

## **PLEASE READ THESE LICENCE TERMS CAREFULLY**

BY CLICKING ON THE "I ACCEPT" BUTTON BELOW YOU AGREE TO THESE TERMS WHICH WILL BIND YOU.

IF YOU DO NOT AGREE TO THESE TERMS, CLICK ON THE "I DO NOT ACCEPT" BUTTON BELOW.

This licence agreement (**Licence**) is a legal agreement between you (either as an individual or, if applicable, the entity on behalf of which you enter into this Licence) (**Licensee** or **you**) and Coriana Enterprises Ltd T/A Applied Cytometry (company number 8039712) of Matrix House, Nobel Way, Dinnington, South Yorkshire, S25 3QB, England (**Licensor, our, us** or **we**) for:

- your access to our VenturiOne software for off-line analysis of flow cytometry data and including any Maintenance Release which is acquired by you during the subsistence of this Licence (**Software**); and
- the user manuals and other documentation that is generally made available to end-users by us with the Software (**Documentation**).

We license use of the Software and Documentation to you on the basis of this Licence. We do not sell the Software or Documentation to you. We (or our licensors) remain the owners of the Software and Documentation at all times.

**OPERATING SYSTEM REQUIREMENTS:** this Software requires a Computer with an appropriate interface and the operating system requirements as we may specify from time to time.

### **IMPORTANT NOTICE TO ALL USERS:**

- By installing or using the Software and/or by clicking on the "I ACCEPT" button of any form containing this document you are agreeing to the terms and conditions of this Licence which will bind you and your employees (where applicable). The terms of this Licence include, in particular, limitations on liability in conditions 2, 5, 6, 7, 8 and 9.
- If you do not agree to all of the terms and conditions of this Licence, you should click the "I DO NOT ACCEPT" button of the form, and you shall thereafter have no rights to use any of the Software or Documentation. If you do not agree to the terms of this Licence, we will not licence the Software and Documentation to you and you must discontinue your access now. In this case you may not install or access any Software or Documentation.
- We may revise the terms of this Licence at any time. Please check the terms of this Licence regularly to take notice of any changes we make, as they are binding on you (for example, if you click on the "I ACCEPT" button after being notified of the updated Licence). If you do not accept the terms of the updated Licence you will not be permitted to continue to use the Software and the Documentation.

### **YOUR PRIVACY**

Under data protection legislation, we are required to provide you with certain information about who we are, how we process your personal data and for what purposes and your rights in relation to your

personal data and how to exercise them. This information is provided in our privacy notice which can be found on our website [<https://www.appliedcytometry.com>], unless you are using a specific service to which a different provisions apply, as set out below [13] and it is important that you read that information.

## 1. DEFINITIONS

1.1 In this Licence unless the context otherwise requires:

1.1.1 "Acceptance Date" means the date of first installation of the Software or the date of your first acceptance of this Licence, whichever occurs first;

1.1.2 "Evaluation Licence" means a limited licence granted under condition 2.3 for evaluation purposes only, as stated by us in writing;

1.1.3 "Group" means the Licensee's subsidiary and holding companies (as those terms are defined in Section 1159 of the Companies Act 2006) and each and any subsidiaries of such holding companies other than the Licensee and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:

1.1.3.1 another person (or its nominee) by way of security or in connection with the taking of security; or

1.1.3.2 its nominee;

1.1.4 "Heightened Cybersecurity Requirements" means any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either you or your end users relating to security of network and information systems and security breach and incident reporting requirements, which may include the Cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), and the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

1.1.5 "Initial Subscription Term" means the initial term of this Licence as stated by us in writing;

1.1.6 "Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other

intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;

- 1.1.7 "Licence Fee" means:
  - 1.1.7.1 zero for an Evaluation Licence; and
  - 1.1.7.2 otherwise, the Lifetime Licence Fee or the Periodic Licence Fee payable by the Licensee to the Licensor under condition 4, as notified by Licensor;
- 1.1.8 "Licence Key" means a licence key generated by the Licensor that enables the Licensee to use the Software subject to the terms and conditions of this Licence;
- 1.1.9 "Licensee Data" means the data inputted by the Licensee for the purpose of using the Software or facilitating the Licensee's use of the Software;
- 1.1.10 "Maintenance Release" means any release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software (but which does not constitute a New Version), which is made available by the Licensor;
- 1.1.11 "New Version" means any new version of the Software which from time to time is publicly marketed and offered for purchase by the Licensor in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product; and
- 1.1.12 "Personal Computer" means the personal computer on which the Software is first installed.
- 1.2 An obligation on a party in this Licence not to do something is an obligation on that party not to do so itself or suffer, permit or allow any Group member, agent, or third party to do so.
- 1.3 Condition, Schedule and paragraph headings shall not affect the interpretation of this Licence.
- 1.4 Unless the context otherwise requires:
  - 1.4.1 words in the singular shall include the plural and in the plural shall include the singular;

- 1.4.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.4.3 a reference to one gender shall include a reference to the other genders;
- 1.4.4 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns; and
- 1.4.5 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 The Schedules form part of this Licence and shall have effect as if set out in full in the body of this Licence. Any reference to this Licence includes the Schedules.
- 1.6 In the case of conflict or ambiguity between any provision contained in the body of this Licence and any provision contained in the Schedules, the provision in the body of this Licence shall take precedence.
- 1.7 References to conditions and Schedules are to the conditions and Schedules of this Licence and references to paragraphs are to paragraphs of the relevant Schedule.

## 2. GRANT AND SCOPE OF LICENCE

- 2.1 In consideration of your payment to us of the Licence Fee (if applicable) and you agreeing to abide by the terms of this Licence, we hereby grant to you a non-exclusive, non-transferable, revocable licence (without the right to grant sub-licences) to use the Software and the Documentation on the Personal Computer only on the terms of this Licence commencing on and including the Acceptance Date.
- 2.2 Subject to condition 2.3, you may:
  - 2.2.1 install and use the Software only on the Personal Computer (provided that the Personal Computer remains in your ownership and control), e.g. for the off-line analysis of flow cytometry data, and only for your internal business purposes (or those of your employer) (**Permitted Use**); and
  - 2.2.2 provided you comply with the provisions in condition 3, make a reasonable number of copies of the Software solely for backup purposes; and
  - 2.2.3 use any Documentation in support of the Permitted Use and, provided you comply with the provisions in condition 3, you may make one copy of the Documentation as is reasonably necessary for its proper and lawful use.
- 2.3 If the licence granted under this Licence is an Evaluation Licence, as stated by us in writing, or if no Licence Fee is payable by you:

- 2.3.1 you may install and use the Software only on the Personal Computer (provided that the Personal Computer remains in your ownership and control), e.g. for the off-line analysis of flow cytometry data, and solely to evaluate the suitability of the Software for Licensee's business (**Permitted Evaluation Use**);
- 2.3.2 you must not make any copies of the Software or the Documentation;
- 2.3.3 the Licence may be terminated at any time by Licensor;
- 2.3.4 unless terminated earlier by us under condition 2.3.3, the Licence will automatically terminate on the expiry of 14 consecutive days from the date of installation (or such other period as we expressly agree in writing); and
- 2.3.5 you acknowledge that the Software provided for the Permitted Evaluation Use may not exhibit full functionality.
- 2.4 Any Licensee Data you enter into the during an Evaluation Licence will be permanently lost unless you purchase a Licence to use the Software, or export such data, before the expiry or termination of the Evaluation Licence.
- 2.5 For the purposes of this licence, unless the context otherwise requires, "use" means accessing, downloading or loading the Software into temporary memory or permanent storage on the Personal Computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this Licence or any other valid licence for use on each computer to which the Software is distributed.
- 2.6 You are solely responsible for obtaining all equipment required for the use of the Software and you are responsible for ensuring the compatibility thereof with the Software, and for paying all fees, including all taxes and Internet access fees, necessary to access and use the Software.
- 2.7 Your access to and use of the Software shall be enabled by the use of a Licence Key.
- 2.8 You acknowledge and accept that the Licence Key authorisation process may require the transmission of data regarding the Personal Computer to us and you consent to such transmission. If any personal data is transmitted as part of the Licence Key authorisation process, such personal data in accordance with our privacy policy, which can be found on our website [<https://www.appliedcytometry.com>].
- 2.9 The rights provided under this condition 2 are granted to the Licensee only, and shall not be considered granted to any subsidiary or holding company of the Licensee.

### 3. **RESTRICTIONS**

- 3.1 Except as expressly set out in this Licence or as permitted or required by any local law, you undertake:

- 3.1.1 not to copy the Software or Documentation, except where such copying is incidental to or necessary for the Permitted Use or where it is necessary for the purpose of back-up or operational security and to record the number and location of all copies of the Software and Documentation;
- 3.1.2 not to use or reproduce the Software or Documentation except as specifically permitted under this Licence;
- 3.1.3 not to make alterations to, or modifications of, nor permit the Software or any part of it (subject to condition 3.1.4) to be combined with, or become incorporated in, or used with or in, any other programs;
- 3.1.4 not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Software, or otherwise attempt to (i) derive source code or underlying ideas, algorithms, structure or organisation from the Software, or (ii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Software, including, without limitation, any such mechanism used to restrict or control the functionality of the Software, nor attempt to do any such things, except to the extent that (by virtue of sections 50B and 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are necessary to decompile the Software to obtain the information necessary to create an independent program that can be operated with the Software or with another program (**Permitted Objective**), and provided that the information obtained by you during such activities:
  - 3.1.4.1 is used only for the Permitted Objective;
  - 3.1.4.2 is not disclosed or communicated without our prior written consent to any third party to whom it is not necessary to disclose or communicate it in order to achieve the Permitted Objective; and
  - 3.1.4.3 is not used to create any software that is substantially similar in its expression to or functionality of the Software;
- 3.1.5 not to use the Software to provide services to any person or otherwise use the Software on a service bureau basis;
- 3.1.6 not to use the Software on any computer other than the Personal Computer;
- 3.1.7 to use the Software and Documentation Off-line only;
- 3.1.8 not to remove, alter, cover or hide any patent, copyright, trademark or other proprietary notices, labels or marks whatsoever of Licensor on or in

the Licence Key, the Software or Documentation, and Licensee shall reproduce such notices, labels and marks on any copies of such the Software and Documentation that Licensee makes in connection with Licensee's permitted use of the Software and Documentation.

- 3.1.9 to keep the Software (and copies thereof) confidential, secure and in an encrypted form wherever practicable, and shall use all reasonable security practices and systems to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Software and to use the best available security practices and systems applicable to the use of the Software and Personal Computer to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Software;
- 3.1.10 to supervise and control use of the Software and Personal Computer and ensure that the Software is used by your employees, representatives or authorised third parties in accordance with the terms of this Licence;
- 3.1.11 not to sell, rent, lease, license, sublicense, distribute, loan, translate, merge, adapt, vary, alter, modify, provide, frame, mirror, republish, download, display, transmit or otherwise make available, the Software, Documentation or any username or password used by you in any form or media or by any means, in whole or in part, to any person without prior written consent from us;
- 3.1.12 not extract, download, reutilise, use, exploit, redistribute, disseminate, copy or store the Software for any purpose not expressly permitted by this Licence;
- 3.1.13 not access, store, distribute or transmit any viruses (including worms, trojan horses and other similar things or devices), or any material during the course of its use of the Software that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive or is otherwise illegal or causes damage or injury to any person or property;
- 3.1.14 not to use the Software for any criminal intent, purpose or endeavour nor for any purpose contrary to any law or regulation or any regulatory code, guidance or request;
- 3.1.15 not to instruct or facilitate any third party or Group member to carry out any of the restrictions detailed in this condition 3.1; and
- 3.1.16 to permit us to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this

Licence, for the purposes of ensuring that you are complying with the terms of this Licence, provided that we provide you with reasonable advance notice of such inspections, which shall take place at reasonable times.

- 3.2 The Software is not intended to be used for medical diagnostic purposes. You undertake not to use the Software for medical diagnostic purposes and you shall indemnify and keep indemnified the Licensor, and our directors, officers and employees from and against all claims, liabilities, judgments and other costs and expenses (including, but not limited to, reasonable professional fees and expenses) incurred in investigating, defending and settling claims of any kind resulting from any claims made or actions brought by persons as a result of the Software being used for medical diagnostic purposes.
- 3.3 You acknowledge that in the course of accessing and using the Software, you may have access to our Confidential Information and/or the Confidential Information of your (or your employer's) and our customers. For the purposes of this Licence, "Confidential Information" means any information or matter which is not in the public domain (except as a result of your breach of this Licence) and which relates to our affairs, or our customers, distributors or sales agents, or any of their affairs or customers.
- 3.4 You hereby accept and agree that you shall not (except in accordance with the Permitted Purpose), either during this Licence or at any time after its termination, use or disclose to any third party (and shall use your best endeavours to prevent its publication or disclosure by your agents, officers, employees and Group members) any Confidential Information. This restriction does not apply to:
  - 3.4.1 any use or disclosure authorised by us in writing;
  - 3.4.2 any disclosure as may be required by any law or any legal or regulatory authority; or
  - 3.4.3 any information which is already in, or comes into, the public domain otherwise than through the unauthorised disclosure by you.
- 3.5 You hereby agree to keep confidential the Licence Key, Software and Documentation and to protect the contents of the Software and Documentation, to limit access to the same to those who have a need to use any of them for the Permitted Purpose and to prevent unauthorised disclosure by your agents, officers or employees and Group members.
- 3.6 If you choose, or you are provided with, a username, password or any other piece of information as part of our security procedures, you must treat such information as confidential. You must not disclose it to any third party.
- 3.7 If you become aware of or learn or suspect:



- 3.7.1 any misuse of the Software;
- 3.7.2 any unauthorised use, disclosure, reproduction, or distribution of the Licence Key, Software or Documentation, which comes to Licensee's attention, or which Licensee reasonably suspects;
- 3.7.3 any security breach in connection with this Licence that could compromise the security or integrity of the Software or otherwise adversely affect us;  
or
- 3.7.4 that your username or password, the Licence Key or any other security feature has been revealed to or obtained by any unauthorised person,

you must promptly notify us at [info@appliedcytometry.com](mailto:info@appliedcytometry.com) and fully co-operate with us to remedy the issue as soon as reasonably practicable.

#### 4. LICENCE FEE

- 4.1 If a Licence Fee is required to be paid, as stated by us in writing, such Licence Fee shall be due and payable in accordance with the terms of this Licence before your right to use the Software commences. You may only install or use the Software and/or Documentation after you have paid to us and we have accepted all applicable Licence Fees.
- 4.2 You shall pay to us, as applicable and invoiced by us:
  - 4.2.1 the Lifetime Licence Fee on or before the Acceptance Date; or
  - 4.2.2 the first Periodic Licence Fee on or before the Acceptance Date and thereafter, monthly in advance on or before the first day of the month in question after the Acceptance Date.
- 4.3 You shall on or before the Acceptance Date:
  - 4.3.1 provide to us valid, up-to-date and complete contact and billing details;  
or
  - 4.3.2 set up and maintain throughout the Subscription Term a suitable and valid automatic payment method (such as direct debit), in which case you authorise us to collect payment directly via that method whenever a payment is due.
- 4.4 You shall pay the applicable Licence Fees which have become payable in accordance with the payment terms specified on the relevant invoice.
- 4.5 All Licence Fees paid are non-refundable.

- 4.6 All sums payable under this Licence are exclusive of any excise, sales, use, value added or other taxes, tariffs or duties whatsoever that may be applicable to the use of the Software and Documentation, for which the Licensee shall be responsible. When we have the legal obligation to collect such taxes, tariffs or duties, the amount of such taxes, tariffs and duties shall be invoiced to you and you shall pay such amount to us on demand unless you provide us with a valid tax exemption certificate authorised by the appropriate taxing authority.
- 4.7 All amounts due under this Licence from you to us shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Any such taxes which are otherwise imposed on payments to us shall be your sole responsibility and you shall provide us with official receipts issued by the appropriate taxing authority and such other evidence as we reasonably request to establish that such taxes have been paid.
- 4.8 If you fail to make any payment due to us under this Licence by the due date for payment, then, without limiting any other remedies we may have, you shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.
- 4.9 We shall be entitled to increase the Periodic Licence Fee payable at the start of each Renewal Period upon 90 days' prior written notice to you.

## 5. **INTELLECTUAL PROPERTY RIGHTS**

- 5.1 You acknowledge that all Intellectual Property Rights in the Licence Key, the Software and the Documentation throughout the world belong to us (or our licensors, as the case may be), that rights in the Licence Key, the Software and the Documentation are licensed (not sold) to you, and that you have no Intellectual Property Rights in, or to, the Licence Key, the Software or the Documentation other than the right to use the same in accordance with the terms of this Licence.
- 5.2 Except as expressly provided in this Licence, Licensor does not grant the Licensee any right, title or interest in or to the Licence Key, the Software or Documentation whether by implication or otherwise howsoever.
- 5.3 You acknowledge that you have no right to have access to the Software in source code form or in unlocked coding or with comments.
- 5.4 You shall own all right, title and interest in and to all of the Licensee Data that is not personal data and you shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Licensee Data.
- 5.5 The integrity of the Licence Key and the Software is protected by technical protection mechanisms ("**TPM**") so that the Intellectual Property Rights in the Licence Key and the

Software are not misappropriated. You must not attempt, or procure that a third party attempts, in any way to remove or circumvent any such TPM, nor apply or manufacture for sale or hire, import, distribute, sell or let for hire, offer or expose for sale or hire, advertise for sale or hire or have in your possession for private or commercial purposes any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of such TPM.

- 5.6 Licensor may use the name of the Licensee and/or any member of the Group in its publicity materials.

## 6. LIMITED WARRANTY

- 6.1 The Licensor warrants that the Software will operate for a period of 90 days from the Acceptance Date (**Warranty Period**) in all material respects in accordance with the functional specifications in the Documentation, except where any failure of the Software resulted, in whole or in part, from accident, abuse, misuse or misapplication of the Software.

- 6.2 If, within the Warranty Period, you notify us in writing of any defect or fault in the Software in consequence of which it fails to operate in all material respects in accordance with the functional specifications in the Documentation, and such defect or fault does not result from you (or anyone acting with your authority) having amended the Software or used it outside the terms of this Licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by us, or the Software has not been loaded onto Licensor-specified or suitably configured equipment, we shall, at our option, do one of the following:

6.2.1 repair or replace the Software so that it operates in all material respects in accordance with the functional specifications in the Documentation for the remainder of the original Warranty Period or for a period of thirty (30) days after redelivery to Licensee, whichever is longer; or

6.2.2 terminate this Licence immediately by notice in writing to you and refund any of the Licence Fee paid by you as at the date of termination (less a reasonable sum in respect of your use of the Software to the date of termination) on return of the Software and all copies thereof to us,

provided that you provide all the information that may be necessary to assist us in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable us to re-create the defect or fault.

- 6.3 We will provide limited technical support regarding the use and operation of the Software:

6.3.1 up to a maximum of 2 hours' support (in total) via telephone; or

- 6.3.2 for a period of one (1) year from the Acceptance Date, whichever expires first. Technical support is available by telephone during our standard technical support hours of 9:00 a.m. to 5:00 p.m. GMT and 24-hour through any website that we may operate from time to time for that purpose.
- 6.4 We and our affiliated companies do not warrant, guarantee, or make any representations:
- 6.4.1 regarding the use or output, or the results of the use or output, of the Software or written materials in terms of correctness, completeness, accuracy, timeliness, sequence, reliability or otherwise;
  - 6.4.2 regarding the security of your data or equipment at any time or for any purpose;
  - 6.4.3 Subject to condition 6.3, with respect to technical assistance or information provided by us to you or your agents or personnel;
  - 6.4.4 as to the frequency, value, applicability or content of future Maintenance Releases;
  - 6.4.5 that the use of the Software will be uninterrupted or error-free or that it will meet any Heightened Cybersecurity Requirements;
  - 6.4.6 that the Software will be virus free;
  - 6.4.7 as to title or non-infringement in the Software; or.
  - 6.4.8 that the Software will meet your requirements.
- 6.5 You acknowledge and accept that the Software has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet your requirements.
- 6.6 You are responsible for configuring your information technology, computer programmes and platform in order to download and access the Software.
- 6.7 You should take the necessary steps to ensure that appropriate security measures, including but not limited to the use of virus protection mechanisms, are adopted prior to you downloading and using the Software.
- 6.8 No oral or written information or advice given by us or our affiliated companies, or our or their respective agents, distributors, dealers and employees, shall create a warranty or representation and you may not rely on any such information or advice.

- 6.9 We only supply the Software and Documentation for internal use by your business, or the business of your employer, for the Permitted Use and you hereby agree not to use the Software or Documentation for any other purposes.
- 6.10 Except for the limited warranty set forth in condition 6.1 above, or as expressly stated elsewhere in this Licence, the Software and Documentation is licensed "as is", with all faults and without warranty, and any condition, warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into, or incorporated in, this Licence whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law, including the implied conditions, warranties or other terms as to merchantability, satisfactory quality, fitness for a particular purpose, lack of viruses, lack of negligence or lack of workmanlike effort or the use of reasonable skill and care.
- 6.11 You hereby agree that the foregoing provisions of this condition 6 sets forth the entire liability and obligations of Licensor, and your and the Group's sole and exclusive remedy for breach by us of the express limited warranty in condition 6.1.

## 7. **OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU**

- 7.1 Except as expressly stated in condition 7.2:
- 7.1.1 the Licensor shall not in any circumstances have any liability for any losses or damages which may be suffered by you (or any person claiming under or through you), whether the same are suffered directly or indirectly or are immediate or consequential, under or in connection with this Licence and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- 7.1.1.1 special damage even if we were aware of the circumstances in which such special damage could arise;
  - 7.1.1.2 loss of profits, sales, business, or revenue;
  - 7.1.1.3 loss of anticipated savings;
  - 7.1.1.4 loss of business opportunity;
  - 7.1.1.5 loss of or damage to goodwill or reputation;
  - 7.1.1.6 exemplary damages;
  - 7.1.1.7 punitive damages;
  - 7.1.1.8 costs of the procurement of substitute goods or services;
  - 7.1.1.9 loss or corruption of data; and

- 7.1.2 the total aggregate liability of the Licensor, whether in contract, tort (including negligence) or otherwise and whether under or in connection with this Licence or any collateral contract, shall in no circumstances exceed 10% of the most recent Licence Fee paid by you under this Licence before the date on which the claim arose; and
- 7.1.3 you hereby agree that, in entering into this Licence, either you did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Licence or (if you did rely on any representations, whether written or oral, not expressly set out in this Licence) that you shall have no remedy in respect of such representations and (in either case) the licensor shall have no liability in any circumstances otherwise than in accordance with the express terms of this Licence.
- 7.2 The exclusions in condition 6 and this condition 7 shall apply to the fullest extent permissible at law, but the Licensor does not exclude liability for:
- 7.2.1 death or personal injury caused by our negligence;
- 7.2.2 fraud or fraudulent misrepresentation; or
- 7.2.3 any liability which may not be excluded by applicable law.
- 7.3 All dates supplied by us for the delivery of the Software shall be treated as approximate only. We shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 7.4 If the Licensee is in any country listed in Schedule 1, then that schedule shall also apply. Despite condition 1.6, in the case of conflict or ambiguity between any provision contained in the body of this Licence and any provision contained in that schedule, the provision contained in the schedule shall prevail, but only in respect of the Licensee's use of the Software in that country.
- 7.5 This Licence sets out the full extent of our obligations and liabilities in respect of the supply of the Software and Documentation.

## 8. **EVENTS OUTSIDE OUR CONTROL**

- 8.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Licence that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in condition 8.2.
- 8.2 An "Event Outside Our Control" means any act or event beyond our reasonable control, including without limitation failure of public or private telecommunications networks.
- 8.3 If an Event Outside Our Control takes place that affects the performance of our obligations under this Licence:

- 8.3.1 our obligations under this Licence will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and
- 8.3.2 we will use our reasonable endeavours to find a solution by which our obligations under this Licence may be performed despite the Event Outside Our Control.

## 9. SUSPENSION AND TERMINATION

- 9.1 This Licence shall commence on the Acceptance Date and shall continue:
  - 9.1.1 in the case of a Lifetime Licence, unless otherwise terminated in accordance with the provisions of this Licence; and
  - 9.1.2 in the case of a Periodic Licence, unless and until terminated as provided in this condition **Error! Reference source not found.**, for the Initial Subscription Term and, thereafter, this Licence shall be automatically renewed for successive periods of one month (each a Renewal Period), unless:
    - 9.1.2.1 either party notifies the other party, in writing, of termination of a Periodic Licence at least 15 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Licence shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
    - 9.1.2.2 otherwise terminated in accordance with the provisions of this Licence, and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "Subscription Term".
- 9.2 Without affecting any other right or remedy available to us, we reserve the right to disable your username and/or password (whether chosen by you or allocated by us), account and access to all or part of the Software, without notice and without liability, if you commit a material or persistent breach of this Licence.
- 9.3 Without affecting any other right or remedy available to us, we may terminate this Licence without liability with immediate effect by giving written notice to you if:
  - 9.3.1 you fail to pay any amount due under this Licence on the due date for payment and you remain in default not less than 7 days after being notified by us in writing to make such payment;
  - 9.3.2 you commit a material or persistent breach of any other term of this Licence which breach is irremediable or (if such breach is remediable) you fails to remedy that breach within 7 days after we notify you in writing requiring you to do so (and we shall be under no obligation to provide any

or all access to the Software during the 7-day notice period). For the avoidance of doubt, we consider a breach of any of the Restrictions in condition 3 to be a breach which cannot be remedied;

- 9.3.3 you take any step or action in connection with your entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 9.3.4 you suspend, or threaten to suspend, or cease or threaten to cease to carry on all or a substantial part of your business; or
  - 9.3.5 your financial position deteriorates to such an extent that in our reasonable opinion your capability to adequately fulfil your obligations under this Licence has been placed in jeopardy; or
  - 9.3.6 there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Licensee.
- 9.4 In any event this Licence shall automatically terminate without notice upon the expiry of any expiry date agreed in writing by the parties.
- 9.5 Upon termination or expiry of this Licence for any reason:
- 9.5.1 all rights and licences granted to you under this Licence shall cease;
  - 9.5.2 you must cease all access and activities authorised by this Licence;
  - 9.5.3 we have the right to disable any username or password used by you, whether chosen by you or allocated by us;
  - 9.5.4 you must immediately delete or remove the Software (and any portion thereof) from all computer equipment in your possession (including the Personal Computer) and immediately destroy or return to us (at our option) all copies of the Licence Key, Software and Documentation then in your possession, custody or control and, in the case of destruction, certify to us that you have done so;
  - 9.5.5 on our request, certify in writing that you have complied with your obligations under this condition 9.5; and
  - 9.5.6 we shall not be liable to the Licensee because of such termination or expiry for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures,



inventory, investments, leases or commitments in connection with the business or goodwill of Licensee.

9.6 Any provision of this Licence that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Licence shall remain in full force and effect.

9.7 Termination or expiry of this Licence shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Licence which existed at or before the date of termination or expiry and any payment obligation.

## 10. **COMPLIANCE WITH APPLICABLE LAWS**

10.1 You hereby agree to comply with all applicable technology control or export laws and regulations, including United States export laws and regulations (**Export Control Laws**).

10.2 You hereby accept and agree to assume full responsibility for:

10.2.1 determining any Export Control Law requirements applicable to any export, direct or indirect, of any technical data acquired under this Licence (or any products, including the Software, incorporating any such data); and

10.2.2 obtaining any licence or other governmental approval or authorisation required under Export Control Laws for any direct or indirect exports or re-exports of the Software and Documentation.

10.3 You hereby warrant that you will not use or otherwise export or re-export, directly or indirectly, the Software and/or Documentation except as authorised by and in compliance with Export Control Laws.

10.4 You hereby agree to:

10.4.1 provide us with any reasonable assistance requested to enable us to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws;

10.4.2 reimburse us for all costs, expenses and liabilities we may incur in the event that you elect, in your sole discretion, to apply for an export licence or other approval or authorisation which you determine is required in respect of the Software or Documentation, or any information or service related to the Software or Documentation; and

10.4.3 indemnify and keep us and our directors, officers and employees indemnified from and against all claims, judgments, fines, penalties,

sanctions, liabilities or other remedies imposed by a government, agency or regulatory authority and other costs and expenses (including, but not limited to, reasonable professional fees and expenses) of any kind resulting from any breach by you of any Export Control Laws.

- 10.5 You shall at your own expense, make, obtain, and maintain in force at all times during the term of this Licence, all filings, registrations, reports, licenses, permits and authorisations (collectively "Authorisations") in order for you to exercise your rights and perform your obligations under this Licence. We will provide you with such assistance as you may reasonably request in making or obtaining any such Authorisations.
- 10.6 In the event that the issuance of any Authorisation is conditioned upon an amendment or modification to this Licence which is unacceptable to us, we shall have the right to terminate this Licence without any liability or further obligation whatsoever to you.
- 10.7 You hereby represent and warrant that no consent, approval or authorisation of or designation, declaration or filing with any governmental authority is required in connection with the valid execution, delivery and performance of this Licence.

## 11. **COMMUNICATIONS BETWEEN US**

- 11.1 If you wish to contact us in writing, or if any condition in this Licence requires you to give us notice in writing, you can send this to us by email or by pre-paid post to Coriana Enterprises Ltd T/A Applied Cytometry at Matrix House, Nobel Way, Dinnington, South Yorkshire, S25 3QB, England and/or [info@appliedcytometry.com](mailto:info@appliedcytometry.com). We will confirm receipt of this by contacting you in writing, normally by email.
- 11.2 If we have to contact you or give you notice in writing, we will do so by email or by pre-paid post to the address you provide or confirm to us.
- 11.3 Please note that any notice given by you to us, or by us to you, will be deemed received and properly served immediately when posted by us on our website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.
- 11.4 Any notice given under or in connection with this Licence shall be in English. All other documents provided under or in connection with this Licence shall be in English, or accompanied by a certified English translation the English language version shall prevail if there is a conflict.
- 11.5 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 12. **OTHER IMPORTANT TERMS**

- 12.1 We may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of our rights and obligations under this Licence, provided we give written notice to you if this happens.
- 12.2 You shall not:
- 12.2.1 sub-license, assign or novate the benefit or burden of this Licence in whole or in part;
  - 12.2.2 allow the Software to become the subject of any charge, lien or encumbrance; and
  - 12.2.3 deal in any other manner with any or all of its rights and obligations under this Licence, without our prior written consent.
- 12.3 You and we confirm that we are each acting on our own behalf and not for the benefit of any other person.
- 12.4 This Licence does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence.
- 12.5 You hereby agree that you shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Licence or any document expressly referred to in it and that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Licence or any document expressly referred to in it.
- 12.6 Each of the provisions of this Licence operates separately. If any court or relevant authority decides that any of provision or part-provision is invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Licence.
- 12.7 If we do not insist immediately that you do anything you are required to do under this Licence, or if we delay in taking steps against you in respect of your breaking the terms of this Licence, or if we do not enforce all or any of our rights against you, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 12.8 This Licence (and any document referred to in it) contains the whole agreement between you and us relating to the subject matter hereof (to the exclusion of any terms, provisions or conditions contained on or within any purchase order, acknowledgement or other business form that you may use in connection with this Licence) and supersedes all prior agreements, arrangements and understandings between you and us relating to that subject matter.

- 12.9 No variation of this Licence shall be effective unless it is in writing and signed by us.
- 12.10 This Licence, its subject matter and its formation (and any non-contractual disputes or claims) shall be governed by and construed in accordance with English law. We both hereby irrevocably agree to the exclusive jurisdiction of the courts of England and Wales.
- 12.11 This Licence is prepared in the English language and if it is translated into any other language, the English language version of this Licence shall prevail if there is a conflict.

13. **OTHER APPLICABLE TERMS**

Additional terms and privacy policies may also apply to your access and use of the Software and Documentation if you use them in conjunction with any of our other products.

## **Schedule 1**

### **Country-specific Conditions**

1. IF LICENSEE IS BASED IN THE UNITED STATES, THE FOLLOWING CONDITIONS SHALL APPLY:
  - 1.1 SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF EXPRESS OR IMPLIED WARRANTIES AS SET FORTH IN THIS LICENCE, IN WHICH EVENT, ANY SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD.
  - 1.2 SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.
2. THE LICENSEE MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.