1. AGREEMENT

1.1. Parties. The terms and conditions set forth below, together with those appearing in this purchase order and any attachments hereto, including a Statement of Work, (collectively, “Order”), constitute an agreement between AGILENT TECHNOLOGIES, INC., or any other AGILENT entity identified on the face of this purchase order, including any and all applicable subsidiaries (“AGILENT”), and the party identified in the “Issued To” box on the face of this purchase order (“Seller”).

1.2. Precedence. In the event of a conflict between this Order and any other written agreement between the parties and specifically covering the same goods or services, the terms and conditions of such agreement shall prevail to the extent of such conflict. A conflict between the terms set forth herein and those set forth in an SOW shall be resolved in favor of the SOW. Notwithstanding the above, this Order shall prevail over any differing or additional terms and conditions proposed by Seller, including, without limitation, those contained in any invoice.

1.3. No Modification. No modification of this Order shall be binding unless in writing approved by an authorized representative of each party.

2. PRICES AND PAYMENT

2.1. Price. Seller shall sell to AGILENT the goods (“Goods”) or services (“Services”) shown in this Order at the prices specified. Any forecasts provided by AGILENT were provided as an accommodation to Seller, and shall not constitute a commitment of any type by AGILENT. Except as otherwise provided in this Order, prices are exclusive of applicable freight charges and duties.

2.2. Taxes. AGILENT shall be responsible for any applicable sales taxes, provided Seller has submitted appropriate information or documentation to allow AGILENT to recover such taxes as appropriate. AGILENT shall include such taxes with the payment or provide Seller with the appropriate information or documentation to support exemption from such taxes. AGILENT shall have no other or further liability to Seller with respect to any tax, duty, levy or like imposition for which Seller may be liable as a result of the supply of the Goods or Services.

2.3. E-Commerce System. Seller shall submit to AGILENT correct, itemized invoices of all charges for the Goods or Services. Seller shall establish an electronic Seller account through such third party internet-based platform as AGILENT may require from time to time, through which Seller shall submit invoices to and receive purchase orders from AGILENT (the “E-Commerce System”). The electronic Seller account will be established within 30 days of the date of this Order. If AGILENT has established an E-Commerce System applicable to this Agreement, the use of such E-Commerce System is a material obligation of Seller, and AGILENT will not pay any invoice unless Seller has submitted such invoice through the E-Commerce System.

2.4. Payment. Unless indicated otherwise on the face of this purchase order, payment shall be due forty-five (45) days after the latter of AGILENT’s receipt of either an appropriate invoice from Seller or the relevant Goods or Services. AGILENT may deduct from such payment any monies owed by Seller to AGILENT.

2.5. Not Acceptance. Payment by AGILENT shall neither constitute acceptance of the Goods or Services, nor impair AGILENT’s right to inspect such Goods or Services or invoke any available remedies.

3. SHIPMENT AND DELIVERY

3.1. Shipment Terms. Seller shall ship Goods in the method identified by AGILENT to permit Seller to meet the delivery date(s) identified by AGILENT on the face of this purchase order (“Delivery Date”). If Seller ships by any other method, Seller shall pay any resulting increase in the cost of freight. Except as specified below, shipments of Goods shall be FCA (as that term is defined in the Incoterms 2010 handbook) Seller’s place of shipment/export, and title and risk of loss or damage shall pass from Seller to AGILENT upon Seller’s delivery of the Goods to the designated carrier at the place of shipment/export. If AGILENT agrees to pay for applicable freight charges and duties as part of the purchase price, arrangements and risk of loss or damage shall pass from Seller to AGILENT upon Seller’s delivery of the Goods to the “Ship To” address identified by AGILENT on the face of this purchase order.

3.2. Costs. Except as otherwise provided in this Order, AGILENT shall bear all shipping and transport expenses. Seller shall bear all expenses related to handling, packing, packaging, loading and delivery of Goods to the designated carrier, and loading of Goods onto carrier’s conveyance.

3.3. Packaging. Seller shall handle, pack and package the Goods so as to protect the Goods from loss or damage, in conformance with good commercial practice, AGILENT specifications, government regulations (including those applicable to chemicals and hazardous materials) and Seller’s performance (including recycling, re- use and return, and refurbish to AGILENT, upon request, information or documentation of Seller’s compliance). Seller shall be responsible for any loss or damage due to its failure to handle, pack and package the Goods in a proper and lawful manner. AGILENT may not be liable for any such loss or damage against the carrier involved. In each shipment, Seller shall include a packing list that contains the following: (a) this Order number; (b) the AGILENT part number; (c) the quantity shipped; and (d) the requested delivery date. The information on the packing list must agree with the AGILENT purchase order.

3.4. Late Shipment. Failure to meet the Delivery Date specified on the face of this Order may constitute a breach of this Order. Seller shall give AGILENT notice of any prospective failure to ship Goods or provide Services in time to meet the Delivery Date. If only a portion of the Goods is available for shipment to meet the Delivery Date, Seller shall ship the available Goods unless directed by AGILENT to reschedule shipment. If only a portion of the Goods can be performed on the Delivery Date, Seller shall perform such Services unless directed by AGILENT to reschedule performance. Partial deliveries shall be deemed late shipments and be considered complete only when all Goods and Services have been shipped. Notwithstanding the above, upon Seller’s notice of any prospective failure to ship Goods or provide Services in time to meet the Delivery Date, AGILENT reserves the right to terminate the Order and any subsequent Orders without any charge or liability.

3.5. Late Shipment. If, due to Seller’s failure to ship Goods in a timely manner, the identified method of transportation would not perform in time to meet the Delivery Date, Seller shall ship the Goods by air transportation or other means acceptable to AGILENT, and shall pay for any resulting increase in the cost of freight.

3.6. Early Shipment. If AGILENT receives any shipment more than three working days prior to the Delivery Date, AGILENT may either return the Goods or delay performance. Partial deliveries shall be directed by AGILENT to reschedule performance. If only a portion of the Services can be furnished on the Delivery Date, AGILENT may either return the Goods or delay performance. Partial deliveries shall be directed by AGILENT to reschedule performance. If only a portion of the Services can be furnished on the Delivery Date, AGILENT may either return the Goods or delay performance. Partial deliveries shall be directed by AGILENT to reschedule performance.
6. NONCOMPLYING GOODS AND SERVICES

6.1. AGILENT’s Options. In addition to the remedies specified in Section 10 below, if any Goods or Service is defective or otherwise not in conformity with the requirements of this Order (“Non-Complying Goods” and “Non-Complying Services”, respectively), AGILENT may either (a) return the Non-Complying Goods for repair, replacement or reworking at Seller’s expense; (b) repair the Non-Complying Goods itself and recover its reasonable expenses of repair from Seller; or (c) require Seller to re-perform the Services at Seller’s expense.

6.2. Time for Compliance. If AGILENT returns the Non-Complying Goods, Seller shall return the repaired, replacement or reworked Non-Complying Goods no later than five working days after receipt of the Non-Complying Goods from AGILENT. If AGILENT requires Seller to re-perform the Non-Complying Services, Seller shall re-perform the Services within five working days after notice from AGILENT that Services are defective or not in conformity with the requirements of this Order. The cure period specified in Section 10.1 below shall apply only once to any breach of this section 6.

6.3. Failure to Provide Complying Goods. If Seller fails to return repaired, replacement or reworked Goods to AGILENT within five working days of receipt of Non-Complying Goods, AGILENT may reject the Non-Complying Goods, and Seller shall reimburse AGILENT all associated costs paid by AGILENT. If AGILENT rejects the Non-Complying Goods, AGILENT may terminate this Order and procure, upon such terms and in such manner as AGILENT deems appropriate, replacement goods. Seller shall reimburse AGILENT upon demand for all additional costs incurred by AGILENT in purchasing any such replacement goods.

6.4. Failure to Re-Perform Services. If Seller fails to satisfactorily re-perform the Services within five working days after notice from AGILENT, AGILENT may terminate this Order and procure, upon such terms and in such manner as AGILENT deems appropriate, replacement services. Seller shall reimburse AGILENT upon demand for all associated costs paid by AGILENT for the Services, as is equitable under the circumstances, and for all additional costs incurred by AGILENT in purchasing any such replacement services.

6.5. End-Of-Life Return. If Seller fails to return repaired, replacement or reworked Goods or Services to AGILENT, without any charge or liability to AGILENT, any material included in the Goods or their packaging by return freight prepaid by AGILENT.

7. LICENSE

7.1. License Grant. If Goods include software, Seller grants to AGILENT a non-exclusive, royalty-free, worldwide license to use, import, reproduce, and distribute the software in object code form for internal use directly or as integrated into AGILENT products. Seller also grants to AGILENT a non-exclusive, royalty-free, worldwide license to use, import, distribute and offer for sale any copies of the software purchased that remain in the original shrink-wrap packaging. If Goods include documentation, Seller grants to AGILENT a non-exclusive, royalty-free, worldwide license to use, reproduce, distribute and prepare derivative works in AGILENT’s name all documentation furnished by Seller. AGILENT may reproduce such documentation without Seller’s logo or other identification of source, subject to affixing copyright notices to all copies of documentation, and Seller hereby waives and shall cause to be waived all applicable moral rights with respect to such documentation. These rights with respect to software and documentation shall extend to (a) third parties to use and reproduce the Goods for AGILENT’s internal use; and (b) third-party channels of distribution.

8. INDEMNIFICATION, INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

8.1. Intellectual Property in Results of Services.

8.1.1. “Intellectual Property” or “IP” shall mean all inventions, patents (including without limitation applications divisions, reissues, reexaminations, terms extensions, continuations, and any foreign counterparts), works of authorship, copyrights (including without limitation registrations, applications and derivatives), trademarks (including without limitation service marks, trade dress, and other marks indentifying a party or its products), designs, processes, mask works, trade secrets, domain names, proprietary technical information and other similar proprietary information tangible and intangible, whether or not registered or registrable.

8.1.2. “Pre-existing IP” means IP conceived or developed prior to or independent of performance of this Order. Seller will remain full right, title and interest in and to any Pre-existing IP. Seller will not use any Pre-existing IP in connection with this Order without first obtaining from the owner any rights necessary to enable Seller to fully comply with the terms of this Order.

8.1.3. Seller hereby agrees to and does irrevocably assign and transfer to AGILENT all of its worldwide rights, title, and interest in and to the Goods, and all results of the Services at AGILENT’s sole expense, Seller shall execute any documents and take all additional steps as reasonably requested by AGILENT to perfect, record, and register such assignment.

8.1.4. Seller hereby grants to AGILENT a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, transferable license with right to sublicense any Pre-existing IP to the extent necessary for AGILENT’s full enjoyment and commercial exploitation of the results of the Services as reasonably contemplated by the Order.

8.1.5. Indemnification. Seller agrees to defend, indemnify and hold harmless AGILENT and its affiliates, subsidiaries, assigns, subcontractors and customers from and against all claims, losses, demands, fees, damages, liabilities, costs, expenses (including attorneys’ fees), obligations, causes of action, suits or injuries of any kind or nature arising from, in connection with or related in any way to any breach or alleged breach of any of the warranties made by Seller or any act or omission of Seller.

8.2. Infringing Goods and Services. Without limiting the above remedy, if AGILENT’s use of any Goods or receipt of any Service is enjoined because of any actual or claimed infringement of patent, trademark, copyright, trade secret or other intellectual property rights, or if AGILENT is required to replace infringing goods or service (as applicable) without loss of functionality; (b) modify the Infringing Product to be non-infringing; or (c) if unable to replace or modify the Infringing Product, refund in full all costs paid by AGILENT for the Infringing Product and reimburse AGILENT upon demand for all additional costs incurred by AGILENT in purchasing any replacement goods or services.

8.3. Removal of AGILENT’s Trademarks. Unless otherwise specified or approved by AGILENT, Seller will remove AGILENT’s name and any of AGILENT’s trademarks, trade names, insignia, part numbers, symbols or decorative designs from all Goods rejected or returned by AGILENT or not sold or shipped to AGILENT.

8.4. Confidential Information. Except as required to supply Goods or Services pursuant to this Order or as otherwise instructed by AGILENT, Seller shall not use or disclose any confidential information of AGILENT. Confidential information includes, without limitation, all information designated by AGILENT as confidential; all information or data concerning AGILENT’s Goods (including the discovery, invention, research, improvement, development, manufacture or sale thereof) or general business operations (including costs, forecasts, profits, pricing methods and processes); information obtained through access to any AGILENT information systems (“IA/S”), including but not limited to computer, networks and voice mail; and any other information that is of such a nature that a reasonable person would believe it to be confidential.

8.5. Limited IA/S Access. Seller’s access to AGILENT’s IA/S is limited to those specific IA/S, time periods and personnel authorized by AGILENT, and is subject to AGILENT information protection policies. Any other access is expressly prohibited. Seller warrants that it shall comply with these obligations and that access granted hereunder shall not impair the integrity and availability of AGILENT’s IA/S. AGILENT may audit Seller to verify compliance. Seller warrants that each employee, agent or subcontractor who performs work pursuant to the Order has been informed of the obligations contained herein and has agreed to be bound by them.

9. LEGAL COMPLIANCE

9.1. General Compliance. Seller shall comply with all applicable laws, rules, and regulations. Without limiting the generality of the foregoing sentence, Seller warrants the following:

9.1.1. Environmental Compliance. All Goods and their packaging shall comply with all applicable environmental, health and safety (EHS) laws, rules and regulations, including The General Specification for the Environment (GSE) of the U.S. Environmental Protection Agency (EPA).

9.1.2. Chemical Substances. Each chemical substance contained in Goods is on the inventory of chemical substances compiled and published by the U.S. Environmental Protection Agency pursuant to the Toxic Substances Control Act; and all required Material Safety Data Sheets, Chemical Safety Data Sheet and other product-content information shall be provided to AGILENT prior to the delivery of any Goods, and shall be current, complete, and accurate. Seller shall provide product material chemical composition data upon request to verify compliance with applicable product chemical content restrictions.

9.1.3. Substance Classification. No Goods nor any component of any Goods contain a “Class I substance” or “Class II substance” as those terms are defined by U.S. law at 42 U.S.C. Section 7671, as now in existence or hereafter amended; or has been manufactured with a process that uses any Class I substance or Class II substance within the meaning of U.S. law at 42 U.S.C. Section 7671 as amended, and of its substance classification.

9.1.4. Invoice Certification. As a condition precedent to payment thereof, Seller shall, upon request, certify each invoice as follows: “We certify that contract deliverables listed hereon were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the U.S. Fair Labor Standards Act, as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof. We further certify that any and all additional contract deliverables shall be produced in compliance with the same requirements.”

9.1.5. Procurement Regulations. If the Goods and Services are to be sold by AGILENT to the U.S. government, all applicable procurement regulations required by U.S. law or regulation to be inserted in contracts or subcontracts apply to this Order.

9.1.6. C-TPAT. In connection with providing Goods and Services to AGILENT, Seller shall comply with Customs-Trade Partnership against Terrorism (C-TPAT) or equivalent supply chain security measures. When requested by AGILENT, Seller shall demonstrate compliance by providing certification thereof to
PURCHASE ORDER TERMS AND CONDITIONS

AGILENT.


9.2 Other Requirements. AGILENT will have the right, upon reasonable request, to review Seller’s processes, books, records, and accounting practices, to ensure compliance with AGILENT’s Supplier Environmental and Social Responsibility (ESR) Code of Conduct for any transactions related to this Order until five (5) years after delivery of the Goods and/or Services. Seller will maintain complete records including but not limited to the costs of all materials and services purchased, work subcontracted to other parties and all payroll costs. All records will be maintained in accordance with GAAP or like accounting rules in other jurisdictions and in such manner as may be readily audited. A failure to provide such records upon AGILENT’s request shall be deemed a material breach of this Order.

10. BREACH

10.1. Breach by Seller. If Seller breaches any provision of this Order, AGILENT may terminate the whole or any part of this Order, unless Seller cures the breach within ten (10) working days after receipt of AGILENT’s notice of breach.

10.2. Definition of Breach. For purposes of section 10.1 above, the term “breach” shall, without limitation, include (a) any proceeding, whether voluntary or involuntary, in bankruptcy or insolvency by or against Seller; (b) the appointment, with or without Seller’s consent, of a receiver or an assignee for the benefit of creditors; (c) Seller’s failure to provide AGILENT, upon request, with reasonable assurances of performance; or (d) any other failure by Seller to comply with this Order.

10.3. Termination. In the event that AGILENT terminates this Order in whole or in part as provided above, AGILENT may procure, upon such terms and in such manner as AGILENT deems appropriate, replacement goods or services, and Seller shall reimburse AGILENT upon demand for all additional costs incurred by AGILENT in purchasing such replacement goods or services.

10.4 Rights and Remedies. The rights and remedies granted to AGILENT pursuant to this Order are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.

11. IMPORT/EXPORT REQUIREMENTS

11.1 General Compliance. Seller shall comply with all applicable import and export requirements, and shall furnish to AGILENT, upon request, information or documentation of Seller’s compliance, as well as any other information or documentation required to enable AGILENT to comply with such requirements applicable to the receipt of any Goods. Without limiting the generality of the foregoing sentence, Seller warrantees the following:

11.1.1 Certification. Upon AGILENT’s request, Seller shall provide AGILENT with an appropriate certification stating the country of origin for Goods, sufficient to satisfy the requirements of (a) the customs authorities of the country of receipt; and (b) any applicable export licensing regulations, including those of the United States.

11.1.2 Required Marking. All Goods shall be marked (or the container shall be marked) with the country of origin for Goods if Seller can reasonably do so. Goods shipped to AGILENT's facilities shall be marked with the country of origin.

11.1.3 Commercial Invoice. Seller shall issue a commercial invoice containing, without limitation, the following information: invoice number, invoice date, name and address of the shipper, name and address of the seller (if different from the shipper), name and address of the consignee, name and address of the buyer (if different from the consignee), a detailed description of the

12. MISCELLANEOUS

12.1 No Assignment. Seller shall not assign its rights or obligations without AGILENT’s prior written consent. Any attempted delegation or assignment shall be void.

12.2 Waiver. The waiver of any term or condition of this Order must be in writing. No such waiver shall be construed as a waiver of any other term or condition, nor as a waiver of any subsequent breach of the same term or condition.

12.3 Choice of Law. Without reference to any conflict of laws provisions, this Order shall be interpreted and governed by the laws of the state or locality of the “Ship To” address identified by AGILENT on the face of this purchase order. Seller hereby consents to the jurisdiction and venue of the courts of such state or locality.

12.4 LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, UNLESS EXPRESSLY PROVIDED OTHERWISE, NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY. NOTWITHSTANDING THE FOREGOING, SELLER SHALL BE RESPONSIBLE FOR ANY DAMAGES OR ANY KIND UNDER SECTIONS 9 AND 9 ABOVE AND FOR CLAIMS OF BODILY INJURY OR DEATH.

12.5 Non-Restrictive Relationship. Nothing in this Order shall be construed to preclude AGILENT from producing, distributing or marketing the same or similar goods or services as the Goods or Services provided under this Order or from purchasing such same or similar goods or services from other third parties.

12.6 Severability. If a body of competent jurisdiction holds any term or provision of this Order to be invalid or unenforceable, such term or provision will be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions of this Order will remain in full force and effect.

12.7 Insurance. When providing Services to Agilent, Seller will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect AGILENT in the event of such injury or damage, and will be in compliance with any and all laws, regulations, orders, etc. Seller further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Seller in the jurisdiction or jurisdictions in which Seller’s operations take place.

12.8 Product Discontinuance. Seller shall provide AGILENT written advance notice (hereafter “Product Discontinuance Notice” or “PDN”) of any product discontinuances as soon as possible but no later than six (6) months before the Last Buy Date (LBD). At a minimum, a PDN shall include: AGILENT part numbers, planned substitutions, and last order and shipment dates. Seller will send all PDNs to corp.discontinuance@agilent.com.

12.9 Additional Provisions. The following clauses are incorporated by reference and are applicable to the extent required by the clause:

12.9.1 FAR 52.203-13, Contractor Code of Business Ethics and Conduct (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).


12.9.3 FAR 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637(d) (2) and (3)).

12.9.4 FAR 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637(d) (4)).

12.9.5 FAR 52.222-17. Non displacement of Qualified Workers (E.O. 13495).

Flow down required in accordance with paragraph (i) of FAR 52.222-17.

12.9.6 FAR 52.222-21, Prohibition of Segregated Facilities.

12.9.7 FAR 52.222-26, Equal Opportunity (E.O. 11246).


12.9.9 FAR 52.222-36, Equal Opportunity for Workers with Disabilities (29 U.S.C. 793); 12.9.10 FAR 52.222-37, Employment Reports on Veterans.

12.9.11 FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (E.O. 13496).

Flow down required in accordance with paragraph (f) of FAR 52.222-40.

12.9.12 FAR 52.222-41, Service Contract Labor Standards (41 U.S.C. 351, et seq.).

12.9.13 FAR 52.222-50, Combating Trafficking in Persons (22 U.S.C. 7104(g)).


12.9.16 FAR 52.222-54, Employment Eligibility Verification.

12.9.17 FAR 52.222-55, Minimum Wages under Executive Order 13665.

12.9.18 FAR 52.222-56, Contractors Performing Private Security Functions Outside the United States (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

12.9.19 FAR 52.226-4, Promoting Excess Food Donation to Nonprofit Organizations (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR 52.226-4.

12.9.20 FAR 52.232-40, Providing Accelerated Payments to Small Business Subcontractors), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

12.9.21 FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

12.9.22 DFARS 252.244-7000, Subcontracts for Commercial Items.

12.9.23 DFARS 252.203-7005, Representation relating to Compensation of Former DoD Officials.
12.9.24 DFARS 252.204-7012, Safeguarding of Unclassified Controlled Technical Information
12.9.25 DFARS 252.244-7001, Contractor Purchasing System Administration - Alternate I.
12.9.26 DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System
12.9.27 The parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities; prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin; and require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

12.10 Small Business - If Seller is a “small business” as defined by the Table of Small Business Size Standards established by the U.S. Small Business Administration, the Seller acknowledges that Seller has current and accurate representations and certifications for size and socioeconomic status via the SAM website accessed through https://www.sam.gov or by returning AGILENT'S Small Business Status Renewal Form, and that representations and certifications will be updated as needed, but at a minimum, at least annually.