

**NON-DISCLOSURE, NON-COMPETITION AND
NON-CIRCUMVENTION AGREEMENT**

THIS NON-DISCLOSURE, NON-COMPETITION AND NON-CIRCUMVENTION AGREEMENT (the “Agreement”) is made and entered into as of this ____ day of _____, 2024 (the “Effective Date”) by and between the Society of American Gastrointestinal and Endoscopic Surgeons, (hereinafter referred to as “SAGES”) on the one hand, and _____ (“Recipient”).

Recitals

This Agreement is made and entered into with reference to the following facts, which are hereby incorporated into, and made a material part of, the agreement set forth below:

A. SAGES is engaged in the development, marketing and future sale of an automated skills scoring system for its Fundamentals of Laparoscopic Surgery (FLS) program (herein after referred to as “the system”).

B. SAGES wishes to discuss with Recipient the possibility of a future collaboration in the development of an automated scoring system for its FLS skills exam.

C. In order to accommodate SAGES, Recipient hereby agrees and acknowledges that the program contains certain confidential and proprietary information relating to the content of the program and deconstructed skills set, all of which was and is confidential and proprietary information. Recipient hereby acknowledges that said confidential and proprietary information has significant value to SAGES and provides SAGES with significant competitive advantage.

D. SAGES has been and continues to be willing to disclose to Recipient such confidential and proprietary information, but only on the condition that Recipient agrees to maintain the strictest secrecy and confidence with respect to such information and to refrain from using such information to SAGES’ disadvantage, as the unauthorized disclosure and/or use thereof Recipient hereby acknowledges would result in great harm to SAGES.

E. In reliance upon the foregoing, SAGES, on the one hand, and Recipient, on the other, now desire to memorialize their agreement with respect to the disclosure of such confidential and proprietary information by SAGES to Recipient and Recipient’s use thereof.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, the terms, covenants, conditions and mutual promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Recipient and SAGES do hereby enter into the following agreement.

Agreement

1. **Definitions.**

1.1 **Proprietary Information.** As used in this Agreement, the term “Proprietary Information” shall mean any and all information, in whatever form, that (a) is not known by Recipient or is generally unavailable to the public at the time of disclosure, (b) has been created, discovered, developed or otherwise become known to SAGES, and (c) has actual or potential economic value to SAGES and/or is otherwise useful to SAGES in connection with SAGES’ business, either now or in the future. “Proprietary Information” shall include, without limitation, trade secrets (as that term is defined under California Civil Code Section 3426.1) and all other developments, designs, improvements, projections, models, specifications, research, analyses, blueprints, drawings, product formulas and specifications and all other strategic, technical, marketing, sales, financial and operational information relating to SAGES, which may be disclosed to Recipient by SAGES or may otherwise be learned or discovered by Recipient, either directly or indirectly, in writing, orally, by observation or otherwise.

1.2 Recipient. As used in this Agreement, the term “Recipient” shall include any and all shareholders, directors, officers, employees, agents, representatives and affiliates of Recipient.

2. Duty of Trust and Confidentiality. With respect to the Proprietary Information and all other information related, applicable or useful to SAGES which may be or already has been made known to Recipient by SAGES, or which otherwise may have been or may be learned or discovered by Recipient, Recipient hereby acknowledge that they owe a strict duty of trust and confidence to SAGES.

3. Non-Disclosure. At all times, after the execution of this agreement, Recipient shall keep in strictest confidence and trust the Proprietary Information and the Contacts and shall not, whether knowingly or otherwise, use or disclose, or induce or assist in the use or disclosure of, the Proprietary Information, without SAGES’ prior express written consent.

4. Returning SAGES’ Documents and Other Tangible Items. Recipient shall, at all times, maintain a record of the location of all Proprietary Information. Recipient shall not take or allow any individual or entity to take, and Recipient shall deliver to SAGES all original copies and reproductions (in whatever form) of the Proprietary Information that are in Recipient’s possession or subject to Recipient’s control, including, without limitation, all analyses, compilations, studies, records, sketches, reports, notebooks, proposals, lists, correspondence, documents, computer disks, photographs, negatives, videos, notes, drawings, specifications, tape recordings and other electronic recordings, programs and data if Recipient decides in the future that it no longer needs to use the program. Upon the cessation of its use of the program for any reason, Recipient agrees that any and all documentation, materials or other information (in whatever form) prepared by Recipient or another individual or entity at Recipient’s request which are based upon any Proprietary Information will either be retained by Recipient and kept confidential pursuant to the terms of this Agreement or destroyed. Recipient hereby acknowledges that they understand that the unauthorized taking of any Proprietary Information may be a crime under Section 499c of the California Penal Code, and may also result in civil liability under Sections 3426.1 through 3426.11 of the California Civil Code.

5. Non-Competition. At all times, Recipient shall not use any of the Proprietary Information and/or the Contacts in such a manner as to compete, directly or indirectly, with SAGES or in any other manner which is detrimental to SAGES, or to further, promote or otherwise assist any other individual or entity to do the same.

6. No License. Recipient hereby acknowledge that no license or any other right, title or interest in any Proprietary Information, either express or implied, is being granted to Recipient hereunder.

7. Equitable Remedies. Recipient hereby acknowledge that irreparable injury will result to SAGES from its violation of any of the terms of this Agreement and hereby expressly agrees that SAGES shall be entitled, in addition to damages and any other remedies provided by law, to an injunction or other equitable remedy respecting such violation or continued violation.

8. Attorneys Fees. In connection with any lawsuit or arbitration arising out of or relating to this Agreement or the relationship between the parties hereto, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorney’s fees, and related costs and expenses, as fixed and determined by the court.

9. Miscellaneous. This Agreement contains the entire understanding between the parties concerning the subject matter of this Agreement and supersedes all prior understandings and agreements, whether oral or written, between them respecting the subject matter hereof. This Agreement may be amended, supplemented or otherwise modified only by an agreement in writing signed by all of the parties hereto. The provisions of this Agreement are severable, and if any one or more provisions are determined to be judicially unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall

nevertheless be binding and enforceable. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy existing at law, in equity or otherwise. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. The waiver or excuse by either party hereto as to any breach, default or deficiency in the performance by the other party of any duty or obligation by the other party to be performed hereunder shall not constitute or be deemed a continuing waiver or excuse of the same or any other duty or obligation owed by the other. The terms and conditions of this Agreement shall survive and continue to apply to the parties after cessation of the Projects. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of California. If any dispute arises out of or relating to this agreement, then the Superior Court of the State of California, County of Los Angeles, Northwest Judicial District shall retain exclusive jurisdiction and venue over this matter. Certain of the parties' signatures are affixed hereto in a representative capacity and each of the individuals executing this Agreement in such representative capacity hereby represents and warrants that he is authorized to execute this Agreement on behalf of and to bind the individual or entity on whose behalf his signature is affixed.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

THE SOCIETY OF AMERICAN
GASTROINTESTINAL AND ENDOSCOPIC
SURGEONS

By: _____

By: _____
Jessica Mischna
Director of Fundamentals