



Laser Institute of America

Laser Applications and Safety

NETWORK SITE LICENSE AGREEMENT

This Agreement is made and entered into as of _____, 2009 by and between _____, having a principal place of business located at _____ (Street Address, City, State, and Zip Code) Licensee and the Laser Institute of America, Inc. ("LIA"), incorporated in the state of California, whose business operations are located at 13501 Ingenuity Drive, Suite 128, Orlando, Florida 32826, either or both of which shall also be hereinafter referred to as the "Party" or "Parties", respectively.

WHEREAS your licensed rights to the Laser Safety Training for Physicians On-Line Course (referred to as the Course) and information provided, including Course Notes and Sample Forms (referred to as the Course Materials) are limited to the following: ,

- LIA owns the exclusive rights to publish, print, duplicate, reproduce, package, distribute, sell and/or lease the Course and Course Materials and owns all copyright rights; and
- Licensee desires to obtain a Network Site License to share an electronic version of the Course and printable Course Materials and to utilize the Course in electronic form on multiple computers for internal use at a single site location at _____ (Street Address, City, State, and Zip Code) (hereinafter the "Site License"); and
- LIA is willing to grant such a Site License for the Course and Course Materials to Licensee and Licensee is willing to accept a Site License, on the terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of these premises and the mutual obligations hereinafter set forth, the Parties agree as follows:

1. **Definitions:**

- (a) "The Licensed the Course and Course Materials" shall mean the content presented.
- (b) "A single site" shall mean the facilities under the control of Licensee at its principal place of the Site License as noted above.
- (c) "To use" (per clause 2) the Licensed the Course and Course Materials shall mean Licensee may distribute the electronic version over its intranet having multiple computers.

2. **License:**

LIA agrees to grant and Licensee agrees to accept a nontransferable, non-exclusive and limited license, with no right to sublicense, to use the Licensed the Course and Course Materials subject to the terms and restrictions set forth in this Agreement. Licensee's rights hereunder are those of a licensed user only and are limited as follows:

- (a) **Copyright and Permitted Use.** The Licensed Course and Course Materials are copyrighted, and except as set forth herein, all rights therein are reserved to LIA. Licensee shall not alter the content (including paragraph numbering) of the Licensed Course and Course Materials. The Licensed Course and Course Materials are to be used in an electronic format by Licensee for the use by those individuals employed by or otherwise engaged by the Licensee in research, education, and development in furtherance of the Licensee's business, including employees, contractors, subcontractors, consultants and students. The license granted in this Agreement is for internal use only over the Licensee's intranet. Neither Licensee nor any authorized user may post the Licensed Course and Course Materials on the Internet or otherwise make the Licensed Course and Course Materials available on the Internet. Licensee shall not allow access to the Licensed Course and Course Materials by any third party. Licensee is responsible for incorporating appropriate security measures to assure that only authorized users can access the Licensed Course and Course Materials.
- (b) **Copying.** Authorized users of Licensee may reproduce the electronic version of the Licensed Course Materials, as needed, on paper or in electronic format for temporary use, and personal use only, by such authorized users as long as all copies retain the LIA's copyright notice and no copies are distributed to third parties.
- (c) **Security Measures.** Licensee must incorporate security measures to prohibit unauthorized access when the Licensed Course and Course Materials are delivered electronically via the Internet and/or any other public network, and provided that delivery over the Internet or other public network is permitted only when authorized users are accessing the Licensee's intranet or LIA's host site. The Licensed Course and Course Materials shall not be made publicly available, or permitted to be published, without security on an open network, without the prior written approval of LIA.

3. **Term:**

The term of this Agreement is for one (1) year beginning on the date LIA receives payment and Licensee signs on to site. This Agreement may be extended for additional term(s) upon mutual agreement of LIA and Licensee in writing.

4. **License Fee:**

Licensee agrees to pay LIA the applicable fees for the term of this one (1) year license. The initial license fee is due upon execution of this Agreement. Each renewal license fee is due

“Net 30 days” of receipt of invoice from LIA which may be delivered electronically by LIA. The license granted by this Agreement is effective once payment is made and Licensee signs onto the site, but the term of this Agreement will commence as provided in Section 3. Any updates or revisions to the Licensed Course and Course Materials published during the term of this Agreement shall be made available to Licensee for distribution over Licensee’s intranet at no additional charge.

5. **Termination:**

- (a) This Agreement may be earlier terminated by the parties only as follows:
 - (i) by written mutual agreement of Licensee and LIA;
 - (ii) the insolvency of or the petition by or on behalf of either Party for bankruptcy or reorganization under bankruptcy laws or any assignment for the benefit of creditors;
 - (iii) by either party, in the event of a material breach of this Agreement by the other party (other than a payment default), if such breach is not cured within ten (10) days after written notice of such breach; and
 - (iv) by LIA in the event of a failure by Licensee to make license fee payments and any such failure is not cured within ten (10) days after written notice thereof.
- (b) Upon termination of this Agreement, Licensee agrees to cease distribution of the Licensed Course and Course Materials via Licensee’s intranet or otherwise and shall destroy any copies of the License Course and Course Materials. Upon LIA's request, Licensee shall provide to LIA an officer's certificate of destruction, in form acceptable to LIA.

6. **Copyright Protection:**

Licensee shall use its best efforts to assure that its employees and other authorized users do not engage in the unauthorized duplication, reproduction or copying of those Licensed Course and Course Materials. Licensee shall ensure that any extant copyright notice is visible on the Licensed Course and Course Materials and that its authorized users are advised of the terms and conditions of use under this Agreement.

7. **Indemnity:**

LIA, any agent, representative, publisher or distributor of the Licensed Course and Course Materials, or any of their respective directors, officers, employees, agents, representatives or members (“the LIA Indemnified Parties”) shall have no liability for, and Licensee shall defend, indemnify and hold each of the LIA Indemnified Parties harmless from and against, any claim, loss, demand, liability, obligation and expense (including reasonable attorneys' fees and costs) based upon or arising out of any injury or damage including but not limited to, any personal or bodily injury or property damage, arising out of, pertaining to, or resulting in any

way from, the use or possession of any of the Licensed Course and Course Materials by Licensee and/or any party obtaining or accessing the Licensed Course and Course Materials from Licensee whether authorized or unauthorized.

8. **Confidentiality.**

The Parties agree that the financial terms (including but not limited to royalty rates) of this Agreement are considered as confidential information. The Parties shall keep such financial terms in confidence and shall not, at any time during the term of the Agreement, without the other Party's prior written consent, disclose or otherwise make such financial terms available, directly or indirectly, to any third party.

9. **LIMITED WARRANTY:**

LIA MAKES NO REPRESENTATION OR WARRANTY OR CONDITION OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED COURSE AND COURSE MATERIALS, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE SUFFICIENCY, ACCURACY OR UTILIZATION OF, OR ANY INFORMATION OR OPINION CONTAINED OR REFLECTED IN, ANY OF THE LICENSED COURSE AND COURSE MATERIALS. LIA EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO OFFICER, DIRECTOR, EMPLOYEE, MEMBER, AGENT, OR REPRESENTATIVE OF LIA IS AUTHORIZED TO MAKE ANY MODIFICATION, EXTENSION, OR ADDITION TO THIS LIMITED WARRANTY.

10. **LIMITATION OF LIABILITY:**

- (a) Licensee acknowledges that each of LIA's obligations and liabilities with respect to the Licensed Course and Course Materials are exhaustively defined in this Agreement. Licensee is responsible for the consequences of any use of any of the Licensed Course and Course Materials (whether or not such use was consistent with the license granted hereunder), including any changes Licensee may make to the Licensed Course and Course Materials (whether authorized or unauthorized). WHETHER OR NOT LIA HAS BEEN ADVISED OF THEIR POSSIBILITY, NEITHER LIA NOR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, REPRESENTATIVES OR AGENTS, SHALL BE LIABLE, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS, DAMAGE, COST OR EXPENSE OF ANY KIND WHATSOEVER AND HOWSOEVER CAUSED, THAT MAY BE SUFFERED BY LICENSEE OR ANY OF ITS DIRECTORS, OFFICERS, MANAGERS, MEMBERS, EMPLOYEES, AGENTS, REPRESENTATIVES OR CONTRACTORS OR ANY THIRD PARTY.
- (b) If at any time an allegation of infringement of any rights of any third party is made, or in LIA's opinion is likely to be made, with respect to any of the Licensed Course and Course Materials, LIA may, at its option and at its own expense (i)

obtain for Licensee the right to continue using the Licensed Course and Course Materials, (ii) modify or replace the Licensed Course and Course Materials or any portion thereof so as to avoid any such claim of infringement, or (iii) refund to Licensee the License Fee. LIA SHALL HAVE NO LIABILITY TO LICENSEE IF ANY CLAIM OF INFRINGEMENT WOULD HAVE BEEN AVOIDED EXCEPT FOR LICENSEE'S REFUSAL TO USE ANY MODIFIED OR REPLACEMENT LICENSED COURSE AND COURSE MATERIALS SUPPLIED OR OFFERED TO BE SUPPLIED PURSUANT TO THIS SECTION OR TO OTHERWISE CEASE USING THE LICENSED COURSE AND COURSE MATERIALS. LIA'S LIABILITY TO LICENSEE FOR DAMAGES, IF ANY, SHALL NOT EXCEED THE AMOUNT OF THE LICENSE FEE PAID BY LICENSEE FOR THE LICENSED COURSE AND COURSE MATERIALS SUBJECT TO ANY SUCH CLAIM.

- (c) Section 10 states the entire liability of LIA with respect to the infringement or alleged infringement of any third party rights of any kind whatsoever by any of the Licensed Course and Course Materials.

11. **General:**

- (a) Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms, and further agrees that this is the complete and exclusive statement of the Agreement between the Parties, which supersedes and merges all prior proposals, understanding and all other agreements, oral and written, between the Parties relating to this Agreement. Licensee acknowledges that it is not relying on any warranty or representation not expressly set forth herein in entering into this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both Parties.
- (b) The terms and conditions of this Agreement are severable. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed to the minimum extent necessary to make it enforceable, and such reformation shall not affect the enforceability (i) of such provision under other circumstances, or (ii) of the remaining provisions hereof under all circumstances.
- (c) Licensee may not transfer, assign, sublicense, or subcontract, without the prior written consent of LIA, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part. Transfers, assignments, sublicenses, and subcontracts in violation hereof shall be voidable at LIA's option.

12. **Notices:**

Any and all notices required to be given hereunder shall be in writing, sent by registered or certified mail, return receipt requested, addressed to the parties at their respective addresses specified below and are effective when mailed. Alternatively, either a facsimile transmittal, an e-

mail transmittal, an overnight messenger or courier or an “express mail” transmittal, with a confirmation shall be acceptable. Either party by like notice may specify a different address:

For LIA: Laser Institute of America
13501 Ingenuity Drive, Suite 128
Orlando, FL 32826
Attn: Peter M. Baker, Executive Director
(407) 380-1553 Fax: (407) 380-5588
E-Mail: pbaker@laserinstitute.org

For Licensee: Company Name: _____
Address: _____
Address: _____
Contact’s Name: _____
Telephone: _____
Fax: _____
Email Address: _____

13. **Force Majeure.**

Neither party shall be responsible for any delay or failure in performance resulting from acts entirely beyond its control.

14. **Governing Law; Consent to Jurisdiction:**

This Agreement shall be governed by the laws of the State of Florida without reference to its conflict of laws provisions and Licensee further consent to jurisdiction by the state and federal courts sitting in the State of Florida. Licensee waives any objection to these courts including inconvenient forum.

15. **WAIVER OF JURY TRIAL. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN CONNECTION WITH ANY ACTION ARISING UNDER OR RELATED TO THIS AGREEMENT.**

16. **Export.** In addition to the restrictions on use contained in this Agreement, Licensee may not load or export or re-export any of the Licensed Course and Course Materials or any underlying information or technology except in full compliance with all United States and other applicable laws and regulations. Licensee shall take all necessary steps to assure that its authorized users are aware of the foregoing restrictions and abide by the foregoing restrictions. Nothing in this Section implies that the license granted by LIA hereunder permits any load, export or re-export of the Licensed Course and Course Materials.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized representative hereinafter identified.

LASER INSTITUTE OF AMERICA, INC.

By: _____
Print Name: _____
Date: _____

By: _____
Peter M. Baker, Executive Director
Date: _____

SAMPLE