

Liquivision Xen and Enlightened PC Interface User Agreement and Warranty

► IMPORTANT NOTICE

THIS LIQUIVISION XEN USER AGREEMENT AND WARRANTY (THIS “AGREEMENT”) IS AN AGREEMENT BETWEEN YOU AND LIQUIVISION PRODUCTS INC. (“LIQUIVISION”). YOUR USE OF THE LIQUIVISION XEN DIVE COMPUTER AND THE OPTIONAL ENLIGHTENED PC INTERFACE (TOGETHER, THE “XEN”) IS SUBJECT TO THE TERMS AND CONDITIONS SET OUT IN THIS AGREEMENT. THIS AGREEMENT ALSO SETS OUT LIQUIVISION’S WARRANTY OF THE XEN EXCLUSIONS AND LIMITATIONS OF LIQUIVISION’S LIABILITY TO YOU, PROVISIONS GOVERNING THE RESOLUTION OF DISPUTES AND CLAIMS BETWEEN YOU AND LIQUIVISION, AND OTHER

. IF YOU USE THE XEN, YOU ARE DEEMED TO HAVE AGREED TO THIS AGREEMENT.

INCORRECT USE OF THE XEN OR ITS ACCESSORIES WILL INVALIDATE YOUR WARRANTY AND CAN CAUSE PERMANENT DAMAGE TO THE XEN ITS ACCESSORIES .

1. Your Risks and Responsibilities

Scuba diving, free diving and any other form of underwater diving (all of which are referred to in this Agreement as “diving”) are inherently dangerous and risky activities. Even with the best training, planning and equipment, participants may be injured or may die. If you choose to participate in diving, you accept the risk of injury or death and the responsibility to take all necessary steps to reduce these risks. Without limiting the foregoing, it is your sole responsibility to:

- obtain appropriate training;
- obtain, maintain and conduct appropriate pre-dive tests and checks of appropriate diving equipment, including redundant and back-up equipment to compensate for equipment failures while diving;
- plan your dive in advance and prepare and keep with you a dive plan;
- dive only within your abilities and experience and in accordance with your dive plan;
- practice safe diving techniques, including not diving alone.

You also have the responsibilities set out in sections 3, 4, 5, 6 and 10 below.

2. Liquivision and the Xen

When purchased by you, the Xen consists of: (i) the Xen Dive Computer hardware unit (the “Xen Unit”) encased in a protective waterproof shell, (ii) the optional Enlightened PC Interface computer hardware unit encased in a protective shell (the “PC Interface Unit”), (iii) Liquivision’s bottom-timer software component and the Enlightened PC Interface software (collectively, the “Software”), (iv) a wrist strap, bungee cord, USB cable, and any other accessories that may be included. When you purchase the Xen, you become the owner of the Xen (but not any patent or other intellectual property rights in the Xen, including in the Software, all of which remain the sole and exclusive property of Liquivision). The optional Enlightened PC Interface, its Software and accessories are sold separately from the Xen Dive computer, its Software, and accessories. In the event that you have not purchased the Enlightened PC Interface, its Software and accessories, all references in this Agreement to the “Xen” refer only to the Xen Dive Computer, its Software and accessories

3. License to the Software

- 3.1. License: Subject to the provisions of this Agreement, Liquivision grants you a license to use the Software in accordance with this Agreement. Each license is non-exclusive, personal to you, non-sublicensable, restricted and limited, and subject to the provisions of this Agreement. Your Software license applies only to the specific Xen Unit bearing the serial number registered by you on www.liquivision.com, and the specific Enlightened PC Interface you have purchased and for which you can produce a valid receipt. Your Software license commences on the date on you activate the Software on www.liquivision.com.
- 3.2. Restrictions and Requirements: You will not, directly or indirectly: (i) use, disclose, or provide or permit access to or use of the Software except as expressly permitted in this Agreement; (ii) copy, reproduce, translate, modify, enhance or improve the Software; (iii) create derivative works from the Software or merge, embed or combine the Software with any other software or materials; (iv) reverse engineer, disassemble, decompile, convert into human-readable form, or otherwise attempt to access or derive the source code of the Software; (v) license, sublicense, sell, resell, lend, lease, loan, rent, share, transfer, assign, pledge, publish, transmit, publicly display or perform, distribute, create any interest in, or otherwise give or make available per permit access to or use of the Software or its functionality or any results of its use to or for the benefit of any other person, and with or without charge; (vi) alter, attempt to circumvent, destroy, obscure, conceal, modify or remove any notices (including trademark and copyright notices), proprietary codes or locks, means of identification, digital rights tools or management information, or agreements on, in or in relation to the Software; or (vii) permits or assist any person to use the Software in a way that would constitute an infringement of Liquivision's rights or a breach of this Agreement if done by you.
- 3.3. Ownership: You acknowledge and agree that Liquivision retains all rights, titles and interests (including intellectual property rights) throughout the world in, to and associated with the Software, including all copies of the Software provided to you. The Software is licensed (not sold) for limited purposes to you. The Software and related intellectual property rights are protected by intellectual property laws and treaties throughout the world. You will not acquire any right, title or interest in, to or associated with the Software pursuant to this Agreement or otherwise. Notwithstanding any other provision of this Agreement, under no circumstances will Liquivision be obligated to provide, nor will you be entitled to receive, obtain or access, any source (human readable) code for the Software. All rights not expressly granted under this Agreement are reserved to Liquivision.
- 3.4. Disclaimer: Liquivision is not responsible for any problems you may experience as a result of use of the Software, including death, personal injury or loss or damage to your data or other personal property.

4. Warranty

- 4.1. Warranty & Warranty Period: The Warranty Periods are:
- 4.1.1. Two (2) years for the Xen Unit and Software;
- 4.1.2. Two (2) years for the Enlightened PC Interface and Enlightened PC Software (whether included in the original Xen sales package or sold separately).
- 4.1.3. One (1) year for parts and accessories including (but not limited to) wrist straps, bungee cords, and USB cables.

4.2. Remedy: In the event of any breach of the Warranty, Liquivision's sole liability and obligation to you, and your sole right and remedy against Liquivision, is for Liquivision, at its option, to either: (i) repair or replace the defective component of the Xen; or (ii) replace the defective Xen in its entirety; or (iii) refund the purchase price for the defective Xen. If Liquivision repairs or replaces your Xen, the repaired or replacement Xen is subject to the Warranty for the remainder of the original Warranty Period of the repaired or replaced Xen or three months from the date of repair or replacement, whichever is longer. Any part removed from a Xen during repair and any Xen that is replaced or for which a refund is given by Liquivision, or by a Dealer on behalf of Liquivision, under the Warranty becomes the property of Liquivision. In fulfillment of the Warranty, Liquivision and its Dealers may use parts that are new, equivalent to new or reconditioned in the repair of a Xen, and may provide a new, equivalent to new or reconditioned Xen in replacement of another Xen. Neither Liquivision nor any of its Dealers will be liable to compensate you for any loss of use of the Xen as a result of any warranty claim, including as a result of any delay in the repair or replacement of your Xen.

4.3. Warranty Limitations and Exclusions: The Warranty is subject to the following limitations and exclusions:

- The Warranty applies only if the Xen Dive Computer is used while worn by a human being diving to a depth not exceeding 200 metres (656 feet). The Warranty is void in the event of any other use.
- The Enlightened PC Interface and its USB cables are not intended for use underwater, and any submersion of those items in water will void the Warranty in respect of those items.
- The Xen must be used in accordance with the Xen User Manual. The Warranty does not apply to defects or damage caused by: (i) misuse, neglect or improper or rough handling (including punctures, bending, compressing or dropping of the Xen); (ii) any use of the Xen not in accordance with the Xen User Manual; (iii) use of the Xen with or connection of the Xen to any product, accessory, software and/or service not manufactured, supplied or approved by Liquivision, including without limitation USB cables not provided by Liquivision; (iv) normal wear and tear; (v) accidents, fire, power changes, other hazards, acts of God and other causes beyond the reasonable control of Liquivision; (vi) modification of the Software by you;
- The Warranty will be void if: (i) the Xen has been opened, modified or repaired by any person other than Liquivision, with the exception of the opening of the battery compartment of the Xen Dive Computer solely for the purpose of replacing the battery in accordance with the User Manual and this Agreement; (ii) the Xen Dive Computer's serial number has been removed, erased, defaced or altered in any way or is illegible, as determined by Liquivision in its sole discretion; or (iii) the Xen has been exposed to chemical products, including mosquito repellants.
- The Warranty does not cover changes to the Xen Dive Computer display as a result of aging or use, including display burn-in or decreased brightness over time, which are a natural result of the use or aging of the Xen Dive Computer display and are not a defect. Liquivision recommends using the Xen display on the lowest required brightness setting to reduce the results of display aging and use.
- The Warranty does not cover loss or damage to the Xen Dive Computer as a result of improper maintenance of the Xen Dive Computer's O-rings, including but not limited to dry, cracked, dirty or dusty O-rings. Liquivision may agree in its sole discretion to repair such loss or damage, entirely at your cost.
- The Xen Dive Computer is mounted to the wrist strap using spring pins. You acknowledge and agree that spring pins may break or lose hold. You also acknowledge and agree that the wrist strap may break, and the Xen Dive Computer could become detached from the wrist strap. During the Warranty Period, Liquivision will repair or replace broken wrist straps or spring pins, but Liquivision will not be liable for any loss of the Xen Dive Computer as a result of a broken or defective wrist strap or spring pin.

- The Xen Dive Computer may be mounted to your wrist using the bungee cord provided. You acknowledge and agree that the bungee cord may break, and that the Xen could become detached from the bungee cord. During the Warranty Period, Liquivision will replace broken bungee cords, but Liquivision will not be liable for any loss of the Xen Dive Computer as a result of a lost, broken or defective bungee cord.

5. Replacement of Xen Battery

Your Battery: The Xen Dive Computer is fitted with a specific brand and model of battery (the Battery), details of which are contained in the Xen User Manual . You may replace the Battery in your Xen Dive Computer as required, in accordance with the Xen User Manual and this Agreement. subject to the following:

- IT IS YOUR RESPONSIBILITY TO MONITOR BATTERY VOLTAGE AND ENSURE THE XEN DIVE COMPUTER HAS ENOUGH BATTERY LIFE TO COMPLETE YOUR PLANNED DIVE. LIQUIVISION IS NOT RESPONSIBLE AND WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM OR IN CONNECTION WITH THE XEN DIVE COMPUTER POWERING OFF AS A RESULT OF INSUFFICIENT BATTERY LIFE.
- LIQUIVISION WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGE TO THE XEN DIVE COMPUTER ARISING FROM OR IN CONNECTION WITH THE REPLACEMENT OF THE BATTERY NOT IN ACCORDANCE WITH THE XEN USER MANUAL, INCLUDING WITHOUT LIMITATION THE INCORRECT OR FORCEFUL INSERTION OF THE BATTERY CAP, WHICH CAN DAMAGE THE SCREW THREADS ON THE CAP OR IN THE XEN UNIT. LIQUIVISION MAY AGREE TO REPAIR ANY SUCH DAMAGE AT LIQUIVISION'S SOLE DISCRETION, AND ENTIRELY AT YOUR COST.
- LIQUIVISION WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGE TO THE XEN DIVE COMPUTER ARISING FROM OR IN CONNECTION WITH A FLOODED BATTERY COMPARTMENT, WHETHER OR NOT THE BATTERY HAS BEEN REPLACED.
- RE-CHARGING A NON-CHARGEABLE BATTERY CAN CAUSE A FIRE OR EXPLOSION. SHORTING OUT THE BATTERY CAN SIMILARLY CAUSE A FIRE OR EXPLOSION. LIQUIVISION WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM OR IN CONNECTION WITH THE RECHARGING OR SHORTING OUT OF THE BATTERY.

6. Warranty Procedure

If you believe you have a warranty claim in respect of your Xen, please consult the online help resources available at www.liquivision.com/contact.php or referred to in the Xen User Manual before submitting your warranty claim and seeking warranty service. If you still believe you have a warranty claim, then contact the Dealer from which you purchased your Xen, or Liquivision at info@liquivision.ca if you purchased your Xen Interface through the Liquivision website.

You are responsible for all shipping costs (including insurance) incurred when sending your Xen to Liquivision or a Dealer and returning your repaired or replacement Xen to you. Before returning or sending your Xen to Liquivision or a Dealer, you must remember to make back-up copies of any content or data that is installed or stored on the Xen, as these may be lost during repair of the Xen, and will not be transferred to a replacement Xen. Neither Liquivision nor its Dealers will be liable for any loss of, damage to or corruption of any settings, content or data that is installed or stored on the Xen during repair or replacement.

7. Transfer of Your Xen

You may sell, give, rent or lend your Xen to another person, provided that you give that person this Agreement at the same time and they agree to this Agreement. You will not sell, give, rent or lend your Xen, or otherwise permit any person to use your Xen, unless that person has agreed to this Agreement. If you purchased your Xen

from a Dealer, you must also give that person proof of your date of purchase of your Xen, without which they will not be entitled to submit a claim under the Warranty.

8. No Other Representations, Warranties, Conditions or Guarantees

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE WARRANTIES PROVIDED UNDER SECTION 4 ABOVE ARE YOUR SOLE AND EXCLUSIVE RIGHTS AND REMEDIES, AND LIQUIVISION'S SOLE AND EXCLUSIVE LIABILITIES AND OBLIGATIONS TO YOU, IN CONNECTION WITH YOUR PURCHASE AND USE OF THE XEN, AND ARE IN LIEU OF EVERY AND ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES OF ANY NATURE OR KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, INCLUDING ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF OR RELATING TO ACCURACY; CAPACITY; COMPLETENESS; DELAYS; DURABILITY; ERRORS; FITNESS FOR A PARTICULAR PURPOSE; LACK OF NEGLIGENCE, VIRUSES OR OTHER HARMFUL COMPONENT, ERRORS, OR INTERRUPTED SERVICE; MERCHANTABILITY; NON-INFRINGEMENT; PERFORMANCE; RESULTS; SUITABILITY; QUALITY; TIMELINESS; TITLE; SIMILARITY OR WORKMANLIKE EFFORT; ALL OF WHICH ARE HEREBY DISCLAIMED BY LIQUIVISION TO THE FULLEST EXTENT PERMITTED BY LAW.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LIQUIVISION MAKES NO REPRESENTATION, WARRANTY, CONDITION OR GUARANTEE THAT: (A) THE XEN WILL BE AVAILABLE OR WILL FUNCTION WITHOUT INTERRUPTION OR WILL BE FREE OF ERRORS OR THAT ANY ERRORS WILL BE CORRECTED; (B) DATA PROCESSED BY THE XEN OR ANY SOFTWARE INSTALLED ON THE XEN WILL BE ACCURATE, COMPLETE, SEQUENTIAL, OR TIMELY; (C) CERTAIN OR ANY RESULTS MAY BE OBTAINED THROUGH THE USE OF THE XEN; (D) THE USE OF THE XEN WILL BE FREE OF ERRORS, VIRUSES, TROJAN HORSES, WORMS OR OTHER DESTRUCTIVE OR DISRUPTIVE COMPONENTS; (E) THE USE OF THE XEN WILL NOT INFRINGE THE RIGHTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS) OF ANY PERSON; (F) YOUR XEN WILL RESEMBLE OR OPERATE IN AN IDENTICAL FASHION TO ANY OTHER XEN (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO DISPLAY BRIGHTNESS, TAP SENSITIVITY, BATTERY LIFE, OR COLOUR); AND LIQUIVISION DISCLAIMS ANY AND ALL LIABILITY REGARDING SUCH MATTERS TO THE FULLEST EXTENT PERMITTED BY LAW.

9. Exclusion of Damages

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND EXCEPT FOR LIQUIVISION'S WARRANTY OBLIGATIONS UNDER SECTION 4 ABOVE, IN NO EVENT WILL LIQUIVISION BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY LOSS OR DAMAGE ARISING FROM, CONNECTED WITH, OR RELATING TO THE XEN, THE USE OF THE XEN, THIS AGREEMENT, THE SUBJECT MATTER OF THIS AGREEMENT, OR OTHERWISE, OR FOR LOSS OF DATA, INFORMATION, BUSINESS, MARKETS, SAVINGS, INCOME, PROFITS, USE, PRODUCTION, OR GOODWILL, ANTICIPATED OR OTHERWISE, OR ECONOMIC LOSS.

10. Personal Injury or Death

YOU AGREE THAT YOU UNDERSTAND AND ACCEPT ALL RISKS ASSOCIATED WITH DIVING, AND THAT LIQUIVISION IS NOT LIABLE TO YOU OR ANY OTHER PERSON, INCLUDING YOUR HEIRS, EXECUTORS OR PERSONAL REPRESENTATIVES, FOR ANY LOSS, DAMAGE, COST, EXPENSE OR CLAIM ARISING OUT OF, CAUSED BY OR RELATING TO YOUR PERSONAL INJURY OR DEATH WHILE DIVING, EVEN IF YOUR PERSONAL INJURY OR DEATH IS CAUSED, IN WHOLE OR IN PART AND DIRECTLY OR INDIRECTLY, BY THE XEN OR YOUR USE OF THE XEN, AND REGARDLESS OF WHETHER OR NOT THE XEN FUNCTIONED PROPERLY OR WAS DEFECTIVE IN ANY WAY.

YOU HEREBY IRREVOCABLY WAIVE AND RELEASE LIQUIVISION FROM ANY LIABILITY OR OBLIGATION TO YOU OR YOUR HEIRS, EXECUTORS OR PERSONAL REPRESENTATIVES FOR ANY LOSS, DAMAGE, COST, EXPENSE OR CLAIM ARISING OUT OF, CAUSED BY OR RELATING TO YOUR PERSONAL INJURY OR DEATH WHILE DIVING, EVEN IF YOUR PERSONAL INJURY OR DEATH IS CAUSED, IN WHOLE OR IN PART AND DIRECTLY OR INDIRECTLY, BY THE XEN OR YOUR USE OF THE XEN, AND REGARDLESS OF WHETHER OR NOT THE XEN FUNCTIONED PROPERLY OR WAS DEFECTIVE IN ANY WAY.

11. Limitation of Liability

IF NOTWITHSTANDING THE PROVISIONS OF SECTIONS 8, 9 AND 10 OF THIS AGREEMENT LIQUIVISION HAS ANY LIABILITY OR OBLIGATION TO YOU IN RESPECT OF ANY MATTER REFERRED TO IN THOSE SECTIONS, LIQUIVISION'S TOTAL CUMULATIVE LIABILITY TO YOU, YOUR HEIRS, EXECUTORS AND PERSONAL REPRESENTATIVES AND TO ANY OTHER PERSON ARISING FROM, CONNECTED WITH, OR RELATING TO THIS AGREEMENT, THE XEN, YOUR USE OF THE XEN OR OTHERWISE, FROM ANY AND ALL CAUSE OR CAUSES WILL NOT, IN THE AGGREGATE, EXCEED THE PURCHASE PRICE OF THE XEN, AND YOU HEREBY RELEASE LIQUIVISION FROM ANY AND ALL OBLIGATIONS, LIABILITIES, CLAIMS OR DEMANDS IN EXCESS OF THIS LIMITATION.

12. Application of Exclusions and Limitations

SECTIONS 9, 10 AND 11 SHALL APPLY TO ALL LOSSES, DAMAGES, COSTS, EXPENSES, CLAIMS, LIABILITIES AND OBLIGATIONS REFERRED TO THEREIN, UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY, STATUTORY LIABILITY OR ANY OTHER THEORY OR LAW OR EQUITY), REGARDLESS OF ANY NEGLIGENCE (INCLUDING GROSS NEGLIGENCE) OR OTHER FAULT OR WRONGDOING BY LIQUIVISION OR ANY PERSON FOR WHOM LIQUIVISION IS RESPONSIBLE, AND EVEN IF LIQUIVISION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE BEING INCURRED.

13. Exception to Exclusions and Limitations

The exclusion of certain warranties and the exclusion or limitation of certain liabilities is prohibited by legislation in some jurisdictions. Such legislative limitations may apply to you.

14. References to Liquivision

In sections 8, 9, 10, 11 and 12, references to Liquivision include Liquivision's past, present and future directors, officers, employees, agents, representatives, successors and assigns.

15. Interpretation

In this Agreement: (i) a reference to "this Agreement" and other similar terms refers to this Agreement as a whole, and not just to the particular provision in which those words appear; (ii) "including" means including without limitation; (iii) headings in this Agreement are for reference only and do not define, limit or enlarge the scope or meaning of this Agreement or any of its provisions; (iv) words importing the singular number only include the plural and vice versa; and (v) words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, societies, and corporations.

16. Enurement

The provisions of this Agreement will enure to the benefit of and be binding upon the Liquivision and its successors and assigns and you and your heirs, executors, personal representatives and permitted assigns. You may not assign this Agreement except with your Xen in accordance with section 7 above.

17. Governing Law and Jurisdiction

This Agreement and all related matters will be governed, and construed in accordance with, the laws of British Columbia, Canada and applicable federal laws of Canada, excluding the United Nations Convention for the International Sale of Goods and any rules of private international law or the conflict of laws which would lead to the application of any other laws. Any dispute arising from, connected with, or relating to this Agreement or any related matters will be resolved by the courts of British Columbia sitting in the City of Vancouver, British Columbia, Canada and you hereby irrevocably submit and attorn to the original and exclusive jurisdiction of those courts in respect of any and all such matters.

18. Severability

If any provision of this Agreement is determined to be unenforceable or invalid for any reason, then that provision will be deemed to be severed from this Agreement and the remaining provisions will continue in full force and effect without being impaired or invalidated in any way, unless as a result of any such severance this Agreement would fail in its essential purpose.

19. Entire Agreement

This Agreement constitutes the entire agreement between Liquivision and you regarding the subject matter of this Agreement and supersedes any and all previous communications, representations, negotiations, discussions, agreements or understandings, whether oral or written, between you and Liquivision or between you and any Dealer with respect to the subject matter of this Agreement. This Agreement may be modified only by a written instrument signed by Liquivision or its successors or assigns.