



## **TERMS OF USE**

April 2023 version

### **PREAMBLE**

The ILASIS LASER company (hereinafter referred to as “**ILASIS**”) develops, manufactures and sells ultrafast lasers and medical systems for eye surgery.

As part of its activity, ILASIS particularly uses frugal innovative technologies as well as in-depth know-how enabling it to imagine, study, develop, perfect, promote, sell and distribute laser-based devices for ophthalmologic surgery (hereinafter referred to as “**Rx device**”) under the brand “Helix Surgical”.

In order to use the Rx device, the End User needs to insert an Activation card in the reader of the Rx device.

These Terms of Use provide the conditions under which the End User shall use the Activation card.

**This having been stated, the following has been agreed and decided upon:**

### **ARTICLE 1: DEFINITIONS**

1. **Activation card:** refers to the card provided by ILASIS that is inserted in the reader of the Rx device.
2. **Activation code:** refers to the codes contained in the Activation cards that are activated one by one at each shot in order to use the Rx device.
3. **EULA:** refers to these Terms of USE.
4. **DISTRIBUTOR:** refers to ILASIS's independent partner, authorised and trained by ILASIS to market the Rx devices.
5. **Party:** here refers to ILASIS or the End User.
6. **End User:** refers to any natural or legal person who has the right to use the Rx device in the context of this latter's professional activity.

### **ARTICLE 2: PURPOSE**

**ILASIS LASER** - Simplified joint stock company with capital of €194,425  
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The purpose of the EULA is to define the conditions under which ILASIS grants to the End User the right to use the Activation card designated in the preamble and under the conditions hereafter developed.

### **ARTICLE 3: USING THE ACTIVATION CARD**

ILASIS requires that the surgeon has been previously trained and obtained the dedicated certification necessary to use the Rx device.

The conditions of use of the Activation card are described in the instructions for use of the Rx device which specify the technical checks to be performed by the surgeon before using the Rx device on a patient.

The Activation card contains a defined number of activations codes corresponding to the same number of shots that can be performed by the surgeon using the Rx device.

Once inserted in the reader of the Rx device, the Activations codes contained in the Activation card are activated one by one at each shot in order to use the Rx device.

The Activation card can be used in any Rx device.

It will only be possible to use the Activation card if the number of Activation codes contained on this card is superior or equal to one (1).

If the Activation card is lost by the End User, ILASIS will not replace it or refund its price.

### **ARTICLE 4: GUARANTEES/LIABILITY**

#### **4-1 / Guarantees**

##### **4-1-1 Compliance Guarantee**

Any reservation or dispute regarding the compliance or the operation of the Activation card shall be immediately notified by the End User to the DISTRIBUTOR by registered letter with acknowledgment of receipt upon receipt of the products.

The End User will provide any justification as to the reality of the defects or faults found, and to take all steps so that ILASIS can make the finding of such defects or faults.

The End User shall refrain from intervening itself or from using a third party for this purpose.

Failure to comply with these conditions will result in the Activation card being deemed to be compliant and ILASIS's liability will not be challenged, the End User being held responsible for any damage suffered by ILASIS as a result of non-compliance with this procedure.

No return of Activation card may take place without the prior written consent of ILASIS.

In the event of a return accepted by ILASIS, a new Activation card will be shipped to the End User *via* the DISTRIBUTOR.

#### 4-1-2 Warranty disclaimer

The warranty referred to in article 4-1-1 are excluded in cases where:

- the End User has failed to observe the instructions for use of the Activation card, or
- the End User has directly or indirectly modified the Activation card, or
- the Activation card was used by a surgeon who does not hold the required certification to use the Rx device.

#### **4-2 / Liability**

4-2-1 ILASIS's liability is related to the scope and the admissibility of the guarantee referred to in article 4-1-1 of the EULA.

Thus, ILASIS's liability cannot be retained if the conditions of eligibility for the application of the aforementioned guarantee are not met.

Moreover, ILASIS cannot be held liable for any of the following types of damages, regardless of the type of liability claim, and even if ILASIS has been informed of the possibility of such damages:

- consequential damage, collateral damage, accessories, special, moral,
- damages resulting from loss of profits, loss of opportunity, loss of business, revenue shortfall or loss of use, suffered by the End User or any third party..

In any case, ILASIS's liability is limited to the price of the Activation card paid by the End User.

4-2-2 The End User shall be liable for any damage caused to ILASIS due to the failure to observe any of its legal and contractual obligations.

#### **4-3 / Force majeure**

The non-fulfilment of all or part of its obligations by one or other of the Parties cannot incur liability if the non-performance is due to an event of force majeure.

By express agreement, and without this constituting an exhaustive list, the following events shall be deemed to constitute force majeure, irrespective of the criteria of irresistibility, unpredictability and externality, if they are beyond the control of the Parties and even if they are only partial:

- loss of supply of energy, failure and/or interruption of the transmission networks, including access to the Internet,
- fire, lightning, flood and other natural disasters, water damage, exceptional weather conditions, disaster, epidemic, riot, war, civil war, insurrection, attack, explosion, act of vandalism,
- total or partial strike, lockout.

The case of force majeure suspends the obligations of the Parties affected by it for its entire duration and as long as its effects are felt.

Nevertheless, should the consequences of the force majeure last more than sixty (60) consecutive days, each Party may terminate the EULA by notifying this decision by any means without this termination entitling either Party to any compensation. The termination will take effect no later than eight (8) days after the date of dispatch of the notification.

## **ARTICLE 5: DELIVERY - FINANCIAL CONDITIONS**

Activation cards are sent to the End User by ILASIS or the DISTRIBUTOR by mailing.

The price of the Activation card is mentioned in the purchase order issued by the DISTRIBUTOR and signed by the End User.

The price of the Activation card will be paid to the DISTRIBUTOR.

## **ARTICLE 6: CONFIDENTIALITY**

ILASIS is prohibited from communicating to anyone, whether directly or indirectly, all or part of information of any kind, commercial, industrial, technical, financial, nominative, etc., communicated to it by the End User, or of which it may have become aware when executing the EULA.

For its part, the End User agrees to keep strictly confidential and is prohibited from communicating to anyone, directly or indirectly, all or part of the information of any kind, commercial, industrial, technical, financial, nominative, etc., communicated to it by ILASIS or the DISTRIBUTOR, or of which it may have become aware during the execution of the EULA.

Each of the Parties shall take all necessary steps to ensure that its employees who are aware of this information by their activity are bound by the provisions of this article.

This confidentiality undertaking will continue as long as the confidential information is not in the public domain.

## **ARTICLE 7: GENERAL PROVISIONS**

### **7-1 / Tolerances**

It is formally agreed that any forbearance or waiver by one of the Parties, on the application of all or part of the obligations set out under the EULA, whatever their frequency and duration may have been, cannot be considered a modification of the EULA, nor create any right whatsoever.

### **7-2 / Partial invalidity**

The invalidity or non-applicability of any single one of the stipulations of the EULA does not imply the invalidity of the other stipulations, which retain all their force and impact.

The Parties may however, by mutual agreement, agree to replace the invalid stipulation(s).

### **7-3 / Governing Law**

By express agreement between the Parties, the EULA is subject to French law, to the exclusion of any other legislation.

### **7-4 / Disputes**

7-4-1 In order to find together a solution to any dispute that may arise in the execution of the EULA, ILASIS and the End User agree to meet within thirty (30) days from the receipt of a registered letter with an acknowledgement of receipt, notified by one of the two Parties.

If, after a period of two (2) months, the Parties cannot agree on a compromise or a solution, the dispute will then be submitted to the competent jurisdiction described below.

7-4-2 In the absence of an amicable agreement, the most diligent Party will bring the matter before the competent French courts.

IF THE END USER IS A TRADER, THE PARTIES AGREE TO SUBMIT ANY DISPUTE RELATING TO THE CONCLUSION, INTERPRETATION, EXECUTION OR TERMINATION OF THE EULA TO THE JURISDICTION OF THE COMPETENT COURTS HAVING JURISDICTION OVER THE REGISTERED OFFICE OF ILASIS, INCLUDING INTERLOCUTORY PROCEEDINGS, NOTWITHSTANDING RECOURSE IN WARRANTY OR PLURALITY OF DEFENDANTS.

### **7-5 / Domiciliation**

For the execution hereof and their consequences, the Parties shall respectively elect domicile at their headquarters.

## **ARTICLE 8: PERSONAL DATA**

The personal data of the End User (or its representatives) transmitted to ILASIS will be used by ILASIS for the operation of the Activation card.

Personal data shall be collected in accordance with article 6.1(b) of Regulation (EU) No 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

This data is for ILASIS only. It may, however, be communicated to third parties to respond to an injunction by the legal authorities made to ILASIS.

This personal data shall be retained for the duration of the use of the Activation card and beyond for a period of three (3) years for commercial prospecting purposes.

The data may also be kept for a longer period in order to fulfil a legal or regulatory obligation or to avail itself of a right, during the time required for the fulfilment of the obligation or the limitation of the right in question.

The individual whose End User has communicated the personal data to ILASIS, justifying its identity, may exercise its right of access, rectification and/or deletion of the information concerning it and contained in ILASIS's databases, upon request to the latter by post to its registered office.

They also have a right to limit the processing of their personal data, to erasure, to portability of their personal data, to withdraw their consent and to file a claim with the French Data Protection Agency (CNIL).

They may also object to the use of their personal data for prospecting purposes and generally to the processing of its personal data for legitimate reasons.

They may give general or specific instructions respectively to a trusted third party certified by the CNIL or to ILASIS concerning the retention, deletion and disclosure of their personal data after their death. It may appoint a person responsible for the execution and modify them at any time.

In the absence of directives given in their lifetime, their heirs will have the opportunity to exercise certain rights, in particular the right of access.