

Philips Lumify Service Subscription Agreement

IMPORTANT -- READ THESE TERMS CAREFULLY BEFORE CONFIRMING YOUR LUMIFY ORDER

When you confirm your Lumify order, you acknowledge that you have read this subscription agreement and agree to be bound by its terms. Your order and agreement to this subscription does not constitute acceptance by Philips. Philips will notify you of acceptance of your order. If the party named as the subscriber in the order confirmation is a corporation, institution or other legal entity, you represent that you are authorized on behalf of such entity to bind such entity to this subscription agreement. This is an agreement between you (the individual, corporation, institution or other legal entity identified in the order confirmation via the Lumify website) and Philips North America LLC. ("Philips").

What is the Lumify Service? The Lumify Service (or the "Service") consists of (i) rental by you of one or more ultrasound transducers owned by Philips and (ii) the grant by Philips to you of a license to the Lumify software application for use with such transducer(s). The Service includes a limited warranty, as long as you subscribe, and the option to purchase an extended protection plan (also known as a "premium warranty").

The order confirmation will identify (a) the model of the transducers that you are renting, (b) the subscription price and (c) your election to purchase an extended protection plan. In the case of 6, 12, 18 or 24 month Prepaid Subscription Term Plans the subscription price will be fixed for the duration of such term. The subscription price will be fixed for the first year of the subscription period. Thereafter, Philips may change the subscription price at any time on 30 days prior written notice.

The Lumify Service is made available on a subscription basis only pursuant to the terms hereof.

Internet connectivity is not required to use the Lumify Service, but is required in order to download the app and to register the transducer for the first time. To maintain continuous availability of the Service, the application on your smart device will be required to be connected to the internet at least once every 30 days.

As part of the Lumify Service, Philips periodically collects diagnostic information and you agree to such collection when you subscribe to the Lumify Service. Please see the Privacy Notice for more details.

Philips has the right to modify this subscription agreement at each renewal of a 6, 12, 18 or 24 month subscription plan. If you do not agree to any such modified agreement, then you may provide notice of non-renewal as described below under "Prepaid Subscription Term Plans".



Rental of transducers. Philips is renting ultrasound transducers to you for duration of this subscription. Ownership of the transducers is not being transferred from Philips to you. You must return transducers to Philips upon termination of the subscription. Philips will provide you with a prepaid shipping label. You are solely responsible for proper care and use of the transducers during the subscription period. The transducers may be new or used transducers that have passed all Philips quality control procedures.

Title to the transducers will at all times remain with Philips. You will not pledge, hypothecate, sell, lease, transfer, assign or otherwise encumber the transducers, nor allow any liens or security interests or other rights in the transducers to be filed, registered, perfected, or granted in any way.

You will bear all risk of loss (including theft or damage due to fire, flood or other casualty loss) with respect to the transducers from the date of your receipt from Philips until the transducers are returned to Philips. All transducers returned to Philips must be in the same condition as originally provided to you except for normal wear and tear. If you do not return the transducer(s) in the same condition (except for normal wear and tear), Philips reserves the right to charge you a per transducer “damaged equipment” fee in the amount of Five Thousand Dollars (\$5,000). An extended protection plan is available to cover casualty loss at an extra charge.

Philips will remotely disable the service upon termination of your subscription or in the case of loss or theft.

License to App. Philips grants to you, as licensee, a limited, non-exclusive, non-transferable license to use the Lumify software application and all bug fixes and certain updates thereto (the “Lumify App” or the “App”) on one or more computers or smart devices that are listed on the approved hardware list published on the Lumify website for the duration of the subscription. Software upgrades that introduce major additional functionality are not licensed hereunder, but may be offered at an additional charge.

The Lumify App is available via the GooglePlay store. When downloaded, the Lumify App is in demonstration mode only but will be fully enabled upon purchase of a subscription and activation of the transducer via the Lumify website. Philips will remotely disable the Service upon termination of your subscription.

You have no ownership rights in the Lumify App. Rather, you have a license to access and use the App for the duration of the subscription. Ownership of the App and all intellectual property rights therein shall remain at all times with Philips (or if applicable a third party licensor). Any access or use of the App by any other person, business, corporation, government organization or any other entity is strictly forbidden and is a violation of this Agreement.

The Lumify App contains material that may be protected by patent, copyright and trade secret law, and by international treaty provisions. All rights not granted to you herein are expressly reserved by Philips (or, if applicable, a third party licensor).



You agree not to publish, display, disclose, rent, lease, modify, loan, distribute, or create derivative works based on the App or any part thereof. You acknowledge that the Lumify App contains proprietary trade secrets of Philips or if applicable a third party licensor, and you agree to maintain the confidentiality of the App software using at least as great a degree of care as you use to maintain the confidentiality of your own most confidential information, but in no event less than reasonable care.

Prepaid Subscription Term Plans. Philips may offer 6, 12, 18 and 24 month subscription term plans. For these plans, the subscription period will commence on the date that is 10 calendar days after shipment of the transducers to you and will continue for a period of 6, 12, 18 or 24 months, as the case may be. Neither Philips nor you is entitled to terminate these plans prior to the end of the subscription term.

At the end of the applicable term, the subscription will automatically renew for an equivalent term at the same pricing unless you or Philips provide written notice at least 30 calendar days prior to the end of such term.

Termination or Expiration. If you (or Philips) provide notice of non-renewal at the end of a prepaid subscription term plan, then you will return the transducer(s) to Philips. Philips will provide you with a prepaid shipping label. If you do not return the transducer(s) within 30 days after termination or expiration of the term, Philips reserves the right to charge you a per transducer “lost equipment” fee in the amount of Five Thousand Dollars (\$5,000).

Subscription Payment Terms; Taxes. The subscription payment for the entire term (either 6, 12, 18, or 24 months) is payable at commencement of the term. Philips will invoice you for such amount at commencement of the term, and you will pay such invoice within 30 days of the date of invoice.

The subscription price does not include applicable sales, excise, use, or other taxes in effect or later levied. Philips will invoice you for those taxes, and you will pay those taxes in accordance with the terms of the invoice.

In the alternative, you may provide credit card information to Philips or its authorized contractor and you hereby authorize Philips or its authorized contractor to charge your credit card account.



Use of Compatible Smart Devices. In order to use the Lumify Service, you must purchase at your own expense a smart device from the approved list published on the Lumify website. The Service does not include the required smart device.

Philips does not provide any maintenance or repair services for compatible smart devices. You bear the sole responsibility to maintain and repair compatible smart devices at your own expense. Likewise, Philips does not provide anti-virus software as part of the Service. You bear the sole responsibility to purchase and manage all virus issues in connection with compatible smart devices. Further, the Lumify Service does not include any security software for the smart devices. You bear the sole responsibility to manage and maintain firewalls or other appropriate security for data residing on compatible smart devices.

Support. 24-7 self-help support is available online at www.Lumify.com/support. Remote support experts are available during normal business hours at 1.800.722.9377

30 Day Money Back Guarantee (for new customers only). If you are not satisfied with the Lumify Service for any reason, simply notify Philips at any time within 30 days of the commencement of the subscription period and return the transducer within such 30 day period, and no fees will be due hereunder. This offer is available to new customers only.

If you use the Lumify Service at no charge pursuant to the 30 day money back guarantee, that may constitute a discount. You must fully and accurately report such discount on cost reports or other applicable claims for payment submitted under any federal healthcare program, including Medicare and Medicaid as required by federal law (see 42 CFR 1001.952[h]).

Limited Warranty. Philips warrants to you that the Lumify Service will perform in substantial compliance with its published specifications during the subscription period. The warranty does not apply: (i) if the transducer is contaminated with blood or other potentially infectious substances; (ii) if the transducer is used with equipment other than the list of compatible smart devices published on the Lumify website; (iii) in the event of alteration or improper storage, handling, use or maintenance of the transducer by anyone other than Philips or its authorized representatives; (iv) to any damage caused by an external source, regardless of nature; and (v) for damage due to neglect or misuse of the transducer.

Philips' obligations under the warranty are limited, at Philips' option, to repair or replacement. The obligations of Philips described above are Philips' only obligations and your sole and exclusive remedy for a breach of warranty with respect to the Lumify Service.

If requested, you agree to return the transducer to Philips so that Philips may repair or replace the transducer. Philips will provide you with a pre-paid shipping label for such purpose.



Extended Protection Plan. Under the extended protection plan (also known as the “premium warranty”), if the transducer is damaged due to fire, flood or any other casualty event, or loss or theft, then Philips will, at its option, repair or replace the transducer up to a maximum of two events in any 12 month period.

Limitation of Liability. Philips makes no other guarantees or warranties of any kind relating to the Lumify Service and expressly disclaims all warranties whether express or implied, written or oral, with respect to the Lumify Service and the transducer, including warranty of merchantability or fitness for a particular purpose. The maximum liability of Philips arising out of providing the Lumify Service or its use, whether based on warranty, contract, indemnity, tort or otherwise, shall not exceed all payments received by Philips from you under this agreement during the one year period prior to the event giving rise to the claim. This limitation shall not apply to (a) third party claims for bodily injury caused by Philips negligence or defect in the Lumify Service, (b) out of pocket costs incurred by you to provide patient notifications required by law, to the extent such notices are caused by unauthorized disclosure of personal health information by Philips and (c) fines/penalties levied against you by government agencies citing unauthorized disclosure by Philips of personal health information as the basis for such fines/penalties. **In no event shall Philips be liable for special, incidental or consequential damages including without limitation lost revenues or profits, business interruption, loss of data or the cost of substitute products or services.**

Patent Infringement Claims. Philips shall indemnify, defend, and hold you harmless against any new claim that the transducer or the Lumify App infringes, misappropriates, or violates any third party intellectual property right, whether patent, copyright, trademark, or trade secret, provided that you: (a) provide Philips prompt written notice of the claim; (b) grant Philips full and complete information and assistance necessary for Philips to defend, settle, or avoid the claim; and (c) give Philips sole control of the defense or settlement of the claim.

If a transducer or the Lumify App is found or believed by Philips to infringe such a claim or you have been enjoined from using the transducer and/or the Lumify App pursuant to an injunction issued by a court of competent jurisdiction, Philips may, at its option: (i) procure the right for you to use the transducer and App; (ii) replace or modify the transducer or App to avoid infringement; or (iii) refund to you a portion of the subscription price upon the return of the transducer. Philips shall have no obligation for any claim of infringement arising from modifications to the transducer or the App by you or your agents; use of the transducer or the App other than in accordance with the specifications or applicable written instructions; use of the transducer or App with any other product, including tablets or other smart devices regardless of whether such tablets or other smart devices are on the approved list; if infringement would have been avoided by the use of a current unaltered release of the transducer or App; or use of the transducer or App after Philips has advised you, in writing, to stop use of Lumify Service in view of the claimed infringement. Philips will not be liable for any claim where the damages sought are based directly or indirectly upon the amount of use of the Lumify Service. The terms in this section state Philips’ entire obligation and liability for claims of infringement, and your sole remedy in the event of a claim of infringement.



Compliance with Laws; Privacy. Philips collects or uses personal information in connection with your use of the Lumify Service. Philips values and respects your privacy. Please see the privacy notice for details of how and under what circumstances Philips collects and uses such personal information.

Your use of the Lumify Service does not enable or allow Philips to access protected health information (as such term is defined in the HIPAA Privacy Rule).

Each party shall comply with all laws, rules, and regulations applicable to the party in connection with the transactions contemplated hereby, including, but not limited to, those relating to affirmative action, fair employment practices, FDA, Medicare fraud and abuse, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

General Terms. The following additional terms shall be applicable to your subscription to the Lumify Service:

Excluded Provider. Philips represents and warrants that Philips and its employees and subcontractors are not debarred, excluded, suspended or otherwise ineligible to participate in a federal health care program, nor have they been convicted of any health care related crime. Philips shall promptly notify you when it becomes aware that Philips or any of its employees or subcontractors providing services hereunder have become an excluded provider, whereupon you may terminate your subscription by providing written notice.

Interest on Late Payments. You agree to pay interest on any amount not paid when due at the maximum rate permitted by applicable law. If you fail to pay any amount when due, in addition to any other rights or remedies available to Philips at law or in equity, Philips may disable the Lumify App and discontinue the Lumify Service and deduct the unpaid amount from any amounts otherwise owed to you by Philips under any agreement with you. In any action initiated to enforce the terms hereof following your default, Philips shall be entitled to recover as part of its damages all costs and expenses, including reasonable attorneys' fees, in connection with such action.

Force Majeure. Each party shall be excused from performing its obligations (except for payment obligations) arising from any delay or default caused by events beyond its reasonable control including, but not limited to, acts of God, acts of third parties, acts of any civil or military authority, fire, floods, war, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any government act, regulation or request, shortage of labor, materials or manufacturing facilities.

Assignment. You may not assign any rights or obligations under the subscription without the prior written consent of Philips, which consent shall not be unreasonably withheld, and any attempted assignment without such consent shall be of no force or effect.

Governing Law. This subscription agreement shall be governed by the laws of the state where the Lumify Service will be accessed and used, without regard to that state's choice of law principles, and expressly



excluding application of the Uniform Computer Information Transactions Act (“UCITA”), in any form. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.

Entire Agreement. This Subscription Agreement and the order confirmation constitute the entire understanding and agreement by and between the parties with respect to the transactions contemplated hereby, and supersede any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated hereby. No additional terms, conditions, consents, waivers, alterations, or modifications shall be binding unless in writing and signed by the parties. Additional or different terms and conditions, whether stated in your purchase order or other document issued by you, are specifically rejected and shall not apply to the transactions contemplated hereby.

Course of Dealing. The failure of you or of Philips at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary standards and customary practice or interpretation in matters involving the sale, delivery, installation, use, or service of similar or dissimilar products or services shall not serve as references in interpreting this subscription agreement.

Severability. If any provision of this Agreement is deemed to be illegal, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall not be affected or impaired, and shall continue in full force and effect.

Performance. The failure of you or of Philips at any time to require the performance of any obligation hereunder will not affect the right to require such performance at any time thereafter.

Obligations. Your obligations are independent of any other obligations you may have under any other agreement, contract or account with Philips. You will not exercise any right of offset in connection with this subscription agreement or in connection with any other agreement, contract or account with Philips.



