

Terms and Conditions of Use – License Agreement

Updated and Amended Tuesday, March 03, 2009 – Effective Immediately

DATAGRAPH-MED[®] REFRACTIVE OUTCOMES ANALYSIS SOFTWARE END USER LICENSE AGREEMENT (EULA)

To use this version of the DATAGRAPH-MED[®] refractive outcomes analysis software, you must first review and agree to all of the terms of this License Agreement. Any use of the DATAGRAPH-MED[®] software confirms acceptance of these terms in their entirety and without alternation:

This DATAGRAPH-MED[®] REFRACTIVE OUTCOMES ANALYSIS SOFTWARE License Agreement ("License") is your proof of license for the DATAGRAPH-MED[®] refractive outcomes analysis software ("the Software"). An electronic copy of this license will also be provided to you upon installation of the Software. This License must be acknowledged and agreed to prior to first use of the Software, and remains in effect for every use of the software by any and all parties.

1. Grant and Term of License. INGENIEURBÜRO PIEGER GMBH grants you a personal, non-exclusive, non-transferable right to install and use the Software. This License shall continue in effect until terminated by INGENIEURBÜRO PIEGER GMBH. It shall be immediately and automatically revoked upon:
 - 1.1. Any failure by you or other persons using this software to comply with the limitations set forth in this License.
 - 1.2. Upon publication of a revised Terms and Conditions (License) agreement, whether or not you acknowledge receipt of the revised License.
2. Number of Installations: The Software may be installed on no more than four (4) computers or workstations unless otherwise specified in writing by INGENIEURBÜRO PIEGER GMBH. Installation of the Software on additional or subsequent computers or networks requires payment of additional licensing fee(s) and will be subject to the same licensing terms and supervision requirements.
3. Network Installations: The Software may be installed on non-Terminal Server computer networks within the terms of this licensing agreement. In the event of network installations, each workstation shall require a separate registration. The total number of registered workstations is limited to four (4) under this agreement. Network configuration and support by INGENIEURBÜRO PIEGER GMBH are not provided as part of this agreement.
4. Terminal Server (Citrix, or TSR) Networks: This program may not be installed on Terminal Server or similar "thin client" networks under this agreement. Installation on such networks requires separate licensing and fees. Network configuration and support by INGENIEURBÜRO PIEGER GMBH are not provided as part of this agreement.
5. Physician Supervision Required: Use of this software may only occur under the direct supervision and control of a qualified, licensed physician. By agreeing to the terms of this License, you certify that you are a qualified and licensed physician or are an entity that employs a qualified licensed physician who will be responsible for the Supervision of the Software and its use.
6. Trial Period. You may install and test the Software prior to licensing with a limited number of data entries or by using the samples database which is included in the installation. The software can be activated by entering a personal activation code. The purchase date is defined as the date the first of up to 4 activation codes was shipped

from INGENIEURBÜRO PIEGER GMBH. INGENIEURBÜRO PIEGER GMBH assumes no liability for costs incurred, data lost, or other expenses or damages that may result from use of the program or for failure to purchase the program. INGENIEURBÜRO PIEGER GMBH will not provide services to export data entered into the trial version to other programs or formats.

7. Restrictions. The Software remains the property of INGENIEURBÜRO PIEGER GMBH and/or its licensors and is protected by U.S. and international copyright and intellectual property laws and treaty provisions. All rights to patents, copyrights, trademarks and trade secrets in the Software or any modifications to it shall be and remain sole and exclusive property of INGENIEURBÜRO PIEGER GMBH and/or its licensors. You may not modify, alter, translate, reverse engineer, decompile, disassemble or create derivative works based on the Software, or remove any proprietary notices or labels that it contains. You are permitted, however, to make a complete copy of the Software for backup purposes.
8. License Revocation. The INGENIEURBÜRO PIEGER GMBH reserves the right to revoke this license agreement immediately, automatically, and without warning in the event that license violations are discovered. Such revocation may include, but is not limited to, deactivation of the software on all workstation installations, return of all copies of the software and supporting materials, and termination of all support services. No refund of purchase fees or other compensation will be due to the purchaser or user(s) in the event of license revocation. INGENIEURBÜRO PIEGER GMBH assumes no liability for costs incurred, data lost, or other expenses or damages that may result from license revocation. INGENIEURBÜRO PIEGER GMBH will not provide services to export data entered into the trial version to other programs or formats. Revocation does not preclude INGENIEURBÜRO PIEGER GMBH from taking further legal action against users and/or purchasers for software copyright or licensing violations.
9. Changed Terms. INGENIEURBÜRO PIEGER GMBH shall have the right to change and/or add to the terms and conditions of this License at any time and to change, discontinue or impose conditions on any aspect of the Software. Such changes shall be effective upon notification by any means reasonable to give you actual or constructive notice or upon posting of such terms on the Software.
10. No Warranties or Liabilities. You expressly acknowledge and agree that this Software is software that may contain software errors or "bugs" that could cause unanticipated consequences through its use. You acknowledge and agree that your use of this Software is AT YOUR OWN RISK and that the Software is provided "AS IS" without any warranties or conditions whatsoever. INGENIEURBÜRO PIEGER GMBH, DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES AS TO THE NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE SOFTWARE OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; (ii) SHALL IN NO EVENT BE LIABLE TO YOU OR ANYONE ELSE FOR LOSS, INJURY OR DAMAGE CAUSED IN WHOLE OR PART BY, OR FAILURES, DELAYS OR INTERRUPTIONS OF, THE SOFTWARE; (iii) SHALL IN NO EVENT BE LIABLE TO YOU OR ANYONE ELSE FOR ANY DIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS OR TRADING LOSSES ARISING OUT OF OR RELATING TO THE USE OR INABILITY TO USE THE SOFTWARE OR ANY DECISION MADE OR ACTION TAKEN BY YOU IN RELIANCE ON THE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE IS WITH YOU AND SHOULD IT BE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF SERVICING, REPAIR OR CORRECTION OF SUCH DEFECTS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF WARRANTIES OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.
11. User Commitment: You acknowledge that the information generated by the Software is intended to assist an operating surgeon provide efficient patient care and/or surgical planning. You agree not to utilize any information generated by the Software

for patient care and/or surgical planning without validation by the operating surgeon. Validation includes but is not limited to checking the entered data, re-calculation of any information provided by the Software, and confirmation of all information, by the operating surgeon. Surgical Plans are not valid unless printed, validated and signed by the operating surgeon. INGENIEURBÜRO PIEGER GMBH, its proprietors, employees, contracted independent contractors, non-paid assistants and consultants, paid or otherwise, assume no liability for surgical or clinical outcomes related to use of the Software. The indemnification stipulated below extends to any and all use and consequences of use of the Software.

12. YOU ACKNOWLEDGE THAT THE OPERATING SURGEON HAS FULL AND FINAL RESPONSIBILITY FOR ALL PROCEDURES PERFORMED AND AGREE THAT ALL INFORMATION GENERATED BY THE SOFTWARE WILL BE INDEPENDENTLY VERIFIED PRIOR TO USE BY THE OPERATING SURGEON.
13. Data Accuracy. You acknowledge that you have full and complete control over the completeness, accuracy, privacy, and timely entry of all data entered into the DATAGRAPH-MED[®] refractive outcomes analysis software, and take full responsibility for all aspects of the data. You acknowledge that any surgical plans and outcomes generated in the DATAGRAPH-MED[®] refractive outcomes analysis software consider, rely upon, and are based on data entered by you. As such, you release assume full responsibility for the data entered into the software and release the INGENIEURBÜRO PIEGER GMBH, and its officers, shareholders, employees and agents, from any responsibility or liability associated with use of that data.
14. Upgrades. All clients using the DATAGRAPH-MED[®] refractive outcomes analysis software are required to assure that they are using the same version of The DATAGRAPH-MED[®] refractive outcomes analysis software program.
 - 14.1. Versions other than that which is current are considered to be obsolete and should not be used by any client. Obsolete software versions are still subject to the same "Terms and Conditions of Use" as stated in the most current version of the "Terms and Conditions of Use". Upgrades for The DATAGRAPH-MED[®] refractive outcomes analysis software are located at our Web Site at www.datagraph-med.net on the download page.
 - 14.2. The purchaser of The DATAGRAPH-MED[®] refractive outcomes analysis software accepts sole responsibility for assuring that The DATAGRAPH-MED[®] refractive outcomes analysis software version in use at all times is the most current version.
15. Compliance with HIPAA and other Privacy Regulations: You assume full responsibility for compliance with HIPAA and any other privacy requirements associated with use of the DATAGRAPH-MED[®] refractive outcomes analysis software. The INGENIEURBÜRO PIEGER GMBH is not to be listed or considered, listed, reported, or otherwise held as an affiliated business under HIPAA or other regulations. You agree not to transmit, send, or otherwise convey information that violates any HIPAA or other privacy regulations to the INGENIEURBÜRO PIEGER GMBH, its officers, shareholders, employees and agents.
16. Technical Support provided by INGENIEURBÜRO PIEGER GMBH will be limited to non-patient related issues, such as Licensing installation(s) and guidance with any "Error Codes" and "Error Messages" which appear on the client(s) screen within the DATAGRAPH-MED[®] refractive outcomes analysis software only. This assistance will be limited specifically to the "Error Message" or "Error Code" as stated on the screen.
17. Indemnification: You agree to indemnify and hold harmless INGENIEURBÜRO PIEGER GMBH, the developer and distributor and/or the DATAGRAPH-MED[®] refractive outcomes analysis software and its officers, shareholders, employees and agents from and against any claim and from and against all costs which may be related to any claim, including all defence costs and reasonable legal fees, which arise from or are related to any procedure, procedure performed, or use of any information, data

storage, data entry, reports, and /or calculation(s) derived by using the DATAGRAPH-MED[®] refractive outcomes analysis software. You also agree to be bound by the terms and conditions set forth in this DATAGRAPH-MED[®] refractive outcomes analysis software Licensing Agreement.

18. Reliance. You acknowledge that the INGENIEURBÜRO PIEGER GMBH relies on your agreement with the Terms and Conditions outlined here for sale of the DATAGRAPH-MED[®] refractive outcomes analysis software.
19. General. This License constitutes the entire agreement between you and INGENIEURBÜRO PIEGER GMBH with respect to this Software and supersedes any other communication (including advertising). If any provision of this License is held unenforceable, that provision shall be enforced to the maximum extent permissible so as to give effect the intent of this License, and the remainder of this License shall continue in full force and effect. This License shall be governed by German law.

The Manufacturer is INGENIEURBÜRO PIEGER GMBH; Treidelsweg 8, 90530 Wendelstein, Germany.

END OF DATAGRAPH-MED[®] REFRACTIVE OUTCOMES ANALYSIS SOFTWARE LICENSE AGREEMENT