

## Restech DataView™ End User License Agreement

**NOTICE TO USER:** PLEASE READ THIS CONTRACT CAREFULLY. BY USING ALL OR ANY PORTION OF THE RESTECH DATAVIEW™ SOFTWARE ("SOFTWARE") YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, IN PARTICULAR THE LIMITATIONS ON: USE CONTAINED IN SECTION 2; TRANSFERABILITY IN SECTION 4; WARRANTY IN SECTION 6; AND LIABILITY IN SECTION 7. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. THIS AGREEMENT IS ENFORCEABLE AGAINST YOU AND ANY LEGAL ENTITY THAT OBTAINED THE SOFTWARE AND ON WHOSE BEHALF IT IS USED. IF YOU DO NOT AGREE, DO NOT USE THIS SOFTWARE.

Respiratory Technology Corporation (dba "Restech" and here-in-after referred to as "Restech") owns all intellectual property in the Software. Restech permits you to Use the Software only in accordance with the terms of this Agreement. Use of some third party materials included in the Software may be subject to other terms and conditions typically found in a separate license agreement or "Read Me" file located near such materials.

**1. Definitions.** "Software" means (a) all of the contents of the files, disk(s), CD-ROM(s) or other media with which this Agreement is provided, including but not limited to (i) Restech or third party computer information or software; (ii) related explanatory written materials or files ("Documentation"); and (b) upgrades, modified versions, updates, additions, and copies of the Software, if any, licensed to you by Restech (collectively, "Updates"). "Use" or "Using" means to access, install, download, copy or otherwise benefit from using the functionality of the Software in accordance with the Documentation. "Permitted Number" means one (1) unless otherwise indicated under a valid license (e.g. volume license) granted by Restech. "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions. "Restech" means Respiratory Technology Corporation, a California corporation, 10804 Willow Ct. Suite B, San Diego, California 92127.

**2. Software License.** As long as you comply with the terms of this Software License Agreement (this "Agreement"), Restech grants to you a non-exclusive license to Use the Software for the purposes described in the Documentation.

2.1 General Use. You may install and Use a copy of the Software on your compatible computer, up to the Permitted Number of computers.

2.2 Backup Copy. You may make one backup copy of the Software, provided your backup copy is not installed or used on any computer. You may not transfer the rights to a backup copy unless you transfer all rights in the Software as provided under Section 4.

2.3 Portable or Home Computer Use. In addition to the single copy permitted under Sections 2.1 and 2.2, the primary user of the computer on which the Software is installed may make a second copy of the Software for his or her exclusive use on either a portable Computer or a Computer located at his or her home, provided the Software on the portable or home Computer is not used at the same time as the Software on the primary computer.

2.3.1 Indemnity. You agree to hold Restech harmless from any and all liabilities, losses, actions, damages, or claims (including all reasonable expenses, costs, and attorneys fees) arising out of or relating to any use of, or reliance on, without limitation.

2.4.2 Limit of Liability. UNDER NO CIRCUMSTANCES WILL RESTECH BE LIABLE TO YOU, OR ANY OTHER PERSON OR ENTITY, FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOST OR DAMAGED DATA, OR OTHER COMMERCIAL OR ECONOMIC LOSS OR FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, STATUTORY, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER RELATED TO YOUR USE OR RELIANCE UPON CD SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE. THIS LIMITATION SHALL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL OR MATERIAL BREACH OR A BREACH OF THE FUNDAMENTAL OR MATERIAL TERMS OF THIS AGREEMENT.

**3. Intellectual Property Ownership, Copyright Protection.** The Software and any authorized copies that you make are the intellectual property of and are owned by Restech. The structure, organization and code of the Software are the valuable trade secrets and confidential information of Restech. The Software is protected by law, including without limitation the copyright laws of the United States and other countries, and by international treaty provisions. Except as expressly stated herein, this Agreement does not grant you any intellectual property rights in the Software and all rights not expressly granted are reserved by Restech.

### **4. Restrictions.**

4.1 Notices. You shall not copy the Software except as set forth in Section 2. Any copy of the Software that you make must contain the same copyright and other proprietary notices that appear on or in the Software.

4.2 No Modifications. You shall not modify, adapt or translate the Software. You shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software except to the extent you may be expressly permitted to decompile under applicable law, it is essential to do so in

order to achieve operability of the Software with another software program, and you have first requested Restech to provide the information necessary to achieve such operability and Restech has not made such information available. Restech has the right to impose reasonable conditions and to request a reasonable fee before providing such information. Any such information supplied by Restech and any information obtained by you by such permitted decompilation may only be used by you for the purpose described herein and may not be disclosed to any third party or used to create any software which is substantially similar to the expression of the Software. Requests for information should be directed to the Restech Customer Support Department.

**5. Updates.** If the Software is an Update to a previous version of the Software, you must possess a valid license to such previous version in order to Use such Update. All Updates are provided to you on a license exchange basis. You agree that by Using an Update you voluntarily terminate your right to use any previous version of the Software. You acknowledge that any obligation Restech may have to support the previous versions of the Software may be ended upon availability of the Update.

**6. NO WARRANTY.** The Software is being delivered to you "AS IS" and Restech makes no warranty as to its use or performance. RESTECH AND ITS SUPPLIERS DO NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE SOFTWARE. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, RESTECH MAKES NO WARRANTIES CONDITIONS, REPRESENTATIONS, OR TERMS (EXPRESS OR IMPLIED WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING WITHOUT LIMITATION NONINFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, INTEGRATION, SATISFACTORY QUALITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

**7. LIMITATION OF LIABILITY.** IN NO EVENT WILL RESTECH BE LIABLE TO YOU FOR ANY DAMAGES, CLAIMS OR COSTS WHATSOEVER OR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL DAMAGES, OR ANY LOST PROFITS OR LOST SAVINGS, EVEN IF AN RESTECH REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS OR FOR ANY CLAIM BY ANY THIRD PARTY. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN YOUR JURISDICTION. RESTECH'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID FOR THE SOFTWARE, IF ANY.

**8. Export Rules.** You agree that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws").

**9. Governing Law.** This Agreement will be governed by and construed in accordance with the substantive laws in force in the State of California.

**10. General Provisions.** If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of this Agreement, which shall remain valid and enforceable according to its terms. This Agreement shall not prejudice the statutory rights of any party dealing as a consumer. This Agreement may only be modified by a writing signed by an authorized officer of Restech. Updates may be licensed to you by Restech with additional or different terms. This is the entire agreement between Restech and you relating to the Software and it supersedes any prior representations, discussions, undertakings, communications or advertising relating to the Software.

10.1 You are required to take all reasonable measures to avoid and reduce damages, in particular to make back-up copies of the Software and your computer data subject to the provisions of this Agreement.

If you have any questions regarding this Agreement or if you wish to request any information from Restech please use the address and contact information included with this product to contact the Restech office.

Restech and DataView are either registered trademarks or trademarks of Respiratory Technology Corporation in the United States.