

EULA – CytoSwarm

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) (**you**) and Coriana Enterprises Ltd T/A Applied Cytometry (company number 8039712) of Matrix House, Nobel Way, Dinnington, South Yorkshire, S25 3QB, England (**our, us or we**) for:

- your use of our application, personal computer, mobile or WebApp, software and any Maintenance Release which is acquired by you during the subsistence of this Licence (**App**);
- the related user manuals and other documentation that is generally made available to end-users by us within the App (**Documentation**); and
- the services you connect to via the App and that we provide to you through it (whether we provide it directly or use another party to provide it to you) and the data supplied with or via the App (**Services**).

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

The Service Conditions also apply to your access and use of the Services.

OPERATING SYSTEM REQUIREMENTS: this App requires a device with an appropriate interface and operating system requirements as we may specify from time to time.

IMPORTANT NOTICE TO ALL USERS:

- By accessing or using the App 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 App, Documentation or the Service. If you do not agree to the terms of this Licence, we will not permit you to use the App, Documentation and the Service and you must discontinue your access now. In this case you may not access App, Documentation or the Service.
- 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 App, Documentation and the Service.

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 here <https://www.appliedcytometry.com/privacy> and it is important that you read that information.

WE DO NOT ACCEPT ANY CUSTOMER DATA CONTAINING ANY PERSONAL DATA AND YOU ARE RESPONSIBLE FOR EFFECTIVELY ANONYMISING ANY PERSONAL DATA CONTAINED WITHIN THE CUSTOMER DATA BEFORE SUCH CUSTOMER DATA IS INPUTTED TO OR UPLOADED VIA THE APP.

1. DEFINITIONS

1.1 In this Licence unless the context otherwise requires:

1.1.1 "Acceptance Date" means the date of your first access to the App or the date of your first acceptance of this Licence, whichever occurs first.

1.1.2 "Customer Data" means all information that is provided, posted, uploaded, inputted or submitted by you to us, including data files uploaded by you via the App for the purpose of using the Services or facilitating your use of the Services. Customer Data does not include information, data, text, messages, software, sound, music, video, photographs, graphics, images, and tags that we incorporate into or make available to you as part of the Services, including the information used to update the Customer Data in certain properties as part of the Services;

1.1.3 "Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including for the time being the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003, as amended;

1.1.4 "Evaluation Licence" means a limited licence granted under condition 2.3 for evaluation purposes only, as noted in the Order Form or otherwise stated by us in writing;

1.1.5 "Group" means your 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 you 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:

- 1.1.5.1 another person (or its nominee) by way of security or in connection with the taking of security; or
- 1.1.5.2 its nominee;
- 1.1.6 "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;
- 1.1.7 "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;
- 1.1.8 "Maintenance Release" means any release of the App that corrects faults, adds functionality or otherwise amends or upgrades the App (but which does not constitute a New Version), which we make freely available;
- 1.1.9 "New Version" means any new version of the App which from time to time is publicly marketed and we offer for purchase in the course of our 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;
- 1.1.10 "Normal Business Hours" means 9:00 a.m. to 5:00 p.m. GMT each day (other than a Saturday, Sunday or public holiday in England); and
- 1.1.11 "Order Form" means the form or online subscription process by which you agree (or your employer agrees) to subscribe to and purchase the Services.
- 1.1.12 "Service Conditions" means terms applying to the provision of the Services, as provided in writing by us; and

- 1.1.13 "Subscription Term" means the Initial Subscription Term and any subsequent Renewal Periods as stated in the Order Form or otherwise stated by us in writing.
- 1.2 An obligation on you in this Licence not to do something is an obligation on you not to do so yourself 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 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
- 1.4.4 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 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 Fees (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 download or stream a copy of the App onto your compatible device(s) and view, use and display the App on such device(s) and use the Services for your internal business purposes (or those of your employer) only on the terms of this Licence commencing on and including the Acceptance Date for the Subscription Term.
- 2.2 Subject to condition 2.3, you may:

- 2.2.1 Download or stream, access and use the App and use the Services only in the ordinary course of your internal business purposes (or those of your employer) (**Permitted Use**); and
 - 2.2.2 use any Documentation in support of the Permitted Use;
 - 2.2.3 provided you comply with the provisions in condition 3, you may make one copy of the App and the Documentation for back up purposes as is reasonably necessary for its proper and lawful use; and
 - 2.2.4 receive and use any Maintenance Release as we may provide to you.
- 2.3 If the licence granted under this Licence is an Evaluation Licence, as stated in the Order Form or otherwise stated by us in writing, or if no Licence Fee is payable by you:
- 2.3.1 you may access and use the App and the Services solely to evaluate the suitability of the App and Services for the ordinary course of your internal business purposes (or those of your employer) (**Permitted Evaluation Use**);
 - 2.3.2 you must not make any copies of the App or the Documentation;
 - 2.3.3 the Licence may be terminated at any time by us;
 - 2.3.4 unless terminated earlier by us under condition 2.3.3, the Licence will automatically terminate on the expiry of 30 consecutive days from the date of initial access (or such other period as we expressly agree in writing); and
 - 2.3.5 you acknowledge that the App and/or Services provided for the Permitted Evaluation Use may not exhibit full functionality.
- 2.4 Any Customer Data you provide during an Evaluation Licence will be permanently lost at the expiry or termination of the Evaluation Licence unless you purchase a subscription to use the Services, or export such data, before the expiry or termination of the Evaluation Licence. We will have no responsibility or liability for any Customer Data disposed of or deleted (whether by us or a third party) after termination or expiration of your Evaluation Licence.
- 2.5 You are solely responsible for:
- 2.5.1 obtaining all equipment required for the use of the App and Services and you are responsible for ensuring the compatibility thereof with the App and Services;
 - 2.5.2 for paying all fees, including all taxes and Internet access fees, necessary to access and use the App and Services;

- 2.5.1 ensuring that your network and systems comply with the relevant specifications provided by us from time to time;
 - 2.5.2 effectively anonymising any personal data contained within the Customer Data before such Customer Data is provided, posted, uploaded, inputted or submitted via the App;
 - 2.5.3 to the extent permitted by law and except as otherwise expressly provided in this Licence, procuring, maintaining and securing your network connections and telecommunications links from your systems to our data centres (or those of our service providers), and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet;
 - 2.5.4 if you download or stream the App onto any phone or other device not owned by you, you must have the owner's permission to do so. You will be responsible for complying with the terms of this Licence, whether or not you own the phone or other device; and
 - 2.5.5 for obtaining and maintain all other necessary licences, consents, and permissions required for your use of the App and the Services.
- 2.6 You acknowledge and accept that our authorisation process and your use of the App or any of the Services, requires the transmission of technical data regarding your network connections, the devices you use the App on and related software, hardware and peripherals to improve our products and to provide any Services to you. You agree to us collecting and using such data. If any personal data is transmitted as part of the authorisation process, we shall process such personal data in accordance with our privacy policy, which can be found here <https://www.appliedcytometry.com/privacy>.
- 2.7 You shall:
- 2.7.1 provide us with:
 - 2.7.1.1 all necessary co-operation in relation to this Licence; and
 - 2.7.1.2 all necessary access to such information as may be required by us in order to provide the App and/or Services, including but not limited to Customer Data, security access information and configuration services;
 - 2.7.2 without affecting your other obligations under this Licence, comply with all applicable laws and regulations with respect to your activities under this Licence;
 - 2.7.3 carry out all other of your responsibilities set out in this Licence in a timely and efficient manner; and

- 2.7.4 use the App and Services only in accordance with the terms and conditions of this Licence and the Service Conditions.
- 2.8 The rights provided under this condition 2 are granted to you only and shall not be considered granted to any subsidiary or holding company of yours.
- 2.9 This Licence shall not prevent us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing software, documentation, products and/or services which are similar to those provided under this Licence.
- 2.10 From time to time we may automatically update the App and change the Services to improve performance, enhance functionality, reflect changes to the operating system and/or address security issues. Alternatively, we may ask you to update the App for these reasons. If you choose not to install such updates or if you opt out of automatic updates you may not be able to continue using the App and the Services.

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 App or Documentation, except where such copying is incidental to or necessary for the Permitted Use;
 - 3.1.2 not to use or reproduce the App or Documentation except as specifically permitted under this Licence;
 - 3.1.3 not to exceed the Usage Limit applicable to your use of the App and/or Services as specified in the Order Form;
 - 3.1.4 not to make alterations to, or modifications of, nor permit the App or any part of it (subject to condition 3.1.5) to be combined with, or become incorporated in, or used with or in, any other programs;
 - 3.1.5 not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the App, or otherwise attempt to (i) derive source code or underlying ideas, algorithms, structure or organisation from the App, or (ii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the App, including, without limitation, any such mechanism used to restrict or control the functionality of the App, 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 App to obtain the information necessary to create an independent program that can be

operated with the App or with another program (**Permitted Objective**), and provided that the information obtained by you during such activities:

- 3.1.5.1 is used only for the Permitted Objective;
 - 3.1.5.2 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
 - 3.1.5.3 is not used to create any software that is substantially similar in its expression to or functionality of the App;
- 3.1.6 not to use the App or Services to provide services to any person or otherwise use the App or Services on a service bureau basis;
- 3.1.7 not to remove, alter, cover or hide any patent, copyright, trademark or our other proprietary notices, labels or marks whatsoever on or in the App or Documentation, or any data file provided as part of the Services, and you shall reproduce such notices, labels and marks on any copies of the App, Documentation or any data file provided as part of the Services that you make in connection with your permitted use of the App, Documentation and Services.
- 3.1.8 to keep the App (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 App and to use the best available security practices and systems applicable to the use of and access to the App to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the App;
- 3.1.9 to supervise and control use of the App and Services and ensure that the App and Services is used by your employees, representatives or authorised third parties in accordance with the terms of this Licence;
- 3.1.10 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 App, Documentation, Services 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;

- 3.1.11 not extract, download, reutilise, use, exploit, redistribute, disseminate, copy or store the App for any purpose not expressly permitted by this Licence;
 - 3.1.12 not access, store, distribute or transmit any Viruses (including worms, trojan horses and other similar things or devices), or any data or material during the course of its use of the App or Services 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;
 - 3.1.13 not to use the App or Services in any unlawful manner, for any criminal intent, purpose or endeavour nor for any purpose contrary to any law or regulation or any regulatory code, guidance or request;
 - 3.1.14 not to infringe our intellectual property rights or those of any third party in relation to your use of the App, Documentation or Services, including by the submission of any data or material (to the extent that such use is not licensed by these terms);
 - 3.1.15 not to use the App or Services in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users;
 - 3.1.16 not to collect or harvest any information or data from the Services or our systems or attempt to decipher any transmissions to or from the servers running any Services;
 - 3.1.17 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
 - 3.1.18 to permit us to inspect and have access to any premises (and to the computer equipment located there) at or on which the App 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 App and Services are not intended to be used for medical diagnostic purposes. You undertake not to use the App or Services for medical diagnostic purposes and you shall indemnify us and keep us indemnified, 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 App and/or Services being used for medical diagnostic purposes.

3.3 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.

3.4 If you become aware of or learn or suspect:

3.4.1 any misuse of the App and/or Services;

3.4.2 any unauthorised use, disclosure, reproduction, or distribution of the App, Documentation or Services, which comes to your attention, or which you reasonably suspect;

3.4.3 any security breach in connection with this Licence that could compromise the security or integrity of the App or Services or otherwise adversely affect us; or

3.4.4 that your username or password or any other security feature has been revealed to or obtained by any unauthorised person,

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

4. **INTELLECTUAL PROPERTY RIGHTS**

4.1 You acknowledge that all Intellectual Property Rights the App, the Documentation and the Services throughout the world belong to us (or our licensors, as the case may be), that rights in the App, the Documentation and Services are licensed (not sold) to you, and that you have no Intellectual Property Rights in, or to, the App, the Documentation or Services other than the right to use the same in accordance with the terms of this Licence.

4.2 Except as expressly provided in this Licence, we do not grant you any right, title or interest in or to the App, the Documentation or Services whether by implication or otherwise howsoever.

4.3 You acknowledge that you have no right to have access to the App or software used to provide the Services in source code form or in unlocked coding or with comments.

4.4 You shall own all right, title and interest in and to all of the Customer Data and you shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all Customer Data.

4.5 The integrity of the App and Services is protected by technical protection mechanisms ("TPM") so that the Intellectual Property Rights in the App, Documentation and Services 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. **NO WARRANTY**

5.1 We shall use commercially reasonable endeavours to make the App available 24 hours a day, seven days a week, except for:

5.1.1 planned maintenance carried out during the maintenance window of 5.01pm Friday to 8.59am Monday (or where Monday is a public holiday in England, 8.59am Tuesday) UK time; and

5.1.2 unscheduled or emergency maintenance, provided that if unscheduled or emergency maintenance is performed during Normal Business Hours We will use reasonable endeavours to give you notice in advance.

5.2 We will provide limited technical support regarding the use and operation of the App:

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

5.2.2 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. UK time each day (other than a Saturday, Sunday or public holiday in England) and 24-hour through any website that we may operate from time to time for that purpose.

5.3 We and our affiliated companies do not warrant, guarantee, or make any representations:

5.3.1 regarding the use or output, or the results of the use or output, of the App or Services or any data file provided as part of the Services or written materials in terms of correctness, completeness, accuracy, timeliness, sequence, reliability or otherwise;

5.3.2 regarding the security of your data or equipment at any time or for any purpose;

5.3.3 with respect to technical assistance or information provided by us to you or your agents or personnel;

5.3.4 as to the frequency, value, applicability or content of future Maintenance Releases;

5.3.5 that the use of the App will be uninterrupted or error-free or that it will meet any Heightened Cybersecurity Requirements;

5.3.6 that the App or any data provided as part of the Services will be Virus free;

- 5.3.7 as to title or non-infringement in the App and/or Services; or
- 5.3.8 that the App and/or Services will meet your requirements.
- 5.4 You acknowledge and accept that the App and Services 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 App and Services as described in the Documentation meet your requirements.
- 5.5 You are responsible for configuring your information technology, computer programmes, device(s) and platform in order to access the App and use the Services.
- 5.6 Subject to condition 7.2, we are not liable or responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the App and Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.7 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 using the App and/or Services.
- 5.8 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.
- 5.9 We only supply the App, Documentation and Services for internal use by your business, or the business of your employer, for the Permitted Use and you hereby agree not to use the App, Documentation or Service for any other purposes.
- 5.10 Except as expressly stated elsewhere in this Licence, the App, Documentation and use of the Services is licensed "as is", with all faults and without warranty, and any condition, warranty, representation or other term concerning the supply of the App, Documentation and Services 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.

6. **CUSTOMER DATA**

- 6.1 You undertake to effectively anonymise any personal data including Special Category Data contained within the Customer Data before such Customer Data is provided, posted, uploaded, inputted or submitted via the App in order for us to provide Services to you.
- 6.2 We may monitor use of the Services by all of our customers and use the aggregated information gathered in an anonymous manner. You agree that we may use and publish

such information, provided that such information does not disclose any Customer Data and/or identify you.

- 6.3 We will maintain commercially appropriate technical and organisational measures to ensure a level of security appropriate to the risk to protect Customer Data. In the event of any loss or damage to Customer Data, your sole and exclusive remedy against us shall be for us to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by us (or our hosting provider). We shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 6.4 On the termination or expiry of this Licence, we may destroy or otherwise dispose of any of the Customer Data in our possession, unless we receive, no later than thirty (30) days after the effective date of the termination or expiry of this Licence, a written request for the delivery to you of the then most recent back-up of the Customer Data maintained by us (or by our hosting provider). We shall use reasonable commercial endeavours to deliver the back-up to you within 30 days of our receipt of such a written request, provided that you have, at that time, paid all fees and charges outstanding at and resulting from termination or expiry (whether or not due at the date of termination or expiry) and thereafter we shall promptly delete all existing copies of it (except to the extent that any applicable laws requires us to store such data). For these purposes the term "delete" shall mean to put such data beyond use.
- 6.5 This condition 6 shall survive termination or expiry of this Licence.

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

- 7.1 Except as expressly stated in condition 7.2:
- 7.1.1 we 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 any special damage, indirect or consequential loss even if we were aware of the circumstances in which such loss or 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 services;
 - 7.1.1.9 loss of use or corruption of software, data or information; and
- 7.1.2 our total aggregate liability, whether in contract, tort (including negligence) or otherwise and whether under or in connection with this Licence shall in no circumstances exceed £100.00 in any five, 5, year period, Great British Pounds ("GBP"), provided however that this limitation shall not apply to you if you only use the App, Documentation and/or Services under an Evaluation Licence, and in this case, if we are determined to have any liability to you or any third party arising from your use of the App, Documentation and/or Services under an Evaluation Licence, then our aggregate liability will be limited to £10.00 GBP in any five, 5, year period; 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) we shall have no liability in any circumstances otherwise than in accordance with the express terms of this Licence.
- 7.2 The exclusions in condition 5 and this condition 7 shall apply to the fullest extent permissible at law, but we do 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 If you are located in or are accessing the App in any country listed in Schedule 1, then that schedule shall also apply. 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 your use of the App in that country.
- 7.4 This Licence sets out the full extent of our obligations and liabilities in respect of the supply of the App and Documentation.
- 7.5 This condition 7 shall survive termination or expiry of this Licence.

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 any act or event beyond our reasonable control, including without limitation failure of public or private telecommunications networks (an “**Event Outside Our Control**”).
- 8.2 If an Event Outside Our Control takes place that affects the performance of our obligations under this Licence:
- 8.2.1 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
- 8.2.2 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. **TERMINATION OR EXPIRY OF THIS LICENCE**

- 9.1 Upon termination or expiry of this Licence for any reason:
- 9.1.1 all rights and licences granted to you under this Licence shall cease;
- 9.1.2 you must cease all access and activities authorised by this Licence;
- 9.1.3 we have the right to disable any username or password used by you, whether chosen by you or allocated by us;
- 9.1.4 you must within 30 days delete or remove the App (and any portion thereof) from all devices and computer equipment in your possession, custody or and control and immediately destroy or return to us (at our option) all copies of the App and/or Documentation then in your possession, custody or control and, in the case of destruction, certify to us that you have done so;
- 9.1.5 on our request, certify in writing that you have complied with your obligations under this condition 9.1;
- 9.1.6 we may remotely access your devices and remove the App from them and cease providing you with access to the Services;
- 9.1.7 we may destroy or otherwise dispose of any of the Customer Data in our possession in accordance with condition 6.4; and
- 9.1.8 we shall not be liable to you 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 your business or goodwill.

9.2 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.

9.3 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. **COMMUNICATIONS BETWEEN US**

10.1 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. We will confirm receipt of this by contacting you in writing, normally by email.

10.2 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.

10.3 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 at 9.00 am UK time on the third working day (in the place of receipt) after the date of posting of any letter.

10.4 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.

10.5 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.

10.6 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.

11. **OTHER IMPORTANT TERMS**

11.1 We may at any time sub-contract, assign, novate, charge or deal in any other manner with any or all of our rights and obligations under this Licence.

- 11.2 You shall not:
- 11.2.1 sub-license, assign or novate the benefit or burden of this Licence in whole or in part;
 - 11.2.2 allow the App to become the subject of any charge, lien or encumbrance; and
 - 11.2.3 deal in any other manner with any or all of its rights and obligations under this Licence,
- without our prior written consent. If you sell any device on which the App is installed, you must remove the App from it.
- 11.3 You and we each represent and warrant to the other that it has full power and authority to enter into this Agreement and you and we confirm that we are each acting on our own behalf and not for the benefit of any other person.
- 11.4 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.
- 11.5 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.
- 11.6 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.
- 11.7 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.
- 11.8 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.
- 11.9 No variation of this Licence shall be effective unless it is in writing and signed by us.

- 11.10 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.
- 11.11 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.

Schedule 1

Country-specific Conditions

12. IF YOU ARE BASED IN THE UNITED STATES, THE FOLLOWING CONDITIONS SHALL APPLY:
 - 12.1 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.
 - 12.2 SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.
 - 12.3 YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.