

# IMAGE SUBLICENSE AGREEMENT

THIS SUBLICENSE AGREEMENT (“Agreement”) is effective upon registration for the Lumenis Physician Portal, by and between Lumenis, Inc. (“Lumenis”) a Massachusetts corporation with offices at 5302 Betsy Ross Drive, Santa Clara, CA 95054 and Sublicensee (“Sublicensee”).

## 1. Images

Lumenis has the right and license to use the copyrighted images described (each an “Image”, collectively the “Images”). The Images are owned by the individuals who photographed them and protected by the intellectual property laws of the United States and International copyright conventions.

## 2. Grant of Rights and Use of Images

2.1. Lumenis hereby grants Sublicensee a personal, non-assignable, non-transferable, non-exclusive right to use the Images for the following limited applications:

- 2.1.1 teaching and training.
- 2.1.2 publication in medical literature and presentation at scientific meetings.
- 2.1.3 publication in teaching guides or training materials for clinical training workshops.
- 2.1.4 promotion and patient education, including posting on Internet websites or other media outlets, patient brochures and clinical case books.

2.2. When posting, publishing or reproducing an Image in any manner, Sublicensee must credit the photographer of each Image as listed in Exhibit A with the statement “Courtesy of (name of photographer).”, and include the following statement in close proximity to the Image: “This is an example. Actual results may vary.”

2.3. Sublicensee is not granted any derivative, electronic or digital rights or any other rights whatsoever in the Images. A derivative work is anything sourced from or referenced from a pre-existing Image.

2.4. Sublicensee may not sell, rent, trade, loan, give, license, sublicense, or otherwise transfer to anyone the Images or the right to reproduce the Images. Sublicensee agrees to take all commercially reasonable steps to prevent third parties from reproducing, duplicating, or distributing the Images.

2.5. Lumenis reserves the right to withdraw an Image from use for any reason and Sublicensee agrees to destroy any file and discontinue the uses of any Image that has been withdrawn.

## 3. Restrictions on Use

3.1. Sublicensee agrees not to retouch or alter the Images in any manner.

3.2. Sublicensee agrees not to use or permit the use of the Images in any manner that might be considered defamatory, libelous, pornographic, fraudulent, infringing or otherwise unlawful, whether directly or in context or juxtaposition with specific subject matter or by altering it in any way.

3.3. Sublicensee agrees not to place the Images online in a downloadable format.

## 4. Term and Termination

The “Term” of this Agreement shall be indefinite. Lumenis may terminate this Agreement effective immediately with or without cause upon written notice to the Sublicensee. Sublicensee’s rights contained in this Agreement will terminate automatically without notice if Sublicensee fails to comply with any provision of this Agreement. Upon termination, Sublicensee must immediately (a) stop using the Images and (b) delete the Images and all copies from all electronic and or magnetic media and destroy all other copies of the Images, or upon request return all such copies to Lumenis.

**5. Indemnification**

Sublicensee agrees to indemnify and hold Lumenis harmless from any and all claims, liabilities, damages, costs and expenses, including reasonable attorney's fees, arising from the use of an Image or any breach of this Agreement.

**6. Limitation of Liability**

6.1. Under no circumstances will Lumenis be liable for any damages whatsoever (including without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) arising out of the use of or inability to use the Images even if Lumenis has been advised of the possibility of such damages.

6.2. The Images are provided to Sublicensee on an "as is" basis. Lumenis makes no warranties of any kind, either express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose or non-infringement to the fullest extent permissible pursuant to applicable law. Lumenis and its directors, officers, employees, parents, subsidiaries, affiliates or agents shall not be liable for any damages, whether direct, indirect, consequential or incidental, or other damages arising out of the use of, or the inability to use the Images.

**7. Governing Law.** This Agreement shall be governed by and construed according to the law of the State of California, exclusive of conflicts of law provisions that would permit or require the application of the laws of a different jurisdiction. Sublicensee agrees that any action for enforcement of this Agreement or any other dispute arising under this Agreement shall be filed exclusively in courts or before arbitrators in Santa Clara County, California.

**8. Entire Agreement; Amendment.** This Agreement sets forth the entire understanding and agreement between the parties. All prior understandings or representations, whether oral, written, based on "industry custom" or past dealings, are hereby merged in this Agreement. No terms or conditions may be added unless made in writing and signed by both parties. No action of Lumenis, other than an express written waiver, may be construed as a waiver of any part of this Agreement, and no employee is authorized to waive it orally.

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