

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “**Agreement**”) is made and entered into this ___ day of _____, 202_ (the “**Effective Date**”), by and among SOCIETY OF AMERICAN GASTROINTESTINAL AND ENDOSCOPIC SURGEONS, 11300 W. Olympic Blvd., Suite 600 Los Angeles, CA 90064 (“**SAGES**”), on the one hand and _____ (“**INSTITUTION**”), on the other hand (individually, the “**Party**” and collectively, the “**Parties**”).

Recitals

WHEREAS, Fundamental Use of Surgical Energy™ (“**FUSE**”) is a FUSE program developed by SAGES.

WHEREAS, SAGES is defined as the service provider which supplies the FUSE online curriculums for the time of the contract. INSTITUTION is defined, in part, as an organization providing initial and continued medical training to those individuals working, either as an employee, independent contractor or agent of INSTITUTION. No modifications to the curriculums will be permitted.

WHEREAS, SAGES has agreed to issue a license to INSTITUTION which would allow Institution to host the FUSE online curriculums on their internal LMS pursuant to the terms agreed upon in this contract.

In consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby enter into the agreement set forth below:

AGREEMENT

1. Grant of License to INSTITUTION

a. SAGES hereby grants to INSTITUTION a license for the term of the rights described in Section 4, which would allow The Institution to host the FUSE online curriculums on their internal LMS. SAGES will provide the FUSE online curriculums that includes a current set of sample practice questions for each chapter but does not include the certification exams. The certification exam developed exclusively by SAGES for FUSE is not the subject of this agreement.

b. Institution further agrees to share scientific, and demographic data with SAGES during the course of the agreement and at its termination.

c. INSTITUTION acknowledges that SAGES is the owner of all right, title and interest in and to any additions or modifications made to the FUSE online curriculums by the INSTITUTION or any of its agents, representatives, or employees and that said additions or modifications made by INSTITUTION have to first be approved, at SAGES sole discretion, by SAGES.

d. Upon expiration or termination of this Agreement, INSTITUTION will no longer have any rights to use the FUSE online curriculums and any other associated SAGES intellectual property and shall return it to SAGES within fifteen days after termination.

e. INSTITUTION acknowledges that no ownership of the FUSE online curriculums will be transferred to INSTITUTION.

f. INSTITUTION hereby agrees that any modifications or changes that INSTITUTION, its agents, independent contractors or employees make to any of the FUSE online curriculums (“**Work**”) are a “work made for hire” as defined in the U.S. Copyright Act of 1976 or applicable law, and that SAGES will be considered the author of the Work for all purposes, and will be the owner of all rights comprised in the undivided copyright, and all renewals and extensions thereof in and to the Work, and of any and all other intellectual property rights in the Work, including, without limitation, patents, trade secrets, trademarks and service marks. Without limiting the generality of the foregoing, INSTITUTION expressly agrees that SAGES will be and will remain the sole owner of all rights in the Work of every kind and character whatsoever throughout the universe, whether or not those rights now exist or come into existence hereafter, and whether or not the rights are now known, recognized or contemplated.

g. All rights not expressly granted to INSTITUTION under this Agreement are hereby reserved to SAGES.

2. **SAGES’ Obligations**

a. SAGES shall provide the FUSE online curriculums to INSTITUTION with one current set of review questions per module in English.

b. SAGES shall provide to INSTITUTION the files relating to the FUSE online curriculums in SCORM via dropbox, or a similar outlet.

3. **INSTITUTIONS Obligations**

a. INSTITUTION will be responsible for uploading the files into their LMS and providing any and all IT assistance to its users.

b. INSTITUTION agrees to add the SAGES FUSE logos on all printed and electronic materials. INSTITUTION further agrees to incorporate all of SAGES trademarks on all SAGES FUSE logos used by the INSTITUTION.

c. INSTITUTION agrees to update SAGES once a year, which shall be the anniversary date of the effective date of this Agreement with all scientific and demographic data collected from INSTITUTION’s use of the FUSE online curriculums.

d. INSTITUTION agrees to participate and cooperate with SAGES as a co-editor and/or co-author concerning any peer reviewed publications based on the FUSE online curriculum and associated scientific and demographic data.

e. INSTITUTION shall not assign, sell, market or transfer this Agreement or any rights that it has obtained from it without SAGES prior written consent. Any such action without the written consent of SAGES shall be null and void.

4. **Term of this Agreement**

a. This Agreement shall be effective for one year from the effective date of this Agreement which is _____.

b. The INSTITUTION is not receiving any rights to a high stakes certification exam.

c. The INSTITUTION does not expect SAGES to assist with implementation and daily operations of the FUSE online curriculums.

d. This license shall be automatically renewable for additional periods of one year, unless notice of termination is given in accordance with Sections 6 and 13.

5. **Financial Terms**

a. As consideration for the issuance of the aforementioned license, INSTITUTION agrees to pay a sum of TBD US \$ annually for each of the available online curriculum, regardless of the number of surgeons trained during this period. SAGES reserves the right, at its sole discretion, to increase the amount charged INSTITUTION for the aforementioned license for each successive year.

b. Payments will be made within 30 days from the anniversary date of the signature of the present contract.

6. **Right to Terminate**

a. Either Party may terminate this Agreement in the event the other Party (a) becomes insolvent (as defined by the law applicable to such Party), (b) files a bankruptcy, (c) becomes the subject of an involuntary bankruptcy proceeding (or a proceeding for dissolution or liquidation) which is not dismissed within sixty (60) days of the filing date, (d) commences a proceeding to appoint a trustee, receiver or liquidator, (e) becomes the subject of a provisional attachment, attachment or execution, (f) makes an assignment for the benefit of creditors, or (g) if one Party commits a material breach of any of the terms or provisions of this Agreement and does not cure a Default as provided below.

b. In the event that Either Party (the “**Non-Defaulting Party**”) believes that the other Party (the “**Defaulting Party**”) has materially breached (“**Default**”) any term set forth in this Agreement the Non-Defaulting Party shall so notify the Defaulting Party in accordance with

paragraph 13 of this Agreement. The Non-Defaulting Party may terminate the manufacturing and distribution rights under this Agreement in the event the Defaulting Party fails to meet with the Non-Defaulting Party about the alleged material breach within fifteen (15) calendar days from the receipt of written notice from the Non-Defaulting Party. If the Parties meet and agree upon a remedy, then the defaulting party will have fifteen days after the agreement to cure the material breach and the Non-Defaulting Party may terminate any portion of this Agreement if the Defaulting Party has failed to cure the material breach within the aforementioned fifteen day.

c. The parties agree that all business and technical information that one party (“**Receiving Party**”) obtains from the other party (“**Disclosing Party**”) is confidential information of the Disclosing Party (“**Confidential Information**”). Confidential Information of SAGES, includes, but is not limited to the methods by which SAGES creates and develops the FUSE online curriculums and sample practice questions for each chapter. Confidential Information of INSTITUTION includes, but is not limited to, scientific and demographic data that it collects from INSTITUTION’s use of the FUSE online curriculums. Except as expressly and unambiguously allowed herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information of the Disclosing Party. Upon termination of this Agreement, or upon request of the Disclosing Party, the Receiving Party will return to the Disclosing Party all Confidential Information of the Disclosing Party, all documents and media containing such Confidential Information, and any and all copies or extracts thereof, or destroy such Confidential Information as directed by the Disclosing Party. Each Party may disclose Confidential Information to its employees, affiliates, independent contractors and subcontractors to the extent necessary to fulfill each Party’s obligations under this Agreement, provided that those employees are bound to confidentiality obligations at least as restrictive as those set forth herein. The Receiving Party will not be obligated under this Section with respect to information the Receiving Party can document: (a) is or has become readily publicly available without restriction through no fault of the Receiving Party or its employees or agents; (b) is received without restriction from a third party lawfully in possession of such information and lawfully empowered to disclose such information; (c) was rightfully in the possession of the Receiving Party prior to its disclosure by the other Party; (d) was independently developed by employees of the Receiving Party without access to Disclosing Party’s Confidential Information; or (e) is required to be disclosed by law or by order of a court of competent jurisdiction.

d. Each Party hereby acknowledges and agrees (a) that in connection with each Party’s rights and obligations under this Agreement, the Recipient has been placed in a position of trust and confidence by the disclosing party, and that the Recipient owes to the disclosing party a duty of confidentiality to the disclosing party with respect to the Confidential Information, (b) that the Confidential Information has actual or potential economic value which is unique to the disclosing party by virtue of the fact that it is not generally known to the public or to other individuals or business entities who could profit by its disclosure or use and that it is not readily available through any source other than the disclosing party, and (c) that it is the policy and practice of the disclosing party to keep the Confidential Information secret and confidential,

e. At all times throughout the Term of this Agreement and at all times thereafter, the Recipient (a) shall keep in strictest confidence the Confidential Information, and use the

Confidential Information for the sole purpose of performing its obligations under this Agreement; and (b) shall not, whether knowingly or otherwise, use or disclose, or induce or assist in the use or disclosure of, the Confidential Information, without the disclosing party's prior express written consent (unless disclosure is required to conform to the edicts of the law or to comply with legal process served on the Recipient,).

8. **Indemnification**

a. INSTITUTION shall indemnify, defend and hold SAGES, its members and its Personnel harmless from any liabilities, claims, or demands (including reasonable legal costs) that SAGES, its Members or its Personnel may sustain or incur as a result of a third party claim brought against SAGES as a consequence of a breach of this Agreement by INSTITUTION, except to the extent that willful or grossly negligent acts or omissions of SAGES, its Members, or its Personnel cause or contribute to the liability, claim or demand.

b. In the event that any claim or suit is brought against INSTITUTION by a third party alleging infringement of any United States copyright, trademark that SAGES licenses to INSTITUTION, SAGES agrees, at its expense, to defend INSTITUTION and its customers against such claim or suit relating to the FUSE online curriculum. As a condition of SAGES indemnification obligation under this Section, INSTITUTION will give SAGES full and complete authority, information and assistance to defend such claim or proceeding at the expense of SAGES, including sole control of the selection of counsel and the defense of any such claim or proceeding and all negotiations for its compromise or settlement. In no event, however, may SAGES enter into any settlement agreement which would in any manner whatsoever affect the right of or bind INSTITUTION without the prior written consent of INSTITUTION. If SAGES wishes INSTITUTION to defend any such claims of infringement, INSTITUTION may consider taking on the defense but shall seek from SAGES the reasonable costs and fees associated with defending the matter in the United States only. In no event, however, may INSTITUTION enter into any settlement agreement which would in any manner whatsoever affect the right of or bind SAGES without the prior written consent of SAGES.

c. Each party agrees to cooperate in any action under this Section which is controlled by the other Party and agrees to share the costs equally for any costs and expenses incurred by the cooperating Party in connection with providing such assistance.

3. **Force Majeure**

If either Party is prevented from performing any portion of this Agreement due to civil commotion, pandemic, acts of war, acts of a governmental authority, any law, regulation, ordinance, or acts of nature, which is beyond the reasonable control of the Party affected, such defaulting Party will be excused from performance for the period of the delay and for a reasonable time thereafter; provided, however, that if the period of nonperformance exceeds sixty (60) days the Party whose ability to perform has not been affected may terminate this Agreement by giving written notice to the other Party.

4. **(Sections 4 and 5 should remain in the agreement. Lets discuss)Relationship of Parties**

Nothing contained in this Agreement shall be construed to constitute SAGES as a partner, employee, joint venturer or agent of INSTITUTION, nor shall SAGES or INSTITUTION hold itself out as such. Neither Party has any right or authority to incur, assume or create, in writing nor otherwise, any warranty, liability or other obligation of any kind, express or implied, in the name of or on behalf of the other, other than those warranties, liabilities or obligations expressed in this Agreement. The Parties agree that both SAGES and INSTITUTION shall remain an independent contractor responsible for its own actions.

5. **Execution**

The Parties shall execute such instruments and documents and diligently undertake such actions as may be required in order to consummate the transaction contemplated by this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

6. **Entire Agreement**

This Agreement, including the following Appendices incorporated by reference hereto, constitutes the entire Agreement between the Parties pertaining to the subject matter and supersedes all prior agreements and understanding between parties, written or oral, with respect to such subject matter.

7. **Amendment**

The Parties agree that this Agreement, together with any Appendices attached hereto, may be amended from time to time in writing by mutual agreement of the parties. No Party will be bound by any change, alteration, amendment, modification or attempted waiver of any of the provisions of this Agreement unless in writing and signed by an authorized officer of the Party against whom it is sought to be enforced.

8. **Severability**

If any term, provision, covenant or condition of this Agreement is held invalid or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way effect the validity or enforceability of the remaining portions of this Agreement. This Agreement was jointly drafted by the Parties and neither Party shall be construed as the drafting Party. Subject to any restrictions set forth in this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.

9. **Waiver**

The waiver by either Party of a default or breach of any provision of this Agreement by the other Party will not operate or be construed as a waiver of any subsequent default or breach.

10. **Authority**

Both Parties represent and warrant to each other that they have the right and lawful authority to enter into this Agreement and thereby bind the Party on behalf of which he or she signed without further approval or other action by or from that Party for the purposes herein and that there are no other outstanding agreements or obligations inconsistent with the terms and provisions hereof. Except as otherwise set forth in this Agreement, neither Party has made or is making any representations or warranties to the other Party with regard to any matter involving the transaction contemplated by this Agreement.

11. **Notices and Other Communications**

All notices, approvals, demands, or other communications required or permitted hereunder shall be in writing, and shall be sent by an internationally recognized overnight courier or sent by facsimile or electronic mail, and shall be deemed given upon receipt. All notices, approvals, demands, or other communications shall be deemed received upon the earlier of (i) if sent by overnight courier, the date of delivery to the address of the Parties as set forth below, or (ii) if sent by facsimile or electronic mail, the date of receipt by the person to whom such notice is addressed, provided that the sender of such notice receives electronic confirmation of such person's receipt thereof.

If to SAGES:

SOCIETY OF AMERICAN GASTROINTESTINAL AND ENDOSCOPIC
SURGEONS
11300 W. Olympic Blvd., Suite 600
Los Angeles, CA 90064

12. **No Variations**

This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes all prior and contemporaneous agreements, whether written or oral, between the Parties. This Agreement may be amended only by an instrument in writing which expressly refers to this Agreement and specifically states that it is intended to amend it.

13. **Successors and Assigns**

This Agreement shall be binding upon the Parties, their legal representatives and successors.

14. **Headings**

Headings of clauses have been included for purposes of convenience only and shall not affect the interpretation of this Agreement.

15. **Validity**

The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision.

16. **Counterparts**

The Parties shall execute such instruments and documents and diligently undertake such actions as may be required in order to consummate the transaction contemplated by this Agreement. This Agreement may be executed in two (2) counterparts, each of which will be deemed an original, but both of which together will constitute but one and the same instrument. This Agreement may be executed and delivered by mail or email and the Parties agree that such mail or email execution and delivery will have the same force and effect as delivery of an original document without original signatures, and that each Party may use such mail or email signatures as evidence of the execution and delivery of this Agreement by all Parties to the same extent that an original signature could be used.

17. **Joint Drafting**

The Parties hereby acknowledge and agree that this Agreement has been jointly drafted by them and neither of these Parties will be construed as the drafting party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

SOCIETY OF AMERICAN
GASTROINTESTINAL AND
ENDOSCOPIC SURGEONS

By: _____

Name: _____

Title: _____

INSTITUTION

By: _____

Name: _____

Title: _____