

IMPORTANT - READ CAREFULLY: This License Agreement (hereinafter “Agreement”) is a legal contract between you (either an individual or a single business entity, hereinafter referred to as “Licensee”) and COVIDIEN LP, a Medtronic company, with offices at 6135 Gunbarrel Avenue, Boulder, Colorado 80301 USA (hereinafter “Medtronic” or “Licensor”), for the Capnostream™ 35 Portable Respiratory Monitor Software (the “Software”). The term “Software” also includes any supplied corrections, bug fixes, enhancements, updates or other modifications created and supplied by Medtronic and any user manuals or other documentation supplied by Medtronic in conjunction with the Software.

BY DOWNLOADING, INSTALLING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE.

1. LICENSE TERMS

a. *Grant of License.* Licensor hereby grants to Licensee, pursuant to the terms and conditions of this Agreement, a nonexclusive, nontransferable license (hereinafter “License”) to use the Software.

b. *Authorized Use.* Licensee shall use the Software only to update Licensee’s Capnostream™ 35 Portable Respiratory Monitor.

c. *Restrictions on Use.* Licensee agrees to use the Software only for Licensee’s own business, including in conjunction with its subsidiaries or affiliates. Under no circumstances shall Licensee permit any unrelated third parties to use or access the Software.

d. *Modifications; Reverse Engineering.* Licensee agrees that only Licensor shall have the right to alter, maintain, enhance or otherwise modify the Software. Licensee shall not disassemble, decompile or reverse engineer the Software. Licensee shall not permit or assist any third party to disassemble, decompile or reverse engineer the Software.

e. *Reservation of Rights.* Licensor hereby reserves any and all rights not expressly and explicitly granted in this Agreement, including, but not limited to, Licensor’s right to revoke this license.

f. *Term of License.* Unless otherwise terminated as set forth herein, the term of the License granted hereunder shall extend for as long as Licensee uses the Software.

g. *Representations by Licensee.* By accepting this Agreement and/or by using the Software, Licensee hereby represents and warrants that all information provided by Licensee to Licensor during the registration process for the Software is true and accurate in all material respects. Licensee further represents and warrants that Licensee has been duly authorized to enter into this Agreement for and on behalf of any person, company, or other entity specified during the initial registration process for the Software. Should either of these representations prove false at any time, Licensor may, in Licensor’s sole discretion, immediately discontinue Licensee’s access to and disable Licensee’s use of the Software without notice and without recourse by Licensee.

2. INTELLECTUAL PROPERTY RIGHTS

a. *Title.* Licensee and Licensor agree that Licensor owns all proprietary rights, including patent, copyright, trade secret, trademark and other proprietary rights, in and to the Software and any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to the Software, whether made by Licensor or any third party. No title to the Software is transferred hereby and Licensee’s rights hereunder are strictly limited as set forth herein.

b. *Transfers.* Under no circumstances shall Licensee sell, license, publish, display, distribute, or otherwise transfer to a third party the Software or any copy thereof, in whole or in part, without Licensor's prior written consent.

3. LIMITATION OF LIABILITY IN NO EVENT WILL MEDTRONIC BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHER SIMILAR DAMAGES, INCLUDING LOST PROFITS, ARISING FROM THE USE OF OR INABILITY TO USE THE SOFTWARE OR FROM ANY BREACH OF WARRANTY, EVEN IF MEDTRONIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4. GENERAL PROVISIONS

a. *Modifications.* Only Medtronic may alter or revise the terms of this Agreement.

b. *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of Colorado USA, without regard to choice of law provisions.

c. *Waiver.* Any waiver, either expressed or implied, by either party, of any default by the other party in the observance and performance of any of the conditions and/or covenants of duties set forth herein, shall not constitute or be construed as a waiver of any subsequent or other default.

d. *Read and Understood.* Licensee hereby acknowledges that Licensee has read and understands this Agreement and agrees to be bound by its terms.