

# CYTEK BIOSCIENCES

## SOFTWARE LICENSE AGREEMENT

CYTEK BIOSCIENCES, INC. (“**CYTEK BIO**”) IS WILLING TO LICENSE THE SPECTROFLO SOFTWARE AND DOCUMENTATION (EACH, DEFINED BELOW) TO THE COMPANY ON WHOSE BEHALF YOU ARE LOADING THE SOFTWARE (“**CUSTOMER**”) ONLY ON THE CONDITION THAT CUSTOMER ACCEPTS ALL OF THE TERMS IN THIS SOFTWARE LICENSE AGREEMENT (THE “**AGREEMENT**”). AS AN EMPLOYEE OR AGENT OF CUSTOMER (“**YOU**”), YOU AGREE THAT YOU ARE ENTERING INTO THIS AGREEMENT TO OBTAIN THE SOFTWARE FOR USE BY CUSTOMER FOR ITS OWN BUSINESS PURPOSES, YOU HEREBY AGREE THAT YOU ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER AND THAT YOU HAVE THE AUTHORITY TO BIND CUSTOMER TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

**BY CLICKING ON THE “ACCEPT” BUTTON BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY IT. IF YOU DO NOT AGREE TO ANY OF THE TERMS BELOW, CYTEK BIO IS UNWILLING TO LICENSE THE SPECTROFLO SOFTWARE TO CUSTOMER, AND YOU MUST CLICK ON THE “DO NOT ACCEPT” BUTTON BELOW TO DISCONTINUE THE INSTALLATION PROCESS.**

**IF CUSTOMER DOES NOT AGREE TO BE BOUND BY THE AGREEMENT, CUSTOMER MAY NOT ACCESS OR USE THE SPECTROFLO SOFTWARE.**

### **AGREEMENT:**

#### **1. DEFINITIONS.** As used in this Agreement:

“**Documentation**” means the end user manuals provided to Customer along with the SpectroFlo Software.

“**Executable Code**” means the fully compiled binary version of a software program that can be executed by a computer and used by an end user without further compilation.

“**Instrument**” means the SpectroFlo instrument that Customer receives from Cytek Bio, which includes preloaded SpectroFlo Software.

“**Intellectual Property Rights**” means all copyrights, trade secrets, patents, patent applications, moral rights, contract rights, and other proprietary rights, but specifically excluding any trademarks or service marks.

“**Source Code**” means the human-readable version of a software program that can be compiled into Executable Code.

“**SpectroFlo Software**” means the SpectroFlo software program or programs, downloadable by Customer, provided by Cytek Bio on a CD, and/or preloaded into the Instrument, and any modified, updated, or enhanced versions of such programs that Cytek Bio may provide to Customer pursuant to this Agreement or to a separate maintenance and support agreement.

#### **2. LICENSE GRANT.** Subject to the terms and conditions of this Agreement, Cytek Bio grants to Customer a non-exclusive, non-transferable (except as permitted under Section 9.4), worldwide, perpetual (for the duration of any Intellectual Property Rights therein) and irrevocable (unless terminated under Section 8.2), fully paid and royalty-free license to (i) use the SpectroFlo Software on the Instrument, and (ii) install or download one (1) copy of the

SpectroFlo Software on one (1) computer, all solely for Customer's internal business purposes and solely in accordance with the Documentation.

**3. LICENSE RESTRICTIONS.** Customer acknowledges that the SpectroFlo Software and its structure, organization, and Source Code constitute valuable trade secrets of Cytek Bio and its suppliers. Accordingly, Customer agrees not to (a) modify, adapt, alter, translate, or create derivative works from the SpectroFlo Software; (b) merge the SpectroFlo Software with other software; (c) sublicense, lease, rent, loan, or otherwise transfer (except in connection with an assignment of Customer's rights permitted under Section 9.4) the SpectroFlo Software to any third party, (d) use the SpectroFlo Software in any service bureau or time-sharing arrangement, (e) reverse engineer, decompile, disassemble, or otherwise attempt to derive the Source Code for the SpectroFlo Software; or (f) otherwise use or copy the SpectroFlo Software except as expressly allowed under Section 2.

**4. DELIVERY, INSTALLATION, AND ACCEPTANCE.** The SpectroFlo Software can be delivered by electronic download or installed by a CD-ROM or flash memory in accordance with Cytek Bio's instructions and comes pre-loaded on the Instrument. Customer will be responsible for installing the SpectroFlo Software on a single computer as permitted under this Agreement. The SpectroFlo Software will be deemed irrevocably accepted upon delivery.

## **5. WARRANTIES**

**5.1 Performance.** Cytek Bio represents and warrants that the SpectroFlo Software will conform in all material respects to the Documentation for a period of one (1) year from the date of delivery of the Instrument (the "Software Warranty Period"). In the event there is any material non-conformance of the SpectroFlo Software to the Documentation during the Software Warranty Period, Cytek Bio will repair or replace the SpectroFlo Software in accordance with Cytek Bio's then current standard software support and maintenance policy. Cytek Bio does not warrant that the Customer's use of the SpectroFlo Software will be error-free or uninterrupted. Any such repair or replacement will not extend the original Software Warranty Period. The foregoing is Cytek Bio's sole liability and Customer's exclusive remedy of any breach of the foregoing performance warranty.

**5.2 Disclaimers.** **THE EXPRESS WARRANTIES IN THIS SECTION 5 ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SPECTROFLO SOFTWARE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, INTERFERENCE WITH CUSTOMER'S QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 5, THE SPECTROFLO SOFTWARE IS PROVIDED "AS IS" WITH ALL FAULTS , AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, ACCURACY, AND EFFORT IS WITH THE CUSTOMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT IT HAS NOT RELIED ON ANY ORAL OR WRITTEN INFORMATION OR ADVICE, WHETHER GIVEN BY CYTEK BIO, ITS SUPPLIERS, DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES.**

**6. INFRINGEMENT CLAIMS.** Cytek Bio will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the SpectroFlo Software directly infringes any U.S. copyrights or misappropriates any trade secrets recognized as such under the Uniform Trade Secret law, and Cytek Bio will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to

such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer notifying Cytek Bio promptly in writing of such action, Customer giving Cytek Bio sole control of the defense thereof and any related settlement negotiations, and Customer cooperating with Cytek Bio and, at Cytek Bio's request and expense, assisting in such defense. If the SpectroFlo Software becomes, or in Cytek Bio's opinion is likely to become, the subject of an infringement claim, Cytek Bio may, at its option and expense, either (a) procure for Customer the right to continue using the SpectroFlo Software, (b) replace or modify the SpectroFlo Software so that it becomes non-infringing or (c) accept return of the SpectroFlo Software and give Customer a credit. Notwithstanding the foregoing, Cytek Bio will have no obligation under this Section 6 or otherwise with respect to any infringement claim based upon (i) any use of the SpectroFlo Software not in accordance with this Agreement or for purposes not intended by Cytek Bio, (ii) any use of the SpectroFlo Software in combination with other products, equipment, software, or data not supplied by Cytek Bio, (iii) any use of any release of the SpectroFlo Software other than the most current release made available to Customer, or (iv) any modification of the SpectroFlo Software by any person other than Cytek Bio. **THIS SECTION 6 STATES CYTEK BIO'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.**

**7. LIMITATION OF LIABILITY. IN NO EVENT WILL CYTEK BIO BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT EVEN IF CYTEK BIO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CYTEK BIO'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SPECTROFLO SOFTWARE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES CUSTOMER PAID TO CYTEK BIO FOR THE INSTRUMENT. IN ADDITION, CYTEK BIO DISCLAIMS ALL LIABILITY OF ANY KIND OF CYTEK BIO'S SUPPLIERS.**

## **8. TERM AND TERMINATION**

**8.1 Term.** The term of this Agreement will begin on the Effective Date and will continue indefinitely unless terminated pursuant to Section 8.2.

**8.2 Termination.** Customer may terminate this Agreement at any time, with or without cause, upon written notice to Cytek Bio. Cytek Bio may terminate this Agreement, effective immediately upon written notice to Customer, if (a) Customer breaches any provision in Section 3, or (b) Customer breaches any other provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from Cytek Bio.

**8.3 Effects of Termination.** Upon termination or expiration of this Agreement for any reason, all licensed rights granted in this Agreement will immediately cease to exist, and Customer must promptly discontinue all use of the SpectroFlo Software, erase all copies of the SpectroFlo Software from Customer's computers, and return to Cytek Bio or destroy all copies of the SpectroFlo Software and Documentation on tangible media in Customer's possession or control and certify in writing to Cytek Bio that it has fully complied with these requirements.

**8.4 Survival.** Sections 1 (Definitions), 2 (License Grant), 3 (Restrictions on Use), 5 (Warranties), 6 (Infringement Claims), 7 (Limitation of Liability), 8.3 (Effects of Termination), and 9 (General) will survive termination of this Agreement for any reason.

## **9. GENERAL**

**9.1 Proprietary Rights.** The SpectroFlo Software and Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of Cytek Bio and its suppliers. All rights in and to the SpectroFlo Software not expressly granted to Customer in this Agreement are reserved by Cytek Bio and its suppliers. Nothing in this Agreement will be deemed to grant, by implication, by estoppel, or otherwise, a license under any of Cytek Bio's existing or future patents; Cytek Bio agrees that it will not assert any of its rights under such patents against Customer based upon the exercise by Customer of the license granted in Section 2. Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of Cytek Bio or its suppliers on the SpectroFlo Software or the Documentation.

**9.2 No Maintenance or Support.** Cytek Bio is not required to provide any maintenance or support services with respect to the SpectroFlo Software under this Agreement other than to provide Cytek Bio's then current standard software maintenance and support for the SpectroFlo Software during the Software Warranty Period.

**9.3 Compliance with Laws.** Customer acknowledges that the laws and regulations of the United States restrict the export and re-export of commodities and technical data of United States origin, including the SpectroFlo Software. Customer agrees that it will not export or re-export the SpectroFlo Software in any form in violation of the export or import laws of the United States or any foreign jurisdiction. [Customer understands that the SpectroFlo Software contains encryption technology that may require export approvals from the United States Bureau of Export Administration.] Customer will defend, indemnify, and hold harmless Cytek Bio from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors, or employees.

**9.4 Assignments.** Customer may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement (including its licenses with respect to the SpectroFlo Software) to any third party without Cytek Bio's prior written consent, except pursuant to a transfer of all or substantially all of Customer's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment or transfer in violation of the foregoing will be void.

**9.5 U.S. Government End Users.** If Customer is a branch or agency of the United States Government, the following provision applies. The SpectroFlo Software and Documentation are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.

**9.6 Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by courier, or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth beneath such party's signature, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving notice of the new address to the other party.

**9.7 Governing Law and Venue.** This Agreement will be governed by the laws of the State of California as such laws apply to contracts between California residents performed entirely within California. Any action or proceeding arising from or relating to this Agreement may be brought in a federal court in the Northern District of California or in state court in Santa Clara County, California, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

**9.8 Remedies.** Except as provided in Sections 5 and 6, the parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the SpectroFlo Software contains valuable trade secrets and proprietary information of Cytek Bio, that any actual or threatened breach of Section 3 will constitute immediate, irreparable harm to Cytek Bio for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach.

**9.9 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**9.10 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Customer agrees that Section 7 will remain in effect notwithstanding the unenforceability of any provision in Section 5.

**9.11 Confidentiality of Agreement.** Neither party will disclose any terms of this Agreement to anyone other than its attorneys, accountants, and other professional advisors except (a) as required by law or (b) pursuant to a mutually agreeable press release or (c) in connection with a contemplated transfer of such party's business and this Agreement permitted by Section 9.4 (provided that any third party to whom the terms of this Agreement are to be disclosed signs a confidentiality agreement reasonably satisfactory to the other party).

**9.12 Construction.** The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to".

**9.13 Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

**9.14 Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties. The terms of any purchase order or similar document submitted by Customer to Cytek Bio will have no effect.