor for a period of six (6) months. The Periodical Lease Payment during the Rental Lease Period will \$15,000.00 per month. The Periodical Lease payment includes system usage and service.	
If Lessee is not in default and has paid all outstanding amounts owed to Lessor, then at any time on or before the sixth (6th) Periodical Lease Payment, and with thirty (30) days prior written notice, Lessee will have a one-time option to exercise one of the following options.	
<ol style="list-style-type: none"> <li>Purchase the Equipment for \$2,305,700.00 (plus applicable taxes).</li> <li>Return the Equipment to Lessor. If the Lessee exercises option two and returns the Equipment to Lessor, Lessee will be charged the standard shipping charge.</li> <li>Lease the Equipment for a Lease term greater than twelve (12) months and on mutually agreed upon terms and conditions.</li> <li>Continue to rent the Equipment for twelve (12) months at terms and conditions to be mutually agreed upon.</li> </ol>	
For the avoidance of doubt 0% of the Periodical Lease Payment shall be applied as credit to any of the options.	
*If Lessee is required to send written notice or has questions regarding this Lease Agreement, all communications should be directed to CustomerFinance@intusur.com.	

All amounts are denominated in USD and net of taxes, any applicable taxes will be for the account of the Lessee. Where the terms of this Lease Agreement are inconsistent with the Special Conditions above, if any, the Special Conditions prevail. The Standard Terms and Conditions of Leasing attached hereto are hereby incorporated to and form an integral part of this Agreement. All references to this Agreement will include the terms and conditions set out herein, in the Annexes and the Standard Terms and Conditions of Leasing. By signing this Lease Agreement, Lessee agrees to be bound by and undertakes to comply with all the terms and conditions set out in this Lease Agreement.

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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.

IF THIS AGREEMENT IS NOT SIGNED BY BOTH PARTIES AND RETURNED TO INTUITIVE ON OR BEFORE MARCH 28, 2023 THE TERMS WILL BE SUBJECT TO CHANGE.

ACCEPTED BY:

Intuitive Surgical, Inc.

Signature: Marc Giuffrida  
Marc Giuffrida (Mar 30, 2023 10:43 PDT)

Email: marc.giuffrida@intusurg.com

Title: Sr. Director, Contract Administration

Company: Intuitive Surgical, Inc  
Date:

ACCEPTED BY:

COUNTY OF RIVERSIDE, a political subdivision of the state of California, on behalf of Riverside University Health System Medical Center

By: Kevin Jeffries

Name: KEVIN JEFFRIES

Title: CHAIR, BOARD OF SUPERVISORS

E-mail:

Date: 5/2/23

NS

ATTEST:  
KIMBERLY A. RECTOR, Clerk

By Kimberly A. Rector  
DEPUTY

FORM APPROVED COUNTY COUNSEL  
BY Esen E Sainz 3-29-23  
ESEN E SAINZ DATE

MAY 2 2023 15.1

## Standard Terms and Conditions of Leasing

### 1. DEFINITIONS

Terms not herein defined will have the meanings set out in the Lease Agreement, unless the context otherwise requires.

**"Acceptance"** means the Equipment is deemed accepted by Lessee upon delivery to Lessee's designated location as evidenced by Lessee's execution of an acceptance letter, a form of which is attached hereto as Annex 1.

**"Lease Agreement"** means the agreement between the Lessor and the Lessee for the lease of the Equipment from the Lessor to the Lessee, including the Annexes thereto, incorporating these Standard Terms and Conditions.

**"Event of Default"** means an event specified under Clause 12 of these Terms and Conditions.

**"Equipment"** means the equipment specified in the Lease Agreement and any part thereof including, without limitation, all component parts and all software.

**"Lease Payment"** means the payment of rent for the lease of the Equipment, owed by the Lessee to the Lessor under the Lease Agreement, including but not limited to the periodical installments and the Balloon Payment.

**"Termination Sum"** means the aggregate of:

- (i) all Lease Payments due and payable under the Lease Agreement;
- (ii) an amount equal to one-hundred per cent (100%) of all remaining Lease Payments yet to fall due under the Lease Agreement discounted by the contract interest rate inherent in the Lease Agreement; and
- (iii) all other sums due and payable under the Lease Agreement (including, without limitation, Default Interest, costs and expenses related to or connected with the termination of the Lease Agreement and any sum recoverable from the Lessee), not to exceed the Maximum Compensation Amount as indicated above.

**"Total Loss"** includes any actual, constructive, or agreed total loss, theft, damage beyond repair, taking back of the Equipment (or any part thereof) by the owner of the Equipment pursuant to a right incorporated in the Lease Agreement for the sale of the Equipment and any seizure or confiscation of the Equipment.

### 2. LEASE, SELECTION AND DELIVERY OF EQUIPMENT

(a) The Lessor agrees to lease to the Lessee and the Lessee agrees to lease from the Lessor the Equipment on the terms and conditions as set out in the Lease Agreement.

(b) The Lessee has chosen the Equipment and agreed with the Lessor upon the terms of delivery of the Equipment.

(c) Upon delivery, the Lessee will inspect the Equipment, ensure that the Equipment is in good and working order and condition, and issue and deliver the duly signed and dated Acceptance Letter set out in Annex 1 of the Lease Agreement to the Lessor.

### 3. LEASE AND OTHER PAYMENTS

(a) The Lessee will pay (i) to the Lessor the Lease Payment and all other payments on the dates and in the manner specified in the Lease Agreement, and (ii) all taxes, rates, registration charges or other applicable expenses in respect to the Equipment.

(b) If the Lessee fails to pay any amount payable by it under the Lease Agreement on its due date, it will pay to the Lessor interest on the overdue amount ("Default Interest") from and excluding such due date up to and including the date of actual payment. Default Interest will be twelve per cent (12%) per annum, or the maximum rate allowed by applicable law, whichever is lower, and will be calculated on a daily basis. Default Interest will be payable by the Lessee on demand by the Lessor.

(c) The Lessee will pay all payments when due under the Lease Agreement notwithstanding that the Equipment are unusable for any reason at any time during the Lease Period, and the Lessor will not be liable to provide the Lessee with any replacement equipment.

(d) The Lessor will have a right to set-off in respect of any payments, charges or other sums due or prematurely due and payable, and the Lessee agrees to waive any legal defense against such set-off. The Lessee will have no right of set-off in respect of any payments, charges or other sums due or claimed to be due to the Lessee from the Lessor hereunder.

(e) Lessee agrees that Lessee's obligation and duty to pay all sums due and to become due pursuant to this Lease Agreement will be absolute and unconditional and are not subject to any defense, counterclaim, setoff or recoupment by reason of any past, present, or future claims which Lessee may have against Lessor, except those remedies that are available at law. Additionally, Lessee will not assert against any assignee of this Agreement any defense, counterclaim, setoff or recoupment by reason of any past, present, or future claims which Lessee may have against Lessor.

### 4. LOCATION, USE AND MAINTENANCE OF THE EQUIPMENT

(a) The Equipment will be kept at the Location as set out in the Lease Agreement and will not be removed without the prior written consent of the Lessor.

### 5. OWNERSHIP, INSPECTION AND TESTING

(a) The Lessor may at any time during the Lease Period require inspection of the Equipment, provided the Lessor gives at least 48 hours written notice. For such purpose, the Lessee will ensure that the Lessor and its authorized representatives have access to the Equipment and the premises at which the Equipment is located and to the records (including books of accounts) relating to the Equipment, during normal business hours. The Lessee will keep proper accounts of all its dealings in relation to the Equipment and deliver to the Lessor any such records when requested by the Lessor.

### 6. PROHIBITION AGAINST DEALING WITH EQUIPMENT

(a) The Lessee will not (i) sell, transfer, lease, sub-lease or otherwise dispose of the Equipment (ii) create, permit, or allow to subsist any security interest, lien, or encumbrance on the Equipment, (iii) affix the Equipment to any premises in such a manner as to make it a part of such premises, (iv) represent itself to be, hold itself out as being or suffer or permit anything to be done whereby it may be reputed to be, the owner of the Equipment, and/or (v) alter or modify or permit any alteration of the Equipment, without the Lessor's prior written consent.

(b) The Lessee will notify the Lessor immediately of any enforcement of any security interest created by it and/or any landlord of the premises on or in which the Equipment is located or the appointment of any receiver of all or part of the assets of the Lessee.

### 7. REPRESENTATIONS AND WARRANTIES

(a) The Lessee represents and warrants to the Lessor that: (i) it has the power to enter into and perform, and has taken all necessary action to authorize the entry into and performance of the Lease Agreement and the transactions contemplated by the Lease Agreement; and (ii) all information supplied by it or on its behalf to the Lessor in connection with the Lease Agreement are true and accurate as at the date at which it is stated to be given.

### 8. TOTAL LOSS AND INSURANCE

(a) The Lessee will bear the risks related to a Total Loss of the Equipment after delivery. For the avoidance of doubt, this amount will not exceed the Maximum Compensation Amount. If a Total Loss occurs with respect to the Equipment, Lessee will promptly notify Lessor thereof. On the Lease Payment date following such notice, Lessee will pay to Lessor an amount equal to the Termination Sum plus a sum equal to the calculated residual value at the time of expiration of the Lease Period, if any. Upon the making of such payment by Lessee, the payment obligation for such Equipment will cease, the Lease Agreement as to such Equipment will terminate and, except in the case of a Total Loss, Lessor will be entitled to recover possession at Lessee's expense in accordance with Clause 10 below. Provided that Lessor has received all payments to be made by the Lessee under this Lease Agreement, the Lessee will be entitled to the proceeds of any recovery in respect of that Equipment from insurance or otherwise.

(b) If not agreed otherwise in writing, the Lessee will at its own expense insure the Equipment on a policy and terms with such insurers as may be approved by the Lessor and will keep this insurance coverage in place until the Equipment is returned to the Lessor or the title has been transferred to the Lessee.

(c) The proceeds of the insurances will be paid to the Lessor and applied towards satisfaction of all amounts owing by the Lessee to the Lessor under the Lease Agreement.

(d) If the Lessee fails to comply with this Clause 8 the Lessor may (but is not obligated to do so), at the expense of the Lessee, effect any insurance, and all costs and expenses incurred in so doing will be repaid to the Lessor by the Lessee on demand.

### 9. OWNERSHIP IN THE EQUIPMENT

The Lessor will be the sole legal and beneficial owner of the Equipment and the Lessee will not do or permit to be done anything that could prejudice the rights of the Lessor in respect of the Equipment. During the Lease Period ownership in the Equipment will not for any reason pass to the Lessee.

### 10. RETURN OF EQUIPMENT

(a) In the event that the Lease Agreement is terminated for any reason other than by reason of a Total Loss, the Lessee will immediately (i) return the Equipment to the Lessor or its designated agent, by delivering the Equipment to such address as the Lessor may require at Lessor's own cost and expense or (ii) allow the Lessor access to pick up the Equipment. The Lessee will return the Equipment to the Lessor, free and clear of any security interest and in good working condition without any damage or fault which would affect the value of the Equipment or its operation (reasonable wear and tear excepted) together with all licenses, certificates and other documents relating to the Equipment.

(b) If upon return the Equipment is not in the condition stated in Clause 10(a) above, the Lessor may at its own discretion cause such reasonable repair works as it deems necessary to be carried out by a provider of its choice. All reasonable costs and expenses in connection with such repairs will be paid by the Lessee.

#### 11. END OF LEASE OPTIONS

11.1 OPTION A  Applicable  Not Applicable

(a) *Provided* that the Lessee has fulfilled all its obligations under this Lease Agreement and paid the Balloon Payment, if any, in full, title to the Equipment will pass to the Lessee on an "as is where is" basis without any warranties whatsoever given by the Lessor at the end of the Lease Period.

(b) The Lessee may request the Lessor to re-lease all (but not part thereof) of the Equipment to the Lessee at the end of the Lease Period, *provided* that the Lessee's financial situation has not deteriorated and that the Lessee has duly fulfilled its obligations under this Lease Agreement. The Lease Payments and the Lease Period of the re-lease will be determined between the Parties hereto at the time of re-lease. If the Lessee wishes to renew the Lease Agreement, it will notify the Lessor in writing no less than ninety (90) days prior to the end of the Lease Period. If the Lessor does not confirm acceptance of the Lessee's request within four (4) weeks, it is deemed to have been declined. In case the Lessor refuses such request, the Lessee continues to be obliged to make the Balloon Payment in the manner and on the date as specified in the Lease Agreement.

11.2 OPTION B  Applicable  Not Applicable

*Provided* that no Event of Default has occurred at the end of the Lease Period, the Lessee may, by written notice to the Lessor not less than 90 days prior to the end of the Lease Period, exercise one of the options below.

(a) The Lessee may request the Lessor to sell all (but not part thereof) of the Equipment to the Lessee after the end of the Lease Period and the Lessor will meet such request *provided* that the Lessee has fulfilled all its obligations under this Lease Agreement. The purchase price of the Equipment will be an amount equal to the fair market value, as determined by the Lessor, or, if applicable, as indicated in the Special Conditions noted above. Upon payment of the purchase price, title to the Equipment will pass to the Lessee on an "as is where is" basis without any warranties whatsoever given by the Lessor. If no sale can be achieved, the Lessee will return the Equipment to the Lessor immediately at the end of the Lease Period in accordance with Clause 10 hereof.

(b) The Lessee may request the Lessor to re-lease all (but not part thereof) of the Equipment to the Lessee at the end of the Lease Period, *provided* that, the Lessee's financial situation has not deteriorated and that the Lessee has duly fulfilled its obligations under this Lease Agreement. If the Lessor does not confirm acceptance of the Lessee's request within four (4) weeks, it is deemed to have been declined. The Lease Payments and the Lease Period of the re-lease will be determined between the Parties hereto at the time of re-lease. If the Lessor refuses such request, the Lessee will return the Equipment to the Lessor immediately at the end of the Lease Period in accordance with Clause 10 hereof.

(c) If the Lessee fails to provide sufficient written notice as noted above, the Lease Agreement will be automatically renewed for a period of one (1) month at any one time, at the price of the most recent Periodical Lease Payment, unless either Party gives notice to the other party no less than two (2) weeks prior to the end of the respective renewal period of its desire to terminate the Lease Agreement. Unless otherwise agreed between the Parties, the Lessee will in such case return the Equipment to the Lessor in accordance with Clause 10 hereof.

#### 12. EVENT OF DEFAULT

Each of the events set out in this Clause 12 is an Event of Default. Upon the occurrence of an Event of Default, the Lessor may by written notice to the Lessee terminate the Lease Agreement, which will take effect in accordance with its terms.

(a) The Lessee does not pay on the due date any amount payable by it under the Lease Agreement in the prescribed manner, and such default is not cured within ten (10) days.

(b) The Lessee does not comply with any term of the Lease Agreement, any Sales/Use, License and Service Agreement between Lessor and Lessee, or any other similar agreement governing the use of the Equipment.

(c) Any representation made or repeated by the Lessee in the Lease Agreement is proved to be incorrect in any material respect when made or deemed to be repeated.

(d) The Lessee is unable to pay its debts as they fall due, admits its inability to pay its debts as they fall due, or is otherwise deemed for the purposes of any law to be insolvent, or (by reason of actual or anticipated financial difficulties) begins negotiations with any creditor for the rescheduling of any of its indebtedness.

(e) Any step is taken with a view to a moratorium, rehabilitation or composition with any of the Lessee's creditors, a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution for, to petition for or to file documents with a court or any registrar for, its winding-up, bankruptcy, dissolution or judicial management or any such resolution is passed or any person petitions for or files documents for the same,

an order for its bankruptcy, winding-up, judicial management or dissolution is made or any other analogous step or procedure is taken in any jurisdiction.

(f) Any provisional attachment, attachment, sequestration, distress, execution or analogous event affects any material asset(s) of the Lessee and is not discharged within 14 days.

(g) Where the Lessee, is an individual, the Lessee dies, becomes partly or wholly incapacitated.

(h) It is or becomes unlawful for the Lessee to perform any of its obligations under the Lease Agreement, or the Lease Agreement is not effective in accordance with its terms.

(i) An event or series of events occur which, in the reasonable opinion of the Lessor, is likely to result in a Total Loss.

(j) The Lessee abandons the Equipment or does anything which, in the reasonable opinion of the Lessor, prejudices the rights of the Lessor in or over the Equipment.

(k) There is, in the Lessor's reasonable opinion, a material change in the shareholding of the Lessee or any person, or group of persons acting in concert, acquires control of the Lessee.

(l) An event or series of events occur which, in the reasonable opinion of the Lessor, have or are likely to have a material adverse effect on the financial condition of the Lessee.

#### 13. TERMINATION

(a) After execution of the Lease Agreement, the Lessee will, except as set out in Clause 13(f), not be entitled to cancel or terminate the Lease Agreement before expiration of the Lease Period.

(b) Any termination of the Lease Agreement and any delivery of the Equipment by the Lessee to the Lessor will be without prejudice to any right or claim a party may have against the other under the Lease Agreement (including, without limitation, for arrears in Lease Payment, other sums payable by the Lessee under the Lease Agreement and damages for breach of the Lease Agreement).

(c) Where the Lease Agreement is terminated due to an Event of Default, the Lessee will pay to the Lessor the Termination Sum.

(d) Until the Lessor has received the Termination Sum in full, all obligations of the Lessee under the Lease Agreement will continue and the Lessee will continue to pay the Lease Payment notwithstanding any repossession of the Equipment by the Lessor.

(e) Upon termination of the Lease Agreement, the Lessor will without prejudice to any other rights which it may have, have the right to repossess the Equipment and for this purpose to enter the land, building or premises at which the Equipment are located and the Lessee will give access to or procure that the Lessor or its agents be given access to the land, building or premises for this purpose, at a mutually agreeable date and time.

(f) During the Lease Period, *provided* that no Event of Default has occurred and the Lessee has duly performed all of its obligations under this Lease Agreement the Lessee may by written notice to the Lessor request to early terminate the Lease Agreement. On the Lease Payment date following such notice, Lessee will pay to Lessor an amount equal to the Termination Sum. Upon the making of such payment by Lessee, the payment obligation for such Equipment will cease and the Lease Agreement as to such Equipment will terminate. The Lessee will in such case return the Equipment to the Lessor in accordance with Clause 10 hereof.

#### 14. SUBMISSION OF MATERIALS

Upon written request by the Lessor for the purpose of credit preservation, the Lessee will provide the credit status of the Lessee, and cooperate with the Lessor for any investigations thereon. At Lessor's request, the Lessee will provide a copy of its year-end financial statements not later than four (4) months from the end of the financial year. The Lessee will notify the Lessor of any material change or any suspected material change in the credit status of the Lessee.

#### 15. TAXES AND COSTS

(a) Lessee is responsible for all license and registration fees, and all sales, use, property, stamp and other taxes and charges relating in any manner to the Equipment or this Lease Agreement, except the Medical Device Excise Tax.

(b) All payments by the Lessee under the Lease Agreement will be made free and clear of and without any deduction for or on account of any taxes and withholding taxes, except to the extent that the Lessee is required by law to make payment subject to taxes. If any amounts in respect of tax or any other deduction must be made from any amounts payable by the Lessee to the Lessor under the Lease Agreement, the Lessee will pay such additional amounts as may be necessary to ensure that the Lessor receives a net amount equal to the full amount which it would have received had the payment not been made subject to tax or the deduction.

(c) The Lessee will bear the costs for the protection or exercise of the Lessor's rights, or the protection, collection or disposition of securities including but not limited to the stamp duty, the expense for sending demand or notice to the Lessee, the expenses for registration, change and cancellation of

security interest, and all legal fees which Lessor may incur in connection with the enforcement of this Lease Agreement.

(d) Unless otherwise provided, this Lease Agreement is entered into with the assumption that Lessor is the owner of the Equipment for income tax purposes and is entitled to certain federal and state tax benefits available to the owner of equipment (collectively "Tax Benefits"), including without limitation, accelerated cost recovery deductions and deductions for interest incurred by Lessor to finance the purchase of the Equipment, available under the Code. Lessee represent, warrant, and covenant to Lessor that (a) unless Lessee has provided Lessor with a 501(c)(3) letter indicating that Lessee is tax exempt, then Lessee is not a tax exempt entity (as defined in Section 168(h) of the Code, (b) Lessee will use the Equipment solely within the United States, and (c) Lessee will take no position inconsistent with the assumption that Lessor is the owner of the Equipment for any tax purposes. If, because of any act or omission by Lessee, or any party acting through Lessee, or the breach or the inaccuracy of any representation, warranty or covenant made by Lessee in this Agreement, Lessor reasonably determines that Lessor cannot claim, are not allowed to claim, lose, or must recapture any or all of the Tax Benefits otherwise available with respect to the Equipment (a "Tax Loss"), then Lessee will, promptly upon demand, pay to Lessor an amount sufficient to provide Lessor the same after-tax rate of return and aggregate after-tax cash flow through the end of the term of the Lease Agreement as Lessor would have realized but for such Tax Loss.

#### 16. INDEMNITY

See Use, License and Service Agreement, Section 11 ("Indemnification").

#### 17. FORCE MAJEURE

(a) Neither Lessor nor Lessee 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, acts of God, fire, earthquake, war, the threat of imminent war, riots, or other acts of civil disobedience, insurrection, labor or trade disputes, shortage of components, any governmental law, order, regulation, ordinance or any other supranational legal authority, explosion, storms, floods, lightning, or earthquake.

18. **UCC FILINGS AND FINANCIAL STATEMENTS.** Lessee authorizes Lessor to file a financing statement with respect to the Equipment and grants the Lessor the right to sign such financing statement on Lessee's behalf. If Lessor reasonably deems it necessary, Lessee agrees to submit financial statements (audited if available) on a quarterly basis.

19. **UCC-ARTICLE 2A Provisions:** Lessee agrees that this Lease Agreement is a Finance Lease as that term is defined in Article 2A of the Uniform Commercial Code ("UCC"). Lessee waives any and all rights and remedies granted Lessee under Sections 2A-508 2A-522 of the UCC.

#### 20. INSURANCE REQUIREMENTS OF LESSOR

See Use, License and Service Agreement Section 15.6 ("Insurance").

#### 21. MISCELLANEOUS

(a) The Lease Agreement will not be construed to be a purchase or an agreement for the purchase of the Equipment by the Lessee.

(b) The Lessee may not assign or transfer any of its rights and obligations under the Lease Agreement without the Lessor's prior written consent. The Lessor may with prior written notice to the Lessee assign or transfer any of its rights and obligations under the Lease Agreement and dispose of its rights and title to the Equipment. Should Lessee not consent to the assignment, due to a legal prohibition from doing business with that entity, Lessee may terminate this Agreement and return the Equipment as required by Section 10.

(c) This Lease Agreement constitutes the entire obligation of the parties hereto and supersedes any prior expressions of intent or understandings with respect to this transaction. Any amendment of this Lease Agreement will be in writing and will be signed by duly authorized representatives of both parties hereto.

(d) No failure or delay on the part of the Lessor to exercise any right provided for in this Lease Agreement will constitute a waiver of such right or any obligation of the Lessee under this Lease Agreement, nor will any single or partial exercise of any such right preclude any further exercise thereof. No waiver by the Lessor hereunder will be effective unless it is in writing. The rights and remedies provided for in this Lease Agreement are cumulative and not exclusive of any other rights or remedies which the Lessor may otherwise have.

(e) If any one or more of the provisions of this Lease Agreement or any document executed in connection herewith will be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.

(f) The Lessee acknowledges and agrees that the sole responsibility for determining the proper treatment of this Lease Agreement for tax purposes rests with the Lessee. The Lessor makes no representations whatsoever as to the proper treatment of this Lease Agreement for tax purposes. The Lessee acknowledges that the Lessor is the legal owner of the Equipment.

(g) All notices, claims, requests, demands, and other formal communications hereunder will be in writing and will be deemed given at the time of personal delivery to notice addresses set forth on page 1 of this Agreement or completed facsimile, or, if sent by a reputable overnight courier or registered or certified mail, one business day after such sending.

(h) Both Parties will promptly notify the other of any changes in company name, registered office, and any other matters which may affect this Lease Agreement.

(i) This Agreement shall be governed by the laws of the State of California, excluding its conflicts of laws principles. With respect to any legal action or proceeding relating to this Agreement, the parties consent and submit to the *exclusive* jurisdiction of the Federal and State courts located in California, and the parties agree that venue therein is proper.

(j) For the avoidance of doubt, the Lessee retains all rights, warranties and remedies granted to it under the corresponding Use, License and Service Agreement.

(k) The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made, and invoices shall be rendered "monthly" in arrears. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

(l) **Disputes:** The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.



Annex 1

ACCEPTANCE DOCUMENT

I, the undersigned, as an authorized representative of the below named hospital, acknowledge that the following product was (check the box below which applies):

Delivered       Installed

CUSTOMER

END USER

LM Agreement Number:

Equipment Description	Serial Number
-----------------------	---------------

ACCEPTANCE

ACCEPTANCE CRITERIA - PER AGREEMENT:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Please email signed acceptance letter to [Acceptance@Intusurg.com](mailto:Acceptance@Intusurg.com)**

837921-03, Rev F

# USE, LICENSE AND SERVICE AGREEMENT

Agreement No.: 42003568

This Use, License & Service Agreement ("Agreement") is dated **March 25, 2023** (the "Effective Date") and is between **Intuitive Surgical, Inc.**, a Delaware corporation ("Intuitive"), located at 1020 Kifer Road, Sunnyvale, California 94086, and **County of Riverside**, a political subdivision of the state of California on behalf of its **Riverside County Regional Medical Center** located at 26520 Cactus Avenue, Moreno Valley, CA 92555 ("Customer").

The parties agree as follows:

## 1. Introduction

Customer agrees to obtain and license the Software and Documentation from Intuitive, and Intuitive agrees to respectively provide and license certain software and equipment to Customer, as well as provide Service for the System all according to the terms and conditions of this Agreement. Customer is contemporaneously entering into a lease agreement (the "**Lease Agreement**") dated **March 25, 2023** for the lease of the System. The Lease Agreement may also cover other equipment and/or the Services and/or a System delivery fee and/or other fees as further specified in Exhibit A and the Lease Agreement.

## 2. Definitions

- 2.1 "**Acceptance**" means Customer's acceptance of the System as specified in **Exhibit A**.
- 2.2 "**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.
- 2.3 "**Delivery Date**" means the estimated scheduled date for delivery of the System to Customer specified in **Exhibit A**.
- 2.4 "**Digital Solutions**" means the digital products, consisting of certain hardware components and software program elements, and any services associated with such digital products, as those products and services are described in the Master Digital Solutions Addendum attached hereto as **Exhibit C**.
- 2.5 "**Instruments and Accessories**" means those instruments or accessories made or approved by Intuitive for use with the System.
- 2.6 "**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.
- 2.7 "**Reprocess**" or "**Reprocessing**" means Customer's process for cleaning, disinfection, and sterilization of Instruments and Accessories, including testing to validate cleaning, disinfection and sterilization process as may be required by applicable law and/or regulation.
- 2.8 "**Services**" means the support and maintenance of the System described in Section 5 for the Service fees designated in the **Lease Agreement**.
- 2.9 "**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 manuals, labeling, instructions for use, notifications or other documentation ("Documentation"), that Customer may receive, 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.
- 2.10 "**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.

## 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 the **Lease Agreement**. Risk of loss or damage to the System passes to the Customer upon delivery of the System to Customer.
- 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, cleaning of parts of the System, the Instruments and Accessories and discussing opportunities to improve cost efficiencies. 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 **Reprocess and Disposal.** Customer is responsible for properly Reprocessing and/or 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 Documentation and 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. Some components of the Software may be provided to Customer under a separate license, such as an open source license. In the event of a conflict between this Agreement and any such separate license, the separate license will prevail with respect to the component that is the subject of such separate license.

#### 5. **Services**

- 5.1 **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 10.1(A) apply. Customer may contact Intuitive to upgrade its Service Plan to **dv Premium Care Plan**. A \$15,000/year uplift fee to annual Service fees set forth in Exhibit A will be charged; a detailed Service plan description will be provided to Customer for its acceptance and signature.

Intuitive will provide Services under the **dv Complete Care Plan**, with benefits and limitations as follows:

- (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) Provide preferred pricing and next day service repairs or replacement due to accidental damage on endoscopes and camera heads;
- (H) Respond to Customer's request for Services described in Section 5.1(B)-(C) by phone, e-mail, or an on premise visit, during normal business hours (excluding Intuitive holidays) promptly as is reasonable after Intuitive's receipt of Customer's request, but not later than twenty-four (24) hours after Intuitive's receipt. Normal business hours are

Monday through Friday, 8:00 a.m.- 5:00 p.m. Customer's local time. Billable rates are applicable for service outside of normal business hours, and for reasons defined below in Section 5.2 (Limitations of Service).

- (I) Perform System preventative maintenance inspections as necessary to maintain factory specifications.
- (J) Provide on-site visits for support of advanced training of Customer's personnel on sterile Reprocessing process.
- (K) When the system is connected to OnSite®, remotely monitor system to diagnose potential issues and proactively dispatch a Field Service Engineer to make repairs when needed.
- (L) Provide access to the da Vinci Surgery Customer Portal.

#### 5.2 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 obtained 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 5.2(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.

#### 5.3 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 5.3 authorizes Customer or the Clinical Liaison to perform Services or to perform any act otherwise prohibited by this Agreement.

#### 6. 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**.

#### 7. 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.

#### 8. 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 in accordance with the terms and conditions contained in the then current Instrument and Accessory Catalog. 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. Customer is responsible for Reprocessing Instruments in accordance with the Documentation. 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, and cleaning or sterilization inconsistent with the Documentation. This license expires once an Instrument or Accessory is used up to its maximum number of uses, as is specified in the Documentation accompanying the Instrument or Accessory. Customer may purchase Instruments and Accessories for the purpose of Customer's Reprocessing requirements. The cost of Instruments and Accessories used in Customer's Reprocessing, including Instrument and Accessories used or involved in destructive testing, will be the responsibility of the Customer. Customer may contact Intuitive's Customer Support Department if, during the Reprocessing, Customer experiences results unacceptable under applicable law and/or regulation. Intuitive will provide commercially reasonable assistance in such investigations and remediation efforts but will not be obligated to conduct or pay for such studies or provide materials at no cost or reduced cost as a condition of purchase or continued use.

9. **Pricing and Payment Terms**

9.1 **System.**

- (A) **Price.** Customer will pay the "Periodical Lease Payments" amount as indicated in the **Lease Agreement** for the lease of the System. At the termination of the Lease Agreement, the terms and conditions applicable to end of lease options are set forth in the Lease Agreement. If Customer requires a purchase order for internal processing purposes, Customer must provide the purchase order at the time of signature of this Agreement and provide Customer's Accounts Payable Department contact information on Exhibit A.

9.2 **Services.**

- (A) **Price.** While the System is being leased by Customer, either (i) the price of annual Services is included in the "Periodical Lease Payments" amount as indicated in the **Lease Agreement**; or (ii) the price of annual Services is not included in the Periodical Lease Payments, and Customer will pay for the Services separately at the price specified in the **Lease Agreement**. If, after the term of the lease, or pursuant to Special Conditions in the Lease Agreement, if any, Customer purchases the System from Intuitive under the applicable terms and conditions of the Lease Agreement, Customer will pay for the Services at the price specified in the Lease Agreement. 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 14).
- (B) **Payment Terms.** Unless as otherwise indicated in **Exhibit A**, Intuitive will deliver to Customer an invoice for the annual Services fee thirty (30) days prior to the first anniversary of Acceptance and each subsequent anniversary of Acceptance throughout the Initial Term of the Agreement. Customer will pay the invoice for Services not later than thirty (30) days after the date of invoice. In the event Customer requires a purchase order to be referenced on a Service invoice to facilitate payment, Customer will provide Intuitive with a purchase order number sixty (60) days prior to each anniversary of Acceptance. 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.

9.3 **Taxes.**

Customer will pay, or reimburse Intuitive for, all Taxes, including related penalties or interest resulting from Customer's use of the System under this Agreement.

10. **Warranty and Disclaimer**

10.1 **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**, the System 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 10.1 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.

10.2 **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.

10.3 **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.

## 11. Indemnification

### 11.1 Intuitive's Indemnification 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.

(B) **Indemnification Limitations.** Intuitive has no obligation under this Section 11.1 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, provided or approved by Intuitive, provided that Intuitive has a duty to provide advance notice to Customer through the Documentation.

(C) **THE PROVISIONS OF THIS SECTION 11 STATE THE SOLE AND EXCLUSIVE OBLIGATIONS OF INTUITIVE FOR ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT. For the avoidance of doubt, Customer retains its rights to remedies at law.**

11.2 **By Intuitive.** To the extent allowable by law, Intuitive hereby assumes all liability for, and agrees to indemnify, defend and hold harmless Customer, 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 11.2 shall not apply to the extent that (i) such Claims arise from Customer's negligence or willful misconduct or breach of any of its obligations hereunder.

11.3 **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 Sections 3.4 and 3.5. (Use of System; Reprocess and Disposal) Notwithstanding the foregoing, Customer's indemnification obligations under this Section 11.3 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.

11.4 **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).

11.5 **Claim Notification Requirement.** A party's indemnification obligations under this Section 11 will not apply unless the indemnified party notifies the indemnifying party of the claim as soon as reasonably possible from when 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.

## 12. Limitation of Liability.

Except for a breach of the obligations in Sections 3.4 (Use of System), 4 (Software License and Restrictions), 8 (Instruments and Accessories), 9 (Pricing and Payment Terms), 11 (Indemnification), 13 (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 (excluding gross negligence and or willful misconduct), is limited to an amount equal to two times the sum of amounts payable by Customer under this Agreement. Except for a breach of the obligations in Sections 3.4, 4, 8, or 13, 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.

**13. 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 and all information derivable from the System, but excluding information that can be learned simply through observation of the System and its operation. The terms and conditions of this Agreement are considered Intuitive's Proprietary Information, however, Intuitive understands and agrees that its contents are subject to the California Public Records Act and California Brown Act and that Customer must make the Agreement available for public information. 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. Notwithstanding any provision of this Agreement, the Receiving Party shall be permitted to disclose the Disclosing Party's Confidential Information solely to the extent that such disclosure is required by law or by order of any court or governmental authority, including but not limited to California Public Records Act requests and Brown meeting requests, provided, however, that the Receiving Party shall first have given advance notice to the Disclosing Party, so as to permit the Disclosing Party as owner of the information an opportunity to review such information for confidentiality and privilege preservation and/or to attempt to obtain a protective order or similar administrative or legal remedy requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued or for such other legal requirement, and that the Receiving Party shall cooperate with the Disclosing Party in such efforts. As it relates to any California Public Records Act or Brown Act requests, to the extent Customer is required by law to disclose any of the above-described information, communications, and documents, Customer shall comply with such law. Customer has the right in its sole discretion to determine what shall be disclosed, as required by law. 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.

**14. Term.**

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

14.2 **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, 9.1, 9.3, 11, 12, 13, 14.2, 15, and any other provision which by its nature will survive, will remain in effect notwithstanding the expiration or termination of this Agreement.

**15. Miscellaneous.**

15.1 **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.

15.2 **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.

15.3 **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.

15.4 **Federal Audit.** As a medical device manufacturer, Intuitive has an obligation to report certain adverse event details to the Food and Drug Administration (FDA). Intuitive may request, and Customer shall provide Intuitive, all information necessary to fulfill Intuitive's complaint reporting obligation of adverse events. 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.

- 15.5 **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, acts of God, fire, earthquake, war, the threat of imminent war, riots, or other acts of civil disobedience, insurrection, labor or trade disputes, shortage of components, any governmental law, order, regulation, ordinance or any other supranational legal authority, explosion, storms, floods, lightning, or earthquake.
- 15.6 **Insurance.** Without limiting or diminishing the INTUITIVE'S obligation to indemnify or hold the CUSTOMER harmless, INTUITIVE shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the CUSTOMER herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.
- A. **Workers' Compensation:** If the INTUITIVE has employees as defined by the State of California, the INTUITIVE shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside. Policy shall name the CUSTOMER as Additional Insureds.
- B. **Commercial General Liability:** Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of INTUITIVE'S performance of its obligations hereunder. Policy shall name the CUSTOMER as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. Policy shall name the CUSTOMER as Additional Insureds.
- C. **Vehicle Liability:** If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then INTUITIVE shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. Policy shall name the CUSTOMER as Additional Insureds.
- D. Intentionally left blank.
- E. **Cyber Liability Insurance,** with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Intuitive in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, and network security.
- F. Policy shall name the CUSTOMER as Additional Insureds
- G. **General Insurance Provisions - All lines:**
- 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8).
  - 2) INTUITIVE shall declare its insurance self-insured retention for each coverage required herein.
  - 3) INTUITIVE shall furnish the CUSTOMER of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance.
  - 4) INTUITIVE shall not commence operations until the CUSTOMER has been furnished original Certificate (s) of Insurance.
  - 5) It is understood and agreed to by the parties hereto that the INTUITIVE'S insurance shall be construed as primary insurance, and the CUSTOMER'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
  - 6) Intentionally left blank.
  - 7) Intentionally left blank.
  - 8) Intentionally left blank.



9) INTUITIVE agrees to notify CUSTOMER of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.


- 15.7 **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 the Hardware is being leased and may be sold under the Lease Agreement as the case may be. Neither party is the drafter of this Agreement. Accordingly, the language of this Agreement will not be construed for or against either Party.
- 15.8 **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.
- 15.9 **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.
- 15.10 **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.
- 15.11 **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 10) 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.
- 15.12 **Data Use.** INTENTIONALLY OMITTED.
- 15.13 **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.
- 15.14 **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.
- 15.15 **Representations and Warranties by Customer.** Customer represents and warrants to Intuitive that: (i) it has the power to enter into and perform, and has taken all necessary action to authorize the entry into and performance of, the Agreement and the transactions contemplated by the Agreement; and (ii) all information supplied by it or on its behalf to Intuitive in connection with the Agreement and any guarantee (as the case may be) are true and accurate as at the date at which it is stated to be given.
- 15.16 **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 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.**

**IF THIS AGREEMENT IS NOT SIGNED BY BOTH PARTIES AND RETURNED TO INTUITIVE ON OR BEFORE MARCH 28, 2023, THE TERMS WILL BE SUBJECT TO CHANGE.**

ACCEPTED BY:

Intuitive Surgical, Inc., a Delaware corporation

Signature:   
Nick Santore (Mar 30, 2023 10:30 PDT)

Email: nick.santore@intusurg.com

Title: VP Commercial Solutions

Company: Intuitive Surgical, Inc.

ACCEPTED BY:

COUNTY OF RIVERSIDE, a political subdivision of the state of California, on behalf of Riverside University Health System Medical Center

By: 

Name: KEVIN JEFFRIES

Title: CHAIR, BOARD OF SUPERVISORS


Date: 5/2/23

ATTEST:

KIMBERLY A. RECTOR, Clerk

By:   
DEPUTY

FORM APPROVED COUNTY COUNSEL

BY  3-29-23  
ESENE SAINZ DATE

MAY 2 2023 15.1

## EXHIBIT A Equipment List

### 1. Intuitive will provide Customer with the following:

#### da Vinci Xi® Dual Console System (Firefly® Fluorescence Imaging Enabled)

Two (2): da Vinci Xi® System Surgeon Consoles

One (1): da Vinci Xi® System Patient Cart

One (1) da Vinci Xi® System Vision Cart

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

da Vinci Xi® System Documentation including:

User's Manual For System

Warranty period: n/a

User's Manual for Instruments and Accessories

Warranty period: n/a

One (1) da Vinci Xi® Cleaning & Sterilization Kit

Warranty period: 90 days from Acceptance

Two (2) da Vinci Xi® Instrument Release Kit (IRK)

Warranty period: 90 days from Acceptance

da Vinci Xi® System Software

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

Instrument and Accessories including:

Accessory Starter Kit

Two (2): Box of 6: 8 mm Bladeless Obturator

One (1): 8 mm Blunt Obturator

Four (4): Box of 10: 5 mm - 8 mm Universal Seal

Four (4): 8 mm Cannula

Three (3): Monopolar Energy Instrument Cord

Three (3): Bipolar Energy Instrument Cord

One (1): Box of 3: da Vinci Xi® Gage Pin

Three (3): Instrument Introducer

One (1): Box of 10: Tip Cover for Hot Shears (MCS)

One (1): Pmed Cable, Covidien Force Traid ESU

Warranty period: 90 days from Acceptance

Drapes

Two (2): Pack of 20 da Vinci Xi® Arm Drape

One (1): Pack of 20 da Vinci Xi® Column Drape

Warranty period: 90 days from Acceptance

Vision Equipment:

Two (2): da Vinci Xi® Endoscope with Camera, 8 mm 0 degree

Two (2): da Vinci Xi® Endoscope with Camera, 8 mm 30 degree

Four (4): da Vinci Xi® Endoscope Sterilization Tray

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

Training Instrument Starter Kit

One (1): Large Needle Driver

One (1): ProGrasp Forceps

One (1): Maryland Bipolar Forceps

One (1): Hot Shears (Monopolar Curved Scissors)

One (1): Tip-Up Fenestrated Grasper

One (1): Mega SutureCut Needle Driver

Warranty period: 90 days from Acceptance

(all kits subject to change without notice)

**2. Equipment and Service.**

Qty.	Included in Periodical Lease Payment	Not included in Periodical Lease Payment	Equipment Description
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	System Type: da Vinci® Xi™ Dual Console System
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Service during the first twelve months of the Lease Period
n/a	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Service beginning on the thirteenth month of the Lease Period, or if Lessee purchases the Equipment*
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	System delivery fee
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	da Vinci® Xi™ Integrated Table Motion Upgrade**
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	E-100 Generator**
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Intuitive Hub***

\*The applicable Service price is valid for a period of five years from the effective date of this Agreement.

\*\*Subject to availability, any Instruments or Accessories provided to Customer as set forth in Exhibit A, Section 2 are subject to the Terms of the *da Vinci EndoWrist Instrument & Accessory Catalog* as if such Terms were contained in this Agreement. Delivery charges will be *Pre-Pay & Add*. If Exhibit A, Section 2 includes Instruments or Accessories, they will be shipped FCA Intuitive's warehouse. If Single Site Instruments are listed, they will be delivered upon Customer's completion of the advanced instrument training verification.

\*\*\*Digital Solutions are subject to the terms and conditions of the Master Digital Solutions Addendum attached hereto as Exhibit C.

Intuitive makes no representation with regard to Certificate of Need requirements for this lease. It is Customer's responsibility to determine whether this lease 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 lease.

The estimated delivery date for the System is **March 30, 2023** ("**Delivery Date**"). The Delivery Date is an estimated "on or before" delivery date to Customer's designated location (see "Ship-to" below).

Customer will pay to Intuitive all fees for the lease or purchase of Systems, Instruments, Accessories, Service or other fees that are not included in Periodical Lease Payment, as such fees are further detailed in the Lease Agreement, and not later than thirty (30) days after the date of Intuitive's invoice.

**3. Acceptance.** The System is deemed accepted by Customer upon delivery to Customer's designated location ("Acceptance"). An example of Acceptance Document is hereto attached as Exhibit B.

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

Riverside County Regional Medical Center  
 26520 Cactus Avenue  
 Moreno Valley, CA 92555

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

Riverside County Regional Medical Center  
 26520 Cactus Avenue  
 Moreno Valley, CA 92555

*Customer's Account Payable Department Contact:*

*Customer's PO Number:*

**6. Taxes and Costs.**

6.1 Customer will be deemed to be Taxable until such time as customer provides the Intuitive tax department with the appropriate, fully executed tax exemption certificate as directed below: Attn: Tax Department, Intuitive Surgical, Inc., 1020 Kifer Road, Sunnyvale, CA 94086; fax number: 408-523-1390; email at [TaxEmail@intusurg.com](mailto:TaxEmail@intusurg.com).

6.2 Customer is responsible for all license and registration fees, and all sales, use, property, stamp and other taxes and charges relating in any manner to the System or this Agreement, except the Medical Device Excise Tax.

7. **Term.** The initial term of this System obtained under this Agreement will commence as of the Effective Date and will continue until the end of the Lease Term ("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 (based on a porcine model) is three thousand dollars (\$3,000.00) 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. Notwithstanding the foregoing, Intuitive will provide Customer with the following:
9. **Proctoring.** As of the Effective Date, the rate for Proctor's services is three thousand dollars (\$3,000.00) 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. Notwithstanding the foregoing, Intuitive will provide Customer with the following:

# EXHIBIT B

## ACCEPTANCE DOCUMENT

I, the undersigned, as an authorized representative of the below named hospital, acknowledge that the following product was (check the box below which applies):

Delivered       Installed

CUSTOMER

END USER

LM Agreement Number:

Equipment Description	Serial Number

ACCEPTANCE CRITERIA - PER AGREEMENT:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Please email signed acceptance letter to [Acceptance@Intusurg.com](mailto:Acceptance@Intusurg.com)**

837921-03, Rev F

**EXHIBIT C  
MASTER DIGITAL SOLUTIONS ADDENDUM**

1. **Products and Services.** The digital products (“Products”), consisting of certain hardware components and software program elements, and any services associated with such digital products (“Services”) (collectively, “Digital Solutions”) to be provided under this Master Digital Solutions Addendum (“Addendum”) are as follows:

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>1. <b>Intuitive Hub:</b></p> <p>a. <b>Includes Clinical Media Management and Telepresence</b></p> <p>i. <b>Hardware:</b></p> <p>1. <b>Medical grade touch panel capture and compression unit</b></p> <p>2. <b>“Telepresence Kit” (Room camera/webcam and headset)</b></p> <p>3. <b>Foot pedal control accessory</b></p> <p>ii. <b>Software:</b></p> <p>1. <b>Includes 3D capture, live stream/telepresence &amp; advanced content management</b></p> <p>iii. <b>Virtual media server (“Hub Media Server”)</b></p> <p>1. <b>Includes web tool and mobile application</b></p> <p>iv. <b>Services included at no additional cost</b></p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>2. <b>da Vinci® SimNow® Skills Simulator (“Simulator”)</b></p> <p>a. <b>Services for Simulator (“Simulator Services”)</b></p> <p>i. <b>First year included at no additional cost</b></p> <p>ii. <b>Future years billed annually at \$20,000.00 per year</b></p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>3. <b>Custom Hospital Analytics</b></p> <p>a. <b>Includes Report</b></p> <p>b. <b>Services included at no additional cost</b></p>

**GENERAL TERMS AND CONDITIONS:**

2. **Use of Products.** Customer will ensure the proper use of the Products consistent with the documentation describing the functionality, instructions for use, and any other documentation or installation instructions relating to the Products delivered to Customer (the “Documentation”). Customer will ensure the proper management and supervision of the Products. Customer will not, nor will Customer permit any third party to, modify, disassemble, reverse engineer, alter, or misuse the Products. 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 Addendum. 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 Products; (2) reconfiguring any Products; or (3) reverse engineering, decompiling, disassembling, attempting to derive the source code for, otherwise manipulating the software without Intuitive’s written permission. If Customer fails to comply with the requirements of this Section, Intuitive may terminate this Addendum immediately upon written notice, and any warranties applicable to the Products will become void.
3. **Proprietary Information.** The “Proprietary Information” section of the Agreement is incorporated into this Addendum by reference. Notwithstanding anything to the contrary in the Agreement, Proprietary Information also includes all information derivable from the Digital Solutions, but excluding information that can be learned simply through observation of the Digital Solutions and its operation. In addition, any feedback provided with respect to the Digital Solutions shall be the sole Proprietary Information of Intuitive.
4. **Software License and Restrictions**
  - 4.1 **Software Licensing.** Intuitive represents and warrants that it owns or otherwise has the right to license any software provided hereunder.
  - 4.2 **Restrictions.** Intuitive grants to Customer a non-exclusive, non-transferable, fully paid, restricted use license to use the software solely in connection with the operation of the Products as described in the Documentation. Only authorized Customer employees, consultants, or independent contractors may use the software.
  - 4.3 **Replacement Software.** In the event that during the term of this Addendum, Intuitive replaces any licensed software with an alternative software that is not a maintenance release, but has minimal differences in features and functions (regardless of differences arising from such factors such as operating systems, databases, and user interfaces), Customer shall have the right to exchange the licensed software for such alternative software at no additional cost. Customer shall pay for the Services, installation fees, third party software fees, and hardware fees associated with such alternative software.
5. **Services.** The parties agree to the terms and conditions of the following Services provided by Intuitive.
  - 5.1 **Corrective Services.** Upon discovery of a problem, Intuitive shall, within a commercially reasonable amount of time, provide a correction or temporary bypass sufficient to mitigate any material adverse effect on the delivery of patient care, or provide a written

diagnosis of and plan for resolving the problem. Intuitive shall periodically report its progress in correcting an unresolved problem and perform problem corrections remotely, if possible. However, in the event that remote support fails to resolve a problem, and Customer's personnel have made all reasonable efforts based on Intuitive instructions to resolve such problem, a support engineer may be dispatched at Intuitive's discretion.

- 5.2 Software Services.** Intuitive may periodically release changes to the software ("Software Releases"), including maintenance, updates or upgrades.
- 5.3 Hardware Services.** Intuitive shall provide Customer with repair service that allows Customer to mail in the Product to any authorized Intuitive Service Center ("Repair Service"). All costs associated with the repair of the Product are included under Repair Service; however, Customer is responsible for the freight charges for delivering the Product to the Intuitive Service Center.
- 5.4 Help Desk Services.** Help desk services are available and accessible by telephone (to be provided by Intuitive upon request) or e-mail (customerservice@intusurg.com). The help desk will assist Customer in resolving a problem and obtaining general technical assistance, including queries on how to use the Products and requests for additional Documentation.
- 5.5 Limitations on Services.** Intuitive shall have no obligation to provide any Services hereunder if the problem is the result of Section 5.5(a)-(j) below ("Excluded Events"). For any provision of Services following an Excluded Event, Customer shall be charged at then current time and material rates.

Excluded Events include:

- (a) the Products being altered, repaired or reworked by a third party without Intuitive's prior written consent;
- (b) Customer's or a third party's improper installation, maintenance or storage, mishandling, abuse or misuse of the Products;
- (c) Customer's or a third party's use of the Products in conjunction with equipment electronically or mechanically incompatible or of an inferior quality on an unsupported hardware or software platform;
- (d) damages caused due to the Customer's or any third party's fault;
- (e) failure to implement any Software Release, problem corrections or other Intuitive Software Releases or patch provided or recommended by Intuitive;
- (f) changes to the operating system, network configuration or environment which adversely affect the Products, except for changes pursuant to Intuitive's written authorization;
- (g) failure to provide and continually maintain adequate electrical power, air conditioning and humidity controls in accordance with the specifications or such other instructions provided by Intuitive;
- (h) failure of any hardware or software (other than the software provided by Intuitive) incorporated into, forming part of, or supporting the Products to operate properly in accordance with Intuitive requirements set forth in Documentation and guidelines as provided from time to time;
- (i) network capacity overload, bandwidth limitation, or any other network malfunctions; or
- (j) if the software provided by Intuitive used by Customer is older than the last two major versions released by Intuitive

- 6. Business Associate Agreement.** The Business Associate Agreement ("BAA") entered into between Customer and Intuitive applies to protected health information ("PHI"), as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and as may be amended from time to time.
- 7. Use of Customer Data.** The terms and conditions set forth in the Data Use section of the Agreement and set forth in a Master Data Use Agreement entered into between the parties shall apply to this Addendum.
- 8. Customer Responsibilities.** Customer shall be responsible for the following obligations:

**8.1 Customer Maintenance.**

- (a) Allowing Intuitive remote access to the Products;
- (b) Operating the Products in accordance with the Documentation;
- (c) Contacting Intuitive promptly upon discovery of a problem;
- (d) Investigating and verifying problems;
- (e) Producing and providing Intuitive with performance reports and other reports, as requested by Intuitive, from time to time;
- (f) Enabling HTTP access for automatic e-mail deliveries to the Intuitive support alarm system;
- (g) Installing fixes of the Products, when approved in writing by Intuitive;
- (h) Purchasing and maintaining all third party licenses as needed to utilize the Products.

**8.2 Changes in Environment.** Customer shall coordinate, document and report any change in the environment in which the Products operate, including any changes in the Product's hardware, network or software not supplied or developed by Intuitive (e.g. installing a new patch of the operating system). Customer shall promptly report any problem related to or affecting the environment, and its resolution progress.

**8.3 Supervisor.** Customer shall designate an appropriately qualified person who has been trained and certified by Intuitive for Digital Solutions operation, administration, and maintenance (the "Supervisor"). The Supervisor will serve as the primary point of contact with Intuitive for all Digital Solutions-related activities performed under this Addendum.



8.4 **On-Site Support.** Personnel performing the on-site support Services may use and store at Customer's facility software, documentation, tools, test equipment and other material to provide the Services regarding the Product ("Service Materials"). Intuitive grants no title or license to such Service Materials and retains all right, title, and interest in such Service Materials. Customer will not use such Service Materials or make them available to third parties. Intuitive may remove Service Materials at any time and Customer will give Intuitive access for such removal. Upon request by Intuitive, Customer support personnel must be available to assist with remote access issues and provide on-site assistance to Intuitive.

8.5 **Problem Correction.** Customer will cooperate with Intuitive in the correction of problems, including without limitation, providing a detailed description of the problem, and taking all reasonable measures requested by Intuitive to detect and obtain further information about the problem. Customer will provide and install such reasonable troubleshooting tools and activate such event loggers (incorporated in the Products) as may be requested by Intuitive and will cooperate fully with Intuitive in the problem replication, identification and analysis process. Customer shall forward to Intuitive all troubleshooting, log reports and other reports generated in connection with the Products.

8.6 Customer hereby acknowledges and agrees that any medical related activities must be performed by properly credentialed surgeons and physicians. Any and all issues related to credentialing or the confidentiality and security of patient information are the sole responsibility and obligation of Customer.

9. **Term and Termination.** This Addendum will commence as of the Effective Date and will continue until terminated by Intuitive. However, either party may terminate this Addendum if the other party breaches a material term or condition of this Addendum and fails to cure the breach following thirty (30) days' written notice from the non-breaching party

10. **Conflicting Terms.** Except as set forth herein, all other terms and conditions of the Agreement remain the same. In the event of a conflict between the terms of this Addendum and the Agreement, the terms of this Addendum will prevail. This Addendum supersedes any prior agreements between the parties regarding the Digital Solutions described herein.

11. Intuitive may offer future iterations of the Digital Solutions listed above. The terms and conditions in this Addendum shall apply to future iterations of the Digital Solutions as well as any assessment or feedback provided by Customer with respect to future iterations of the Digital Solutions.

#### **ADDITIONAL TERMS AND CONDITIONS FOR INTUITIVE HUB:**

12. **Delivery and Installation Terms.** Subject to credit approval of Customer by Intuitive, Intuitive will use commercially reasonable efforts to deliver the Products to Customer's designated location noted as the "Ship-to" in Exhibit A of the Agreement ("Customer's Designated Location") using a carrier selected by Intuitive. Delivery charges will be *Pre-Pay & Add*. Risk of loss or damage to the Products passes to the Customer upon shipment of the Products to Customer. Title to Products sold to Customer passes upon Acceptance (as defined below). Each party will provide the other party with thirty (30) days' notice, or if the 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 Products. Intuitive will use commercially reasonable efforts to install the Product in an efficient and expeditious manner. Customer will also provide Intuitive with information, consultation, and advice reasonably necessary to permit installation.

13. **Acceptance.** The Products shall be deemed accepted by Customer upon shipment to Customer's Designated Location ("Acceptance"). Intuitive agrees to work with Customer to operationalize Intuitive Hub within a commercially reasonable amount of time after Acceptance. For the avoidance of doubt, Customer shall be invoiced for Intuitive Hub upon Acceptance.

14. **Customer Responsibilities.** Customer shall be responsible for the additional obligations:

##### **14.1 Customer Maintenance.**

- (a) Customer shall maintain the Hub Media Server. The Hub Media Server can be a VM (virtual machine) or a dedicated physical server in accordance with Intuitive's pre-requisites. Unless Intuitive indicates otherwise, Customer's responsibility for the server includes, but is not limited to, OS (operating system), anti-virus, H/W (hardware), networking (multicast) and storage;
- (b) Customer shall maintain the database and storage systems. Intuitive shall provide backup policy recommendations to Customer.

15. **Software License Restrictions.** Except for the use of any mobile application in accordance with the terms of service applicable to such application, Customer shall use the software only at Customer's Designated Location, unless (i) otherwise agreed to in writing; or (ii) Customer is prevented from using software at the Customer's Designated Location due to periods of disaster recovery, testing scheduled by Customer in advance, or due to causes beyond Customer's control. If Customer is prevented from using the software at a Customer's Designated Location, Customer shall notify Intuitive in writing prior to using any software at another location. All Customer obligations, representations, and warranties provided under this Agreement shall extend to the alternative location for a period as agreed to between the parties.

16. **Telepresence.** Intuitive Hub implements a telepresence software solution to leverage in-room cameras and enable audio/video transmission devices that require network access via Ethernet and/or Wifi connection to enable remote users to observe and communicate with designated operating surgeons, interventional pulmonologists, and medical staff. Customer will grant network access to a designated external server infrastructure, as identified by Intuitive.

17. **Usage and HIPAA.** Customer hereby acknowledges and affirms Customer is in control of and is responsible for both the physical and cybersecurity of Intuitive Hub within the procedure room, and Customer determines what audio and/or video is transmitted via Intuitive Hub. Customer will fulfill all Customer legal and regulatory obligations related to the use of Intuitive Hub, including under HIPAA. If needed for Customer's use of Intuitive Hub (including the Telepresence solution), Customer agrees to provide any required notices and obtain all necessary consents, including patient HIPAA authorizations. For remote observations, e.g. demonstrations of the use of Intuitive products or other activities to remote observers, if Customer uses Intuitive Hub to transmit PHI, then Customer will obtain a patient HIPAA authorization covering remote observation of the surgery or procedure for the observers' own purposes. Other than Intuitive personnel, remote observers are typically non-Customer health care professionals and/or Customer staff interested in demonstrations of Intuitive products. Remote users other than Intuitive personnel are not affiliated with Intuitive, and Customer agrees that it is the sole responsibility and obligation of Customer to engage them directly. Intuitive obtains usage and log data about Intuitive Hub, such as which features were used during a session and the duration of the session. However, Intuitive does not record, use, disclose, or store video and/or audio transmitted through the Telepresence solution.
18. **Release of Liability.** For purposes of this Addendum, Customer and its affiliates hereby release from liability and waive the right to sue Intuitive and any of its subsidiaries, affiliate companies, their employees, officers, directors and agents from any and all claims resulting from any illness of or physical injury to a patient (including death), or any economic loss (including liability for damages or penalties) that Customer may suffer because of use of Intuitive Hub. Customer understands that there are risks, including to patients, which may occur from Customer's use of Intuitive Hub. Customer assumes all liability or related risks, whether known or unknown to Customer, of use of Intuitive Hub. Customer hereby acknowledges and affirms that Intuitive has no input, control over, or involvement in the assistance, coaching, guidance, surgical training, proctoring, recommendations, practice, observations, or other services offered to, or utilized by Customer, relating to the practice of medicine. For the avoidance of doubt, nothing in this Section shall be construed to reduce or negate Intuitive's obligations or Customer's rights and remedies related to the da Vinci® Surgical System under the Agreement.
19. **Indemnification.** For purposes of this Addendum, Customer 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, loss or damage to Customer's personal property, liabilities, expenses, and costs, including reasonable attorney's fees, (collectively, "Claims") arising as a result of Customer's use of Intuitive Hub, including but not limited to any Claims related to any and all consents and/or technical, network, download, access, connection, installation and/or computer issues arising in connection with Customer's use. The indemnification obligations described herein shall not apply to the extent such Claims arise as a result of Intuitive's gross negligence or intentional misconduct.

#### **ADDITIONAL TERMS AND CONDITIONS FOR SIMULATOR:**

20. **Networking Requirements.** Simulator may require a network connection in order to achieve full functionality. Customer acknowledges that when Simulator is in use, Customer is responsible for maintaining an active network connection to Intuitive's Simulator infrastructure as specified in the Simulator's network requirements, for the purpose of supporting all services such as, latest simulation updates, OS patches, anti-virus updates, data backup and user account management capabilities. Customer is responsible for the security of the Simulator and the security of the internal network to which the Simulator is configured. Intuitive reserves the right to change, add, or remove functionalities or features at any time.
21. **Information Security.** Customer is responsible for maintaining the confidentiality of its username(s), password(s), account(s), as well as all activities that occur under that account(s) and both the physical and cyber-security of the Simulator. Customer agrees that Intuitive may share data relating to the use of the Simulator with any Customer-authorized user of the Simulator.
22. **Simulator Services.** If Customer is current in payment to Intuitive of the Simulator Services fees, Customer will receive access to the Intuitive library of basic, advanced, and procedure skills simulation. In the event of nonpayment for Simulator Services, access to the Intuitive library of basic, advanced, and procedure skills simulation will be suspended. At any time during the term of this Addendum, with thirty (30) days prior written notice, Customer may opt-out of Simulator Services. For the avoidance of doubt, in the event Customer opts-out, Customer will not receive a refund of any prepaid, unused Simulator Services fees.

#### **ADDITIONAL TERMS AND CONDITIONS FOR CUSTOM HOSPITAL ANALYTICS:**

23. Customer may provide or have provided to Intuitive certain data that Customer collects and maintains regarding surgical procedures performed at one or more facilities affiliated with Customer (the "Data"). Customer represents and warrants that the Data to be provided by Customer to Intuitive will be de-identified by Customer to include no direct patient identifiers or PHI in accordance with HIPAA and its implementing regulations, as amended by the HITECH Act and its implementing regulations. Customer further agrees to label the Data provided to Intuitive with the identity of the Customer, and if applicable, the specific facility of Customer's organization associated with the Data. Customer represents and warrants to Intuitive that Customer has the right to provide Intuitive the Data and any other related materials, including, if applicable, any and all information to which physicians employed by or affiliated with Customer may have an interest. Customer shall own the Data.
24. Intuitive agrees to use the Data to provide a report to Customer addressing the current state of Customer's perioperative program, or other programs, which quantifies the impact of robotic-assisted minimally invasive surgery on clinical and economic outcomes associated with Customer's organization (the "Report"). Intuitive may combine the Data with certain data that Intuitive may collect relating to Customer's use of Intuitive products. Intuitive shall own all right, title, and interest, including all related intellectual property rights, in and to the

Report, queries, protocols, code lists and data specs. Intuitive shall also own all right, title, and interest, including all related intellectual property rights, in and to any statistics, analytics, analyses, models, knowledge, reports, or other learning it derives from the Data. Any Report provided by Intuitive to Customer is provided as-is and may contain inaccuracies; therefore, Intuitive cannot guarantee the quality or accuracy of the Report.

25. Customer grants to Intuitive a perpetual, irrevocable, worldwide, non-transferable (except to Intuitive's affiliates), nonexclusive license to use the Data for Intuitive's commercial purposes. Intuitive shall continue to have the right to access the Data after Intuitive delivers the Report to Customer, to enable Intuitive's continued analysis of the Data, whether alone or in conjunction with other data accessible to Intuitive. Intuitive is further authorized to publish, without identifying Customer, and use for any reasonable commercial purpose any statistics, analytics, analyses, models, knowledge, reports, or other learning derived from the Data. Intuitive grants to Customer a perpetual, irrevocable, worldwide, non-transferable, nonexclusive license to use the Report for Customer's internal purposes.

**EXHIBIT C**  
**MASTER DATA USE AGREEMENT**

1. **Introduction.** Intuitive has developed and plans to continue to develop an evolving suite of Digital Solutions to support its customers. Digital Solutions analyze data that Intuitive collects in order to deliver insights designed to help customers improve patient care and the Parties acknowledge and agree that these insights from data are only possible through Processing (as defined below). The Parties have entered into, or may enter into, agreements for Intuitive products and/or services, including Digital Solutions, Ion® or da Vinci® (“Applicable Agreement(s)”). Therefore, the Parties intend for this MDUA to serve as a single, clear statement of each Party’s right to use any data that it receives from the other Party, including as a result of any Applicable Agreements. Customer may be referred to herein as “You.” Each of Intuitive and Customer may be referred to individually as “Party” or collectively as “Parties.”
2. **Permission to Use Intuitive Data.** Intuitive provides to You certain standard proficiency, support and other data and insights, including additional products or services and associated data and insights that You have the option to order pursuant to a subsequent agreement (“Intuitive Data”). Intuitive grants You permission to use, copy, disclose, modify and create derivative works from, distribute, display, perform and otherwise process (“Process”), on an internal basis Intuitive Data only for Your lawful business purposes subject to any use restrictions in the Applicable Agreement. Unless otherwise agreed to in the Applicable Agreement, as part of Your internal Processing, You may only share such Intuitive Data with (i) Your employees, and (ii) service providers or contractors, and may do so solely for Your internal business purposes and subject to any further restrictions on Processing in any Applicable Agreement.
3. **Customer Data Processing by Intuitive.** To provide training, support and services to You, Intuitive must Process the following data:
  - 3.1 Any data that is automatically generated or recorded by Intuitive products or services (e.g., data regarding button and foot pedal presses, system logs, and regarding use of instruments, including data entered into Intuitive products), together with the surgeon name and procedure type associated with any particular procedure or Intuitive device, to the extent made available to, or accessible by, Intuitive; and, any data that Intuitive captures and records in the course of providing products or services to, or conducting surveys with, You or any of Your personnel, workforce members, or other persons to whom You make such products or services available. For clarity, this section excludes any data that a user deliberately enters into the user interface of a Digital Solution, where such user is not responding to survey questions.
  - 3.2 Data that a user deliberately enters into the user interface of any Digital Solutions, including the touch screen on any da Vinci® or Ion™ device and data that a surgeon enters about a procedure into the My Case application.
  - 3.3 Data that originates from Your electronic medical records and related systems and that is shared with Intuitive, video footage that is captured on Your premises or as a result of activities undertaken or procedures performed by or on behalf of any of Your personnel, and data that originates from Your picture archiving and communication system (“PACS Data”), in each case to the extent made available to, or accessible by, Intuitive by You.
  - 3.4 **De-Identification.** With respect to protected health information (“PHI”), as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and as may be amended from time to time, that is provided by or on behalf of You to Intuitive, Intuitive may collect and Process such PHI only for the following purposes: (i) in order to provide its products and services to You or any of Your personnel or workforce members, or other persons whom You approve, in accordance with the Applicable Agreement, including the applicable Business Associate Agreement, and (ii) as part of those services, to create data that has been de-identified in a manner that is consistent with the de-identification requirements of 45 C.F.R. § 164.514(b) (“De-Identified Data”). The De-Identified Data may be collected and Processed by Intuitive for any lawful business purpose, provided, however, that Intuitive will not sell or license any De-identified Data.
  - 3.5 **Observable Facts and General Knowledge.** Without limiting the other use rights set out herein, facts obtained from human observation and any general knowledge (but excluding any PHI) gained by Intuitive may be collected and Processed by Intuitive to the extent permitted by applicable law.
  - 3.6 **Legal Compliance.** Nothing in this MDUA or any other agreement prevents Intuitive from collecting or Processing any data as needed to comply with law or legal process, or to prepare regulatory or legal filings (e.g., performing post-market surveillance or for purposes of SEC or FDA filings, reports or submissions).
4. **Term.** The term (“Term”) of this MDUA commences on the Effective Date and continues in effect until all Applicable Agreements between the Parties expire or are terminated. This MDUA applies to data collected prior to the Effective Date or during the Term.
5. **Relation to Other Agreements.** In the event of any conflict between this MDUA and any other written data agreement entered into between these Parties, this MDUA will control and resolve the conflict. For the avoidance of doubt, this MDUA does not modify (i) any privacy or security protections for PHI agreed to in any Business Associate Agreement, or (ii) any data use provisions contained in any Sponsored Research agreement.
6. **Data Governance.** The Parties appoint the below persons as their data governance representatives (“Data Governance Representatives”). In the event that either Party has data Processing or governance concerns, such Party may notify the other Party’s Data Governance Representative(s), and the Parties will promptly convene a meeting to discuss and endeavor to resolve the matter. A Party may change its Data Governance Representative on Notice to the other Party.

<u>Intuitive</u>	<u>Customer</u>
Wendi W. Wright Sr. Director, Privacy & Data Protection	[Name] [Title]

7. **Integration; No-Reliance on Other Documents; Amendments.** This MDUA constitutes the entire agreement between the Parties regarding the subject matter herein and will be binding upon the Parties and their respective successors and permitted assigns. Other documents, agreements, understandings, representations, disclosures, negotiations and discussions, written or oral, of the Parties with respect to this subject matter are excluded and are not relied upon by either Party. This MDUA, and any of its provisions may be waived, amended or supplemented only by a written instrument that refers to this MDUA and specifically references the provisions that it is waiving, amending or supplementing, and that is signed by an authorized officer of each Party. No waiver by a Party of any term or condition set forth in this MDUA will be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of a Party to assert a right or provision under this MDUA will not constitute a waiver of such right or provision. Except as set forth herein, all other terms and conditions of the Agreement remain the same. In the event of a conflict between the terms of this MDUA and the Agreement, the terms of this MDUA will prevail.

8. **Governing Law; Jurisdiction.** Intentionally left blank.

**EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS MDUA OR THE DATA PROCESSING CONTEMPLATED HEREBY.**

9. **Assignment.** Intentionally left blank.

10. **Severability.** If any provision of this MDUA 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 MDUA, 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.

11. **Counterparts.** This MDUA may be executed in multiple copies, each of which is an original, and all of which taken together will constitute one single agreement.

12. **Notice.** All formal legal notices (“Notices”) required or permitted hereunder will be in writing and sent via e-mail to the e-mail addresses set forth below, followed by a copy sent via a nationally recognized overnight courier to the physical address listed below. Notices sent in accordance with this provision will be deemed delivered and effective when sent via e-mail. Either Party may change their notification address by providing Notice in accordance with this Section.

<u>Intuitive</u>	<u>Customer</u>
Attn: Legal – Privacy and Data Protection group 1020 Kifer Road Sunnyvale, CA 94086	[Attn] [Address] [City, St]
with a copy to: data.privac_@intusur_.com	with a copy to: [email]

13. **Feedback.** Notwithstanding anything herein or in any other agreement to the contrary, any and all suggestions, comments, ideas or other feedback provided by or on behalf of You or any of Your affiliates to Intuitive, regarding any Intuitive products or services (collectively, “Feedback”) is given voluntarily and does not constitute confidential information (even if marked as such), and Intuitive is not required to hold it in confidence. Intuitive may collect and otherwise Process Feedback for any purpose without restriction, obligation or liability of any kind to You or any of Your affiliates, and without vesting any rights in You or any of Your affiliates. For the avoidance of doubt, as between the Parties, Intuitive is the sole owner of all right, title and interest in its technologies, including any improvement developed by virtue of its Processing of any data under this MDUA.

14. **Survival.** The respective rights and obligations of each Party under Sections 2 (Permission to Use Intuitive Data), 3 (Customer Data Processing by Intuitive), 4 (Term), 8 (Governing Law; Jurisdiction), 12 (Notice), 13 (Feedback), and 14 (Survival) of this MDUA shall survive the termination of this MDUA.

## Exhibit D

# BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is effective as of the date of final signature of the Agreement ("Effective Date") and is between **Intuitive Surgical, Inc.**, a Delaware corporation, located at 1020 Kifer Road, Sunnyvale, California 94086, on behalf of itself and its affiliates ("Business Associate"), and **County of Riverside**, a political subdivision of the state of California on behalf of its Riverside University Health System located at 26520 Cactus Avenue, Moreno Valley, CA 92555 ("Covered Entity"). Business Associate and Covered Entity may be individually referred to herein as "Party," and collectively referred to herein as "Parties."

### 1. Introduction.

Covered Entity and Business Associate have entered into, or may enter into, Underlying Agreement(s) (as defined below) for the provision of Products and Services (as defined below). The Parties wish to enter into this Agreement pursuant to the business associate agreement requirements set forth in the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 ("HITECH"), and all applicable implementing regulations, including, without limitation, the Privacy Rule (45 C.F.R. § 160 and § 164 (Subparts A and E)), the Security Rule (45 C.F.R. § 160 and § 164 (Subparts A and C)), and the Breach Notification Rule (45 CFR §§ 164.400-414). All such laws and regulations may be collectively referred to herein as "HIPAA". This Agreement is incorporated by reference into the Underlying Agreements and supersedes any prior business associate agreement between the Parties.

### 2. Definitions. Unless otherwise defined herein, all capitalized terms used in this Agreement shall have the same meaning as ascribed to those terms by HIPAA.

2.1 **"Products and Services"** shall mean those certain products and/or services provided by Business Associate, pursuant to an Underlying Agreement, that require the creation, receipt, maintenance or transmission of PHI by Business Associate for or on behalf of Covered Entity.

2.2 **"Protected Health Information"** or **"PHI"** shall have the same meaning as ascribed in 45 C.F.R. §160.103, except that all references to PHI shall mean only the PHI that is required to be accessed, created, maintained or transmitted by Business Associate for or on behalf of Covered Entity to perform under the Underlying Agreements. As may be applicable, PHI shall include "Electronic Protected Health Information" or "EPHI".

2.3 **"Underlying Agreement(s)"** shall mean any written agreements, supplements, or addendums that the Parties have entered into, or will enter into, for the provision of Products and Services. This Agreement shall not be incorporated into any agreement, supplement, or addendum that does not reference this Agreement.

### 3. Permitted Uses and Disclosures of PHI.

3.1 **General.** Business Associate shall Use or Disclose PHI only as permitted or required by this Agreement or the Underlying Agreement, or as permitted or required by law.

3.2 **Proper Management and Administration.** Business Associate may Use or Disclose PHI for the Business Associate's proper management and administration or to carry out the Business Associate's legal responsibilities. However, Business Associate may only Use or Disclose PHI under this Section 3.2 to the extent that:

a. Such Uses or Disclosures are Required by Law, or

b. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the person: (1) will hold the PHI confidentially and further Use or Disclose the PHI only (i) as permitted or required by law, or (ii) for the purpose for which it was disclosed to the person; and (2) will notify the Business Associate and Covered Entity of any instance the person becomes aware of in which the confidentiality of the information has been breached.

3.3 **Data Aggregation.** Business Associate may provide Data Aggregation services relating to the health care operations of Covered Entity, as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

### 4. Business Associate Obligations.

4.1 **General.** Business Associate shall not Use or Disclose PHI other than as permitted or required by this Agreement or the Underlying Agreement, or as permitted or required by law.

4.2 **Safeguards.** Business Associate shall implement reasonable and appropriate Administrative, Physical, and Technical safeguards to ensure the Confidentiality, Integrity, and Availability of EPHI, to prevent Use or Disclosure of the PHI other than as provided for by this Agreement or the Underlying Agreement.

- 4.3 **Minimum Necessary.** Business Associate shall Use or Disclose only the Minimum Necessary PHI to accomplish the intended purpose of the Use or Disclosure.
- 4.4 **Security Incidents.** In the event Business Associate discovers the occurrence of any successful Security Incident, Business Associate shall, within two (2) business days of discovery of such successful Security Incident, notify Covered Entity of the same. The Parties acknowledge the ongoing existence and occurrence of attempted but "Unsuccessful Security Incidents". Provided these Unsuccessful Security Incidents do not result in an unauthorized access, use, disclosure, modification, or destruction of PHI or significantly compromise Business Associate's security safeguards for PHI, the Parties agree that this acknowledgment shall serve as notice of such incidents and do not require additional notice to Covered Entity. Unsuccessful Security Incidents shall include pings, and other surveillance activities on Business Associate's firewall, port scans, unsuccessful log on attempts and password-based attacks, denials of service attempts, other common firewall attacks, and any combination of the above so long as no such incident results in a successful Security Incident.
- 4.5 **Impermissible Uses and Disclosures.** In the event Business Associate discovers the occurrence of any impermissible Use or Disclosure of PHI by it, Business Associate shall, within two (2) business days of discovery of such impermissible Use or Disclosure, notify Covered Entity of the same as required by 45 CFR §164.410.
- 4.6 **Breaches of Unsecured PHI.** In the event Business Associate discovers the occurrence of its Breach of Unsecured PHI ("Breach"), Business Associate shall, within two (2) business days of discovery of such Breach, notify Covered Entity of the Breach. The notification to Covered Entity shall include all information required by 45 CFR § 164.410(c) to the extent then known. If the information required is not available to Business Associate at the time of the notification, Business Associate shall thereafter provide supplemental information to Covered Entity as soon as commercially possible.
- A. Content of notification. The written notification to Covered Entity relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Business Associate:
- 1) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the breach;
  - 2) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
  - 3) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
  - 4) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
  - 5) A brief description of what Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
  - 6) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. Cooperation. With respect to any breach of unsecured PHI reported by Business Associate, Business Associate shall cooperate with Covered Entity and shall provide Covered Entity with any information requested by Covered Entity to enable Covered Entity to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, prominent media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.
- C. Payment of costs. With respect to any breach of unsecured PHI caused solely by the Business Associate's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Business Associate agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Business Associate's obligations to indemnify, defend and hold harmless Covered Entity under Section 7 of this Addendum.
- D. Additional State Reporting Requirements. The parties agree that this Section 4.6 D applies only if and/or when Covered Entity, in its capacity as a licensed clinic, health facility, home health agency, or hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical information under the more stringent requirements of California Health & Safety Code §1280.15. For purposes of this Section 4.6 D, "unauthorized" has the meaning given such term in California Health & Safety Code §1280.15(j)(2).
- 1) Business Associate agrees to assist Covered Entity to fulfill its reporting obligations to affected patients and to the California Department of Public Health ("CDPH") in a timely manner under the California Health & Safety Code §1280.15.
  - 2) Business Associate agrees to report to Covered Entity any unlawful or unauthorized access, use, or disclosure of patient's medical information without unreasonable delay and no later than two (2) business days after Business Associate detects such incident. Business Associate further agrees such report shall be made in writing, and shall include substantially the same types of information listed above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or unauthorized access, use, or disclosure as defined above in this section, understanding and acknowledging that the term "breach" as used in Section 8.A.2 does not apply to California Health & Safety Code §1280.15.
- 4.7 **Mitigation.** Business Associate shall mitigate, to the extent reasonably practicable and attributable to it, any harmful effect known to Business Associate of any successful Security Incident, impermissible Use or Disclosure of PHI, or Breach of Unsecured PHI.

- 4.8 **Subcontractors.** Business Associate shall ensure that any Subcontractors that access, create, maintain, or transmit PHI for or on behalf of Business Associate agree to restrictions and conditions at least as stringent as those that apply to Business Associate under this Agreement.
- 4.9 **Designated Record Sets.** To the extent Business Associate maintains any PHI in a Designated Record Set, the following shall apply:
- a. **Access to PHI.** Upon Covered Entity's written request to Business Associate, Business Associate agrees to provide Covered Entity with a copy of an Individual's PHI maintained in a Designated Record Set within five (5) business days of such request. Business Associate shall provide such copy in the manner required by law. In the event an Individual submits a request directly to Business Associate to provide a copy of PHI maintained in a Designated Record Set, Business Associate shall notify Covered Entity of the request within five (5) business days to allow Covered Entity to respond to the Individual.
  - b. **Amendment to PHI.** Upon Covered Entity's written request to Business Associate, Business Associate agrees to amend the Individual's PHI maintained in a Designated Record Set within fifteen (15) business days of such request. In the event an Individual submits a request directly to Business Associate to amend PHI maintained in a Designated Record Set, Business Associate shall notify Covered Entity of the request within five (5) business days to allow Covered Entity to respond to the Individual.
- 4.10 **Accounting of Disclosures.** Upon Covered Entity's written request to Business Associate, Business Associate agrees to provide Covered Entity with an accounting of Disclosures of the Individual's PHI, as well as any information required by 45 C.F.R. § 164.528, within fifteen (15) business days of such request, to allow for Covered Entity to make the accounting to the Individual. In the event an Individual submits a request directly to Business Associate for an accounting of Disclosures of the Individual's PHI, Business Associate shall notify Covered Entity of the request within fifteen (15) business days to allow Covered Entity to respond to the Individual. Business Associate shall make available for Covered Entity information required by this Section 4.10 for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.
- 4.11 **Audits.** Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining the Parties' compliance with applicable law or regulation.
- 4.12 **Compliance with Laws.** Business Associate shall comply with all applicable laws and regulations. To the extent Business Associate is to carry out an obligation of Covered Entity, as may be required by law, Business Associate agrees to comply with the requirements of the applicable law in the performance of such obligation.

## 5. Covered Entity Obligations.

- 5.1 **Notice to Business Associate.** To the extent Business Associate's ability to Use or Disclose PHI is impacted, Covered Entity shall notify Business Associate of any: (i) limitation in Covered Entity's notice of privacy practices; (ii) changes to, or revocation of, an Individual's permission to Use or Disclose PHI; or (iii) restriction to the Use or Disclosure of PHI that Covered Entity has agreed to.
- 5.2 **Minimum Necessary.** Covered Entity shall provide to Business Associate only the Minimum Necessary PHI to accomplish the intended purpose of the Use or Disclosure.
- 5.3 **Compliance with Laws.** Covered Entity shall comply with all applicable laws and regulations, and shall not request Business Associate to create, use, disclose, amend or destroy PHI in a manner inconsistent with HIPAA.

## 6. Term and Termination.

- 6.1 **Term.** This Agreement shall commence as of the Effective Date, and shall terminate when all PHI and/or ePHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Agreement.
- 6.2 **Termination.** A breach of any provision of this Agreement by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Agreement and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:
- A. Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.
  - B. Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.



- C. If termination of the Underlying Agreement is not feasible, the breaching party, upon the request of the non-breaching party, shall implement, at its own expense, a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

6.3 **Effect of Termination.** Upon termination of this Agreement, to the extent feasible, Business Associate shall return or destroy all PHI the Business Associate maintains in any form, and shall retain no copies of such PHI. To the extent the return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Agreement to the PHI retained by Business Associate, and shall limit further Use or Disclosure to those purposes that make the return or destruction of the PHI infeasible. Additionally, upon termination of this Agreement, any Underlying Agreement shall terminate pursuant to the terms and conditions of that Underlying Agreement. Any provision of this Agreement which by its nature requires survival shall survive termination of this Agreement.

7. **Hold Harmless/Indemnification.**

- A. Business Associate agrees to indemnify and hold harmless Covered Entity, all Departments of Covered Entity, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Business Associate, its officers, employees, subcontractor's agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Business Associate, its officers, agents, employees, subcontractors, agents or representatives from this Agreement. Business Associate shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of Covered Entity, all Departments of Covered Entity, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by Business Associate, Business Associate shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of Covered Entity, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of Covered Entity; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Business Associate's indemnification to Covered Entity as set forth herein. Business Associate's obligation to defend, indemnify and hold harmless Covered Entity shall be subject to Covered Entity having given Business Associate written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Business Associate's expense, for the defense or settlement thereof. Business Associate's obligation hereunder shall be satisfied when Business Associate has provided to Covered Entity the appropriate form of dismissal relieving Covered Entity from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Agreement shall in no way limit or circumscribe Business Associate's obligations to indemnify and hold harmless Covered Entity herein from third party claims arising from issues of this Agreement.
- D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Business Associate from indemnifying Covered Entity to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Agreement, this indemnification shall only apply to the subject issues included within this Agreement.

8. **Miscellaneous.**

8.1 **Notice.** All notice or other communication required or permitted under this Agreement shall be made in writing, and shall be deemed received five (5) business days after the date of mailing, one (1) business day after dispatch by overnight courier service or electronic mail, upon receipt if personally delivered, or upon confirmation of confirmed transmission if by facsimile. Any notice or communication shall be delivered to the respective Party, as follows:

**If to Business Associate:**

Attn: Legal – Privacy and Data Protection Group  
Intuitive Surgical, Inc.  
1020 Kifer Road  
Sunnyvale, CA 94086

**If to Covered Entity:**

HIPAA Privacy Manager  
Riverside University Health System Medical Center  
26520 Cactus Avenue  
Moreno Valley, Ca 92555

With a copy to:

[Data.privacy@intusurg.com](mailto:Data.privacy@intusurg.com)

Email Subject: "BAA or HIPAA Notice"

8.2 **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with HIPAA.

8.3 **Relationship of the Parties.** The Parties agree that Business Associate is an independent contractor of Covered Entity, and is therefore not an agent of Covered Entity. This Agreement is intended to apply only to the Parties, and nothing herein is intended for the benefit of any third party.

- 8.4 **Amendment.** The Parties agree to meet in good faith to amend this Agreement in the event such amendment is necessary for either Party to comply with any mandatory legal requirement. This Agreement may be amended only in writing, signed by both Parties.
- 8.5 **Entire Agreement.** This Agreement constitutes the entire agreement between Business Associate and Covered Entity regarding the subject matter herein.



Date: March 7, 2023

From:

To: Board of Supervisors/Purchasing Agent

Via: Israel Gomez, Procurement Contract Specialist

Subject: Sole Source Procurement; Request for Lease Agreement and Use license and Service Agreement with Intuitive Medical Inc for one da Vinci Surgical Robot and associated maintenance and supplies

The below information is provided in support of my Department requesting approval for a single source.

1. **Supplier being requested:** Intuitive Medical, Inc.
2. **Vendor ID:** 0000200566
3.  **Single Source**                       **Sole Source**
4. **Have you previously requested and received approval for a sole or single source request for this vendor for your department?** *(If yes, please provide the approved sole or single source number).*

**Yes**     **No**

SSJ# \_\_\_\_\_
- 4a. **Was the request approved for a different project?**

**Yes**     **No**
5. **Supply/Service being requested:**  
One da Vinci Surgical Robot, associated supplies, and maintenance
6. **Unique features of the supply/service being requested from this supplier.**

The da Vinci Robot allows surgeons to operate using a computer console with controls that manipulate the robot arms and displays high definition, magnified, 3D images of inside a patient's body. Compared to traditional surgery, robotic surgery provides surgeons with a



greater range of motion and precision. The assistance from the Robot's arms and cameras allows surgeons to reach areas not normally possible through a traditional laparoscopic or open method. The advanced technology that is integrated in to the da Vinci Robot results in less bleeding and post operative pain, leading to a quicker recovery time.

**7. Reasons why my department requires these unique features from the vendor and what benefit will accrue to the county:**

RUHS- Medical Center (RUHS-MC) Operating Room (O.R.) is committed to providing high quality healthcare to the residents of Riverside County. To achieve such success RUHS-MC O.R. must keep their equipment and practices on par with the latest technology. The continued patient population growth at RUHS-MC is indicative of need for additional equipment, so that physicians and patients at RUHS maintain access to the best treatment possible. Acquisition of an additional da Vinci Robot will ensure that surgeons and more importantly patients, will have the ability to use the da Vinci Robot for their surgical procedures.

**8. Period of Performance:** From: FY22/23 to FY26/27

Is this an annually renewable contract?       No       Yes  
 Is this a fixed-term agreement:               No       Yes

**9. Identify all costs for this requested purchase. In addition, please include any single or sole source amounts previously approved and related to this project and vendor in the section designated below for current and future fiscal years. You do not need to include previous fiscal year amounts. If approval is for multiple years, ongoing costs must be identified below. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each consecutive year. If the annual increase may exceed the Purchasing Agent's authority, Board approval must be obtained.**

Total contract amount for this Lease Agreement, Use license Service Agreement, for one da Vinci Surgical Robot, supplies, and associated maintenance with Intuitive Medical Inc is \$3,964,214

<b>FINANCIAL DATA</b>	<b>First Year</b>	<b>Second Year</b>	<b>Third Year</b>	<b>Fourth Year</b>	<b>Total Cost</b>
<b>COST</b>	\$1,060,960	1,120,627	1,120,627	1,120,627	\$4,422,841

**10. Price Reasonableness:**

Intuitive surgical is the only manufacturer of this product. The terms being offered to the County are comparable to those offered to the other regional medical centers.



Board approval of this Agreement is required as the compensation provisions exceeds the Purchasing Agent's authority for contracting with a single vendor, per Ordinance 459.6, without seeking competitive bids.

**11. Projected Board of Supervisor Date (if applicable): 3/28/2023**  
*(Draft Form 11s, service agreement and or quotes must accompany the sole source request for Purchasing Agent approval.)*

<i>Jennifer Cruikshank</i>	Jennifer Cruikshank	Mar 14, 2023
Department Head Signature (or designee)	Print Name	Date

**The section below is to be completed by the Purchasing Agent or designee.**

Purchasing Department Comments:

**Approve**

Approve with Condition/s

Disapprove

Condition/s:

Approved, with yearly costs not to exceed as noted above.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Not to exceed:**

**One-time** \$ \_\_\_\_\_

**Annual Amount** \$ \_\_\_\_\_ / per fiscal year through \_\_\_\_\_ (date)  
*(If Annual Amount Varies each FY)*

FY \_\_\_\_\_ : \$ \_\_\_\_\_

FY \_\_\_\_\_ : \$ \_\_\_\_\_



FY \_\_\_\_\_ : \$ \_\_\_\_\_  
FY \_\_\_\_\_ : \$ \_\_\_\_\_  
FY \_\_\_\_\_ : \$ \_\_\_\_\_

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<i>Meghan Hahn</i>	4/7/23	23-171
<b>Purchasing Agent</b>	<b>Date</b>	<b>Approval Number</b> (Reference on Purchasing Documents)

# LEASE AGREEMENT

Agreement No.: 42002802

This Lease Agreement ("Lease Agreement") is made and entered into as of **March 25, 2023** between **Intuitive Surgical, Inc.**, a Delaware corporation, located at 1020 Kifer Road, Sunnyvale, California 94086 ("**Lessor**" or "**Intuitive**"); and

**Lessee: County of Riverside, a political subdivision of the state of California, on behalf of Riverside University Health System Medical Center**  
**Registered Address: 26520 Cactus Avenue, Moreno Valley, CA 92555**

Lessor and Lessee are contemporaneously entering into a Use, License & Service Agreement, dated **March 25, 2023**.

The Lessor and the Lessee are referred to as the "Parties" collectively or "Party" individually.

Qty.	Included in Periodical Lease Payment	Not included in Periodical Lease Payment	Equipment Description	Price
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	System Title "System": da Vinci® Xi™ Dual Console System	\$2,204,870.00
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Service during the first twelve months of the Lease Period	Included in Periodical Lease Payments
n/a	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Service beginning on the thirteenth month of the Lease Period, or if Lessee purchases the equipment "Service": see Special Conditions	\$179,000.00 per year*
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	System delivery fee	\$6,500.00
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	da Vinci® Xi™ Integrated Table Motion Upgrade**	\$75,000.00
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	E-100 Generator	\$25,000.00
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	da Vinci® SimNow Simulator, including on year SimNow Service & Benefits	\$100,000.00
n/a	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Auto-renewal SimNow Service & Benefits Years 2-5	\$20,000.00 per year
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Intuitive Hub	\$35,000.00

\*Intuitive will credit Lessee a pro-rata amount of the annual Service fee Lessee has paid to Intuitive for the leased System based on the number of months remaining in the current Service year from the date the leased System is de-installed. The credit will be applied to Lessee's account with Intuitive within thirty (30) days from the date the leased System is de-installed. The Service price indicated above will be valid for a period of five (5) years from the effective date of this Lease Agreement.

### Lease Conditions

<b>Lease Period</b>	48 Months. The Lease Period may be extended in accordance with the Lease Agreement.		
<b>Commencement Date</b>	This Lease Agreement will commence on the date of Acceptance specified in the Acceptance Document.		
<b>Interest Rate</b>	4.75%		
<b>Periodical Lease Payments</b>	Months 1-48 \$49,132.28 per month	No. of Periodical Lease Payments: 48	<input checked="" type="checkbox"/> Monthly payments (subject to extension of Lease Period)
	Lessee agrees and acknowledges payments due herein shall not be excused by any contingencies including, but not limited to, Lessee's internal practices, policies, or any state approvals.		
	<input type="checkbox"/> The first Periodical Lease Payment is due on Commencement Date. Thereafter, each subsequent Periodical Lease Payment is due on the corresponding day of each month, as applicable, of the Lease Period (payments in advance). <input checked="" type="checkbox"/> The first Periodical Lease Payment is due one month after the Commencement Date. Thereafter, each subsequent payment is due on the corresponding day of each month of the Lease Period (payments in arrears).		
<b>Deposit</b>	\$0.00	The Deposit if any is due on the Commencement Date	
<b>Balloon Payment</b>	N/A	The Balloon Payment if any is due on the last day of the Lease Period.	
<b>End of Lease Options</b>	<input type="checkbox"/> End of Lease option A applies (see 11.1 of Standard Terms and Conditions) <input checked="" type="checkbox"/> End of Lease option B applies (see 11.2 of Standard Terms and Conditions) <input checked="" type="checkbox"/> See Special Conditions below		
<b>Funding Amount</b>	Original Equipment Cost (OEC): \$2,446,370.00	Down-Payment from Lessee to Lessor: \$0.00	Funding Amount: \$2,446,370.00

**Maximum Compensation Amount:** Maximum payments by Lessee to Lessor shall not exceed three million eighty two thousand and fifty seven dollars (\$3,082,057.00) in the aggregate including all expenses. The Lessee is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products.

### Special Conditions\*

If Lessee is not in default, on each anniversary date of Acceptance, Lessee will have the option to upgrade the Equipment at a price to be mutually agreed to between the parties. Lessee must provide Lessor written notice sixty (60) days prior to the anniversary date of Acceptance with regards to intent. If Lessee exercises its upgrade option, service will be purchased on the upgraded Equipment. If Lessor does not receive notice as to Lessee's intent, the parties may agree to continue the Lease as outlined above, by formal mutual written amendment signed by both parties.

Provided the Lessee is not in default, the Fair Market Value at the end of the Lease Period will not exceed \$366,955.50 plus applicable taxes.

\*If Lessee is required to send written notice or has questions regarding this Lease Agreement, all communications should be directed to CustomerFinance@intuitive.com.

All amounts are denominated in USD and net of taxes, any applicable taxes will be for the account of the Lessee. Where the terms of this Lease Agreement are inconsistent with the Special Conditions above, if any, the Special Conditions prevail. The Standard Terms and Conditions of Leasing attached hereto are hereby incorporated to and form an integral part of this Agreement. All references to this Agreement will include the terms and conditions set out herein, in the Annexes and the Standard Terms and Conditions of Leasing. By signing this Lease Agreement, Lessee agrees to be bound by and undertakes to comply with all the terms and conditions set out in this Lease Agreement.

MAY 2 2023 15.1

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.

IF THIS AGREEMENT IS NOT SIGNED BY BOTH PARTIES AND RETURNED TO INTUITIVE ON OR BEFORE MARCH 28, 2023 THE TERMS WILL BE SUBJECT TO CHANGE.

ACCEPTED BY:

Intuitive Surgical, Inc.

Signature: Marc Giuffrida  
Marc Giuffrida (Mar 30, 2023 10:44 PDT)

Email: marc.giuffrida@intusurg.com

Title: Sr. Director, Contract Administration

Company: Intuitive Surgical, Inc  
Date:

ACCEPTED BY:

COUNTY OF RIVERSIDE, a political subdivision of the state of California, on behalf of Riverside University Health System Medical Center

By: Kevin Jeffries

Name: KEVIN JEFFRIES  
Title: CHAIR, BOARD OF SUPERVISORS

E-mail:

Date: 5/2/23

NS

ATTEST:  
KIMBERLY A. RECTOR, Clerk

By: Brana Smith  
DEPUTY

FORM APPROVED COUNTY COUNSEL

BY ESENE SAINZ 3-29-23  
DATE

MAY 2 2023 15.1



## Standard Terms and Conditions of Leasing

### 1. DEFINITIONS

Terms not herein defined will have the meanings set out in the Lease Agreement, unless the context otherwise requires.

"**Acceptance**" means the Equipment is deemed accepted by Lessee upon delivery to Lessee's designated location as evidenced by Lessee's execution of an acceptance letter, a form of which is attached hereto as Annex 1.

"**Lease Agreement**" means the agreement between the Lessor and the Lessee for the lease of the Equipment from the Lessor to the Lessee, including the Annexes thereto, incorporating these Standard Terms and Conditions.

"**Event of Default**" means an event specified under Clause 12 of these Terms and Conditions.

"**Equipment**" means the equipment specified in the Lease Agreement and any part thereof including, without limitation, all component parts and all software.

"**Lease Payment**" means the payment of rent for the lease of the Equipment, owed by the Lessee to the Lessor under the Lease Agreement, including but not limited to the periodical installments and the Balloon Payment.

"**Termination Sum**" means the aggregate of:

- (i) all Lease Payments due and payable under the Lease Agreement;
- (ii) an amount equal to one-hundred per cent (100%) of all remaining Lease Payments yet to fall due under the Lease Agreement discounted by the contract interest rate inherent in the Lease Agreement; and
- (iii) all other sums due and payable under the Lease Agreement (including, without limitation, Default Interest, costs and expenses related to or connected with the termination of the Lease Agreement and any sum recoverable from the Lessee), not to exceed the Maximum Compensation Amount as indicated above.

"**Total Loss**" includes any actual, constructive, or agreed total loss, theft, damage beyond repair, taking back of the Equipment (or any part thereof) by the owner of the Equipment pursuant to a right incorporated in the Lease Agreement for the sale of the Equipment and any seizure or confiscation of the Equipment.

### 2. LEASE, SELECTION AND DELIVERY OF EQUIPMENT

(a) The Lessor agrees to lease to the Lessee and the Lessee agrees to lease from the Lessor the Equipment on the terms and conditions as set out in the Lease Agreement.

(b) The Lessee has chosen the Equipment and agreed with the Lessor upon the terms of delivery of the Equipment.

(c) Upon delivery, the Lessee will inspect the Equipment, ensure that the Equipment is in good and working order and condition, and issue and deliver the duly signed and dated Acceptance Letter set out in Annex 1 of the Lease Agreement to the Lessor.

### 3. LEASE AND OTHER PAYMENTS

(a) The Lessee will pay (i) to the Lessor the Lease Payment and all other payments on the dates and in the manner specified in the Lease Agreement, and (ii) all taxes, rates, registration charges or other applicable expenses in respect to the Equipment.

(b) If the Lessee fails to pay any amount payable by it under the Lease Agreement on its due date, it will pay to the Lessor interest on the overdue amount ("Default Interest") from and excluding such due date up to and including the date of actual payment. Default Interest will be twelve per cent (12%) per annum, or the maximum rate allowed by applicable law, whichever is lower, and will be calculated on a daily basis. Default Interest will be payable by the Lessee on demand by the Lessor.

(c) The Lessee will pay all payments when due under the Lease Agreement notwithstanding that the Equipment are unusable for any reason at any time during the Lease Period, and the Lessor will not be liable to provide the Lessee with any replacement equipment.

(d) The Lessor will have a right to set-off in respect of any payments, charges or other sums due or prematurely due and payable, and the Lessee agrees to waive any legal defense against such set-off. The Lessee will have no right of set-off in respect of any payments, charges or other sums due or claimed to be due to the Lessee from the Lessor hereunder.

(e) Lessee agrees that Lessee's obligation and duty to pay all sums due and to become due pursuant to this Lease Agreement will be absolute and unconditional and are not subject to any defense, counterclaim, setoff or recoupment by reason of any past, present, or future claims which Lessee may have against Lessor, except those remedies that are available at law. Additionally, Lessee will not assert against any assignee of this Agreement any defense, counterclaim, setoff or recoupment by reason of any past, present, or future claims which Lessee may have against Lessor.

### 4. LOCATION, USE AND MAINTENANCE OF THE EQUIPMENT

(a) The Equipment will be kept at the Location as set out in the Lease Agreement and will not be removed without the prior written consent of the Lessor.

### 5. OWNERSHIP, INSPECTION AND TESTING

(a) The Lessor may at any time during the Lease Period require inspection of the Equipment, provided the Lessor gives at least 48 hours written notice. For such purpose, the Lessee will ensure that the Lessor and its authorized representatives have access to the Equipment and the premises at which the Equipment is located and to the records (including books of accounts) relating to the Equipment, during normal business hours. The Lessee will keep proper accounts of all its dealings in relation to the Equipment and deliver to the Lessor any such records when requested by the Lessor.

### 6. PROHIBITION AGAINST DEALING WITH EQUIPMENT

(a) The Lessee will not (i) sell, transfer, lease, sub-lease or otherwise dispose of the Equipment (ii) create, permit, or allow to subsist any security interest, lien, or encumbrance on the Equipment, (iii) affix the Equipment to any premises in such a manner as to make it a part of such premises, (iv) represent itself to be, hold itself out as being or suffer or permit anything to be done whereby it may be reputed to be, the owner of the Equipment, and/or (v) alter or modify or permit any alteration of the Equipment, without the Lessor's prior written consent.

(b) The Lessee will notify the Lessor immediately of any enforcement of any security interest created by it and/or any landlord of the premises on or in which the Equipment is located or the appointment of any receiver of all or part of the assets of the Lessee.

### 7. REPRESENTATIONS AND WARRANTIES

(a) The Lessee represents and warrants to the Lessor that: (i) it has the power to enter into and perform, and has taken all necessary action to authorize the entry into and performance of the Lease Agreement and the transactions contemplated by the Lease Agreement; and (ii) all information supplied by it or on its behalf to the Lessor in connection with the Lease Agreement are true and accurate as at the date at which it is stated to be given.

### 8. TOTAL LOSS AND INSURANCE

(a) The Lessee will bear the risks related to a Total Loss of the Equipment after delivery. For the avoidance of doubt, this amount will not exceed the Maximum Compensation Amount. If a Total Loss occurs with respect to the Equipment, Lessee will promptly notify Lessor thereof. On the Lease Payment date following such notice, Lessee will pay to Lessor an amount equal to the Termination Sum plus a sum equal to the calculated residual value at the time of expiration of the Lease Period, if any. Upon the making of such payment by Lessee, the payment obligation for such Equipment will cease, the Lease Agreement as to such Equipment will terminate and, except in the case of a Total Loss, Lessor will be entitled to recover possession at Lessee's expense in accordance with Clause 10 below. Provided that Lessor has received all payments to be made by the Lessee under this Lease Agreement, the Lessee will be entitled to the proceeds of any recovery in respect of that Equipment from insurance or otherwise.

(b) If not agreed otherwise in writing, the Lessee will at its own expense insure the Equipment on a policy and terms with such insurers as may be approved by the Lessor and will keep this insurance coverage in place until the Equipment is returned to the Lessor or the title has been transferred to the Lessee.

(c) The proceeds of the insurances will be paid to the Lessor and applied towards satisfaction of all amounts owing by the Lessee to the Lessor under the Lease Agreement.

(d) If the Lessee fails to comply with this Clause 8 the Lessor may (but is not obligated to do so), at the expense of the Lessee, effect any insurance, and all costs and expenses incurred in so doing will be repaid to the Lessor by the Lessee on demand.

### 9. OWNERSHIP IN THE EQUIPMENT

The Lessor will be the sole legal and beneficial owner of the Equipment and the Lessee will not do or permit to be done anything that could prejudice the rights of the Lessor in respect of the Equipment. During the Lease Period ownership in the Equipment will not for any reason pass to the Lessee.

### 10. RETURN OF EQUIPMENT

(a) In the event that the Lease Agreement is terminated for any reason other than by reason of a Total Loss, the Lessee will immediately (i) return the Equipment to the Lessor or its designated agent, by delivering the Equipment to such address as the Lessor may require at Lessor's own cost and expense or (ii) allow the Lessor access to pick up the Equipment. The Lessee will return the Equipment to the Lessor, free and clear of any security interest and in good working condition without any damage or fault which would affect the value of the Equipment or its operation (reasonable wear and tear excepted) together with all licenses, certificates and other documents relating to the Equipment.

(b) If upon return the Equipment is not in the condition stated in Clause 10(a) above, the Lessor may at its own discretion cause such reasonable repair works as it deems necessary to be carried out by a provider of its choice. All reasonable costs and expenses in connection with such repairs will be paid by the Lessee.

#### 11. END OF LEASE OPTIONS

11.1 OPTION A  Applicable  Not Applicable

(a) *Provided* that the Lessee has fulfilled all its obligations under this Lease Agreement and paid the Balloon Payment, if any, in full, title to the Equipment will pass to the Lessee on an "as is where is" basis without any warranties whatsoever given by the Lessor at the end of the Lease Period.

(b) The Lessee may request the Lessor to re-lease all (but not part thereof) of the Equipment to the Lessee at the end of the Lease Period, *provided* that the Lessee's financial situation has not deteriorated and that the Lessee has duly fulfilled its obligations under this Lease Agreement. The Lease Payments and the Lease Period of the re-lease will be determined between the Parties hereto at the time of re-lease. If the Lessee wishes to renew the Lease Agreement, it will notify the Lessor in writing no less than ninety (90) days prior to the end of the Lease Period. If the Lessor does not confirm acceptance of the Lessee's request within four (4) weeks, it is deemed to have been declined. In case the Lessor refuses such request, the Lessee continues to be obliged to make the Balloon Payment in the manner and on the date as specified in the Lease Agreement.

11.2 OPTION B  Applicable  Not Applicable

*Provided* that no Event of Default has occurred at the end of the Lease Period, the Lessee may, by written notice to the Lessor not less than 90 days prior to the end of the Lease Period, exercise one of the options below.

(a) The Lessee may request the Lessor to sell all (but not part thereof) of the Equipment to the Lessee after the end of the Lease Period and the Lessor will meet such request *provided* that the Lessee has fulfilled all its obligations under this Lease Agreement. The purchase price of the Equipment will be an amount equal to the fair market value, as determined by the Lessor, or, if applicable, as indicated in the Special Conditions noted above. Upon payment of the purchase price, title to the Equipment will pass to the Lessee on an "as is where is" basis without any warranties whatsoever given by the Lessor. If no sale can be achieved, the Lessee will return the Equipment to the Lessor immediately at the end of the Lease Period in accordance with Clause 10 hereof.

(b) The Lessee may request the Lessor to re-lease all (but not part thereof) of the Equipment to the Lessee at the end of the Lease Period, *provided* that, the Lessee's financial situation has not deteriorated and that the Lessee has duly fulfilled its obligations under this Lease Agreement. If the Lessor does not confirm acceptance of the Lessee's request within four (4) weeks, it is deemed to have been declined. The Lease Payments and the Lease Period of the re-lease will be determined between the Parties hereto at the time of re-lease. If the Lessor refuses such request, the Lessee will return the Equipment to the Lessor immediately at the end of the Lease Period in accordance with Clause 10 hereof.

(c) If the Lessee fails to provide sufficient written notice as noted above, the Lease Agreement will be automatically renewed for a period of one (1) month at any one time, at the price of the most recent Periodical Lease Payment, unless either Party gives notice to the other party no less than two (2) weeks prior to the end of the respective renewal period of its desire to terminate the Lease Agreement. Unless otherwise agreed between the Parties, the Lessee will in such case return the Equipment to the Lessor in accordance with Clause 10 hereof.

#### 12. EVENT OF DEFAULT

Each of the events set out in this Clause 12 is an Event of Default. Upon the occurrence of an Event of Default, the Lessor may by written notice to the Lessee terminate the Lease Agreement, which will take effect in accordance with its terms.

(a) The Lessee does not pay on the due date any amount payable by it under the Lease Agreement in the prescribed manner, and such default is not cured within ten (10) days.

(b) The Lessee does not comply with any term of the Lease Agreement, any Sales/Use, License and Service Agreement between Lessor and Lessee, or any other similar agreement governing the use of the Equipment.

(c) Any representation made or repeated by the Lessee in the Lease Agreement is proved to be incorrect in any material respect when made or deemed to be repeated.

(d) The Lessee is unable to pay its debts as they fall due, admits its inability to pay its debts as they fall due, or is otherwise deemed for the purposes of any law to be insolvent, or (by reason of actual or anticipated financial difficulties) begins negotiations with any creditor for the rescheduling of any of its indebtedness.

(e) Any step is taken with a view to a moratorium, rehabilitation or composition with any of the Lessee's creditors, a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution for, to petition for or to file documents with a court or any registrar for, its winding-up, bankruptcy, dissolution or judicial management or any such resolution is passed or any person petitions for or files documents for the same,

an order for its bankruptcy, winding-up, judicial management or dissolution is made or any other analogous step or procedure is taken in any jurisdiction.

(f) Any provisional attachment, attachment, sequestration, distress, execution or analogous event affects any material asset(s) of the Lessee and is not discharged within 14 days.

(g) Where the Lessee, is an individual, the Lessee dies, becomes partly or wholly incapacitated.

(h) It is or becomes unlawful for the Lessee to perform any of its obligations under the Lease Agreement, or the Lease Agreement is not effective in accordance with its terms.

(i) An event or series of events occur which, in the reasonable opinion of the Lessor, is likely to result in a Total Loss.

(j) The Lessee abandons the Equipment or does anything which, in the reasonable opinion of the Lessor, prejudices the rights of the Lessor in or over the Equipment.

(k) There is, in the Lessor's reasonable opinion, a material change in the shareholding of the Lessee or any person, or group of persons acting in concert, acquires control of the Lessee.

(l) An event or series of events occur which, in the reasonable opinion of the Lessor, have or are likely to have a material adverse effect on the financial condition of the Lessee.

#### 13. TERMINATION

(a) After execution of the Lease Agreement, the Lessee will, except as set out in Clause 13(f), not be entitled to cancel or terminate the Lease Agreement before expiration of the Lease Period.

(b) Any termination of the Lease Agreement and any delivery of the Equipment by the Lessee to the Lessor will be without prejudice to any right or claim a party may have against the other under the Lease Agreement (including, without limitation, for arrears in Lease Payment, other sums payable by the Lessee under the Lease Agreement and damages for breach of the Lease Agreement).

(c) Where the Lease Agreement is terminated due to an Event of Default, the Lessee will pay to the Lessor the Termination Sum.

(d) Until the Lessor has received the Termination Sum in full, all obligations of the Lessee under the Lease Agreement will continue and the Lessee will continue to pay the Lease Payment notwithstanding any repossession of the Equipment by the Lessor.

(e) Upon termination of the Lease Agreement, the Lessor will without prejudice to any other rights which it may have, have the right to repossess the Equipment and for this purpose to enter the land, building or premises at which the Equipment are located and the Lessee will give access to or procure that the Lessor or its agents be given access to the land, building or premises for this purpose, at a mutually agreeable date and time.

(f) During the Lease Period, *provided* that no Event of Default has occurred and the Lessee has duly performed all of its obligations under this Lease Agreement the Lessee may by written notice to the Lessor request to early terminate the Lease Agreement. On the Lease Payment date following such notice, Lessee will pay to Lessor an amount equal to the Termination Sum. Upon the making of such payment by Lessee, the payment obligation for such Equipment will cease and the Lease Agreement as to such Equipment will terminate. The Lessee will in such case return the Equipment to the Lessor in accordance with Clause 10 hereof.

#### 14. SUBMISSION OF MATERIALS

Upon written request by the Lessor for the purpose of credit preservation, the Lessee will provide the credit status of the Lessee, and cooperate with the Lessor for any investigations thereon. At Lessor's request, the Lessee will provide a copy of its year-end financial statements not later than four (4) months from the end of the financial year. The Lessee will notify the Lessor of any material change or any suspected material change in the credit status of the Lessee.

#### 15. TAXES AND COSTS

(a) Lessee is responsible for all license and registration fees, and all sales, use, property, stamp and other taxes and charges relating in any manner to the Equipment or this Lease Agreement, except the Medical Device Excise Tax.

(b) All payments by the Lessee under the Lease Agreement will be made free and clear of and without any deduction for or on account of any taxes and withholding taxes, except to the extent that the Lessee is required by law to make payment subject to taxes. If any amounts in respect of tax or any other deduction must be made from any amounts payable by the Lessee to the Lessor under the Lease Agreement, the Lessee will pay such additional amounts as may be necessary to ensure that the Lessor receives a net amount equal to the full amount which it would have received had the payment not been made subject to tax or the deduction.

(c) The Lessee will bear the costs for the protection or exercise of the Lessor's rights, or the protection, collection or disposition of securities including but not limited to the stamp duty, the expense for sending demand or notice to the Lessee, the expenses for registration, change and cancellation of

security interest, and all legal fees which Lessor may incur in connection with the enforcement of this Lease Agreement.

(d) Unless otherwise provided, this Lease Agreement is entered into with the assumption that Lessor is the owner of the Equipment for income tax purposes and is entitled to certain federal and state tax benefits available to the owner of equipment (collectively "Tax Benefits"), including without limitation, accelerated cost recovery deductions and deductions for interest incurred by Lessor to finance the purchase of the Equipment, available under the Code. Lessee represent, warrant, and covenant to Lessor that (a) unless Lessee has provided Lessor with a 501(c)(3) letter indicating that Lessee is tax exempt, then Lessee is not a tax exempt entity (as defined in Section 168(h) of the Code, (b) Lessee will use the Equipment solely within the United States, and (c) Lessee will take no position inconsistent with the assumption that Lessor is the owner of the Equipment for any tax purposes. If, because of any act or omission by Lessee, or any party acting through Lessee, or the breach or the inaccuracy of any representation, warranty or covenant made by Lessee in this Agreement, Lessor reasonably determines that Lessor cannot claim, are not allowed to claim, lose, or must recapture any or all of the Tax Benefits otherwise available with respect to the Equipment (a "Tax Loss"), then Lessee will, promptly upon demand, pay to Lessor an amount sufficient to provide Lessor the same after-tax rate of return and aggregate after-tax cash flow through the end of the term of the Lease Agreement as Lessor would have realized but for such Tax Loss.

#### 16. INDEMNITY

See Use, License and Service Agreement, Section 11 ("Indemnification").

#### 17. FORCE MAJEURE

(a) Neither Lessor nor Lessee 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, acts of God, fire, earthquake, war, the threat of imminent war, riots, or other acts of civil disobedience, insurrection, labor or trade disputes, shortage of components, any governmental law, order, regulation, ordinance or any other supranational legal authority, explosion, storms, floods, lightning, or earthquake.

18. **UCC FILINGS AND FINANCIAL STATEMENTS.** Lessee authorizes Lessor to file a financing statement with respect to the Equipment and grants the Lessor the right to sign such financing statement on Lessee's behalf. If Lessor reasonably deems it necessary, Lessee agrees to submit financial statements (audited if available) on a quarterly basis.

19. **UCC-ARTICLE 2A Provisions:** Lessee agrees that this Lease Agreement is a Finance Lease as that term is defined in Article 2A of the Uniform Commercial Code ("UCC"). Lessee waives any and all rights and remedies granted Lessee under Sections 2A-508 2A-522 of the UCC.

#### 20. INSURANCE REQUIREMENTS OF LESSOR

See Use, License and Service Agreement Section 15.6 ("Insurance").

#### 21. MISCELLANEOUS

(a) The Lease Agreement will not be construed to be a purchase or an agreement for the purchase of the Equipment by the Lessee.

(b) The Lessee may not assign or transfer any of its rights and obligations under the Lease Agreement without the Lessor's prior written consent. The Lessor may with prior written notice to the Lessee assign or transfer any of its rights and obligations under the Lease Agreement and dispose of its rights and title to the Equipment. Should Lessee not consent to the assignment, due to a legal prohibition from doing business with that entity, Lessee may terminate this Agreement and return the Equipment as required by Section 10.

(c) This Lease Agreement constitutes the entire obligation of the parties hereto and supersedes any prior expressions of intent or understandings with respect to this transaction. Any amendment of this Lease Agreement will be in writing and will be signed by duly authorized representatives of both parties hereto.

(d) No failure or delay on the part of the Lessor to exercise any right provided for in this Lease Agreement will constitute a waiver of such right or any obligation of the Lessee under this Lease Agreement, nor will any single or partial exercise of any such right preclude any further exercise thereof. No waiver by the Lessor hereunder will be effective unless it is in writing. The rights and remedies provided for in this Lease Agreement are cumulative and not exclusive of any other rights or remedies which the Lessor may otherwise have.

(e) If any one or more of the provisions of this Lease Agreement or any document executed in connection herewith will be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.

(f) The Lessee acknowledges and agrees that the sole responsibility for determining the proper treatment of this Lease Agreement for tax purposes rests with the Lessee. The Lessor makes no representations whatsoever as to the proper treatment of this Lease Agreement for tax purposes. The Lessee acknowledges that the Lessor is the legal owner of the Equipment.

(g) All notices, claims, requests, demands, and other formal communications hereunder will be in writing and will be deemed given at the time of personal delivery to notice addresses set forth on page 1 of this Agreement or completed facsimile, or, if sent by a reputable overnight courier or registered or certified mail, one business day after such sending.

(h) Both Parties will promptly notify the other of any changes in company name, registered office, and any other matters which may affect this Lease Agreement.

(i) This Agreement shall be governed by the laws of the State of California, excluding its conflicts of laws principles. With respect to any legal action or proceeding relating to this Agreement, the parties consent and submit to the *exclusive* jurisdiction of the Federal and State courts located in California, and the parties agree that venue therein is proper.

(j) For the avoidance of doubt, the Lessee retains all rights, warranties and remedies granted to it under the corresponding Use, License and Service Agreement.

(k) The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made, and invoices shall be rendered "monthly" in arrears. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

(l) Disputes: The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

Annex 1

ACCEPTANCE DOCUMENT

I, the undersigned, as an authorized representative of the below named hospital, acknowledge that the following product was (check the box below which applies):

Delivered       Installed

CUSTOMER

--

END USER

--

LM Agreement Number:

--

Equipment Description	Serial Number

ACCEPTANCE

ACCEPTANCE CRITERIA - PER AGREEMENT

--

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Please email signed acceptance letter to [Acceptance@intusupg.com](mailto:Acceptance@intusupg.com)

837921-03, Rev F

# USE, LICENSE AND SERVICE AGREEMENT

Agreement No.: 42002802

This Use, License & Service Agreement ("Agreement") is dated **March 25, 2023** (the "Effective Date") and is between **Intuitive Surgical, Inc.**, a Delaware corporation ("Intuitive"), located at 1020 Kifer Road, Sunnyvale, California 94086, and **County of Riverside**, a political subdivision of the state of California on behalf of its **Riverside County Regional Medical Center** located at 26520 Cactus Avenue, Moreno Valley, CA 92555 ("Customer").

The parties agree as follows:

## 1. Introduction

Customer agrees to obtain and license the Software and Documentation from Intuitive, and Intuitive agrees to respectively provide and license certain software and equipment to Customer, as well as provide Service for the System all according to the terms and conditions of this Agreement. Customer is contemporaneously entering into a lease agreement (the "**Lease Agreement**") dated **March 25, 2023** for the lease of the System. The Lease Agreement may also cover other equipment and/or the Services and/or a System delivery fee and/or other fees as further specified in Exhibit A and the Lease Agreement.

## 2. Definitions

- 2.1 "**Acceptance**" means Customer's acceptance of the System as specified in **Exhibit A**.
- 2.2 "**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.
- 2.3 "**Delivery Date**" means the estimated scheduled date for delivery of the System to Customer specified in **Exhibit A**.
- 2.4 "**Digital Solutions**" means the digital products, consisting of certain hardware components and software program elements, and any services associated with such digital products, as those products and services are described in the Master Digital Solutions Addendum attached hereto as **Exhibit C**.
- 2.5 "**Instruments and Accessories**" means those instruments or accessories made or approved by Intuitive for use with the System.
- 2.6 "**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.
- 2.7 "**Reprocess**" or "**Reprocessing**" means Customer's process for cleaning, disinfection, and sterilization of Instruments and Accessories, including testing to validate cleaning, disinfection and sterilization process as may be required by applicable law and/or regulation.
- 2.8 "**Services**" means the support and maintenance of the System described in Section 5 for the Service fees designated in the **Lease Agreement**.
- 2.9 "**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 manuals, labeling, instructions for use, notifications or other documentation ("Documentation"), that Customer may receive, 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.
- 2.10 "**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.

## 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.

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- 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 the **Lease Agreement**. Risk of loss or damage to the System passes to the Customer upon delivery of the System to Customer.
- 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, cleaning of parts of the System, the Instruments and Accessories and discussing opportunities to improve cost efficiencies. 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 **Reprocess and Disposal.** Customer is responsible for properly Reprocessing and/or 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 Documentation and 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. Some components of the Software may be provided to Customer under a separate license, such as an open source license. In the event of a conflict between this Agreement and any such separate license, the separate license will prevail with respect to the component that is the subject of such separate license.

#### 5. **Services**

- 5.1 **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 10.1(A) apply. Customer may contact Intuitive to upgrade its Service Plan to **dv Premium Care Plan**. A \$15,000/year uplift fee to annual Service fees set forth in Exhibit A will be charged; a detailed Service plan description will be provided to Customer for its acceptance and signature.

Intuitive will provide Services under the **dv Complete Care Plan**, with benefits and limitations as follows:

- (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) Provide preferred pricing and next day service repairs or replacement due to accidental damage on endoscopes and camera heads;
- (H) Respond to Customer's request for Services described in Section 5.1(B)-(C) by phone, e-mail, or an on premise visit, during normal business hours (excluding Intuitive holidays) promptly as is reasonable after Intuitive's receipt of Customer's request, but not later than twenty-four (24) hours after Intuitive's receipt. Normal business hours are

Monday through Friday, 8:00 a.m.- 5:00 p.m. Customer's local time. Billable rates are applicable for service outside of normal business hours, and for reasons defined below in Section 5.2 (Limitations of Service).

- (I) Perform System preventative maintenance inspections as necessary to maintain factory specifications.
- (J) Provide on-site visits for support of advanced training of Customer's personnel on sterile Reprocessing process.
- (K) When the system is connected to OnSite®, remotely monitor system to diagnose potential issues and proactively dispatch a Field Service Engineer to make repairs when needed.
- (L) Provide access to the da Vinci Surgery Customer Portal.

#### 5.2 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 obtained 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 5.2(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.

#### 5.3 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 5.3 authorizes Customer or the Clinical Liaison to perform Services or to perform any act otherwise prohibited by this Agreement.

#### 6. 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**.

#### 7. 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.

#### 8. 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 in accordance with the terms and conditions contained in the then current Instrument and Accessory Catalog. 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. Customer is responsible for Reprocessing Instruments in accordance with the Documentation. 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, and cleaning or sterilization inconsistent with the Documentation. This license expires once an Instrument or Accessory is used up to its maximum number of uses, as is specified in the Documentation accompanying the Instrument or Accessory. Customer may purchase Instruments and Accessories for the purpose of Customer's Reprocessing requirements. The cost of Instruments and Accessories used in Customer's Reprocessing, including Instrument and Accessories used or involved in destructive testing, will be the responsibility of the Customer. Customer may contact Intuitive's Customer Support Department if, during the Reprocessing, Customer experiences results unacceptable under applicable law and/or regulation. Intuitive will provide commercially reasonable assistance in such investigations and remediation efforts but will not be obligated to conduct or pay for such studies or provide materials at no cost or reduced cost as a condition of purchase or continued use.

## 9. Pricing and Payment Terms

### 9.1 System.

- (A) **Price.** Customer will pay the "Periodical Lease Payments" amount as indicated in the **Lease Agreement** for the lease of the System. At the termination of the Lease Agreement, the terms and conditions applicable to end of lease options are set forth in the Lease Agreement. If Customer requires a purchase order for internal processing purposes, Customer must provide the purchase order at the time of signature of this Agreement and provide Customer's Accounts Payable Department contact information on Exhibit A.

### 9.2 Services.

- (A) **Price.** While the System is being leased by Customer, either (i) the price of annual Services is included in the "Periodical Lease Payments" amount as indicated in the **Lease Agreement**; or (ii) the price of annual Services is not included in the Periodical Lease Payments, and Customer will pay for the Services separately at the price specified in the **Lease Agreement**. If, after the term of the lease, or pursuant to Special Conditions in the Lease Agreement, if any, Customer purchases the System from Intuitive under the applicable terms and conditions of the Lease Agreement, Customer will pay for the Services at the price specified in the Lease Agreement. 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 14).
- (B) **Payment Terms.** Unless as otherwise indicated in **Exhibit A**, Intuitive will deliver to Customer an invoice for the annual Services fee thirty (30) days prior to the first anniversary of Acceptance and each subsequent anniversary of Acceptance throughout the Initial Term of the Agreement. Customer will pay the invoice for Services not later than thirty (30) days after the date of invoice. In the event Customer requires a purchase order to be referenced on a Service invoice to facilitate payment, Customer will provide Intuitive with a purchase order number sixty (60) days prior to each anniversary of Acceptance. 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.

### 9.3 Taxes.

Customer will pay, or reimburse Intuitive for, all Taxes, including related penalties or interest resulting from Customer's use of the System under this Agreement.

## 10. Warranty and Disclaimer

### 10.1 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**, the System 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 10.1 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.



- 10.2 **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.
- 10.3 **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.

## 11. Indemnification

### 11.1 Intuitive's Indemnification 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.
- (B) **Indemnification Limitations.** Intuitive has no obligation under this Section 11.1 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, provided or approved by Intuitive, provided that Intuitive has a duty to provide advance notice to Customer through the Documentation.

(C) **THE PROVISIONS OF THIS SECTION 11 STATE THE SOLE AND EXCLUSIVE OBLIGATIONS OF INTUITIVE FOR ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT. For the avoidance of doubt, Customer retains its rights to remedies at law.**

11.2 **By Intuitive.** To the extent allowable by law, Intuitive hereby assumes all liability for, and agrees to indemnify, defend and hold harmless Customer, 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 11.2 shall not apply to the extent that (i) such Claims arise from Customer's negligence or willful misconduct or breach of any of its obligations hereunder.

11.3 **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 Sections 3.4 and 3.5. (Use of System; Reprocess and Disposal) Notwithstanding the foregoing, Customer's indemnification obligations under this Section 11.3 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.

11.4 **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).

11.5 **Claim Notification Requirement.** A party's indemnification obligations under this Section 11 will not apply unless the indemnified party notifies the indemnifying party of the claim as soon as reasonably possible from when 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.

## 12. Limitation of Liability.

Except for a breach of the obligations in Sections 3.4 (Use of System), 4 (Software License and Restrictions), 8 (Instruments and Accessories), 9 (Pricing and Payment Terms), 11 (Indemnification), 13 (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 (excluding gross negligence and or willful misconduct), is limited to an amount equal to two times the sum of amounts payable by Customer under this Agreement. Except for a breach of the obligations in Sections 3.4, 4, 8, or 13, 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.

**13. 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 and all information derivable from the System, but excluding information that can be learned simply through observation of the System and its operation. The terms and conditions of this Agreement are considered Intuitive's Proprietary Information, however, Intuitive understands and agrees that its contents are subject to the California Public Records Act and California Brown Act and that Customer must make the Agreement available for public information. 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. Notwithstanding any provision of this Agreement, the Receiving Party shall be permitted to disclose the Disclosing Party's Confidential Information solely to the extent that such disclosure is required by law or by order of any court or governmental authority, including but not limited to California Public Records Act requests and Brown meeting requests, provided, however, that the Receiving Party shall first have given advance notice to the Disclosing Party, so as to permit the Disclosing Party as owner of the information an opportunity to review such information for confidentiality and privilege preservation and/or to attempt to obtain a protective order or similar administrative or legal remedy requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued or for such other legal requirement, and that the Receiving Party shall cooperate with the Disclosing Party in such efforts. As it relates to any California Public Records Act or Brown Act requests, to the extent Customer is required by law to disclose any of the above-described information, communications, and documents, Customer shall comply with such law. Customer has the right in its sole discretion to determine what shall be disclosed, as required by law. 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.

**14. Term.**

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

14.2 **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, 9.1, 9.3, 11, 12, 13, 14.2, 15, and any other provision which by its nature will survive, will remain in effect notwithstanding the expiration or termination of this Agreement.

**15. Miscellaneous.**

15.1 **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.

15.2 **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.

15.3 **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.

15.4 **Federal Audit.** As a medical device manufacturer, Intuitive has an obligation to report certain adverse event details to the Food and Drug Administration (FDA). Intuitive may request, and Customer shall provide Intuitive, all information necessary to fulfill Intuitive's complaint reporting obligation of adverse events. 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.

- 15.5 **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, acts of God, fire, earthquake, war, the threat of imminent war, riots, or other acts of civil disobedience, insurrection, labor or trade disputes, shortage of components, any governmental law, order, regulation, ordinance or any other supranational legal authority, explosion, storms, floods, lightning, or earthquake.
- 15.6 **Insurance.** Without limiting or diminishing the INTUITIVE'S obligation to indemnify or hold the CUSTOMER harmless, INTUITIVE shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the CUSTOMER herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.
- A. **Workers' Compensation:** If the INTUITIVE has employees as defined by the State of California, the INTUITIVE shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside. Policy shall name the CUSTOMER as Additional Insureds.
- B. **Commercial General Liability:** Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of INTUITIVE'S performance of its obligations hereunder. Policy shall name the CUSTOMER as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. Policy shall name the CUSTOMER as Additional Insureds.
- C. **Vehicle Liability:** If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then INTUITIVE shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. Policy shall name the CUSTOMER as Additional Insureds.
- D. Intentionally left blank.
- E. **Cyber Liability Insurance,** with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Intuitive in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, and network security.
- F. Policy shall name the CUSTOMER as Additional Insureds
- G. **General Insurance Provisions - All lines:**
- 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8).
  - 2) INTUITIVE shall declare its insurance self-insured retention for each coverage required herein.
  - 3) INTUITIVE shall furnish the CUSTOMER of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance.
  - 4) INTUITIVE shall not commence operations until the CUSTOMER has been furnished original Certificate (s) of Insurance.
  - 5) It is understood and agreed to by the parties hereto that the INTUITIVE'S insurance shall be construed as primary insurance, and the CUSTOMER'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
  - 6) Intentionally left blank.
  - 7) Intentionally left blank.
  - 8) Intentionally left blank.

9) INTUITIVE agrees to notify CUSTOMER of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

- 15.7 **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 the Hardware is being leased and may be sold under the Lease Agreement as the case may be. Neither party is the drafter of this Agreement. Accordingly, the language of this Agreement will not be construed for or against either Party.
- 15.8 **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.
- 15.9 **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.
- 15.10 **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.
- 15.11 **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 10) 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.
- 15.12 **Data Use. INTENTIONALLY OMITTED.**
- 15.13 **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.
- 15.14 **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.
- 15.15 **Representations and Warranties by Customer.** Customer represents and warrants to Intuitive that: (i) it has the power to enter into and perform, and has taken all necessary action to authorize the entry into and performance of, the Agreement and the transactions contemplated by the Agreement; and (ii) all information supplied by it or on its behalf to Intuitive in connection with the Agreement and any guarantee (as the case may be) are true and accurate as at the date at which it is stated to be given.
- 15.16 **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 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.**

**IF THIS AGREEMENT IS NOT SIGNED BY BOTH PARTIES AND RETURNED TO INTUITIVE ON OR BEFORE MARCH 28, 2023, THE TERMS WILL BE SUBJECT TO CHANGE.**

ACCEPTED BY:

Intuitive Surgical, Inc., a Delaware corporation

Signature:   
Marc Giuffrida (Mar 30, 2023 10:44 PDT)

Email: marc.giuffrida@intusurg.com

Title: Sr. Director, Contract Administration

Company: Intuitive Surgical, Inc

ACCEPTED BY:

COUNTY OF RIVERSIDE, a political subdivision of the state of California, on behalf of Riverside University Health System Medical Center

By: 

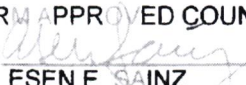
Name: KEVIN JEFFRIES

Title: CHAIR, BOARD OF SUPERVISORS

Date: 5/2/23

ATTEST:  
KIMBERLY A. RECTOR, Clerk

By:   
DEPUTY

FOR APPROVED COUNTY COUNSEL  
BY  3-29-23  
ESENE SAINZ DATE

MAY 2 2023 15.1

## EXHIBIT A Equipment List

### I. Intuitive will provide Customer with the following:

#### da Vinci Xi® Dual Console System (Firefly® Fluorescence Imaging Enabled)

Two (2): da Vinci Xi® System Surgeon Consoles

One (1): da Vinci Xi® System Patient Cart

One (1) da Vinci Xi® System Vision Cart

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

da Vinci Xi® System Documentation including:

User's Manual For System

Warranty period: n/a

User's Manual for Instruments and Accessories

Warranty period: n/a

One (1) da Vinci Xi® Cleaning & Sterilization Kit

Warranty period: 90 days from Acceptance

Two (2) da Vinci Xi® Instrument Release Kit (IRK)

Warranty period: 90 days from Acceptance

da Vinci Xi® System Software

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

Instrument and Accessories including:

Accessory Starter Kit

Two (2): Box of 6: 8 mm Bladeless Obturator

One (1): 8 mm Blunt Obturator

Four (4): Box of 10: 5 mm - 8 mm Universal Seal

Four (4): 8 mm Cannula

Three (3): Monopolar Energy Instrument Cord

Three (3): Bipolar Energy Instrument Cord

One (1): Box of 3: da Vinci Xi® Gage Pin

Three (3): Instrument Introducer

One (1): Box of 10: Tip Cover for Hot Shears (MCS)

One (1): Pmed Cable, Covidien Force Traid ESU

Warranty period: 90 days from Acceptance

Drapes

Two (2): Pack of 20 da Vinci Xi® Arm Drape

One (1): Pack of 20 da Vinci Xi® Column Drape

Warranty period: 90 days from Acceptance

Vision Equipment:

Two (2): da Vinci Xi® Endoscope with Camera, 8 mm 0 degree

Two (2): da Vinci Xi® Endoscope with Camera, 8 mm 30 degree

Four (4): da Vinci Xi® Endoscope Sterilization Tray

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

Training Instrument Starter Kit

One (1): Large Needle Driver

One (1): ProGrasp Forceps

One (1): Maryland Bipolar Forceps

One (1): Hot Shears (Monopolar Curved Scissors)

One (1): Tip-Up Fenestrated Grasper

One (1): Mega SutureCut Needle Driver

Warranty period: 90 days from Acceptance

(all kits subject to change without notice)

**2. Equipment and Service.**

Qty.	Included in Periodical Lease Payment	Not included in Periodical Lease Payment	Equipment Description
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	System Type: da Vinci® Xi™ Dual Console System
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Service during the first twelve months of the Lease Period
n/a	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Service beginning on the thirteenth month of the Lease Period, or if Lessee purchases the Equipment*
1	<input type="checkbox"/>	<input type="checkbox"/>	System delivery fee
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	da Vinci® Xi™ Integrated Table Motion Upgrade**
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	E-100 Generator**
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	da Vinci® SimNow Simulator including on year SimNow Service & Benefits***
n/a	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Auto-renewal SimNow Service & Benefits Years 2-5
1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Intuitive Hub***

\*The applicable Service price is valid for a period of five years from the effective date of this Agreement.

\*\*Subject to availability, any Instruments or Accessories provided to Customer as set forth in Exhibit A, Section 2 are subject to the Terms of the *da Vinci EndoWrist Instrument & Accessory Catalog* as if such Terms were contained in this Agreement. Delivery charges will be *Pre-Pay & Add*. If Exhibit A, Section 2 includes Instruments or Accessories, they will be shipped FCA Intuitive's warehouse. If Single Site Instruments are listed, they will be delivered upon Customer's completion of the advanced instrument training verification.

\*\*\*Digital Solutions are subject to the terms and conditions of the Master Digital Solutions Addendum attached hereto as Exhibit C.

Intuitive makes no representation with regard to Certificate of Need requirements for this lease. It is Customer's responsibility to determine whether this lease 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 lease.

The estimated delivery date for the System is **March 30, 2023** ("Delivery Date"). The Delivery Date is an estimated "on or before" delivery date to Customer's designated location (see "Ship-to" below).

Customer will pay to Intuitive all fees for the lease or purchase of Systems, Instruments, Accessories, Service or other fees that are not included in Periodical Lease Payment, as such fees are further detailed in the Lease Agreement, and not later than thirty (30) days after the date of Intuitive's invoice.

**3. Acceptance.** The System is deemed accepted by Customer upon delivery to Customer's designated location ("Acceptance"). An example of Acceptance Document is hereto attached as Exhibit B.

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

Riverside County Regional Medical Center  
 26520 Cactus Avenue  
 Moreno Valley, CA 92555

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

Riverside County Regional Medical Center  
 26520 Cactus Avenue  
 Moreno Valley, CA 92555

*Customer's Account Payable Department Contact:*

*Customer's PO Number:*

**6. Taxes and Costs.**

- 6.1 Customer will be deemed to be Taxable until such time as customer provides the Intuitive tax department with the appropriate, fully executed tax exemption certificate as directed below: Attn: Tax Department, Intuitive Surgical, Inc., 1020 Kifer Road, Sunnyvale, CA 94086; fax number: 408-523-1390; email at TaxEmail@intusur.com.
- 6.2 Customer is responsible for all license and registration fees, and all sales, use, property, stamp and other taxes and charges relating in any manner to the System or this Agreement, except the Medical Device Excise Tax.

7. **Term.** The initial term of this System obtained under this Agreement will commence as of the Effective Date and will continue until the end of the Lease Term ("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 (based on a porcine model) is three thousand dollars (\$3,000.00) 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. Notwithstanding the foregoing, Intuitive will provide Customer with the following:
9. **Proctoring.** As of the Effective Date, the rate for Proctor's services is three thousand dollars (\$3,000.00) 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. Notwithstanding the foregoing, Intuitive will provide Customer with the following:
10. **da Vinci® Instruments and Accessories Credit.** Customer will be given a credit in the amount of \$135,000.00 towards the future purchase of da Vinci® Instruments and Accessories



# EXHIBIT B

INTUITIVE  
SURGICAL

**ACCEPTANCE DOCUMENT**

I, the undersigned, as an authorized representative of the below named hospital, acknowledge that the following product was (check the box below which applies):

Delivered       Installed

CUSTOMER

END USER

LM Agreement Number:

Equipment Description	Serial Number

ACCEPTANCE CRITERIA - PER AGREEMENT:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Please email signed acceptance letter to [Acceptance@Intusurg.com](mailto:Acceptance@Intusurg.com)**

837921-03, Rev F

**EXHIBIT C**  
**MASTER DIGITAL SOLUTIONS ADDENDUM**

1. **Products and Services.** The digital products (“Products”), consisting of certain hardware components and software program elements, and any services associated with such digital products (“Services”) (collectively, “Digital Solutions”) to be provided under this Master Digital Solutions Addendum (“Addendum”) are as follows:

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p><b>1. Intuitive Hub:</b></p> <p><b>a. Includes Clinical Media Management and Telepresence</b></p> <p><b>i. Hardware:</b></p> <p style="padding-left: 20px;">1. Medical grade touch panel capture and compression unit</p> <p style="padding-left: 20px;">2. “Telepresence Kit” (Room camera/webcam and headset)</p> <p style="padding-left: 20px;">3. Foot pedal control accessory</p> <p><b>ii. Software:</b></p> <p style="padding-left: 20px;">1. Includes 3D capture, live stream/telepresence &amp; advanced content management</p> <p><b>iii. Virtual media server (“Hub Media Server”)</b></p> <p style="padding-left: 20px;">1. Includes web tool and mobile application</p> <p><b>iv. Services included at no additional cost</b></p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p><b>2. da Vinci® SimNow® Skills Simulator (“Simulator”)</b></p> <p><b>a. Services for Simulator (“Simulator Services”)</b></p> <p style="padding-left: 20px;">i. First year included at no additional cost</p> <p style="padding-left: 20px;">ii. Future years billed annually at \$20,000.00 per year</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p><b>3. Custom Hospital Analytics</b></p> <p><b>a. Includes Report</b></p> <p><b>b. Services included at no additional cost</b></p>

**GENERAL TERMS AND CONDITIONS:**

2. **Use of Products.** Customer will ensure the proper use of the Products consistent with the documentation describing the functionality, instructions for use, and any other documentation or installation instructions relating to the Products delivered to Customer (the “Documentation”). Customer will ensure the proper management and supervision of the Products. Customer will not, nor will Customer permit any third party to, modify, disassemble, reverse engineer, alter, or misuse the Products. 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 Addendum. 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 Products; (2) reconfiguring any Products; or (3) reverse engineering, decompiling, disassembling, attempting to derive the source code for, otherwise manipulating the software without Intuitive’s written permission. If Customer fails to comply with the requirements of this Section, Intuitive may terminate this Addendum immediately upon written notice, and any warranties applicable to the Products will become void.
3. **Proprietary Information.** The “Proprietary Information” section of the Agreement is incorporated into this Addendum by reference. Notwithstanding anything to the contrary in the Agreement, Proprietary Information also includes all information derivable from the Digital Solutions, but excluding information that can be learned simply through observation of the Digital Solutions and its operation. In addition, any feedback provided with respect to the Digital Solutions shall be the sole Proprietary Information of Intuitive.
4. **Software License and Restrictions**
- 4.1 **Software Licensing.** Intuitive represents and warrants that it owns or otherwise has the right to license any software provided hereunder.
- 4.2 **Restrictions.** Intuitive grants to Customer a non-exclusive, non-transferable, fully paid, restricted use license to use the software solely in connection with the operation of the Products as described in the Documentation. Only authorized Customer employees, consultants, or independent contractors may use the software.
- 4.3 **Replacement Software.** In the event that during the term of this Addendum, Intuitive replaces any licensed software with an alternative software that is not a maintenance release, but has minimal differences in features and functions (regardless of differences arising from such factors such as operating systems, databases, and user interfaces), Customer shall have the right to exchange the licensed software for such alternative software at no additional cost. Customer shall pay for the Services, installation fees, third party software fees, and hardware fees associated with such alternative software.
5. **Services.** The parties agree to the terms and conditions of the following Services provided by Intuitive.
- 5.1 **Corrective Services.** Upon discovery of a problem, Intuitive shall, within a commercially reasonable amount of time, provide a correction or temporary bypass sufficient to mitigate any material adverse effect on the delivery of patient care, or provide a written

diagnosis of and plan for resolving the problem. Intuitive shall periodically report its progress in correcting an unresolved problem and perform problem corrections remotely, if possible. However, in the event that remote support fails to resolve a problem, and Customer's personnel have made all reasonable efforts based on Intuitive instructions to resolve such problem, a support engineer may be dispatched at Intuitive's discretion.

**5.2 Software Services.** Intuitive may periodically release changes to the software ("Software Releases"), including maintenance, updates or upgrades.

**5.3 Hardware Services.** Intuitive shall provide Customer with repair service that allows Customer to mail in the Product to any authorized Intuitive Service Center ("Repair Service"). All costs associated with the repair of the Product are included under Repair Service; however, Customer is responsible for the freight charges for delivering the Product to the Intuitive Service Center.

**5.4 Help Desk Services.** Help desk services are available and accessible by telephone (to be provided by Intuitive upon request) or e-mail (customerservice@intusurg.com). The help desk will assist Customer in resolving a problem and obtaining general technical assistance, including queries on how to use the Products and requests for additional Documentation.

**5.5 Limitations on Services.** Intuitive shall have no obligation to provide any Services hereunder if the problem is the result of Section 5.5(a)-(j) below ("Excluded Events"). For any provision of Services following an Excluded Event, Customer shall be charged at then current time and material rates.

Excluded Events include:

- (a) the Products being altered, repaired or reworked by a third party without Intuitive's prior written consent;
- (b) Customer's or a third party's improper installation, maintenance or storage, mishandling, abuse or misuse of the Products;
- (c) Customer's or a third party's use of the Products in conjunction with equipment electronically or mechanically incompatible or of an inferior quality on an unsupported hardware or software platform;
- (d) damages caused due to the Customer's or any third party's fault;
- (e) failure to implement any Software Release, problem corrections or other Intuitive Software Releases or patch provided or recommended by Intuitive;
- (f) changes to the operating system, network configuration or environment which adversely affect the Products, except for changes pursuant to Intuitive's written authorization;
- (g) failure to provide and continually maintain adequate electrical power, air conditioning and humidity controls in accordance with the specifications or such other instructions provided by Intuitive;
- (h) failure of any hardware or software (other than the software provided by Intuitive) incorporated into, forming part of, or supporting the Products to operate properly in accordance with Intuitive requirements set forth in Documentation and guidelines as provided from time to time;
- (i) network capacity overload, bandwidth limitation, or any other network malfunctions; or
- (j) if the software provided by Intuitive used by Customer is older than the last two major versions released by Intuitive

**6. Business Associate Agreement.** The Business Associate Agreement ("BAA") entered into between Customer and Intuitive applies to protected health information ("PHI"), as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and as may be amended from time to time.

**7. Use of Customer Data.** The terms and conditions set forth in the Data Use section of the Agreement and set forth in a Master Data Use Agreement entered into between the parties shall apply to this Addendum.

**8. Customer Responsibilities.** Customer shall be responsible for the following obligations:

**8.1 Customer Maintenance.**

- (a) Allowing Intuitive remote access to the Products;
- (b) Operating the Products in accordance with the Documentation;
- (c) Contacting Intuitive promptly upon discovery of a problem;
- (d) Investigating and verifying problems;
- (e) Producing and providing Intuitive with performance reports and other reports, as requested by Intuitive, from time to time;
- (f) Enabling HTTP access for automatic e-mail deliveries to the Intuitive support alarm system;
- (g) Installing fixes of the Products, when approved in writing by Intuitive;
- (h) Purchasing and maintaining all third party licenses as needed to utilize the Products.

**8.2 Changes in Environment.** Customer shall coordinate, document and report any change in the environment in which the Products operate, including any changes in the Product's hardware, network or software not supplied or developed by Intuitive (e.g. installing a new patch of the operating system). Customer shall promptly report any problem related to or affecting the environment, and its resolution progress.

**8.3 Supervisor.** Customer shall designate an appropriately qualified person who has been trained and certified by Intuitive for Digital Solutions operation, administration, and maintenance (the "Supervisor"). The Supervisor will serve as the primary point of contact with Intuitive for all Digital Solutions-related activities performed under this Addendum.

8.4 **On-Site Support.** Personnel performing the on-site support Services may use and store at Customer's facility software, documentation, tools, test equipment and other material to provide the Services regarding the Product ("Service Materials"). Intuitive grants no title or license to such Service Materials and retains all right, title, and interest in such Service Materials. Customer will not use such Service Materials or make them available to third parties. Intuitive may remove Service Materials at any time and Customer will give Intuitive access for such removal. Upon request by Intuitive, Customer support personnel must be available to assist with remote access issues and provide on-site assistance to Intuitive.

8.5 **Problem Correction.** Customer will cooperate with Intuitive in the correction of problems, including without limitation, providing a detailed description of the problem, and taking all reasonable measures requested by Intuitive to detect and obtain further information about the problem. Customer will provide and install such reasonable troubleshooting tools and activate such event loggers (incorporated in the Products) as may be requested by Intuitive and will cooperate fully with Intuitive in the problem replication, identification and analysis process. Customer shall forward to Intuitive all troubleshooting, log reports and other reports generated in connection with the Products.

8.6 Customer hereby acknowledges and agrees that any medical related activities must be performed by properly credentialed surgeons and physicians. Any and all issues related to credentialing or the confidentiality and security of patient information are the sole responsibility and obligation of Customer.

9. **Term and Termination.** This Addendum will commence as of the Effective Date and will continue until terminated by Intuitive. However, either party may terminate this Addendum if the other party breaches a material term or condition of this Addendum and fails to cure the breach following thirty (30) days' written notice from the non-breaching party

10. **Conflicting Terms.** Except as set forth herein, all other terms and conditions of the Agreement remain the same. In the event of a conflict between the terms of this Addendum and the Agreement, the terms of this Addendum will prevail. This Addendum supersedes any prior agreements between the parties regarding the Digital Solutions described herein.

11. Intuitive may offer future iterations of the Digital Solutions listed above. The terms and conditions in this Addendum shall apply to future iterations of the Digital Solutions as well as any assessment or feedback provided by Customer with respect to future iterations of the Digital Solutions.

#### **ADDITIONAL TERMS AND CONDITIONS FOR INTUITIVE HUB:**

12. **Delivery and Installation Terms.** Subject to credit approval of Customer by Intuitive, Intuitive will use commercially reasonable efforts to deliver the Products to Customer's designated location noted as the "Ship-to" in Exhibit A of the Agreement ("Customer's Designated Location") using a carrier selected by Intuitive. Delivery charges will be *Pre-Pay & Add*. Risk of loss or damage to the Products passes to the Customer upon shipment of the Products to Customer. Title to Products sold to Customer passes upon Acceptance (as defined below). Each party will provide the other party with thirty (30) days' notice, or if the 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 Products. Intuitive will use commercially reasonable efforts to install the Product in an efficient and expeditious manner. Customer will also provide Intuitive with information, consultation, and advice reasonably necessary to permit installation.

13. **Acceptance.** The Products shall be deemed accepted by Customer upon shipment to Customer's Designated Location ("Acceptance"). Intuitive agrees to work with Customer to operationalize Intuitive Hub within a commercially reasonable amount of time after Acceptance. For the avoidance of doubt, Customer shall be invoiced for Intuitive Hub upon Acceptance.

14. **Customer Responsibilities.** Customer shall be responsible for the additional obligations:

##### **14.1 Customer Maintenance.**

- (a) Customer shall maintain the Hub Media Server. The Hub Media Server can be a VM (virtual machine) or a dedicated physical server in accordance with Intuitive's pre-requisites. Unless Intuitive indicates otherwise, Customer's responsibility for the server includes, but is not limited to, OS (operating system), anti-virus, H/W (hardware), networking (multicast) and storage;
- (b) Customer shall maintain the database and storage systems. Intuitive shall provide backup policy recommendations to Customer.

15. **Software License Restrictions.** Except for the use of any mobile application in accordance with the terms of service applicable to such application, Customer shall use the software only at Customer's Designated Location, unless (i) otherwise agreed to in writing; or (ii) Customer is prevented from using software at the Customer's Designated Location due to periods of disaster recovery, testing scheduled by Customer in advance, or due to causes beyond Customer's control. If Customer is prevented from using the software at a Customer's Designated Location, Customer shall notify Intuitive in writing prior to using any software at another location. All Customer obligations, representations, and warranties provided under this Agreement shall extend to the alternative location for a period as agreed to between the parties.

16. **Telepresence.** Intuitive Hub implements a telepresence software solution to leverage in-room cameras and enable audio/video transmission devices that require network access via Ethernet and/or Wifi connection to enable remote users to observe and communicate with designated operating surgeons, interventional pulmonologists, and medical staff. Customer will grant network access to a designated external server infrastructure, as identified by Intuitive.

17. **Usage and HIPAA.** Customer hereby acknowledges and affirms Customer is in control of and is responsible for both the physical and cybersecurity of Intuitive Hub within the procedure room, and Customer determines what audio and/or video is transmitted via Intuitive Hub. Customer will fulfill all Customer legal and regulatory obligations related to the use of Intuitive Hub, including under HIPAA. If needed for Customer's use of Intuitive Hub (including the Telepresence solution), Customer agrees to provide any required notices and obtain all necessary consents, including patient HIPAA authorizations. For remote observations, e.g. demonstrations of the use of Intuitive products or other activities to remote observers, if Customer uses Intuitive Hub to transmit PHI, then Customer will obtain a patient HIPAA authorization covering remote observation of the surgery or procedure for the observers' own purposes. Other than Intuitive personnel, remote observers are typically non-Customer health care professionals and/or Customer staff interested in demonstrations of Intuitive products. Remote users other than Intuitive personnel are not affiliated with Intuitive, and Customer agrees that it is the sole responsibility and obligation of Customer to engage them directly. Intuitive obtains usage and log data about Intuitive Hub, such as which features were used during a session and the duration of the session. However, Intuitive does not record, use, disclose, or store video and/or audio transmitted through the Telepresence solution.
18. **Release of Liability.** For purposes of this Addendum, Customer and its affiliates hereby release from liability and waive the right to sue Intuitive and any of its subsidiaries, affiliate companies, their employees, officers, directors and agents from any and all claims resulting from any illness of or physical injury to a patient (including death), or any economic loss (including liability for damages or penalties) that Customer may suffer because of use of Intuitive Hub. Customer understands that there are risks, including to patients, which may occur from Customer's use of Intuitive Hub. Customer assumes all liability or related risks, whether known or unknown to Customer, of use of Intuitive Hub. Customer hereby acknowledges and affirms that Intuitive has no input, control over, or involvement in the assistance, coaching, guidance, surgical training, proctoring, recommendations, practice, observations, or other services offered to, or utilized by Customer, relating to the practice of medicine. For the avoidance of doubt, nothing in this Section shall be construed to reduce or negate Intuitive's obligations or Customer's rights and remedies related to the da Vinci® Surgical System under the Agreement.
19. **Indemnification.** For purposes of this Addendum, Customer 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, loss or damage to Customer's personal property, liabilities, expenses, and costs, including reasonable attorney's fees, (collectively, "Claims") arising as a result of Customer's use of Intuitive Hub, including but not limited to any Claims related to any and all consents and/or technical, network, download, access, connection, installation and/or computer issues arising in connection with Customer's use. The indemnification obligations described herein shall not apply to the extent such Claims arise as a result of Intuitive's gross negligence or intentional misconduct.

#### **ADDITIONAL TERMS AND CONDITIONS FOR SIMULATOR:**

20. **Networking Requirements.** Simulator may require a network connection in order to achieve full functionality. Customer acknowledges that when Simulator is in use, Customer is responsible for maintaining an active network connection to Intuitive's Simulator infrastructure as specified in the Simulator's network requirements, for the purpose of supporting all services such as, latest simulation updates, OS patches, anti-virus updates, data backup and user account management capabilities. Customer is responsible for the security of the Simulator and the security of the internal network to which the Simulator is configured. Intuitive reserves the right to change, add, or remove functionalities or features at any time.
21. **Information Security.** Customer is responsible for maintaining the confidentiality of its username(s), password(s), account(s), as well as all activities that occur under that account(s) and both the physical and cyber-security of the Simulator. Customer agrees that Intuitive may share data relating to the use of the Simulator with any Customer-authorized user of the Simulator.
22. **Simulator Services.** If Customer is current in payment to Intuitive of the Simulator Services fees, Customer will receive access to the Intuitive library of basic, advanced, and procedure skills simulation. In the event of nonpayment for Simulator Services, access to the Intuitive library of basic, advanced, and procedure skills simulation will be suspended. At any time during the term of this Addendum, with thirty (30) days prior written notice, Customer may opt-out of Simulator Services. For the avoidance of doubt, in the event Customer opts-out, Customer will not receive a refund of any prepaid, unused Simulator Services fees.

#### **ADDITIONAL TERMS AND CONDITIONS FOR CUSTOM HOSPITAL ANALYTICS:**

23. Customer may provide or have provided to Intuitive certain data that Customer collects and maintains regarding surgical procedures performed at one or more facilities affiliated with Customer (the "Data"). Customer represents and warrants that the Data to be provided by Customer to Intuitive will be de-identified by Customer to include no direct patient identifiers or PHI in accordance with HIPAA and its implementing regulations, as amended by the HITECH Act and its implementing regulations. Customer further agrees to label the Data provided to Intuitive with the identity of the Customer, and if applicable, the specific facility of Customer's organization associated with the Data. Customer represents and warrants to Intuitive that Customer has the right to provide Intuitive the Data and any other related materials, including, if applicable, any and all information to which physicians employed by or affiliated with Customer may have an interest. Customer shall own the Data.
24. Intuitive agrees to use the Data to provide a report to Customer addressing the current state of Customer's perioperative program, or other programs, which quantifies the impact of robotic-assisted minimally invasive surgery on clinical and economic outcomes associated with Customer's organization (the "Report"). Intuitive may combine the Data with certain data that Intuitive may collect relating to Customer's use of Intuitive products. Intuitive shall own all right, title, and interest, including all related intellectual property rights, in and to the

Report, queries, protocols, code lists and data specs. Intuitive shall also own all right, title, and interest, including all related intellectual property rights, in and to any statistics, analytics, analyses, models, knowledge, reports, or other learning it derives from the Data. Any Report provided by Intuitive to Customer is provided as-is and may contain inaccuracies; therefore, Intuitive cannot guarantee the quality or accuracy of the Report.

25. Customer grants to Intuitive a perpetual, irrevocable, worldwide, non-transferable (except to Intuitive's affiliates), nonexclusive license to use the Data for Intuitive's commercial purposes. Intuitive shall continue to have the right to access the Data after Intuitive delivers the Report to Customer, to enable Intuitive's continued analysis of the Data, whether alone or in conjunction with other data accessible to Intuitive. Intuitive is further authorized to publish, without identifying Customer, and use for any reasonable commercial purpose any statistics, analytics, analyses, models, knowledge, reports, or other learning derived from the Data. Intuitive grants to Customer a perpetual, irrevocable, worldwide, non-transferable, nonexclusive license to use the Report for Customer's internal purposes.

**EXHIBIT C**  
**MASTER DATA USE AGREEMENT**

1. **Introduction.** Intuitive has developed and plans to continue to develop an evolving suite of Digital Solutions to support its customers. Digital Solutions analyze data that Intuitive collects in order to deliver insights designed to help customers improve patient care and the Parties acknowledge and agree that these insights from data are only possible through Processing (as defined below). The Parties have entered into, or may enter into, agreements for Intuitive products and/or services, including Digital Solutions, Ion® or da Vinci® (“Applicable Agreement(s”). Therefore, the Parties intend for this MDUA to serve as a single, clear statement of each Party’s right to use any data that it receives from the other Party, including as a result of any Applicable Agreements. Customer may be referred to herein as “You.” Each of Intuitive and Customer may be referred to individually as “Party” or collectively as “Parties.”
2. **Permission to Use Intuitive Data.** Intuitive provides to You certain standard proficiency, support and other data and insights, including additional products or services and associated data and insights that You have the option to order pursuant to a subsequent agreement (“Intuitive Data”). Intuitive grants You permission to use, copy, disclose, modify and create derivative works from, distribute, display, perform and otherwise process (“Process”), on an internal basis Intuitive Data only for Your lawful business purposes subject to any use restrictions in the Applicable Agreement. Unless otherwise agreed to in the Applicable Agreement, as part of Your internal Processing, You may only share such Intuitive Data with (i) Your employees, and (ii) service providers or contractors, and may do so solely for Your internal business purposes and subject to any further restrictions on Processing in any Applicable Agreement.
3. **Customer Data Processing by Intuitive.** To provide training, support and services to You, Intuitive must Process the following data:
  - 3.1 Any data that is automatically generated or recorded by Intuitive products or services (e.g., data regarding button and foot pedal presses, system logs, and regarding use of instruments, including data entered into Intuitive products), together with the surgeon name and procedure type associated with any particular procedure or Intuitive device, to the extent made available to, or accessible by, Intuitive; and, any data that Intuitive captures and records in the course of providing products or services to, or conducting surveys with, You or any of Your personnel, workforce members, or other persons to whom You make such products or services available. For clarity, this section excludes any data that a user deliberately enters into the user interface of a Digital Solution, where such user is not responding to survey questions.
  - 3.2 Data that a user deliberately enters into the user interface of any Digital Solutions, including the touch screen on any da Vinci® or Ion™ device and data that a surgeon enters about a procedure into the My Case application.
  - 3.3 Data that originates from Your electronic medical records and related systems and that is shared with Intuitive, video footage that is captured on Your premises or as a result of activities undertaken or procedures performed by or on behalf of any of Your personnel, and data that originates from Your picture archiving and communication system (“PACS Data”), in each case to the extent made available to, or accessible by, Intuitive by You.
  - 3.4 **De-Identification.** With respect to protected health information (“PHI”), as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and as may be amended from time to time, that is provided by or on behalf of You to Intuitive, Intuitive may collect and Process such PHI only for the following purposes: (i) in order to provide its products and services to You or any of Your personnel or workforce members, or other persons whom You approve, in accordance with the Applicable Agreement, including the applicable Business Associate Agreement, and (ii) as part of those services, to create data that has been de-identified in a manner that is consistent with the de-identification requirements of 45 C.F.R. § 164.514(b) (“De-Identified Data”). The De-Identified Data may be collected and Processed by Intuitive for any lawful business purpose, provided, however, that Intuitive will not sell or license any De-identified Data.
  - 3.5 **Observable Facts and General Knowledge.** Without limiting the other use rights set out herein, facts obtained from human observation and any general knowledge (but excluding any PHI) gained by Intuitive may be collected and Processed by Intuitive to the extent permitted by applicable law.
  - 3.6 **Legal Compliance.** Nothing in this MDUA or any other agreement prevents Intuitive from collecting or Processing any data as needed to comply with law or legal process, or to prepare regulatory or legal filings (e.g., performing post-market surveillance or for purposes of SEC or FDA filings, reports or submissions).
4. **Term.** The term (“Term”) of this MDUA commences on the Effective Date and continues in effect until all Applicable Agreements between the Parties expire or are terminated. This MDUA applies to data collected prior to the Effective Date or during the Term.
5. **Relation to Other Agreements.** In the event of any conflict between this MDUA and any other written data agreement entered into between these Parties, this MDUA will control and resolve the conflict. For the avoidance of doubt, this MDUA does not modify (i) any privacy or security protections for PHI agreed to in any Business Associate Agreement, or (ii) any data use provisions contained in any Sponsored Research agreement.
6. **Data Governance.** The Parties appoint the below persons as their data governance representatives (“Data Governance Representatives”). In the event that either Party has data Processing or governance concerns, such Party may notify the other Party’s Data Governance Representative(s), and the Parties will promptly convene a meeting to discuss and endeavor to resolve the matter. A Party may change its Data Governance Representative on Notice to the other Party.

Intuitive

Wendi W. Wright  
Sr. Director Privac. & Data Protection

Customer

[Name]  
[Title]

7. **Integration; No-Reliance on Other Documents; Amendments.** This MDUA constitutes the entire agreement between the Parties regarding the subject matter herein and will be binding upon the Parties and their respective successors and permitted assigns. Other documents, agreements, understandings, representations, disclosures, negotiations and discussions, written or oral, of the Parties with respect to this subject matter are excluded and are not relied upon by either Party. This MDUA, and any of its provisions may be waived, amended or supplemented only by a written instrument that refers to this MDUA and specifically references the provisions that it is waiving, amending or supplementing, and that is signed by an authorized officer of each Party. No waiver by a Party of any term or condition set forth in this MDUA will be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of a Party to assert a right or provision under this MDUA will not constitute a waiver of such right or provision. Except as set forth herein, all other terms and conditions of the Agreement remain the same. In the event of a conflict between the terms of this MDUA and the Agreement, the terms of this MDUA will prevail.

8. **Governing Law; Jurisdiction.** Intentionally left blank.

**EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS MDUA OR THE DATA PROCESSING CONTEMPLATED HEREBY.**

9. **Assignment.** Intentionally left blank.

10. **Severability.** If any provision of this MDUA 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 MDUA, 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.

11. **Counterparts.** This MDUA may be executed in multiple copies, each of which is an original, and all of which taken together will constitute one single agreement.

12. **Notice.** All formal legal notices (“Notices”) required or permitted hereunder will be in writing and sent via e-mail to the e-mail addresses set forth below, followed by a copy sent via a nationally recognized overnight courier to the physical address listed below. Notices sent in accordance with this provision will be deemed delivered and effective when sent via e-mail. Either Party may change their notification address by providing Notice in accordance with this Section.

<u>Intuitive</u>	<u>Customer</u>
Attn: Legal – Privacy and Data Protection group 1020 Kifer Road Sunnyvale, CA 94086	[Attn] [Address] [City, St]
with a copy to: data.privac. @ intuitur .com	with a copy to: email

13. **Feedback.** Notwithstanding anything herein or in any other agreement to the contrary, any and all suggestions, comments, ideas or other feedback provided by or on behalf of You or any of Your affiliates to Intuitive, regarding any Intuitive products or services (collectively, “Feedback”) is given voluntarily and does not constitute confidential information (even if marked as such), and Intuitive is not required to hold it in confidence. Intuitive may collect and otherwise Process Feedback for any purpose without restriction, obligation or liability of any kind to You or any of Your affiliates, and without vesting any rights in You or any of Your affiliates. For the avoidance of doubt, as between the Parties, Intuitive is the sole owner of all right, title and interest in its technologies, including any improvement developed by virtue of its Processing of any data under this MDUA.

14. **Survival.** The respective rights and obligations of each Party under Sections 2 (Permission to Use Intuitive Data), 3 (Customer Data Processing by Intuitive), 4 (Term), 8 (Governing Law; Jurisdiction), 12 (Notice), 13 (Feedback), and 14 (Survival) of this MDUA shall survive the termination of this MDUA.



## Exhibit D

# BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is effective as of the date of final signature of the Agreement (“Effective Date”) and is between **Intuitive Surgical, Inc.**, a Delaware corporation, located at 1020 Kifer Road, Sunnyvale, California 94086, on behalf of itself and its affiliates (“Business Associate”), and **County of Riverside**, a political subdivision of the state of California on behalf of its Riverside University Health System located at 26520 Cactus Avenue, Moreno Valley, CA 92555 (“Covered Entity”). Business Associate and Covered Entity may be individually referred to herein as “Party,” and collectively referred to herein as “Parties.”

### 1. Introduction.

Covered Entity and Business Associate have entered into, or may enter into, Underlying Agreement(s) (as defined below) for the provision of Products and Services (as defined below). The Parties wish to enter into this Agreement pursuant to the business associate agreement requirements set forth in the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (“HITECH”), and all applicable implementing regulations, including, without limitation, the Privacy Rule (45 C.F.R. § 160 and § 164 (Subparts A and E)), the Security Rule (45 C.F.R. § 160 and § 164 (Subparts A and C)), and the Breach Notification Rule (45 CFR §§ 164.400-414). All such laws and regulations may be collectively referred to herein as “HIPAA”. This Agreement is incorporated by reference into the Underlying Agreements and supersedes any prior business associate agreement between the Parties.

### 2. Definitions. Unless otherwise defined herein, all capitalized terms used in this Agreement shall have the same meaning as ascribed to those terms by HIPAA.

2.1 “**Products and Services**” shall mean those certain products and/or services provided by Business Associate, pursuant to an Underlying Agreement, that require the creation, receipt, maintenance or transmission of PHI by Business Associate for or on behalf of Covered Entity.

2.2 “**Protected Health Information**” or “**PHI**” shall have the same meaning as ascribed in 45 C.F.R. §160.103, except that all references to PHI shall mean only the PHI that is required to be accessed, created, maintained or transmitted by Business Associate for or on behalf of Covered Entity to perform under the Underlying Agreements. As may be applicable, PHI shall include “Electronic Protected Health Information” or “E PHI”.

2.3 “**Underlying Agreement(s)**” shall mean any written agreements, supplements, or addendums that the Parties have entered into, or will enter into, for the provision of Products and Services. This Agreement shall not be incorporated into any agreement, supplement, or addendum that does not reference this Agreement.

### 3. Permitted Uses and Disclosures of PHI.

3.1 **General.** Business Associate shall Use or Disclose PHI only as permitted or required by this Agreement or the Underlying Agreement, or as permitted or required by law.

3.2 **Proper Management and Administration.** Business Associate may Use or Disclose PHI for the Business Associate’s proper management and administration or to carry out the Business Associate’s legal responsibilities. However, Business Associate may only Use or Disclose PHI under this Section 3.2 to the extent that:

a. Such Uses or Disclosures are Required by Law, or

b. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the person: (1) will hold the PHI confidentially and further Use or Disclose the PHI only (i) as permitted or required by law, or (ii) for the purpose for which it was disclosed to the person; and (2) will notify the Business Associate and Covered Entity of any instance the person becomes aware of in which the confidentiality of the information has been breached.

3.3 **Data Aggregation.** Business Associate may provide Data Aggregation services relating to the health care operations of Covered Entity, as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

### 4. Business Associate Obligations.

4.1 **General.** Business Associate shall not Use or Disclose PHI other than as permitted or required by this Agreement or the Underlying Agreement, or as permitted or required by law.

4.2 **Safeguards.** Business Associate shall implement reasonable and appropriate Administrative, Physical, and Technical safeguards to ensure the Confidentiality, Integrity, and Availability of EPHI, to prevent Use or Disclosure of the PHI other than as provided for by this Agreement or the Underlying Agreement.

- 4.3 **Minimum Necessary.** Business Associate shall Use or Disclose only the Minimum Necessary PHI to accomplish the intended purpose of the Use or Disclosure.
- 4.4 **Security Incidents.** In the event Business Associate discovers the occurrence of any successful Security Incident, Business Associate shall, within two (2) business days of discovery of such successful Security Incident, notify Covered Entity of the same. The Parties acknowledge the ongoing existence and occurrence of attempted but "Unsuccessful Security Incidents". Provided these Unsuccessful Security Incidents do not result in an unauthorized access, use, disclosure, modification, or destruction of PHI or significantly compromise Business Associate's security safeguards for PHI, the Parties agree that this acknowledgment shall serve as notice of such incidents and do not require additional notice to Covered Entity. Unsuccessful Security Incidents shall include pings, and other surveillance activities on Business Associate's firewall, port scans, unsuccessful log on attempts and password-based attacks, denials of service attempts, other common firewall attacks, and any combination of the above so long as no such incident results in a successful Security Incident.
- 4.5 **Impermissible Uses and Disclosures.** In the event Business Associate discovers the occurrence of any impermissible Use or Disclosure of PHI by it, Business Associate shall, within two (2) business days of discovery of such impermissible Use or Disclosure, notify Covered Entity of the same as required by 45 CFR §164.410.
- 4.6 **Breaches of Unsecured PHI.** In the event Business Associate discovers the occurrence of its Breach of Unsecured PHI ("Breach"), Business Associate shall, within two (2) business days of discovery of such Breach, notify Covered Entity of the Breach. The notification to Covered Entity shall include all information required by 45 CFR § 164.410(c) to the extent then known. If the information required is not available to Business Associate at the time of the notification, Business Associate shall thereafter provide supplemental information to Covered Entity as soon as commercially possible.
- A. **Content of notification.** The written notification to Covered Entity relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Business Associate:
    - 1) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the breach;
    - 2) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
    - 3) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
    - 4) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
    - 5) A brief description of what Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
    - 6) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
  - B. **Cooperation.** With respect to any breach of unsecured PHI reported by Business Associate, Business Associate shall cooperate with Covered Entity and shall provide Covered Entity with any information requested by Covered Entity to enable Covered Entity to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, prominent media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.
  - C. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Business Associate's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Business Associate agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Business Associate's obligations to indemnify, defend and hold harmless Covered Entity under Section 7 of this Addendum.
  - D. **Additional State Reporting Requirements.** The parties agree that this Section 4.6 D applies only if and/or when Covered Entity, in its capacity as a licensed clinic, health facility, home health agency, or hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical information under the more stringent requirements of California Health & Safety Code §1280.15. For purposes of this Section 4.6 D, "unauthorized" has the meaning given such term in California Health & Safety Code §1280.15(j)(2).
    - 1) Business Associate agrees to assist Covered Entity to fulfill its reporting obligations to affected patients and to the California Department of Public Health ("CDPH") in a timely manner under the California Health & Safety Code §1280.15.
    - 2) Business Associate agrees to report to Covered Entity any unlawful or unauthorized access, use, or disclosure of patient's medical information without unreasonable delay and no later than two (2) business days after Business Associate detects such incident. Business Associate further agrees such report shall be made in writing, and shall include substantially the same types of information listed above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or unauthorized access, use, or disclosure as defined above in this section, understanding and acknowledging that the term "breach" as used in Section 8.A.2 does not apply to California Health & Safety Code §1280.15.
- 4.7 **Mitigation.** Business Associate shall mitigate, to the extent reasonably practicable and attributable to it, any harmful effect known to Business Associate of any successful Security Incident, impermissible Use or Disclosure of PHI, or Breach of Unsecured PHI.

- 4.8 **Subcontractors.** Business Associate shall ensure that any Subcontractors that access, create, maintain, or transmit PHI for or on behalf of Business Associate agree to restrictions and conditions at least as stringent as those that apply to Business Associate under this Agreement.
- 4.9 **Designated Record Sets.** To the extent Business Associate maintains any PHI in a Designated Record Set, the following shall apply:
- a. **Access to PHI.** Upon Covered Entity's written request to Business Associate, Business Associate agrees to provide Covered Entity with a copy of an Individual's PHI maintained in a Designated Record Set within five (5) business days of such request. Business Associate shall provide such copy in the manner required by law. In the event an Individual submits a request directly to Business Associate to provide a copy of PHI maintained in a Designated Record Set, Business Associate shall notify Covered Entity of the request within five (5) business days to allow Covered Entity to respond to the Individual.
  - b. **Amendment to PHI.** Upon Covered Entity's written request to Business Associate, Business Associate agrees to amend the Individual's PHI maintained in a Designated Record Set within fifteen (15) business days of such request. In the event an Individual submits a request directly to Business Associate to amend PHI maintained in a Designated Record Set, Business Associate shall notify Covered Entity of the request within five (5) business days to allow Covered Entity to respond to the Individual.
- 4.10 **Accounting of Disclosures.** Upon Covered Entity's written request to Business Associate, Business Associate agrees to provide Covered Entity with an accounting of Disclosures of the Individual's PHI, as well as any information required by 45 C.F.R. § 164.528, within fifteen (15) business days of such request, to allow for Covered Entity to make the accounting to the Individual. In the event an Individual submits a request directly to Business Associate for an accounting of Disclosures of the Individual's PHI, Business Associate shall notify Covered Entity of the request within fifteen (15) business days to allow Covered Entity to respond to the Individual. Business Associate shall make available for Covered Entity information required by this Section 4.10 for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.
- 4.11 **Audits.** Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining the Parties' compliance with applicable law or regulation.
- 4.12 **Compliance with Laws.** Business Associate shall comply with all applicable laws and regulations. To the extent Business Associate is to carry out an obligation of Covered Entity, as may be required by law, Business Associate agrees to comply with the requirements of the applicable law in the performance of such obligation.

## 5. Covered Entity Obligations.

- 5.1 **Notice to Business Associate.** To the extent Business Associate's ability to Use or Disclose PHI is impacted, Covered Entity shall notify Business Associate of any: (i) limitation in Covered Entity's notice of privacy practices; (ii) changes to, or revocation of, an Individual's permission to Use or Disclose PHI; or (iii) restriction to the Use or Disclosure of PHI that Covered Entity has agreed to.
- 5.2 **Minimum Necessary.** Covered Entity shall provide to Business Associate only the Minimum Necessary PHI to accomplish the intended purpose of the Use or Disclosure.
- 5.3 **Compliance with Laws.** Covered Entity shall comply with all applicable laws and regulations, and shall not request Business Associate to create, use, disclose, amend or destroy PHI in a manner inconsistent with HIPAA.

## 6. Term and Termination.

- 6.1 **Term.** This Agreement shall commence as of the Effective Date, and shall terminate when all PHI and/or ePHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Agreement.
- 6.2 **Termination.** A breach of any provision of this Agreement by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Agreement and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:
- A. Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.
  - B. Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.

- C. If termination of the Underlying Agreement is not feasible, the breaching party, upon the request of the non-breaching party, shall implement, at its own expense, a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

6.3 **Effect of Termination.** Upon termination of this Agreement, to the extent feasible, Business Associate shall return or destroy all PHI the Business Associate maintains in any form, and shall retain no copies of such PHI. To the extent the return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Agreement to the PHI retained by Business Associate, and shall limit further Use or Disclosure to those purposes that make the return or destruction of the PHI infeasible. Additionally, upon termination of this Agreement, any Underlying Agreement shall terminate pursuant to the terms and conditions of that Underlying Agreement. Any provision of this Agreement which by its nature requires survival shall survive termination of this Agreement.

**7. Hold Harmless/Indemnification.**

- A. Business Associate agrees to indemnify and hold harmless Covered Entity, all Departments of Covered Entity, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Business Associate, its officers, employees, subcontractor's agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Business Associate, its officers, agents, employees, subcontractors, agents or representatives from this Agreement. Business Associate shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of Covered Entity, all Departments of Covered Entity, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by Business Associate, Business Associate shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of Covered Entity, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of Covered Entity; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Business Associate's indemnification to Covered Entity as set forth herein. Business Associate's obligation to defend, indemnify and hold harmless Covered Entity shall be subject to Covered Entity having given Business Associate written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Business Associate's expense, for the defense or settlement thereof. Business Associate's obligation hereunder shall be satisfied when Business Associate has provided to Covered Entity the appropriate form of dismissal relieving Covered Entity from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Agreement shall in no way limit or circumscribe Business Associate's obligations to indemnify and hold harmless Covered Entity herein from third party claims arising from issues of this Agreement.
- D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Business Associate from indemnifying Covered Entity to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Agreement, this indemnification shall only apply to the subject issues included within this Agreement.

**8. Miscellaneous.**

8.1 **Notice.** All notice or other communication required or permitted under this Agreement shall be made in writing, and shall be deemed received five (5) business days after the date of mailing, one (1) business day after dispatch by overnight courier service or electronic mail, upon receipt if personally delivered, or upon confirmation of confirmed transmission if by facsimile. Any notice or communication shall be delivered to the respective Party, as follows:

**If to Business Associate:**

Attn: Legal – Privacy and Data Protection Group  
Intuitive Surgical, Inc.  
1020 Kifer Road  
Sunnyvale, CA 94086

**If to Covered Entity:**

HIPAA Privacy Manager  
Riverside University Health System Medical Center  
26520 Cactus Avenue  
Moreno Valley, Ca 92555

With a copy to:

[Data.privacy@intusurg.com](mailto:Data.privacy@intusurg.com)

Email Subject: "BAA or HIPAA Notice"

8.2 **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with HIPAA.

8.3 **Relationship of the Parties.** The Parties agree that Business Associate is an independent contractor of Covered Entity, and is therefore not an agent of Covered Entity. This Agreement is intended to apply only to the Parties, and nothing herein is intended for the benefit of any third party.

- 8.4 **Amendment.** The Parties agree to meet in good faith to amend this Agreement in the event such amendment is necessary for either Party to comply with any mandatory legal requirement. This Agreement may be amended only in writing, signed by both Parties.
- 8.5 **Entire Agreement.** This Agreement constitutes the entire agreement between Business Associate and Covered Entity regarding the subject matter herein.



Date: March 7, 2023

From:

To: Board of Supervisors/Purchasing Agent

Via: Israel Gomez, Procurement Contract Specialist

Subject: Sole Source Procurement; Request for Lease Agreement and Use license and Service Agreement with Intuitive Medical Inc for one da Vinci Surgical Robot and associated maintenance and supplies

The below information is provided in support of my Department requesting approval for a single source.

1. **Supplier being requested:** Intuitive Medical, Inc.
2. **Vendor ID:** 0000200566
3.  **Single Source**                       **Sole Source**
4. **Have you previously requested and received approval for a sole or single source request for this vendor for your department?** *(If yes, please provide the approved sole or single source number).*  
 **Yes**     **No**  
SSJ# \_\_\_\_\_
- 4a. **Was the request approved for a different project?**  
 **Yes**     **No**
5. **Supply/Service being requested:**  
One da Vinci Surgical Robot, associated supplies, and maintenance
6. **Unique features of the supply/service being requested from this supplier.**

The da Vinci Robot allows surgeons to operate using a computer console with controls that manipulate the robot arms and displays high definition, magnified, 3D images of inside a patient's body. Compared to traditional surgery, robotic surgery provides surgeons with a



greater range of motion and precision. The assistance from the Robot's arms and cameras allows surgeons to reach areas not normally possible through a traditional laparoscopic or open method. The advanced technology that is integrated in to the da Vinci Robot results in less bleeding and post operative pain, leading to a quicker recovery time.

**7. Reasons why my department requires these unique features from the vendor and what benefit will accrue to the county:**

RUHS- Medical Center (RUHS-MC) Operating Room (O.R.) is committed to providing high quality healthcare to the residents of Riverside County. To achieve such success RUHS-MC O.R. must keep their equipment and practices on par with the latest technology. The continued patient population growth at RUHS-MC is indicative of need for additional equipment, so that physicians and patients at RUHS maintain access to the best treatment possible. Acquisition of an additional da Vinci Robot will ensure that surgeons and more importantly patients, will have the ability to use the da Vinci Robot for their surgical procedures.

**8. Period of Performance:** From: FY22/23 to FY26/27

Is this an annually renewable contract?  No  Yes  
 Is this a fixed-term agreement:  No  Yes

**9. Identify all costs for this requested purchase. In addition, please include any single or sole source amounts previously approved and related to this project and vendor in the section designated below for current and future fiscal years. You do not need to include previous fiscal year amounts. If approval is for multiple years, ongoing costs must be identified below. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each consecutive year. If the annual increase may exceed the Purchasing Agent's authority, Board approval must be obtained.**

Total contract amount for this Lease Agreement, Use license Service Agreement, for one da Vinci Surgical Robot, supplies, and associated maintenance with Intuitive Medical Inc is \$3,964,214

<b>FINANCIAL DATA</b>	<b>First Year</b>	<b>Second Year</b>	<b>Third Year</b>	<b>Fourth Year</b>	<b>Total Cost</b>
<b>COST</b>	\$1,060,960	1,120,627	1,120,627	1,120,627	\$4,422,841

**10. Price Reasonableness:**

Intuitive surgical is the only manufacturer of this product. The terms being offered to the County are comparable to those offered to the other regional medical centers.



Board approval of this Agreement is required as the compensation provisions exceeds the Purchasing Agent's authority for contracting with a single vendor, per Ordinance 459.6, without seeking competitive bids.

**11. Projected Board of Supervisor Date (if applicable): 3/28/2023**  
*(Draft Form 11s, service agreement and or quotes must accompany the sole source request for Purchasing Agent approval.)*

<i>Jennifer Cruikshank</i>	Jennifer Cruikshank	Mar 14, 2023
Department Head Signature (or designee)	Print Name	Date

The section below is to be completed by the Purchasing Agent or designee.

Purchasing Department Comments:

**Approve**

Approve with Condition/s

Disapprove

Condition/s:

Approved, with yearly costs not to exceed as noted above.

Not to exceed:

One-time \$ \_\_\_\_\_

Annual Amount \$ \_\_\_\_\_ / per fiscal year through \_\_\_\_\_ (date)  
*(If Annual Amount Varies each FY)*

FY \_\_\_\_\_ : \$ \_\_\_\_\_

FY \_\_\_\_\_ : \$ \_\_\_\_\_





FY \_\_\_\_\_ : \$ \_\_\_\_\_  
FY \_\_\_\_\_ : \$ \_\_\_\_\_  
FY \_\_\_\_\_ : \$ \_\_\_\_\_

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<i>Meghan Hahn</i>	4/7/23	23-171
<b>Purchasing Agent</b>	<b>Date</b>	<b>Approval Number</b> (Reference on Purchasing Documents)