

MERET OPTICAL COMMUNICATIONS, INC.

Purchase Agreement for Products and Services

1. **Preamble.** This Purchase Agreement (“Agreement”) is entered into by and between the under-signed Buyer and Meret Optical Communications, Inc. (“Meret”). This Agreement is effective as of the date of the execution by Meret. This Agreement stated the entire agreement of the parties regarding the subject matter and supersedes all prior or contemporaneous agreements and communications, oral or written, with respect to such subject matter and all provisions in any purchase order, order acknowledgement or other document issued by either party. This Agreement may only be modified by a duly signed written amendment. Buyer’s purchase of services is also governed by Meret’s Terms and Conditions of Support Services (accessible at www.meretoptical.com).
2. **Ordering; Shipment.** Buyer will issue written purchase orders, which are subject to acceptance by Meret. Acceptance occurs upon issuance of an Order Acknowledgement. Changes in delivery schedules (including cancellation) made within five (5) days of scheduled delivery will be subject to a rescheduling charge of five percent (5%) of the net order value of the rescheduled portion of the order. Delivery is F.O.B. Meret’s factory/distribution site, such delivery to be made to a carrier/freight forwarder selected by Meret. If Buyer requests use of a specific qualified carrier/freight forwarder, Meret will not unreasonably withhold its consent. Meret will package products in accordance with Meret’ standard practices. Products are deemed accepted by Buyer, and title, possession and risk of loss shall pass to Buyer, upon delivery of the Products to the carrier/freight forwarder.
3. **Payment.** All items sold are invoiced in full upon shipment. Payment is due net thirty (30) days from invoice date. The purchase price does not include taxes and other charges. Buyer shall pay all taxes (other than taxes on the net income of Meret), duties, assessments and shipping, handling, insurance, brokerage and other charges. Meret reserves the right to determine Buyer’s credit limit at any time, and may delay delivery until Buyer pays all past due amounts or makes full or partial payment for future delivers. Buyer grants Meret a purchase money security interest in the products and proceeds thereof until payment has been made in full, and hereby appoints Meret or its designee as Buyer’s attorney in fact to act in Buyer’s name to execute and file documents as appropriate to perfect such interest. This appointment is coupled with an interest and, hence, irrevocable.
4. **License.** Notwithstanding any other provisions herein, Meret does not transfer to Buyer any right, title or interest to software contained in or constituting the products. Meret and/or its affiliates grant Buyer a non-exclusive license to use such software solely in connection with the products and in accordance with Meret’s End User License Agreement accompanying such software.
5. **Limited Warranty.** The products will conform in all material respects to the end user documentation provided with the products, and the hardware components of the products will be free from defects in materials and workmanship, for one (1) year after shipment. The warranty does not cover the results of accidents, abuse, neglect, vandalism, use contrary to handling or operation instructions supplied by Meret, or repair or modification by anyone other than Meret. This warranty extends only to Buyer and is not assignable. Buyer shall promptly, but not later than ten (10) days after the term of this warranty, notify Meret in writing of any nonconformity to the warranty, and provide such details as Meret reasonably requests. Buyer will, upon Meret’s request and in accordance with Meret’s return procedures, return such products to Meret at Buyer’s expense and risk. Meret will determine in its sole reasonable discretion whether products fail to conform to warranty and, as to conforming products, return such products at Buyer’s expense and risk. If Meret determines that products fail to conform, Buyer’s sole remedy shall be, at Meret’s option and expense, the repair or replacement and return of the products, or a refund of the price paid by Buyer for the products. MERET DISCLAIMS ALL OTHER WARRANTIES CONCERNING PRODUCTS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING AS TO PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR PARTICULAR PURPOSE. MERET’S OBLIGATIONS ARISING FROM CLAIMES OF INFRINGEMENT ARE SET FORTH EXCLUSIVELY IN THE NEXT PARAGRAPH. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARAY, THIS IS BUYER’S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY.

6. Indemnification. Meret will defend any suit brought against Buyer claiming that the Meret products infringe any valid United States patent, copyright, mask work, trademark or trade secret, and will pay the amount of any final judgment that may be awarded against Buyer in any such suit; provided that Buyer (i) gives prompt written notice to Meret of any such suit and furnished all papers received in connection therewith; (ii) permits Meret to control the defense and settlement of any such suit; and (iii) provides reasonable assistance to Meret in the conduct of such defense. This indemnity shall not apply to infringement caused by (i) modifications to standard products by or at the request of Buyer (whether or not with Meret's approval), (ii) combination of the products with other products or services not provided by Meret, or (iii) Buyer's failure to use the most recent release of Software provided by Meret. In the event of a claimed infringement, Meret may, at its option, elect to (i) procure the right to use the products; (ii) replace or modify the products so that they become non-infringing; or (iii) refund to Buyer the depreciated value of the infringing products (based on the straight-line depreciation of book value over a five-year life). THE FOREGOING INDEMNITY CONSTITUTES THE ENTIRE LIABILITY OF MERET AND THE SOLE REMEDY FO BUYER WITH RESPECT TO ANY CLAIM OR ACTION BASED IN WHOLE OR IN PART UPON INFRINGEMENT OF INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS.

7. Liability Limitations. Meret's aggregate liability under any and all claims relating to this agreement shall in no event exceed the fees paid by Buyer to Meret under this agreement for the products involved in such claims. This limitation is separate and independent of any warranties made by Meret and is intended to be effective notwithstanding the failure of essential purpose of any remedy related to such warranties. Neither party will be liable for any failure to perform its obligations hereunder resulting from causes beyond its reasonable control. MERET OPTICAL COMMUNICATIONS, INC. IS NOT LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES EVEN IF ADVISED OF THE POSSIBLITY THEREOF.

8. Governing Law: Export Compliance. This agreement is governed and construed in accordance with the internal law as of the State of California without application of conflict of laws principles but shall not be governed by the United Nations Convention on the International Sales of Goods. The parties consent to the jurisdiction of any court located in San Diego County, State of California and waive objection to such venue. The prevailing parting in any legal proceeding shall recover its expenses in connection therewith, including reasonable attorney's fees. Buyer covenants not to import or export products except pursuant to the laws of all relevant jurisdictions.

Therefore, the authorized representatives of the parties have executed this Agreement.

Meret Optical Communications, Inc., a California corporation with its principal place of business at:

7343 Ronson Road, Suite N
San Diego, CA 92111

By: _____

Name/Title: _____

Date: _____

Buyer: _____, a

_____ corporation with its principal place of business at:

By: _____

Name/Title: _____

Date: _____