

Cerillo 社 同意書

以下は、Cerillo 社の同意書です。本同意書の内容を十分にご確認、ご了解の上、ご同意いただける場合は、別紙の Cerillo 社 同意書（署名）にご署名をお願い致します。

※各条文（**全てではありません**）について概要をコメントに記載しておりますが、コメントは概要であり省略など含まれております。正確な内容の詳細については、**原文（英語）を必ず確認してください**。

CERILLO DEVICE PURCHASE (SALES TERMS AND CONDITIONS) AND END-USER LICENSE AGREEMENT (EULA) FOR CERILLO SOFTWARE

Cerillo Device Purchase Agreement (Sales Terms & Conditions)

Revised July 2021

The following agreement sets forth the terms of purchase and use of a Cerillo instrument.

THIS DEVICE PURCHASE AGREEMENT (“Agreement”) is a legal agreement between CERILLO, INC, a Virginia corporation with a principal place of business at 107 E Water St, Charlottesville, VA 22902 (“CERILLO”), and you, the purchaser (either an individual or an entity) and who is referred to in this Agreement either as “you” or “Purchaser.” Each of CERILLO and Purchaser is sometimes referred to as a “Party” and collectively as the “Parties.”

By using the Device or Software (as defined below), you agree to be bound by the terms of this Purchase Agreement. IF YOU DO NOT AGREE TO THE TERMS OF THIS PURCHASE AGREEMENT, DO NOT USE THE DEVICE. YOU AGREE THAT YOUR USE OF THE DEVICE ACKNOWLEDGES THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

In consideration of the mutual promises and agreements in this Agreement and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties for themselves, their successors, and assigns, do hereby agree as follows:

1. SALE

1. CERILLO hereby sells and transfers to Purchaser the device (the “Device”) as described in the Purchaser Order you have filled out on CERILLO’s website or submitted to CERILLO by other means (the “Purchase Order”) for the consideration as listed on that same Purchase Order (the “Purchase Price”), and on the terms and conditions contained herein. The Device is described in the Purchase Order. This Agreement includes a license to use the related software (the “Software”) on the terms of this Agreement and of the End User License Agreement (“EULA”), which can be found on CERILLO’s website and may be attached to this Agreement.

2. USE AND REPAIR

1. **Operation of Device.** Purchaser shall cause the Device to be operated in accordance with all applicable CERILLO instructions, manuals and publications by competent and qualified personnel.

2. **Warranty.** CERILLO provides a warranty on the Device and Software that covers repair or replacement of the Device, at the option of CERILLO for two (2) years after the date of the sale of the Device subject to the limitations set forth in Section 7 of this Agreement. If (i) such repair fails or (ii) the replacement is defective, the Distributor has the right to either claim for a reasonable reduction of the purchase price or to cancel the purchase contract and to return the Products in question, in which case, the CERILLO shall refund to the Purchaser the purchase price of the Products (or, to the extent applicable a proportion of the purchase price).

Section 3. EXPORT CONTROL

CERILLO is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act 1979), and its obligations under this Agreement are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the appropriate agency of the United States or written assurances that Purchaser will not export data or commodities to certain foreign countries without prior approval of such agency. Purchaser agrees to cooperate with CERILLO, including without limitation, providing required documentation, in order to obtain export licenses or exemptions therefrom, if required. Purchaser warrants that it will comply with the U.S. Export Administration Regulations and other laws and regulations governing exports in effect from time to time. Purchaser further agrees not to provide the Device to any organization, public or private, which engages in the research or production of military devices, armaments, or any instruments of warfare, including biological, chemical and nuclear warfare.

Section 4. OWNERSHIP OF INTELLECTUAL PROPERTY

CERILLO has rights to the intellectual property underlying the Device and Software. Neither Purchaser nor its representatives shall (i) reverse engineer the Device, (ii) disassemble the Device, including without limitation, by removing any components from their respective housings, except in connection with authorized repairs, (iii) copy, modify or make any reproduction of the Device in whole or in part through mechanical or other means, or (iv) use, inspect or analyze the Device other than solely as necessary for the use of this Device. Furthermore, Purchaser shall not, and shall not authorize any third party to, alter, modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble, or attempt to derive computer source code from the Software. Request for information necessary to achieve interoperability between Purchaser's computer systems and the Software shall be communicated promptly in writing to CERILLO and CERILLO will provide such information to Purchaser. To the extent that CERILLO provides Purchaser with access to any source code to the Software, such source code shall be deemed confidential and Purchaser shall return the same to CERILLO upon request and destroy any copies remaining in Purchaser's possession.

Section 5. INDEMNITY

Purchaser shall indemnify, reimburse, and hold harmless CERILLO, its employees, directors, consultants, agents, successors, and assigns, and the University Of Virginia Patent Foundation, which granted CERILLO a license to the Device, and its employees, directors, consultants and agents, from and against any and all losses, damages, injuries, claims, demands, actions, suits, proceedings, liabilities, costs, and expenses, including legal expenses, of whatever nature, whether related to injury or death to persons or damage to property resulting from a claim brought by a third party to the extent arising out of or connected with Purchaser's negligent acts or omissions relating to this purchase, including its negligent use of the Device or Software, except to the extent caused by CERILLO's gross negligence or willful misconduct.

CERILLO shall indemnify, reimburse, and hold harmless Purchaser, its employees, directors, consultants, agents, successors, and assigns from and against any and all losses, damages, injuries, claims, demands, actions, suits, proceedings, liabilities, costs, and expenses, including legal expenses, of whatever nature, whether related to injury or death to persons (including Purchaser's employees) or damage to property, resulting from a claim

brought by a third party to the extent arising out of or connected with or resulting from: (i) CERILLO's negligent acts or omissions; (ii) CERILLO's breach of its warranty under this Agreement; or (iii) the knowing infringement by the Device or Software of any United States patents, trade secrets or other registered intellectual property related to the use of the Device or Software, except to the extent caused by Purchaser's gross negligence willful misconduct.

Section 6. REPRESENTATIONS AND WARRANTIES

1. CERILLO warrants that (i) it has the right to lawfully sell the Device and grant the license to the Software to Purchaser as set forth in the EULA; (ii) it has full power to enter into and fully perform this Agreement without conflict with any other Agreements and, to CERILLO's knowledge, the Device or Software furnished hereunder will not infringe upon or violate any rights of any third person, including, without limitation, rights of patent, trade secret, trademark, trade dress or copyright; and (iii) the Software will be free from computer viruses, worms, time bombs, Trojan horses and other malicious code, files, scripts, agents or programs.
2. Purchaser warrants that it has full power to enter into and fully perform this Agreement without conflict with any other agreements.

Section 7. DISCLAIMERS

THERE ARE NO UNDERSTANDINGS, AGREEMENTS, REPRESENTATIONS, OR WARRANTIES, EITHER EXPRESS OR IMPLIED (INCLUDING ANY REGARDING THE MERCHANTABILITY OF THE DEVICE OR SOFTWARE, OR THE FITNESS OF THE DEVICE OR SOFTWARE FOR A PARTICULAR PURPOSE) NOT SPECIFIED HEREIN, RESPECTING THIS AGREEMENT OR THE DEVICE AND SOFTWARE. THIS AGREEMENT STATES THE ENTIRE OBLIGATION OF CERILLO IN CONNECTION WITH THIS TRANSACTION.

CERILLO IS NOT RESPONSIBLE FOR MISUSE OF THE DEVICE OR SOFTWARE BY PURCHASER. PURCHASER, IN ITS SOLE DISCRETION, MUST DETERMINE THE SUITABILITY OF THE DEVICE AND SOFTWARE FOR ITS PURPOSES. THE LIMITED WARRANTY SET FORTH IN THIS AGREEMENT DOES NOT EXTEND TO ANY LOSSES OR DAMAGES DUE TO MISUSE, ACCIDENT, ABUSE, NEGLIGENCE, NORMAL WEAR AND TEAR, NEGLIGENCE, UNAUTHORIZED MODIFICATION OR ALTERATION, REPAIR, HANDLING, MAINTENANCE OR APPLICATION OR ANY OTHER CAUSE NOT THE FAULT OF CERILLO AND SHALL NOT APPLY TO AND DOES NOT COVER ANY DEVICE OR SOFTWARE: (1) WHICH HAS BEEN ALTERED BY A PARTY OTHER THAN CERILLO; (2) WHICH HAS BEEN SUBJECTED TO IMPROPER HANDLING, USE, MODIFICATION, OR ALTERATION; OR (3) WHICH HAS BEEN SUBJECTED TO MISUSE, NEGLIGENCE, ABUSE, ACCIDENT OR WEAR AND TEAR.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE DEVICE AND SOFTWARE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CERILLO'S LIABILITY TO PURCHASER, ITS AFFILIATES, AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, SUCCESSORS AND/OR ASSIGNS, EXCEED THE PRICE PAID BY PURCHASER FOR THE DEVICE AND SOFTWARE HEREUNDER. PROVIDED, HOWEVER, THAT THIS SHALL NOT APPLY TO ANY LOSS OR DAMAGE RELATED TO OR ARISING FROM CERILLO'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

Section 8. ASSIGNMENT

Purchaser shall not, without the prior consent of CERILLO, which consent will not be unreasonably withheld,

assign or otherwise transfer its rights and obligations under this Agreement to any third party. However, this provision shall not apply to the transfer by Purchaser to an Affiliate or Related Party of Purchaser. “Affiliate” shall mean an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified. The term “control” (including the terms “controlling”, “controlled by” and under “common control with”) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of at least 51% of the voting securities, by contract, or otherwise. A “Related Party” shall include collaborators with the Purchaser in scientific research requiring the use of the Device and Software where the collaborators and the Purchaser have a documented bona fide professional relationship.

Section 9. BINDING EFFECT

The terms, provisions, and conditions of this Agreement shall be binding on the parties hereto and on their respective successors and permitted assigns. Any causes of action arising from this Agreement shall survive the termination of this Agreement.

Section 10. MERGER, AMENDMENT, AND WAIVER

This Agreement, in conjunction with the terms and conditions of the EULA, supersedes all previous agreements between the Parties with respect to the subject matter hereof, and constitutes a final written expression of all the terms of the agreement between the Parties. No amendment or waiver of the terms, provisions, or conditions of this Agreement shall be effective unless in writing and executed by the parties. No delay or failure by a Party to enforce any right or obligation hereunder shall be deemed to be a waiver of such right or obligation nor shall any waiver of any specific breach of this Agreement be deemed a waiver of any other or additional breach, similar or dissimilar.

Section 11. LEGAL RELATIONSHIP

This Agreement and the relations established by and between the Parties under this Agreement do not constitute a legal relationship (such as a partnership, joint venture, agency or contract of employment) between them by which one Party may be considered liable for the debts or obligations of another Party, except to the extent expressly stated in this Agreement.

Section 12. TERMINATION

1. **Termination for Breach.** This Agreement may be terminated by either Party by written notice of termination to the other Party if such other Party materially breaches any material term or condition of this Agreement and fails or is unable to remedy the breach within sixty (60) days after being given written notice stating the non-breaching Party’s intent to terminate.
2. **Effect of Termination.** If Purchaser is the breaching Party, then upon termination its rights to use the license granted hereunder will terminate. As to either Party, upon termination the non-breaching Party will be entitled, subject to the limitations in Section 7, to appropriate remedies agreed to by the Parties through negotiation or mediation or, if the Parties cannot agree, then by a court of competent jurisdiction.
3. **Survival of Rights.** The rights and obligations set forth in Sections 3, 4, 5, 7, 9, and 11 and the EULA shall survive and continue after any termination of this Agreement.

End-User License Agreement (EULA) for CERILLO Software *Revised June 2021*

This CERILLO End-User License Agreement (“EULA”) is a legal agreement between PURCHASER (referred to as “you”), the end-user, and CERILLO INC (“CERILLO”) regarding the use of the CERILLO Stratus (“the Device”), including software and related documentation (“SOFTWARE”).

By using the Device or SOFTWARE, you agree to be bound by the terms of this End User License Agreement. IF YOU DO NOT AGREE TO THE TERMS OF THIS END USER LICENSE AGREEMENT, DO NOT USE THE SOFTWARE. YOU AGREE THAT YOUR USE OF THE SOFTWARE ACKNOWLEDGES THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

Upon your execution of this EULA, CERILLO will grant you a non-exclusive license to use the Software on an “AS IS” basis as set forth below.

The SOFTWARE is licensed, not sold.

1. **GRANT OF LICENSE.** Subject to the terms and conditions of this EULA, CERILLO hereby grants to you and your Affiliates a limited, nonexclusive, nontransferable, non-assignable license (without right to sublicense, except with the approval of CERILLO) under CERILLO’s licenses, copyrights and trade secrets to use the SOFTWARE in conjunction with the Device. No rights or licenses under any of CERILLO’s patents or licenses are granted by or shall be implied from the license of the SOFTWARE or the sale of the Device except as set forth in the Device Purchase Agreement (“the Agreement”) and this EULA.
2. **RESTRICTIONS.** Except as otherwise set forth in this EULA or the Agreement:
 - You must maintain all proprietary notices on all copies of the SOFTWARE.
 - You may not distribute copies of the SOFTWARE to third parties other than Affiliates.
 - You may not reverse-engineer, decompile, disassemble, or otherwise attempt to derive source code from the SOFTWARE.
 - You may not copy (other than as provided above), distribute, sublicense, rent, lease, transfer or grant any rights in or to all or any portion of the SOFTWARE.
 - You must comply with all applicable laws regarding the use of the SOFTWARE.
 - You may not modify or prepare derivative works of the SOFTWARE.
 - You may not use the SOFTWARE in a computer-based service business or publicly display visual output of the SOFTWARE.
 - You may not transmit the SOFTWARE over a network, by telephone, or electronically by any means.
 - You must comply with all notices, restrictions and terms and conditions of any third-party software or open source code libraries or tools included in the SOFTWARE.
3. **TERM AND TERMINATION.** Your rights under this EULA are effective until termination. You may terminate this EULA at any time by destroying the SOFTWARE, including all computer programs and documentation, and erasing any copies residing on your computer. CERILLO may terminate this EULA pursuant to the terms of the Purchase Agreement. Your rights under this EULA will terminate if you terminate this EULA, as provided above, or if you materially breach any of material term or condition of this EULA and fail or are unable to remedy the breach within sixty (60) days after being given written notice from CERILLO stating CERILLO’s intention to terminate the EULA. Upon any termination of this EULA, you agree to destroy the SOFTWARE and erase any copies residing on your computer.

4. **RIGHTS IN SOFTWARE.** As between you and CERILLO, all rights and title in and to the SOFTWARE and any copies thereof are owned by CERILLO. This EULA is not a sale and does not transfer to you any title or ownership interest in or to the SOFTWARE or any patent, copyright, trade secret, trade name, trademark or other intellectual property right therein. You shall not remove, alter, or obscure any proprietary notices contained on or within the SOFTWARE and shall reproduce such notices on any back-up or other copies of the SOFTWARE. All title and intellectual property rights in and to the content which may be accessed through use of the SOFTWARE is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This EULA grants you no rights to use such content, except as provided in this EULA.

5. **DEVICE PURCHASE AGREEMENT.** This EULA is part of the Purchase Agreement and, in conjunction with the Purchase Agreement, constitutes the final written expression of the understanding between you and CERILLO. Any terms in the EULA with an initial capital letter which are not otherwise defined in this EULA shall have the meaning ascribed to them in the Agreement.

